Journal of Criminal Law and Criminology

Volume 24
Issue 2 *July-August*

Article 8

Summer 1933

# Book Reviews

# BOOK REVIEWS

THORSTEN SELLIN [ED.]

LEGISLATIVE REGULATION. By *Ernst Freund.* xvi+458 pp. The Commonwealth Fund, New York, 1932. $4.50.

According to the author "the topics dealt with in the book are intended to be of some value to those concerned with the function and tasks of legislation; the possibilities of general as distinguished from special legislation, the problems of phraseology and style, available forms and methods, and the technical detail of penal and civil regulation." This in itself is an enormous undertaking and though handled with profound scholarship and the analytical instinct of a really great mind, it is feared that too much is undertaken for the work to be generally utilized. To the professional legislative draftsman it will be a mine of information and suggestion and a useful guide; for the use of the ordinary legislator it should have been simpler, more direct and less involved. When, too, it deals with the fundamental policies of administration and with the considerations which should influence the leaders of business and economic thought in their entry into the field of legislation, or perhaps prospective propaganda which might lead to legislation or to the repeal for modification of that which already is in existence, the philosophical thought is often so intermingled with other discussion and sometimes confusing references that the book is somewhat difficult to read. There is nothing in it that is not worthy of considered thought but will it be read, except in the classroom, and under the compulsion which the classroom possible?

The volume begins with a discussion of the relative fields of written and of unwritten law—the one declaratory and the other regulative in character, the one "being in the nature of a rule of decision in a community acknowledging the reign of law, and the other, or the regulative rule, being a direct expression of government." Of the defects of both the writer is well aware. "Case Law," he says, "is a form of casuistry, even though we may concede it to be legitimate casuistry, and it can lay no claim to exhaustiveness." On the other hand, he is fully aware that a code can hardly anticipate the problems of the future and must itself be everywhere difficult of construction. His final justification of the code, indeed, and of legislation generally, lies in the fact that "in order to assign to legislation its proper place in private law, it must be realized, that dealing as it does with general principles and with general legal concepts, the judicial process cannot produce the rule that is regulative in character, and especially is the necessity of certainty and of regulative definiteness necessary in the field of the criminal law. We might, for instance, proceed against all crimes on the theory of public

nuisances and leave it to the courts to determine the limits of personal expression or of personal selfishness but much hardship, delay and uncertainty would be the inevitable result." This thought the author later on in his work amplifies when he comes to discuss the so-called Sherman Act, where the rule of reason which has been applied by the court in its construction of the term "restraint of trade," has made of the act "a statute which may perhaps with justice and some measure of satisfaction be made use of in the courts of equity, but has made its criminal provisions practically unenforceable," since the feeling that where one is sought to be punished for a criminal offense he should at any rate have had a clear warning beforehand of the point when his activities will become criminal has resulted in but a few prosecutions being brought.

Although he recognizes the value of special legislation in some instances, such as in our laws requiring the recording of mortgages, the author believes that our codes and our common law have removed much of the necessity therefor and that on the whole there is a tendency away from it. Originally, we granted private or special charters to municipalities and corporations; now with a greater measure of wisdom we have general incorporation and cities and villages acts. He also points to the numerous amendments and the numerous contrary decisions which the attempt to codify too specifically gave rise to in the practice of the State of New York.

As far as the substantive criminal law is concerned, Professor Freund believes that a large measure of specialization and codification is necessary; but he leaves us with the question, "Is the greater conservatism of foreign criminal legislation possibly due to a greater reliance upon general police orders issued under a wide delegation of executive power?" He further adds: "And in considering legislative availability, it may not be sufficient to find a workable definition of comprehensive generic offenses, without also inquiring and determining whether the establishment of offenses of very wide scope is criminologically desirable."

When he turns to penal regulation and special legislation he calls attention to the fact that, "in spite of the general terms of the Sherman Act, the Supreme Court judicially chose to make exceptions in the case of Farmers' cooperative societies." Yet he adds: "It was a convenient method of questioning the legitimacy of a new policy reducing liberty by legislative regulation, but the principle of regulation being once conceded, it must proceed by the method of selection and exemption, and the necessary imperfections of that method can hardly compare in capriciousness and inconsistency with the decisions that have undertaken to subject classification to judicial checks."

