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Book Review. Criminal Procedure from Arrest to Appeal by Lester Bernhardt-Orfield

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cussed, and a fine statement is made for a more affirmative attitude toward law itself. The section and the book end on a challenging note as follows: "A great opportunity and a similarly great responsibility still lie ahead of legal education. They are the task of implanting conviction in faculty and students, both of whom have been conditioned by the opinion of a nation that has never entirely grown to repose abiding faith in its government, that government is important; that through no other means, perhaps, may the lawyer so largely determine his own future and that of all of us."

This book points the way for legal education; a way that builds on the past but recognizes that the future for the law schools is already here. The book suggests improvements designed to meet the problems of such a future, but most of all it calls for an awareness about those problems and urges a planned solution to them. Anyone who expects to be a participant in the days ahead for legal education owes it to himself to read this book.

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CRIMINAL PROCEDURE FROM ARREST TO APPEAL. By Lester Bernhardt Orfield. New York University Press, 1947; pp. xxxi, 614 (incl. index).

Professor Orfield has produced a book which is both scholarly and stimulating—an enviable achievement. It is his second contribution to the Judicial Administration Series, which is published under the auspices of the National Conference of Judicial Councils, his first work in that series having been "Criminal Appeals in America."

The present volume does not purport to be a textbook; still less is it a "hornbook" or an attempted restatement. True, it does contain sound statements of existing law relating to criminal procedure; it also contains short presentations of the historical development of some of the more important phases of that procedure, both in England and the United States, and affords frequent opportunity for highly interesting comparisons of existing American procedure with existing English and Continental procedures. But its purpose and achievement go beyond all these things.

An impressive amount of research has quite obviously gone into the writing of this book. Its great importance and usefulness, however, lie in the successful and attractive manner in which that research has been turned to account, for it has been used as a springboard for the attainment of the author's real goals, which are to wake up the legal profession, particularly those of its members who feel they are *not* concerned with criminal procedure, to an awareness of

the crying need for reform in the law relating to that procedure, and secondarily to present the carefully considered recommendations of the author and others with respect to specific needed reforms.

The first of these goals is based upon the expressed conviction that "The initiation of criminal procedural reforms is primarily the function and duty of lawyers." Not only is this because lawyers are better equipped to recognize the need for reform and to devise procedures which will fulfill such need constitutionally, but also because lawyers have a peculiar responsibility in the administration of justice, and the welfare of the public and the reputation of the bar depend upon the energetic discharge of that responsibility. Any lawyer who feels our criminal procedure is up-to-date, or adequate for contemporary social needs, will be shaken from his complacency by this book—to his own advantage.

The second goal is achieved against a background of wide study of criminal procedure in theory and in action. The book is full of facts based upon the experience of police departments and prosecuting officials and the findings of crime surveys. The author's recommendations deal mainly with matters where such facts have fully demonstrated a genuine need for change, although there are other recommendations designed either to perform the function of "a stitch in time" or to round out a rational and simplified system. In the main, though by no means invariably the author's recommendations follow closely those of the American Law Institute as expressed in its suggested Code of Criminal Procedure. One of the valuable features of the book, however, is its wealth of comparisons of common law, Federal rules, state codes and decisions, the A. L. I. Code, various Uniform Laws, English and Continental laws, and the ideas of innumerable investigators and scholars.

"Criminal Procedure from Arrest to Appeal" is not a treatise on criminal procedure; it is an education in criminal procedure. Yet the author never strives to exhaust a topic; a point is never labored; the text is not overburdened with references or with mere weight of learning; the author says, concisely and persuasively what he wants to say and lets it go at that, although the footnotes constitute a valuable bibliography on each topic. It is a book to read and enjoy as well as to consider thoughtfully. It brings up questions about which many "civil" lawyers have few accurate notions, including such things as detention without arrest, frisking, the flaws in existing remedies for illegal arrest, the third degree, shopping for bail, the abolition of the grand jury, difficulties created by the use of radio cars by the police, the effect of *nolle prosequi* and *nolo contendere*, the writ of *coram nobis* (of special interest to Kentucky practitioners in view of its recent revival in that state), and many others.

The book has already been quoted by the Supreme Court of the United States.* This reviewer adopted the book for classroom use and found it had a remarkably stimulating effect upon freshmen law students. The effect will be still greater upon experienced lawyers interested in the vital role of law in our society.

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*In *Von Moltke v. Gillies*, —U.S.—, 68 Sup. Ct. 316, 321 (1948).