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## Review of “Perkins on Criminal Law,” By Rollin M. Perkins

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## BOOK REVIEWS

PERKINS ON CRIMINAL LAW. By Professor Rollin M. Perkins. Brooklyn, New York: Foundation Press, Inc., 1957. Pp. xxviii, 999. \$15.00 & \$10.00.

Professor Rollin M. Perkins has written a comprehensive text book on criminal law which covers not only the modern statutory criminal law, but includes a detailed discussion of the common law as well.

Each of the chapters is introduced by describing the historical background and explaining why the law has developed to its modern status. The author follows this with a statement as to what the law is in various jurisdictions, frequently concluding with a scholarly discussion as to why that is the law and the reasons why it should or should not continue to be so. This not only makes for easy and interesting reading, but it will cause the reader to review many of the citations that are set out in the footnotes. For the student, in particular, this treatment is very helpful. The volume follows the pattern of the author's case book, but its value goes well beyond a student's requirements and would be a valuable addition to any lawyer's library.

The many years of the author's experience as a professor of criminal law are reflected in the scholarly presentation. However, on rare occasions he overlooks the practical problems connected with the *enforcement* of criminal law. For instance, in *State v. Martin*,<sup>1</sup> a case in which the defendant has thrown a glass tube filled with acid at the driver's side of a taxicab, splattering acid on or near two passengers, the court held that the specific intent was to injure the driver, not the passengers, and that there could be no transfer of such intent to the passengers. In freeing the defendant the court mentioned, and Professor Perkins emphasizes in his discussion of the case, that the prosecutor should have filed the charge with the cab driver named as the victim. Any prosecutor with courtroom experience would realize, however, that there are many practical reasons why an innocent passenger would be a more appealing victim to a jury than the cab driver. Some reasons could be that the labor dispute in which the driver was involved might confuse the issues in the assault trial, or the driver might have had a criminal record or some other background that could have adversely affected the outcome. When a prosecutor elects to bring prosecution in such a situation, the law should encourage him to select his strongest case. The failure of the courts to give full protection of the law to innocent victims should not be explained away by accusing the prosecutor of failure to use diligence in drawing the criminal information.

Many states have refused to follow the rule of the *Martin* case, and by judicial interpretation of their statutes have allowed the required specific intent to be transferred, thereby extending the protection of the law to the innocent victim as well as the intended victim. The author wisely ends his discussion of transferred intent with the statement: "There is no need for a statute to limit its application by specificity of this nature and the tendency today is to omit any such restricting terms."<sup>2</sup>

The author's definition and classification of the law of homicide is worth any lawyer's reading time. His treatment of the statutory modifications to the common

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1. 342 Mo. 1089, 119 S.W.2d 298 (1938). This decision is one of the leading cases on the specific intent required by certain states in crimes such as assault with intent to kill, rob, etc.

2. PERKINS, CRIMINAL LAW 718 (1957).

law, and the reasons for these changes, gives the student and general practitioner a ready grasp of the subject.

The subject of insanity in criminal cases is given very thorough and interesting treatment. Discussion includes the *M'Naghten* rule (holding a defendant not responsible for a criminal act if he had a defect of reason which prevented him from knowing what he was doing, or from knowing the act was wrong), the irresistible impulse rule, insane delusions, and the *Durham* case (holding that the defendant must be acquitted if it is found that he had a mental disease, and that his criminal act was the product of the mental disease or defect). Each of the rules is discussed and illustrated so that even the neophyte should have little difficulty in understanding the different rules and the reasons for them.

Discussion of criminal insanity, however, is not confined to a bare explanation of the various tests for insanity in criminal cases. The author concludes this section with a strong argument for committing and treating persons who, although legally sane, are afflicted with mental defects or disorders. He insists that, even if persons mentally ill are convicted (found legally sane), they should be segregated from other prisoners and given therapeutic treatment. A point is thereby made of the present inadequate handling of mentally disturbed people who are not legally insane and, under our present practice, are committed to penal institutions. While it obviously is vital that the public be protected from mentally disturbed persons who commit criminal acts, it is essential that such persons, even though legally sane, be given therapeutic treatment, looking towards their complete recovery when that is medically attainable.

Professor Perkins seems to agree with the view of many psychiatrists that oftentimes there are insane people who despite their afflictions can distinguish right from wrong, and that therefore we should prepare ourselves for the improvement of the right and wrong test without throwing juries into complete confusion. The present right and wrong test is a simple standard for the jury to apply, but many psychiatrists feel this test is too simple—that it disregards those who have serious mental disorders but who do know right from wrong.

Constant legislative enactment of new criminal statutes makes it imperative that the lawyer be well grounded in the area of criminal law and kept abreast of its development. Furthermore, statutory evolution demonstrates that the criminal law, like the law generally, constantly changes and improves; that its object is always the improvement of the administration of justice, looking both to protection of the individual's rights and to protection of the public from the criminal offender. As Dean Roscoe Pound has said: "Raising up a body of lawyers, who are to be advocates, prosecutors, and judges, with no thorough training in criminal law, is nothing short of a threat to the administration of justice."<sup>3</sup>

Professor Perkins, by his important work, has made a substantial contribution toward the improvement of the criminal law and will interest many students in this vital field. The basic philosophy of American justice, as spelled out in the text, makes his book a volume every lawyer and student would be pleased to have.

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3. See *id.* at vi.

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