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Book Reviews

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Book Reviews

THE CRIMINAL LAW REVOLUTION AND ITS AFTERMATH. By the Editors of the Criminal Law Reporter. The Bureau of National Affairs, Inc., Washington, D.C. 1978. Pp. xiv, 292. \$15.00.

Beginning with its 1961 decision in *Mapp v. Ohio*, the Supreme Court launched a full scale assault on the criminal justice system for the purpose of providing criminal suspects with a greatly expanded array of constitutional rights. Over a period of nine terms the Warren Court gave radical new interpretation to the fourth, fifth and sixth amendments, dramatically changing the law, particularly regarding searches and seizure, the privilege against self-incrimination, and the right to counsel. So great was the impact on the system of criminal justice that the Court's decisions, as viewed from historical perspective, took on the form of a legal revolution.

The Criminal Law Revolution and Its Aftermath is a quick-reference commentary providing a term-by-term review of all criminal rulings handed down by the Supreme Court from 1960 to 1977, in which the "revolution" and its later "aftermath" are chronicled. The "aftermath" encompasses the first eight terms of the Burger Court — mixed reactions in which there was both consolidation of existing trends toward greater rights and, on the other hand, certain indications of retrenchment. In all, 684 cases are summarized under more than 125 subject headings.

The idea of placing the Warren and Burger Court decisions in historical perspective is excellent. Too many times the student of criminal justice is forced into strictly a topical viewpoint of right to counsel, search and seizure, etc., with the result that one tends to overlook the parallel pattern of development within other areas of criminal justice. Thus, the editors have provided a valuable reference source which ties together all areas of concern into one concise historical package.

Of particular usefulness in this regard is the Introduction which, though perhaps too brief, gives the reader an initial overview of the "revolution," a synopsis of the decisions in nine distinct areas of the law (Exclusionary Rule, Cruel and Unusual

Punishment, Right to Counsel, etc.) and, finally, a summary of the "aftermath."

The Table of Contents is clear and simple in format as it merely lists the seventeen Court terms included in the book and the various subject headings covered within each term. One improvement which might be made in this regard would be to unscramble the now haphazard listing of subject headings and list them in the same order under each term, perhaps assigning to each a distinct number for more convenient reference. If listed in that manner, one who is interested in researching the development of a particular area of the law could more easily recognize it by finding the same subject in a corresponding place under any given term.

In the back of the book are two Tables of Cases — one alphabetical for all cases cited, and the other by subject classification. However, the subject classification table is limited by the fact that each case is listed under only one subject classification, regardless of the number of issues it may involve. Given the historical nature of this book, it would be beneficial to the user to have an additional table of cases by subject classification listed not simply alphabetically, but by term or in the order of decision. This would give the researcher a quick grasp of the historical flow of cases within each subject area.

In the main text of the book, the reader will find short summaries of each of the 684 included cases. To be sure, neither student or practitioner can rest securely with the thought that these brief summaries have provided any in-depth understanding of any of the cases. However, for their purpose, the brief summaries are adequate in alerting the reader to the essential holding in each case, the views of dissenting Justices, and whether earlier cases were overruled or distinguished. As one sees the importance of a given case in the particular area of inquiry, he may then go to the case itself for more complete analysis. In short, the book should be regarded primarily as a reference tool, or perhaps a whirlwind tour of the battlefield taken by those who wish merely a general orientation regarding the "revolution."

To the extent they have gone, the editors have done a distinct service to all who desire a better understanding of the radical development which has taken place over the last two decades in the field of criminal justice. Beyond a mere reporting of cases in a historical context, the editors have attempted to give at least some synthesis and analysis of each term's activity by prefacing each term with a brief (perhaps too brief) preview of trends or major precedents to be set within that term, and often some commentary as to the effect that certain political, social or legal forces

may have had on the Court and its decisions. A far more in-depth analysis of each term would be desirable, even at the expense of eliminating some of the subject heading materials. Of great interest, for example, would be the Court's composition in each term, and the manner in which individual Justices may have evolved in their own thinking from term to term during this tumultuous period.

