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Book Reviews

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BOOK REVIEWS

CRIMINAL PROCEDURE FROM ARREST TO APPEAL. By *Lester Bernhardt Orfield*. Judicial Administration Series, New York University Press, New York, 1947. Pp. 614. \$5.50.

Professor Orfield, in his scholarly, well-documented book on "Criminal Procedure from Arrest to Appeal," has made a substantial contribution in the field of administration of criminal justice. The nine chapters in the book deal specifically with arrest, preliminary examination, bail, grand jury, indictment and information, arraignment and preparation for trial, trial, motions after verdict, and sentence and judgment.

The author has traced the development of the tremendous progress that has been made in setting up safeguards to protect the rights of defendants in criminal cases. In some instances, procedures that were originally intended to aid the prosecution have gradually become defense measures almost exclusively. As an illustration, the preliminary examination, historically, was for the benefit of the prosecution. Today it is almost wholly utilized for the benefit of the defendant. Its present basic purpose is to save the innocent defendant from the annoyance and costs involved in defending himself in further proceedings. The defendant has also greatly improved his position in such procedures as the grand jury. In the earliest days of the grand jury, indictments returned by it were tried by ordeal. When ordeals were abolished in 1215, each indictment had to be referred back to the grand jury to which other colleagues were sometimes added. Finally, after the lapse of a century, the practice developed wherein the new jurors alone undertook the responsibility of deciding the guilt or innocence of the accused. A statute of 1352 specifically excluded the original accusers. This history explains the existence of the two juries commonplace in our system of jurisprudence today. The defendant's position was still not materially advanced, however, since as late as 1554, jurors were imprisoned and heavily fined for acquitting a defendant. The right of the jury to return any verdict it thought proper without being subjected to punishment at the will of the court was finally established in 1670 in *Bushel's case*. The progress of the law in securing the interests of the accused individual is further illustrated by the fact that today, in many criminal trials, the testimony of the defendant weighs heavily in numerous acquittals whereas at common law the defendant was not considered competent to testify.

Professor Orfield's book is replete with data concerning reforms designed to inure to the benefit of the defendant. In fact, our emphasis on reform has been primarily in the direction of protecting the interests of the accused. Unfortunately, very little substantial progress has been achieved in removing abuses which frequently result in the demoralization of duly constituted law enforcement agencies and enable the organized professional criminal class to prey upon society with virtual immunity in many areas. While Professor Orfield does not attempt to explain why the rights of the innocent law-abiding citizens are given but very little consideration in most attempts at reformation

of criminal law and procedure, many reasons could be offered. For example, that our concern has been almost solely with the rights of the defendant, is traceable in part to the tremendous influence of professional criminal lawyers in many state legislatures as well as in their capacity as advisers of lawyer committees which study and initiate legislation in the field of criminal law. Too frequently such committees are largely composed of lawyers who have never had any firsthand knowledge of criminal law as it is frequently applied in the criminal courts. They lend an attentive ear to the constant theme of lawlessness on the part of the police but there is little realization of the needed removal of prevalent lawlessness on the part of many criminal lawyers and occasionally even of judges themselves. And with almost every session of the Supreme Court more and more restrictions and technicalities are placed as obstacles in the path of efficient law enforcement which in turn has become much more difficult due to the complex nature of society today.

Professor Orfield's book relates that as far back as the Seventeenth Century, Sir Matthew Hale objected to the technical rules which had been imposed as to the sufficiency of indictments. He wrote: ". . . more offenders escape by the over easy ear given to exceptions in indictments, than by their own innocence, and many times gross murders, burglaries, robberies, and other heinous and crying offenses, escape by these unseemly niceties to the reproach of the law, to the shame of the government, and to the encouragement of villainy, and to the dishonor of God." Almost three centuries later, President Herbert Hoover on April 22, 1929 stated that every "student of our law enforcement mechanism knows full well . . . that its procedure unduly favors the criminal" and that in "our desire to be merciful the pendulum has swung in favor of the prisoner and far away from the protection of society."

