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Book Reviews

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BOOK REVIEWS

THORSTEN SELLIN [Ed.]

LAW AND ORDER IN POLYNÉSIA. By *H. Ian Hogbin*. Harcourt Brace and Co., New York, 1934. \$3.50.

The writer is in some doubt as to whether he should review Professor Malinowski's introduction to Dr. Hogbin's book or Dr. Hogbin's appendices to Professor Malinowski's introduction or attempt the synthesis which both Malinowski and Hogbin have ignored and review the material between the covers as one book.

The first seventy odd pages are devoted to a valuable theoretical statement of the problem of law and order in primitive societies, contributed by Malinowski. The following 150 pages are Hogbin's account of the functioning of law and order in Ontong, Java—this being based upon the field work of the author. The final 50 pages contain an account of the problem in other Polynesian societies.

If there were any real synthesis of the three sections, if they had not remained essentially disparate, it would be possible to discuss the merits of the book as a whole. There being no organic unity, they must be considered as three separate essays on the subject of Law and Order.

Functional theory in anthropology—and Malinowski is one of the foremost of this school of theorists—regards culture as an instrument which is at the disposal of all human groups for the satisfaction of

basic and derived wants. Further, it borrows from pragmatism the notion that the real definition of a social form lies in its effect, what it accomplishes in a culture rather than in its form. The practical effects of such a point of view are manifold. It requires of the ethnologist that in studying the problem of law and order he may not confine himself to legal, political and juridical institutions. It requires that he have an understanding of the entire culture before daring to interpret a section of it. It is this point of view that Malinowski urges upon the ethnologist in the present essay.

It is a point of view which Malinowski has amply validated. In his own field work he has successfully used it and presents now a theoretical review of his methodological findings. Principal among these findings is the conclusion that the repression of crime in primitive society comes not from the fear of agencies of punishment but from the complex of reciprocal relationships which a crime would disturb. For each duty there is a privilege, or, as Malinowski phrases it, there is a duality of positive sanctions and punitive sanctions of which the positive sanctions are vastly the more important. In short, rules of conduct are kept rather than broken because it is pleasant to keep them, because conformity is "baited with inducements" rather than because the threat of punishment is the deterrent.

It seems to the reviewer, however, that the distinction is not so clean-cut as Malinowski intends it to be. If he means that it is not fear of a policeman or the avenging act of a kinsman that principally keeps the savage from breaking a rule, there should be no argument. But if, on the other hand, he means also to suggest that because of the satisfaction meted out by living according to prescribed regulations there is no temptation to crime, there is considerable room for argument. If there were no temptation to crime, there would be no function for mechanisms of law and order to perform and we would expect to find the absence of these mechanisms rather than their presence.

A hypothetical situation may serve to make the point clear. If it were possible in a culture for rules of conduct to be broken, and the breach would in no wise affect any of the relationships between the offender and the rest of the community, and these rules of conduct were obeyed even though personal sacrifice were involved, we would admit that it was the joy of living in conformity that was responsible. But inasmuch as in all societies disapproved deviation is followed by some form of censure and by a change in the relationships of the offending individual with his fellows, we are not privileged to say that it is the positive satisfaction of conformity rather than the fear of the unpleasant nature of the resultant change in the position of the offender in his society which is the effective deterrent.

Apparently, Malinowski wrote the introduction to Hogbin's material because he felt that Hogbin's field work bore him out. Again this may

be open to some doubt. Hogbin traces the relationships in which the individual is involved, the numerous reciprocal relations which are necessary to the existence of the native and the abrogation of which would lead to hardship and shame. So much is clear and granted. Social science is indebted to both Malinowski and Hogbin for emphasizing this extremely important fact, but Hogbin's material by no means establishes the fact that the fear of disturbing a vital reciprocal relationship is not a punitive sanction.

The functional field worker, by reason of his theory, assumes certain obligations towards completeness and synthesis that are commendable. Unfortunately—measured thus—Hogbin's material is rather thin, does not possess the fullness of documentation that Malinowski is so admired for, and lacks above all what might well be termed an essential in functional analysis—a number of statements of values, motivations, philosophies of life. Apparently Hogbin realized the importance of this information and attempted to get it. Whether he succeeded and has not published it here, or whether he was unable to get it, is information not available to the reviewer. Its absence is a serious handicap.

