

1942

## Book Reviews

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## BOOK REVIEWS

A. R. Lindesmith [Ed.]

**SOCIAL ASPECTS OF CRIME IN ENGLAND BETWEEN THE WARS.** By *Hermann Mannheim*, London. George Allen and Unwin Limited (W. W. Norton Company, New York, Distributors) 1940. Pp. 382. \$5.00.

Professor Hermann Mannheim, a mainland refugee, has written this book under the Leon Fellowship of the University of London. It is one of the few criminological investigations on crime in England since the end of World War I. The author's broad understanding of European conditions has made it possible for him to present the problems and difficulties of criminal statistics in England. He explains the increase in crime in terms of War and post-War conditions, Unemployment and Strikes, Alcoholism, Gambling, Methods of Business Administration together with the general changes in social conditions in Great Britain. The author combines critical analysis of the statistical methods with case histories and special consideration of certain cities and areas. Professor Mannheim is not bound by any particularistic or singularistic explanation of crime arising from ecological, psychological or other approaches. Within the limitations of his book he observes a large variety of sociological factors as they affect the problem of crime in England.

Professor Mannheim states that the problem of crime in post-War Europe can be understood only from the "spiritual background" for "post-War people, compared with pre-War people, have lost confidence in things human and divine." (p. 109.) In a general way the increase of crime in the post-War period is the result more of "emotional unrest" and "bad habits acquired in the War" than "purely economic distress." Professor Mannheim points out that in spite of inflation and revolution it was easier for ex-service men to adjust themselves in post-War Germany than it was for the English soldier to return to civil life at the end of the War. The English soldier returned expecting to find a "country fit for heroes to live in"

and not finding it he became discontented, disappointed and pessimistic. The German soldier, on the other hand, had no such high hopes after demobilization for everything had "gone with the winds" of inflation and revolution.

In explaining unemployment and crimes the author states that "unemployment, particularly when it lasts long, cannot fail to affect the moral power of resistance against evil influences." (p. 147). Economic stress also changes the character of crime for "the man in employment with a grievance may rob his employer or fellow-workers whilst the unemployed may turn to offenses against impersonal bodies as railway companies, etc."

Professor Mannheim's presentation of crime in relation to "Methods of Business Administration" is most interesting perhaps because it has much in common with the same problem confronting the American public. He explains that certain methods of business and the administration of the government contribute to the delinquency of citizens. "Bookmakers who pay fines imposed upon their runners for street betting offenses are allowed to deduct such fines as expenses for the purpose of income-tax assessments." (p. 187). In other instances burglary insurance encourages the robber for the victim usually has all losses covered by insurance. The burglar often says to the attacked householder, "You know what we want. You are insured. You won't miss it." (p. 189). Again merchants encourage shoplifting when "everything is spread out before their eyes (customers) and they can take what they want."

In explaining the gambling problem he takes up the offenses committed in order to obtain money to gamble and crimes resulting from efforts to recoup losses in betting. Next to the building trade gambling and betting showed the largest annual turnover in any single industry in Great Britain. The turnover has been estimated at 450,000,000 pounds with an annual profit of 50,000,000 pounds.

The final part of the book dealing with juvenile delinquency reveals how England is attempting to meet the problem through the Borstal Association for boys and the Aylesbury Association for girls. He suggests that these programs have developed since England can no longer send delinquent and dependent children to the colonies or the dominions. In addition to the usual explanations of delinquency Professor Mannheim suggests others such as, "misconduct of the mother during the father's War service," "spoiled middle-class children" and "grandmotherly upbringing."

While Professor Mannheim's book has not been written in this or that "frame of reference" the American student of criminology will find it a valuable contribution to the problem of crime in any country.

WALTER A. LUNDEN

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**SUCCESS IN COURT.** By Francis L. Wellman; The Macmillan Co., 1941. Pp. XVIII: 404. Price \$3.50.

In 1903 Mr. Wellman published his *Art of Cross Examination*. This was an *omelette soufflé*, deliciously prepared, packed with proteins and as yet unrecognized vitamins. Through twenty-four printings and four editions it has nourished and delighted generations of young lawyers. As I sit in court and listen to hundreds of too long and surprisingly inept cross-examinations I wonder sometimes if Mr. Wellman's great book was written in vain; but no doubt some readers have learned much from it and the profession would be the poorer without it. Now, thirty-eight years later, the same author presents his *Success in Court*. It seems ungracious to say that the omelette has been cooked over once too often; yet that is the impression made upon this reviewer. Gone are both the lightness of touch and the vigor of the earlier work. Garrulity and even worse, apologies for repetition, have taken their place. An author who has said superlatively well all that he has to say upon a subject owes to his reputation and to his own integrity that he shall not repeat himself over and over.

