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Handbook of Criminal Law

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on the point to make entirely clear to the reader exactly what is referred to by the statement, than to actual mistake. One of the fine qualities of this book is the pithy summary in a sentence appended to the case citations of the point of the case and the fact situation involved in it. The footnotes bristle with such annotations, and only one who has attempted this type of work can quite appreciate how well it has here been done. No doubt Professor Borchard's assistant, Miss Phoebe Morrison, deserves a part of the credit for such features of the book as this, if she has done for him what the best research assistants have done at one time or another for most of us.

Professor Borchard is to be commended, and the profession of lawyers and legal scholarship congratulated on the appearance of this book.

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CRIMINAL LAW. By Justin Miller. St. Paul: West Publishing Co. 1934. Pp. xiii, 649.

Even an elementary and brief text-book on criminal law by the chairman of the Section on Criminal Law of the American Bar Association will be bound to receive the interest and attention of students of that subject. Unfortunately, as the author himself recognizes in his preface, the brevity of the work, together with the Hornbook method of concise, dogmatic assertions, give a simplicity and apparent unanimity to the rules and cases that unhappily are far from true, but in these days of thousands of cases, where authority can be found for any proposition whatsoever, it is perhaps a desirable thing to give up an attempt at nearer completeness, in order to furnish us instead with definite statements of what an author with his experience considers to be the better or best rule.

In arrangement the book rather definitely follows the same publisher's earlier Hornbook, by Clark, but there is sufficient change in material and outlook so that it seems quite correct not to refer to it as merely a new edition of the earlier work. Needless to say, the cases have been brought down to date, although the date on the preface (January 1, 1934) makes the book seem older than it really is. From this general likeness to Clark's book, it follows that the presentation of the subject is along thoroughly orthodox, accepted lines—a fact which, while it makes it a dependable, informative book to put into students' hands, also makes it a difficult one to review. There are no salient innovations to awaken either pronounced agreement or equally pronounced disagreement. Comment is almost obliged to descend to details, a state of affairs alike unsatisfactory to reviewer and reader. Thus, in the reviewer's opinion, too much space is given to the obsolete distinction between justifiable and excusable homicides. Perhaps this is merely one illustration of the author's tendency to look mainly backward at what the cases have held, not forward at what they should hold—a modest but unfortunate tendency, in view of the value which his opinions are certain to have. Occasionally it seems as if greater clarity might have been gained by a slightly different arrangement of the subject matter. Thus, aggravated assaults are taken up just before batteries. This is confusing. Despite the fact that they are called aggravated "assaults", they would much more accurately be considered as aggravated batteries, as they normally are composed of a battery plus some further harmful ingredient. To treat of them before simple batteries are dealt with, means handling the complex before the simple. Furthermore the black letter heading to this section gives the definite impression that the further harmful ingredient making it an "aggravated" battery

can only be one bearing on the intent with which the act of battery is accompanied. This of course leaves no apparent place for such aggravated batteries as, for example, assault with deadly weapon, assault while hooded, etc.

Another instance of what seems to the reviewer a peculiarity of arranging the material occurs in the sections on self-defense. There is, first of all, a discussion of what an innocent, attacked person may do. Then comes treatment of what an aggressor, after withdrawal from the fight, may do. And then there is a return to the innocent party by discussing whether he must retreat, if feasible. Why not finish with his rights and duties before going on to another subject?

A further example of too great a reverence for the orthodox is in the preservation of that absurd old *cliché,* that a battery is a touching in "an angry, revengeful, rude, insolent or hostile manner." The politeness of a Chesterfield and the motives of a saint will not now, and never would, keep a blow from being a battery, if there was no consent. Why cumber the definition with such junk?

A useful feature, properly modernized, is found in chapter 16, which gives attention to federal and state laws on monopolies, tax violations, etc., although it comes with a start of surprise that this same chapter deals not only with the Sherman Anti-Trust law but also with sodomy, bigamy and similar aberrations.

The author's purpose, as he states in the preface, was to create a safe guide to put in the hands of the hurried attorney or trial judge as well as a useful explanatory text for the student. The small criticisms of arrangement and conservatism which have just been made do not alter the fact that these purposes have certainly been successfully achieved by the author.

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TWILIGHT OF THE SUPREME COURT. By Edward S. Corwin. New Haven: Yale University Press. 1934. Pp. xxvii, 237.

In four related, but not closely integrated, lectures Professor Corwin discusses the history of our constitutional theory and its bearing upon the effort of the national government to exercise a national power "commensurate with the national scope of our economy." Perhaps it is mere chivalry, or a joyous love of battle, rather than admiration for the lady in distress, that entices the lecturer to enter the lists to do incidental battle for Mademoiselle Nira. Whatever the motive [and the author does not hesitate to avow a "sympathetic interest in the larger features of the New Deal," (p. xxvii) and these "larger features" are well stated and with apparent approval (p. 148)], the strategy is admirable and convincing. However, while history plus logic plus a depression may equal a New Deal, or a governmental policy unincumbered by theories of *laissez faire* or "dual federalism"; when there is added an unknown quantity, the Supreme Court, to the equation the result may be the Old Order in all its depressing ugliness. In view of the recent decisions of the Supreme Court in the oil case[1] and the gold clause cases[2] it is evident that Mademoiselle Nira is not entirely out of the judicial woods and that she may still meet with the big black wolf.

Professor Corwin's discussion of constitutional theory bears generally upon the part played by the Supreme Court in the fashioning of legislative policy, and immediately upon its probable attitude toward the New Deal. Our constitutional

[1]Panama Refining Co. v. Ryan, 55 Sup. Ct. 241 (1935).
[2]55 Sup. Ct. 407 (1935).