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Book Review: Theft, Law and Society, By Jerome Hall

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against restrictive action by a populary majority, and sometimes it is well that there be just such a check.

The functions of government are necessarily increasing. Private enterprise, private industry, must be subjected to more and more regulatory legislation. Regulation through administrative boards is the only effective device for supervision. The idea of vested rights must not be permitted to excuse exploitation of natural resources and classes of people by any particular group of persons in the state. As a matter of policy the Court, perhaps, should choose to permit legislatures, state as well as national, to enact and enforce more legislation affecting other interests even than industrial activity. The Court's decisions in these cases must be subjected to careful criticisms based upon the critics' understandings of the matters of policy involved. The Court must not be permitted to hide behind worn-out maxims about their applying and interpreting the laws of the land. But sometimes it will not be wrong "in principle," in the minds of the critics, for example, when the Court chooses to interfere with the enforcement of some act of a legislature, particularly a state legislature, but conceivably an act of Congress itself, which legislation does seriously affect the private individual's privilege to criticise, to speak freely ,to believe as he chooses. The power should be there to be exercised when necessary. The chance for safety is worth the risk of mistake.

Most lawmen are ready to concede that the presence of this power of judicial review in the Supreme Court is an historical accident. But the device is a useful one. It means that there is a tremendous responsibility placed upon the men on the bench. It means that the judges must be statesmen, not merely lawmen. The man on the street, the men in the billboard picture, might not be so sure of their allegiance to the Constitution if they knew what the powers are that five men on the bench can exercise in unison. The Constitution, in the words of the present Chief Justice, is what the judges say it is.[2] They are not omniscient. But they are as impartial as human beings can be. A lot of what passes for constitutional law is comparable to Blackstone's hocus-pocus, but the traditions of the profession are a serious check upon arbitrary decisions. Many, perhaps most, of the understanding lawmen believe that the "system" is a good one, and are willing to let a part of the future, at least, rest upon the doctrine of judicial supremacy.

VERNON X. MILLER.

Theft, Law and Society, By Jerome Hall, The Benjamin Research Fellow, Harvard Law School. 1935. One Volume, pp. xxxv-360. Little, Brown, and Company, Boston, Massachusetts.

Professor Hall has contributed a most noteworthy monograph on the law of Theft. Professor K. N. Llewellyn of Columbia Law School wrote the introduction. This book will undoubtedly have a great influence on the course of legislation in the years to come.

Hall's thesis is that the law of theft grew in answer to changing social needs as fiction after fiction was used to extend the scope of existing laws or limit the operation of existing laws; and further, that modern society must recast its laws of theft because they no longer answer our needs.

The subject matter of the book is interesting to lawyer, criminologist and sociologist alike. Beginning with the famous Carriers Case of 1473 Hall carries forward the historical development of the law of larceny. The Carriers Case

[2] See the author's "salutation" on page xxvii of the book under review.

was the turning point in which it was held that a carrier who converted the contents of several bales of merchandise was guilty of a crime rather than a simple civil offense. This case as well as later ones showed the great difficulty of adjusting the law to existing facts. The development of technicalities in the law as well as its administration gives us little reason to praise the courts. With the large number of offenses punished by execution every expedient was devised to make unnecessary the infliction of capital punishment. It is said however that 72,000 offenders were put to death during the reign of Henry VIII. Hall says, (p. 92) "every conceivable refinement was made by the courts to avoid application of this statute." Many cases are cited to show that the jury and the judge would cooperate in getting the value of the goods stolen below the mark of five shillings set by the statute.

However, interesting as the historical treatment is, the important part of the book deals with receiving stolen property of all kinds. Here, too, the law has been slow and cumbersome. Every lawyer knows the difficulty the law experienced in convicting the receiver. But the important thing here is the fact that Hall shows that larceny must be divided into "theft for private consumption" and "theft for sale" and we can stop a great deal of the "theft for sale" if we close more effectively the bottle neck, which is the receiver.

