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Book Reviews

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BOOK REVIEWS

A. R. Lindesmith [Ed.]

MIGRATION AND SOCIAL WELFARE. By Philip E. Ryan. New York: Russel Sage Foundation, 1940. Pp. 98. \$0.50.

This monograph is "an approach to," rather than a solution of the problem of transiency or the non-settled person in the Community. The perplexing nature of this problem is frankly admitted.

From this study it is made apparent that social responsibility for the transient rests lightly upon the public conscience. The writer points out that the national character of the problem has never been properly recognized except in the brief existence of The Federal Transient Program. Since that brief service has been terminated, and the passage in several states of stricter domicile laws, the shifting of community responsibility threatens to revert to out-dated treatment of all migratory members of society.

That migration has been a more or less essential factor in the building of America and of shifting industry, is here shown. The "Depression Decade" of 1930 to 1939, with its abnormal unemployment has magnified and accentuated a problem that has always been in part the expression of unsatisfied cravings for adventure and for essential human needs.

In fact, a major force that impels people to move from place to place is held to be economic. To be sure, there is the chronic "tramp" or "mobile non-worker," but there is also the transient unemployed, or the "depression transient," worthy of greater consideration if they are to escape the danger, and the burden, of becoming chronics or delinquents.

It is this latter contingency—the relation of transiency to criminality that will be of special interest to the readers of this Journal. The writer of this review, in his forty years' experience with released prisoners, has long been impressed with the

very great part transiency plays as a factor in producing crime.

In failing to provide adequate care for the transient, wherever he may be found, communities fail to realize that some of their own citizens are being similarly neglected in other communities. It is because of the need of reciprocal relationships between communities to meet mutual needs, that this problem becomes a national one. On this subject, a Report of the Department of Labor is quoted as saying: "If preventive measures are to be effective, some method of assuring migrants adequate income and normal community contacts must be devised, as well as making available to them the services of agencies whose purpose is the prevention of delinquency."

The author calls attention to the fact that the prevailing policy of failure to provide for transients is a reflection of fundamental civil rights as specified in the Constitution: It provides that: "Citizens of each state shall be entitled to the privileges and immunities of the citizens of the several states. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States."

From this, it would appear that such measures as the Illinois three year law, which denies relief or subsistence to any who cannot prove their constant presence for three years, is unconstitutional, but who can prove that? Certainly not the indigents who, as a result, must either starve or steal.

The traditional American concept of relief for local residents only, partly derived from the English poor-laws, is in conflict with the modern urge to aid all who are in need. Whether the Community Chest movement has helped or hindered this tendency may be seriously questioned. At

any rate, as this brochure states: "The result is a group of needy persons for whose welfare no governmental unit has an accepted responsibility—people without a state, although most of them are American citizens." Social workers, the author states, have long recognized the injustice of settlement restrictions, and the consequent desert of need not provided for in widely scattered Community Funds or in the resources of private agencies.

As to the psychology of the problem, this study, as well as others, recognizes that, human nature being what it is, people will move regardless of settlement laws or the availability of relief. Restrictive measures have proven of little avail in curbing migration. Because the causes and sweep of population movements are beyond the control of local communities, the entire nation should provide for the small per cent of needy migrants.

Many proposals and experiments have been made in an effort to remedy the lack of coordination in this field. Councils of Social Agencies, Congressional Committees and Legislative enactments have all pointed toward the need of a National Policy and the coordination of numerous State, Federal and Private Agencies.

For such coordination and the desired long range planning, two existing agencies have been suggested, viz: the Interdepartmental Committee to Coordinate Health and Welfare Activities, and the National Resources Planning Board. Some progress has already been made by these bodies, but further cooperation is needed between Federal, State, Regional and local Private Agencies to meet the problems of migration effectively.

This little volume is thoughtfully indexed, and an extensive topical bibliography of 11 pages indicates the use of extensive source material in the study.

F. EMORY LYON.

The Central Howard Association.

The aim of this treatise on the theory of criminal law is to study the distinction between the principle of "act" and that of "actor." It is devoted to the historical development of the theory of the criminal actor, and a companion volume will apply to the problem of the existing law of the Third Reich.

