

1951

Book Reviews

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Recommended Citation

Book Reviews, 41 J. Crim. L. & Criminology 802 (1950-1951)

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BOOK REVIEWS

CORRECTION—We regret that, in our last November-December number, at page 483, Professor Walter Reckless' *CRIME PROBLEM* was wrongly entitled *CRIMINAL BEHAVIOR* which is the title of an earlier book by the same author.

CRIME PROBLEM is published by Appleton-Century-Crofts, Inc. of New York City. Its price is \$4.25.—EDITOR.

GAMBLING: SHOULD IT BE LEGALIZED? By *Virgil W. Peterson*. Charles C. Thomas, Publisher, Springfield, Illinois, 1951. 158 pp. \$2.75.

Virgil W. Peterson, author of "*Gambling: Should It Be Legalized?*" was one of the first witnesses invited to appear before the Special Senate Committee to Investigate Organized Crime in Interstate Commerce. His testimony with respect to the nation-wide activities of the organized criminal elements, particularly in the realm of gambling, established to a considerable degree the fields of inquiry subsequently undertaken by the Committee.

In his book, Mr. Peterson draws upon his vast experience and years of research and study. For many years, he was special agent in charge of various F.B.I. offices about the country and for the past nine years has been the Operating Director of the Chicago Crime Commission. His experience and painstaking research are reflected in the scholarly, well documented treatment of the legalization of gambling—a subject both timely and important.

The question presented to the reader by the title of the book is answered by the author with an emphatic "No"! It is not the "No" of the moralist but rather an objective conclusion based upon a thorough knowledge of the past history of legalization in this country. The various legalization experiences from the early days of the colonies to the present time are fully described, with particular emphasis on the Louisiana Lottery and the effect of legalization in Nevada. Mr. Peterson points to the proof in history that under no system of legalization has a community succeeded either in eliminating the participation by the criminal element or preventing corruption on the part of law enforcement officials.

A considerable portion of the book is devoted to startling case histories of political-criminal alliances which have resulted in and from the failure to enforce the gambling laws in many of our metropolitan areas.

The solution of the gambling problem and the elimination of the corrupting influence of the professional gambling business appears to lie in the strict enforcement of the anti-gambling laws and a militant insistence upon strict enforcement by our citizens.

"*Gambling: Should It Be Legalized?*" is an invaluable book for the citizen who believes that legalization is the panacea for the gambling evil; for the citizen who is of the opinion that gambling cannot be stopped and that, therefore, the state might just as well share in the vast sums spent in gambling; and also for the citizen who has formed no opinion concerning the legalization of gambling and wishes to be fully and intelligently informed about the subject.

United States Senate

ESTES KEFAUVER

CRIMES AGAINST INTERNATIONAL LAW. By *Joseph Barry Keenan* and *Brendan Francis Brown*. Public Affairs Press, Washington, D. C., 1950. Pp. X, 226.

THE TOKYO TRIAL. By *Solis Horwitz*. International Conciliation, November, 1950, No. 465, Carnegie Endowment for International Peace, New York. Pp. 473-584.

The first of these volumes by the Chief of Counsel of the Prosecution in the Tokyo trial and a judicial consultant at that trial constitutes a philosophical and historical examination of the law and procedure of the war crimes trials in general and the Tokyo trial in particular. The conclusion is favorable to the precedents which have been set.

"If the message of the Tokyo and Nuernberg cases goes unheeded, surely there is but very little hope for the beginning of a new age among men in their international relationships. Unless there is honest faith in a higher law, restraining the unjust acts of those who are entrusted with the shaping and execution of national policies, and unless the world community puts that faith into effect by the continued implementation of this law, through international treaties and undertakings, and thereafter enforces international criminal law by judicial process, savagery and barbarism will assume grotesque and apocalyptic forms of frightfulness. In the ensuing deluge of blood and fire, no nation could long endure." (P. 161.)

The volume does not quote extensively from the opinions of the Tokyo tribunal and does not examine the dissenting opinions of certain of the judges. For such information one should turn to the second of the publications listed above which presents in condensed form the basis of the tribunal's jurisdiction, a description of the defendants and their indictment, the details of the trial, and a resumé of the judgment and sentences as well as the dissenting opinions. It is interesting to compare Horwitz's conclusion with that of the other book just quoted.

