

Washington University Law Review

Volume 20 | Issue 1

January 1934

Review of “Handbook of Criminal Law,” By Justin Miller

Tyrrell Williams

Follow this and additional works at: http://openscholarship.wustl.edu/law_lawreview



Part of the [Criminal Law Commons](#)

Recommended Citation

Tyrrell Williams, *Review of “Handbook of Criminal Law,” By Justin Miller*, 20 ST. LOUIS L. REV. 095 (1934).

Available at: http://openscholarship.wustl.edu/law_lawreview/vol20/iss1/5

This Book Review is brought to you for free and open access by the Law School at Washington University Open Scholarship. It has been accepted for inclusion in Washington University Law Review by an authorized administrator of Washington University Open Scholarship. For more information, please contact digital@wumail.wustl.edu.

On the other hand, it should be understood that the philosophy of the law has not been neglected. Quite the contrary is true. For example, the author traces the growth of state inheritance taxation in the United States, and proceeds to lay a firm foundation by examining the nature of an inheritance tax and the principle underlying all inheritance taxation, which the author phrases as follows:

“The right of the state to levy an inheritance or transfer tax arises out of the principle that property rights cease upon the death of the holder thereof. The right of one, therefore, to give his property at death, and the right to receive such property are not natural rights, but are creatures of the statute. The state may, therefore, levy a tax upon such transfer.”

As indicated by the wording of the title, the portion of the book devoted to taxability of trusts is not limited to the holdings of the state courts, but is a general treatment of the subject under the latest decisions of all the courts, state and federal.

The chapter on valuation gives the mortality and annuity tables used in the various states, and tells for each state separately what table is used.

Some forms have been included. There is a table of cases and a fairly detailed index, as well as a detailed table of contents. It is believed that this will render the information contained in the book readily accessible to the practitioner. The volume is about the same size as the current Southwestern Reporter volumes, but the type is larger and the paper is not so thin.

RALPH R. NEUHOFF.

St. Louis, Missouri.

HANDBOOK OF CRIMINAL LAW, by *Justin Miller*, Dean of the School of Law, Duke University, (Hornbook Series). St. Paul, Minn.: West Publishing Co., 1934. Pp. xiii, 649.

The second volume in the well known Hornbook Series was William L. Clark's Handbook of Criminal Law, published in 1894. Well edited second and third editions of this book were published in 1902 and 1915 respectively. These earlier works are now superseded in the Hornbook Series by the new Justin Miller's Handbook of Criminal Law, which is original and modern, although, as the author makes clear in his preface, based to some extent upon the plan, text and chapter arrangement of the classic prototype. Clark's handbook of 1894 contained 377 pages of text and about 2720 cited cases. Miller's handbook of 1934 contains 544 pages of text and about 5600 cited cases. The figures do not indicate a much more intensive treatment of those particular topics which were recognized as pertinent to the substantive law of crimes in 1894. Rather the figures indicate that criminal law is a much more widely developed subject in 1934 than it was in 1894. Clark had not a word to say about kidnapping as a felony, for the simple reason that kidnapping was not a felony in 1894. Miller states that kidnapping "has been made a felony generally by the state statutes." He also refers to the recent federal legislation on the same topic. Most of the foot-note cases on kidnapping are felony cases.

Federal or state statutes against monopolies, selling impure food and drugs, espionage, displaying a red flag to incite disorder, evading taxes, prize fighting, white slavery, traffic in stolen automobiles, intentionally losing a professional baseball game, announcing false time at a horse race, using the national anthem in a medley, permitting hogs to run on levees, and statutes against scores of other human activities—all are adequately treated by Miller, but for obvious reasons were not mentioned by Clark.

A more significant variance between the book of 1894 and the book of 1934 has to do with the attitude toward criminal procedure. Both books are designed to present the substantive law of crimes. The author of 1894 found it possible to treat this subject as if it were absolutely separate from criminal procedure except as to the one matter of former jeopardy. This defense might be waived, and so even in 1894 double jeopardy had a procedural aspect. In 1934 there are some states which require a special preliminary plea of insanity to make the defense available. Some jurisdictions require a special plea as a foundation for any evidence of an alibi. Since 1894 we Americans have invented juvenile delinquency as something distinct from crime, and to be determined by courts having a jurisdiction quite different from the English concept of criminal jurisdiction, although often the same court will exercise both jurisdictions. Since 1894 state and federal laws have been passed relating to probation, bench parole and prison parole. All of these new laws have had the practical effect of bringing criminal law and criminal procedure into much closer relation. Miller in 1934 finds it impossible to write an adequately useful book on criminal law without touching upon many phases of criminal procedure, although he consciously tries to delimit his field according to the conventional boundaries. Indeed the first chapter of Miller's book, short but extremely valuable, entitled "The Scope of Criminal Law," is an essay in the orientation of traditional criminal law with reference to the much broader concept of criminal justice, which necessarily includes not only criminal procedure but also laws designed to change social and industrial conditions in order to prevent crime.

One more comparison between the book of 1894 and the book of 1934 is noteworthy. Forty years ago apparently students and lawyers were supposed to accept the law of legislatures and courts exactly as the children of Israel accepted the Ten Commandments. In 1934 some criticism of law is expected and encouraged. The text of Miller's handbook is purely in the nature of orthodox commentary. But the footnotes are evidently prepared with the particular desire to stimulate a reading of constructively critical essays in legal periodicals and other recent professional literature. Among the hundred or more publications cited in the footnotes, other than statutes, cases and conventional text books, are the Missouri Crime Survey and The St. Louis Law Review.

As collateral reading for students in American law schools, Miller's Handbook of Criminal Law is undoubtedly the most practical as well as the most stimulating one-volume work now on the market.

TYRRELL WILLIAMS.

Washington University School of Law.