March 1933

Book Reviews

Chicago-Kent Law Review

Follow this and additional works at: https://scholarship.kentlaw.iit.edu/cklawreview

Part of the Law Commons

Recommended Citation
Available at: https://scholarship.kentlaw.iit.edu/cklawreview/vol11/iss2/4

This Book Review is brought to you for free and open access by Scholarly Commons @ IIT Chicago-Kent College of Law. It has been accepted for inclusion in Chicago-Kent Law Review by an authorized editor of Scholarly Commons @ IIT Chicago-Kent College of Law. For more information, please contact dginsberg@kentlaw.iit.edu.
BOOK REVIEWS


In these days when we are continually receiving large numbers of books containing reports of decisions, digests, statutes and commentaries on substantive law, it is refreshing to find that there is still a demand for books which emphasize the practical side of the legal profession, namely, the art of advocacy. Three years ago, the author of this book brought out his biography of Marshall Hall under the title "For the Defense," a book which received immediate attention and has proved to be one of the best sellers in legal literature. Unless we are mistaken, this new volume will contend closely for the first place among the author's productions.

In considering the career of Edward Carson for the purpose of this review, it would be well to eliminate the consideration of his political activities as a member of Parliament, as a leader of the Unionist forces in North Ireland, and as a member of Balfour's cabinet. It is preferable to consider the record which he made for himself in the trial of cases, and here he stands with the four or five great advocates of the generation which is now passing away on the English stage. He can be mentioned in the same breath with Birkenhead, Rufus Isaacs (later Lord Reading), Marshall Hall, and Charles Mathews.

While his career began in Ireland where, as the attorney for the Crown, he prosecuted a number of violations of the Crimes Act, it was only when he arrived in London and became a King's Counsel that he really made his distinguished reputation. His first great case was the trial of the case between the Marquess of Queensbury and Oscar Wilde, in which an action for criminal libel was brought against the plaintiff for relating that the defendant had committed an unmentionable offense. The plaintiff undertook to justify upon the ground that the writings of the defendant could be interpreted only upon the assumption that he had committed the particular offense in question. But the de-
fendant did not stop here. By following out that meticulous course of preparation which distinguished him in his official career, he was able to locate a number of witnesses who would support his defense. Carson’s strongest point was in his cross-examination, and there is abundant authority, altogether apart from the present book, that he stood head and shoulders above the other members of the English bar in this particular, yet his cross-examination of Wilde, effective as it was, had not been sufficient to break down his testimony in any substantial degree. At this point, the plaintiff rested. The defendant then, in his opening address, electrified the court by stating that he would call as witnesses in the case those persons who, of their own knowledge, could support the plea of justification in regard to the commission of the offense in question. Without being forced to call a single witness, Wilde’s counsel, for the purpose of giving him an opportunity to escape from England, took a non-suit in the action; but the night upon which this course was taken, before the plaintiff had an opportunity to get to France, he was arrested on a criminal charge and as is well known, was subsequently convicted and served a sentence in jail.

Carson was peculiarly strong in actions for libel against newspapers. In the case of *Cadbury v. Standard Newspapers*, he was able to obtain a judgment against the defendant for one farthing only, where, from the evidence at the close of the trial, it seemed quite probable that damages would be very much larger. On the other hand, when he appeared for Lever in his suit against the Harmsworth syndicate, his presentation of the case was so strong that before the jury had an opportunity to consider the matter, the defendant voluntarily offered to pay fifty thousand pounds damages, which was quickly accepted by the plaintiff. This is said to be the largest damage in a libel suit ever given in an English court.

A number of other interesting cases were tried by this English barrister will be enjoyed by the reader. *Carson the Advocate* can be recommended to the young attorney as a fascinating and a most readable book on the actual practice of the profession.

Upon reading a history of the project to restate the law of contracts, one is first awed at the magnitude of the task, the forcefulness and courage of those who undertook it. In the second reaction the reader is inclined to ask whether the time, effort, and money expended have resulted in equivalent value. The answer depends on what result is expected.

If the Restatement is expected to be an authoritative codification of the law, it will fail to fulfill expectation. Courts already have alluded to it and repudiated its statements. If a textbook is expected, it will prove inadequate, since theories and reasons are not given for its statements. If an encyclopedia is wanted, it will prove useless, for the Restatement is not annotated. The only authority for its statements is that of the American Law Institute.

But, the object of the Restatement is not to outline what the law should be nor to influence judicial decision; its purpose is "to state clearly and precisely, in the light of the decisions, the principles and rules of the common law." It is beside the point that it might well be the basis for uniform legislation.

