

In fact, the member's immunity extends only to actions based on his activities in the legislature, or to civil "arrest, detention or molestation" for other matters while the legislature is in session.¹⁰ An ordinary civil action against a member of the legislature while the legislature is in session is quite permissible.

In addition to these positive errors, there are a number of strange omissions. The salary of Surrogate Court judges is discussed,¹¹ but the salaries of other types of judge are not mentioned. The number of Justices of the Peace, Magistrates, County Court judges and Queen's Bench judges is listed,¹² but not the number of Court of Appeal judges. (In fact, the Admiralty Court, which has yet to render a decision, is given considerably more attention than the Court of Appeal). Mention is made of appeals to the Supreme Court of Canada in criminal cases,¹³ but no reference is made to civil appeals. It is unfortunate, too, that only passing reference¹⁴ is made to the political appointment of judges. A study of this delicate question in the light of the author's thesis that the effect of partisan politics on all organs of government is beneficial might have been very interesting.

On the whole, it must be said that Professor Donnelly's apparent failure to collaborate with a lawyer on these matters was unwise, and has resulted in an inadequate and sometimes misleading treatment of the judiciary.

But the lawyer's hypersensitivity about errors in the realm he likes to call his own should not be allowed to blind him to the virtues of the book. It will be a welcome addition to the bookshelves of anyone interested in the facts of political life, lawyer or layman.

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DICKENS AND CRIME

By PHILIP COLLINS. Toronto: MacMillan of Canada, 1962.

Pp. xiii, 371. \$6.00.

Charles Dickens was not content to be England's second greatest creative genius. To satisfy a vast ego, he set himself up as an authority on a wide variety of subjects. He was, of course, within his rights. In a democratic society, any man, whether an ignoramus or an Einstein, is entitled to his own opinion on any subject—with the qualification that his opinion, on the open market, is entitled only to the respect which it deserves.

10. R.S.M., 1954, c. 141, s. 46-7. This is the present counterpart of the "statute of 1937" to which the author refers.

11. P. 156.

12. P. 155-7. The number of County Court judges is incorrectly stated to be nine. In fact there are ten.

13. P. 157.

14. P. 153.

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Being free with his opinions in many fields, Dickens had some opinions which did not deserve much respect. Unfortunately, because his novels had made him world-famous, his opinion on any subject was accepted, in some circles, at an authority greatly beyond its true merit. As a contemporary critic said: "even the hallucinations of Mr. Dickens are referred to as weighty evidence!"¹

Few men have been more over-praised, or given more praise on the wrong grounds, than Charles Dickens. For example: in 1909, Sir Louis Davies, (then a judge of the Supreme Court, later Chief Justice of Canada), began an interesting sketch of his life and career with these enthusiastic words:

Charles Dickens, author, orator, man of letters, champion of children, friend of the downtrodden and the distressed, the enemy of cant, hypocrisy, cruelty and oppression, was born in 1812 and died in 1870.²

In recent years, scholars have been busily engaged in retouching, nearer to the truth, the popular image of Charles Dickens as a man of compassion who exuded the genuine, one-hundred-proof spirit of Christmas for three hundred and sixty-five days of the year.

When his own interests or emotions were involved, Dickens could be as hard as nails. He cast out his wife and took up with an actress half his age, and so rationalized his behaviour that, in his own eyes, he was the aggrieved party. "His treatment of Catherine (his wife)," said Edmund Wilson, "suggests . . . the behaviour of a Renaissance monarch summarily consigning to a convent the wife who has served her turn."³

In this book, Mr. Philip Collins, "a profound admirer and student of Dickens,"⁴ has done much to correct the popular notion that Dickens was a great law reformer and penologist.

Dickens' lifetime coincided with "the greatest period of legal and penal reform in our history."⁵ He was never in the vanguard of this reform. Starting as a mild reformer, his attitude to reform became less enlightened as he grew older. "In the 1840's Dickens' opinions on prison discipline," says Mr. Collins:

had been, on the whole, enlightened; by the 50's and 60's he was running level with, or even behind, public opinion, let alone progressive opinion, in this field. In the 40's, too, he had advocated the abolition of capital punishment; by 1859 he was threatening to hang any Home Secretary who stepped in between one particular "black scoundrel" and the gallows. "I doubt the whipping panacea gravely," he wrote in 1852 during a wave of brutal assaults; sixteen years later, during a similar outbreak, he writes of the street ruffian: "I would have his back scarified often and deep."⁶

1. Quoted by Mr. Collins, p. 117.

2. (1909) 29 *Canadian Law Times*, p. 433.

3. *The Wound and the Bow*, University Paperbacks, p. 56.