Anthropologists in general, and functionalists in particular, believe in the continuity of society. They believe that what is significant of human relationships in primitive society has a very good chance of being applicable to modern society. It would be immensely valuable if Professor Malinowski would undertake to demonstrate the functional similarity of property law in primitive society with property law in our own—to demonstrate the reciprocal

duties of rank and power toward the lowly in our own society as he has so ably done for the Trobriand Islands. It would have an audience rather larger than falls to the lot of most scientific books—an audience embracing not only social scientists but the United States Chamber of Commerce and imperialist statesmen as well.

LLOYD FISHER.

Office of Indian Affairs,
Washington, D. C.

OT TIOREM K VOSPITATELNIM UTCH-ROCHDENIAM [From Prisons to Educational Institutions]. Ed. by *A. I. Vishinsky*. 450 pp. State Publishing Company, Moscow, 1934.

This volume of collected papers on the evolution of the Russian penal system is published under the auspices of the Attorney-General's department and the Department of Justice of the Federated Republics of Soviet Russia. It is an extremely interesting book and the material is so startling and unusual that if it were not so heavily documented by official decrees, extracts from laws and numerous photographs, one would almost doubt its veracity. They present a series of articles by the leading criminologists of Russia and it is a resumé of what has been done in the field of penology for the past sixteen years, when a definite interest in correctional institutions began to be shown by the government. The first chapter, by Estrin and Trachterev, deals with the development of the Soviet legislation in reference to crime and there one can see readily the various mistakes which were made in the beginning and the evolution of an extremely liberal and progressive policy in

reference to crime which has been so characteristic of Russia. It is interesting that from the very beginning there was a tendency in the law to differentiate the "enemies of society" who should be deprived of liberty and those who can be re-educated by various methods. It is quite obvious that the whole problems of solving crime was simplified a great deal by the unprecedented demand for labor in Soviet Russia. Prisons were converted into various types of factories with an opportunity for the prisoners to take courses in various trades and then apply them in the prison industries. One must qualify the word "prison" in this case as apparently many of the prisons there are prisons without walls. There are some extremely interesting descriptions of villages, model farms, factories, where apparently there is very little restriction of liberty and where one finds a great deal of self government and an honor system. It is rather interesting that the prisoners in Russia receive full pay as any other laborers and they even have a right, after the expiration of the sentence, to sue the state if they are injured.

Good workmen who distinguish themselves by efficient production are given all sorts of privileges such as parole and even commutation of sentence. Such privileges were given, for example, to fifty thousand prisoners who were engaged in a construction of the Baltic Canal. There is a firm belief that participation in various tasks together with an intensive educational program of the most varied kind serve to make the prisoners more socially-minded than they were before they were sentenced. Certain things are very hard to understand, as, for

example, the model farms operated by prisoners where there is apparently very little supervision, no locked doors and very few guards. One wonders why the prisoners do not run away, but perhaps this can be explained by the peculiar local conditions in Russia where without a passport and without a trade card a man would have a difficult time in getting a position. One also has a feeling that there is more thought put in the supervision and care of prisoners than of the large masses of the general population.

In the various articles one is greatly impressed by the extreme ingenuity displayed by the penologists in organizing every possible form of educational activity and the development of a feeling of decency and self-respect in the prisoners. Very little is said about the prevention of delinquency and crime which is stressed so much in this country. There is only one short reference to the voluntary colonies managed by the G. P. U. for problem children where the admission is absolutely voluntary and where the adolescents can leave at any time without any restrictions. There is unfortunately no evaluation of this method of dealing with juvenile delinquents.

In spite of a certain vagueness of presentation, the various articles present their subject material unusually well and the illustrations are excellent and self-explanatory. The papers vary in subject from the review of the recent legislation to the methods of organization of recreation in the prisons. The interesting thing is that the book reveals the treatment of crime not only in the large centers but also in some of the rural republics of Russia which are located in Central

Asia. The book is so interesting that some parts of it will be worth translating or at least abstracting.

JACOB KASANIN, M.D.
State Hospital for
Mental Diseases,
Howard, R. I.

THERE IS NO TRUCE: THE LIFE OF THOMAS MOTT OSBORNE. *Rudolph W. Chamberlin*. New York, The Macmillan Co. 414 pp. \$3.50.

Much has been written about the life and work of Thomas Mott Osborne. It remained, however, for Rudolph W. Chamberlin to tell the true story of the man and his work. The title of the biography "There Is No Truce" expresses the character of its subject. Once Osborne's mind was made up, it was impossible to change it; and he gave no quarter.