The Restatement will serve to simplify a difficult subject. It will be found useful by practicing attorneys who wish a hurried review of some phase of the subject, by students who wish to summarize their knowledge of contract law, and by professors who are met with the difficult problem of selecting from a maze of conflicting decisions one line of authority upon which may be placed the stamp of approval. This stamp of approval is herein placed on principles of law recognized in judicial decision by such eminent jurists and students of the law as Samuel Williston, William E. McCurdy, and Zechariah Chafee, Jr., of Harvard University, Arthur L. Corbin of Yale University; Merton L. Ferson of the University of Cincinnati, Dudley O. McGovney of the University of California; William H. Page of the University of Wisconsin; George J. Thompson of Cornell University; and
Edgar N. Durfee of the University of Michigan. It would be presumptuous to criticize the judgment of such men in their analysis of cases and selection of contract principles. No one should hesitate to accept the statement of the Institute as a prima facie correct statement of the law. It would be a great boon if judges would lean favorably toward the Restatement in deciding their cases and digress only when good reason should be shown to the contrary.

A Herculean task such as this should not be passed by lightly. The work has been so widely heralded that it might not receive due award were it to be judged solely from the surface. In reading it, one must bear in mind the time and effort and judgment that lies back of each statement.

The Institute was organized in February, 1923. At that time, a committee of leading lawyers, who were gathered by the Association of American Law Schools, invited to a conference the following: judges from courts of last resorts in every part of the country; law professors of renown; officers of bar associations; representatives from the National Conference of Commissioners upon Uniform State Laws, the American Judicature Society, the International Law Association, and the Institute of Criminal Law and Criminology; and recognized leaders of the bar from every part of the country. This meeting authorized the formation of a corporation, the American Law Institute. A council which was created to direct the work divided it into the subjects of Contracts, Torts, Conflict of Laws, Agency, Business Association, and so forth; and for each subject a reporter for the original drafting of the restatement of his subject was selected.

Samuel Williston was selected as reporter for the subject of Contracts, and the others already named were chosen to act as advisers. As the reporter progressed with his work he submitted drafts to a meeting of his advisers. When the advisers and reporter came to an agreement, the text was submitted to the Council. Amendments were made and the statement returned to the reporter for redrafting. When this work was done and finally approved, every member of the Institute was sent a copy, and his comments were called for. Most of the states organized committees to examine the work and copies were sent to them
also. Criticism was sent in to the Council and the work was finally finished in 1932. The result is the present two volumes.

A splendid table of contents and a compact but complete index render the volumes readily usable. The entire work is divided into eighteen chapters, each one of which carries a number of subtopics. Within the subtopics are paragraphs numbered consecutively throughout the work, each of which states a principle. The principles in boldface type are followed by comment and illustrations. Annotations are being prepared in separate volumes, state by state.

It remains to be seen whether the Restatement will have moderate or superlative success. The worthiness of the object warrants great success. In any event, the Carnegie Corporation for promotion of knowledge and understanding in the United States deserves due credit for its grant of funds which made the work possible.


As a successor to Five Hundred Criminal Careers, Glueck presents this series of essays on the problem of probation in our system of criminal justice, in commemoration of H. C. Parsons, penologist, that purport to take up the probation problem from the point of view of the criminologist, the social-case worker, the judge, and the prison official.

Probation, a relatively recent development in penal treatment, has for its most characteristic feature the suspension of sentence over a period of time during which the probationer is under the constant supervision of a probation officer. It differs from conventional penal treatment in that the "criminal" is not sent to any penal institution at all but is permitted to associate in the open world under some definite restrictions. It differs from parole in that this somewhat limited freedom is granted immediately rather than after a period of incarceration. From both a theoretical and practical standpoint probation affords the greatest opportunity for the "criminal" to "make good." He does not suffer from a reputation of being an "ex-convict," while of
course under a certain degree of opprobrium. If his social behavior patterns have not definitely developed anti-social trends, he will not be further "contaminated" by a prison environment. He will generally have some sort of employment and will thus not be a burden on the state, as he otherwise would be if incarcerated. Probably the most advantageous feature is its economy. It does not necessitate the maintenance of costly buildings nor the employment of great numbers of men, as in a prison. But it does not meet with public acceptance, because it lacks the feature of "punishment," in that the "criminal" is treated so humanely. This feature of the system has hampered its development constantly; but with the gradual change in public opinion it is probable that probation will be a more popular type of penal treatment.

