Journal of Criminal Law and Criminology

Volume 21
Issue 1 *May*

Article 8

Spring 1930

# Reviews and Criticisms

# REVIEWS AND CRITICISMS

THORSTEN SELLIN, ED.

GESCHICHTE DES DEUTSCHEN STRAFRECHTS BIS ZUM KAROLINA. By *Prof. Dr. Rudolph His.* xiv+188 pp. Druck und Verlag von R. Oldenbourg. Munich and Berlin, 1928.

This work by Professor His, already favorably known from his *Strafrecht des Deutschen Mittelalters* (1920, 1927) will do much to increase his reputation as a diligent and accurate historian of Criminal Law and Procedure in Germany in the Middle Ages.

The present volume is intended as the third part of the comprehensive *Handbuch der Mittelalterlichen und Neueren Geschichte* edited by Von Below, Meinecke and Brackman, but is complete in itself.

The author has consulted many authorities, among them Dean Wigmore's *Responsibility for Tortious Acts* and the works of Holdsworth, Pollock and Maitland, Maine, Chadwick and others in English and scores in French, German, Italian and Spanish. The plan of the book forbade quotation but that good use has been made of the authorities is obvious.

The work is in three parts: (1) *Die Missetat* (The Crime), (2) *Die Folgen der Missetat,* (The Consequences of the Crime) and (3) *Einzelne Verbrechen* (Particular Offences). All of these are fully treated historically and geographically, the author wisely not restricting himself to rigid chronological sequence. It is proposed to abstract Part I somewhat fully to indicate the trend of the book. The first part, *Die Missetat,* begins with a discussion, interesting rather to the philologist than to the lawyer, of the terminology employed to denote crime: *Verbrechen, Vergehen, Excessus, Übeltat, Unrecht, Ungericht, Unfug,* etc. *Missetat* might be even of children or animals, and so did not always imply legal obligation. Then follows an account of the species of crime, beginning with Tacitus' description in his *Germania* of *leviora delicta* in contrast with *scelera* and *flagitia.*

The distinction in the early pre-Frank times between *Busswürdige* and *Todeswürdige* crimes (those to be satisfied with "Bot" or Wergeld and those calling for the death penalty) is pointed out, the latter including murder, larceny, rape (and arson) and also treason and harmful sorcery.

In the Frankish Times by the Lex Salica, almost all crimes became of the former class at least if not accompanied by actual violence: but under the Carlovingians the trend was reversed and this process continued to the last century of the Middle Ages. The legislation, as in Westphalia and Thuringia, made the more serious crimes, breaches of the peace, punishable with the halter.

As to responsibility for crime, criminal capacity as a rule was co-temporary and co-extensive with civil capacity, and in most places began at the end of the 12th year—generally the misdeeds of children

were looked upon as accidents punishable by *Bot* but not by fine. Often such were like other accidents to be assessed at half: but elsewhere as in the Lex Salica the guardian had to pay the whole amount from the infant's estate. By the time of the Carlovingians, mention is made of the punishment of the child himself. In the late Middle Ages we find that already an attempt was made to test the mental capacity of the child wrongdoer. For example in Lübeck, an "apple-test" was prescribed. If a child under 12 killed another child, the judge was to offer the offender an apple or a penny. If he chose the penny, he showed mental maturity and must suffer punishment, but mercy was to be shown if the blood relations on both sides asked for it. The author ventures to doubt—and his doubt will be shared by most of us—that this test which was in one form or another somewhat widely practised, could ever be satisfactory. And at least in Berlin, proof was excluded in this form of mental maturity in the case of a thirteen-year-old slayer.

At another place, at the beginning of the 16th century, a child guilty of arson suffered the death penalty if he concealed the fact, thereby manifesting judgment. At Nuremberg in 1506, a fourteen-year-old lad was asked by a judge "whether he was old enough to hang when he well deserved hanging."

