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Book Reviews

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BOOK REVIEWS

THE NUREMBERG TRIAL AND AGGRESSIVE WAR. By Sheldon Glueck, 1946. Alfred H. Knopf, New York. Pp. 120. \$2.00.

This small volume introduced by Mr. Justice Jackson, United States Chief of Council in the Nuremberg Trial, consists of the author's article published in the *Harvard Law Review* in the spring of 1946. The only changes consist in the insertion of some long footnotes of the article in the text of the book and others in appendices. The author acknowledges that he has modified one position which he took in his book on War Criminals published in 1944. There he had denied that the initiation of aggressive war was a crime. The present volume is mainly a justification based on customary and conventional international law for the inclusion of that crime in the Charter of the International Military Tribunal. The author believes that his discussion justifies the conclusion: "that the waging of an aggressive war is not only unlawful but also criminal, and that there is nothing fundamentally 'retrospective' or unjust either in recognizing this fact or in holding individual members of a Government personally liable for criminal acts committed in the name of the State." (p. 91.)

The arguments presented take in the main the line taken by Mr. Justice Jackson in opening the argument of the Prosecution at Nuremberg, namely: that a rule of customary international law had developed through the practice, declarations and agreements of states before the Nazi aggressions occurred establishing the initiation of aggressive war as an individual offense. The author maintains his earlier interpretation that the Pact of Paris did not in itself establish aggressive war as a crime, though he cites some opinions which attribute to it that effect (p. 18). The significance of the Pact, he thinks, lies rather in the evidence it affords of the existence of a rule of customary international law and in its influence upon the "defense of justification." Since the Pact clearly made it illegal for Germany to authorize aggressive war, individuals initiating such a war in the name of Germany cannot justify themselves by claiming that their acts were lawful acts of the German State. "As applied to acts chargeable as crimes, aggressive war can no longer be a legal justification and shield" (p. 107).

The author goes at length into the general proposition that "acts of state" in violation of the state's obligations under international law cannot confer immunity upon individuals (p. 52). The discussion on this point (p. 46 ff.) on the nature of customary law (p. 34 ff.), on the relation of individuals to international law (p. 60 ff.), on the scope of the *ex post facto* rule (p. 74 ff.), and on the jurisdiction of the Nuremberg tribunal are excellent (p. 85 ff.).

The author develops the legal case for the Nuremberg trial so well that it is regrettable that he repeated the statement in his earlier volume, that "the United Nations could have executed the Nuremberg defendants without any judicial procedure whatsoever" (p. 8). His effort to support the proposition by arguing that the "will of the victor" is law for the vanquished, that international agreements made under duress are valid, and that enemy leaders like Napoleon have been dealt with politically, is not convincing. There is a conventional rule of international law that prisoners of war cannot be punished without trial, and the rule is well established in numerous international arbitrations that punishment of resident aliens without trial is a denial of justice and a violation of international law.

It is true, international law may require states to punish individuals within their jurisdiction who have committed offenses against international law to the injury of other states, and it is also true that a state cannot excuse its failure to perform this international duty by the plea that its criminal law did not include the offense. In such cases the state should provide for trial by special legislation. If the accused individual is found guilty and punished there would be no violation of the *ex post facto* rule because the act was an offense against international law when committed.

Certainly, with the present emphasis upon "human rights," punishment of individuals without formal charge and fair trial cannot be considered permissible under international law. If individuals are to be regarded as subjects of international law, and they must if the concept of individual offenses against the law of nations is accepted, an agreement between states to which the individual is not a party cannot deprive him of that human right.

In spite of his attempt to show that political treatment of the Nazi leaders would have been justifiable, the author does not criticize the United Nations for deciding to proceed in a more "civilized way" (p. 11), and he points out the care taken by the tribunal at Nuremberg to conduct the trial fairly, giving the defendants every opportunity for defense.

