

Book Reviews

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MARYLAND CORPORATION LAW AND PRACTICE, Revised Edition. By Herbert M. Brune, Jr. Washington, D. C. Washington Law Book Company, 1953. Pp. XVIII, 848. \$20.00.

By Laws 1908, Chapter 240, commonly known as the Bar Association Bill of 1908, a complete revision and recodification was effected in the Maryland laws relating to corporations generally. Shortly thereafter Joseph C. France, the reporter of the commission responsible for the drafting of this legislation, wrote "Principles of Maryland Corporation Law".

In 1933, the first edition of the present work by Mr. Brune was published. The framework of the statutory law was still that of the Act of 1908, but sections of Article 23 had been amended at almost every session of the General Assembly and the statutory picture in 1933 was far different from that in 1908. With substantial changes in the law and with the constantly increasing volume of corporate practice the first edition of this work was welcomed by the bar. Further, the work did, as stated in the Preface, represent "the first attempt to collect all the Maryland statutes and case law applicable to corporations generally". This comment could not have been made of Mr. France's work, excellent as it was. Nor could the comment have been made with respect to the annotated pamphlets of the Maryland Corporation Law issued periodically by the State Tax Commission. This factor made the 1933 publication doubly welcome.

Twenty years have now passed, the first edition of the work is out of print, the statutory law has been completely revised and recodified by Laws 1951, Chapter 135, and the courts have decided a large number of cases which affect corporation law and practice. Almost any combination of these factors would justify a new edition of the work. The present Revised Edition published in May, 1953, answers a basic need. The work will be invaluable both to practitioners and to students of the Maryland law. The scope of natural interest in the book, outside the State as well as for Maryland practitioners, is indicated from the extensive use of the Maryland law referred to in the Preface. Widespread interest is most certainly to be expected in a law which will control operations of over 17,000 corporations,

and the purpose of the author has been to fulfill the need for a complete reference work on this law.

The book contains as Part 1 a treatise on the Maryland corporation law, as Part 2 certain office forms, as Part 3 certain official forms of the State Tax Commission, and as Part 4 the text of the statute law with a reproduction of the Explanatory Notes to the Report of the Revision Commission, which prepared the Act of 1951 and submitted the proposed bill to the Legislative Council. Tables and an index follow.

The "office forms" of Part 2 are the forms required in practice for initial incorporation and organization, that is, articles of incorporation, by-laws and organization minutes. The inclusion of other forms in more or less common use would have been a welcome addition to the book; the author cannot, however, be criticized where limits of space do not permit extensions in the scope of a work.

The "official forms" contained in Part 3 are, in fact, skeleton forms provided by the State Tax Commission as guides to compliance with statutory requirements, plus the 1952 Form of Personal Property Returns and Annual Franchise Tax Report. In addition to articles of incorporation, the forms for domestic corporations include articles of amendment, stock issuance statement, articles of reduction, articles of dissolution, articles of revival, and notifications with reference to resident agent and principal office designation and changes. Foreign corporation forms are also included.

The text of the statutory law contained in Part 4 calls for no comment. In the opinion of the reviewer, Mr. Brune's decision to include in Part 4 the Explanatory Notes to the Commission's Report on the 1951 Act, and also to include in the tables the cross-references between the 1951 Act and the old law, was one for which the Bar should be grateful. The Reports of the Corporation Law Commission, containing these Explanatory Notes and tables will in time become more and more difficult to obtain. Inclusion of them in Mr. Brune's book will make them permanently available.

Of most general interest is the treatise on the Maryland corporation law comprising Part 1 of the volume. Notable in the Revised Edition is a new chapter on the general subject of equity jurisdiction and procedure. Otherwise, the form follows that of the first edition, which is now familiar to practitioners interested in the Maryland law.

The discussion of the corporation law has been brought up to date, and a large number of annotations have been

added for cases decided since date of publication of the earlier edition. The author has devoted both thought and effort to his analysis of the statutory law and of the decisions under that law. Attempts have been made to indicate that certain cases decided under earlier statutes may now be of doubtful value as precedents. No justifiable criticism can be made of the work for not containing a *caveat* to every annotation on this score; both the practitioner and the student must be consciously aware at all times that in the field of corporation law statutes play a major part and that these statutes are from time to time amended.

The work is thorough and has been done competently. It is a "must" addition for the library of all lawyers who engage in any substantial volume of practice in the Maryland corporation law.

McKENNEY W. EGERTON*

PSYCHIATRY AND THE LAW. By Manfred S. Guttmacher and Henry Weihofen. New York. W. W. Norton & Company, Inc., 1952. Pp. viii, 476. \$7.50.

To a lawyer, perhaps the most significant part of this book is found in the three chapters entitled "Mental Disorder and the Criminal". The material in the preceding eight chapters which deal with such subjects as sex offenders, psychopaths, psychoneurosis and personality neurosis is but a prologue to the theme there contained, and is essentially an orientation course on the principles of psychiatry, which is of interest to laymen equally with lawyers.

The purpose therefore of this review is to emphasize the thinking of the authors on the pointed and timely questions which they raise concerning the criminal law and the insane.

In *Spencer v. State*,¹ it was said:

" . . . according to the law, as we find it settled by the great preponderance of judicial authority, if the party accused be competent to form and execute a criminal design; or, in other words, if at the time of the commission of the alleged offense, he had capacity and reason sufficient to enable him to distinguish between right and wrong, and understand the nature and con-

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¹ 69 Md. 28, 37, 13 A. 809 (1888).

sequences of his act, as applied to himself, he is a responsible agent, and amenable to the criminal law of the land for the consequences of his act."