Women were originally considered irresponsible: in North Germany at first, this exemption from punishment was taken away in particular crimes—witchcraft, theft and other debasing crimes. These took women out of the peace and rendered them liable to the death penalty. In Anglo-Saxon law the execution of women first appears in theft. Other South German law from the Frankish period recognizes the public punishment of women but in milder form. So far as giving *Bot* is concerned, quite frequently in the Middle Ages the woman was assessed at half—sometimes, indeed a special *Bot* was provided for.

In the case of the insane, wrong doing was usually treated like that of children.

The law as to the responsibility of the guardian differed in different places—in the North German law, the guardian was answerable for *Bot*. In Danish law certainly for the whole *Bot;* while in Sweden the act of a lunatic was looked on as an accident if the insanity had previously been manifest. The Lombardy law did not recognize the responsibility of the guardian: the act of the lunatic was not to be atoned for by *Bot* but the injured person might with impunity kill him. In Saxony, those actually insane and destitute of reason could not be punished with death. Frequently provisions were made of a humane character looking to substantial irresponsibility of those of unsound mind. They were driven from Basle with rods. In the late Middle Ages, however, the law no longer shrank from the death penalty for the insane, but the judge might still exercise mercy.

Drunkenness was never a ground for exemption from punishment; but intoxication, like passion, was in some authorities of the later Middle Ages, adduced as a mitigating circumstance. The judge might

consider the intoxication of the wrongdoer as such unless he had put himself in this condition to commit the act. Designed and undesigned, intentional and unintentional acts are fully treated. The distinction goes back to the earliest times.

In certain crimes, as murder, theft or arson, the evil intent was inherent—"die Tat tötet den Mann," "le fait juge l'homme"—as we say, *Res ipsa loquitur*—in others, it was only prima facie, and if the act was one of those considered as accidents, this suspicion must be strengthened by evidence.

In South Germany by the Frankish period, the law had taken the later view and as a rule called upon the accused to disprove the prima facie suspicion.

Originally, too, accidental wrongdoing subjected the actor to the revenge of the injured party and in case of death, the liability to retaliation continued longer than in other offences—the offender was generally liable to pay the full *Bot*. In the Frankish period, however, private feud was expressly excluded from involuntary acts. The laws of the German Middle Ages show a distinct advance in directing for involuntary injury simply compensation. As early as the Frankish period we find the Latin *Negligentia incaute,* displacing the native terms, indicating a scientific study of law, even in early times.

Negligence (*Fahrlässigkeit*) was variously treated: e. g., in 1425 at Groningen it is laid down that if one ran down another when he was on the wagon horse or going beside the wagon, it was considered an accident but if he was sitting in the wagon or standing, full *Bot* must be paid. How this would work out in the case of an automobile in these days may be a question. In Anglo-Saxon law, when a man was injured by a spear carried by another, if the carrier had it on his shoulder or level with the point forward, the act was prima facie an accident. If the point was three fingers higher than the butt so that it pierced the victim before the eyes of the carrier, he was liable.

Perhaps enough has been extracted on this topic and we may pass on to the responsibility of the unfree animals and things inanimate. As to the first, in the earliest times while the serf was himself liable to retaliation, the master was held for the *Bot* and fine. This was based on his mastership alone but in later days it was attempted to base it upon his neglect to train his serf better. The Visigoths outlawed a master who failed to pay for his serf's misdeeds. In the Frankish times most of the laws saddled the master only if the act was done on his direction or suggestion. In some places the delivery up of the serf had freed the master. The responsibility for the acts of animals followed a somewhat similar course; sometimes as in England the animal was confiscated.

Much the same may be said of inanimate things. The section dealing with responsibility for the acts of others points out that the very essence of the German household implied responsibility for the acts and defaults of the members, originally even of adult sons. In the Middle Ages this responsibility attached only if the adult son were retained in the household thereafter.

The responsibility of the *Gemeindegenossen* (Guild brethren) is fully discussed as well as that of the *Sippe* (Kin) and it is pointed out that in Anglo-Saxon law the guild stood in the place of kin for the kinless slayer.

