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Book Reviews

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BOOK REVIEWS

LAW REPORTS OF TRIALS OF WAR CRIMINALS, Volume II: THE BELSEN TRIAL, LONDON: The United Nations War Crimes Commission, 1947. H. M. Stationery Office, London, Pp. 156, 3S.

This volume deals with the trials of persons in charge of the Belsen and Auschwitz Concentration Camps. Of the forty-five persons charged with war crimes, one was not tried because of illness, and fourteen were found not guilty. Of the remainder, eleven were sentenced to death by hanging, and the rest to imprisonment for terms of from one year to life.

In an opening note, Lord Wright, Chairman of the United Nations War Crimes Commission, comments on the fairness with which the trial, some of which he witnessed, was conducted, and notes that the British court was limited by the Royal Warrant to trial of war crimes. It could not deal with crimes against peace and crimes against humanity, as did the Nuremberg tribunal.

The account of the trial includes a history of the proceedings, a summary of the evidence for the prosecution and for the defense, the arguments on law, the summary by the Judge Advocate, the verdict and sentences, and some editorial notes.

The most interesting feature of the report is the legal argument for the defense, by Colonel H. A. Smith, Professor of International Law at the University of London (p. 69ff), and the answer by the Chief Prosecutor, Colonel Backhouse (p. 104ff). The former argued that the offenses were not strictly "war crimes" because the acts were not committed in pursuit of military operations; that the tribunal lacked jurisdiction over some of the accused because their victims had ceased to be Allied persons after Germany annexed the territory in which they lived; and that the accused in any case were protected by German law and superior orders. The prosecutor successfully answered these arguments by noting that Allied nationals, whether prisoners of war or not, were protected by the laws of war; that title to territory could not pass while war continued; that international law, not national law, controlled in war crimes trials; and that the defense of superior orders was not absolute. In this argument there was considerable citation of precedents and military regulations.

Other matters dealt with in the arguments and editorial notes concern the jurisdiction of military courts, the admissibility of certain types of evidence, the question of group criminality, and the responsibility of states and individuals under international law. The defense was given an opportunity to argue the validity of the charges on fundamental principles on the theory that the provision of the Royal Warrant barring objections to the court or its jurisdiction did not bar attacks upon the charges.

The report is well presented, and makes valuable material available on the law and procedure of war crimes trials.

University of Chicago

QUINCY WRIGHT

AMERICAN MILITARY GOVERNMENT IN GERMANY. By *Harold Zink*. The MacMillan Company, New York, 1947. Pp. 272. \$4.00.

FINAL JUDGMENT: THE STORY OF NUREMBERG. By *Victor H. Bernstein*. Boni & Gaer, New York, 1947. PP.xii, 289. \$3.50.

American Military Government in Germany is an outstanding contribution to the literature on one of the most important problems of our day. Professor Harold Zink is eminently qualified to write on the subject of the American attempt to bring democracy to Germany. As Hall Professor of Political Science at Depauw University he is not only the author of one of the leading textbooks on American government, but also has produced numerous scholarly studies in comparative government and politics. Abandoning the seclusion of his university in 1943, he entered the U. S. Army. He was assigned to the German Country Unit of SHAEF (Supreme Headquarters of Allied Expeditionary Forces); he participated in the editing of the *Handbook for Military Government in Germany*, he served in the United States Group of the Control Council for Germany, and he was also a consultant on the re-organization of the German Government.

Military Government in Germany has been widely branded as a colossal failure. It has been unfavorably compared with the remarkable progress of General MacArthur in Japan. Professor Zink has been unsparring in his criticism of the defects of the military in Germany; but he has been equally emphatic in recording its achievements. He has brought to his study of Military Government an admirable poise and balance which permit him to point out in unmistakable terms the weaknesses of the American experiment in Germany while also depicting the enormous difficulties in the way of Military Government and the real accomplishments of General Clay and his officers.

As Professor Zink indicates, the War Department at an early stage in World War II was not unaware of the need of highly specialized experts. As early as 1942, the Department began to train selected civilians for Military Government. The author rightly proves that the training laid too much stress on military drill, while incompetent personnel greatly encumbered the training program. On the whole, however, the curriculum of the Military Government School at Charlottesville and at Fort Custer, as well as in the Civil Affairs Training Schools (CATS) in twelve universities throughout the United States was admirably conducted. After the assignment of the trained personnel to the German Country Unit of SHAEF at Shrivenham in England, which served as the Civil Affairs training center prior to D-Day, there was deplorable waste of time due to lack of proper direction. Many high-ranking officers were assigned to this task without adequate training or temperament.