"Amidst the tensions of the new post-war conflicts the members of the Tribunal might have succumbed to a feeling that their task was a futile one. It is of the utmost significance that they did not succumb, but, even under the impact of events which might foreshadow a conflict more horrible than the one just concluded, they elected to reaffirm as an act of faith, their conviction that war was not a necessary concomitant of international life and that acknowledged principles of law and justice were fully applicable to nations and their leaders. Whatever may be the ultimate decision on the merits of this judgment, perhaps the real significance of the work of the Tokyo Tribunal lies in this act of faith." (P. 575.)

While Horwitz's book is an excellent descriptive analysis of the Tokyo trial, Keenan and Brown's book is a philosophical synthesis of war crimes trials based upon the authors' experience at Tokyo. They do not always make it clear in the text whether a particular generalization was the opinion of the prosecution, of the Tribunal or of the concensus of international lawyers as interpreted by the authors. This can often be found by reference to the footnotes gathered at the end of the volume, but the text is in the form of a rational and historical exposition of the law relied upon in the war crime trials. The conclusions on various points are often presented in carefully worded paragraphs. Thus, of the nature of the law applied we read:

"In substance, the international criminal law incorporated into the Nuernberg Charter was not statutory. It was customary law and law based on the recognition of international morality by treaties, by a long and distinguished

line of juridical experts, by the school of Natural Law Jurisprudence, and by a great part of world public opinion. The principles underlying this law had been given universal application in the analogous sphere of national society by the legal systems of all civilized peoples. In form, the international criminal law of the Nuernberg Charter was quasi-statutory or quasi-legislative. Law previously resting on the authority of reason alone was given legalistic shape and political and physical sanction . . . In its (the Tribunal's) judicial act of finding a law, there was to be no law making. But customary law was to be transformed into judicial custom, having the sanction of physical power. The action of the Tribunal, operating under its charter, violated no *ex post facto* principles, as understood and interpreted by natural law jurists, or even by those who relied on analytical, constitutional grounds." (Pp. 43, 47.)

The authors accept the conception that international law is based on moral foundations. The prosecution convinced a majority of the Tokyo Tribunal of this position in contrast to the position of the defense that international law is amoral and wholly conventional (P. 71).

"Perhaps," they say on this point, "it would not have been imperative for the Defense, in its choice of strategy, to adopt a non-moral view of law and international law, if it had been convinced that it would be able to obtain sufficient evidence, otherwise to prove the justice of the actions of the Japanese war leaders. Recourse to an amoral *lex* concept of law might possibly raise the presumption that this was the only adequate defense possible. An analysis of the evidence presented in the trial rather tends to support this presumption, which was not rebutted. But the strategy and tactics of the Defense in raising the issue of the nature of international law were historically and philosophically vulnerable." (P. 75.)

The major problems which have been discussed in connection with the voluminous literature on the Nuernberg trial are dealt with—the alleged application of *ex post facto* law, the definition of aggressive war, criminal conspiracy, and crimes against humanity, the question of individual responsibility under international law, and the defenses of "act of state" and "superior orders." There is also a chapter on the procedure of the Tokyo trial.

The historical examination of the distinction between just and unjust war, the exposition of the concept, "crimes against humanity," and the comparative examination of the concept of conspiracy in the principle countries are particularly illuminating. Of aggressive war, we read:

"The concept of aggressive war may not be expressed with the precision of a scientific formula, or described like the objective data of the physical sciences. Aggressive war is not entirely a physical fact to be observed and defined like the operation of the laws of matter. It is rather an activity involving injustice between nations, rising to the level of criminality because of its disastrous effects upon the common good of international society." (P. 58.)

On the distinction between domestic criminal law and the laws of war and humanity the authors say after noting that national criminal laws deal principally with internal matters which are limited in their wicked effects to local societies wherein they occur:

"Violations of the laws and customs of war and humanity, however, are the concern of the Society of Nations, for their evil consequences transcend the criminal injustice which has been inflicted upon the individual victim and

overflow the bounds of national societies to cause enmity between nations. They shatter the harmony and good will which ought to prevail between States, and which are indispensable for the preservation of world peace." (P. 115.)

