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# Book Reviews

# BOOK REVIEWS

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CRIMINAL APPEALS IN AMERICA. By *Lester B. Orfield.* Boston: Little, Brown and Co., 1939. Pp. xiii—321. $5.00.

Members of the bench and bar and others who are interested in the improvement of criminal appeals in America will find this book a most valuable contribution to the subject. Professor Orfield has assembled, classified, and analyzed a wealth of facts. His numerous citations of articles from journals and law reviews appear to be exhaustive, and his collection of cases is ample for illustrative purposes. It is rare that so much painstaking research is reflected in so compact a volume. Yet with all this research the reader gains a clear impression that in the compilation, organization, and comparative analysis of criminal appellate procedure much new ground is being plowed.

The book discusses the origin, function, and scope of criminal appeals. It treats of English criminal appeals, varying appellate procedures of different states in felony cases, petty criminal appeals, Federal criminal appeals, and appeals under the American Law Institute Code of Criminal Procedure. The author approaches each of these types of procedure, except the last mentioned in traditional historical manner. In addition to this historical presentation of materials he weaves into his chapters, wherever possible, the available statistical data to disclose the efficiency or lack of it in different criminal appeal procedures of different jurisdictions. His not infrequent reference to continental practice is also helpful in giving the reader an enlarged view.

As one might expect, a discussion of criminal appeals in America is grounded upon the development of the law of appeal under English Common law procedure. From this natural beginning point, the book traces statutory modifications of criminal review procedure up to and including the American Law Institute Code of Criminal Procedure, which with slight modifications, is now adopted in a considerable group of states.

This volume is not a lawyer's book for the purpose of aiding him to determine accurately the steps of criminal appellate procedure in any particular jurisdiction, although it is rather complete in its discussion of the new rules of criminal appeal in the Federal courts. It is primarily destined to aid members of judicial councils, trial and appellate judges, law teachers and members of legislative committees who are interested in perfecting criminal appeal procedure. The book points out and decries the common pitfalls of technicalities and delays in the administration of criminal justice, and suggests feasible and tested procedures which have resulted in increasing the speed, thoroughness and simplicity of review of a criminal cause upon the facts, as well as

upon the law. This is a signal service.

Professor Orfield is to be complimented upon the impartial and scholarly manner in which he marshalls and presents the various conflicting arguments upon proposed reforms in this field, where such exist. His courage noticeably impels him, not infrequently, to lend the weight of his own opinion to the view of one or the other of the different contending groups. When he does this, his opinion is invariably supported by the material facts in so far as criminal surveys and statistical data have yet revealed them. One may imply from reading this book that Professor Orfield has the good fortune to be the spear-head of a concerted attack upon old rules of criminal appellate procedure, which is being rightly fostered by leading law teachers, forward looking judges, and by the judicial councils of many of the states. To the extent that this implication finds support in fact these teachers, judges and lawyers deserve favorable recognition for the part they have played in creating the desire and need for such a work.

This historical panorama of criminal causes rather startles one anew at the great inertia of human thought as therein reflected. Once again the conservative stubbornness of acquired procedural habits of learned men is seen to weigh heavily against the reasoned admission that new practices would obviate old evils and better the administration of criminal justice. Again we may recall the adage that "if it were as easy to do as to know what were well to be done perfection would oft be attained."

One is also impressed with the idea that the great reforms in criminal appellate procedure have occurred in this country within the last fifteen years or thereabouts. And as these new practices are being tested against the background of American attitudes, this new volume makes it clear that there is much remaining to be done before criminal appeals in America will be as well and promptly considered as has been the practice in England under the Criminal Appeals Act of 1907. Felony cases under current English practice are disposed of within five to eight weeks after sentence and yet a full opportunity is given for review of the facts as well as the law, even to the extent of hearing new testimony and allowing new writings to be introduced before the Court of Criminal Appeals in order to determine each case speedily and fairly upon its merits.