Chamberlin goes carefully and entertainingly into Osborne's early life, showing the origin and development of eccentricities which later led to much misunderstanding among his enemies and prevented complete understanding even among some of his friends. He shows the relationship existing between Osborne and his family, particularly the love which he carried to the grave for his wife and his sons.

A clear picture is drawn of Osborne's entire career in the penal field, with particular emphasis on the unjust and, happily, unsuccessful attack upon his character in the Sing Sing controversy. It shows how he attempted to build up self-government in prisons, the opposition he encountered, the successes he attained, and the strength of his determination to carry out the poli-

cies which he believed right. Some account is given also of his career at the Portsmouth Naval Prison, but in less detail. Those of us who were with him at Portsmouth could write much more about his shortcomings and successes there; and we know full well the flimsiness of such charges as were brought against his administration.

Probably Osborne's chief weakness was his failure to apply himself closely to administrative detail, and his inability to surround himself with persons who could and would carry out the details which were so distasteful to him. His whole attitude toward life was that of an idealist, losing sight of the material, and wholly unconscious of the human equation in life's problems. His idealism, together with his forceful personality, accomplished much, but could have accomplished more, in many instances, had he had loyal and efficient subordinates who would have supplied his weaknesses. We who surrounded him at Portsmouth realized this, and with Cox, McCormick, and others, were successful to a marked degree in carrying on an administration that was of benefit to the United States Navy and to the Government. Osborne instilled into his charges at Portsmouth a deep feeling of loyalty and devotion to duty. Hundreds of these men, restored to duty in honorable status, gave a good account of themselves before the close of the World War.

Mr. Chamberlin's book will be of value to those interested in penal problems because of its exposition of the ideas advanced by Osborne. It should be read by everyone for

its portrayal of a great reformer and wonderful personality.

HAROLD E. DONNELL.
Baltimore, Md.

THE INCIDENCE OF DELINQUENCY IN BERKELEY, 1928-1932. By *Herman Adler, Frances Cahn, and Johannes Stuart*. x+102 pp. University of California Press, Berkeley, 1934. \$2.00.

This study was projected as the first part of a broad survey of delinquency and crime in the San Francisco Bay region. The part covered by this report is an analysis of existing record material to determine the extent of delinquency in Berkeley. The study covers the general description of Berkeley; the extent of delinquency, and the distribution of delinquency in districts, with such specific classifications as sex, race, age, marital status, types of offences and agencies handling the cases.

This study has special import, however, in the particular analysis of its findings. It was concluded "that so far as outward appearances went, there were no significant features observable in the structures, the habitations, the traffic, the occupations, or the social life of the inhabitants that could be connected in any way with the delinquency statistics." It is indicated that the factor to be noted in the high and low delinquency areas is not alone the transition or change in the character of the districts, but rather the result of meeting of two social levels. It appears that while delinquency areas may be the result of transitional phenomena, it is an internal rather than an external status. The area tends to be "psychological

and invisible and only occasionally does it follow a geographic boundary which can be easily demonstrated on a map." The authors agree in this study with the conclusion made in similar studies that physical movement and density of population are only a part of the picture and that these must be re-defined in psychological terms and also in the psychological sense of alertness, interests and social relationships.

While this study had in view the objective of making an attempt "to influence experimentally the rate of delinquency by the application of the basic information obtained as a result of the analysis," the material presented in this first part is not adequate for setting up such an experimental program.

M. C. ELMER.

University of Pittsburgh.

L'OEUVRE D'ADOLPHE PRINS [The Work of Adolphe Prins]. Ed. by L. Wodon and J. Servais. xxii+567 pp. Université Libre de Bruxelles, Brussels, 1934. 75 fr.

The law faculty of the University of Brussels has honored the memory of one of its illustrious members by publishing an anthology of his sociological and criminological works under the above title. An Introduction is written by M. Paul Hymans, the Belgian Minister of Foreign Affairs and President of the University.

The volume is divided into two parts: the first, excerpts of Prins' sociological writings with an introductory summary by Mr. Wodon and the second, a description of his work and activity as a penologist. Mr. Servais introduces the

second part with an essay on "Adolphe Prins, Penalist."

At the age of twenty-five Prins' first publication *Poésies* appeared. From then until 1918, the year before his death, when *La démocratie après la guerre* was published, he wrote unremittingly. Close to one hundred titles appear in his bibliography of pamphlets, tracts, and tomes.