Nevertheless, Mr. Wellman's present

book is worth reading. As in his earlier work he reveals that to him the trial of cases was a fascinating game of skill, to be played according to the rules but without a "holier than thou" fastidiousness.<sup>1</sup> Still, if practitioners do no more than follow his precepts, current court room practice will not suffer. His insistence upon careful preparation, his repeated suggestion that young lawyers observe the methods and techniques of their more distinguished contemporaries and read the published accounts of the lives and work of great advocates of the past—these are sage counsels. Again and again Mr. Wellman insists that good manners and gentlemanliness are as essential to conspicuous success in court as are integrity and knowledge of the case. He notes that often our American judges are themselves inexperienced and weak;<sup>2</sup> and many of his anecdotes recall events that could not have occurred before a judge who conceived that his duty goes beyond calling balls and strikes. All of us can learn something from this trenchant observer.

A particularly interesting feature of the present volume is that Mr. Wellman has called in a valiant corps of co-authors whose contributed chapters make the book something in the nature of a symposium. It is valuable to have a chapter from Judge Floyd E. Thompson to whose extensive trial practice was added a term of service on the bench. The relative detachment of the judicial point of view is very different from that of the practicing lawyer, and a coalescence of the two is most helpful to the young aspirant for professional success. One of the best chapters in the book is that contributed by the late Emory R. Buckner. His temperate and almost incidental reference to complaisant judges who give a lawyer no protection against abuse and "smart remarks" of opposing counsel<sup>3</sup> might well be expanded to include judges who permit badgering of witnesses. It has been said that no bench is better than the bar that practices before it. The converse is equally true.

Both Mr. Wellman and a number of his contributors insist upon the importance of knowing when to stop. I recall in my own days at the bar that my few effective cross-

<sup>1</sup> See ppg. 15 and 16.

<sup>2</sup> See ppg. 114-116.

<sup>3</sup> See pp. 359.

examinations were made so by my partner and trial associate who jabbed me with his elbow when I had made a point and was about to spoil it by just one more question to drive it home.

An equally important contribution is that of Mr. Weymouth Kirkland who states forcibly the need for selectivity in the presentation of a case.<sup>4</sup> Every case has a main current of fact and a compelling principle of law. Of course there are by-ways that beckon,—often there are side issues that must be cleared away. But in marshalling his facts for the jury or in arguing his law to the judge the most skilful advocate is the one who sticks to the high-road and induces both judge and jury to march along it with him. And above all he knows when to stop.

JOSEPH N. ULMAN

Baltimore, Md.

#### THE PARDONING POWER OF THE PRESIDENT.

By *W. H. Humbert*. American Council on Public Affairs (1941).

The purpose of this monograph has not been to present any novel viewpoint, but merely to give a systematic account of the theory and application of the President's pardoning power. It sketches the history of the pardoning power in England and in the colonies and of the discussions of the pardon clause in the Constitutional Convention and in the ratifying state conventions; it devotes a chapter to definitions and distinctions; two chapters to the constitutional and legal aspects; and a chapter each to the pardoning procedure, to facts and figures on the actual exercise of the power, and to a summary and conclusion. The whole is competently and methodically done.

Although published in 1941, the work seems to have been written at least two years before, for it contains no reference to any of the materials on the subject published in the past few years, notably the Attorney General's Survey of Release Procedures.

