Journal of Criminal Law and Criminology

Volume 8 | Issue 3 Article 11

1917

Correspondence

CORRESPONDENCE.

PEOPLE v. JUREK.

Aurora, Illinois, July 13th, 1917.

Messrs. Chester G. Vernier, Elmer A. Wilcox and William G. Hale.

Dear Sirs:

I have read some of your comments upon Judicial Decisions on Criminal Law Procedure, with interest.

The comment which challenged my attention and has provoked my writer's rheumatism, is the one upon the setting aside of the verdict in *People* v. *Jurek,* 115 N. E. 644, an Illinois case.

The comment is: "The absurdity of the law which makes the juries judges of the law as well as the fact has been often commented upon. That it is absurd is fully conceded, except by those who desire additional loopholes for securing the acquital of those, in fact, guilty of crime. The above decision furnishes an additional reason for changing the law."

The law is the rule of action, commanding the people, who are not lawyers, to do certain things, and commanding the same people not to do certain things; and ignorance of the law does not excuse the actor. This idea originated in a monarchy, and it is very strange that it should not obtain in a republican form of government.

The law is supposed to be enacted for the people rather than for the lawyers. If the law is such that the people can not understand, then it is up to some one to explain it to them.

We know that some lawyers do not understand it, and that the supreme courts cannot explain it so that some of the lawyers can comprehend it. We know that some people have brains—who are not lawyers, and who occupy more places on the assessment roll than the lawyers.

Furthermore, with us, it is a government by the people for the people, and why should the people be denied their representation in court, where the law is executed? They can not and do not make more mistakes than the legislatures do in enacting a law, nor the trial court in trying a case in law.

The fundamental proposition in the enforcement of the law by trial is, that the offender shall be tried by his peers. That is, if the offender can not understand the law, then he shall have a trial by his peers, who do not know any more about the law than himself. It is up to the lawyers to explain the law in the light of the evidence, and the law and the lawyers do not make the evidence.

I submit that if the lawyers can not make an unintelligent law plain to a jury, that the offender should be excused, because his crime is a less offense than a law which can not be explained.

It is true that many verdicts are contrary to the written law, and contrary to the intelligence of some people, but if the wisdom of the past were sufficient, then there would be no use for a legislature to repeal an act in the last new moon, and before sun-up the next day. Every offender repeals the law in his own case.

Personally, I have never represented a defendant. I have helped to prosecute some. The fact is that we must offset imperfections with imperfections.

Very truly yours,

(Signed) CHAS. A. LOVE.

REPLY.

The foregoing criticism of my comment upon the recent case of *People* v. *Jurek,* is so lacking in coherent development and so extreme in character as to carry with it its own refutation in the mind of the average reader; and, hence, is in and of itself scarcely entitled to a reply. In view, however, of the brevity of my original note, I am led to take this opportunity of elaborating slightly upon it. The critic must admit, of course, that he can find scant support for his views among the standard authorities, and that insofar as the rule for which he contends is followed at all by the courts, it is anomalous and arbitrarily limited to criminal cases. "The doctrine has obtained," says Mr. Wigmore, "in a few jurisdictions that the jury in dealing with the *local law* applicable to the case, have a legal right to repudiate the instructions of the judge and to determine the law for themselves; but this ill-advised doctrine, defiant of the fundamentals of law, has only a narrow acceptance." [Wigmore, on Evidence, § 2559.]

And in Thompson on Trials [§ 2134], the following vigorous statement is found: "The evil consequences which flow from educating juries in the idea that they are judges of the law in a sense which places their judgment above that of the court, and which makes decisions of the court mere incidental aids or helps to them in making up their judgment upon the law, must be apparent upon the slightest reflection. It was well said, in an early and leading case in Kentucky: 'If the court had no right to decide the law error, confusion, uncertainty, and licentiousness would characterize the criminal trials, and the safety of the accused might be as much endangered as the stability of public justice would certainly be.' ". The same author quotes Mr.

Justice Story, as follows: "If the jury were at liberty to settle the law for themselves, the effect would be, not only that the law itself would be most uncertain, from the different views which juries might take of it, but, in case of error, there would be no remedy or redress for the injured party; for the court would not have any right to review the law as it had been settled by the jury. Indeed, it would be almost impracticable to ascertain what the law, as settled by the jury, actually was. On the contrary, if the court should err in laying down the law to the jury, there is an adequate remedy for the injured party by a motion for a new trial or a writ of error, as the nature of the jurisdiction of the particular court may require. Every person accused, as a criminal, has a right to be tried according to the law of the land—the fixed law of the land—and not by the law as a jury may understand it, or choose, from wantonness or ignorance or accidental mistake to interpret it." [*U. S.* v. *Battiste,* 2 Summ. (U. S.) 240, 243.]

A system, therefore, which leaves the determination of the law of the case to those who are trained to that end, *i. e.,* the judges, not only tends to the establishment and maintenance of a uniform, determinable and methodical body of law, but even accomplishes in the largest practicable measure that which the critic himself apparently desires, viz., the protection of the accused from wrongful punishment. Under the procedure which history has established, and the wisdom of experience has justified, the rights of both society and the one charged with crime are surrounded with every reasonable safeguard. The people are not, as our critic would have us believe, without representation in the courts. The judges, as well as jurors, are most emphatically the representatives of the people. The innocent man has no better friend than the upright judge clothed with a fair measure of authority, and society no more effective champion of law enforcement. What more can we ask?

Moreover, a system of jurisprudence which makes juries the judges of the law must lead inevitably, if logical, to a jury-enacted law for the specific controversy. This in turn means no established rule for the guidance of human conduct; hence, no law in the accepted sense. Under such a system the judicial office may well be abolished.

WILLIAM G. HALE.

College of Law, University of Illinois.