Professor Orfield recognizes the great importance of morphology in streamlining appellate procedure but does not overrate its significance. He emphasizes that high capacity and the desired esprit de corps of all persons participating can accomplish wonders even under a bad set of procedural rules. He observes that judicial habits of hyper-technical analysis and contentions and dilatory attitudes of the members of the bar participating in criminal cases may go a very long way to veto the possible effectiveness of a model set of rules of appellate criminal practice.

By way of illustration the author points out that the Texas Court of Criminal Appeals (created 1876) and the Oklahoma Court of Criminal appeals (created 1908) are specialized courts of criminal appeal, supposedly established to

obviate technicalities and delays in criminal appeals. Yet while a similar endeavor begun in England in 1907 against a background of British conditions and traditions has proved highly efficient, these two efforts in the United States resulted in more technicalities and more delays in the review of criminal causes than was experienced under appellate tribunals having civil as well as criminal jurisdiction. Transplanting the tree of organization to another climate and soil frequently produces different results. The somewhat unfavorable results obtained by these two social experiments have had a deterrent effect upon the advocates of the transplanting of the English criminal appeals procedure. In looking for an explanation the author observes that lack of comparable training and desired attitudes of bench and bar are largely responsible for much of the law's delay. And on the contrary, he observes that the high professional ability of the life-tenure trial judges of England goes far in discouraging frivolous appeals, in facilitating speedy appeals, and in precluding emphasis upon technical formality rather than upon substantial merit. There has been no new trial (as we know it) in England in criminal causes since 1907. The case is speedily and finally disposed of in an appeal.

The American Law Institute Code of Criminal Procedure finds very favorable appraisal at the hands of the author. This Code, which was first offered as model legislation to the states in 1930, receives however several criticisms (p. 252). One of the chief objections is that in allowing sixty days in which to take an appeal the Code fosters delay. The English practice of requiring an appeal to be taken within ten days after conviction or the present Federal practice which allows five days (p. 266) is claimed to be much preferred. A rather strong case is made against appeal by the State, particularly as to certification of questions of law prior to verdict. The argument is that one appeal should be sufficient and that to allow more than one is to encourage delay, and in many instances to harass the defendant and cause him unfair financial burden. This is partly obviated by the Code in that the clerk of the trial court must transmit the appeal papers to the appellate court without charge, which includes a transcript of the stenographic reporter's notes (p. 268). Another defect of the Code is said to be the granting of bail after verdict and pending appeal. The English practice of incarcerating convicted prisoners, separate from those whose convictions have become final and of allowing them compensation for remunerative work if the conviction is reversed is said to be a most salutary means of speeding up the final determination of a criminal cause.

A chapter is devoted to the new Federal rules of criminal procedure promulgated by the United States Supreme Court on May 7, 1934, following the congressional act of February 24, 1933, as amended March 8, 1934 (p. 252). These new rules receive very favorable comment. In several respects such as, the short time allowed for taking appeal, the rules are modeled after the English practice. Professor Orfield is profuse, and rightly so, in his praise of the modern trend toward greater rule-

making power in the appellate court regarding appeal practices. Certainly the Court is cognizant of the evils and in a position more readily to correct them than is the legislative branch of the government.

Several times the suggestion is made that sentencing might be made a specialized activity in the administration of criminal justice and entrusted to what the author calls a Disposition Tribunal (pp. 277, 293, 297). The personnel and their qualifications, and the method of functioning of this suggested tribunal is unfortunately left to the imagination of the reader. One may suspect that the writer is merely echoing the views of some psychiatrists or criminologists who have not thought through the difficulties that surely will be encountered in attempting to integrate such a tribunal into existing judicial organization. This inchoate notion may have merit. Whether it does or does not remains for further elucidation. Some readers may regard the last two chapters as partly repetitious. Such claim would have to be admitted. But it would seem that a complete justification can be pleaded by stating that the intricacy of the varied rules of criminal appellate procedure in so many different jurisdictions and courts sufficiently warrants such repitition as occurs in the interest of effective summation.

