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Book Reviews

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BOOK REVIEWS

GENERAL PRINCIPLES OF CRIMINAL LAW. By JEROME HALL, Professor of Law, Indiana University. Published by The Bobbs-Merrill Company, Indianapolis, 1947. Pp. viii + 618, including Index of Proper Names, Table of Cases, and Subject Index. Blue Fabrokoid 6" x 9". Price \$7.00.

"Because the principles of criminal law include many of the ultimate ideas of Western civilization, one might well devote a lifetime to the study of those principles and still regard the results with diffidence", states Professor Hall in the preface. He also remarks, "This book is devoted to an analysis of such principles of criminal law and of the major doctrines of that law." But, the reader will find, it does so with a quasi-functional approach. The author's 1937 article on "legality, and subsequent articles on the history and rationale of *criminal attempts*; "strict liability"; and "interrelations of criminal law and torts," have been diffused in this volume and in some instances revised and modified. The "plot" is therefore different and entirely new as far as the story of the "Principles of Criminal Law" are involved.

The first chapter on Criminal Law Theory digs into the ancient writers and includes references to the modern classical works of Bishop and Wharton. The later two are the "cream of the crop". Bishop wrote for fifty years and is the defense lawyer's *vade mecum*; Wharton, just as brilliant, often upholds the position of the government. In order to get an overall picture of criminal theory I suppose it might be wise to start with the oldest code of laws in the world, The Code of Hammurabi, King of Babylon, B.C. 2285-2242, and move west with the course of empires. Such a screening would enable a person to pursue the second chapter, "The Principle of Legality-*Nulla Poena Sine Lege*," *sine die*.

Is it a crime to think? To think out loud? To prepare to execute the crime in the mind, for example, by a cook going to the drug store and buying arsenic to put in the soup? If a person shoots at a tree thinking it is a man, is that act a *criminal attempt*? These questions arise in the following sequence. Chapter three unravels the history of *criminal attempt* and chapter four expounds its rationale. In the language of the coffee table these matters have always been the lullaby of teachers of criminal law. "*Mens rea* and moral culpability" follow naturally in chapter five, and "objective liability" in chapter six. The later chapter opens up that age old question of whether the subjective or objective test is final in criminal cases. The thinking and publications of Professor Albert Kocourek certainly should be spliced in to any discussion on the question.

"Interrelations of Criminal Law and Torts-Intentional Wrongs" are discussed in chapter seven and "Recklessness and Negligence" in chapter eight but in the latter Dean Leon Green's *Rationale of Proximate Cause* should have been considered. Chapter nine is on "Criminal Omissions;" chapter ten on "Strict Liability;" chapter eleven on "Ignorance and Mistake;" chapter twelve on "Necessity and Coercion;" chapter thirteen is titled "Intoxication;" chapter fourteen "Mental Disease" discusses the antiquated Right and Wrong Test; the Irresistible Impulse Test, and modern developments that should interest the psychiatrist. To quote

the author, "Here again, in sum, the wise injunction is to keep the expert 'on tap, but not on top.'"

The criminologist will find ample food for thought in chapter fifteen on "Criminology and Criminal law." In the words of Portia:

Tarry a little: there is something else.

Professor Hall is to be congratulated on his broad vision and his attempt to bring order out of chaos by digging, digging, and digging in the lodestone of the law. It is like tearing a seamless web. For example, the McNabb case could add another chapter. The publishers are to be complimented on producing such a timely volume with fine format and excellent typography.

DePaul University

John W. Curran

THE CONSTITUTION AND CIVIL RIGHTS. By MILTON R. KONVITZ. New York: Columbia University Press, 1947. Pp. viii, 254. \$3.00.

This little volume considers the very large problem of the relationship of the Constitution to the location, nature, and importance of civil rights. By civil rights, the author does not mean political rights, such as "the right to vote," nor civil liberties such as those found in the first eight amendments. Instead, he defines civil rights as ". . . the rights of persons to employment, and to accommodations in hotels, restaurants, common carriers, and other places of public accommodation and resort" (p. vii), and thus contemplates ". . . the rights enumerated in the federal Civil Rights Act of 1875 and the various acts against discrimination found on the statute books of eighteen states." The plain fact, of course, is that the Supreme Court has limited the authority of Congress to protect civil rights and, in addition, has narrowly construed constitutional provisions relating thereto (see in particular *Barron v. Baltimore* (1833); *The Slaughterhouse Cases* (1873); and *Civil Rights Cases* (1883)). In the author's words: "In so far as the Constitution is concerned, the civil rights, privileges, and immunities can be counted on one hand" (p. vii). The states have been reluctant to utilize their constitutional authority to guarantee civil rights ("In thirty American states there are no civil rights acts; . . ." (p. viii)). The author quite properly gives serious consideration to *Screws v. U. S.* (1945) in which the federal government applied Sec. 52 of the Federal Criminal Code to an offense committed against a Negro in Georgia by three public officials. Although the Supreme Court remanded the case for rehearing on a technicality, it recognized the jurisdiction of the federal government to act, thus reactivating a section long dormant and opening the way to a possible strengthening of the Civil Rights Unit of the Department of Justice (p. 66) as well as suggesting the constitutionality of federal anti-lynching legislation (p. 74). This is a thoroughly sound case study of the federal system in action in an area that strikes close to the heart of American assumptions of government. Because of widespread ignorance as to the constitutional bases of discrimination, it is hoped that this realistic, scholarly analysis will be read widely. This can be done without pain for the author writes with a precise, forceful style. A collection of eleven appendices, including the Civil Rights Bill for the District of

Columbia, Model State Civil Rights Bill Proposed by the American Civil Liberties Union, Antilynching Bill: H.R. 51, Federal Fair Employment Practices Bill: H.R. 2232, and various state civil rights acts makes this monograph even more valuable.