As to joint offenders, only one *Bot* was payable for one trespass in the old law; but where physical punishment was in question all were treated alike. The word *Beihilfe,* abetting, first appears in the 18th century. Originally abettors were not punished. Accessories after the fact were not liable in all cases in the older law. They were in Theft and perhaps other crimes of that base character. "Der Hehler ist so gut wie der Stehler"; the concealer is the same as the thief. In Visigoth law there are three thieves—one steals, the second slips the goods into his hand and the third conceals them. Attempts were originally not punishable but one who broke into a house to steal or who was caught setting fire might be killed on the spot. Necessity, self-defence and inducement are treated together, an example of the first being the right to trespass on adjoining property when the highway was impassable; so, too, in some places the "wayfaring man" might feed his horse on adjoining grass or cut down a tree to repair his wagon. Self-defence allowing the hurt or slaying of an aggressor in defence of person, kin or goods was based upon the position of a wilful aggressor as out of the law's protection: in the older times such a wounding or slaying called for an immediate outcry or showing to neighbors. This was the Anglo-Saxon rule.

The Special Peaces were at different places or times in addition to the General Peace; for example House-peace, Church-peace, Burgh-peace, Peace of the Church Festivals, etc. In Frankish times the highest was the King's Peace, while from the advent of Christianity, the Temple Peace of heathen times passed to the churches. A substantial increase in special Peaces took place in the Middle Ages, as for example in the Friesian Peaces of the Stable, Barn, Hen-house, Boat and Wagon.

The combination of several offences had attracted attention already in Frankish times but it calls for no special remark.

This ends Part I; the other Parts I shall only briefly refer to.

Part II, dealing with the consequence of misdeeds points out the liability of actor, his Kin and Guild, traces this from the Frankish period, the Feud, Knightly and otherwise, Expiation and Reconciliation, Punishment by the State, Outlawry, Death, Corporal Punishment, Banishment, Enslavement, Abjuring the Realm, Loss of Honor, etc. Of these I may notice that originally the method of capital punishment depended on the local law, drowning, burning at the stake, stoning, burying alive, etc. In the Middle Ages came in seething in boiling water, oil or wine. For dishonoring punishment may be mentioned the practice that a slanderer hitting himself on the mouth and saying: "Mouth, you have said so and so, take that," he was free.

The *Bot* and fine was also fully dealt with.

Part III deals with particular crimes, Blasphemy, Sorcery, Witchcraft, Heresy, Perjury, Treason, Murder, Rape, Injury to the Person,

Wounding, Insult and Slander, Crime against Freedom, Prostitution, Adultery, Theft, Forgery, Fraud, Arson, Burglary, Grave-robbing, Counterfeiting.

The work as a whole is illuminating and is well worth the careful study of the historical and comparative lawyer. Of course, "there is no money in it" for the practising barrister or attorney.

WILLIAM RENWICK RIDDELL.

---

MAGISTRATURA Y JUSTICIA. By *Francisco Beceña.* 419 pp. Liberia Victoriano Suarez, Madrid, 1928.

This volume is a study in comparative law having for its subject the problem of judicial organization or, more accurately to characterize the field of the author's attention, the function of the interpretation and application of law in particular cases. The author's approach to the subject is the historical one for, he observes, the problem has faced all kinds of political organizations from the patriarchal to the constitutional. Certain peoples have created judicial organizations of a superior type compared with others and certain periods have apparently been favorable for the formation of organizations especially suited to their social surroundings.

Professor Beceña first studies certain characteristics of the judicial organization in Rome, beginning with the primitive days of the monarchy and coming down through the Republic and the Empire. Special attention is given to the typically Roman institution of the Praetor and to the very important part which the Praetor's function of interpretation played in the development of Roman law. The characteristics of the English system are next reviewed—a system in many ways in striking contrast to those of continental type. The greater obligatory force of precedent in the English legal system as compared with the continental and at the same time the freedom of decision and independence of the judges are generally remarked by those accustomed to systems derived from the Roman law. French judicial organization is the subject of the next chapter. This, while possessing many fundamental points of identity with the Spanish system, nevertheless presents a number of differences and even contradictions which are pointed out by the author. The system of Spain itself is the subject of the final chapter of the book and in connection with its exposition comparisons are drawn with the provisions of the systems which have previously been passed in review.