The historical investigation goes back only to the Imperial Criminal Code of 1871, where the principle of act was completely dominant. With the collapse of the theoretical foundations (such as the principle of retaliation) upon which the Code was based, the principle of act became more and more untenable, so that a reform movement arose which took as its basis the principle of agent, or actor. Bockelmann maintains, however, that this "naturalistic" reform movement formulated quite inadequately the principle of agent, which has therefore never effectively supplanted the traditional principle of act. The so-called naturalistic school, which abandoned the dogma of atonement and looked upon the agent as *homo naturalis*, was in the opinion of the author bound to fail because the principle of guilt is indestructible. It will apparently be the aim of the second part of his study to establish an accord between the principle of agent and the idea of guilt, and to prove that this accord is the underlying idea of the Criminal Code of the Third Reich.

From the point of view of method the study is astonishingly superficial. The author expressly states that he is confining himself to specimens. But it is certainly open to question, firstly, whether sound method permits of drawing general conclusions from specimens; and secondly, whether the specimens chosen are those of greatest relevance for the purpose. It is arbitrary, furthermore, and distinctly dubious method, to begin an historical investigation of criminal theory with the Imperial Code of 1871, as if this Code had inaugurated a new epoch in criminology. Even more significant is Bockelmann's capricious treatment of the literature on the subject. By neglecting important works he has ruled out in advance any clear understanding, and has compromised such scientific value as his monograph might otherwise have had.

"STUDIEN ZUM TÄTERSTRAFRECHT," Teil I. Abhandlungen des Kriminalistischen Instituts an der Universität Berlin. By Paul Bockelmann. Berlin: Walter de Gruyter & Co., 1939. Pp. 141.

The positive-juridical discussion is confined to the remarks found in the usual criminological handbooks. And the inquiries into the ideas and theories of law, which should have been the core of the whole study, are so banal and naive that their brevity is almost their only virtue. In the chapter on "Origin and Meaning of the Idea of the Criminal Act," for example, he might well have elaborated the alternative *principia ultima* underlying the dualistic criminological development of the last 150 years—a fascinating study in the evolution of ideas. Instead, the author merely offers a wearisome chain of catch-words and misinterpretations which miss the essential points.

It is not surprising to find in such a study a complete and thoroughgoing misinterpretation of the criminological work of Franz von Liszt. Such tags as "liberalism," "individualism," and "naturalism" are trotted out as substitutes for logical analysis. For example, the author at one point starts with the major premise that Liszt is a "liberal." Now a liberal, he goes on, is by definition nothing but a "reformer," and reform means compromise. But, in the rigorous either-or atmosphere of today, compromise is the philosophy only of the weak and the antiquated. Consequently, Liszt's teachings are simply the product of an outmoded liberal epoch.

To be sure, there *has* been a "liberal" epoch in German criminology, namely at the time of Anselm von Feuerbach. Liszt, however, is no "liberal" in such a sense.* In propagating the principle of *nulla poena sine lege*, and in teaching that the criminal code is the *magna charta* of the criminal, Liszt was not proposing to protect the liberty of the individual at the expense of the state: his purpose was simply to eliminate arbitrariness and to guarantee legal security. Even in Soviet Russia, which is scarcely a leading exponent of liberalism, these are recognized criminological principles.

Neither is Liszt an "individualist" in the derogatory sense in which the author uses the term. True, Liszt is against retaliatory punishment, whereby the prevalence of the state's authority over the in-

dividual is manifested. But he did not aim to favor the individual at the expense of the state or to show him excessive tenderness. On the contrary, Liszt proposed to strengthen the authority of the state. The state, however, is for Liszt not a vengeful Leviathan whose authority is measured by its frightfulness. For Liszt public authority is an ethical power. It involves obligation, not privilege.

Finally, Liszt is no "naturalist" in the common meaning of the word. True, he is a determinist, and he accepted the interpretation of behavior—the one most current at the turn of the century—in terms of character, heritage and milieu. However, Liszt accepted this theory only for the sake of argument: he saw in it a weapon to use against the inhumane principle of retaliation. But his whole underlying aim was to clarify the problem of social responsibility. Therefore he maintained that it is the milieu—i.e., society and the social situation—which stands causatively behind the criminal and his act. If, notwithstanding, society "punishes," then it does so because of social necessity (*par faute de mieux*), namely to protect itself. Ethical justice, however, demands that society be conscious of its social responsibility in shaping social conditions in such a way as not to create causes for further crimes.