While the crime of genocide, recognized as one of the principal offenses against humanity, is not dealt with in the text, it is considered in an appendix. (P. 162.)

The authors note that the concept of conspiracy accepted by the Tribunal was broader than that of the common law and narrower than that of Soviet law on the subject, resembling that in the codes of France, Germany, Japan, and China. (Pp. 91-92.) The issue of conspiracy was more important in the Tokyo than it had been in the Nuernberg trial partly from a difference in the wording of the Charter and partly from the different emphasis given by the indictment and the prosecution. The sentences in the Tokyo trial were based largely on the conspiracy count in respect to aggressive war, while at Nuernberg they were based mainly on the substantive offenses of planning, preparing, initiating, or waging aggressive war.

Of individual responsibility under international law Keenan and Brown say:

"International law would have no actual or ultimate meaning, purpose, or function if it did not bind individuals, as well as nations. International society, just like the society of the family and the civil society of the nation, exists for the individual primarily. International society does not exist primarily for the nation. The rights of the individual, therefore, are paramount in international society; so too are his duties." (Pp. 127-128.)

Of the defense that those indicted acted in pursuance of an "act of state" these authors say:

"The just application of the doctrine of Act of State depends upon two general conditions, first, that the acts in question are not criminal, considered in the light of international law, and secondly, that if certain unauthorized criminal acts have been committed under the claim that they were official, whereas they were not, the Sovereign will try and punish its own purported representatives." (P. 131.)

In the reviewer's opinion this does not state adequately the distinction between the individual offense of planning or preparing aggressive war and the obligation of the state not to authorize aggressive war. If this distinction is kept in mind, it would seem clear that the individual cannot defend himself for criminal acts on the ground of act of state if the state itself was going beyond its legal powers in authorizing the aggressive war.

In regard to the much discussed defense of "superior orders" the authors accept the test laid down at Nuernberg, "The true test, which is found in varying degrees in the criminal law of most nations, is not the existence of the order, but whether moral choice was in fact possible." (P. 133.)

The two volumes here reviewed are very welcomed additions to the literature of war crimes trials. The Tokyo Trial has been much less discussed than have others and these volumes provide access to the arguments and opinions there developed and to the growing literature on this trial. The Keenan and Brown volume deserves particular study by those interested in the development of international criminal law and will take its place as an important contribution to the growth of international law in general. The volume is enriched by appendices dealing with the crime of genocide, the membership of the Tri-

bunal and arguments presented concerning the substitution of a judge who resigned, the legal and sociological position of General MacArthur in reference to the trial, and the Tribunal's rules of procedure. There is a brief bibliography and an index.

University of Chicago

QUINCY WRIGHT

JUVENILE COURTS IN NORTH CAROLINA. By *Wiley B. Sanders*. The University of North Carolina Press, 1948. Pp. viii 210. \$4.00.

Despite the fact that a great deal of thought and discussion has been centered on juvenile delinquency over the years, seldom does one find available data that would render possible the accurate determination of the extent and secular trends of this social problem. The data that are attainable are seldom collected with consistently defined classification categories nor can the accuracy of such data be guaranteed. The deplorable condition of statistics of juvenile delinquency has made it practically impossible to describe in any effective and accurate fashion long-time trends in juvenile delinquency on a local, state or national level. Sanders' book contains the results of a successful attempt to remedy the defects in data on juvenile delinquency for the state of North Carolina.

The book is divided into three parts, each of which constitutes separate although closely related studies. The first part is devoted to the results of a careful study of the cases handled by the juvenile courts of North Carolina in the five year period, July 1, 1934-June 30, 1939. In the second part are presented data that describe the juvenile delinquency cases disposed of by North Carolina courts from July 1, 1939 through June 30, 1944. An interesting and illuminating description of the organizational structure and practices of the North Carolina juvenile court system comprises the final part of the book.

An examination of the materials presented in Parts I and II will, it is believed, amply demonstrate the fact that the author has achieved the primary objective of his project, namely—"to meet [the] need for reliable information about juvenile courts in North Carolina and about the delinquent, the dependent and neglected, and other types of children who come under the court's jurisdiction." (Page 3.) The author's accomplishment is made possible by the fact that the same definitions and classification categories are utilized in the gathering of data throughout the study. Thus the data collected are consistent and comparable from year to year. Furthermore, no effort was spared to make the data and coverage as complete as possible for the years studied.

