

decided that "extraordinary conditions do not create or enlarge constitutional power and can not justify governmental action outside the sphere of constitutional authority." The failure of Justice Cardozo to dissent in the Schechter case tends to show that even though he had always been considered a liberal-minded jurist, and, to the extent to which his leanings have been revealed by decisions prior to the Schechter case, in favor of legislative social experiments; still he is as yet unwilling to broaden his concepts of constitutionality to embrace the statutes complained of in the Schechter case. Whether his liberalism stops at this point or merely marks time until he feels that changed situations and viewpoints demand a broader conception are things which we have no means of knowing in advance.

The book requires but one finishing touch to be complete. It is only natural that, after watching Justice Cardozo the craftsman sitting upon his bench and operating his legal machinery, one wonders how this eminent jurist acts in his role as an ordinary citizen. A few sentences in a foreword by Dean Roscoe Pound relate something of the great man's early legal life but fall short completely of satisfying one's desire to know more about his private life.

DONALD J. HOLLINGSWORTH.

CRIMINAL LAW IN ACTION. John Barker Waite. Houlston House, Sears Pub. Co., N.Y. 1934.

"Criminal Law in Action" is a metaphor. It connotes official activity of policemen, prosecuting attorneys, defense counsel, jurors, judges, and all other officials by whom the mandates of the law are translated into action and through whose activities alone, the law has any observable effect. Law does not act; it can not act. It is nothing more than "a statement of acts which human beings are expected to perform or to refrain from performing." If one of the mandates of the law is broken, law itself does not punish the violators, it merely declares what other persons shall do in order to punish the violators. "Able men can make deficient law effective, but the most perfect law will be inoperative and futile if its administrators are incompetent and inefficient." For that reason most of "Criminal Law in Action" deals with agents of the law, rather than with the law's provisions.

The author wants it specifically understood that the purpose of this book is exposition and not advocacy. In other words he does not wish to advocate any changes or reforms but desires simply to explain the failures of the criminal law in action as he himself, through many years of study, and actual contact, has come to know and appreciate them.

The jury system, as one could anticipate, comes in for a large part in "Criminal Law in Action." Men can be punished only through verdict of a jury and this is not merely theory but courts follow it meticulously in practice. The jury is supreme in its power to acquit a defendant but its convictions are subject to review and reversal.

All praise for the jury system is in terms of advantage to the defendant, that it is not likely to convict innocence, never of its efficacy in protection of society. The author expounds the view that the jury system is also an obstacle to the progress of justice and the imposition of deserved punishment. American trial practice is rife with suspicion of the intelligence, the honesty, and the motives of jurors. Mr. Waite seems to be in favor of judges being permitted to express their opinions concerning the facts so that the juries can profit from their greater experience in gauging witnesses and evaluating evidence. American legislators, however, have been afraid that judges would express strongly prejudicial and, perhaps, dishonest opinions and afraid that juries would weakly and stupidly surrender their privilege of independent judgment and follow the judicial desires. The whole situation presents an illuminating inconsistency of insistence upon the desirability of jury verdicts, coupled with complete distrust of jury's capacity for intelligence, independence of opinion.

The author says the jury system should be retained, however, for the sake of its obstructive value in preventing possible injustice to individuals. Value of the jury system is directly related to the character of the jurors which in turn depend upon honesty of the jury commissioners and the industry and courage of the judges. "The jury system is not and can't be better than the men who manage it."

In a similar manner are the other agents and administrators of our criminal law viz. the policemen, judges, prosecuting attorneys and defense counsels taken up. And since the author is considering why enforcement is not better than it is he notes more particularly the incompetencies and failures in its administrations. However, he does not lack appreciation of those who serve society well but he has striven to "see, why, despite the efforts of these admirable servants, the administration of criminal justice is so unsatisfactory." Thus in various chapters in this treatise we are shown the evils, the failures and the faults, rather than the saving graces of these divers and sundry officials who translate the mandates of the law into action.

Much space is also given to the part the newspapers play in the administration of our criminal law. Newspapers often interfere with expedition, fairness and character of criminal trials by prejudicing juries.

They can make a trial a farce by printing hearsay evidence, prior convictions, rumors and untested statements that rules of fairness exclude. If there is any merit in the theory that crime can be repressed by fear of punishment, the ineffectiveness of criminal law is no more the fault of policemen, judges and juries than it is the consequence of distorted news values of the press.

The public itself must share responsibility for the law's inefficiency because it does not seriously scorn and condemn law breakers, it does not really desire all of its laws enforced, and it fears and distrusts its own enforcement employees too keenly to authorize the mechanics essential to greatest efficiency. The public even goes so far as to respect the criminal. "We can't absolve ourselves until we have attested our own express attitude toward crime, and even more particularly, until we have done everything possible to improve the character of our enforcement personnel."

In a very clear and logical Epilogue the author sets forth the view that the law's new purpose will be the elimination from society of those persons whose actions show that they can't be safely allowed to mingle freely with their fellows. Its objective will no longer be the hope of frightening potential criminals into circumspection by more punishment of those criminals who are caught. The primary aim will be to get rid of those individuals who are known to be dangerous to the continued peace and safety of society.

This treatise is one which will not only appeal to those who have had legal training but will also be appreciated by the layman whose views as to why the criminal law fails are generally narrowed in scope because of the lack of enlightenment.

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