

1950

Book Reviews

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Recommended Citation

Book Reviews, 41 J. Crim. L. & Criminology 76 (1950-1951)

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BOOK REVIEWS

CRIMINAL LAW ADMINISTRATION AND PUBLIC ORDER. By *George H. Dession*. Michie Casebook Corporation, Charlottesville, Va., 1948. Pp. 1081. \$9.50.

Professor Dession unquestionably has produced a brilliantly outstanding work. By it the impact of what has been identified as the "approach" of the modern Yale Law School has been brought to a new field of law, and as usual the field may well never be quite the same again. This does not mean, of course, that all of the ideas which have inspired the work will gain immediate acceptance. On the contrary, many of them will not, and probably some of them never will. Nevertheless, it is quite possible that in time "Criminal Law Administration and Public Order" will become known as the prototype of all teaching materials in the field of criminal law, its procedure and administration.

While perhaps it is difficult these days, in view of the current widespread innovation and experimentation, to say what is orthodox in teaching materials, most persons would agree that Professor Dession's volume is *unorthodox*. A brief resumé of the content may be in order. Part I (pp. 1-206), entitled "Crime, Sanction and Policy," is very general in character. It presents the questions of what conduct historically has been considered criminal and what standards have been applied in making this determination, and what types of sanctions have been applied, as well as certain "policy" considerations involved in such problems as "*nullum crimen sine lege*," the use of analogy in criminal law, the objectives of sanctions, the use of preventive measures as opposed to "depriving sanctions," etc. Part II (pp. 207-388), entitled "Initiation of Proceedings: Distribution of Power and Participation," is concerned with pre-trial matters, the inclusion of at least some of which represents a departure from the traditional in criminal law and procedure courses. Here are treated such problems as jurisdiction (including that of nations) and venue, and the duties, powers and activities of police, "inquisitorial" bodies, and public prosecutors. Part III (pp. 389-800), entitled "Theories of Action," includes the major portion of the substantive criminal law and the definitions of crimes. Professor Dession has made that arrangement of this material which first introduces principles common to the field of crime generally, and then presents specific crimes. Part IV (pp. 801-1011), entitled "The Criminal Proceedings," is the part devoted to "criminal procedure" in the more traditional sense. Part V (pp. 1012-1052), entitled "Penal Administration," includes chapters on "Status and Rights of the Convict" and "Release Procedures."

Basic to Professor Dession's presentation are the following notions, among others: (1) The criminal law, in *all* of its aspects, is increasing rapidly in importance, and, in fact, has always been more important than law students are commonly led to believe. It should be studied on a practical as well as on a theoretical level, and the interest of all law men in the practice and administration of criminal law should be greatly stimulated. (2) The federal criminal law rivals, if it does not exceed, the local criminal law in importance. (3) The increasing use of criminal sanctions in many traditionally non-criminal fields of law, especially the regulative field, has not only helped to increase the importance of criminal law, but also has produced new problems. (4) The increasing emphasis upon comparative and international law should be reflected in the field of criminal law. (5) The study of substantive criminal law should be integrated with that of criminal procedure, and *both* should be integrated extensively with the social sciences. (6) The emphasis in this field is constantly shifting away from the relatively sterile process of cataloguing traditional "crimes" and "penalties" toward the more productive process of devising new preventive measures and more effective administrative procedures.

