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Book Reviews

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BOOK REVIEWS

CASES ON CRIMINAL LAW AND PROCEDURE. By *Augustine Derby* and *Lester B. Orfield*. The Bobbs-Merrill Company, Inc., 1950. Pp. xiii+832. \$6.50.

Although the required course in criminal law has long been one of the staples of the law school curriculum, there is much disagreement as to the objectives of the course and the means for reaching those ends. Here, as elsewhere, there is a "traditional approach," but even a cursory examination of the leading casebooks in the field reveals a striking diversity of emphasis and technique. The nature and breadth of the subject matter militate against absolute standards. Nor is this a matter to be deplored.

The recently-published casebook of Professors Derby and Orfield, in general, hews closely to the traditional line. As the editors point out, this is primarily a *casebook*. "Non-legal" materials are almost completely excluded. Even the citation of such material is sparing, indeed. Furthermore, much the predominant emphasis of the book is on state as contrasted to federal law.

Within the limitations established for themselves, the editors have produced a competent and craftsmanlike work. The materials are divided between matters of "substantive law" and "procedure" at the ratio of about 5-3. Many of the cases are recent ones, and for the most part appear to be excellent vehicles for classroom instruction. With a few exceptions, the cases are well edited.

Disregarding minor difficulties of organization, criticism of the book, it seems to me, must be directed most largely to the editors' conception of the course rather than to the execution of their project. Recognizing that such questions involve matters which each instructor must resolve for himself, my chief complaint can best be summarized by the assertion that the editors have not demanded enough of the course in criminal law. In the first place, the wisdom of confining the student to an exclusive diet of appellate court opinions may be doubted. There are few areas in the law school curriculum in which the discrepancy between "law in the books" and "law in action" is quite so striking. It would seem that one of the principal objectives of instruction in criminal law should be the preparation of the student for this situation. The only feasible method of conveying real understanding of the operation of the system is through frank consideration of the sociological and political background against which the criminal law is administered. That judicial opinions alone are inadequate for that purpose seems to me apparent.

Second, it may be doubted that these materials adequately convey the impact of the expanding conception of due process developed by the federal Supreme Court in recent years on the administration of the criminal law. Indeed, it is probably accurate to say that these developments today represent the most dynamic forces at work in the field both on the state and federal levels. One misses particularly an adequate presentation of the role of the federal courts in the area of post-conviction remedies. Furthermore, the predominant emphasis on the more routine matters of state law results, it seems to me, in the slighting of the "public law" aspects of the subject. In times such as these, one may well demand that a primary responsibility of the course in criminal law should be the careful consideration of the relation between a system of civil and political liberty and the administration of criminal sanctions. This is not to say that the editors have in any sense ignored these problems. But with the possible exception of the materials on double jeopardy, the basic issues are hardly more than suggested.

Obviously, in the traditional three semester hours allotted to instruction in criminal law it is not possible to consider everything relevant to the field. Here, as elsewhere the problem is that of making the most practical use of the time available. But in determining what is "practical" it must be recognized that the training of criminal law practitioners can not be regarded as the exclusive or even the primary objective of the course. Particularly in the urban areas, as the students themselves realize, the larger segment of the bar never or rarely becomes associated with criminal litigation. Yet it seems clear that without the active and sympathetic support of the bar as a whole there is little reason to hope for fundamental improvement in the system of criminal justice. This would suggest that the course in criminal law should be expected to provide a basis for intelligent criticism and understanding of the system by the non-specialist. If the attaining of that objective requires somewhat less extended consideration of matters of narrower concern, it seems to me that the sacrifice should be made. I am convinced, however, that the sacrifice need not be substantial.

From the foregoing it should not be inferred that this casebook is devoid of substantial merits. The procedural section of the work, particularly provides some of the outstanding materials now available. The layman, also, interested in obtaining information on the legal problems of the field, may find the book of real utility.

School of Law, Northwestern University

FRANCIS A. ALLEN

SEXUAL DEVIATIONS. By *Louis S. London, M.D.* and *Frank S. Caprio, M.D.*
Linacre Press, Washington, D. C., 1950. Pp. 702. \$10.00.