Apart from these general aspects of criminology, this book contains two chapters on the legal problem of probation—one by Sam Warner, professor of penal law in Harvard Law School, on the general legal status of probation, and another by Judge Ullman of the Maryland Bench on the practical legal problems in the administration of probation. Parenthetically, Sam Warner's was the report on criminal statistics to the Wickersham commission that aroused such furor among the police when he announced that practically all their statistics were essentially worthless, either as inadequate or juggled. While Professor Warner seems to entertain the opinion that some form of probation was used by the old English criminal courts, it is today wholly statutory in the United States. It is generally accepted that the granting of probation is entirely a matter of judicial discretion, that the "criminal" has no right other than to be considered for probation. If the judge goes through the form of investigating the "prospects" of success, that is all that he can demand; the grant of probation must rest in sound judicial discretion. If probation is decided upon, the "criminal" is conditionally released from custody, or his bond is canceled, but his sentence is merely suspended during the probation period. The condition imposed is that he shall "make good." If this condition is broken, the "criminal" will be subject to the full imposition of the original sentence.
judge Ullman has a chapter on the judge's problem in deciding whether or not probation shall be granted. The judge usually finds utterly no assistance from past decisions, for these are few in number and usually very unsatisfactory in that most of them assume that probation shall be granted or denied and then go on to discuss the legal consequences. The judge must rely to a very great extent upon the advice of social workers who have investigated the man's family history and general environment, and upon the report of the psychiatrist (assuming that mentality is an important factor in success on probation). At present, it is largely a matter of guess-work. In this aspect of the problem sociologists and criminologists can offer some assistance by determining the relative chance of success or failure on the basis of study of past probationers, such as that pursued by Professor E. W. Burgess and Clark Tibbitts in their Illinois study on parole and the Gluecks in their Massachusetts study. But the field of study is as yet almost entirely undeveloped. A brief survey of it is found in the chapter by Professor Thorstein Sellin.

The book concludes with several chapters on the administration of probation in several European countries, notably Great Britain, France, and Germany. While the essays are somewhat sketchy, the book on the whole is a relatively satisfactory symposium, and it should arouse the attention of those interested in penal administration.


The author presents a successful attempt to ascertain what interrelations, if any, exist between the formal legal boundaries defining jurisdictional districts and the economically and socially interdependent metropolitan area, and to determine to what extent the increasing volume and complexity of modern legal controversies within such a metropolitan area transcend the formal legal boundaries. The book is the result of one of the recent social science studies in regional areas conducted at the Uni-
versity of Chicago under the direction of Professor Charles Merriam. The area of study was determined, after considering such factors as retail trading, commutation, telephone service, and free delivery zones, as that included within a fifty-mile radius from the center of Chicago, embracing northeastern Illinois, northwestern Indiana, and southeastern Wisconsin. Within this metropolitan area, the economic and social interests of which all focus on Chicago, were found a vast medley of local judicial authorities, numbering some 556 independent courts, with utterly no co-ordination and only random co-operation. In other words, the judicial system of metropolitan Chicago affords to the political scientist an excellent example of "governmental lag."

Within the metropolitan area, the structure of the judicial system is unnecessarily multiple, overlapping, and artificially rigid, bearing utterly no correspondence to the community of daily activities. Haphazard arrangements of calendars with resulting implications of expensive delays and unlimited continuances are naturally inevitable consequences. Lacking some centralized authority performing administrative functions in assigning cases, there can be no efficient distribution of cases, except in some of the Chicago courts where chief justices perform such functions. The dockets of many courts exercising duplicate jurisdiction are crowded and idle intermittently. One redeeming feature of this labyrinthine judicial system, to the lawyer at least, is that it affords him a vast opportunity for selection, dependent upon such factors as speed, simple procedure, low costs, or the reverse, and favoritism by court officials (as the clerk or master). The author points out many surprising facts, such as the actual functioning of justices of the peace within the city of Chicago contrary to constitutional provisions, the trial of cases in the suburbs with transcripts of record to Chicago where execution is issued to save costs.

Responsibility for this inefficient and complex system is placed upon the state authorities and state constitution rather than upon the local desire for "home rule," for the Illinois Constitution contains detailed provisions governing the administration of the judicial machinery that effectively prevent or hinder any radical reorganization looking toward speed and efficiency of the system.
Lepawskey points out the important function that private investigatory bodies, such as the Chicago Crime Commission and the Chicago Motor Club, perform in supervising court activities. The former non-governmental supervisory body has a record system eminently superior to that found in any official agency, through which it is able more intelligently to evaluate and correlate the work performed. An illuminating instance is cited where, upon the non-appearance of the defendants in a murder case in the criminal court, the state’s attorney moved to have the charge stricken with leave to reinstate, because neither the sheriff nor the police reported the defendants in their custody. The watcher of the crime commission reported the incident to his superior, who, the next day, through an excellent system of cross-indexes, was able to inform the officials that the defendants were in Pontiac serving time for robbery.

The author recommends an elimination of judicial deadwood—idle justices of the peace, city and mayoral courts—the creation of an assigning officer in the larger court systems where some degree of specialization is possible, with consequent centralization of responsibility, enlargement of the judicial administrative area through the agency of local and state compacts, if necessary, to embrace the entire metropolitan area, with establishment of district and branch courts. The need for some central agency of judicial supervision is indicated.

It is submitted that in any program of judicial reorganization the emphasis should be placed more upon the personnel of the courts rather than on a mere substituted structure. Any such a reorganization scheme should leave the details to be gradually evolved by the courts through their rule-making power rather than by detailed legislative enactments.

As illustrative of the application of social science methods and points of view this work will unquestionably be of interest to lawyers and students interested in judicial administration.