Generally speaking, Professor Freund appears to favor "civil regulation with disastrous consequences naturally following a violation," such as the English requirement for the registration of vessels and the consequence in case of disobedience of being unable to obtain entry and clearance, rather than regulation by direct penalty alone. His criticism of the Sherman act is that it "was conceived as a measure of criminal law rather than as a regulative statute."

When liability for new obligations is imposed upon persons or indus-

try he believes that mutual adjustments should be afforded. He points with approval to the English statutes which, although imposing a liability upon railroad companies for fires started by their engines, allows the companies the right to enter upon adjoining land to clear it from inflammable substances.

Although he refuses to commit himself, in the main the author seems to favor "deferred or administrative control" or perhaps a system of licensing with annexed conditions, which is practically the same thing, to the general and usual license.

Prohibitions, the author says, are more easily enforced than requirements and he seems to approve of the German maxim that "where a prohibitive regulation is inadequate, a police requirement is inadmissible."

The book also contains several thoughtful and scholarly, and at all times, suggestive chapters concerning the language of statutes, judicial construction, the canons of style, the choice of phrasing and of terms and the definiteness of terms. It is stated that these chapters are written primarily for the lawyer. The only question is whether the average practitioner will read them and whether the lawyer who is used to working from digests and indexes will find in the index to the book a sufficient guide thereto. This criticism may perhaps be made concerning the index as a whole. One also is reminded of a remark that was once made by the always modest but at the same time always effective and practical Judge Burr W. Jones who in speaking of his own work on Evidence which achieved so great a popularity among lawyers said, "The lawyers as a whole seem to like it. They use it and carry it to the court room with them more than they do the scholarly and monumental work of Professor Wigmore. In scholarship Colonel Wigmore stands head and shoulders above me, but for the busy man I think my book is more readable and more usable. Professor Wigmore writes for the scholar and the student and for the man who thinks and works as a scholar and as a student. He writes, perhaps, for the legal reformer. I have written for the man who wants to know immediately what he can do and what he cannot do. I write for the man who is upon the firing line."

Professor Freund also gives us a chapter on the Technique of Penal Regulation and others on Licenses and Orders and Procedure before Administrative Boards which are well worth reading but require careful study.

He then shows us the error of too sweeping negatives in prohibitory and licensing regulation, an example being the quite common statutes which provide that *no one* shall *employ* a minor under a certain age in a factory or store or sell intoxicating liquors to such a person, and leave it to be afterwards determined whether the servants of the owner, such as the manager and foreman and other agents, can be held liable thereunder or even the owner himself if he takes no active part in the transaction. Responsibility, he claims, should be directly placed. The problem of penalties and enforcement are also dealt with and the discussion is well worth perusal.

The closing chapters of the book are devoted to the Technique of Civil Regulation. The author states that "the general question whether form or informality should be pre-

ferred is one of legislative policy and not of drafting." Nonetheless he perhaps gives us a hint of his own views in his statement that "the German Code favored informality subject to relatively few exceptions." The chapter, however, as a whole contains illustrations rather than principles or theories and Professor Freund contents himself with stating what has rather than what should have been the practice in England, in Germany, and the United States. There is, however, a strong argument in favor of explicit provisions in the cases of the granting of the power of official action and the qualification and disqualification for public office.

Mandatory and non-mandatory provisions are also discussed as well as the power which lies in the courts to relieve against error.

Like all of the work and acts of the late Professor Freund the book as a whole presents a fine example of indefatigable toil and thorough conscientious scholarship.

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STALIN'S LADDER: WAR AND PEACE IN THE SOVIET UNION. By *Elias Tobenkin.* x+308 pp. Minton, Balch and Company, New York, 1933. $3.00.

Stalin's Ladder is a description and appraisal of the methods by which the Russian people under Stalin's leadership are trying to climb to a higher plane. The author was born in Russia, migrated to the United States, and then returned to Russia, where for two years he was correspondent for several newspapers and magazines, and where he lived during most of his stay in private homes.

Approximately one-third of the book deals with crime and punishment in Russia. This portion of the book was written for the Bureau of Social Hygiene. Many intensive studies of the effect of the revolutionary changes upon crime and punishment in Russia should be made. The materials and facilities for studies of this nature have not been and are not now available, and the portion of this book which deals with crime and punishment provides a useful substitute for the more precise knowledge which should be secured. The description of the prisons is more complete than the description of crimes.