This volume was published before the opinion was rendered by the tribunal at Nuremberg, but Glueck's exposition of the law appears to be consistent with that accepted by the tribunal. Because it was bound by the Charter, the tribunal found it necessary to deal only briefly with the justification in general international law of the law and jurisdiction provided for it in that instrument. On this subject, the present volume offers jurists a useful background.

QUINCY WRIGHT.

University of Chicago.

ADOLESCENCE AND YOUTH, THE PROCESS OF MATURING. By Paul H. Landis. First Edition, McGraw-Hill Book Company, Inc., New York and London, 1945. Pp. vii plus 470. \$3.00.

This book by an educator is here reviewed by a psychiatrist. The author in general states that what we call adolescence (and youth) is made up of three aspects: physiological puberty, the psychological experience of attaining maturity, and the sociological experience of adjustment. He stresses mainly the latter aspect.

Biological, psychoanalytical and psychiatric facts are left in the background if they are not expressly taken exception with. In the treatment of the sociological aspect interesting relationships are brought to the fore. The author bases his views mainly on Margaret Mead's observations (*Margaret Mead: Adolescence in Primitive and Modern Society*; on V. C. Calverton and Samuel D. Schmalhausen, *The New Generation*, Macaulay Company, N. Y., 1930; and on *Coming of Age in Samoa*, William Morrow and Co., Inc., N. Y., 1928). He stresses the cultural (man-made) influences in that period which, as he says, erroneously has been called a critical one by the biologists and psychiatrists.

The author's own contributions to our problem are mainly in the interrelationships between adolescence and the structure of population as to age, earning power, etc. Here again the author rightly brings to the fore the relationships between culture and the length of that span

which we call adolescence or youth. The book, which marshals its facts thoroughly, can be warmly recommended especially to biologists, psychoanalysts and psychiatrists in order to see how the facts may or may not be interpreted without recurrence to the viewpoints that are familiar to them.

W. ELIASBERG.

New York.

THE CRIME OF IMPRISONMENT. By George Bernard Shaw. Illustrated by William Gropper. Philosophical Library, New York. Pp. 125. \$2.00.

This is an essay, written after the last war in behalf of the British Labor Research Office. It is a plea to revise the common system of imprisonment. It is in typical Shaw style. In his ninety or so years on this globe Shaw has criticized many things, many of which he knew little about. Among his subjects here are: "*The Seamy Side of Deterence*," "*Judicial Vengeance*," "*The Incorrigible Villains*," "*The Ruthlessness of the Pure Heart*," "*Remedies in the Rough*," "*The Sentimentality of Revenge*," and "*The So Called Criminal Type*." One gathers from a careful study of "*The Crime of Imprisonment*" that, starting from the title, Shaw would recommend that all jails be emptied and refilled by law enforcement officers, judges, prosecutors; and so he does as judged by the following remarks: "I thought, and still think, imprisonment for life a curious sort of mercy." "Imprisonment as it exists today is a worse crime than any of those committed by its victims." Shaw says our prisons are not the Ritz Hotel, as the lodging, the food, the bed, are all deliberately made so uncomfortable as to be instruments of torture, as the clothes worn are rags promiscuously worn by all your fellow prisoners in turn with yourself, the exercise is that of a turnspit, when the ventilation and sanitation are noisome, when the instruction is a sham, the education a fraud, the doctor is a bully to whom your ailments are all malingerings, and the chaplain a moral snob with no time for anything but the distribution of unreadable books. Shaw points to many of the faults of our penal systems but like other curbstome critics he offers no practical solution. Shaw says: "The thief who is in prison is not necessarily more dishonest than his fellows at large, but mostly only one who through ignorance or stupidity, steals in a way that is not customary. It is not true that men can be divided into absolutely honest persons and absolutely dishonest ones. Our honesty varies with the strain put on it." We have Shaw here trying to indict society for its handling of the delinquent. Like all books by Shaw this one makes interesting reading but read it as fiction, not fact.

JOHN I. HOWE.

Chicago Police.