His range of interests was extraordinary. He was professor of criminal law and procedure at the University of Brussels and Inspector General of Belgian prisons. His influence upon criminal legislation in Belgium was perhaps greater than that of any other one individual. Prins was responsible for the organization of the children's courts and the Belgian law of 1912 for the protection of childhood. With Van Hamel and Liszt he founded in 1889 the important *International Union of Criminal Law*.

He published several analytical studies of democracy, the most important being *De l'esprit du gouvernement démocratique* (1906).

Readers of this Journal will be primarily interested in his legal, criminological and penological work. His more important writings in this field are, his doctoral dissertation, *De l'appel dans l'organisation judiciaire répressive* (1875), *Criminalité et répression, Essai de science pénale* (1886) and *Science pénale et droit positif* (1899).

One sentence taken from the first chapter of his *Criminalité et Répression* gives the key to his approach. "There does not exist an abstract type of moral and an abstract type of reprehensible man; crime is not an individual but a social phenomenon." One may infer at once where Prins belongs.

He was an opponent of the traditional classical school of criminology and of the principle of repression. While a strong supporter of the "Positivists" he did not uphold the theory of the "born" criminal but emphasized the social causes of criminality. He was a firm believer in the "individualization of treatment," based upon the personality of the delinquent rather than the abstract nature of his offense.

Prins carried his ideas over into prison treatment. He fought against the solitary confinement which prevailed in the Belgian prisons at the close of the 19th century. The prison should become, he argued, a kind of professional school where men might become regenerated. Wages were to be paid. Conditional liberty (parole) was to be instituted.

He supported the famous Belgian *Service d'anthropologie pénitentiaire*, first step up in 1907 and developed in 1919, which was to determine the moral, physical and psychological condition of the inmate. Prins lived to see all of these ideas incorporated in the Belgian criminal law and prison system. For him the function of the criminal law and penal treatment was the defense of society. A careful reading of this volume leads one to place Prins alongside Ferri as one of the outstanding spirits of modern penology.

NATHANIEL CANTOR.

University of Buffalo.

THE DEFENDANT AND CRIMINAL JUSTICE. By *Roscoe C. Martin*. 264 pp. Univ. of Texas, Austin, 1934.

The object of this little volume is to present to the reader an analysis

of the treatment of criminals by the district courts of Texas, and how criminal justice is affected by such factors as sex, age, race, court record of the defendant, marital status, residence, education, family, occupation, political, religious and fraternal affiliations.

The study is based upon a 10 per cent sample which the author says is representative of the criminal cases tried in the district courts of Texas in 1930.

The year 1930 was selected for study not because it was a typical year or because there were indications that specialized situations were apparent or because it was a maximum or a minimum year as regards the number of criminal cases tried in these courts. It was selected because of what the author calls "two important reasons": (1) the cases were fresh, and (2) the data of the 1930 Census could be used advantageously.

In 1930 the district courts of Texas tried 9,639 criminal cases. This study is limited to felony cases only and the universe studied was 927 cases. Texas is divided into 254 counties of which 25 were selected at random "scattered throughout the state in such a way as to provide representation for its various sections." But a glance at Map I will show a marked concentration of counties studied in the eastern part of the state (15); the far western part is neglected, the northern section has 4 counties, the south 2 and the central west 4. In Footnote 4, Page 25, the author points out "that none of the so-called metropolitan counties has been included." The territory selected had to furnish a 10 per cent sample of the 9,639 criminal cases tried in 1930, but it also had to

provide a 10 per cent miniature of the state of Texas. It would be interesting if not enlightening to know how the figures were juggled "until the demands of the study were reconciled with census statistics in an acceptable fashion."

The author's conclusions are based almost entirely on his interpretations of his tables showing only percentage distributions of the 927 defendants. The tables might well be improved and the interpretation therefrom more intelligible to the reader had the author recorded the actual figures alongside of the percentages for each factor and its subdivisions.

No attempt is made to handle more than two variables at a time. A high degree of relationship may be observed between two variables studied, but it is obvious that, in general, social phenomena are affected by more than one factor, that the fluctuations in a single variable may be due to many interacting forces. The study is unfinished and the conclusions, assuming the representativeness of the sample, are premature. With the problem under consideration and the data available it is surprising to note that the statistical techniques of multiple and partial correlation were not utilized to show respectively

- (1) the degree to which variations in a single dependent variable are related to the combined action of other factors; and
- (2) the relationship between a dependent variable and a single independent variable when all other factors were held constant (not neglected).