The author reports that though statistics are lacking "the concensus of opinion among criminologists in the Soviet Union is that there has been a noticeable increase in criminality during and since 1926" (p. 281). Another trend is the relatively large number of persons between the ages of twenty and thirty among the criminal insane, while in the United States the mapority of criminal insane are over forty years of age. These criminal insane prisoners generally suffer from a mania of persecution by secret service agents or by peasants.

The number of prisoners in 1931 was about one-half as large in proportion to population as in 1914. The Soviet spokesmen explain this as due to a decrease in criminality resulting from the elimination of unemployment. This explanation is very questionable, and the more probable explanation is that attitudes toward the principal crimes have changed. Crimes against private property are regarded as relatively harmless and when punished at all are generally punished by fines which can be paid in installments while the offenders live in their own

homes. When criminals are imprisoned they are, so far as possible, sent to farm communes where they serve as a demonstration to the peasants of the efficiency of collective farming. There is much freedom on these farms and the trade training is excellent.

Scientists have important positions in the penal institutions. An experimental prison in Moscow provides every conceivable opportunity for scientific study of difficult cases and results both in better understanding and treatment of the prisoners and in excellent clinical training for young criminologists.

The policies used in dealing with political prisoners are very different from those used in dealing with other prisoners. Theft of collective communal or cooperative property was in 1932 made punishable by death. No efforts are made to apply scientific methods to political prisoners, and they are isolated in special prisons, the conditions of which are kept completely secret.

EDWIN H. SUTHERLAND.
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THE CHILDREN'S JUDGE. FREDERICK PICKERING CABOT. By *M. A. De Wolfe Howe*. 162 pp. Houghton-Mifflin Co., Boston, 1932. $1.75.

The simplicity of this presentation of the early life and personality of the late Judge Frederick Cabot is appealing and quite consistent with the teller's most important work—the informal, intimate handling of maladjusted children.

Judge Cabot's enviable religious, cultural, and educational background well equipped him to preside over a court that in dealing with children who happen to transgress law and custom has wholly discarded the rules of evidence and procedure that prevail in the police and criminal courts. He demonstrated in his work that the Juvenile Court is in fact more of a clinic than a court. The hearings in children's cases were private and exclusive to a greater degree than that of any other court in the country. He found no legal barrier in the way of protecting children from the dangers of a formal trial or from groups of disinterested and curious spectators.

It appears from this brief biography that the eminent success of Judge Cabot in the treatment of children with conduct disorders was due mostly to the emphasis placed on the question which should be uppermost in the minds of all child welfare workers; "Of what is the child thinking?"

In addition to the pleasure of reading this narrative, sometimes a bit sentimental, of the life and work of a learned and cultured judge, social workers—and lawyers—will find in it much that will help them when their charges finally reach the Juvenile Court.

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THE JUDICIAL SYSTEM OF METROPOLITAN CHICAGO. By *Albert Lepawsky*. xvi+265 pp. Univ. of Chicago Press, Chicago, 1932. $3.00.

This is an exceptionally readable and effective study. With a wealth of factual data, it describes the uncoordinated, haphazard, confusing, overlapping, duplicating, maldistributed and unsupervised court system which has developed in metropolitan Chicago, composed of the territory in Illinois, Michigan and Indiana

within a 50-mile radius of the business center of Chicago; a region blessed with eighteen hundred separate and distinct governmental organizations and 556 independent courts. Mr. Lepawsky expounds, in a most illuminating way, the interactions between metropolitan conditions and the courts of the region. Crime and delinquency are clearly shown to be regional affairs. The volume deals with both civil and criminal courts.

The author adheres closely to his subject of the form and action of the judicial apparatus of the area. His work does not purport to be a comprehensive study of the underlying historical, social and political forces of which the present organization, equipment and methods of the courts are a product. It is, however, generously sprinkled with touches of reference to the more profound causes of the conditions which are described, as, for instance, the unreality of the conventional legal classifications such as civil and criminal, felony and misdemeanor, or, again, the effects of the mobility produced by the automobile, the commercial motivation which court proceedings share with other community activities, and the political as distinguished from the professional concept of the judge. Mr. Lepawsky sticks closely to his subject and to the territory which he has chosen as his field of investigation; but, of course, the conditions which he describes are more or less true of any urban region, and the conclusions he draws are applicable everywhere. In general that conclusion is the need for an organized, coordinated, consolidated and supervised system of metropolitan courts, in which the territorial parts of the region will be cared for by means of branch courts and the various types of problems or jurisdictions by means of functional divisions.