The authors of this book are psychiatrists with psychoanalytic training. They state, in their introduction, that they feel there exists a genuine need for literature dealing with modern concepts of psychosexual pathology. They point out that many of the old books on sex which are still used as reference works contain statements which have since proven to be untrue, such as the belief that homosexuality is a congenital anomaly and, therefore, not amenable to treatment. They write: "Today we know that homosexuality is an acquired neurosis and can be treated by psychoanalysis."

The writers describe, in considerable detail, case histories of patients whom they treated in the course of their private practice of psychoanalysis. They give excellent clinical studies of persons suffering from homosexuality, exhibitionism, incest, sadism and masochism, bestiality and various other types of sexual deviations.

This book may be somewhat disappointing to the legal profession because the majority of the cases described have had no criminal records. For example, the authors do not report cases of lust murders, which, naturally, would not be referred to them but to court psychiatrists. They do, however, describe many of the more common types of sex offenders which do appear in courts, such as the exhibitionist and the transvestite.

They have written one brief and important chapter on "Medio-Legal Management of Sex Offenders," which is of value for subscribers to this JOURNAL.

The book appears to be intended chiefly for psychiatrists and psychoanalysts. Some of the language is highly technical. The case records, however, are usually given in the patient's own language and are easily understandable; the description of the causes found for the patient's deviations and the report of the steps taken to help him overcome his problems are not difficult to understand.

The book contains a glossary of the technical terms used and also has an excellent bibliography. It is highly recommended as a supplement to the earlier writings of such scientists as Havelock Ellis, von Krafft-Ebing, Magnus Hirschfeld, Albert Moll, Ivan Bloch, etc. (who have given us considerable data about sexual deviations), as well as a supplement to the contributions of Freud and his followers who have given us insight into the causes of sex deviations as well as the methods of treatment of these disorders.

University of Virginia Hospital

FRANK J. CURRAN, M.D.

PROTECTING OUR CHILDREN FROM CRIMINAL CAREERS. By *John R. Ellingston*.

Foreword by John D. Rockefeller 3d. New York: Prentice Hall. Pp. 374. \$5.00.

Failure of our society to protect the youngsters of America's communities from delinquent careers cannot be attributed to lack of interest or effort. Despite the sincerity and multiplicity of efforts to date, Ellingston points out, we must recognize they have not proved *good enough*.

Even before the war, national statistics indicated two million out of America's 43 million boys and girls under 18 (approximately 1 out of 20) came to the attention of police every year. Recidivism statistics among juveniles (80% of the graduates of some reformatories) reveal the need for more effective rehabilitation before returning home. We are faced with the challenge of preparing the community to help the returned adolescent, and to build the type of community which will "provide the human relationship and activities that satisfy basic psychological needs."

In 1938, the American Law Institute appointed a research committee to work with leaders in fields other than law including criminology, psychiatry, sociology and social work to draft what came to be a model Youth Correction Authority Act. Four states enacted legislation involving recommendations contained in the model Act made public in 1940, one of them being California. In this book, Mr. Ellingston, special adviser in this field for the Law Institute, outlines the history of putting these principles into practice in California—the difficulties, apparent successes, adjustments needed and made, insights gained and future plans.

The basic innovation in the Youth Authority operation is a personalized treatment afforded by delegating to one commission with state-wide jurisdiction complete control from time of commitment by juvenile and criminal courts, thus ending the impersonal broken assembly line to and from various courts, boards, and agencies. The Youth Authority calls for a thorough diagnosis employing complete case history and personal interview techniques by sympathetic, well-trained workers. This serves to guide assignment to a group where training for rehabilitation begins at once. Thus do decisions and their reconsideration emerge from an integrated network of welfare and fact-finding facilities.

Many sections of the book stand out—Ellingston's thoughts regarding certainty of arrest rather than severity of punishment as deterrent to criminal behavior; methods of safeguarding Youth Authority appointments and fighting institutional inertia; dangers of using criminal-court-judges and criminal-court techniques in juvenile cases. The longest chapter of the book analyzes the vast responsibility resting with our schools to meet the needs of pupils as human beings in today's technological world.