The work is a most interesting and valuable comparative study of judicial functioning in the systems selected for examination.

Warren, Pennsylvania. EDWARD LINDSEY.

---

THE STUDY OF JUDICIAL ADMINISTRATION IN THE STATE OF MARYLAND. By *G. Kenneth Reiblich.* 155 pp. The Johns Hopkins Press, Baltimore, 1929.

This volume outlines the judicial organization of the State of Maryland, and makes many suggestions for its change and improve-

ment. It says little of the police, save that it advocates the creation of a State constabulary for service in the rural districts, but seems to be fairly well satisfied with that of the city of Baltimore, which it credits with an unusual arrest record, as compared with the number of crimes committed. Whether this conclusion, however, is borne out by the facts is another matter, since numerous crime surveys, especially that of Chicago, have disclosed the fact that police reports and records are entirely unsatisfactory, the police usually only reporting those for which arrests have been made or those of some notoriety.

Maryland, it would seem, is what may be termed an old-fashioned state. It has courts of law and courts of equity; it has the grand jury; the old-fashioned coroner, the old-fashioned justice of the peace, and it has retained almost all the old safeguards of the criminal law.

The study is not a survey and gives few, if any, statistics. Perhaps, after all, the law is fairly well administered in the State of Maryland, but that the system in vogue is capable of many improvements there can be no question. There is no sense in the separation of law and equity. The experience of other states, even if not of Maryland, have shown that the grand jury involves an enormous waste of time and an enormous opportunity for the wearing out and corruption of witnesses. The office of justice of the peace has become a byword throughout the nation. We need, as far as possible, to take our judges and police out of politics. Judicial councils should be encouraged and there should be a centralization of the courts. In fact, business methods should be put into judicial administration. We should deal more adequately with the question of insanity as a defense in criminal cases. We should lessen the number of peremptory challenges. Many changes, no doubt, should be made. The Maryland system, in short, is not up to date or adapted to modern conditions. But the same thing is true of almost every state in the Union, and the suggestions for reform which are made by the author, although as a rule wise and needful, have been made everywhere throughout the country; especially have they been emphasized in the recent Missouri and Illinois crime studies. The interesting thing is that from so many viewpoints and from so many quarters, the same conclusions are being reached. None of the reports, however, stresses sufficiently the real cause of our trouble, which lies in personal, rather than in mechanical, inefficiency and which inefficiency, in a large measure, is due to our very democracy. Almost any system will work with the proper men at the helm. Democracy, however, seems unwilling or unable to institute the government of the "good and wise and great" which some of our ancestors, at least, believed could be perpetuated among us.

Northwestern University, Evanston, Illinois.

ANDREW A. BRUCE.

---

THE LAW OF INSANITY. By *George A. Smoot,* LL. B. xxiv+635 pp. Vernon Law Book Company, Kansas City, 1929.

The author has rendered a valuable service to all, whether judges, lawyers, legislators, psychiatrists, or those who are interested in the

many aspects of the law which bear upon those abnormal mental states denominated by the law "insanity." Within the space of a single volume he states the legal principles, substantiated by copious citations.

The book is divided into three parts: Part I, entitled the "Status of Non Compos as an Individual," deals with such matters as the history of insanity, definition, forms and causes of insanity, proceedings to determine insanity, and the care and custody of the insane. Part II, "Status of Non Compos as a Member of Society," considers property rights, obligations, business relations, marriage, torts, criminal responsibility, and the right to demise. Part III, "Status of Non Compos before the Courts," discusses the status of the insane person as a litigant, judgment and review, and the rules of evidence.