The book is indexed with the same care and thoroughness which permeates this excellent treatise. It will undoubtedly do much to further the improvement of criminal appeals in America.

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PUNISHMENT AND SOCIAL STRUCTURE. By *Georg Rusche* and *Otto Kirchheimer*. New York: Columbia Univ. Press, 1939. Pp. vii +268. $3.00.

The announced objective of this book is study of "the sociology of penal systems"; somewhat more broadly, to bring penal methods into meaningful relations with the whole social and economic system. In pursuance of this end, the authors select a number of special problems which they subject to historical and sociological treatment. The period covered is from the later Middle Ages to and including contemporary times. The methods of penal treatment discussed in detail are fines, the galley, transportation, and imprisonment.

A more potentially fruitful project for research than that undertaken by these authors would hardly be desired. And the authors have marshalled a mass of highly significant data. Moreover, their discussion abounds in numerous acute observations: as to the effect of mutilation on subsequent employment (20), that "Cruelty itself is a social phenomenon" (23), the implementation of the thought that the living standards of the lowest classes determine prison conditions (106, 108), the influence of trade union pressure on prison employment (152), the conditions of the labor market and the chances of rehabilitation (158), the imposition of fines and unemployment (171), that in cases of prostitution, the fine amounts to a licensing system (175), and numerous others that show insight and awareness of the implications of penal practices and deficiencies.

But despite the importance of the thesis, abundant descriptive

data, and many acute observations, the study falls far short of being an important contribution to our present knowledge. For it becomes rather quickly apparent that the authors' "social situation," and "historical-sociological analysis of penal methods" simmer down to "economic" influence—and "economic" becomes sometimes the conditions of the labor market, occasionally methods of production, often the bias of dominant economic classes—usually the bourgeoisie. As a consequence it is impossible to determine just what their thesis is. The most persistent current of their debate suggests, but never explicitly, Marxist determinism. In light of their avowed purpose, one expects consideration of a manifold of social data (which would seem to include legal sanctions, moral ideas and public opinion); instead one finds a particularistic ideology which leaves the authors open to serious criticism. Even less successful are the methods of analysis. Interrelation of phenomena requires rigorous marking of boundaries and materials. It calls for definite but justifiable restrictions of theses maintained. Lack of analysis of method, especially where significant interrelation of phenomena is sought, results in a muddled description, all the more vitiated by suspicion that the authors' economic predilection has added bias in choice of data to lack of intelligible reconstruction of the social situations that form the context of change in penal systems. Thus, with reference to early English law, we are told: "The inability of lower-class evildoers to pay fines in money led to the substitution of corporal punishment in their case." (9) The fact is that certain crimes, e.g., treason, could not be paid for by anyone and that increasingly through the later Middle Ages, more and more offenses were made non-clergable (a factor ignored entirely) and seriously punished regardless of who the offender was. We are told repeatedly of special hardships imposed on the poor. But Britton and other mediaevilists inform us that hunger was a complete defense of theft for consumption, thus revealing in some regards a humanity greater than our own. To cite another of the many particularistic exaggerations, we are informed with reference to late 18th century English law, that "Since the personal liberty of of the upper classes was fully recognized by the existing law, reform could benefit only the common people and the movement for greater leniency faced strong resistence." (80) But leniency did come, and abundantly! And certainly without any accompanying loss of power by the bourgeoisie. The authors are typically silent as to the causes of such amelioration. This singlemindedness makes it impossible for them to understand the revolt of humanitarians against solitary confinement when its results became known. In like vein is the argument that "the reformation of convicts is thus regarded as a good investment" (144). They assert that statistics show that foreigners have a higher crime rate: "since the bulk of this group comes from the poorest elements of society, we have clear proof of the impact of an unfavorable economic position on criminality." (152) This neglect of such well-known publications as the Wickersham Crime Reports is not surprising in

light of the authors' unfamiliarity with American works dealing precisely with their own problem. "Money had become the measure of all things" (168)—this of France in the early 19th century! The effort in the last chapter to establish that severity of punishment has not affected the crime rate rests upon fragmentary statistics which add little, if anything, to whatever insight or opinion one already has concerning this matter.

