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Book Reviews

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BOOK REVIEWS

THE STATUTORY CRIMINAL LAW OF GERMANY. Edited by Eldon R. James, Washington: The Library of Congress, 1947. PP276.

It is always a pleasure to observe the appearance of new translations of foreign legal materials. As long as our unilingual tradition persists it will remain an almost insuperable obstacle to effective work in comparative law, but publications such as this one can do much to increase the possibilities in the field. Since comparative criminal law has been particularly neglected in this country, the present volume assumes added potential significance and importance.

The publication is an outgrowth of a compilation of German legislation in the field of criminal law undertaken in 1945 for United States Military Government officers. It contains the German Criminal Code of 1871, with amendments up to 1945, with various supplementary criminal legislation, and certain pertinent postwar laws and proclamations issued by the Control Council for Germany. There are also editorial comments and annotations, references to German judicial decisions and commentators, as well as glossaries, tables and indices, all of which contribute measurably to the volume's interest and utility.

General interest will probably be focused on modifications in German criminal law introduced by Nazi legislation, and the various provisions are so arranged textually that these developments may be traced. It is very clearly revealed that the Nazis sought to achieve their purposes largely within the framework of the existing positive law, but, in order to accomplish this, special legislative manipulation of the concepts *nullum crimen sine lege* and *nulla poena sine lege* and resort to the interpretative device of analogy in criminal law were deemed necessary. This demonstration that the more objectionable features of recent German criminal law stem from superimposed Nazi legislation rather than from an intrinsically "undemocratic" character of continental penal codes is very gratifying to this reviewer. It would be a very great loss if Anglo-American legislators should arbitrarily bar consideration of European codes as possible models, because of pre-conceived prejudices and superficial knowledge about these codes. The present volume would have been a great aid in combating such prejudices and misinformation in Louisiana in 1940-42 during the drafting of the Louisiana Criminal Code.

For those interested in using European law and legal method to advantage in this country, regardless of its origin, the German Criminal Code of 1871, like all European penal codes, is definitely worthy of attention. It is by no means a model of perfection but, like most European codes, it is far superior in form and construction to the bulk of Anglo-American statutory criminal law. This is so mainly because of two formal features: its organization into "general" and "special" parts, and its style, which is based upon brief but general statements of the definitions of crimes. The "general" part includes various general concepts applicable to all of the special articles which follow, such as the concepts of "attempts" to commit crimes, parties to crime, justifications and defenses of various kinds, and so forth. On the other

hand, the general part is deficient in content, for example, in that it lacks definitions of criminal intent and criminal negligence. The same criticism may be directed at the special part, which, because it uses generalized rather than particularized language, is adequate from the point of view of form. But on the substantive side one looks in vain for a generalized concept of "stealing" offenses and finds instead counterparts of Anglo-American larceny, embezzlement and obtaining by false pretenses. In short, the German Criminal Code has many lessons for Anglo-American legislative drafting as a matter of form, but it cannot be said that substantively there is demonstrable any great superiority over the Anglo-American common law of crimes. At least this was the conclusion reached during the drafting of the Louisiana Criminal Code of 1942, with the result that the latter Code is civilian in form, but in substance is based on simplification, clarification and modernization of the common law of crimes. There is nothing in the volume under review which leads the reviewer to a change of position in this respect.

Since there were earlier translations of the German Criminal Code of 1871 which could be used as guides, it seems reasonable to assume that a conscious attempt was made to surpass the earlier efforts with reference to the accuracy of translation. The reviewer does not presume to judge the success of this endeavor. Apparently a large number of skilled persons contributed either directly or indirectly at various stages of the work, and these are purported to be listed in some detail in the preface. Since the project was initiated by the U. S. Military Government and carried out primarily for military purposes, it is inconceivable that Military Government personnel made no contribution. One wonders whether all credit has been rendered precisely where it was due, when the volume now appears as a Library of Congress publication. If not, it would not be by any means the first time in military and government circles where assigned military personnel were exploited and then later ignored.

Tulane University

CLARENCE J. MORROW

LAW REPORTS OF TRIALS OF WAR CRIMINALS, Vol. I. Selected and Prepared by the United Nations War Crimes Commission. London, 1947. Pp. 127. 2s.6d. (Paper).

This volume reports nine cases before British or American military commissions or mixed British-American commissions. Most of them come from the German area, but a few are from the Far Eastern area.