University of Wisconsin

William S. Stokes

PHASES IN THE DRINKING HISTORY OF ALCOHOLICS. By E. M. JELLINEK; Studies on Alcohol, Yale University, Hillhouse Press, New Haven, Conn., 1946, 88 pp. Unbound. \$1.00.

This is Memoir No. 5 of the Section of Studies on Alcohol, and was first published in the *Quarterly Journal of Studies on Alcohol*, Vol. 7, No. 1, June 1946, Box 6162, Yale Station, New Haven, Conn.

This Memoir is the analysis of the results of a questionnaire sent in by about 100 men members of Alcoholics Anonymous. It is informative of the *ages* of alcoholics at the times of certain events (stages of phases) of significance in the *drinking history* of the alcoholic.

The questionnaire had 36 questions and was published in 1945 in *Grapevine* which magazine is the official organ of A. A. A more comprehensive questionnaire of 111 questions is prepared for future studies. These efforts are to get the view point of the alcoholics themselves rather than the points of view of either the psychoanalysts or of the psychologists who studied them, because the alcoholics themselves size up their stages by symptoms rather than by causes or probable causes such as conflicts (or low blood sugar) which outsiders naturally study.

One conclusion is that many alcoholics are fundamentally neurotics or psycho-neurotics, and that turning to alcohol is but a symptom of the constitutional inferiority. Of course it is admitted that heavy drinking has a greater effect on a neurotic than on a non-neurotic person. This reviewer believes that there are other causes of increased susceptibility such as constitution (frailty, scant body hair, small blood vessels) and prior head and brain injuries.

Be all that as it may, one conclusion is that the later in life a man becomes an alcoholic the more rapid is the progress of going through the stages of alcoholic deterioration.

The stages are interesting; the sequence of phases holds for the majority of such individuals but not for every individual: 1. Age at onset of "Blackout" or when later he can not recall what he had done or said; 2. Age at onset of "Loss of Control"; 3. Rationalizing excessive drinking; 4. Morning drink; 5. Solitary drinking; 6. Antisocial acts; 7. Benders; 8. Remorse; 9. Protecting supply; 10. Fears; 11. Resentments; 12. Admits to self that he can not get along without it and that alcohol has "got him down"; 13. Lowest point. Men who had Blackouts at 20 years of age reached their lowest point at 38 or 18 years later; those who had their Blackouts when 24, reached lowest point at 40, or 16 years later; Blackouts at 28 reached lowest point at 42 or 14 years later; and Blackout at 30 had lowest point at 44 or 12 years later.

Other items did not follow in as sure a pattern, some of these stages were "Geographic escape" or moving to another town "to make a fresh start", "Tremors", "Water wagon", Seeking (or getting) aid and

advice" as from lawyer, priest or doctors (including psychiatrists), and "Taking the cure".

It all adds up to further emphasis that Alcoholism is a disease, and like heart disease with hardening of the arteries, it has its progressive stages. It tends to make the efforts of judges and bridewells appear very, very amateurish indeed.

Of course the world is under increasing debt to Yale for these studies on a high level, and we all hope that eventually the men of science will bring together into tabloid form their total knowledge about alcoholism in a generally useful manner.

Chicago

Harold S. Hulbert, M.D.

LEHRBUCH DES SCHWEIZERISCHEN STRAFRECHTS. By ERNST HAFTER. Allgemeiner Teil, Verlag von Staempfli and Co Bern, 1946, pp. 515.

The violent reaction to Fascist patterns of legislation—which were much more permitted practices than established rules—has shaken the foundations of our legal thinking. Law is, of course, self-restriction, and the criminal law has been justly called by a great scholar the Magna Charta of the criminal. The question which we have to face and to answer is whether this self-restraint is a dangerous delusion or in all its hateful control a superior form of social wisdom. Law after all can morally and formally hold its own only as a general principle. Reduced to an exception the law loses that virtue which constitutes its protective strength in periods of storm and stress.

A few neutral countries can help us to go back to spiritual and legal normalcy because they have been spared the emotional hurricanes of the last years. For this reason Professor Hafter's new edition of his treatise of Swiss Criminal Law deserves particular interest and attention. Switzerland has the most modern criminal code of Europe (Law of 1942). Ernst Hafter is the most eminent scholar of criminal law in his country. What he has to say on the status of crime, the act of omission, intent, the consent of the injured party, patterns of culpability, justification and excuse is a real and lasting contribution to the art of constructive legal reasoning. The chapter: *nulla poena sine lege* deals with a principle which no nation and no social group should expose to danger unnecessarily. We might badly need it one day.

Whoever teaches comparative criminal law will be glad to use this excellent book besides American, English, French and Italian texts. The Swiss Criminal Code has been published by this *Journal* in 1939 and our law students have thereby the opportunity of availing themselves of an excellent English translation.

Univ. of Kansas City, Law School

Hans von Hentig