This book has a scholarly Foreword by Thorstein Sellin. If only its discriminating observations had been available to the authors at the inception of their work!

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PRINCIPLES OF CRIMINOLOGY. By *Edwin H. Sutherland.* Chicago: J. B. Lippincott, 1939. Pp. vii-651. $3.50.

What distinguishes the new edition of Sutherland's "Criminology" from earlier editions is the more elaborate statement of the theoretical basis on which Prof. Sutherland has analyzed the wealth of material he has assembled. In his earlier editions Sutherland had already shown—and publications between the second and third editions have confirmed—that a theory of criminology cannot be founded on a biological, physiological, or psychiatric approach. The emphasis in the present attempt to build up a theory of criminal behavior rests on two constant factors: 1) the frequency and consistency of criminal contacts specific to the group of the prospective delinquent, 2) cultural conflict and basic social disorganization. This emphasis on the group factor is elaborated in a wholly new chapter dealing with "behavior systems in crime."

As in his earlier editions, Professor Sutherland is reluctant to offer a general definition of crime. It seems to me, however, that his recognition of social disorganization as a basic cause of criminal behavior readily opens the way for a definition of crime itself. In fact, his whole analysis rests on a basic conception of the nature of crime, particularly evident in his treatment of so-called "white collar crimes" which constitutes a distinct feature of our culture and receives the special emphasis it deserves. Many white collar criminals escape punishment for one or more of the following reasons: 1) if a statute makes a specific act punishable but the delinquent is powerful enough to prevent the authorities from encroaching upon his activities; 2) the behavior code of the group to which the delinquent belongs does not acknowledge the culpability of certain types of activity; and/or 3) the general public does not judge these activities as wrong.

Nevertheless, Professor Sutherland obviously believes that "white collar crimes" do more harm to society and are more criminal in their very essence than most of the crimes prosecuted by the widely publicized Messrs. Hoover and Dewey.

Sutherland correctly stresses the subjectivity of group evaluation and therefore rejects Sellin's notion of conduct norms as the dominant elements in the search for a definition of crime. His own conception, apparent throughout his treatment of numerous detailed problems,

rests on the contrast between our disorganized society and the minimum standard needs of a well-ordered society. If he did not have such a conception of crime, which is wholly independent of special group evaluations, he could not conceivably stigmatize as criminal —as he does all through the book—patterns of behavior which are sometimes not condemned by law or by group feeling. In general, Sutherland prefers to express his conception of crime in a negative way, that is to say, by maintaining the impossibility of discovering a clear-cut distinction between the lines of criminal and of lawful behavior. He says, for example (p. 18): "Thus, crime and not crime are not two distinct types of behavior, but constitute a continuum." The positive elements of such a theory will become all the more discernible as we leave further and further behind us the heritage of the nineteenth century which, as Sutherland says, not without considerable justification, some future time will designate as a period of the world's most extreme social disorganization. Such a positive definition would further elucidate the reasons for the gap universally recognized today between a sociological and a legal definition of crime. This gap too is a product of our contemporary society and is by no means an objective necessity. Quite the contrary, it seems to be an axiom for a well organized society that there shall be an approximate equilibrium between the system of values acknowledged by society and the effectiveness of the penal sanctions which society employs.

He is quite justified in not espousing Sorokin's theory (Social and Cultural Dynamics, II, 595) that social heterogeneity and antagonism lead to an increase in the amount and severity of punishment. The opposite thesis, however, that the offender gets more and the state less support for a policy of severe punishment (p. 371) seems to require further elucidation. We do not yet possess a consistent body of knowledge on how social disorganization affects the policy of punishment. Both the repressive and the mitigating tendencies can probably be found, and the lack of consistency and the rapid changes in the evaluation of different acts may be the dominant factors.