If this is the meaning of Liszt's so-called liberalism, individualism and naturalism, then it is a bit gratuitous for the author to dismiss Liszt condescendingly as old-fashioned, and to leave his reader with only the consolation that in the second volume he will be compensated by Bockelmann's own wisdom.

PHILIPP WEINTRAUB.

Cornell University.

ENGLISH JUVENILE COURTS. By Winifred A. Elkin. London, England: Kegan Paul, Trench, Trubner and Company, Ltd., 1938. Pp. viii-316. 12s. 6d.

English Juvenile Courts is the first volume of its kind to appear since Sir Clarke Hall published *Children's Courts* in 1926. The author explains that two

* Cf. Arthur Baumgarten, "Die Lisztsche Strafrechtsschule und ihre Bedeutung für die

Gegenwart," *Schweizerische Zeitschrift für Strafrecht*, Vol. 51, 1937.

factors have occasioned the publication of the present volume, "The passing of the Children and Young Persons Acts of 1932 and 1933 and the increase in the number of young offenders." The book surveys the work of the juvenile courts in certain selected industrial areas of England, especially the South. The ten well written chapters cover the causes of delinquency, the nature and jurisdiction of the juvenile courts, the organization of the courts, methods of treatment, dismissals and punishments, probation, treatment in Approved Schools and Hostels and appraisal of the success and failures of the courts.

The author summarizes the causes of delinquency by saying that the "delinquent child is thus largely a problem of his emotional life and of his relations to the rest of his world. The individual cannot be understood if he is regarded as an isolated unit." (p. 27) Although juvenile courts were first established by the Children Act of 1908 the juvenile courts of England still remain criminal courts in general practice and procedure. The juvenile court is organized as a "panel" of twelve justices (lay) sitting once a week with a permanent chairman. Each justice is required to sit eight or nine times a year. Appointment to a bench is looked upon as "a social distinction or as an honour earned by those who have made a success in some other walk of life." (p. 297). While the intent of the Children Act was to have separate rooms and buildings for juvenile cases actually trials are held in police headquarters "in a corridor crowded with people waiting to go in to the police court sittings." (p. 77) In the main, the American idea of a "drawing room" juvenile court does not appeal to the English sense of dignity.

The general public is excluded from court hearings although the Press may attend all sessions and report the same as long as no names, addresses or schools are mentioned in the newspapers. The author does not believe that a case should be tried *in camera*, for it would be a "dangerous state of affairs in which no information could be obtained by the general public as to how the courts are working." While most juvenile courts may command the services of a doctor and a psychologist

very few of them "realize the full value of the contribution" made by these men. The author, therefore, makes a plea for the use of specialists in making "preliminary inquiries" prior to trial.

Of the juvenile cases that came before the courts in 1935, 32 per cent were "dismissed after charge proved or bound over without supervision," 51 per cent were "Bound over with supervision" (probation), 9 per cent committed to Approved Schools, 6 per cent fined and 2 per cent dealt with "Otherwise." "Birching" is used as a means of punishment. "A boy under 14 can be birched for any indictable offense other than homicide." (p. 154) When the Young Persons Bill was introduced into Parliament it contained no "birching clause," but the House of Lords refused to pass it without the same. In the author's judgment the English public is not prepared to accept probation as a means of treating juvenile offenders. Hence, probation is more of an ideal and a hope rather than an actuality.

According to the Young Persons Act juvenile offenders are sent to certain Approved Schools in England and Wales rather than to the Old Industrial Schools and Reformatories. The usual commitment is for three years unless additional training is considered necessary. In 1935, 3,144 juveniles were committed to the 88 Approved Schools and at the end of 1936 there were 8,000 boys and girls in these institutions. These schools are a combination of private support and state supervision. According to the Home Office Directory 85 to 90 per cent of the offenders "do well and give no ground for further anxiety" during three years after their release. The percentages vary somewhat according to the character of the school. Beyond these Approved Schools are the Borstal Institutions for older offenders. Here the regime is harder and a part of the penal system of England.