While there is already a considerable measure of acceptance of these ideas, and while Professor Dession's presentation of his material has been brilliantly directed toward realization of his objectives, it is not difficult to imagine reasons why the publication will probably not gain immediate widespread adoption as a teaching device. There are still many law schools which find it either necessary or expedient to divide the subject matter of the work into two courses, and in many schools only the substantive criminal law material is *required*, as a "background" course. The balance of the material, if offered at all, is elective. Professor Dession probably did not contemplate the division of his work between two courses (although it would be an interesting experiment to use Parts I and III together as one course, and Parts II, IV and V together as another), thus restricting somewhat the potentiality of its use. Even if a school offers a single required course embracing both criminal law and procedure, it is to be doubted whether it either would or could devote enough time to such a course to enable the instructor to use Professor Dession's materials to the fullest extent. It is extremely long and comprehensive, and an examination of the total number of pages and the Table of Contents alone is deceptive. A great mass of material is presented in text notes and in footnotes printed in quite small type—many of which concern problems of great importance and which would have to be stressed equally with the more prominently displayed material. Moreover, there are objections of numerous types from the point of view of the more conservative instructors. Some may feel that Professor Dession has tried too zealously to corral problems which may be handled more effectively in courses such as Constitutional Law, Administrative Law, Corporations, International Law, etc. Others will doubt whether the use of this work in class, de-emphasizing as it does the case-by-case development of legal doctrines, will enable the course in Criminal Law to bear its share of the burden of training students in the case method of the common law. Many instructors will doubt that the federal criminal law is as important relatively in most sections of the country as Professor Dession indicates. Most will regard his presentation of the substantive law of crimes as too brief. Professor Dession apparently believes either that the student need not have detailed information on this subject or that he can obtain it for himself. Moreover, instructors who are (or, perhaps, *must be*) more bar-examination conscious and who are accustomed to a less carefully selected student body will dispute him on both counts. And finally, the fact that one must learn a certain amount of "Dessionese" to interpret a number of passages of the work will cause many to be repelled and to fail to give the work the careful consideration it so clearly deserves. It is surprising how many editors of modern teaching materials seem quite oblivious to this risk. One can sympathize with a desire to avoid hackneyed modes of expression. Certainly students in a professional school can be expected to understand language several degrees more complex than basic English. And *sometimes* new ideas require entirely fresh and new phrasing for their expression. But teaching materials are meant to be *teaching* materials, and it would seem that clarity would be the paramount consideration. In such works an editor needlessly courts an unfavorable reception by a choice of phrasing which, because of its unnecessary degree of complexity, looks suspiciously like pedantic affectation.

Tulane University College of Law

CLARENCE J. MORROW

JUVENILE DELINQUENCY. By *Paul W. Tappan*. McGraw-Hill Book Co., 1949. Pp. x+613. \$5.00.

This book, eagerly awaited by some of us who have taught courses in juvenile delinquency at the college level, will be found to be an exceptionally well rounded presentation of the most significant developments in this field. The book contains

a large number of features that renders it especially useful as the basic textbook in courses in juvenile delinquency. Noteworthy is Tappan's incisive discussion of the legal as contrasted with the social work aspects of delinquency—a distinction that must be constantly held in mind if we wish to approach the delinquency problem realistically. As he suggests, many of us have failed to realize that delinquency is and will continue to be a matter of legal definition and thus must involve court intervention. In view of the fact that so many juvenile courts in the United States are neither staffed nor equipped with properly trained and qualified personnel, it becomes imminently necessary to re-assess our notion of what constitutes the proper work of juvenile courts. Tappan suggests that the work of the court is and should be judicial in scope and indicates that juvenile court laws that define delinquency vaguely or loosely permit courts that tend to be "administrative" or "case-work" minded to engage in all sorts of activities which they are not equipped to undertake. It is this type of realism based upon knowledge of actual court and probation procedures in many sections of the United States that makes Tappan's discussion of the problems of juvenile delinquency particularly attractive and stimulating.

The book is divided into four parts and three appendixes. The first part (two chapters) is devoted to the topics; the nature of delinquency and the extent of delinquency. Both topics receive a well rounded treatment. Of special note is Tappan's discussion of the legal aspects of delinquency.