In closing, I should like to express the hope, in spite of the wealth of materials and problems already available in Prof. Sutherland's book, that a future edition will include a discussion of political crimes. I ask this not only because political criminals have developed a pronounced behavior system as interesting as that of the professional thieves,[1] but also because the theory of cultural conflict and social disorganization as roots of crime, as Sutherland develops it, finds no better illustration than in the various kinds of political crime. The very quick transition from disapproved to laudatory behavior and vice versa is revealed with particular clarity in such cases. Furthermore, the analysis of the judicial and police machinery,

[1] See the interesting material in R. Michels "Zur Psychologie de Politischer Stratgetangenen," *Monatschrift für Kriminalbiologie und Stratrechtreform* 30 (1939), 101-106.

which Sutherland considers primarily from the standpoint of efficiency would give new insights.

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PAROLE WITH HONOR. By *Wilbur LaRoe, Jr.* Princeton: Princeton University Press, 1939. Pp. x-295. $3.00.

Perhaps in no other field than that of parole is there such unanimity of opinion among the initiate; nor such complete lack of comprehension on the part of the public. LaRoe, who is an attorney and chairman of the District of Columbia Parole Board, is the intiate. He says the things that all parole people know. He says them forcibly, effectively, and in a fashion that the general public should find interesting and clear.

Emphasized is the point that parole is not sentimental leniency, that since men must leave prison, leaving under the restriction of parole is something added on for the protection of society, not something taken off out of leniency to the criminal. The problem of after-prison adjustment and the contribution to it of job, sponsor, and parole supervision is discussed. So are the history and details of parole administration. In discussing whom to parole LaRoe points out that the more dangerous the man the greater the need for supervision when, as inevitably he must be, he is released. The job problem is discussed with a well deserved rap at the federal and state civil service organizations for their example in setting a policy which, if universal, would make a return to crime the ex-convict's only means to livlihood. The problems of judge, police, and state lines are considered. In conclusion LaRoe sees parole as marching on toward an ultimate state of adequate organization and support as the public gradually realizes with Governor Lehman that "the criminal has no right to parole; but the public *does* have a right to it."

Not the least useful are the appendices giving the principles of parole as adopted by the National Parole Conference, some statistical data, and especially a statement and "comment" on the parole machinery and its operation in each of the states. Illinois readers must smile ruefully at the accuracy of the comment on their state: "Illinois has the essentials of a potentially excellent parole system, but in years past it has been marred by administrative weaknesses and unfairly handicapped by trechant and unintelligent criticism of parole by a portion of the Chicago press."

Considering that LaRoe is a layman the sociologically trained reader will find remarkably little to criticize even though he may recognize the personal basis of the author's evaluation of the relative seriousness of certain types of crime and parole violation. Thus we find (pp. 136-137) "Even more dangerous is any evidence of sex abnormality in the past history of the applicant" yet "The Attorney General's survey seems to show that even offenders guilty of rape observe the conditions of parole, on the whole, as well as do most other types of offenders." Why "even rape" which is notoriously a crime where the percentage of "bum rape" is high and one of persons not ordinarily given to criminal activity? Incidentally, what the A. G.'s study says (Vol. IV, p. 424)

is "The data for no institution reveal an unfavorable parole outcome for sex offenders. On the other hand, the data for 31 of the 71 institutions with sufficient information disclose a favorable outcome for those convicted of sex offenses and the remaining 40 institutions show neutral relationships." Continuing with LaRoe, we find that "In the cases of flagrant sex offenders it (sterilization or castration) may be the only safe method of release. There is no proof that sex criminality is biologically transmitted and as for protection of others sterilization never and castration only sometimes decreases either the drive or the ability of sexual assaults.