Reviewers are expected to make a few adverse criticisms, to display their own

learning and to show that they really read the book. A few such criticisms can be made in this case. For example, it seems doubtful, as Mr. Humbert's own analysis of the cases shows, whether it is the "existing law" that the President cannot grant a pardon without the prisoner's consent. Mr. Humbert himself disapproves of this supposed rule as applied to full pardon, but he accepts it as applied to conditional pardon. It seems sounder to say that while it may be unwise to release a prisoner on conditions which he indicates he will not keep, the sovereign has the power to do so if it wishes.<sup>1</sup> The legislative power to pardon is not part of Mr. Humbert's subject, but his incidental statement that "Congress may grant amnesties prior to conviction" (p. 135) implies that this is the extent of Congress' power, a view which is at least debatable.<sup>2</sup> The assumption that a pardon fraudulently obtained must be permitted to "remain effective" merely because the President probably has no power to revoke (p. 72) ignores the generally accepted rule that a pardon may be vitiated for fraud by the courts.<sup>3</sup> In discussing the effect of a pardon, Mr. Humbert ignores pardons granted for innocence, though his statistics show 94 such pardons granted by the President from 1900 to 1931, and a footnote admits that such pardons, unlike most, should not imply guilt. A discussion of the effect of such pardons would seem to be in order.<sup>4</sup>

But these are minor quibbles. On the whole, Mr. Humbert has written a sound and scholarly book.

HENRY WEIHOFEN

Washington, D. C.

*Ervin Hacker*, KRIMINALSTATISTISCHE UND KRIMINALAETIOLOGISCHE BERICHTS, *Miskolc*, Nr. 4 (1940) pp. 44; Nr. 5 (1940) pp. 44; Nrs. 6-7 (1940) pp. 92; Nrs. 8-9 (1940) pp. 100; Nrs. 10-12 (1941) pp. 152.

In the present volume Hacker continues his statistical "tour du monde," the beginnings of which we already reported in an earlier issue. It covers every country on

<sup>4</sup> See ppg. 398, 9.

<sup>1</sup> Attorney General's Survey of Release Procedures (1939), vol. III, "Pardon," pp. 177-180, 201-202.

<sup>2</sup> Weihofen, "Legislative Pardons," 27 Cal. Law

Rev. 371 (1939); Radin, "Legislative Pardons: Another View," 27 Cal. Law Rev. 387 (1939).

<sup>3</sup> Attorney General's Survey of Release Procedures, vol. III, "Pardon," p. 181.

<sup>4</sup> Weihofen, "The Effect of a Pardon," 88 U. Pa. Law Rev. 177 (1939).

which statistical data seem to have been available and is, in so far, a rather impressive piece of work. But the meaning and the author's interpretation of the figures thus diligently assembled and studiously brought into relation to the respective population data remain open to criticism.

The first questionmark is to be put at the method of collecting the data. His figures are exclusively based on convictions pronounced by courts. Thus, most national particularities, in which the administration of criminal law is especially rich, disappear. These convictions serve as a general denominator when the author makes up his comparative tabulations. Perhaps there is no other denominator available, but, at least, the author might have indicated the extent of the possible deviations by discussing the material referring to the pre-conviction stages.

Secondly, the figures given do not in all cases convey the correct meaning. Thus, e.g., speaking of the criminality of foreigners in France, as well as of the distribution according to age groups, the author gives only figures for the assizes. But, given the rapidly dwindling importance of the assizes, these figures cannot be considered as representative. Moreover, Hacker overlooks the fact that the French assize statistics he quotes speak of "people born in foreign countries," not of foreigners. (Nrs. 6-7, p. 41-43.)

The most serious problem arises with the interpretation of the figures thus assembled. The author shows a strong inclination towards a number of general ideas: e.g., the benefits of higher education as an effective weapon against a criminal career; a higher or lower degree of civilization as being related to the respective ratio of falsifications, frauds, and embezzlements; most prominently, a climatic interpretation of the frequency rate of homicides and its inverse proportion to property crimes. With the stock of such general ideas at hand, the author tries to explain the respective national criminality figures. Sometimes these categories seem to fit, as, e.g., when the easiness of life in British India caused by climatic conditions is used to explain the small larceny rate, whereas lack of discipline and primitive cultural conditions account of the higher homicide

figures. (Nrs. 8-9, p. 92). Often, however, his theories do not seem to fit, as happens with Finland, where "honesty and discipline" are called upon to explain such deviations from the rule. (Nrs. 8-9, p. 6.) The trouble with such procedure is obvious. Instead of applying himself to the impossible task of studying the social conditions as well as the working of the judicial apparatus in every individual country and trying to explain the criminality figures in the light of these data the author, with some praiseworthy exceptions (see, for instance, the interesting remarks on analphabetsim and age groups, Bulgaria (Nr. 6-7, p. 28-30), Rumania (Nrs. 8-9, p. 84-85)) fits his explanations into his undifferentiated categories—if he does not happen to take a page from the vocabulary of straight political propaganda (Nrs. 6-7, pp. 41-42).