Part II (five chapters) is addressed to the etiology of delinquency. The approach to this important phase of the field of delinquency is eclectic, which may account for the fact that the reader familiar with the vast quantity of materials on this topic will find a number of significant omissions. No one will, however, find just cause to quarrel with the author's estimate of the status of knowledge regarding causation of delinquency. What annoyance will be created will be centered on the fact that he assumes the task of summarizing and interpreting the factors that empirical research has suggested as associated with delinquency without the detailed presentation of such findings that underlie his interpretations. This is a hazardous procedure, made especially so by his own evaluation of the research data that he utilizes in his summary and interpretations. If, as he indicates, "all too little is known yet about the specific elements in causal dynamics as they relate to the individual delinquent" (page 72), then it would seem that the reader is entitled to see the data that are being interpreted in the field of delinquency causation. After all it is not unreasonable to suppose that the same data could have led to entirely different conclusions than those formulated by Tappan. It should, however, be said that had he attempted to be other than eclectic a book vastly larger than the one under review would have been produced.

In the next part (four chapters) Professor Tappan is at his best. Part III deals with the many phases of juvenile court procedure. It is in this part that Tappan reveals that realism which the present reviewer believes so essential to counteract the mawkish sentimentality that has made juvenile courts run the gamut of roles from nursemaids to harsh parents—roles that in too many instances the courts were and are unprepared to play.

Part IV (eight chapters) deals with two general topics, namely, the treatment of delinquents and the prevention of delinquency. The emphasis in the discussion is upon current developments in these fields and the presentation is balanced and comprehensive.

Tappan's book, it is believed, will be found to fill a long existing need satisfactorily, in that it is a timely and stimulating presentation of the most significant

aspects of the phenomenon of juvenile delinquency. It should appeal to all who are interested in juvenile delinquents.

University of Minnesota

ELIO D. MONACHESI

THE SHOW OF VIOLENCE. By *Frederic Wertham*, M.D. Doubleday & Company, Inc., Garden City, New York, 1949. 270 pages plus index. \$3.00.

This book exhibits the rarely combined competencies of the specialist in the field and the skillful journalistic reporter. It offers many rewards to the reader.

The case histories of murder in New York should be read and re-read. Several of these concern children. Said one of the murderers to the author: "He selected colored children especially because authorities do not pay much attention when they are hurt or missing!" When little Grace, a white child, was invited by a perfect stranger to what was to be her last joy in life, her father said: "She doesn't see much good times anyway. Let her go. She is always cooped up in the dark cellar." Then the mother agreed. I could not think of any more horrible story of how the concerted efforts of so many authorities failed than in the case "Disorderly Conduct," which is the story of a man who "symbolically" murdered his brother, in reality put a long kitchen knife through the chest of his brother's baby and for nine years could go on terrorizing his old mother and the whole family. What a horrible thought that children supposedly growing up under the protection of their families should be delivered to the butcher's knife by their own parents' stupidity, poverty, ineptness.

The author's last word is the age old question: "Am I my brother's keeper?" and the answer is "yes." However, the implementation to this affirmation of our duty is unfortunately missing in this book. If we ask the author: what, then, are we to do? What is our knowledge about the causation of murder? we get a number of brilliant aperçues such as: the public likes to picture the murderer as one possessed, it does not like to be reminded how often his victims are the dispossessed. The author on the whole is more against the psychiatric thesis than against that of social conditioning of murder. "Murder in any of its forms and disguises cannot be reduced to a purely psychological problem. That is even true of crimes that seem due entirely to human passion." The author is particularly incensed about the American theory of the irresistible impulse. His reasoning is as follows: Irresistible impulses are equal to obsessive compulsion and as obsessions indeed never lead to criminal actions, the conclusion is drawn that there is no such thing as irresistible impulse. But a couple of 100 pages later (p. 248) much is made of an enormously strong impulse which would be necessary to overcome resistances, conquer inhibitions, and build up rationalizations for murder. Brilliance and aggressiveness of formulation much as they are needed, do not, unfortunately, solve the problem. The result of this book, then, as far as prevention of crime is concerned, is meager. Not even the suggestions for better administrative procedure are developed. "The dangers of violence that threaten us come not from the heads of individuals but from social circumstances. Murder is an embolus, the disease lies elsewhere" (in the author's opinion in society). These are not very new nor convincingly substantiated insights.

The criticism, however, is misunderstood, if it discourages anyone, who should be rightly interested, from reading Wertham's book. Whether or not it will become a best seller, it really is a book which can and should stir. Let some of those who are stirred try for some more convincing and more satisfactorily working theory and practice.