Instead of committing a child to a "School" the court may place the youth in a Probation Home (Foster Home) or Hostel with familial care. All of these Homes and Hostels are under the supervision of the Home Office Directory. In the final chapter the author explains the rapid increase of juvenile delinquency

from 1921 to 1935 in terms of the "high rates of unemployment" and the general social disorganization of the times. Juvenile delinquency "reached its peak in the war years (1914-18) and though it fell in the early 'twenties', there was a big jump in the figures in the year of the General Strike." (p. 293) In addition to this the increased rates have been due to a "greater awareness on the part of the public that to charge a delinquent child may be a truer kindness; the other . . . is the outcome of the uncertainty of life today." (p. 293) In conclusion the author hopes for the day when England may study and treat juvenile offenders according to scientific methods. All in all, the book is well written, shows careful analysis, presents valuable information and shows sound judgment of conditions peculiarly English.

WALTER A. LUNDEN.

University of Pittsburgh.

PROCEEDINGS OF THE SIXTY-NINTH ANNUAL CONGRESS OF THE AMERICAN PRISON ASSOCIATION. New York: The American Prison Association, 1939. Pp. xi-588. \$3.00.

The Sixty-Ninth Congress, under the presidency of Austin MacCormick, Commissioner of the Department of Correction of the City of New York, made interesting contributions in the field of crime prevention, probation and juvenile delinquency.

Clifford R. Shaw and Jesse A. Jacobs of the Illinois Institute for Juvenile Research in Chicago reported upon the Chicago Area Project. As known to criminologists, the emphasis is upon a stimulation and coordination of recreational facilities available in the community, the creation of a positive community spirit among the residents and the encouragement of "natural leadership" which grows out of church groups and different social agencies and organizations. Definite results were not reported yet. Of special interest is a note on the type of research material that is systematically collected, making possible an investigation into the results and the working of this type of crime prevention.

The inadequacies of the probation service, available at the present time in the

criminal court, were described in a realistic manner by Justin Miller, Associate Justice, U. S. Court of Appeals, Washington, D. C. Another remarkable contribution to the problem of probation was the lecture of Charles B. Vaughan, Associate Director of the North Carolina State Probation Department. Statistical means of recording probation, its success and failure, were discussed in relation to the administrative problems in this field. The Probation Department of North Carolina is known to have carried out exemplary pioneer work in this respect.

The section on juvenile delinquency was favored by the presence of a prominent foreign guest, Mr. Alexander Paterson, H. M. Commissioner of Prisons for England and Wales, who reported on the Borstal system of dealing with young offenders. William Healy discussed the possibility of transferring this type of treatment to the United States, stressing especially the importance of the personnel problem involved.

The "Relation of Classification to Prisoner Employment" was discussed by vocational guidance experts. A symposium on the "Problem Case in Prison" in the Medical Section of the Congress seems to have suffered from the rather vague definition of the subject.

S. RIEMER.

University of Minnesota.

NINETY TIMES GUILTY. By Hickman Powell. New York: Harcourt, Brace and Co., 1939. Pp. vii-338. \$2.50.

This is Hickman Powell's narrative condensation of the 7,000 page criminal trial proceedings of the Charles Luciano, alias Luckey, prosecution by Thomas E. Dewey. It is the factual, authentic record of a particular racket—organized commercialized prostitution. Charles Luciano, one of New York's racketeers, was absolute czar of the prostitution organization. He also was ruler of the *Unione Siciliana*, a group of killers who delved in general thievery, drug peddling, gambling, etc. They played in New York politics for years.

A few excerpts of the trial are given. Prefacing, is a parade of the personalities involved and their placement in the chain of events which were to follow. The title

of the book is not misleading, signifying the counts named in the indictment.

When Dewey was appointed Special Prosecutor to break rackets, he was not interested in the prostitution question; in fact he ignored it. Later he was informed of a graft imposed upon the girls thus engaged, their earnings taxed three-fold. Apparently, gangsters had taken over a disreputable and criminal industry—the business of prostitution. Therefore, he consented to further investigation.

As special prosecutor, Dewey's problem was to go after big criminals who had attained unprecedented power. He made no attempt to abolish prostitution or drive it from the city, for that is a social rather than criminal problem. Instead, this prosecution was the means of putting big gangsters out of business.

After an almost endless investigation, some 100 girls and others were taken into custody. Evidence was necessary for specific counts in the indictment as New York had no statute making racketeering as such a crime. Eventually, the indictment constituted 90 counts, setting forth definite instances of exploitation of 25 women. At this time the widely discussed Dewey Law, a New York Legislative Act of 1936, was enacted. This procedure permitted a number of crimes of similar nature to be joined in one indictment, so that charges could be tried simultaneously.