The decisions (in all, over 2,500) quoted are representative of the various American jurisdictions. Although it is possibly somewhat outside the strictly reportorial nature of the book, some suggestions might well have been offered for the improvement of existing procedures, and even so epochal a contribution to the literature as Sheldon Glueck's *Mental Disorder and the Criminal Law* has apparently not been consulted. The chapters on the definitions and forms of insanity would have profited from psychiatric collaboration. The legal concepts of the symptoms and causes of mental disorder are so far out of harmony with modern ideas that the author might well have gone farther than to follow the maxim of *stare decisis*.

As it is, however, the volume states the law, and states it accurately. Anyone who has had occasion to thumb through the various scattered captions in Corpus Juris or Law Reports Annotated may well give hearty thanks to the author.

Department of Mental Diseases, Boston, Massachusetts.

WINFRED OVERHOLSER.

---

EROS IM ZUCHTHAUS. EINE BELEUCHTUNG DER GESCHLECTSNOT DER GEFANGENEN, BEARBEITET AUF DER GRUNDLAGE VON EIGNERLEBNISSEN, BEOBACHTUNGEN UND MITTEILUNGEN IN ACHTJÄHRIGER HAFT. By *Karl Plättner*. 225 pp. Mohr-Verlag, Berlin, 1929.

This is an account of the crucifixion of the author on the altar of enforced sex abstinence in prison. It is based, in part, on his own suffering during eight years in prison, in part on observation of and conversation with other prisoners. He describes the great development of abnormal methods of sex expression, ranging from mechanical stimulation to poetry. He finds these abnormalities characteristic of both sexes in prison, and asserts that more homosexuality is found among female prisoners than among male prisoners. He argues that the enforced abstinence injures the organism, the personality, and the social life of prisoners, and that many of the injuries continue after release from prison. The sex orgies subsequent to release often lead to continuation in crime. On the basis of this description of the effects of "sex robbery" he makes a plea for greater opportunity for normal

sex expression by prisoners. This book is important both to the student of penology and to the student of sex instincts.

Bureau of Social Hygiene, New York City.

E. H. SUTHERLAND.

---

KRIMINALITÁS ÉS BEVÁNDORLÁS (Criminality and Immigration). By *Ervin Hacker*. x+270 pp. Dunántúl Egyetemi Nyomdája Pécsett, Budapest, 1929.

Because of the development of methods of transportation, temporary and permanent immigration have become so extensive that numerous aliens are found in every state. Both past and contemporary statistics indicate that the criminality of these immigrants is higher than that of the natives. In some states—Switzerland, for instance—alien criminality is from two to three times as high as that of the people of the country to which they have emigrated, while in other states—Germany and the United States of America, for instance—the criminality of aliens rises from ten to thirty per cent higher than that of the natives. American statistics seem to show that juvenile delinquency is particularly high in the foreign group.

The higher criminality of immigrants is partly due to the excess of unmarried men between the ages of twenty-five and forty—the age group which in the native population shows an exceptionally high criminality also. Other explanations are: the poorer economic condition of the immigrants; the fact that immigrants are mostly industrial workers living in urban communities; the fact that the immigrants' education is considerably lower than that of the natives; the prevalence of prostitution and alcoholism in the immigrant group; the ignorance of social usages and the laws of the country; the anonymity which, to a certain degree, surrounds the resident in a strange land; the antagonism and sometimes the hatred which racial differences cause to arise on the part of natives; and the prevalence of mental and physical defects in the immigrant group.

The author has based his studies mostly on the statistics of the United States, which has for many decades received such a large number of immigrants. The author is of the opinion that if the composition of the immigrant group were the same as that of the native population, and if their living conditions were identical, the criminality of the immigrants would be no higher than that of the natives.