New York

W. ELIASBERG

WHITE COLLAR CRIME. By *Edwin H. Sutherland*. New York: The Dryden Press, 1949. Pp. 272. Index. \$3.00.

White Collar Crime presents a deadly exposé of a way of life which society complacently accepts. Though we may raise problems concerning his conclusions (an inevitable consequence of blazing trails in research), Dr. Sutherland has performed a service unique in the annals of criminology.

His work, covering twenty-odd years research into white collar criminality, undertakes two things: "first, to present evidence that persons of the upper socio-economic class commit many crimes and that these crimes should be included within the scope of the general theories of criminal behavior; second, in the light of this evidence, to present some hypotheses that may explain all criminal behavior, both white collar and other."

The book suggests the following questions:

1. Do the proven violations of law by many of America's corporations constitute the commission of crime?
2. With whom can responsibility for corporate criminal behavior be lodged?
3. Is the universe from which crime statistics are gathered, case histories assembled, and explanations fashioned, sufficiently broad or is it too *inclusive*?

Life histories of seventy large industrial and commercial corporations have undergone the scrutiny of the author and his students for the past twenty-five years. The average life of each analyzed corporate career numbers forty-five years. Corporations coming under the heading of public utilities (including communications and one unspecified industry) are excepted.¹ Other than the generalized factor of size, the criteria for the selection of corporations are not in evidence. No conclusions can be drawn that this represents even a fair sample of America's thousands of corporations, nor can the reader be assured that all, most, or even a majority of corporations commit "white collar crimes."

The following types of violations are considered: restraint of trade; misleading advertising; financial fraud and violation of trust; violation of war regulations and crimes specifically associated with the war effort; commission of unfair labor practices as defined by the National Labor Relations Board; excesses under other labor laws, particularly with respect to wages and hours; rebates; infringement of patents, trademarks, and copyrights. Decisions range in jurisdiction from federal to municipal.

The differential association of those responsible for corporate policy emerges as the universal vehicle—"criminal behavior is learned in association with others who define such behavior favorably and in isolation from those who define it unfavorably, and a person in an appropriate situation engages in such criminal behavior if, and only if, the weight of the favorable definitions exceeds the weight of the unfavorable definitions." In elaborating upon "differential association," the author finds it questionable that crime rates vary in accordance with corporate personality types. "It is questionable whether a logical combination can be made of differential association which is essentially a process of learning and of personal traits which are presumably the product of learning." Exactly why this is so is not explained.

Although Dr. Sutherland concludes that 779 of the 980 decisions against the 70 corporations are, for him, obviously decisions that "crime was committed," the following problems are raised in connection with his hypothesis regarding all of the violations:

1. It is suggested that the law is enforced differently against corporate offenders due to three factors: "the status of the businessmen, the trend away from punish-

1. However, part 3, pp. 185-213, is devoted to findings in the records of fifteen power and light companies.

ment, and the relatively unorganized resentment of the public against white collar crime." But, to what degree does recognition of differential enforcement necessarily liken corporate crimes, in explaining the commission of crime, to such offenses (for example) as grand larceny, embezzlement, pandering, burglary, and rape?

2. Sutherland observes a lag between the letter of the law and its manner of enforcement. He asks the reader to consider a group of white collar violations of the law as crimes although government procedures, public opinion, offenders and victims in these instances more often do not. We must query: To what extent are these violations the products of the system of mores within the final boundaries of which our theories of criminal behavior must be formulated? How can we be sure that the laws accepted by our mores would not be changed were a concerted effort made to bring these same mores closer to the law? Mores and law do not function purely as independent and dependent variables; moreover, their coefficient of correlation is surely not so low as to allow changing the characteristics of one without affecting the other.

3. The customs of American society operate at cross purposes. The very ideologies which Sutherland emphasizes as part and parcel of his "differential association" theory do find their origins within the context of normal lifetime careers, not secluded and restricted associations. Many offenders now serving sentences in penal institutions have asserted that their patterns of criminal behavior are derived in more than part from socially accepted activities.

