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Review of "May's Law of Crimes," By Kenneth Sears and Henry Weihofen

Wendell Carnahan
Washington University School of Law

separation of powers which were available in testing the constitutionality of the National Industrial Recovery Act.

In the judgment of the present reviewer, Mr. Justice Brandeis will be reckoned as the most significant Supreme Court justice since Marshall. He brought to the court an attitude of positive encouragement to necessary governmental experiment and, perhaps most important of all, a technique for the presentation and analysis of significant facts which revitalized constitutional interpretation in the *Jones & Laughlin* case.[3] Doubts have been expressed that the economic beliefs of Mr. Justice Brandeis are adequate to cope with the problems of concentration of economic power presented by modern industrial organization.[4] But the greatness of Brandeis transcends his personal economic opinions. The vigour of his spirit and the perfection of his analytical technique have, to a large measure, converted the majority of the Supreme Court and have added immeasurably to the stability of American constitutional government.

HARRY WILLMER JONES.†

MAY'S LAW OF CRIMES. Fourth edition. By Kenneth C. Sears and Henry Weihofen. Boston: Little, Brown & Company, 1938. Pp. lvi, 438.

Thirty-three years have elapsed since the last edition, prepared by Dean Harry A. Bigelow, of John Wilder May's original two-chapter treatise on *The Law of Crimes*. During this period new problems have been presented, and new applications of old principles of criminal law have been made in an attempt to cope with changing conditions. The present edition recognizes the social significance of its subject matter, and its emphasis is constantly upon the functioning of legal conceptions in a dynamic social order. While the general form of earlier editions is retained, "the writers concluded that it was no longer possible merely to revise the book and have a suitable expression of the current law. Accordingly that which started out as a revision has ended as a practically complete rewriting. Very little of the text of the third edition has been retained, and there is practically nothing left of the first edition published in 1881."[1] Although limitations of space resulted in the omission of many cases, the table of cases refers to nearly half again as many decisions as in the prior edition, and this volume contains an increase of seventy pages.

In their preface,[2] the authors refer to the first edition as designed to give "not * * * a history of what the law has been, nor a discussion of

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pressive record made by the Massachusetts institution, particularly in the last few years.

3. See Fuchs and Freedman, The Wagner Act Decisions and Factual Technique in Public Law Cases (1937) 22 WASHINGTON U. LAW QUARTERLY 510.

4. Laski, Mr. Justice Brandeis (1934) 168 Harper's Magazine 209; Hart, Book Review (1934) 82 U. of Pa. L. Rev. 668.

† Assistant Professor of Law, Washington University; Fellow, Columbia University School of Law, 1938-39.

1. P. v.
2. Ibid.

what it ought to be; but only a statement of what it is." This scope has been retained, and the authors state that they "are conscious of the fact that many crimes have not been discussed."[3] Within the scope of their purpose the authors have done an excellent piece of work, and a reviewer's quarrel must be with their acceptance of scope and page limitations. Or perhaps the quarrel must be with the publisher. The basis for this may be more apparent directly.

The first chapter consisting of ninety-four pages includes consideration of the criminal act, intent, capacity, and justification and constitutes an introduction to the general subject of criminal law and to the subsequent chapters dealing more specifically with offenses against government, the person, the dwelling-house, property, *et cetera.* In a book of this limited length many interesting and important topics are necessarily treated briefly. For example, seven and six pages respectively are devoted to the problems presented by insanity and intoxication; these are problems clamoring for more extensive consideration even in a student's handbook. Consent is dealt with on page 11 and on pages 252-254, and the law of attempts at slightly greater length at page 185. Consideration of the latter phase concludes with a section[4] entitled "Legal Literature on Attempt," in which in slightly more than one page is presented a summary of the most helpful law review writing on this difficult topic.

It would be unfair to the authors to conclude, however, that difficult and intriguing problems are summarily dismissed by a few paragraphs of text; dismissal, if such it is, is less direct. Throughout the book extensive footnotes have been included in which the revisers have referred to a carefully selected list of cases and have exhibited the happy and all too unusual knack of inserting a word, a phrase, or a short sentence following a citation which apprises a reader of the content of the decision referred to. In addition the footnotes carry extensive references to the vast field of periodical material—case notes as well as leading articles—which has become available since the edition of 1905. It is possible for students and teachers of the subject to pursue these references into the untangling of some of the complex problems. One feels, however, that it would have been of service to have had discussion extend beyond "a statement of what it [the law] is" to include some consideration "of what it ought to be," at least by drawing in more in the way of summary of the views presented in periodical material, such as that referred to above in connection with attempts. And the presentation found in the first three chapters of Jerome Hall's *Theft, Law and Society* impels the conclusion that legal history goes far to make contemporary problems in criminal law and administration understandable. This conviction that a service might be rendered by extending the scope and length of the book is based in part upon a consideration of the style of the two revisers. The preface states[5] that Mr. Sears was responsible for the first four chapters and Mr. Weihofen for the last four; whatever divi-

3. P. vi.
4. Sec. 133 at p. 196.
5. P. v.

sion of labors may have been made, there is no noticeable change in the style of writing. All chapters are presented in a mode of expression which is unusual for succinctness and clarity and cross-reference to various subsections dealing with other phases of the immediate problem.

Two chapters appearing in the third edition, dealing with "Locality and Jurisdiction" and "Criminal Procedure," have been omitted from the new edition. It is believed that the fact that many of the law schools combine the consideration of substantive law of crimes and criminal procedure would have justified inclusion of procedural topics and expansion of the book to the extent necessary therefor. A minor omission is very apparent: the table of contents would have been more helpful had it carried section titles as well as main chapter headings.

This volume will be of service to students and teachers of criminal law, and recourse to the periodical literature made readily available will be of great assistance in rounding out treatment which one wishes had not been curtailed by space limitations apparently imposed by the publisher.

WENDELL CARNAHAN.†

THE FORMATIVE ERA OF AMERICAN LAW. By Roscoe Pound. Boston: Little, Brown and Company, 1938. Pp. x, 188.

If, as a brilliant Frenchman has said, the best literary style consists of a maximum of thought in a minimum of words, this little book by Dean Pound is great literature as well as an original, fascinating, and persuasive study of a neglected topic in Anglo-American jurisprudence. In his introduction President Rufus C. Harris designates it as "the first serious and comprehensive account of the formative period of American legal history."[1] The book is based upon four lectures delivered in 1936 before the faculty, students, and guests of Tulane University College of Law in commemoration of the centennial of the death of Edward Livingston, whom the author describes as the "great jurist of nineteenth century America and one to rank with Bentham."[2] As printed in book form the lectures are replete with references to authorities, most of them reported judicial opinions. It goes without saying that this feature of the printed book triples its value for pedagogical purposes.

By the formative era the author means the period from the Revolution to the Civil War. The law studied in this period is chiefly private law and criminal law—not constitutional law, not law which borders on, if it is not a part of, political science. The early development of federal constitutional law has been thoroughly treated by others and is barely touched on in the volume under review. The most notable feature of this American law as surveyed by Dean Pound is the comparative insignificance of federal judicial influence. Ruffin of North Carolina, Gibson of Pennsylvania, Shaw of Massachusetts—each receives more attention than Marshall. Story as a

† Professor of Law, Washington University.

1. P. x.
2. P. 167.