This is the general Maryland law of insanity, and is the Maryland interpretation of the *M'Naghten Case*,² decided in England in 1843. The authors pointed out that this test actually comprises two tests, viz., (1) knowledge of the nature and quality of the act and (2) knowledge of its wrongfulness, but that the emphasis of the courts has been upon the wrongfulness of the act with a resulting failure to consider the question of whether the defendant understands its nature and quality. This is a just criticism of the manner in which the courts have applied the *M'Naghten* rule. Knowledge of the nature and quality of the act really means the understanding that the defendant had of the nature and quality of the act. There are, however, many different degrees of understanding and courts are, not unnaturally, reluctant to deal with these, for proof of understanding will usually require testimony concerning motive. Motive will not legally excuse a crime and therefore evidence bearing on motive is generally rejected as being irrelevant. Yet the same evidence also bears on the understanding that the defendant had of the nature and quality of the act.

The authors contend that only through study of these conscious and unconscious motives can understanding be had of the knowledge and personalities of the individual and what it is that makes him a menace to society, and that it is time for a re-examination of the criminal law dogma that motive is irrelevant. They suggest therefore that the substantive criminal law be changed so as to make motive a part of criminal intent. Such an expansion of the idea of criminal intent may perhaps be justified in those criminal cases where the defense of insanity is interposed in order to determine the degree of understanding that the defendant had of the nature and quality of his act. No solution, however, is offered of the problem as to how much understanding the defendant must have to be responsible for his act or how little understanding he must have to be considered irresponsible.

The authors state that a poll of over three hundred psychiatrists in an evaluation of the rule of the *M'Naghten Case*, resulted in the rule being considered satisfactory by 12%, unsatisfactory by 80%, fairly satisfactory by 5% and unsatisfactory but yet the best rule possible of formulation

² 10 Clark & Fin. 200, 8 Eng. Rep. 718 (1843).

by 2½%.³ These results, however, are hardly novel; it is probable that if a similar poll were taken among lawyers the result would be about the same.

The authors object to the *M'Naghten* rule because it is not broad enough to include irresistible impulse as a defense. Courts generally refused to recognize irresistible impulse as a defense because of the difficulty of both definition and proof. To this objection the authors reply: "Whether a truly irresistible impulse can exist is a question for psychiatrists rather than for judges to decide, and dogmatic judicial denials that such a condition is possible have rather gone out of fashion".⁴ The authors distinguish between those impulses which are wholly irresistible, those which are partially irresistible, those which are irresistible because the impulse was generated from intrinsic motivations, and those which are generated from exterior motivations. Though these distinctions may, as the authors state, be clear enough conceptually, yet to the reviewer they seem fraught with endless and obvious difficulties if made the basis for any practical application.

The treatment of insane delusion under the *M'Naghten* rule is regarded as little short of ridiculous. The rule is:

"If a person under an insane delusion as to an existing facts commits an offense in consequence thereof, . . ." and assuming ". . . that he labors under such partial delusion only, and is not in other respects insane, . . . he must be considered in the same situation as to responsibility as if the facts with respect to which the delusion exists were real."⁵

Fundamentally, the purpose of the *M'Naghten* rule is, according to the authors an:

". . . attempt to isolate those offenders who, because of their mental disorder, are nondeterrable — individuals who, because of the severity of their mental disturbance, are incapable of being intimidated by threats of punishment into abiding by the accepted behavioral (*sic*) standards of the community."⁶

As a substitute the authors recommend the following:

". . . a defendant should be found irresponsible when, at the time of the act, he was suffering from a mental

³ GUTTMACHER and WEIHOFEN, 408.

⁴ *Ibid*, 409.

⁵ *Supra*, n. 2, 211, 723.

⁶ GUTTMACHER and WEIHOFEN, 420.

illness generally recognized by the medical profession, and by reason of which (1) the act was committed or (2) the defendant did not have the particular state of mind that must accompany such act, in order to constitute the crime charged. Section (2) would have its application in regard to degrees of homicide."⁷

Under such a rule, it is urged, criminal court psychiatry would attract rather than repel the more competent members of the psychiatric profession and would make for better administration of criminal justice.⁸

The authors recommend that the judge be shorn of his sentencing power, which is to be vested in a board composed of doctors, social workers, lawyers and psychiatrists. This suggestion is justified on the ground that, as the judge now has the advantage of a presentence investigation report, it would be not much of a further step to permit the persons who make the pre-sentencing reports to do the actual sentencing. This idea has an undoubted appeal, but the administration of criminal justice is a heavy responsibility and one resting primarily upon the courts. To the reviewer, it would seem one which the courts may well share with, but should not surrender to, the members of the psychiatric profession.

BARNARD T. WELSH*

⁷ *Op. cit.*, *ibid.*, 421.

⁸ *Loc. cit.*, *ibid.* Of particular local interest in this connection is the Maryland Defective Delinquent statute, Md. Laws 1951, Ch. 476, Md. Code (1951), Art. 31B, which will be far reaching in the Maryland criminal law in regard to insanity. Section 5 of that Article provides:

" . . . a defective delinquent shall be defined as an individual who, by the demonstration of persistent aggravated anti-social or criminal behavior, evidences a propensity toward criminal activity, and who is found to have either such intellectual deficiency or emotional unbalance, or both, as to clearly demonstrate an actual danger to society so as to require confinement and treatment under an indeterminate sentence, subject to being released only if the intellectual deficiency and/or the emotional unbalance is so relieved as to make it reasonably safe for society to terminate the confinement and treatment."

This provision goes further than the test recommended by the authors.

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