In the section which deals with preventive measures, the author discusses in particular those measures which have been used solely against immigrants, such as extradition, deportation, police supervision (sometimes combined with the obligation to report to the police at certain intervals), heavier pecuniary penalties, etc. The laws dealing with immigration are among the most important measures. Already in 1848 a society was founded in New York City having for its aim to prevent, through adequate immigration laws, the entry of certain types of foreigners, particularly criminals and paupers. From that time on, laws have been passed which exclude from entry to the United States as residents those who have not a specified minimum of money

upon landing, children traveling alone, persons who cannot read and write, persons of immoral character or who have a criminal record, persons sick in body or in mind, and those having anti-social beliefs, such as anarchists. Among other administrative measures are compulsory passport and visas, and the obligation on the part of the foreigner to report to the police when he arrives in a country and when he leaves it.

Henry Phipps Institute, Philadelphia, Pennsylvania.
JULES FREUND.

---

DIE WELT OHNE ZUCHTHAUS. By *Fritz Wittels.* 292 pp. Hippokrates-Verlag, Stuttgart, 1928.

This volume, by one of the best-known disciples of Sigmund Freud, represents a psychoanalytic approach to the problem of "punishment" for crime, and goes to confirm the growing realization that our present system of imprisonment as a penalty for offenses against the social group is essentially irrational and ineffective.

Attacking the underlying assumption of free will, with its bearing upon "responsibility," the author points out that our acts are motivated by instinctive drives (libido), the latter's mode of expression being largely unconsciously affected ("conditioned," if you are a behaviorist) by the actor's previous experiences and training. Conflicts between the instinctive drives on the one hand, and the ego or the ego-ideal on the other, may arise, with the development either of neurotic symptoms or a sense of guilt and unworthiness so strong that it may drive the individual to commit some anti-social act which symbolizes his conflict and results in punishment.

There is a rather detailed discussion of various types of crime and the underlying mental mechanisms, and of the deleterious psychological effect of imprisonment upon the prisoner, all presented interestingly and with a number of illustrative cases, interpreted in a strictly Freudian manner.

Whatever be one's psychiatric theology, one is likely to agree with the author's conclusions. He divides the history of penal law into three periods: (1) the primitive, the age of the *jus talionis;* (2) the paternalistic, the period of punishing; (3) the scientific, the era of social defense. As a concrete example of the scientific attitude, he advocates and outlines in some detail the proposed Italian penal code (1921) of Ferri and Garofalo. Although in any society certain groups will need segregation—for example, the mentally ill and defective, the alcoholic and the habitual offender—they will not be confined for "punishment" but for treatment, release depending upon their condition and not upon some predetermined length of sentence. For the occasional offender other modes of dealing are suggested, such as local exile, prohibition from holding public office, giving bond for good conduct, and so on, as detailed in Ferri's project. To this scheme psychoanalysis would add certain changes in child-training and special attention to the rectification of abnormal (and possibly criminal) mental traits in the young.

The book is a readable and forward-looking attack upon a problem which is, and promises yet to be, far from solution.

Massachusetts Department of Mental Diseases,
Boston, Massachusetts.

WINFRED OVERHOLSER.

---

CAIN, OR THE FUTURE OF CRIME. By *George Godwin*. 108 pp. E. P. Dutton and Company, New York, 1929. $1.00.

This little book, written by an Englishman of whom we should like to know more, contains much plain speaking that will be refreshing to many readers who have thought the same ideas, but have hardly dared express them.

The author has clearly pictured the futility of punishment by imprisonment as a preventive or cure for crime. While he indicates the marked improvement, during the past century, of the English penal system, he frankly declares that no ultimate solution of the crime problem may ever be expected by institutionalizing offenders.

"The truth is," he says, "the whole theory of punishment, medieval and modern, is based upon fallacies. Far from helping towards the solution of the problem, our prisons actually aggravate it. If official statistics have any meaning at all, our prisons are factories for the manufacture of criminals, and very efficient factories too."

The chief shortcoming of the system, Mr. Godwin thinks, is its deadly uniformity. For example! "To subject all prisoners to a standardized régime of punishment is about as sane a proceeding as it would be to perform a standard operation upon every patient in a hospital."