Many of the weaknesses in our present administration of justice are treated realistically by the author. It is pointed out that the modern law of arrest is antiquated and has not been changed to meet changing conditions. In the matter of detention for questioning and investigation, Professor Orfield states that there is clearly needed a statute that will give police officers the right to detain for further questioning and investigation those persons who are reasonably suspected of having committed a crime. At common law an officer had no right to search a suspect before arresting him. But this rule antedated criminals armed with four inch pistols. The author believes that a statute making frisking legal in certain cases would be helpful and that the act of frisking should not be regarded as an arrest.

"Criminal Procedure from Arrest to Appeal" is not a book that is of interest only to the student. It should be of exceptional use to those who are interested in bringing about the enactment of laws that will not only protect the innocent but will give a more adequate protection to society as a whole. As stated in the foreword by Dean Arthur T. Vanderbilt, "The only way to induce effective respect for law is to make the law worthy of respect. Professor Orfield points the way in the important sphere of criminal procedure."

VIRGIL W. PETERSON

Operating Director of the Chicago Crime Commission

LA PICOTA EN AMERICA. Contribución al estudio del derecho penal indiana con 12 laminas fuera de texto. By *Constancio Bernaldo de Quirós*: Jesus Montero, La Habana, 1948. Pp. 205.

Little is said of the pillory in our textbooks of criminology. The most I could find was half a page in Barnes' and Teeters' "New Horizons." Yet the stocks were the most common method of punishment for thousands of years, already mentioned by Aristophanes and well known to Roman criminal justice. Hundreds of pillories can still be seen in European cities and villages and more can be found in provincial museums. Professor Bernaldo de Quirós has therefore deserved the appreciation of criminologists by collecting and describing the pillories still to be met or remembered in Latin America. We are conducted by the learned author of the book on the "Gallows in Spain" from the Dominican Republic down to Argentine. Some of the oldest pillories are those of the first city of Panama (founded in 1519) and the "picota" of Vera Cruz, founded the same year. Whoever reads the history of Mexico City runs, on every page, into the application of the pillory which stood close to the gallows on the square of the National Palace. In fact the old and valuable prints published by Professor de Quirós demonstrate that the "picota" was a part of the gallows, standing in the middle of its four columns.

The small book is a welcome addition to our knowledge which is rather scanty as far as the history of legal institutions in the Southern part of the hemisphere goes. It is, in spite of much poverty and a slower tempo of mechanical civilization, the land of an old culture.

University of Kansas City

HANS VON HENTIG

LEERBOEK DER MISDAADKUNDE. By *J. M. van Bemmelen*: *Criminologie*. W. E. J. Tjeenk Willink. Zwolle, 1948. 416 pages.

There they come, the European textbooks of criminology, de Greef in Belgium, Stefan Hurwitz in Denmark and now my old friend van Bemmelen who has the chair of criminal law at the Unisersity of Leiden. Cut off more or less from Continental science for nearly ten years we are eager to compare our and their progress, our and their figures, our and their findings. The result of this comparison is that the European criminologists have been working hard, that they have been reading a good deal of the British and American literature and that the criminologists in this country will have to make a definite effort to remain on top. I am deeply impressed with the use Professor Bemmelen is making of mass observations, especially the excellent Dutch statistiëns. His has two large chapters, on vocation and religion, as related to delinquency, and a still larger part dealing with the human personality, mental deviations, temperament and character affecting criminal behavior. He is right in adding the phenomenon of suicide which in many cases is an outburst of violence with a minus sign. There are some good pages on the souteneurs and their girls resting mostly on Tage Kemp's exemplary Kopenhagen studies and some German predecessors, and of course a thorough discussion of age, sex, marital status, geography, broken home and other issues connected with crime.

The book, its facts and interpretations, are most readable and instructive. It merits our attention, and, in some parts, our emulation.

University of Kansas City

HANS VON HENTIG

LOS VALORES JURIDICOS, Revista Juridica de Cordoba. By *Sebastian Soler*. Buenos Aires, 1948. 53 pages.

This booklet treats the "values of law," following the doctrines of Kant, Hartmann and Husserl, and the theories of Kelsen (now in Berkeley) and Felix Kaufmann, who recently returned to Munich to assume the chair of legal philosophy. The criminologist will read with great interest Soler's arguments on the "creative character of the criminal sentence." The reader who is fond of delicate philosophical distinctions will enjoy Professor Soler's discussion of the two rules: *nullum crimen sine lege* and *nullus iudex sine lege*. Yet do the deductions of this sagacious mind not remind us a bit of that *logique du coeur* he mentions himself? Or will we—will he—deny that there are *valores*—values of the heart too? The function of law, however, is to counter-balance the vacillations of our emotional life. The Law is the drab and dreary bisector, much worse than the best judge and better than the worst of them.