As principally a compilation of cases in historical context, *The Criminal Law Revolution and Its Aftermath* lends much needed perspective to a field of law which has grown to the extent that it constantly threatens to overwhelm anyone seeking to rightly divide and conquer it. The book in its entirety should be helpful to anyone who may be studying the criminal justice revolution for the first time. With only 279 pages of substantial content, all of which is easily readable, one can get a good grasp of the law's development within a very short time. However, this work's principal value is its use as a research tool quickly tracing the development of the law within a given subject heading and sketching the evolution of trends from one term to the next.

Whatever its use, *The Criminal Law Revolution and Its Aftermath* is a reasonably-priced and useful aid in assessing the impact of Supreme Court decisions upon the American system of criminal justice.

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OPERATING PROBLEMS OF CALIFORNIA CORPORATIONS. Supervising Editor Curtis M. Kaplus. California Continuing Education of the Bar, 2150 Shattuck Ave., Berkeley, Calif., 94704. 1978. Pp. 580. \$55.00.

The California Bar is blessed with another in the series of corporate law "how to do it" books containing some valuable insights and information. The practitioner using this book when faced with a corporate problem will find easy access, through the indices, to brief explanations and well organized charts listing typical operating problems. These charts present the problem with the corresponding recommended action, applicable statutes, and special reminders. The most informative portions are the in-depth chapters dealing with amending the articles and changing the capital structure, mergers, and dissolution.

This work is an excellent source for the practitioner who may need more detailed information on a particular corporate problem. The topic descriptions are carefully annotated with references to relevant law review articles, treatises, and texts. However, the authors have also included a number of useful sample forms which are specifically tailored to California practice.

Chapter Four entitled, "Amending the Articles and Changing the Capital Structure," has a unique approach to analyzing many important corporate problems. The limitations on the power to amend are examined by looking first at the evolution of the law to the present statutory requirement that amendments are proper if lawful at the time of filing.¹ Next, the author points out the court's flexibility in dealing with inconsistencies between the statute and a particular amendment to corporate articles giving considerable attention to the fairness involved. Alternatives to amending the articles are also discussed with particular insight on the role of agreements among shareholders.

In the chapter on counseling corporate management (Chapter Three), the author initially addresses the difficult and critical topic of conflict of interest for corporate counsel, thus, reflecting its relative importance. There is for the most part, a lack of commentary on this topic, and the comments and examples given in this book provide enlightening reading. Chapter Three also introduces, in outline form, the vast field of securities law and a few

1. CAL. CORP. CODE ANN. §900 (West 1977).

of the key problems affecting corporate management.²

The merger chapter (Chapter Five) introduces merger types and procedures from beginning to end and emphasizes the identification of key inputs and decisions. While the tax and accounting implications are introduced, no attempt is made to cover them in detail. The authors also provide sample documents, such as a complete merger agreement and documents for the shareholders, with comment paragraphs interspersed to assist the attorney in tailoring a plan. This material is most valuable when used as a quick overview of merger planning and preparation of the final plan.

The final chapter deals with corporate dissolutions and, although this is generally an unhappy event, the information provided in this chapter may expedite the process. The essential topics are adequately introduced and a number of sample forms are included. Although only a brief explanation of the tax aspects of dissolutions are given, the authors provide the reader with the pertinent state and federal tax forms.

In summary, the principal value of this book is its potential as a research tool and source material for the practitioner faced with a corporate operating problem. *Operating Problems of California Corporations*, although somewhat brief in parts, would be an excellent addition to the library of any attorney dealing with corporate practice.

WILLIAM T. FRYER, III*

2. It would be helpful in the material (§ 3.18 at 140 and § 3.21 at 144) to identify the criteria found in § 12 of the Securities Exchange Act of 1934 (15 U.S.C. § 78a et seq.) for determining when a corporation is subject to the registration requirements and related control and filing procedures of § 16b, § 13d, and other key sections of the Securities and Exchange Act. The broader jurisdiction for § 10b is, however, sufficiently pointed out by the authors.