On the other hand, the writer is rather fruitful in his suggestion of remedies. "The wrongdoer of the future," he declares, "will not be sinned against by the society against which he, in turn, has sinned. He will be recognized for what he is—the socially defective member of the community. And the process will not be punishment for wrongdoing, but treatment for mental defect."

In other words, the psychiatrist will play a much larger part in the future, both in the courts and in correctional institutions. The courts of the past and present, he thinks, are too much absorbed in dealing with the one legalistic fact of the offense, too little with the offender, and all the personal factors which contributed to the violation of law.

The remedy proposed is to let the court end its work with the establishment of guilt, and then turn the "patient" over to the psychologist and the psychiatrist for "treatment."

"The probe will reach far before the final analysis of the case is made. It will take in family history, social environment, conditions of early life, suppressed emotions, and diverted social impulses. It may take weeks or months before the final diagnosis is arrived at, and the appropriate treatment is indicated."

This treatment should apply, the writer believes, even to capital offenses. In other words, he does not favor capital punishment, partly because experience seems to prove that it is not an effective deterrent,

and also because treatment has promise, even for the murderer, and may benefit society by discovering the real cause for homicides.

Over against the concern for the sacredness of human life, as revealed in this connection, is the author's rather startling proposal that the unfit in society should be eliminated. While this suggestion is, of course, not new, it has rarely been so openly advocated as by this writer.

In the future, he says, "That human material which is clearly irreclaimable will be put painlessly away, rather in understanding pity than in a spirit of vengeance."

To the objector who says the community has no moral right to destroy life, he replies that the elimination of the degenerate is based solely on humanitarian considerations. "If human life be indeed sacred. then the life-stream of the race is sacred above the life of the individual."

Thus this writer boldly challenges thought, by his forward-looking programs for the prevention of crime. As to their practical application or administration he gives no attention. For example, with all his faith in psychology, he does not seem to think of what might be the psychological effect on the race of capital punishment, or the elimination of the unfit.

He advocates sterilization, but he ignores the difficulty of its effective administration and the fact that most laws for this purpose have already become a dead letter.

The author sees clearly that it is futile to punish the child for the sins of the fathers and mothers, but the reader naturally asks, how many generations of parents should bear the responsibility?

On the whole, this little book discards unnecessary verbiage, cuts through the conventions, and contains an unusual amount of meat for the open-minded and informed reader.

The Central Howard Association, Chicago, Illinois.

F. EMORY LYON.

---

REPORT OF THE CALIFORNIA CRIME COMMISSION. 97 pp. Sacramento, 1929.

This compact, paper-covered report, by virtue of excellent editing and considerable small type, presents a great deal more matter than its size indicates. The Commission appears to have approached its work with a thorough understanding of method. Opportunity was afforded to every person willing to write a letter or to attend a hearing to give his counsel concerning any part whatsoever of the entire field of law enforcement and penology. This plan calls for a deal of patient listening, reading and summarizing by the Commission, and the report shows that all this work was done in a faithful and sympathetic spirit.

The report to the legislature consists of twenty-seven parts, each setting forth the reasons supporting a recommendation. It appears that bills were also submitted, but none of them is published in the pamphlet report. The range of topics covered is too long for individual comment in this space; suffice it to say that they embody problems

pretty nearly universal among the states at this time. One quite feasible proposal is novel, at least to the writer; it is that state border patrols be maintained to check vehicles for stolen cars, concealed weapons, narcotics, liquors and criminals. This would be much more practical for California than for any central or eastern state.

Probably the most interesting part of the pamphlet will be found in the fifty-three pages of small type in which the views of many persons are published in a topical arrangement, with a number of letters from persons evidently conceded to be experts. The public hearing may be a very useful means, instead of mere camouflage for politicians, but it implies much painstaking editing. The Commission of 1929 is to be commended for the good example it has set.

Commendable also is the brief recommendation for a continuing body to perform work of this nature. California is a large state and its Judicial Council has a very great task in improving civil justice. The legislature might well create a similar body to advise it with respect to refinements in criminal law and procedure.