The preparation for Military Government had been unusually complicated. In Washington, SWNCC (State War Navy Coordinating Committee) formulated a top policy which often was expressed by none other than the President, himself. In the European Theater, general responsibility for Military Government was entrusted to the Commanding General of the American Forces. During the period of combined Anglo-American headquarters, general responsibility for Military Government was delegated to G-5 of SHAEF. The United States Group of the Control Council for Germany was subordinated to this general arrangement. Eventually, G-5 of SHAEF gave way to G-5 USFET (United

States Forces, European Theater), and this organization later became OMGUS (Office of Military Government, U.S. Zone). In preparation for a Military Government, the *Handbook for Military Government in Germany* had gone through three editions. In addition, a multitude of forms and special manuals dealing with public safety, finances, local government and civil service had appeared. Thus, the Military Government officer had a mass of paper direction for his task. The over-all directive, however, was contained in the secret document known as JCS-1067, issued by the Joint Chiefs of Staff in Washington. These directions had been formulated partly under the influence of the Morgenthau Plan for vengeance upon Germany, and in some respects were far from realistic. Fortunately, by the time of the Potsdam Conference in July, 1945, the Morgenthau Plan was largely dissipated and more sensible counsels prevailed.

Professor Zink describes with clarity the transformation of the G-5 staffs into the offices of Military Government at the various levels after VE-Day. This development was under the supervision of Lieutenant-General Lucius D. Clay, who had assumed command of the United States Group of the Control Council in 1944. Dr. Zink expresses high regard for General Clay. He committed various petty blunders, but on general policy he was eminently sound.

As Military Government settled down to its task in Germany, it was confronted with the directives of the Potsdam Conference. The application of these directives in many cases was found to be extremely difficult. The directives for de-nazification or the removal of all Nazi officers from the government services was a perplexing assignment. Wherever the process of de-nazification was carried too far, the efficiency of local government was seriously crippled. The problem of re-educating the Germans seemed almost insuperable. American traditions opposed any program of forcing propaganda upon an alien race. This laudable attitude tended to make educational planning in the American Zone overly cautious, negative in concept and lacking in dynamic character. The goal of democratization was barred by numerous obstacles. Military Government officers were hesitant to compel the introduction of democratic processes. Nevertheless, some pressure had to be exercised. The economic program was unquestionably the most complicated problem, and here Military Government had to fight against the disastrous provision which divided Germany into four separate zones between the British, American, Russian and French Governments. In spite of all these obstacles, Professor Zink believes that the American civil administration proceeded with reasonable promptness and efficiency. The task was stupendous and mistakes were inevitable. Most of them were due to the tendency of the President and the State Department in Washington to allow the situation in Germany to drift.

The volume contains several helpful maps of the United States Zone in Germany and organizational charts of OMGUS, the Allied Control Authority, political parties in the American Zone, and level of industry plan for 1949 production in Germany. Almost the only imperfection of the book is the lack of a glossary of symbols. War Department and military agencies are so numerous that even officers familiar with military government find it necessary to refresh their memories in regard to symbols.

Final Judgment by Victor H. Bernstein is not in the same scholarly category as the study of Professor Zink. The author covered the Nuremberg Trials for an American newspaper. His chapters depicting the guilt of the Hitler group gloat over the humiliation and condign punishment inflicted upon the twenty-two defendants brought to justice for their war crimes before the International Military Tribunal. The story as told by the author is impressionistic and desultory, and fails to give an adequate appraisal of the trial and its significance to civilization. The book contains a considerable amount of data on Nazi crimes, including genocide, concentration camps, looting and Jew baiting.

Northwestern University

KENNETH COLEGROVE

THE LONG HOLIDAY. By *Francis Ambriere*. Ziff-Davis Publishing Company, Chicago, 1948. Pp. 264. \$3.00.

Francis Ambriere wrote most of *The Long Holiday* during the 56 months he was a KG (*Kriegsgefangener*—prisoner of war) in Germany. In 1946 the book won the author the *Prix Goncourt*. More than 200,000 copies of the book were sold in one year in France. The author is one of the leading young journalists who “went to war willingly” to discover that “the dormant French Army” was staffed by officers who “could solve difficult geographical problems in the calm of a shelter” but were “powerless puppets when the Germans struck on the 10th of May 1940.” To the author the early stage of the war before the fall of France was but a “war of Eunuches” which revealed the “miserable state of weakness to which our leaders had reduced us.” His own weapon was an old 1872 model revolver and his battery 200 men with only three machine guns “which never failed to jamb at the fourth volley.” With these he was ordered to “shoot down any German airplanes flying low over our position.” The defeat of France followed “a battle waged by impotent warriors.”