University of Kansas City

HANS VON HENTIG

Home Office CRIMINAL STATISTICS FOR ENGLAND AND WALES, 1939 to 1945 (Cmd 7227) London, 1947. Pp. 46. 9s.

Prior to the war the Home Office of the British Government published detailed annual reports on criminal and judicial statistics for England and Wales ranging from 150 to 200 pages in size. The present 46 page compact abridged summary is the first official statistics to appear since the beginning of World War II. Paper shortages and lack of necessary materials have curtailed other publications and the size of the present report.

During the years 1939 to 1945 most non-indictable offenses decreased except offenses against the Education Act and Cruelty to Children. Of indictable offenses, acts of violence against persons increased from 1,583 in 1938 to 2,459 in 1945, sex offenses from 2,045 to 2,400, fraud and receiving stolen goods from 5,333 to 9,364, breaking and entering from 10,814 to 21,260 (16,554 in 1944) and larceny advanced from 56,092 to 75,975 for the same years. Offenses by males increased 44 per cent and 73 per cent for females.

Juvenile offenses (ages 14 to 17) before the Court of Assize, Central Criminal Court and the Quarter Sessions increased from 240 in 1938 to 678 in 1945. Cases of adolescents (17 to 21 years) rose 100 per cent from 2,004 to 4,260 and adult cases (over 21 years) increased 44 per cent from 6,367 to 9,170. Of juveniles found guilty probation was granted in 51 per cent of the cases in 1938 and 41 per cent in 1945 and of adolescents 45 per cent in 1938 with only 24 per cent in 1945. Of the adults 15 per cent received probation in 1938 with only 6 per cent in 1945. In the same years fines almost doubled in percentage. Sentences of corporal punishment, whipping of boys under 14 years of age, increased from 58 in 1939 to 531 in 1941 and then declined to 25 in 1945. In the seven years the total "Crimes Known to the Police" increased from 303,771 in 1939 to 478,394 in 1945. In terms of index numbers (1939 as 100) violence against persons rose to 164 in 1945, sexual offenses to 170, receiving stolen goods and frauds to 133, breaking and entering to 210 and larceny to 147. The total number of murders varied from the high of 159 in 1942 to the

low of 95 in 1944 and 141 in 1945. Suicides decreased from 5,263 in 1938 to 3,611 in 1944 with an increase to 3,818 in 1945. From 1939 to 1945 1,275,889 persons were charged with violating Defense Regulations of which 928,397 related to "Lights and Sounds" (Blackouts) and 113,799 involved "Control of Industry." Of these total cases 1,204,141 were fined and 12,138 imprisoned. Conviction for indictable offenses according to age groups revealed the age bracket of 14 to 17 to be the highest, i.e., 14 and under 17 1,967 per 100,000, 8 and under 14 1,361, 17 and under 21 1,246, 21 and under 30 610 and 30 and over 236 with 572 for all ages.

These statistics for England and Wales need to be interpreted in terms of the country and years, 1939 and 1945, during which the British Isles suffered from the enemy Blitz, and served as a military base for allied armies when the war disasters reached every city and hamlet of the nation. As early as 1943 the government began reconditioning some of the older prisons which had been closed for years. In 1944 the governor of one of these prisons said to the reviewer "we expect to use them again when the war is over."

WALTER A. LUNDEN

Iowa State College

FORCED LABOR IN SOVIET RUSSIA. By *David J. Dallin* and *Boris I. Nicolaevsky*. Yale University Press, New Haven, 1947. Pp. 331. \$3.75.

For a number of years books have been published describing prison life, forced labor camps and correctional methods in Russia. *Forced Labor in Soviet Russia* is the best book published thus far from the viewpoint of authenticity, documentary evidence, method of presentation and coverage of subject matter. The two authors explain the development and changes in Russian criminal law, judicial procedure and the correctional or prison system. They describe the organization and location of the camps, and depict the inhumane conditions from eyewitness accounts.