American Judicature Society, Chicago, Illinois.

HERBERT HARLEY.

---

HOW TO CONDUCT A CRIMINAL CASE. By *William Harman Black.* li+394 pp. Prentice-Hall, Inc., New York, 1929.

The title page of this book contains the following explanatory statement: "A simple, understandable story of what happens from an arrest to a final sentence or discharge, with a graphic chart, a graphic index, and accurate forms for every step." The author is a Justice of the Supreme Court of New York and Former Acting District Attorney of New York County. He writes, therefore, from a background of personal experience which is of the greatest value. He says in his Foreword: "This book is not written for lawyers. It is a straightaway story, so simple that any layman can understand it. It contains a glossary explaining the meaning of every technical term used. It enables readers to comprehend every point in a criminal law suit. . . . While it refers particularly to a New York criminal case, the general principles are applicable alike to all the states, so it will be helpful to all students and to all lawyers who have had any experience in criminal law."

The author has attempted one of those very difficult feats—describing a highly technical process for the benefit of the layman. It is obvious that from the standpoint of a New York lawyer, the book is of great value. There are certain portions of the book which are also of value to lawyers not in New York; in particular, one refers to the matter of extradition on pages 44 ff. and pages 379 ff. It can hardly be expected that lawyers practising under jurisdictions with different systems of criminal procedure from that in force in New York City will find as much use for the book in a practical way.

The writer realizes that the task of gettng his message across to the layman is a difficult one, and he is to be congratulated for having used two very striking methods of accomplishing this. In the early pages of his book he differentiates between the main thread of

his story and the detours that are necessary to explain particular aspects of criminal procedure by the liberal use of asterisks and footnotes in informing the reader that the main story breaks off at this point and is continued on a page further along. The second explanatory device is a very comprehensive chart which he has had inserted but not pasted into the book, so that it is available for ready reference.

The present reviewer has some doubts in his mind as to how far it is possible for a technical expert to get across his ideas to the layman who is only superficially interested in the subject. Certainly, the layman who is interested in procedure in New York County can get valuable information from Justice Black's chart and find the explanation of it in the book itself. The factors that militate against the success of this book among a group of general readers, however, reflect in no way upon the ability or knowledge of the writer. Anyone who is interested in the subject will find it a most convincing mass of rules and technicalities that can only be unravelled when someone who knows about it takes the trouble to put his ideas on paper and to express them not alone from the standpoint of a justice on the bench, but from the standpoint of the observer who sees the machinery in motion but has no idea how it progresses.

One could wish that in a second edition of this book Justice Black would add more references to case law. The book itself is well supplied with references to the code and statutes, and many statements are made as to actual methods of procedure which no doubt the writer encountered in his own practice. He has used, for instance, many forms which he has taken from the files in the Clerk's office and which, therefore, are real papers and not theoretical propositions. The practitioner of law who has a client involved in one of these cases and who goes to Justice Black's book will, I think, be glad of some information as to the way in which the courts have interpreted the sections.

One of the significant features of the book, however, is that it is another example of a growing tendency on the part of the legal profession to try to make known to the public at large something of the significance of the law as it really operates. In these days, when the administration of justice is a matter of such great interest to the general public throughout the country, it is a very healthy sign when men of the law actually do come forward with a description of their own field of activity and make the necessary effort to explain what is going on for the benefit of the man in the street. The reviewer's doubts as to the value of the book extend not to the material itself but to the further question as to whether or not the man in the street appreciates the value of such work as this, and is prepared to put in the requisite amount of time, thought and study to understand the process of government with which he is perhaps prone to find fault if it does not accomplish results that he thinks should be accomplished. If public opinion constantly was being informed of the progress that is being made in the fields of law, the criticisms would be more discriminating, and it is not unlikely that such reforms as are now under way would be accomplished with less difficulty and misunderstanding.

University of Southern California, Los Angeles, California.

JOHN S. BRADWAY.