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ENVIRONMENTAL LAW AND POLICY, READINGS, MATERIALS AND NOTES, Second Edition. By Richard B. Stewart and James E. Krier. Bobbs-Merrill Law Publishing Company, Inc., P.O. Box 7587, Charlottesville, Va., 22906. 1978. Pp. 1026.

The environmental war continues in America and the 1978 edition of *Environmental Law and Policy* is an excellent sampler of current thinking on some of the major topics in the conflict as well as the developing political/judicial approach to the control of pollution. The book also illustrates, albeit somewhat less clearly, some of the costs involved in controlling pollution and channeling progress into areas least harmful to the environment. This book is a combination of cases, statutes and original thoughts of the authors, Stewart and Krier (from Harvard and Stanford, respectively) as well as a compilation of writings by others. This work should provide a valuable teaching tool, and its 1,000 plus pages of moderate to difficult reading will undoubtedly raise the consciousness of students and other readers regarding the relationship between pollution and pollution control on one hand and business and the American lifestyle on the other.

As is the case with almost any evolving sociological or political movement in America, the response of Americans to pollution and pollution control seems to be following a "pendulum" pattern. For a period in the 1960's and early 1970's, it was extremely fashionable to advocate strict environmentalism without regard for its costs or its effect on the business climate, housing, transportation or other American institutions. Indeed, it may be argued persuasively that an overreaction to protect the environment was necessary not only to provide an immediate remedy for prior abuses, but to also create a consciousness regarding environmental issues. Adequate impetus for "environmental" causes was provided in a timely and emotional manner by pictures of seabirds killed by oil spills, reports of the effects of DDT, and vivid aerial photographs of our smog-shrouded major cities. Blame for these problems was distributed widely among business, capitalism, and the American lifestyle. Indeed, even Christianity has been blamed for our current environmental problems, as is demonstrated by the following quotation from one of the more provocative selections in the book:

Man shares, in great measure, God's transcendence of nature. Christianity, in absolute contrast to ancient paganism and Asia's religions (except,

perhaps, Zoroastrianism), not only established a dualism of man and nature but also insisted that it is God's will that man exploit nature for his proper ends.¹

The spectrum of protagonists riding the resulting wave of public sentiment in favor of protecting the environment at all costs has ranged from the well-informed, well-meaning political leaders, seeking to do the greatest good for the greatest number (present and unborn), to the marxist/socialist who appears to care about the environment only insofar as the issues may be used as a weapon in the continuing battle against capitalism. Arranged in apparent opposition to the environmentalists (although usually not in direct opposition to protection of the environment) are business and industrial interests, developers, transportation companies and others whose economic interests are jeopardized by environmental and pollution controls.

The present mood of the American public, however, appears to be changing, and issues such as energy crisis, overcrowding in the urban centers, and a recognition of some of the true costs of environmental protection are beginning to force a reanalysis of many dogmas and previously held sacred environmental truths. Strangely, the American people appear to be "discovering" that every issue has two sides, and the current trend seems to provide an opportunity to re-blueprint and tune our environmental policies in favor of a well-balanced, unemotional general plan for many aspects of American life in which the environment is adequately protected in light of the costs paid for the benefits obtained. A good example of an institution which has suffered at the hands of pro-environmental restraints is the single family home, the price of which is quickly rising out of the reach of many of the World War II "baby boom" families in many areas of the country. Theoretically, when the demand for realistically priced housing from this large sector of the American population becomes great enough, some of the environmentally motivated impediments to development will fall. Fortunately, many of our young, motivated citizens seem to be directing their efforts away from demonstration and rhetoric and toward planning for progress—rather than stopping it. Unfortunately, few of this new generation of young planners have much practical experience in the everyday administration of a home, a business, or a city/community.

