

1944

Book Reviews

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BOOK REVIEWS

PROYECTO OFICIAL DE CÓDIGO PENAL. By *Manuel López-Rey Arrojo*. La Paz. Empresa Editora "Universo." 1943. Pp. XCIV, 220.

This is the official publication of a proposed new criminal code for Bolivia, drafted by the distinguished Spanish criminologist Dr. López-Rey Arrojo in the period 1940-1943, and corrected and approved by a National Codification Committee of seven eminent scholars appointed by the President of Bolivia in 1941. That Bolivia needs a new criminal code is beyond dispute. The old code, which dates back to November 6, 1834, was modeled on the Spanish code of 1822, and never fitted Bolivian needs. It is juridically so discordantly out of tune with the twentieth century that President Panaranda himself has admitted that the divergence ". . . between law and fact in our system (is) well-known." (p. 9).

Dr. López-Rey Arrojo's objective was to produce a simple, concise, workable criminal code based upon modern principles of law and penology which would be directly applicable to Bolivian problems. To his broad knowledge of criminal law, philosophy, and psychology, the author added the leavening influence of careful field studies and research in La Paz, Cochabamba, Oruro, Potosí, Sucre, Santa Cruz, Coati, and other smaller centers. The resulting code leaves little to be desired. In organization and presentation it is clear and untechnical. Divided into three major parts, the first carefully considers the general rules for applying criminal law, and the remaining two divide offenses between felonies and misdemeanors, a division also found in the codes of Chile, Peru, Cuba, and Uruguay (although not in Mexico and Argentina). In attempting to permit the largest measure of individual freedom consistent with the existence of the state, Dr. López-Rey Arrojo rejects the mechanical philosophy of the classicists and insists on individual case studies of violators and wide latitude of punishment of offenders. The author wisely includes the Indian, who forms the bulk of Bolivia's population, within the provisions of the code, thus avoiding the possibilities of a legislative dualism.

The enthusiasm of the legal student for the code as a juridical document must, of course, be tempered by thought as to its practical usefulness. In adopting the indeterminate sentence, the judge may vary the punishment according to the possibilities of the "juridico-social" readaptation of the individual (Arts. 9, 80, pp. 3, 29). The success of administration of justice in criminal cases under such a flexible system is contingent upon a well-prepared, cooperative judiciary and the establishment of scientific principles of penology in all agencies of law enforcement. While the author admits these prerequisites (see pp. I-XCIV, 186) it is highly doubtful that such objectives will be realized at an early date in Bolivia. A series of minor criticisms perhaps are worthy of brief mention. The author introduces a whole series of new crimes more related to a highly industrialized nation of literate citizens than to a country with an extractive economy and population a large percentage of which is illiterate—crimes such as those against the national economy, labor, the integrity of the community, the family, etc. Allowing up to three years imprisonment for establishing a monopoly (Art. 309, p. 104), and punishing individuals by fine and imprisonment for failing to cure venereal disease, etc. (Arts. 372-381, pp. 122-125) are provisions which may well be questioned, while on the other hand, imprisonment of only six to twelve years is provided for homicide, with only one to three years for homicide resulting from a duel (Arts. 433, 437, pp. 141-142). As one of the author's main foundations is guidance of the individual into an acceptance of the rules of society, perhaps too little attention is devoted

to the definition, scope, and administration of rehabilitation (Arts. 123-125, pp. 48-49).

As the government of President Penaranda was overthrown on December 20, 1943 and replaced by a mixed military and civilian *junta*, with a new president and vice president not to be selected by a constituent congress until August 6, 1944, the early adoption of this criminal code cannot be assured. However, recognizing the high competence of the author, and the unquestioned need for a new code, it is highly probably that the project will not be forgotten, but that in modified form at least it will be used in the near future.