Lord Wright, chairman of the United Nations War Crimes Commission, in his "Forword" points out the scope of the series. It includes trials of persons accused under the first category of the Moscow Declaration of 1943, thus excluding the trials of "major war criminals." Lord Wright also emphasizes the burden placed upon the editors of the series because of the summary character of the verdict of these military commissions. The law applied is to be found not in the verdict, but by inference from the arguments presented by the prosecution and

defense. In British tribunals, unlike those in America, the judge advocate serves not as prosecuting lawyer but as an adviser of the court on the issues of law presented. In these cases, therefore, the judge advocate's statements are of importance.

The reports describe the court, the judge, the arguments presented, the evidence, the verdict, and the sentences; and, by no means least important, they include editorial notes on the cases. In these the editors discuss the conclusions of law upon which the verdict apparently rested. This law deals with such subjects as the jurisdiction of military commissions; the defense value of superior orders, lack of *mens rea*, operational necessities, and coercion; the definition of particular crimes, such as espionage, killing prisoners of war, and violations of capitulations; and the important problems of *ex post facto* law, collective responsibility, and liability of civilians before military tribunals. Most of these problems were discussed in the judgment of the Nuremberg Tribunal, but the meaning of these legal principles gains in clarity through application in the varied circumstances of the cases here presented, such as the well-known affair of the Peleus and the Dostler trial.

These cases make it clear that superior orders constitute no defense against liability where the order was in violation of an obligation of the state under international law. The extent to which the accused had a free choice of action and the degree of his knowledge of the illegality of the action did, however, usually affect the severity of the sentence.

The material in these reports will be welcome to international lawyers. They throw much needed light, not only on the law concerning war crimes, but on the more general problem of international criminal law. It is to be hoped that the War Crimes Commission will continue this valuable series.

University of Chicago

QUINCY WRIGHT

THE CHALLENGE OF MARRIAGE. By *Rudolph Dreikurs*. Duell, Sloane and Pearce, New York, 1946, pp. 271, \$3.00.

The position of women today is in a state of flux and therefore we see violent symptoms. When equilibrium is attained, the status of men and women will be gloriously wonderful. In Dr. Dreikurs' view, much of the current difficulty in marriage and womanhood arises from the refusal of the female to face the challenge of reality, to meet life as it exists. Hence many women do not marry and others, married, find strife in their marriages because they build up unreal substitutes for facts. How to live with others (husband, wife, children) becomes of prime importance.

Too many individuals, says the author, substitute the soporific of reading and thinking for concrete action in personal dilemmas. This is evidenced in the existing struggle between the concept of *hausfrau* as the accepted status of women and the concept of total female independence. Some say that the return to "semi-slavery" is the answer. Others (including many women) feel consciously and otherwise that

the answer lies in more independence and more give-and-take between the sexes.

In the current conflict, there is emerging a sharing of the former "masculine" rights. Sometimes the pendulum swings sharply to one extreme and sometimes to the other. Dr. Dreikurs looks forward to that "gloriously wonderful" state of equilibrium between the sexes but wisely does not venture to indicate its form.

The weapons of women in this struggle have been the same age-old tools of sex, of aping the male. This imitation strives to out-do the male by engaging in occupations and pursuits long held to be solely male—in clothes, in uniquely male jobs which have not been recognized as "nice" for females—cab drivers, deep sea divers, truck drivers, etc. This imitation is both a demonstration and a protest, sometimes outlandish in out-doing the male.

The basic test of the integrity and stability of the individual's life pattern reveals itself in the quest for a partner, in meeting life situations in marriage, in the daily situations between mates and between mates and their children. Not a few females dare not meet reality, face it and live with it. Instead of meeting the challenge of a life partner, they seek substitutes since their inner fears prevent them from accepting reality. Hence they shy away from making a marriage choice.

This reviewer has had casual acquaintance with a large number of unmarried women in their thirties. Every action indicates their desperate search for a mate. The search is desperate in words, in emotional response. They are often exposed to many men yet few exposures carry them over toward action. Merely intuitively, we feel that these women have been conditioned to fear men and marriage, to fear the necessary adjustments. Of course they all have many "reasons" for remaining unmarried—scarcity of the right kind of men, the so-called male preoccupation with the physical side of women. These all appear rationalizations which reveal a basic distrust of men. Yet, in almost every situation, when an examination of the rationalizations is suggested, there is almost total lack of response. (Of course, the same applies to men who have remained unmarried.)

