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George H. Dession

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IN MEMORIAM GEORGE H. DESSION

at least the immediate future. As with many remarkable men, only particular skills or deficiencies are easy to replace; not his genius.

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GEORGE H. DESSION

The untimely death of Professor George H. Dession has deprived all those concerned with the present and future of criminal justice of one of their ablest and most promising colleagues. The present writer never had the privilege of meeting him in person, but the study of his writings makes it possible to reconstruct the basic characteristics of the man. He was one of the comparatively small band of criminal lawyers whose interests extend far beyond the limits of their own branch of the law and even beyond those of the law altogether. Moreover, although dealing in the first place with American conditions, most of his ideas were of a quality so universal as to make them applicable to conditions in other countries, and his writings were keenly appreciated abroad as much as in the United States. He was at home in legal philosophy and sociology and also familiar with the teachings of economists and psychiatrists. At the same time, he had at his disposal that indispensable first-hand experience of the actual working of the machinery of criminal justice that can be obtained only from practical activities in its various fields. Neither his learning nor his practical experience, however, seem to have made him, as sometimes happens, indifferent to the human factor which is perhaps more important here than in any other branch of the law. Characteristically, one of the various "Principles" dominating his major work "Criminal Law, Administration and Public Order" and appearing again in his outstanding James McCormick Mitchell Lecture at the University of Buffalo, is the "Humanitarian Principle" which requires "the largest possible identification" with the lawbreaker — a capacity which, Dession thought, had been almost lost in a self-satisfied and complacent "bourgeois" age too well off to feel sympathy with the underdog. Only communities which have to struggle hard for survival, communities and periods whose political and social values are not yet, or no longer, firmly secured and stabilized can have a real appreciation of the need to protect the legitimate interests of the lawbreaker. This seems to imply that, in the criminological sphere, Dession has taken his stand with Durkheim against Sorokin; and he is not likely to have favoured any Lombrosian or neo-Lombrosian theories stressing the hereditary and constitutional factors in crime and, in the last resort, proclaiming the unalterable difference between the criminal and the law-abiding citizen. In the

field of law reform and penal administration, Dession's interpretation implies the existence of an eternal dilemma: while bad economic conditions make penal reform impossible, in times of prosperity lack of interest among the public produces the same negative result. His bitter criticism of the habit to treat penal administration like a "peace-time army," of indifference alternating with panic — "catharsis" instead of scientific "epidemiology" — is only too justified.

In some of his other "Principles" Dession shows himself a true disciple of Jeremy Bentham. This in particular in his emphasis on the "Economy Principle," on the need to apply punitive sanctions as sparingly as possible. "Punishment is never good in itself," and "the word 'penal' has no longer a place . . ." Closely related to this skeptical attitude towards the potentialities of purely penal action is the equally Benthamite appreciation of the fluctuating nature of the line of demarcation between criminal, civil and administrative law — a point the significance of which is being more and more clearly understood in the light of experiences made in the past fifty years, notably in the fields of monopoly and black market legislation and law administration. A true follower of Bentham, he also was a great questioner of all things established and skeptical of all easy solutions.

It was only natural for a criminal lawyer of Dession's critical mind to find the problem of "Law and Psychiatry" particularly hard to solve. On the one hand, he willingly admits that the questions posed by the M'Naghten Rules are "impossible to answer for psychiatrists." On the other hand, "the law is not intended to be a treatise on psychology," and Dession expresses the fear that the intrusion of psychiatrists in the field of criminal justice means "a much more far-reaching attack on the work of the law courts than that of other experts" (Psychiatry and the Conditions of Criminal Justice, 47 Yale Law Journal, 319). It is here that some of his most searching questions can be found. Individualization of criminal justice? Certainly — but can it be so conditioned as to avoid the dangers associated in our minds with the *lettres de cachet* of French pre-revolutionary times and similar devices also adopted under the slogan of individualized justice? And is individualization, to the extent implied in an application of psychiatry that would be more than mere lip-service, not something entirely beyond the means available for the purpose? It is the ever widening discrepancy between the standards modern society expects and the burden it is willing to shoulder that worried Dession as it worries some other observers who, although sincerely in favour of the Welfare State, realize that some of its demands are far removed from practical politics. It is significant that some of these problems, discussed in one of Dession's most important pre-war writings, appear again in his last published work, his Buffalo Lecture, but it is also significant that now he ends on a more optimistic note than in 1938: "these questions are on the verge of resolution . . . the learning has progressed pretty far on both sides." There is good prospect of both lawyers and psychiatrists

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working together in close harmony. For us as lawyers, however, and to the legislators in whatever country, it is imperative to pay full heed to Dession's final exhortation not to place the whole burden on the psychiatrist, but to provide for him the tools required; i.e., "a civilized Code of Correction."

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GEORGE DESSION

George Dession died at an age when most men are just beginning to reach the height of a distinguished academic career and much can still be expected of them. But he had already made a mature contribution to the field of criminal law and criminal science, and his balanced and sober judgment was valued by all his colleagues.

He recognised the importance of criminal law as a dogmatic discipline, but he was no less convinced that in order to prevent its becoming sterile, it must be seen in relation to the changing needs of society. The working of the machinery of justice, the treatment of offenders, experiments in penal institutions were all to him matters which deserved careful investigation and a prominent place in the curriculum of a legal training. But his disciplined mind held him from any excess.

When giving evidence before the Royal Commission on capital punishment, on the vexed question of criminal liability in relation to mental disorders, he advocated that the law should be widened, but was nevertheless firmly convinced that such cases should be covered by a clear legal formula and the final determination should rest with the courts. Or again, when expounding the desirability of indeterminate sentences for purposes of correction or protection, he was anxious that every safeguard should be evolved to preserve a proper balance between the interests of society and the freedom of the individual.

The address which he delivered before the Conference of Comparative Law convened by Professor Hamson in Cambridge gave rise to much thought with regard to the legal position of the accused. On that occasion many of my Cambridge colleagues made his acquaintance for the first time, and were deeply impressed by the breadth and analytical bent of his mind.

He took a genuine interest in the work of others and was always ready to