Again and again Mr. Ellingston turns back to what seems his basic evangelism. He wants each reader to recognize the real power of individual citizens joining hands in action group research all over the nation to work out a

solution, community by community, state by state. He would propose that a community begin with the reform of its materialistic social values which he believes tolerate delinquency, violence, indolence and prejudice.

The book is directed at no one special group of readers. Ideas presented could serve as effective promotional material in behalf of a new era in the prevention and control of delinquency. I should like to see a brief, punch-line type of educational leaflet, fully annotated and with carefully compiled bibliography, prepared from this book for mass distribution at a minimum cost or free of charge to appropriate government and public officials, welfare organizations, teachers, civic and discussion groups. This might be a truly rewarding use for a small grant from some welfare organization or foundation.

University of Nebraska
College of Law

ROBERT C. SORENSEN

CHILD PSYCHIATRY. By *Leo Kanner*, M.D. Charles C Thomas, Publisher, Springfield, Ill., 1949. 752 pages. \$8.50.

Dr. Kanner's book is an enlarged second edition. The first was published in 1935 under the same title. It broke new ground and went through five printings. The author is Associate Professor of Psychiatry and Pediatrics, and Director of Children's Psychiatric Service in Johns Hopkins University. The volume includes a preface to the present edition by John C. Whitehorn, M.D., Henry Phipps, Professor of Psychiatry in Johns Hopkins University. Prefaces to the first edition by Adolf Meyer, Henry Phipps, Professor Emeritus of Psychiatry, and Dr. Edwards A. Park, Professor Emeritus of Pediatrics, both of Johns Hopkins, are reproduced in this edition.

At least 900 authors are cited in the volume from one to ten or more times each, and the subject index contains approximately 700 items. These two features alone are aids of the first order to the student and to the practitioner. Neurology, sociology, anthropology, psychology and psychiatry are all represented here, though the bibliographic references do not always include substantial works of recent vintage.

The text is divided into four parts: History of Child Psychiatry; Basic Orientation; Clinical Considerations; Phenomenology. The last part is comprised in over 460 pages. The style is always clear and often picturesque.

One is struck by the author's freedom from doctrinaire attitudes. The terms "behaviorism," "constitutionalism," "environmentalism," "psychic determinism," and "organicism," e.g., do not occur in the index. "Any enterprise aimed at determining the exact role played by 'heredity' and 'environment' is doctrinaire and futile. It is made more so by the fact that in all such attempts so far only the *material* environment was considered, without regard to its specific meaning for individual children." (Page 98.)

Each of the 49 chapters in the book is profitable reading for the criminologist, but only one of them—"Delinquency" in 47 pages—relates specifically to criminology. The majority of delinquents, the author believes, are recruited from the dull normal and the borderline who are a "not inconsiderable proportion of the general population." However, there are "innumerable retarded and handicapped children" who never become delinquent. But when feelings of inadequacy or "conflicts over difference" are nurtured in them by the attitudes of families, teachers and others, children face what seems to them a hostile world with their own accumulated hostility—and that spells trouble. It is, therefore, the underlying mechanism in a child's personality—not just his more or less stable intelligence level—that holds the secret of delinquent behavior. Statistics concerning the poverty or affluence of parents and neighborhoods; concerning race, religion, broken homes and all that, are under

suspicion in as far as relation to etiology and therapy are claimed for them. Yet how can the conditions of existence in the worst slums fail to incite and establish inner conflicts such as jealousy, resentment and the sense of inadequacy. These promote the development of at least tolerance for others' acts of retaliation and revenge, and lead to that first casual breakdown that makes the next one seem easy and proper—a breakdown that rarely, if ever, gets into the statistics.