To Dr. Dreikurs, the essential element is the willingness to make any choice at all. The proper selection of a mate, in his formula, consists of the willingness to choose any one, common sense and the determination to make the best of life with the mate selected. "Those who act accordingly will always have found the right mate, the others will never be satisfied."

So too, in the matter of marriage adjustment. Life is never static and the marriage situation least of all. The mature individual keeps his major goals in mind (in this case, the success of marriage); the minor items may be discarded. If one partner reacts in an infantile manner, the other must be able to use persuasion, tact, the arts of love instead of insisting upon the "rights" of a partner in the marriage. Marriage is a continuing situation wherein change is normal and usual; mature persons adjust to new demands.

It is eminently sound that the marriage counsellor merely sees the symptoms of husband-wife interaction. The theme is the same but the

variations endless. Hence, in dealing with husband-wife conflict, in dealing with parent-child difficulty, the counsellor and the individuals concerned must strive for basic teamwork in the preservation of a major social situation—the family and the home. The art of living with other people requires continuing, day-by-day effort.

Counselling Service, Detroit

W. A. GOLDBERG

YOUTH IN TROUBLE, by *Austin L. Porterfield*. Potishman Foundation, Fort Worth, 1946, pp. 135, \$1.50.

“Youth In Trouble,” says Paul Porterfield, Professor of Sociology at Texas Christian University, calls for community organization for the betterment of both youth and their parents. The stress is upon internal organization, with youth and their parents as integral parts of the development. This organization is to be brought about with the efforts of the individuals involved.

Following Sutherland’s concept of white-collar criminality, Porterfield holds that the child absorbs the behavior patterns of his community. If these patterns result in delinquency, the first step must be to remove them from community acceptance.

The answer to “youth in trouble” is to provide for the poor child the same type of concern as his economic betters have. Their behavior is not much different, he finds from a study of college youth and delinquents. But the college youth have parents who shield them, who smooth their path, who intercede for them (by influence, by restitution, etc.) when their behavior meets the law. For these same violations of the law, the poor child is sent to institutions, is brought to the courts.

It is almost as if Porterfield asks for a new community standard. He would bring up the community provision for delinquent youth to the level of the provision for better class children. And the method of doing this is community organization, with the active participation of the youths in trouble and their parents.

All of which is noble and desirable. Realistically, participation by residents in lifting themselves by their bootstraps . . . in bettering their own community . . . should have results in better-adjusted youth. It is better, admittedly, than distributing charity (even by service) to them from the outside. But again, we need to hit at, uproot and change deep economic and social patterns. The provision of more community agencies in a neighborhood will have some results, to be sure. So too with residents’ participation. But who will provide economic security, who will provide parents with understanding, who will provide parents who have the means of shielding their children, for *all* the children of the neighborhood? Further, who will change the cultural pattern of the community so that every child will have everything it needs for normal living? It’s a large order and, helpful as the concept of the community council may be, it is of limited power to meet the prime questions: economic and social security, opportunity for indi-

vidual exploitation of his potentialities, kind and loving and understanding parents.

Counselling Service, Detroit

W. A. GOLDBERG

DELINQUENT GIRLS IN COURT. STUDY OF THE WAYWARD MINOR COURT OF NEW YORK. By *Paul W. Tappan*. Columbia University Press, New York, N. Y., pp. 264, \$3.00.

Government has been constantly extending the scope of its activity and control during the past several decades; and it is perhaps inevitable that social institutions should feel the pressure of expansion as well as economic ones.

The trend is toward a modified socialism, at least, where nationalization is not in full development. Highly significant in this general trend of more governmental activity in spheres which have traditionally been considered the preserves of the individual or of small individual groups, has been the development of the Wayward Minor Court of New York, which Professor Paul W. Tappan analyzes in his study, *Delinquent Girls in Court*.

To cast aside all coyness, without shielding a fundamental institution of our civilization, the conclusion cannot be avoided that most delinquency results from the inability of the family to cope with its younger members. Professor Tappan frankly points out that the Wayward Minor Statute which gave official sanction to the court is a "parent's statute", which by its terms is designed to support or replace parental control." A study of such a court carries with it, of necessity, a stinging indictment of the role of parents in our family-based culture. Actually, best results can be derived from a strengthening of family ties and a more enlightened outlook on the part of the parents of our nation. These parents, as well as the entire institution of the family, are phantom defendants at every case reviewed by the court; it is their inability to cope with their responsibilities which necessitates a legally-sanctioned institution to assume control of errant youth.

