

leap to his decision (p. vii). This is very novel or perhaps I do not understand what is intended.

When one examines the treatment of a specific subject matter, it would at first seem that "formulary" means "principle" and that "factors" means "facts". But closer examination suggests that more than an exercise in semantics is involved.

The truth is that the language of this book owes much to the North American language and, as one brought up on the English language, I am aware of great gaps in my appreciation of Professor Lane's arguments. The methods of criticism, though equally foreign, I am sure would be enlightening if they could be understood more easily.

Let me say at once that an iconoclastic approach to judicial decisions is useful if soundly based. Indeed, I am sure that the great merit of this book is that the author remains unimpressed by anybody or anything other than the strength of his own intellect. But all that is no more than a starting point. What an overall reading of the book does to this reviewer is to leave him with the conclusion that despite the formulation of principles and the actual application of them, any of these cases might have been or their counterparts might yet be decided differently depending entirely upon the exercise of a discretion controlled by nothing more than the composite mood of the Court.

After reading any chapter, one is left not so much with any clear concept of what the law is but with a set of criticisms of each case in which the Court has decided a dispute. The dispute which has been decided tends to be lost sight of in the course of the criticism of the judicial method followed in pronouncing reasons for a judgment. The same technique is followed naturally enough in each of the chapters.

This leaves a person who consults this book with the knowledge that he must also look elsewhere. No doubt the author intends this result. For myself, I would think that one should look at this book last so that through its manner of criticism the student may then best come to his own conclusion upon the specific problem he must solve.

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The Life and Death of John Price: A study of the exercise of naked power, by the Hon. Mr. Justice J. V. Barry. Melbourne University Press, 1964. xiv and 204 pp. (\$5.00 in Australia.)

In Sir John Barry's *Alexander Maconochie of Norfolk Island* (1958) the following passage occurs:

The next Commandant, John Price, was a stern disciplinarian, although he was said to be a just man, according to his lights, and he restored order by the merciless application of terror. Bishop Willson denounced Price's methods after he had visited the island in 1852. . . .

Price remained on the island until 1853, and later became Inspector-General of Prisons for Victoria. On 26 March 1857 at Williamstown, Victoria, when inspecting some earth-works, he was rushed by some convicts and so severely battered that he died on the following day.

Elsewhere in a footnote we are told that Price was a police magistrate from Van Diemen's Land who married a niece of Sir John Franklin; and we are referred to Rusden's *History of Australia* and Ives' *History of Penal Methods* for contrasting estimates of him. But that is substantially all that we are told about John Giles Price.

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Yet it is improbable that any unbearable curiosity will have been engendered. In the unlikely event of anyone following up the footnote references they will have found that Rusden regarded Price as "capable, determined, fearless and strong in mind and body" and that Ives refers to him as "one of those human tigers who, if they cannot obtain some uniform to cover their crimes, are apt to get hanged for them". Further research might have disclosed that he served as a model for Marcus Clarke's prison commandant, Maurice Frere, and for Price Warung's Commandant of Norfolk Island, Mr. Scragge.

But Price emerges, after all, as a relatively minor figure both in the history of Australia and in the history of penal methods. Nor do we have to look to the past for morbid titillation or the stimulation of feelings of virtuous complacency. For in the twentieth century examples of the abuse of power and man's inhumanity to man abound in gross, unparalleled profusion. So that a certain puzzlement that Sir John should have thought Price worth a book—a book, moreover, that has patently entailed considerable painstaking research—is perhaps inevitable.

In the event, however, the author's decision is vindicated. This study of John Price admirably complements the earlier study of Alexander Maconochie. Having told the story of one of the legendary humanitarian heroes of what Sheldon Glueck has called "one of the blackest chapters in the lexicon of man's inhumanity to man", it is fitting that Sir John should complete the picture by giving the other side of the story. And in John Price, who fathered a legend of an altogether different kind, what were in fact the dominant principles of nineteenth century penology were vividly embodied.

Yet just as with Maconochie Sir John conscientiously acknowledged and analysed his weaknesses, so with Price he scrupulously presents the evidence in his favour. Thus he cites such contemporary witnesses as the Military Commander of Norfolk Island who asserted that Price "was the finest character I have met with in a wide experience", and the ex-convict who wrote of Price as "temperate, strict and judicious". Moreover, he is careful to point out—what is too often ignored by historians regaling their readers with the horrors of the past—that in exercising harsh disciplinary control Price was carrying out an allotted task and, Sir John says, "it is idle to censure him for doing what his superiors required of him".

But after all this has been said there remains incontestable evidence that Price not only far exceeded what was required of him but also exceeded the law. For the law conferred on him no authority to torture or torment the prisoners in his charge. And, as Sir John says, "the evidence that he did both is too massive to be ignored". So there will be few readers who will question the final verdict that "On the whole of the record, John Price was a cruel man".

Furthermore Sir John Barry confesses that, having long been fascinated and disturbed by human cruelty, Price holds for him "more than an historical or legendary significance". So in the concluding chapter he sets down what he refers to as "my puzzled reflections on the enigma of this aspect of man's nature". It is an illuminating if inevitably inconclusive essay; and it illuminates more than its subject matter. For it tells us something about the author, that it is cruelty which he finds puzzling. Others, more misanthropic perhaps, may feel that it is Maconochie's benignity rather which needs explaining. However that may be, this is a scholarly, lucid and fascinating work and a welcome addition to the available literature about an era which has, until recently, been badly neglected by serious historians.

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