Nevertheless, strange as it may be, the majority of youths who grow up even in the most unfavorable material surroundings somehow escape becoming overt delinquents and criminals. Harmonious parents and siblings are probably a large factor in this fortunate result, and others are parental attitudes of acceptance, kindness and uprightness toward their children. Where these attitudes are found, mental health and honest, well adjusted children are likely to occur, also. More harm comes to a child because of the instability of parents than from their low I. Q.

Many a troublesome child is a product of overprotection on the part of perfectionist teachers and parents. They build in their children an attitude that is equivalent to believing "I'm no good anyhow. Nobody need expect much of me." Another form that overprotection takes is anxiety and overindulgence. "She can't let him out of her sight. She hands him everything on a silver platter." (Dr. Strecher calls mothers of her sort "Moms.") They foster dependence, not self reliance, they develop a weak fibre that can't take it when an unusual and difficult situation is encountered. The offspring of such "Moms" are AWOL from every boresome duty and many of them see nothing incongruous in paying their debts out of their employers tills because "the world owes them a living."

Evanston, Illinois

ROBERT H. GAULT

FEDERAL PROTECTION OF CIVIL RIGHTS: QUEST FOR A SWORD. By *Robert K. Carr*. Ithaca, New York: Cornell University Press, 1947. \$3.00.

This book tells the story of the Civil Rights Section in the U. S. Department of Justice from 1939 to 1945, and serves as a tribute to the lifelong efforts of its creator, the late Justice Frank Murphy, to maintain the rights of the "forgotten man."

The sub-title and the theme of the book were taken from Mr. Justice Jackson's opinion in *Pollock v. Williams*¹ in which he held that government must not only "shield" civil rights from infringement, but it must become a "sword" to fight aggressively against encroachment on fundamental liberties, whether by public officials or by private individuals. Justice Murphy's unprecedented order creating the section was issued with full knowledge that traditional policy so far as aggressive defense of civil rights is concerned has been "cautious, limited, and tentative, and has always faced an uphill fight constitutionally." This book shows the inadequacy of the "shield" approach and the need for a forthright "sword."

Mr. Carr's presentation points an ominous finger at the need for expert legislative draftsmanship. Despite the array of protective legislation enacted following the Civil War, the Justice Department has failed more often than it has succeeded in enforcing civil rights laws. It is interesting to conjecture what contribution the social scientist might make to the drafting of laws which would accomplish their purpose and mesh more easily with community mores.

Here is a lucid history of the legislation in the field and a realistic handbook for future effort.

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ROBERT C. SORENSEN

1. 322 U.S. 4, 8 (1944).

PENAL REFORM. By *Max Grunhut*. N. Y. Oxford University Press, 1949. Pp. xv, 486. \$9.00.

A long-time empty space in the library of criminology and corrections is now well filled by this unique comparative study of correctional activity in Europe and America. *Penal Reform* is not, as the title may suggest, either an inflammatory or sentimental appeal to do better by those on the other side of the fence. The work is scholarly and sound. Under this one cover, a historical survey of correctional development from the third century A. D. is combined with a comparative analysis and critical commentary on contemporary approaches to treatment. The reviewer has already adopted it as a textbook for his advanced correctional treatment classes. Not only can students learn more about more systems more adequately but they can also secure a more integrated view than has formerly only been possible by the reading of many isolated discussions in many sources.

About one-fourth of the book is devoted to "historical experience." The reader is carried through the centuries topically in such a way that the new approaches in the successive periods of development are clearly evident. The general setting of the times is noted in connection with the correctional developments. The evaluation of present day approaches and suggestions is facilitated by the manner in which past experience is handled. Negative lessons of the past are stated, discussed, and evaluated as to their efficacy. Positive principles garnered from the past are similarly handled.

The balance of the book is concerned with discussion of what is being done now on some of the major problems in correctional administration. The approaches made by various European countries and America are presented and evaluated in connection with specific problems. The presentation of the psychology of imprisonment in the section on "Men in Prison" is especially well done. The implications of classification for the total prison situation as well as for the individual needs is pertinent. Similar comment is earned by the sections on "Prison Labor," "Personal Approach," "Discipline," "Non-Institutional Treatment," "Juveniles and Adolescents," "Habitual Criminals," and the "Mentally Abnormal." Reference is made to little recognized European research on crime prediction that is analogous to American parole prediction efforts.

