Book Review: Sentencing of Adults in Canada, by Stuart K. Jaffary

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Book Review

Citation Information
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for political agreement between the provincial and Dominion governments, on the regulation of these concurrent matters.

The following excerpt taken from the essay, Classification of Laws and the British North America Act, in the author's words "suggests the main thesis of this essay." It also suggests the main thesis of the book and the purpose of the editor in assembling these essays:

This suggests the main thesis of this essay: That a rule of law for purposes of distribution of legislative powers is to be classified by that feature of its meaning which is judged the most important one in that respect. The thesis so stated points to the heart of the problem of interpretation, i.e. whence come the criteria of relative importance necessary for such a decision? In this inquiry, the judges are beyond the aid of logic, because logic merely displays the many possible classifications; it does not assist in a choice between them. If we assume that the purpose of the constitution is to promote the well-being of the people, then some of the necessary criteria will start to emerge. When a particular rule has features of meaning relevant to both federal and provincial classes of laws, then the question must be asked Is it better for the people that this thing be done on a national level, or on a provincial level? In other words, is the feature of the challenged law which falls within the federal class more important to the well-being of the country than that which falls within the provincial class of laws? Such considerations as the relative value of uniformity and regional diversity, the relative merits of local versus central administration, and the justice of minority claims, would have to be weighed.12

Dean Lederman states in the Introduction that the book has been published to make certain materials more accessible to the public and university undergraduates. Certainly many of the non-legal articles would be profitable reading for undergraduates and the general public, but it is to be doubted whether the articles (such as those by Bora Laskin) which involve detailed analysis of the reported case law would mean very much to either the general public or university undergraduates. However, all the essays may be commended as profitable reading for law students13 and practitioners as well.

R. WITTERICK.9

Sentencing of Adults in Canada. BY STUART K. JAFFARY, TORONTO: UNIVERSITY OF TORONTO PRESS, 1963. pp. xii, 122. ($4.95)

The problem of what to do with a person after he is convicted of crime is currently and has been for some time, the subject of heavy debate. Of the act of sentencing, the late author writes that "no

12 P.188-9.
13 And in particular students taking the Dean's course in Constitutional Law.
9 Mr. Witterick is in his second year at Osgoode Hall Law School and is a graduate of York University.
action could be more social or more fraught with human con-
sequences.”

For the most part, the work under review is descriptive. It
attempts to examine the Canadian criminal and penal processes, and
also to place them in a wider context, both philosophically and prac-
tically. This being a Herculean undertaking, the question comes to
mind whether it properly can be achieved in such a short volume.
The many topics chosen to be considered by the author of necessity
receive light treatment, and unfortunately, documentation is sparse.

After introducing the nature of the sentencing power, Dr. Jaffary
considers classicist theories and their influence upon the Criminal
Code of Canada.

The author then proceeds to examine Canadian criminal and
penal statistics (using those published by the Dominion Bureau of
Statistics), and finds that, as respects sentences meted out, there is
a high degree of disparity among the provinces. In search of possible
explanations for such variations, Dr. Jaffary sent questionnaires to
certain officials of several provinces. Replies indicated that dispari-
ties in sentencing were due in some degree to differences in the avail-
ability both of institutional facilities and personnel resources in the
correctional field. Certain of the statistical data tended to support
these explanations. Comparing statistics dealing with frequency and
duration of imprisonment in Canada with those in other countries,
Dr. Jaffary finds that the Canadian offender is more likely to be im-
prisoned and for a longer term.

Under the heading “transition to a social rationale” are con-
sidered various developments of penal reform in England, the United
States and Canada, and an emerging emphasis upon the correction
of the offender. The author was himself a staunch advocate of penal
reform.

Dr. Jaffary indicates that the magistrate holds the major sen-
tencing power in this country, noting that in 1955 ninety-five per
cent of all criminal cases in Canada were disposed of in magistrates’
courts. For this reason, he very properly devotes a significant
portion of his book to the magistrates’ courts at work. His treatment
of this topic, unfortunately, falls short of the searching inquiry that
the reader should reasonably expect. The text is devoid of such
pressing questions as the effect upon sentence of a plea of guilty and
of legal representation. Instead of finding a treatment of these
and other necessary issues, one sees a great deal of space devoted
to matters the relevance of which is questionable. Such matters as
the precise formula employed to calculate a magistrate’s retirement
allowance and a description of the architectural features of two par-
ticular magistrates’ courts well could have been omitted. At one
point, the author notes that in 1956 only in three per cent of the
cases of persons convicted of indictable offences in Ontario were
appeals recorded. This fact, he writes, “would seem to indicate that
the parties at trial are, on the whole, not dissatisfied with the procedure and sentence." In the absence of a deep consideration of a multiplicity of other factors necessarily involved in any decision not to appeal, and such an absence is here the case, this reviewer simply cannot accept it.

In a section of the book which relates the magistrates' courts to the correctional system, Dr. Jaffary offers several constructive suggestions. He advocates better training of the magistracy under a planned programme and the making available to them of guides to sentencing in Canada. He feels that there should be a follow-up system whereby the sentencing court could be made aware of the outcome of the sentences imposed upon offenders. The author propounds a scheme which would encourage, by promoting relationships and communications among correctional agencies, a better integration of the magistracy into the family of corrections. Communication amongst the magistrates themselves is seen by Dr. Jaffary as an important means for improvement, and he makes suggestions relating thereto. Finally, a cogent plea for research in the correctional field is advanced, a plea against which few could argue.

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Students who would heed the advice of the realist and sociological jurispruders to see what the courts are doing in fact would be foolish to read this book: it is much too funny for such serious fellows.

The author canvasses a series of cases in the domestic tribunals of the church, the medical and the legal professions and produces enough off-beat and off-colour material to launch a dozen soap operas.

In the eccentricity sweepstakes, the churchmen clearly lead the field. Archdeacon Wakeford and Reverend Harold Davidson were each defrocked for carrying on missionary work of a very peculiar sort. While the former's activities were confined to a single escapade, the latter styled himself the "Prostitutes' Padre". The account of the adventures leading up to his defrocking is predictable, but his post-trial conduct makes somewhat startling reading:

No longer a clergyman, Davidson set out on his parade of protest which brought him first to Blackpool where he exhibited himself on the pier in a barrel as thousands of sniggering sightseers, each paying twopence, filed past. On one day eleven thousand people paid admission and Davidson was reputed to be earning £500 a week. He and the showman were charged with obstruction and Davidson was fined £4. He moved

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