One of the matters brought out with unusual clearness is the importance of the pre-trial and post-trial procedures and investigations and the consequent increasing importance of the non-judicial personnel, such as the psychiatrist, social-worker and probation officer; and the need for more consolidation arises partly from the fact that thereby all parts of the region, metropolis, smaller cities, towns and villages, may become equipped with the necessary services of the investigational, psychiatric and social service types. The importance of so-called minor crime and minor courts is also again demonstrated. A wise stress is placed upon the recognition of the family, instead of the individual, as the unit of consideration in many types of cases.

The factual data presented by the author must have entailed considerable statistical work. The reader, however, has been spared from having to look at extensive statistical tables and anxiously or impatiently seeking to understand and interpret them. The style of the book is refreshingly clear, flowing, apt and picturesque.

That the system of regional justice is but part of and interlaced with the whole problem of regional governmental organization stands out convincingly. The Judicial Council is suggested as a potential agency of organization and supervision. Mr. Lepawsky quite realizes that the form of organization is important not for the sake of form but by reason of relationships with deep social purposes; as appears from a passage such as this:

"In the court of the metropoli-

tan area there may be worked out devices for the distribution of economic risks, for the adjustment of social privileges and obligations, for the solution of the disputes inherent in metropolitan enterprise and mobility, for modifications of substantive and procedural law."

ALFRED BETTMAN.

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LE RAGIONI UMANE DELLA IMPUTABILITÀ E RESPONSABILITA PENALE. [The Human Reasons for Penal Imputability and Responsibility.] By *Alfredo Giannitrapani.* 419 pp. La Toga, Naples, 1933. L. 25.

This volume is an amplification of the author's former volume *Psicoinfezione Criminale* (See this JOURNAL, Feb., 1931, p. 624). A critical survey of all the penal theories advanced since the Middle Ages leads the author to the conclusion that they all end in metaphysics.

In the second part of the volume human activities are classified into four categories: (a) reflex; (b) instinctive; (c) dissociated or automatic psychic activities; (d) synthetic or conscious psychic activities. Criminal activities belong to the third category. Crime is the result of a more or less pronounced state of dissociation or automatism, during which suggestion holds sway and consciousness is a helpless bystander. Suggestion is always autosuggestion and is capable of initiative and invention. It presents itself to the mind of the subject in the form of an idea, which if, accepted, acquires dynamic force and finds its own way to overt action. The peculiar thing about it is that the process by which the idea becomes dynamic and emerges into activity is unconscious. We are conscious only of the results. The dissociation does not reach a pathological degree. Hence, crime is not an abnormal phenomenon. It is the result of a temporary, but normal interruption of synthetic mental processes.

The individual is responsible because he is capable of synthetic psychic activity and the inhibition of dissociated states. He is punishable because the crime clashes with the law which is the product of social synthesis, and just as the synthetic process of the mind tends to inhibit dissociations, so society tends to inhibit any force which tends to disintegrate it. Punishment should aim to educate the criminal to greater self-direction and fuller use of conscious processes.

Evidently the author is no more successful in avoiding a logical exposition of criminality and the human reasons for its punishment than his predecessors. His own theory is fraught with speculation and gratuitous assumptions, although it has the merit of having a strictly psychological approach. The reviewer feels that the contribution of the volume lies, not so much in the theory advanced, as in the scholarly treatment and criticism of other theories.

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VICE IN CHICAGO. By *Walter C. Reckless.* xviii+314 pp. Univ. of Chicago Press, Chicago, 1933. $3.00.

This volume constitutes a brief summary of the problem of prostitution in Chicago. It is largely an

accumulation of data from such sources as the newspapers, the Illinois Crime Survey, studies of the Committee of Fifteen and the Juvenile Protective Agency and the picture presented is largely statistical, supplemented by a few case histories. Such sources cannot be entirely reliable because: 1) The prostitute is no longer easily identified. 2) Police and private investigations can only include flagrant offenders. 3) Prostitutes are notorious for giving false or misleading stories.