On the subject of violators LaRoe is experienced enough to "recognize exceptions to all general rules" (p. 144), but he says, "As a general rule a parolee who has violated the conditions of his parole has proven his unworthiness and may not be heard to plead for another chance." This is true even in the case of technical, i.e., non-criminal, violations for (p. 146) "It is sound policy to revoke a parole if the parolee is even talking with an ex-convict. This is one phase of parole administration where absolute strictness is necessary." What if parolees meet in the course of employment, casually in the streets or even in the parole office? Is it reasonable to suppose that they will pass by with lowered eyes and bated breath? It seems that here the outraged official displaces the social philosopher for certainly the same social conditions that make the case for parole in the first place are still valid in the reparole situation. The real question is not one of "unworthiness" or giving the technical violator "another chance," but of weighing the social values and costs of further imprisonment.

To the person already familiar with parole in operation the most significant point in the book is likely to be the last of Sanford Bates rhetorical statements to Mr. Voter (Foreword p. v.), "If you still oppose (parole), it may be because you would fear that parole. somewhat coerced by newspaper criticism, *is actually operating to keep men in prison too long.*" This is getting to be so serious as to jeopardize parole in some places seriously, especially in the domain of the Chicago Tribune which is once named and several times referred to by LaRoe. It may well be that the future struggle over parole will be one to prevent extremely long sentence policies such as the current political expediency motivated one of the Illinois Parole Board.

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MORAL PROBLEMS OF MENTAL DEFECT. By *J. S. Cammack, S. J.* New York: Benzinger Brothers, 1939. Pp. 200. $2.25.

This Volume II of the Bellarmine Series, "edited by the Jesuit Fathers of Heythrop College," is carefully annotated and indexed by the author. A seven page Bibliography indicates the wide scope of source material used in the preparation of the book. The historical background of the subject of Mental Defect combines well known classical examples with case studies of contemporary writers in Europe and America.

As a churchman, the author naturally takes exception to purely physiological and materialistic factors as an adequate explanation of mental deviations in character. He contends that the church's develop-

ment of the doctrine of moral responsibility had much to do with the process of fixing reasonable standards of legal responsibility.

Extended discussion is given (with some casuistry it would seem) to definitions of responsibility as developed in the Canon Law of the church. It is conceded that full acccuntability is modified by the agent's knowledge of the consequence of his acts and entire freedom to refrain—that is, by his mental deficiency. In other words: "Responsibility presupposes the liberty of the agent possessing knowledge of the moral law, with power to govern conduct in harmony with such law."

Comparison is made between the substance of the Canon Law of the Church and the development of legal responsibility in the English Courts. An offender must know, not only the nature of his act and that it is wrong, but also must have the power to control his act, to be held criminally accountable.

The long series of discussions and enactments are cited running from the early 1800's to 1913, when the Mental Deficiency Act was passed, more definitely defining moral imbecility. The author states that: "Historically, the first stage in the formation of the notion of moral defect is the distinction made between intellectual and moral insanity." He quotes from Dr. Mercier's "Criminal Responsibility": "Moral insanity is a perversion of feeling and conduct, leading to vicious or criminal acts in those who have previously lived upright and responsible lives—Moral imbecility is an original defect of character displayed from an early age, and consists in inability to be detered by punishment, however severe, certain and prompt, from wrongful acts."

The discussion of these distinctions in England in the latter half of the Eighteenth Century led to the enactment of several educational measures to provide special training for the feeble minded, the epileptic, the deaf and dumb, etc. "Finally, the appreciation of mental defect as an urgent social problem led to the appointment in 1904 of a Royal Commission to 'consider the existing methods of dealing with idiots and epileptics and with imbecile, feeble-minded or defective persons not certified under the lunacy laws.' The Report of the Commission issued in 1908 led to the enactment of new legislation—The Mental Deficiency Act of 1913, which for the first time defined the classes of idots, imbeciles, feeble-minded and moral imbeciles."

In answer to these enactments, the author quoted from L. S. Penrose's "Mental Defect": "The legal class of moral defectives is purely administrative value. . . . In practice the category used for detaining those persons who have intelligence quotients within normal limits, i.e., 70 to 100, but who persistently offend the law. Many psychologists and psychiatrists, at the present time, do not agree with the implications of the category of moral deficiency."