As a typical example the author takes the case of automobile theft. He points out that the Dyer Act does not answer the demands put upon it. (Dyer, as is well known, now says the same thing.) This law, in particular, does not make allowance for the youthful 'joy-ride' thief. As Professor Llewellyn says in his Introduction, automobile theft falls into at least three types: the joyride, theft for gain, either by resale, stripping, or theft by the owner (Hall shows that sound opinion holds that 25 to 50 per cent of all claims by owners are fraudulent) and the "borrowing" of a car to use in a holdup. This latter is a very serious problem and Llewellyn considers whether or not "carrying sawed-off shotguns and tommy-guns in motor cars, and especially in *stolen* motor cars, is not properly placed on a par with bank robbery: occasionally the wolf-pack is picked up on its way to the hunt." It is apparent that a law covering merely "the theft of an automobile" cannot adequately meet the demands that these types of offenses would make upon the law.

The book is one of the best I have seen in the field of criminal investigation. One great effect is and will be the fact that it stimulates one's thinking along all the allied fields. The author's chapter on Reform for Petty Larceny is a beautiful example of common-sense and sound knowledge of law, psychology, and sociology applied to these crimes. The author realizes that crime is behavior. If those who defend individualization of punishment and those who are sceptical of all individualization of punishment will read this chapter, I think that there will be much more sense displayed in the writing and the talking on this subject. The unfortunate thing seems to be that so few people do write or talk sense here. Just lately the Gluecks have been condemned by many for casting doubts on some of our probation and parole work. The facts are clear: in many ways and in many cases this tendency toward individualization of punishment has outstripped our knowledge and to an even greater extent, our group *mores*. For example, we often speak of punishment and vengeance as outworn, archaic ideas. Any thinking person will realize that this is not true. Many crimes still arouse public anger and elicit a desire for revenge. And while the people retain this institutionalized behavior it is far better to proceed cautiously, on the basis of what sure knowledge we have, than to try to cover the whole field. Hall makes a very important suggestion when he says: "the technique necessary

* * * namely, a progressive utilization of this treatment beginning with the crimes which arouse least public emotion, and ascending from that point only as rapidly as experimentation and an educated public opinion permit."

I wish that every person interested in social reform would read and study this book. Its methodology is such that one is led beyond strict confines of the law of theft. The psychologists could profit by it as well as the lawyers, criminologists, and sociologists. Behavior is not simple and reform is not simple. In this book there is a very definite understanding of the complexity of the whole problem. Even though Hall has left it to other investigators to take up other aspects he realizes that a mere outlawry of certain practices will not bring the answer. There is a pattern, a configuration, and we must fit the pieces of reform together in order to achieve a mosaic, which when completed will reduce theft.

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BOOK NOTE

Air Law. Outline and Guide to Law of Radio and Aeronautics. Howard S. LeRoy. Published by the author, Washington, D. C., 1935. 120 pages.

This is not a case or text book but a source book pure and simple. With great industry the author has gathered together references to statutes, ordinances, decisions, opinions, treatises, orders, law review articles, books, etc., dealing with the subject. The book is divided into four chapters as follows: 1. Radio Law, 2. Aeronautical Law, 3. Air Rights as related to Real Property, and 4. Bibliography. The first two chapters just named are divided each into municipal and international law. The municipal law of aeronautics is subdivided into that of the United States and that of foreign states. The United States law is subdivided into: 1. Federal statutes, 2. State and Territorial statutes, 3. Municipal ordinances, 4. Federal and state regulations, 5. Federal and state decisions. The subdivision of the radio law is similar in character. The cases are cited in the order of time with a word or two added indicating whether they deal with a contract, tort, crime, insurance, patent or other problem. The work may well serve as an index or digest to the legal literature which has grown out of these two new fields of law developed in our own time and generation. The prospectus states that the present printing has been limited to 300 copies and will be largely exhausted by the author's classroom requirements and the requests of law libraries and legal periodicals having a special interest in these fields.

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