After capture by the Germans the French KG's were herded to positions behind the lines where they passed through the period of stupor common to all prisoners of war. In this initial misery of capture and defeat the French KG's brooded over “the stupidity and weaknesses which we had witnessed”—a mentality assumed by most war prisoners. But there were Frenchmen who died fighting. In captivity some of the KG's developed a kind of “communion of the living with the dead.” F. Ambriere was one of those rebels who carried his fight against tremendous odds even as a prisoner of war.

For the French KG's there were many obstacles of which the most serious was a “stealthy stultifying stupor.” Beyond this the Nazi captors used French collaborators to convert the French KG's to the “obliging attitude of the Vichy government.” A large number of the French KG's willingly or unwillingly accepted the Vichy view and joined the labor forces or agreed to work with Vichy for the Germans and were soon repatriated. The author was not among these. Because of this and the fact that he with three others failed in an escape to “get back to France by Christmas” he was assigned to the “tough men's barracks.”

In the second year it was not exile and confinement alone but “the permanence of the exile and the confinement” that wore down the prisoners. This tended to divide the KG's into those who “trafficked with the Germans and who in turn were liberated” and those “who

refused to betray our cause and make a travesty of truth." At certain points in this isolation "duty became obscure and the clearest notions so distorted that it was not plain to everyone that Germany was our enemy." Only those who endure in isolation can understand this situation and "captivity probably contains something which can never be conveyed." This was especially true for French KG's while their own country was divided and directed under Vichy to the point where packages sent to the prisoners from France contained leaflets advising collaboration. Even French official delegates wearing the Nazi insignia visited the prison camps in Germany and "preached resignation and submission to the Great German Reich." At other times the KG's were informed officially that the "French Government has decided not to request implementation of the Geneva Convention." This to the author was "irrefutable proof of the betrayal of 1,500,000 men by their own government."

As captivity entered the third year the KG's were assigned to labor battalions, agricultural groups, forest commandos while those who refused to work or tried to escape were sent to three penal camps at Graibenz, Rawaruska and Kobercyn near Cracow in Poland. Here in the late fall and winter of 1943 in isolation the KG's waited for the Allied landing that never came and only the news from the east of the "Stalin-grad epic" gave them some hope. While there was greater isolation in these camps there were a few meager comforts and "considerable barter between the captives and the guards."

Just as the Allies were at the Rhine the author was convicted by a military court in Marburg for "insubordination in the presence of an armed force in war time" which, according to the Hitler military code, was punishable by life imprisonment or death. As a result he spent months in solitary confinement. After the advance by the Russians from the east and the impending attacks in the west the author and others were moved to the south. Then came the rapid denouncement during which large numbers of prisoners of war died of hunger while the "German army was falling to American mechanical superiority" and General Patton's men spread rapidly across the rolling hills. On April 20th 1945 Francis Ambriere entered *Gare de l'Est* in Paris from which he had left almost five years earlier as a soldier of France. He was at home.

Ambriere's book should be read not as a scientific treatment of war prisoners but with understanding as the outpourings of the experience of a patriotic Frenchman who suffered endless hardships at the hands of the enemy and his own country. For the reviewer, as one of those Americans who participated in the liberation and later repatriation of French prisoners in Germany, the book has been most interesting. As a post-war book it has significance. Very few, if any, of the French soldiers were instructed prior to combat of their rights under Article 27 of the Geneva Convention which prohibited the employment of prisoners of war in war industries. In addition the book depicts the many flagrant violations of the Geneva Convention relative to the treatment of prisoners of war. It might be that peace allows people to forget this and maybe some think it is unimportant but to the ten million prisoners of war it is, *or was*, important, especially so when some of these still remain prisoners of war in 1948.

HANDBOOK ON CLASSIFICATION IN CORRECTIONAL INSTITUTIONS. Prepared by The Committee on Classification of the American Prison Association. New York, 1947. Pp. VIII, 88.

At the Annual Congress of the National Prison Association in Cincinnati in 1890 Warden A. A. Brush of Sing Sing, speaking on Prison Discipline said: "When you consider that our prisoners are composed of boys, men just entering manhood, the middle-aged and the old, and that they come here with every conceivable distortion of character; and the different nationalities with which we have to deal; some hot-tempered, quick to take offense, which has led them into trouble and caused their incarceration; others phlegmatic and not easily moved; another set sly and calculating; another with character so distorted that they are almost desperate, and with a very little mismanagement will become incorrigible, it will be easily seen that but few general rules can be laid down."