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MUNICIPALITIES AND THE LAW IN ACTION, Edited by *Charles S. Rhyne*. National Institute of Municipal Law Officers, Washington, D. C. 1944. Pp. 553, \$10.00.

This excellent volume of the proceedings of the 1943 War Conference of the National Institute of Municipal Law Officers—the seventh in a series of publications begun by the National Institute in 1938—contains two articles of outstanding interest and importance, “Municipal Tort Liability and the War,” and “Civil Liberties in Time of War.”

The article on municipal tort liability is extremely useful in assembling the current cases dealing with that vexatious problem, and is particularly significant in demonstrating the manner in which the courts have drawn arbitrary lines through the legal penumbra of “governmental” and “corporate” functions in cases arising out of war conditions—blackout, dimout, civilian defense activities, etc. It is regrettable, however, that the article contributes little toward defining the over-all status of this twilight zone. The article is moot as to whether the artificial and in many instances ridiculous distinction between “governmental” and “corporate” functions should be retained. “Your committee expresses no opinion on this question but suggests that it deserves the serious attention and study of those interested in municipal administration” (p. 268). Municipal immunity from liability for “governmental” torts, in the reviewer’s opinion, is unfair to the public servant, who may be sued personally for torts committed in public employment, to the community, which has found that many municipal officers fail to act vigorously because of the threat of possible suit, and to the individual citizen, who cannot make his municipality liable for its torts committed in the performance of a function defined by the courts as “governmental.” The writers of the article would have been justified in formulating a conclusion more positive than the over-cautious expression of “no opinion.”

“Civil Liberties in Time of War,” correctly concludes that the highly difficult task of protecting the civil rights of minority groups in wartime has been accomplished in admirable fashion. However, in quite rightly emphasizing the importance of *West Virginia State Board of Education v. Barnette* (1943) in overruling the compulsory flag salute doctrine of *Minersville School District v. Gobitis* (1940), the article fails to connect the two cases with dissenting opinion of Justices Murphy, Black, and Douglas in *Jones v. Opelika* (1942) who said, “Since we joined in the opinion of the *Gobitis* case, we think this is an appropriate occasion to state that we now believe that it was also wrongly decided.” This dissent cast strong doubt on the constitutionality of the *Gobitis* rule, and the states were in confusion as to the law until the issue was resolved in the *Barnette* decision. Among the important cases of 1943 not discussed is *Cafeteria Employees Union v. Angelos*, in which the Supreme Court asserted

that the guarantee of freedom of speech of the First Amendment included the right of a labor union to use the term "fascist." Justice Frankfurter declared that ". . . to use loose language or undefined slogans that are part of the conventional give-and-take in our economic-political controversies—like 'unfair' or 'facist' — is not to falsify facts." Charles Weinstein, Assistant Corporation Counsel of New York, added some general comments on civil liberties at the discussions which took place at the War Conference of the National Institute in December, 1943. He discussed carefully selected current cases briefly, but probably would not want to defend seriously the thesis he stated of international pressures overshadowing law and precedent in the rendering of Supreme Court cases.

In "Ordinance Enforcement in Wartime," and "Committee on Model Ordinances," attention is focused on the expert work which has been done toward the drafting of model ordinances, five of which—covering Victory Tax deductions by cities, protection of Victory Gardens from damage, Victory Garden Permits for the use of city property, control of dogs, and curfew for minors—were finished since the 1942 War Conference. Sixteen others had been released earlier. All these ordinances have been widely used. ". . . the ordinance on blackouts and air raids was adopted by practically all cities over 10,000 population in the United States, . . ." (p. 367). At the conference discussions, three lawyers commented superficially on the race riots in Kansas City, Missouri, Newark, New Jersey, and Detroit, Michigan; problems of civilian defense and juvenile delinquency were given light consideration, and a very brief article, "Reforming Traffic Courts," offered in outline some useful suggestions.