A difficulty in comparing white collar crime with traditional criminal behavior lies in our society's reactions to the motivations in each instance. *The moment* a burglar begins burglary operations, his occupation is defined as illegal. A corporation, on the other hand, may be engaged in legitimate activities an instrumentality of which or a *slight departure* from which could be interpreted as being illegal. The forger should never have written the check; only the *direction* of the guilty corporation's expansion was in error. Sutherland even states in his discussion of a corporation's position in the economic structure that "a corporation does not search for opportunities to violate any law whatever. Rather, it is carrying on certain activities for the purpose of profits, finds it is impeded by a specific law, and violates that law."

4. We are not apprised of the degree to which the corporation's inter-relationship with segments of society *other than* fellow companies has played a part in determining the anti-trust violation, the unfair labor practices, and the misleading advertisement. Offensive practices on the part of government or labor unions, for example, are omitted from consideration as though corporate violations were vacuum-packed. The fact that a decision has been recorded against a corporation, so the author himself observes, is proof of commission but obviously does not constitute a description of its essential ingredients.

The author, in preferring criminal to civil procedure, observes that the Justice Department has favored criminal action in anti-trust suits against labor organizations as compared with those against corporations "a method which carries with it more than a stigma of crime . . . although the law was enacted primarily because of fear of the corporations." The book offers no evidential assurance that civil actions provide less damaging stigma and less effective penalties than do criminal actions, that some unions might not also deserve anti-trust suits, that there are not adequate reasons why civil rather than criminal procedure is preferable in bringing about a goal which is not always to punish but to effect needed changes in our economy.

This reviewer hopes, as Dr. Sutherland's research is carried forward, that investigations will be made into the manner in which white collar criminality sets up chain reactions of still more white collar crime. What, also, is the extent to which

those normally defined as criminals are motivated by their associations with and/or expectations of white collar misbehavior of this sort? Still another problem for research has to do with what would happen in the event that "black collar" criminals—recidivists, for example—were provided with "white collar" punishment.

These remarks, critical in part, by no means suggest general dissatisfaction with White Collar Crime. The reviewer's concern, however, is that crime be studied as realistically as possible and that, if we desire to define or study given violations of law, we appreciate their appropriate sources of motive power and effect. Differential association as a theory is adequate only when we fully assess the social forces that make it so.

Dr. Sutherland's realistic insight and his efforts to formulate new techniques for the study of over-all criminal behavior earn a brand of commendation deserving excited promotion rather than mere reviewing. His research into white collar criminality raises fundamental issues concerning our times and speaks some compelling truths about the relationship between criminal behavior and social control.

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ROBERT C. SORENSEN

DELIBERATIONS OF THE INTERNATIONAL PENAL AND PENITENTIARY CONGRESSES: QUESTIONS AND ANSWERS, 1872-1935. By *Negley K. Teeters*. Philadelphia: Temple University Book Store, 1949. Pp. 198.

From the optimism of Enoch Wines in 1872 to the pessimism of 1935 Professor Teeters has given us a generous and solid sample of the views, opinions, and philosophies delineated by world-renowned experts in attendance at the eleven International Penal and Penitentiary Congresses that have thus far been held. These deliberations, for the first time collected and published in English, are of uneven value. Many of the discussions in the light of modern knowledge appear to have only archeological interest and many appear completely irrelevant to any understanding of the basic purposes of penal policy or practice. One gets the impression that whatever may be transacted at such stratospheric levels remains highly academic. International exchange of information is certainly desirable and worthwhile, but this reviewer could find very little definite information that would be significant or pertinent for the American penal system with the possible exception of the discussions on the disposition of juvenile offenders and the justification of the indeterminate sentence. The Congress of 1935 in Berlin might well have been indefinitely postponed.

Despite these strictures Professor Teeters has done a fine job, involving as it did a prodigious industry and an infinite patience.

University of Pennsylvania

J. P. SHALLOO