It is apparent as far as the au-

thor has gone in his statistical procedure, that the different factors, for which percentage distributions are computed, are not equally significant in their relation to "criminal justice." That there is some degree of association between the factors and the penalties is evident in most cases. But mere inspection of the percentage distributions does not indicate the amount or extent of this association. The numerical index of this relation might have been obtained by using the statistical device developed by Karl Pearson, the contingency coefficient, especially adaptable for data under descriptive categories or classes. A table of contingency coefficients obtained from the comparison of the relation between "Criminal Justice" (penalties) and each of the factors would have shown which if any of the factors appeared to be of outstanding importance.

The study is exploratory, the investigation aimed in a worthy direction. The author endeavored to be scientific. Such good intentions are important. The study calls attention to human prejudices and the tendency of prosecutors, judges and juries to favor their own class, the treatment accorded to the transient and foreigner; but these opinions or hunches are not proved.

ELIZABETH REDDEN.

Goucher College,
Baltimore, Md.

DIE RICHTIGE GESTALTUNG DES STRAFVERFAHRENS, DES DIENSTSTRAFVERFAHRENS UND DES EHRENGERICHTSVERFAHRENS [The Proper Form of Criminal Procedure, the Procedure in Offences by Public Servants and in Honor Courts]. By *Kaspar*

Anraths. xvi+162 pp. Verlag Franz Vahlen, Berlin, 1934.

German criminal procedure is a composite of inquisitory and accusatory elements with the inquisitorial features predominating. The *Untersuchungsrichter* investigates and prepares for trial all the serious criminal cases and has all the compulsive power of the state to assist him in getting at the truth. At the trial, the predominating role is played by the presiding judge who conducts a thorough interrogation of the accused, questions witnesses, and directs all the proceedings. The material for the judge's conduct of the trial is taken from the dossier of the earlier investigations.

It has been patent in Germany for many years that this procedure bore too harshly on the accused. It did not guarantee any impartial examination and evaluation of the facts. Investigating magistrates and trial judges were required to perform the contradictory functions of taking care of the interests of the prosecution, the accused and the interests of the state in the truth. Almost inevitably these officials tended to degenerate into mere prosecutors.

To remedy these defects many German scholars preached the modification of German procedure along the lines of the contentious Anglo-American procedure. Dr. Anraths' book presents the arguments in favor of this reform for the procedure of the criminal courts, the courts which try delinquent public officials and the honor courts (*Ehrengerichte*). The special significance of this book lies not in its arguments, which are slightly shopworn, but in the fact that in the shadow of Hitler's concentration camps, Dr. Anraths still dares to

propound a view that the individual has rights which the executive is bound to respect.

Unfortunately the book does not lay down any formula which would make possible a liberalization of the code of criminal procedure during a period of ruthless dictatorship. Dr. Anraths is aware of the close connection between the political ideas underlying a particular regime and the provisions of its criminal procedure (p. 4). Still he is apparently under the impression that human enlightenment has gone so far that political considerations will no longer determine procedural institutions, but that they will be deduced from the processes of human thought. Yet as late as 1931 the Italian Fascist Code provided some striking illustrations of the close connection between criminal procedure and political thinking. It hardly seems likely that the present German government will fail to ape the Italians in this as in other fields and surrender the advantage of being able to destroy its political enemies through a procedure which loads the dice in favor of the prosecution.

MORRIS PLOSCOWE.

Cambridge, Mass.

VOLUNTARY STERILIZATION. By C. P. Blacker. 145 pp. Oxford University Press, New York, 1934. \$1.75.

This little book purports to be a survey of the cause for voluntary sterilization in England. In reality it is a defense of the Report of the Brock Committee which recommends *voluntary* sterilization for mental defectives and persons who had suffered from mental disorder; for persons suffering from or be-

lieved to be carriers of grave physical disabilities which have been shown to be transmissible; and a person believed to be likely to transmit mental disorder or defect. There are elementary but clear chapters on the sterilization operations; the need for legal sanction for these operations in England; and analyses of the various mental diseases and disorders. The book's unique feature is its condemnation of compulsory sterilization and its defense of voluntary sterilization of mental defectives and the mentally diseased.

J. H. LANDMAN.

College of the City
of New York.

FEMALE CONVICT. As Told to *Vincent Burns*. 254 pp. The Macaulay Co., New York City, 1934.

A lurid story of prison experiences, which if true, is a terrible indictment of the administration of some prisons for women, and if false, a gross imposition on the reader. The author, acting as amanuensis to the narrator, who purports to tell her own life story, claims that the book is an "understatement rather than an overstatement of the truth."