In America most students of crime have given little attention to concentration camps, labor stockades and similar methods of treating "socially dangerous people" because political prisoners play such a small role in our legal and correctional system. Another reason for the lack of concern may be due to the "excellent" method by which actual conditions are concealed from people outside as well as inside Russia. There is not just an *Iron Curtain* but a multitude of curtains within Russia (p. xii). The authors of this book have done more than expose a system of penal slave labor, they have shown how that slave and penal system has been integrated with the structure and the functions of Soviet Russia.

Accurate information about conditions within Russia is difficult to obtain, but the authors estimate that the total number of slave laborers in Russia is between eight and 20 millions with about ten millions as a "good figure." The book contains maps showing the names and locations of 125 slave labor camps scattered throughout the country, of which 42 are in Eastern Siberia and the Far East. The prisoners in these camps are classified into three general types; 1 the professional criminals, 2 the *Bytoviks* and 3 the political offenders. The professional criminals who constitute the small minority are the best fed and clothed

of all prisoners. The *Bytoviks* are those public officials who have been found guilty of illegal practices or mal-administration in business or in the government. Many of these hold the administrative posts within the camps, thus reducing the guard-prisoner ratio to a minimum. The political prisoners are peasants who opposed the collective farm program, persons who resided in the border towns for a time, people condemned for religious beliefs, certain state officials who have "fallen from grace," collaborators and Russian repatriated prisoners of war. Most of the prisoners or slaves in the penal camps have been sentenced by some agency within the Russian Secret Police.

According to the authors the slave labor camps have arisen because they are "cheap"; no capital is needed to operate and maintain them. Each camp not only "pays" for itself but it must also fit into the various five-year productive programs of the entire nation. In addition the slave camps remove the absenteeism and some of the undesirable labor practices which had hampered the First Five-Year Plan.

One of the most significant parts of the book is its treatment of the changes in the judicial and penal systems within Russia since the Revolution. As early as 1917 Lenin maintained that Communism would abolish prisons and crime itself. "In the land of Socialism there could be no prisons. Prisons are the remnants of a capitalistic civilization, monuments of barbarism and cruelty" (p. 151). "Crime," said Lenin, "is a form of social excess" . . . "The source of crime is to be found in poverty, hunger, voluntary idleness of the rich, and involuntary idleness of the poor; moral degradation is the result of social disharmony" (p. 149). In due time all the official documents within the country deleted the word "prisons" and used the term "corrective educational institutions." Then came the Great Disappointment. In spite of the NEP, the "Plans" and official declarations, criminality did not disappear but reached an all time high in 1926 when there were 2,365,000 official criminal cases before the courts with about 1,600,000 persons charged with certain disciplinary actions. Criminal litigation mounted, the courts became congested and decisions could not be carried out because of the overcrowded conditions within the prisons. In addition there were certain financial troubles because the state could no longer pay prisoners the 75 per cent of normal wages prescribed by law. All of these conditions brought an *impasse* which had to be met either by reducing criminality or by establishing new and larger prisons. The government chose the latter—prison labor camps.

When the First Five-Year Plan became law the first decree in 1928 provided for a "greater use of penal labor." The Commissariat of Justice did not have to look far for a "model" for their new prison labor camps because one had been in operation since 1923 in the Old Solovetski Monastery in the Murmansk Region near the White Sea. Soon slave labor camps sprang up with prisoners cutting timber, building railroads and canals, expanding old harbors, mining coal, gold and other metals, drilling oil wells and developing resources in the country. The authors give detailed accounts of these camps together with their location and the names of many of the men in charge of them. There is a special account of the gold mining in the Kolyma region, "The Land of the White Death" where temperatures drop as low as 92 degrees below zero. Prisoners were transported by ships

to these regions, driven ashore to work and to live in the land of "geological ice." Here prisoners died in great numbers from cold, lack of food and shelter as well as by bullets.