In so far as it is impossible to gain such an intimate knowledge of the conditions prevailing throughout the whole world the task of comparative criminal statistics becomes by mere necessity more restricted. It should serve to elaborate common avenues of approach rather than provide ready-made figures whose common denominator seems of a fragile nature. In regard to the aetiological inquiries the observation of a smaller segment as well as a more theoretical approach seem to be indicated.

OTTO KIRCHHEIMER

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SOCIAL LEARNING AND IMITATION. By Neal E. Miller and John Dollard. Yale University Press, 1941. Pp. XIV + 341. \$3.50.

Imitation has always been prominent in the thoughts of those who seek to account for social solidarity and for the transmission of culture from century to century and from group to group among contemporaries. If imitative behavior is not instinctive—and that is the prevailing view—it must be learned. Therefore, the authors take up the burden of analyzing the human learning process—its conditions and fundamentals. The theory of learning that they make use of is one that has been in the course of development during several years in the Yale University Institute of Human Relations.

The material of the volume has an empirical basis in the imitative behavior of small children as observed and reported by their mothers who are co-operating with the authors.

The book is in sixteen chapters and two appendices. The chapters that are of most immediate interest to criminologists are those on "Crowd Behavior" and "Analysis of a Lynching"—especially the latter. In the interest of clarity, at least, it seems to the reviewer that a distinction should be made between crowd and mob. It is the difference between a physically active and a physically inactive aggregation and depends upon the presence or absence of a leader. The chapter on lynching is, from first to last, a nice academic analysis of the behavior of a lynching mob. Aside from that its virtue is in its emphasizing certain common sense views, e.g., of the function of threatened punishment and of its certainty: it promotes the second thought or the "breathing spell" before the commission of an act and thus increases the probability that the act may be inhibited.

ROBERT H. GAULT

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THE A. B. C. OF CRIMINOLOGY. By Anita M. Mühl M.D. Melbourne University Press in association with the Oxford University Press, 1941, Pp. 238, 8s 6d.

This book contains a series of thirteen lectures that were delivered at the University of Melbourne in 1939. It is one of several reports of the Australian Council for Educational Research. Their publication has been made possible by the Carnegie Corporation of New York. The volume contains an introduction by J. Akeroyd, Inspector-General of Penal Establishments and Gaols in Victoria.

Following a general survey of the field of Criminology are lectures on the following subjects: Mental Variations, Stealing (two lectures), Sex Crimes, Forgery, Counterfeiting and Blackmail (one lecture covers the last three topics), Murder (two lectures), Epilepsy, Criminal Investigation, Reliability of Testimony, Modern

Methods of Treatment and Crime Prevention.

There is a bibliography of 116 titles in the aggregate—all in English. These fall into the following sections: I Bibliographies. II Criminology—General. III Causation. IV Criminal Investigation—General. V Criminal Investigation—Detail. (a—Documents. b—Fingerprints. c—Fire-arms and Ballistics. d—Identification. e—Lying and its Detection). VI Institutional and other Systems of Treatment of Delinquents. VII Police Administration. VIII Prisons and Reformatories. IX Prevention. X Statistics.

At least two features of this book combine to make it very useful: it is attractively written for the general reader and case studies abound in its pages. These are not written as if they have been copied from the files in the office of a State institution. They do not seem detached as if they had been thrown in to fill up the space. They are always a part of the story and they appear in the same literary style as the lectures as a whole. One wonders why more authors who write for the general public and for undergraduate students do not handle case histories in the Mühl manner. The general reader, finding the words: "The following is a case in point," is very likely to "skip the fine print."

The two lectures on "Stealing" are worth the whole book. In the first stealing is discussed as an offense against the criminal law which may be due to deprivation, compensating activities, compulsion, "getting even," "keeping up with the Jones'," habit of stealing. Case histories as usual here, and the author aims to point out the types of stealers who can be most reasonably expected to yield to efforts at reconstruction. The second lecture on the subject deals with the recidivist, and brings out the exceeding difficulty in the way of reconstruction when we have allowed one to become a repeater before he has reached the age of eighteen and how hopeless it is to expect anything of the psychopath.

Evanston, Illinois ROBERT H. GAULT.