

# Wingersky: A Treatise on the Law of Crimes (Clark and Marshall)

Anna Lavin

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## BOOK REVIEWS

*A Treatise on the Law of Crimes (Clark and Marshall)*. Revised and edited by MELVIN F. WINGERSKY. Chicago: Callaghan & Co., 1958. Pp. 959. \$12.50.

Since the first publication of this familiar work some fifty nine years ago, and through the succeeding four editions, clear presentation of the fundamentals of criminal law, and their legislative and judicial refinements and variations has been its persistent aim and attainment. This Sixth Edition serves the basic purpose with fidelity and in a manner, expert, direct and plain. At the same time Dr. Wingersky brings to the original treatise a refreshing individuality as he enlarges the scope to recognize the play, and influence of, and, at times estrangement from present social and scientific trends in the criminal law field.

The core of the earlier editions remains unchanged, except for modernization, readaptation and elucidation as the decisions warrant, and in that sense, Dr. Wingersky serves the same purposes as his predecessors. But he has not bound himself to the strictures of the earlier editions. He has freely rewritten, substituted, expanded and dissected to reflect transitions in the field.

Dr. Wingersky, moreover, writes a book intended to be studied, expressly disavowing the expedient "catch-phrase," no doubt to the chagrin of his student audience. It is, thus, a forthright renunciation of the original format, wherein "much care" had been taken "in the insertion of catch lines, in order that each principle of the law may stand out before the eye. . . ."<sup>1</sup> From its inception, Dr. Wingersky warns that "For the danger of understating a principle or rule of law in one line distillations, all boldface headnotes were discarded in exchange for the risk of alienating cursory readers." The admonition is not idle, but has its complementary compensation in a subject sequence dictated by logical progression, and in "tables and figures," capsule picture presentations of elements, considerations and comparisons, all innovations of the reviser.

Dr. Wingersky has shown no reluctance to rearrange, where rearrangement has been deemed appropriate. Recognizing that basic legal concepts, jurisdiction and general theories of liability cut across the entire field of criminal law, he has treated these aspects before proceeding to the concept of multiple offenders, or what he terms "Proscribed Coalitions," concluding with the elements of individual offenses. Presentation of the basic work has been varied, altered and enlarged to fit that program.

The ambition to concentrate his expansive subject within one cover is a tribute to the restraint of the editor. To the same end, or perhaps by predilection, Dr. Wingersky reveals himself the master of the curt, but apt, phrase. The definition of the purpose of criminal law distilled to "Human control of contingent human behavior . . ." of a statute as "simply a human attempt to articulate what behavior is proscribed and punishable," illustrate shedding of non-essential context by a student of language, rare in text-book writers. He is not only the teacher, he is an author of considerable ability, with the imagination and catholic interests of the author punctuating and invigorating the impersonality of the text.

At times one senses his urge to exceed the scope of fundamentals and diverge

<sup>1</sup> Foreword, 1st ed.

into legalistic complexity of obvious appeal. See, for example, the rejection of expansion in his terse treatment of statutory immunity, where he snips his inclination to digress with ". . . the grant of immunity is the significant point, though the constitutional facets of the problem are of weightier concern." One feels Dr. Wingersky's primary interest is in the "constitutional facets," and that his personal relish could not be completely sublimated, finding release in provoking the reader.

Of course, this treatise is designed primarily as an introduction of the student to criminal law. Nonetheless, it is to those engaged in the practice an eminently practical tool, and suggests, in a limited way, a new approach to accepted concepts, which we might otherwise take too much for granted. We find nowhere any attempt to impose opinion or judgment, and Dr. Wingersky's summaries and conclusions take on greater value because of this.

ANNA LAVIN\*

\* Member of the Illinois Bar.

*Living the Law.* By FRANK E. COOPER. Indianapolis: Bobbs-Merrill, 1958. Pp. xv, 184. \$7.50.

Two features of this book characterize it as a valuable contribution to the legal profession. The first is its critical approach to traditionally sacred images in the high priesthood of the law. The second is its synthesis of the memorable observations of a procession of legal thinkers in the tradition of Cardozo, Holmes, and Vanderbilt.

Of interest to practicing lawyers is the author's rough treatment of hitherto untouchable principles of law. Consider his discussion of legislative intent:

The worst of the matter, to put it bluntly, is that in most actual case situations where a question arises as to what the legislature intended, the search is fruitless for the simple reason that the legislature had no intention.<sup>1</sup>

Since the beginning of the legislative process, the great majority of legal writers on the subject have indulged in the hypothesis that every legislative body in every enactment has desired collectively to attain some specific object, known as legislative intent. Although Professor Cooper assumes the role of an iconoclast in this matter, he is nonetheless a realist, speaking from years of experience as a practicing lawyer in Detroit, Michigan. Certainly, he is realistic also when he points out: "Even within the closed ranks of the profession, in short, there is widespread recognition of the inadequacy of most lawyers' writing."<sup>2</sup> His evaluation of adjudication by administrators delineates definitively the threat which administrative agencies pose for the doctrine of the separation of powers. Administrative law has been a special interest of Professor Cooper, who, in 1942, won the Ross Essay Contest, sponsored by the American Bar Association with a paper on the subject: "What Changes in Federal Legislation and Administration Are Desirable in the Field of Labor Relations Law?"

Professor Cooper does not merely string quotations together in a haphazard fashion; he knits them together with his own fluent prose. His literary style is most articulate when he is drawing into one seamless narrative excerpts from many masters. It is this feature of his book which will prove most beneficial for students of law. Through Professor Cooper's guidance, the student may be led from the mellow discourse of Cardozo to the crackling witticisms of

<sup>1</sup> Cooper, *Living the Law* 76 (1958).

<sup>2</sup> *Ibid.*, at 164.