The verdict found nine defendants guilty. Luciano was convicted of 61 counts, felonies, with a sentence of 30 to 50 years. The decision was upheld by two higher courts, the U. S. Supreme Court refusing to review.

This book may be profitably perused by those judges, lawyers, law enforcement agents and others, who are interested in the repression of vice and the elimination of gangsters. The setting is New York City, but essentially similar conditions are no doubt prevalent in other communities. Though popularly written it is an informative volume.

GENEVA SMITH.

Department of Public Welfare,
Toledo, Ohio.

JUVENILE COURT LAWS OF THE UNITED STATES. Second Edition. By Gilbert Cosulich. New York: National Probation Association 1939. Pp. V-175. \$1.25.

The increased legislation throughout the country has occasioned the revision of this, the second edition of *Juvenile Court Laws in the United States*. The present volume includes the laws "now in force in all states, territories and dependencies" of the nation. Part I, as in the earlier edition, is a topical summary of all laws in a concise usable form. It includes the general topics of jurisdiction, proceedings, detention, disposition, records, appeals, selection and qualification of judges, referees, probation officers and advisory boards and committees. Much of the material has been presented in tabular form for ready reference. Part II (pp. 111-165) summarizes the juvenile court laws by states in a compact manner.

This volume indicates two significant trends in juvenile legislation, a more liberal treatment of juvenile offenders and advancement in the age jurisdiction of the courts. No probation officer, social worker, attorney or juvenile court judge should be without this volume.

WALTER A. LUNDEN.

University of Pittsburgh.

JUSTICE AND THE CHILD IN NEW JERSEY. Report of the State of New Jersey Juvenile Delinquency Commission. Trenton, New Jersey: Hudson Dispatch Printers, 1939. Pp. XII-262.

This is a joint report of the Juvenile Delinquency Commission and the Works Progress Administration in New Jersey. It is an evaluative and statistical summary of the treatment and care of juvenile offenders in the state covering 52 municipalities in 21 counties from 1930 to 1937. The main part of the report presents the character and function of the juvenile court in New Jersey, the school and delinquency, the police system, probation, institutional care and parole and a brief account of prevention and control of delinquency. The remainder of the report, *appendices*, gives the detailed statistics compiled in the survey.

While "New Jersey can take pride in the advanced state of its legislation on the treatment of delinquency" (p. 2) the commission points out that "teachers persist in using traditional pedagogical methods"; that police departments employ "intimidation where understanding and guidance are needed"; that "the court depends . . . on the emotional reaction of the individual judge to the child," and that probation officers are "handicapped" because the courts and institutions fail to use proper clinical procedures.

WALTER A. LUNDEN.

University of Pittsburgh.

DER GEFÄHRliche SITTlicKEITsVERBRECHER, Kriminalistische Abhandlungen Herausgegeben von Franz Exner, No. XXXIX. By Franz Rattenhuber, Leipzig: Ernst Wiegandt, 1939. Pp. 90. R. M. 2.50.

This monograph deals with 114 dangerous sexual offenders chiefly from Bavaria and Wurtemberg, who had been sterilized in accordance with the provisions of the German penal code.

The author discusses the sections of the criminal law dealing with dangerous "moral" offenders. He describes the first

offenses of the offenders, the nature and extent of their subsequent crimes. Chapter II deals with their "personality," i.e., the physical and mental traits of the parents (the incidence of mental disease, suicide, alcoholism, tuberculosis, criminality), their own psychic characteristics (intelligence, psychopathy, attempts at suicide, alcoholism) and racial affiliation. On p. 54 a table appears giving the percentage of psychopaths found among ten different groups of offenders studied by different authors. The percentage varies from 99% psychopaths in a group of 195 recidivists studied by Stumpf to 11% in a group of 818 *Kinderschänder* studied by Fetscher. Chapter III consists of a description of the environments of the younger and older offenders. (Economic status of family, education, trade, and their tendency to wander from place to place. The military experience of the older group is also included). Chapter IV (four pages) comments on the nature of the sex experiences and perversions of the offenders.

Five pages, which make up the conclusion, are taken up with a classification of "types" of dangerous sex offenders. Many case histories are cited.

NATHANIEL CANTOR.

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