The author lays only incidental stress upon the shifting roles and values of the institutions of our society. As both a lawyer and a trained sociologist, Professor Tappan has made a thorough, albeit occasionally confused study of one of the symptoms of our changing society. Actually, his book often appears drab and poorly organized; but he has collected a mass of facts and trenchant observations concerning the development and characteristics of the rather novel Wayward Minor Court.

For all practical purposes, as defined by statute, "any person between the ages of sixteen and twenty-one who . . . is wilfully disobedient to the reasonable and lawful commands of parent, guardian or other custodian and is morally depraved or is in danger of becoming morally depraved may be deemed a wayward minor", therefore, it can readily be seen that parent-child conflicts, charged with unreasoning emotion, can be placed under the jurisdiction of the court which can impose punishment upon the child but has no control over the

parent. The child is thus immediately at a disadvantage which appears to increase as the machinery of this court swings into high gear.

Originally, the laudable purpose of the court was to prevent the stigma of criminality from being fastened upon a corrigible youthful offender, placing the latter upon probation in an attempt to cut down the emergence of one criminal at the source. Methods of treatment resolved themselves into three categories: processing for (1) behavior problems, sex delinquencies and petty offenses, (2) misdemeanors, and (3) felonies. Thus, it was possible to treat girls in one of the above groups as youthful offenders rather than hardened criminals.

In practice, however, there has been such a confusion of legal, moral and sociological concepts that the casual sex delinquent may, and usually does, find herself saddled with far harsher punishment than the prostitute. Commitment of the wayward minor is far more prevalent than commitment of the habitual offender. This evident anomaly seems to stem primarily from the practice of stripping the wayward minor of the protection of her civil rights; she is not informed of the charges against her, evidence by hearsay is admitted and witnesses are even stacked against her. The defendant is not represented by counsel and rarely has she an opportunity to present her side of the story. Frequently then, the "Wayward Minor" may be a victim of as blatant a "frame" as can possibly be engineered.

Two grave evils seem to have distorted an institution which held out hope for rehabilitating a youthful offender, into a virtual gateway to crime. First, the tendency to conduct investigations for prescription of eventual treatment prior to trial, using the results of such investigations to determine guilt, i.e., against the accused rather than for aiding her in reestablishing rapport with society. This is actually conviction by trial. Second, there is the tendency of many jurists to be swayed by moral considerations; many judges will impose punitive measures for any sexual irregularity, even if the sex conduct is neither promiscuous nor commercialized. Victorian standards are being used to judge the conduct of a less restricted age. Wayward minors are being punished for acts which are not specific breaches of the criminal law. At the same time, adult offenders who are definitely breaking the criminal law are let off lightly or without punishment of any sort. Not only is the accused the victim of the capriciousness of one complainant but also of the arbitrary autonomy of the judge. This is an unhealthy situation hardly designed to extend some measure of aid to the wayward minor.

The best of Professor Tappan's study appears near the end of his book where he lists suggested changes for lifting the court and the statutes governing it to the idealistic level on which it should theoretically be resting. First of all, the statutes should be more specific, listing definite offenses and not making possible remand on the basis of a general line of conduct; conduct which may be immoral but far from criminal and restricting jurisdiction to those who have committed specific offenses. This, it can readily be seen, will afford much more protection to the young girl, protection from both the caprice of incompetent parent and from arbitrary jurists.

Next Professor Tappan insists that, in order to best assist a defendant,

such a court should be interested "in two matters, in the order indicated: (1) the defendant's guilt or innocence and the circumstances of the offense, if any; and (2) the reasons, motivations, or genetic factors in the social history upon which rehabilitative treatment may be predicted". He goes further to hope for the court to shift its emphasis toward two more definite objectives: "(1) to adjudicate to an adolescent offender status and those who have committed acts which if committed by an adult would be crimes . . . ; and (2) to adjudicate and treat therapeutically those girls whose conduct has been promiscuous, commercial and indicative of moral depravity . . ." The latter status, it might seem, would still leave the door open to admit the same evils which are not destroying the full value of the court.