The merit of the articles discussed above, and the many others included in this valuable volume, is that of recording government in action by active practitioners. Political scientists, public administrators, and laymen alike will value this excellent repository of current source material.

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MATERNAL OVERPROTECTION. by *David M. Levy*. New York: Columbia University Press, 1943. \$4.50.

Levy's book illuminates the dynamics of a vital psychological relationship, the significance of which has long been recognized in child guidance. Even more important, however, is the advance step which this study has made in clinical research methodology. For years a mass of data has been accumulating in the files of guidance clinics, yet for the most part it has remained unused except for illustrative purposes. Investigation of specific problems has seemed to demand new material which could be collected with predetermined ends in view and with specific controls insured. Levy, in a systematic approach to records on file at the former Institute for Child Guidance in New York City, has undertaken what may well be regarded as a prototype for similar attacks on a variety of problems.

The essence of the method is, first, a clear and precise definition of criteria for the selection of cases; second, careful analysis of the interrelationships observed between specifically defined factors appearing in various combinations in the histories; and finally the comparison of these data with the results of follow-up and treatment. Application of this procedure to one relationship syndrome has resulted in a study which is quantitative rather than statistical, analytic rather than simply descriptive. Explanatory principles derived from such widely divergent approaches as psychoanalysis and animal experimentation are tested and evaluated in terms of case evidence.

From 20 cases rigidly selected to meet the criterion of "pure" overprotection (overprotection of a "wanted" child), there emerges a remarkably consistent, but not oversimplified picture of maternal overprotection, its background and its results. Although only these so-called "pure" instances are subjected to intensive study, four other types are identified and used as points of reference. Separate chapters are devoted to the analysis of four further criteria: excessive contact, infantilization, prevention of social maturity, and maternal control (lack of control or domination). Characteristic parental factors are also considered.

The least satisfying part of the book is the account of treatment procedures, especially psychotherapy. The multiple approach which Levy characterizes as the American method (the coordination of all available clinical tools as opposed to "a concentrated attack along a main front" in terms of a particular theory) was utilized. Although 47 percent of the cases showed improvement after treatment, a figure which rose to 77 percent at the time of follow-up 9 to 12 years later, psychotherapy was uniformly unsuccessful. It must be granted that the motivation of both parent and child toward perpetuating the relationship, and the absence of felt maladjustment, is an obstacle to therapy. Still, the question may be raised of whether more modern, less directive techniques might not have proved more effective. Clients are described as resistant to "suggestion," "effort to change attitudes," and attempts to "explain" and "educate." It is not impossible that premature interpretation with consequent blocking of the free expression of ambivalences, account in some measure for the poor results of psychotherapy, and makes prognosis appear more unfavorable than it may eventually prove to be as more skilled techniques are developed.

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TWELFTH ANNUAL CONFERENCE ON DELINQUENCY PREVENTION, 1943.

Department of Public Welfare, State of Illinois.

The 1943 conference sponsored by the Illinois Division of Delinquency Prevention, in cooperation with the Big Brother and Big Sister associations, brought together an impressive group of educators, public officials, clergymen, and other professional persons concerned with youth problems. Last, but never least, the young people themselves were represented.

In the collected reports of all the sessions, many familiar problems are mentioned, social maladies of long-standing are high-lighted, and juvenile delinquency appears once more, under war conditions as in time of peace, not as an isolated evil, but as one symptom of society's chronic ill health. In the closing session the Hon. Rolf T. Harbo of the F.B.I. offered the major outlines for a frontal attack on recognized causes of juvenile crime.

If this year's report leaves us with an impression of the magnitude of the problem and the complexity of its solution, instead of arming us with an immediate practical program, this is no fault of the conference nor of the busy individuals who organized and attended it. It is, rather, due to the fact that action, not words, are needed, and action depends on the cooperation of a larger group of citizens, many of whom are indifferent because they are uninformed and unaroused. A widespread and thoughtful reading of this book should act as one corrective for that condition.

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