While it might seem a distinction without a difference, the author puts considerable stress on the difference between mental and moral defect, or "What is the precise concept of moral deficiency—does it mean the immoral defective or the moral defective?" While this would lead to considerable abstract discussion, the author conceds that for practical administrative purposes, the Mental Deficiency Act of 1927 is acceptably clear in its meaning: "Moral Defectives, that is to say, persons in whose case

there exists mental defectiveness coupled with strongly vicious or criminal propensities and who require care, supervision and control for the protection of others."

The author of this book, however, feels there is something worthy of discussion beyond the practical administration of the law. There is the temperamental and emotional factor, not easily defined in statutes, but properly entering into a scientific discussion of the subject. For example, he suggests the hypothesis of "perseveration." While admitting that no two psychologists might agree as to the meaning of this term, he describes it as: "The inertia which psychic energy has to overcome before action can result, and the tendency of this psychic activity to persist when the resistance has been overcome."

While to the general reader, this book may seem rather abstruse, the discussion, with liberal citations from contemporary authors, will be of special value to psychologists, psychiatrists, and all students of delinquency" and on the causes of the emotional maladjustments which so frequently lead to delinquency."

F. EMORY LYON.

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KRIMINALBIOLOGIE. By *Franz Exner*. Hamburg: Hanseatische Verlagsanstalt, 1939. Pp. 366.

In his introduction, Professor Exner indicates what he means by criminal-biology. It includes criminal-anthropology, that is the physical traits of the offender, criminal psychology, and criminal sociology. The student will observe that American criminologists have been interested in the field of criminal-biology without calling it by that name.

Continental research has been directed by physicians, psychiatrists, and members of law school faculties. Emphasis in Europe has been placed on the physicial or structural side of behavior. The American students have approached the problems of crime and its control primarily from the psychological and sociological points of view. American sociologists have emphasized environmental factors.

It seems to me that in recent years there has been a tendency in this country to turn to intensive case studies to discover the *efficient* causes of crime. There is also a tendency among German students to qualify the biological approach and to pay more attention to environmental factors. The present study of Professor Exner reflects a well-rounded approach to both points of view.

The central problem of this study is really the etiology of crime. The author states that criminal-biology must use both the general sociological approach as well as that of the individual case study. The book is divided into five parts: Heredity and Environment, Crime in Society, the Offender, the Offense, Evaluating the Individual Case. Throughout the book the essential importance of viewing the offender as a dynamic whole is emphasized. Professor Exner reiterates that the influences of heredity and environment cannot be separated except for purposes of analysis; that sociological influences operate upon a particular kind of individual; that the offender is exposed to and reacts with a selective environment.

The most important part of this study for me is the author's discussion on method. He maintains that the scientific approach while

essential is not sufficient One also requires a psychology of "insight" "verstehenden Psychologie"). If I understand Professor Exner, he is referring to the fact that meanings as such, cannot be exhausted by any scientific analysis. The author discusses three approaches to the study of the offender, viz., an investigation into the physical and mental traits of his ancestry (such as, for example, the Juke family); a study of the traits of brothers and sisters of the offender; and a study of identical and fraternal twins, criminal and non-criminal.

The question to be answered is whether a normal person from a physically or mentally deviating family is more likely to become criminal than a normal person descending from a normal family. The author cites numerous German studies. The correlation between psychoses and crime is negative but there is a definite correlation found, according to Professor Exner, between psychopathic traits and crime (as well as between epilepsy and crime).

Professor Exner's analysis of the studies of Lange, Lagras, Stumpfl, and Kranz, on twins, is highly critical. There seems to be agreement among the German students who have studied crime committed by twins that biological differences predispose one to crime. (The work of A. J. Rosanoff in this country is in essential agreement, see *Journal of Criminal Law and Criminology*, Vol. XXIV, 1934.) What then, asks Professor Exner, accounts for the fact that a minority of the identical twin siblings did *not* commit crime? No one as yet can satisfactorily answer the question.