4. Introduction by Dr. L. Radsinowics, p. ix.

5. P. 2.

6. P. 17.

Dickens was not a serious student of criminology. In his reaction to crime and criminals, he took counsel from his heart, not his head. George Orwell made this point well:

Dickens . . . shows less understanding of criminals than one would expect of him. Although he is well aware of the social and economic causes of crime, he often seems to feel that when a man has once broken the law he has put himself outside human society . . . as soon as he comes up against crime or the worst depths of poverty, he shows traces of the "I've always kept myself respectable" habit of mind.⁷

Dickens accepted the values of middle class Victorian England. In Lord David Cecil's words: "(He) was himself by birth and instinct a member of that middle class, nor had he the intellectual power to discern its faults."⁸ He was, in short, the victim of his birth and environment. He had no vision of a better world. His genius had seen to it that he had been dealt a good hand by the society in which he lived, and he had no fundamental criticism to offer of that society. "He never wanted, or even envisaged," says Mr. Collins, "a society much different from his own in its social and political and economic organization."⁹ This contributed to his strength as a novelist. As Mr. Collins points out, it enabled him, like his one master, Shakespeare, to keep in the high road of life.

Punishment, as Roscoe Pound once said, is the engine of the criminal law.¹⁰ What broad purposes should society have in mind when setting this engine in motion? What were Dickens' views? In a review of a book written by Frederic Hill, which appeared in Dickens' periodical, *Household Words*, which, if not from his own pen, at least had his editorial sanction, this "deplorable" passage appeared:

I think it right and necessary that there should be in gaols some degraded kind of hard and irksome work, belonging only to gaols. I don't think Mr. Hill's punishment of cleanliness and discipline, and no beer and no tobacco, half enough for the regular hands. I think it a question by no means to be left out of view, what kind of work does the determined thief, or the determined swindler, or the determined vagrant, most abhor? Find me that work; and to it, in preference to any other, I set that man relentlessly. Now I make bold to whisper in Mr. Hill's ear, the enquiry whether the work best answering to that description is not almost invariably found to be useless work? And to such useless work, I plainly say, I desire to set that determined thief, swindler, or vagrant, for his punishment. I have not the least hesitation in avowing to Mr. Hill that it is a satisfaction to me to see that determined thief, swindler, or vagrant, sweating profusely at the treadmill or the crank, and extremely galled to know that he is doing nothing all the time but undergoing punishment.¹¹

These words do not say much for Dickens as the friend of the distressed, or the enemy of cruelty. Those arch-reactionaries, Lord Eldon and Lord Ellenborough, in their sturdy opposition to penal reform, never offered anything worse than this benighted nonsense.

7. *A Collection of Essays*, Anchor Books, p. 80.

8. *Early Victorian Novelists*, Pelican Books, p. 43.

9. P. 220.

10. *Criminal Justice in America*, p. 27.

11. P. 72.

Dickens' attitude to the problem of crime and punishment goes to confirm that a man may be a supreme creative genius, but have no worthwhile contribution to offer in a field which can only be subdued by special study and reflection. Genius is born with a man, but knowledge must be acquired.

Mr. Collins has set the record straight, once and for all, on the subject of Dickens and crime. His book does not celebrate the "jolly" Dickens of popular myth. It helps in the good cause of taking Dickens away from the children of all ages and giving him to the mentally mature. It belongs on every Dickens shelf, at the farthest end from the Christmas books, beside *Martin Chuzzlewit*, *Hard Times*, or *Pickwick*. It has earned for its author the gratitude of all adult admirers of the greatest master of English after Shakespeare.¹²

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MANUAL OF MOTOR VEHICLE LAW

With Special Reference to the Ontario Highway Traffic Act

By DAVID B. HORSLEY. Toronto: The Carswell Company Limited. 1963. Pp. xxviii, 466. \$15.00.

This book is a commentary on the Ontario Highway Traffic Act. Its format is well described by the author in the Preface:

The book is not a text in the strict sense, nor is it in more than a general way an annotated Act, but rather a collection of "notes" hinged onto the text of The Highway Traffic Act.

It is a compromise between a general treatise on the one hand, and a mere digest or catalogue of cases, such as O'Connor's *Highway Traffic Act*, on the other.

Books of this type are undeniably of great value as practitioners' aids, but they are subject to a number of inherent shortcomings. Mr. Horsley's book is not free from such weaknesses.

The need to relate every comment to some specific provision of the statute leads to awkward organizational problems. We find, for example, a 33-page discussion of the duty to repair highways inserted as part of the commentary on the statutory definition of "highway".

Because of the overwhelming quantity of case material that such a book must marshal, it is inevitable that much of the text must consist of one-sentence case descriptions. This creates a danger that the purely

12. See F. R. Leavis, *The Great Tradition*, Anchor Books, p. 297.

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