Despite the obvious truth of Warden Brush's analysis and the same pronouncements of wardens before and after him, American prison administrators assume, expressly or implicitly, that all inmates are members of a specific class, and acting on that assumption, have persisted in management policies which, if we believe their words, are diametrically opposed to their statements of the realities of the prison community.

No one familiar with the problems of prison administration, the difficulties inherent in the nature of the situation, the dissatisfaction of the public, and of serious students of modern penology, can enter a dissenting voice in negative criticism of the enlightened and socially intelligent suggestions and recommendations formulated by the outstandingly competent leaders in this brief but well-organized handbook.

There are three or four emphatic points of view set forth. (1) Prisons are for protection of the public. This does not mean temporary custody based on an out-of-sight brand of penology. (2) Prisoners are human beings. They are subject to the same worries, fears, hopes, frustrations, insecurity, status feelings, resentments, and uncertainties as the rest of us, only more so. Such treatment as they receive and such plans as are drawn up for them must be definitely related to their needs now and after release. (3) Those charged with the responsibility of reorganizing attitudes associated with their offenses must be the types of persons who can gain and hold the confidence of the inmate so that he sees the value of the program devised for him and finds in it an objective worth striving for and achieving. No arrogant use of authority, no sentimental regret for the poor unfortunates, but a sympathetic and intelligently firm application of the fundamental principle of adult conduct that inheres in demonstrating one's competence to do a given job by doing it—whether it be a maintenance job in prison or leading a law-abiding life after release—by assuming one's moral and legal obligations and successfully fulfilling them.

The philosophy of classification, the organization and personnel of reception centers, the function of admission classification, the value of reclassification and progress reports, state-wide uniformity of reports and standards—all these are handled in clear, elementary language by men who are no starry-eyed world movers, no ivory-tower academicians, no ladies'-club speakers on "the prison problem" but hard-headed realists who *know* that if social protection is ever to be achieved it must come after the person is released, not while he paces the exercise yard hard by

the wall talking over his technical failures with a colleague whose faulty technique landed him also in the same exercise yard.

In essence, it is hoped through classification based upon complete social, vocational, educational, psychological, medical, psychiatric, recreational, and religious knowledge about each inmate to have at least a fair basis for planning the inmate's stay so that he may derive a maximum benefit from the institution, that the prison may gradually be socialized, that the parole authority may be as wise as humanly possible in its handling of applications, that the parole supervisor will be in a position to do the best possible job with the man on parole, and the community will be assured that every bit of relevant information that could be found was integrated into the program which will produce a responsible and useful citizen.

It seems to me that classification, in the last analysis, is merely grafting a sound procedure upon a decadent, if not defunct, system of handling non-conformists. The way of the transgressor may be difficult, but the way of handling the problems of the transgressor in a socially mature, enlightened and profitable fashion is indeed harder. When prisons cease to be penitentiaries there will be neither criminals nor prisoners, only persons in need of social guidance. With the best will in the world and the greatest solicitude for social security and integrity, there will be no peace until we get rid of the walled areas of evil and start from the ground up with a new orientation and a new philosophy which will embody the fundamental truth that each person is a different being and as such, within latitude, must be so recognized despite the criminal code, even as you and I.

This does not mean that intelligently conceived pre-parole plans are futile but rather to suggest—perhaps “indicate” is the better word—that any institution, no matter how enlightened its management, whether addressed to the individual or the larger purpose of social protection, can achieve little so long as rules and regulations are imposed to which every person must conform, whether they make sense or not to the person, or whether persons who must conform to them find any reasonably sensible meaning or purpose in them.

For men on parole there is still the typewritten sheet of rules that commands every parolee to eschew a glass of beer or changing his job, getting married, or even associating with his “old associates.” “Individualized treatment” sounds dangerously like “trial-guilt-conviction-commitment-rules-mechanical conformity-release-obedience-violation of parole” to this reviewer.

If the present institutional method of disposing of violators of a moderately anachronistic moral code must or will be retained, then this little handbook per square inch contains more grown-up, non-juvenile, sound sense than all the learned, esoteric, and mosaic conclusions of criminal court judges and district attorneys put together—or even foremen of juries who listen to and beam at lawyers who are gathering votes to be judges.

In short, this volume makes sense—rare indeed in these days of editorial-writer social policy.

Credit should be given to Lewis Drucker and Frank Loveland, Chairmen of the Committee 1944-46 and 1946-47 respectively.