In general, Professor Tappan hews closely to the line drawn for treatment of adult criminals by the more progressive penologists. The girl should enjoy full civil rights at a trial which should judge only her guilt and a thorough study of conditions should be made to determine the most desirable treatment to effect rehabilitation. Emphasis is placed upon the role of the psychiatrist, psychologist and sociologist. This practically is identical with the recommendations of reform penologists for treatment of all criminals. It may well be that Professor Tappan hopes to extend such treatment to adult offenders by application first to minors and this study is but the first step in launching a new era in penology. Thus, there is actually very little in the book which contributes anything new to penological philosophy. Its achievement lies in its dissection of an institution which theoretically offers a virtual panacea in treating youthful offenders yet which in practice falls far short of solving a vital social irritation.

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GENEVIEVE G. WELSHANS

MODERN CLINICAL PSYCHOLOGY. By T. W. Richards, New York, McGraw Hill Book Company, 1946. Pp. 331, \$3.50.

Richards' book, in the words of its preface, is "an attempt to integrate the author's personal experience in what he conceives to be the specialty of clinical psychology." His conception is an eclectic one, showing wide familiarity with the theoretical bases of clinical practice and with up-to-date diagnostic and therapeutic resources.

The scarcity of texts in clinical psychology has, in the past, signified the uncertainty and even timidity of those engaged in this specialty as to just what the field embraces. Clinical psychologists have been performing a growing list of functions, have developed useful techniques, and under the somewhat protective name of "counseling" have treated clients. They have, moreover, contributed a vigorous experimental attack upon the problem of scientific evaluation of methods and results.

Previous texts have been organized about problems and syndromes with which the psychological clinician should be familiar, but have

been slanted toward the diagnostic and referral role he has been expected to play through the use of his tests and measures. Although it has been assumed that he must be well-informed on the dynamics of personality and the symptomatology of abnormal states, a cautious stand has been held as to the use he might make of that knowledge without offense to psychiatric colleagues.

Richards fearlessly states that "in working with cases of severe behavioral maladjustment, then, the clinical psychologist and the psychiatrist have a similar function." He yields priority to the medically trained only in capacity to deal with physical disease and to prescribe drugs. From this point forward, he proceeds to a discussion of the practice of clinical psychology in all phases of handling behavior problems.

This will be considered high treason in some quarters, among conservative psychologists and psychiatrists alike. The book reflects, however, a security engendered in the war, during which psychology and psychiatry worked together, learning mutual respect and inter-dependence. It is to be hoped that the fitness of the clinician (whether psychologist or psychiatrist) will be judged not by medical or academic prestige, but by training, experience and personal qualifications for the performance of any or all of the functions described. It rests with psychology to continue its attack upon problems of training and certification if Richards' stand is to be justified.

Any book written from an eclectic view is likely to appear superficial from the standpoint of any one of its supporting theories. Richards' treatise is no exception to this generality. Personality and its abnormalities are explained here largely in terms of anxiety and the defenses which the ego allegedly adopts to allay it. There is heavy borrowing from psychoanalysis reordered to the author's concepts. An adequate amount of case material is presented, explained and interpreted not merely by discussion, but through samples of behavior obtained on tests of various kinds. The Rorschach and Minnesota Multiphasic are extensively quoted. Other types of projective test, as well as concept, intelligence and deterioration tests are discussed.

There is some question as to the level at which such a book may best be used in the training of clinical psychologists. It is intended for the junior professional student. Although clearly written and presenting a good overall picture of the field, it is doubtful whether the illustrative material is well chosen for an introductory text at an undergraduate level from which many students do not go on. The student who has not considerable familiarity with projective materials and who has not mastered intensive courses in pathological conditions is not prepared to avoid misconceptions derived from over-simplification of complicated subject matter. The reviewer would recommend the book for introductory graduate courses, or as correlative reading for more advanced degree candidates.

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HELEN SARGENT

SECOND ANNUAL REPORT OF EXECUTIVE DIRECTOR TO THE BOARD OF DIRECTORS, YOUTH HOUSE. April 3, 1945 to March 31, 1946.

This most recent mimeographed report of the principles which are being carried into effect in the handling of boys temporarily placed in Youth House, New York City, adds little to the original 1945 report which is new in theory. It does, however, further document the validity of the "non-punitive, helpful spirit of the staff" in coping with anti-social boys. The second annual report is well worth the attention of all those concerned with delinquency and its cure. It offers convincing evidence that the humanitarian, psycho-dynamic approach to behavior problems is not impractical idealism, but the most socially economic means toward the reconstruction of potential criminals. Those concerned with institutional management will find useful the detailed discussion of set-up and procedures in operation.

Northwestern University

HELEN SARGENT