World War II brought changes in the prison system of Russia. The term "Katorga," i.e., penal servitude, was re-introduced into the judicial system, great masses of people were "relocated," border people were "collected," and the enemy prisoners of war had to be "cared for" in some fashion. At the end of the war when civilian and Russian prisoners of war were repatriated, new candidates appeared for the slave labor camps. Unlike the Western nations a Russian repatriated prisoner of war is a man without a country. According to Red Army regulations Russian soldiers and officers must "commit suicide rather than surrender alive" to the enemy. Therefore, a repatriated Soviet prisoner of war is an outcast and a traitor. This explains why the suicide rates were so high among Russian prisoners in the American Zone of Occupation in 1945 and 1946 when the American Army began returning them to Russia.

Forced Labor in Soviet Russia is an excellent account of how the Revolutionary penal philosophy of 1917, which condemned prisons as capitalistic barbarism, 30 years later created the most extensive slave and penal system yet known, far outdoing the Nazi leaders, with "unlimited coercion, of serfdom, slavery and penal servitude."

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WALTER A. LUNDEN

CRIMINAL PSYCHOPATHOLOGY: A BRIEF INVENTORY. By *Ben Karpman*, M. D. (Included in: PROGRESS IN NEUROLOGY AND PSYCHIATRY, an annual review, Vol. III. E. A. Spiegel, Editor.) New York: Grune & Stratton, 1948. Pp. 661. \$5.00.

This annually issued review of advancements in the fields of neurology and psychiatry ought, without doubt, to prove valuable to workers who are interested, in a general way, in either of the two sciences with which the review deals. Of particular interest, on the other hand, to those following developments in criminology or criminal psychopathology is Chapter 26, entitled *Criminal Psychopathology: A Brief Inventory*, by Benjamin Karpman, M. D.

Within the limits of approximately fifteen pages, Karpman has given us, in a lucid and thought-provoking manner, a comparative survey of principal trends evinced in present-day criminal psychopathology. It constitutes no exaggeration whatever to declare that this author's task has exceeded in difficulty the task of any other single contributor to this annual review, because, as he himself so explicitly points out, criminal psychopathology, as such, is of relatively recent origin, with the result that there exists a paucity of literature dealing with the subject.

Karpman mentions the controversy existing even now among medical men who devote a portion of their time and energy to the psychopathology of criminal behavior. According to his understanding, a condition which by one psychiatrist would be regarded as falling into the domain of distinctly abnormal phenomena, would by another psychiatrist be deemed to follow a pattern belonging more nearly to the normal. No doubt Karpman has made a valuable point in the differentiation which he formulates between "conventional" and

“dynamic” psychiatrists. Whereas the former may be prone to consider a particular reaction as falling within the limits of the normal, the latter maintain and advocate a more comprehensive conception of psychiatry, including within the scope of their investigations all forms of irrationally or unconsciously motivated behavior over which the individuals themselves appear to exert no volition. Undoubtedly the latter type of psychiatrist finds himself in a better position to grasp and explain the vagaries associated with criminal tendency.

Another significant question posed by Karpman is that of paraphilia. Conventionally, as we all well know, sexual deviates are regarded as “psychopathic personalities,” to employ a term the vagueness of which seems to be perpetually on the increase. The reviewer emphatically agrees with Karpman that “if one takes into account more than their merely superficial behavior, they too will be found to belong to the group of neuroses,” for the reason that in a large number of cases a particular species of object-choice (Freud) will prove to be dynamically motivated in accordance with a fixation upon some component impulse (Freud).

In view of the foregoing, we are compelled to recognize that there appear to exist two separate trends in the domain of criminal psychopathology, and that either trend may lead the investigator to study the problem from his own circumscribed point of view. At the same time, however, we are forced also to acknowledge that it is the more dynamic concept of neurosis, psychosis, and psychopathy which is more likely to prove fruitful in the ultimate comprehension of such motives as underly the propensity to crime.

In the fourth section of his contribution to this volume, Karpman offers a concise inventory of the criminologic significance of the four main classes of personality disorders: namely, mental deficiency, psychosis, neurosis, and “psychopathic personality.” He also devotes some space to the literature which was published in 1947 on the subject of criminal psychopathology. Here again the reviewer desires to record his complete agreement with a view expressed by Karpman—the view that some Freudians who undertake to tackle the problem of criminal behavior manifest from time to time an unfortunate tendency towards speculation and over-interpretation.

Chicago

NATHANIEL THORNTON