Professor Exner discusses studies which "show" the relation between crime and body-build, sex, age, physical health, the use of alcohol, intelligence, etc. This approach, as well as that of the social-economic environment of the criminal, is familiar to American students.

The author calls attention to the need of trying to discover the psychological dynamics occurring in the offender at the time of the offense. We have had innumerable case studies and sociological studies concerning crime. What we have not discovered is the efficient factors of crime causation which occur precisely at this level, at the point of interaction of the individual and his environment at the time of the offense.

Professor Exner also calls attention to the practical difficulty of prognosis at the time of sentence. In judging the type of sentence to be imposed or in deciding when the offender is to be released, criminal-biology, when developed will, he thinks, have much to offer. It is interesting to note that Professor Exner introduces the American parole predictability studies to the German students.

This volume in my opinion is one of the most critical studies which has appeared in the German literature on criminology. The more the pity, therefore, that it has to be marred (Part II) by the kind of thinking which would debar a junior in an undergraduate standard American college from passing an elementary course in criminology. To illustrate, I turn to Professor Exner's discussion of the Negro crime rate in America, the correlation between nationality and crime, and the crime rate of the Jews in Germany. He attributes the high crime rate of the Negro in America to a biological incapacity to adjust himself to the

American environment. He argues that just as physically the mortality of the Negro is higher (which is true for respiratory disease but apparently false for mental disease) so, too, he is biologically incapacitated to adjust to orderly society—a grand non-sequitur.

The author refers to Shaw's study on the delinquency rate in certain neighborhoods in Chicago in which Shaw has shown that the delinquency rate remains the same no matter what nationality group lives in the delinquency area. Professor Exner argues that it is not the socio-economic character of the neighborhood which accounts for the delinquency rate but that certain nationality groups live in those neighborhoods because they "bring with them tendencies to desire delinquency." (56) The author sensing the absurdity of his position adds that this point of view is perhaps somewhat (!) exaggerated ("vielleicht etwas überspitzt").

The Jews, writes Professor Exner, engage in mental rather than physical activities. They are not sportsmen. This also is seen in their criminal behavior. The resourcefulness of the Jew in the business world leads to such crimes as fraud and forgery, rather than to robbery and theft. He compares the crime rates of Jews and Christians, in order to show that there is a national-racial tendency for Jews to commit crimes which require mental agility rather than force. The categories he uses simply make no sense. What meaning can one attach to his concept of "Christian" with which he compares "Jews" in order to prove that racial differences account for crime rates? His uncritical use of religious, nationality and racial categories is utterly confused. (Pp. 67-71.)

Apparently Part II of an otherwise highly critical work is the price one pays to retain the professorship of criminology at the University of Munich under the Third Reich.

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DER HAUSFRIEDENSBRUCH UNTER BESONDERER BERUCKSICHTIGUNG MUNCHENS; Kriminalistische Abhandlungen herausgegeben von Franz Exner, No. XL. By *Walter Reiserer*. Leipzig: Ernst Wiegand, 1939. Pp. 53, R.M. 2.

This is a study of 250 offenders who had been convicted of "disturbing the domestic peace" in the city of Munich during the period 1927-1936. (The German crime *Hausfriedensbruch* has no exact equivalent in American law. The literal translation best conveys the meaning.)

Chapter I presents a brief summary of the incidence of this offense over a period of years as well as its geographic distribution. Chapter II describes the age, sex, family background, vocational training, criminal record, religious and racial affiliation of and the use of alcohol by the offenders. (A table on p. 29 presents the rate for all crime per 100,000 of the population of Germany between the years 1892-1901; Catholics 1361, Protestants 1122 and Jews 1030.) Chapter III describes the time of year, week, and day as well as the place and occasion of the crime. Chapter IV is a three page discussion of the private suits for this offense which may be initiated in those instances where the prosecution feels criminal action will serve no public purpose.

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