Following a prevailing trend in many other political struggles, that element, the love of which is said to be the root of all evil, i.e., money, creates the major problem. Cleaner cars cost more

1. White, *The Historical Roots of Our Ecologic Crisis*, 155 SCIENCE 1203, 1203-07 (1967).

money. Open space costs money (if the fifth amendment is to be respected). Clean parks and untouched wilderness areas cost money and remove much property from the tax rolls. Industrialists, manufacturers and developers charged with the cost of producing their projects in a cleaner, more aesthetically pleasing way, pass the costs on to the ultimate consumer.

Reinforcing the rationale of the swing away from "environment at any cost" is a growing body of opinion that many environmental problems in America may be cured simply by a reduction in people—a possibility which looks more likely now than ever.² Current predictions on population trends indicate that the populations of the areas most plagued by environmental problems, e.g., industrialized western nations, either have begun to decline or will in the relatively near future. If current trends prevail, the United States will reach zero population growth in about 2015.³ Although the exact date of equilibrium and the effect that fewer people would have on the environment are unclear,⁴ it seems apparent, at the very least, that fewer people mean fewer automobiles, less smog, lower energy needs, and less crowded cities, parks and waterways.

Against this backdrop, the second edition of *Environmental Law and Policy* provides a valuable teaching/learning tool, which will provide the basis for enlightened discussion of some of the problems in the environmental war, for the authors have stressed the establishment of a framework for the analysis of all environmental issues, rather than the emphasis of "black-letter" environmental law. Chapter 1 is an introduction to environmental problems, including accounts of past adverse environmental experiences and predictions of future problems, while Chapter 2 discusses the various causes of environmental problems. Chapter 3 purports to give "an analytic framework for environmental law and policy," and it includes a fair amount of economic analysis which seems to have little bearing on the central issue, i.e., the actual cost of remedial environmental measures. It is difficult to absorb an appreciable amount of Chapter 3 without at least a glossary of terms, notwithstanding the author's statement that "I

2. Westoff, *Marriage and Fertility in the Developed Countries*, SCIENTIFIC AMERICAN, December, 1978, at 51-57.

3. *Id.* at 51.

4. Collins, *The Good News About 1984*, PSYCHOLOGY TODAY, January, 1979, at 34-48.

am confident that the writings and ideas used are within the grasp of any college educated person." Fortunately, the authors go on to allow instructors who do not find it profitable to emphasize economic analysis to avoid such emphasis by omitting all or portions of Chapter 3.

Chapter 4 considers the role of private litigation as a vehicle for solving pollution problems, while Chapter 5 focuses on the legislative and regulatory approach to pollution problems. It is in Chapter 5, dealing with the regulatory approach to the environment, that the student or other reader may find the most useful material with which to equip one's self for a future in environmental protection since a great portion of environmental law problems are resolved through local, state or federal regulations implemented by agencies established for that purpose. This chapter also includes a useful discussion of the major federal pollution control statutes.

Chapter 6 considers "Subsidies, Charges and Other Alternatives to Regulation," many of which are thought-provoking in their fresh approach to environmental problems. Examples are emission fees, pollution permits, and direct compensation paid by offenders for environmental damages such as oil spills.

Chapter 7 builds on Chapter 5 by introducing the reader to some of the administrative law aspects of environmental law in the judicial context, i.e., the standards to be applied when courts are asked to intervene following an administrative decision. Chapter 8 covers the National Environmental Policy Act and the role and importance of environmental impact statements in the regulatory and judicial approach to the environment. Finally, Chapter 9 focuses on the previously mentioned subject of money, this time in the context of the funding of environmental advocacy.

In summary, the book contains some material which may interest only the most empirically oriented reader or the student with a strong background in economic models. Perhaps its most valuable contribution to the growing body of environmental law texts is that the book satisfies even the most demanding reader, with the strongest background while providing teaching and learning materials of a more universal appeal. Certainly, this combination makes the second edition of *Environmental Law and Policy* very

attractive reading and may well make it the most widely used of several good alternatives.

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