In the chapters covering the gang situations, cabarets, and roadhouses, as well as that dealing with organized vice, the author gives brief, succinct, and adequate genetic description of what has taken place in the vice situation since 1911 when efforts were made to suppress commercialized vice. The author's general conclusion is that while vice conditions in general are somewhat better in Chicago than they were in 1911, further measures of control should be developed. The most significant groups of data are presented on spot maps showing that vice, although now not specifically localized, does tend to segregate itself, and the location of vice resorts agree in distribution with venereal cases, but not with poverty or with violation of the eighteenth amendment. The persistence rate of resorts decreased as the "vice areas" were left behind. Valid data obtained from underworld sources and from the "pick up" and shop girl type of prostitute is largely omitted, even though this sort of information would be most valuable in showing the actual situation at the present time. Nevertheless the various topics are handled with care and are deliberately presented in such a way that the fallacies in the methods of obtaining the information are readily discernible. Some of the remedial possibilities mentioned have been adopted since the book was written.

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PROBATION AND CRIMINAL JUSTICE. Essays in Honor of Herbert C. Parsons. Edited by *Sheldon Glueck*. vii+344 pp. Macmillan Co., New York, 1933. $3.00.

This is a volume arranged and edited with rare skill. It is a book that will at once command the interest of the general reader, absorb the critical study of every practical worker in the field of correction, delight every student of the administration of justice.

The preface and opening chapter are by Glueck himself. For the remainder of his symposium he has drawn upon distinguished judges and law professors of America and Europe, a brother psychiatrist of note, eminent penologists and outstanding men in probation.

"A fundamental overhauling is called for of the complicated and ill-arranged structure of criminal justice, to bring about consistency of aim and method," says Glueck in Chapter I. In the last Chapter, XV, Professor Hans von Hentig supports Glueck and with clarity and cogency of reasoning shows how the ground has been cleared for the logical and sound growth of "Probezeit" in the German legal system.

Judge Cornil speaks for the growth of the probation idea in Belgium, Judge Rollet for France, Judge Hall for England, and Charles L. Chute and Sanford Bates

for the United States. By the prestige of their names and by their array of facts, they give this volume a tone of convincing authority.

To Professor Sam B. Warner of Harvard fell the desperate task of confining to a brief chapter. A discussion of the legal problems raised by probation.

Bernard Glueck's essay is surprisingly clear to the lay reader. It is consoling to judges and probation officers who labor today against prejudice and hostility. He says that probation is "the bridge over which might be carried some of the idealism and some of the scientific spirit of modern medicine and modern social service into the dark recesses of the traditional processes of the criminal law."

For the instructive and guiding discussion of the administration of probation, there are chapters by Cooley and Fagan. For presentation of the everyday work details and spirit of the rank and file workers in the probation service, there are chapters by Ralph Ferris and Hans Weiss.

Professor Sellin and Judge Ulman have taken for theme "The Trial Judge's Dilemma" in the granting of probation. The judge is called upon "to guide lives into new channels, to make decisions which will change the future of an infinitely larger number of people than those he is actually forced to dispose of by sentence," says Sellin, and continues "These are duties which the strongest and ablest of men might hesitate to accept."

"In former times," says Sellin, "The traditional training of the judge was perhaps fairly adequate. The demands put on him by the criminal law of today, however, have placed in glaring relief the inadequacies of that training . . . an increasing need will exist for a judicial training in the natural and social sciences as well as strictly legal training."

The able and conscientious judge, with his newly acquired discretionary power as to choice of sentences, faces the problem of how to use his power wisely. In the chapter by Judge Ulman we are privileged to look within the mind of the judge. There are stirring pages in which the reader is caught by the sublimity of his thought and the eloquence of his heart as he pours forth the story of his dilemma, indeed the dilemma of every just judge. Its pages at times run like the confessional.

"The hunch system" in imposing sentences is condemned by Judge Ulman as "one of the weakest points in the present administration of the criminal law." Referring to his use of probation office reports prior to sentence, Judge Ulman declares: "Sentence ought not to be imposed until the judge can re-inforce his courtroom impressions, or correct them, or abandon them after considering these reports."

And Judge Ulman "follows through" after granting probation. He says "the judge knows that he has merely set the wheels in motion; and that he and the probation officer are working together, with a joint responsibility, trying to adjust that man to society."

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