University of Mississippi

ALFRED C. SCHNUR

HELD WITHOUT BAIL. By *Eugene S. Zemans*. Chicago: John Howard Association, 1949. Pp. xvii+65. Appendix, not paginated. \$1.50.

Mr. Zemans, Executive Director of the John Howard Association, serves as an excellent guide on a conducted tour of Chicago's 39 police lock-ups. His rating of these vile and intolerable detention institutions is commendable. His rating of "good" depended upon those that were worse. All of them were undesirable for any protracted occupancy. Surveys made in 1947 were checked again in 1948. In general he found little improvement beyond painting some of the dirtiest. Overcrowding, no ventilation, inadequate lighting, innumerable rats, assorted vermin, no refrigeration, broken or no toilets except the antiquated aqueduct, no toilet paper, common drinking cups, unbearable stench, bottles, rags, cartons and filth strewn inside and outside cells, bologna suspended out of reach of rats, and complete public ignorance and apathy were among the conditions that were found. A visit to New York revealed that such conditions do not have to exist. Chicago newspapers opened fire on the unspeakably filthy places in which Chicago police detained minor viola-

tors. Through the co-operation of the City Club of Chicago, Alderman John E. Egan, who secured the approval of Chicago City Council, and the work of Captain George A. Teeling, appointed by Commissioner John C. Prendergast, long delayed improvements may become a reality. Mr. Zemans tells his story quietly, calmly and objectively, but he tells it well.

University of Pennsylvania

J. P. SHALLOO

THE FIELD OF SOCIAL WORK (Revised). By *Arthur E. Fink*. Henry Holt & Company, New York. Pp. 577. 1949. \$3.75.

This is a revised, enlarged edition of a well written introductory, non-technical text and survey first published in 1942. The book notes the contributions and survivals of expanded community services during war-time, as well as the post-war lessons for the techniques and principles of casework practice. As a result, the greater emphasis desirable has been placed on public social services, including an analysis of contemporary public welfare organization and the institutionalization of social security in our country. The presentation of the subject matter has been considerably reorganized. The extensive illustrative case studies and analyses are new. There is also a helpful new chapter, "The Profession of Social Work," bringing together under one heading the various educational, economic and organizational facts (previously found separately) concerning the vocation of social work.

As before, the new edition surveys the main fields of social work, generally devoting a chapter to each field, discussing both historical and contemporary developments. Thus, in addition to various welfare services, the text surveys family, school, psychiatric, and medical social casework. It gives special treatment to social work for children. The author treats group work, community organization, and, here and there, social action and democratic values; but he does not refer to the growing demand for social workers in the critical field of community relationships in intercultural and interracial activities. The book makes no mention of the implications, applications and organization for group therapy as such; nor does the author consider social workers' growing interest in social research and in the elaboration of specialized techniques and principles for social work administration and social work publicity. Perhaps it is asking too much to expect an elementary survey to treat such advanced, but nevertheless important, developments.

Professor Fink is a faithful follower of the Philadelphia School of Social Work. His treatment and discussion throughout is therefore in terms of the functional approach, which emphasizes casework as a helping process operating in terms of the dynamics of relationship therapy, and defined in terms of the functional autonomy of the client in reaching his own decisions as to how much and in what way he will use the services of the agency; and the limitations of agency function in terms of the differentiation of specialized psychotherapy from casework, and in the functional limitations of agency authority, administrative requirements, community setting, etc. The other leading school of social work, the Freudian, diagnostic and psychoanalytic in emphasis, is mentioned in a footnote. This reviewer believes that beginning students and laymen would benefit more from an equal, a more extended and a more systematic discussion of the principles, values, attitudes and techniques of the various approaches in social work. Narrowness of viewpoint in a general text presents numerous teaching problems.

There is a good chapter on the "Correctional Services," in which this very large and complicated field is surveyed. The technical question of the use of