It is impossible in a brief review to summarize adequately the many interesting facts found in Sanders' work. We can, however, indicate that some of the results of the author's work make completely untenable the impressions regarding juvenile delinquency voiced by many utterly unqualified speakers and writers. At least this is so for the state of North Carolina. Contrary to some opinions, North Carolina has not been engulfed by a "wave" of juvenile delinquency. As a matter of fact the data indicate that juvenile delinquency has decreased in that state. Thus, the average annual delinquency hearings for the period 1934-1939 was 2,610 as contrasted with 2,406 for the 1939-1944 period, constituting a decrease of 7.8 percent. The same trend is revealed by a contrast in rates of delinquency for the two five-year periods. The rate of delinquency for the 1934-1939 interval, based upon the number of official hearings on delinquency charges and upon the number of children of juvenile

court age in the state, was 0.289 percent per year and 0.270 percent per year for the 1939-1944 period. It is of interest, too, that the delinquency rate of Negro children for both of the five-year periods was about twice that of white children in spite of the fact that the number of delinquency hearings for Negro children declined by 20 percent in the 1939-1944 period.

The data further suggest that the phenomenon of recidivism is a stable one in North Carolina. In three successive five-year periods (1929-1934, 1934-1939, 1939-1944) the rates were 15 percent, 17 percent and 16.9 percent, respectively.

The student of juvenile delinquency will also find of interest what Sanders' data demonstrate regarding the effects of World War II on juvenile delinquency. Analyses of trends in delinquency during the 30-month period before the United States entered the war and for a 30-month period following the declaration of war showed a 41.1 percent increase in delinquency hearings for white children and a decrease of 2.1 percent in hearings for Negro children after the outbreak of hostilities.

Enough has been reported, we believe, to whet the interest of serious students of juvenile delinquency in Sanders' book. It is a model to be followed by all who aspire to produce significant and enduring contributions to our knowledge of certain phase of our social life. Our knowledge of juvenile delinquency would be greatly extended if every state in the United States numbered amongst its citizens some persons like Sanders.

University of Minnesota

ELIO D. MONACHESI

THE NEUROSIS OF MAN. *An Introduction to the Science of Human Behavior.*

By *Trigant Burrow*. New York: Harcourt, Brace & Company; London: Routledge and Kegan Paul, Ltd., 1949. 352 pp. \$7.50.

Long before Burrow's stimulating study fell into his hands, the reviewer frequently pondered whether we were not making too much of the individual neurotic or psychotic, and giving but insufficient attention to the possibility that some ubiquitous social neurosis might exist in the world, manifesting itself in a variety of forms and a considerable number of internal and external conflicts with respect to the motives by which man is impelled. In a certain way, then, the somewhat sweeping conclusions reached by Burrow in his **NEUROSIS OF MAN** appear to constitute some measure of confirmation with regard to the reviewer's own mode of reasoning on the subject of the motivation underlying human behavior. For this reason, it has been a particular satisfaction for the reviewer to turn his attention to the present work.

In **THE NEUROSIS OF MAN**, Burrow posits the thesis that all persons, in all cultures, are victims—whether to a greater or to a lesser extent—of a widely prevalent social neurosis the existence of which is now evident beyond any question, and which, especially in this day, we can ill afford not to take into account. Even among individuals whose behavior would by more orthodox psychiatrists be regarded as lying within the province of a vaguely delimited "normality," we can detect, if we but observe closely, some glaring dichotomies of thought and affect. Indeed, man's whole system of reactions, according to Burrow, is "autopathic." This means that, even when most purporting to be "objective," man's thought-processes are largely if not entirely under the dominant influence of his own particular set of conscious or unconscious prejudices, or else his own constellation of preconceived notions with regard to what is right or wrong, or what is good or evil. Thus man is led unwittingly to all sorts of inconsistencies in affect, cognition, and behavior. The solution of so vexing a problem, believes Burrow, can come about only when

human beings are able to achieve some phybiological synthesis of their behavioral processes and arrive at a sounder, more lucid conception of their relations with one another as members of a single species. In this way, and only in this way, could the stubborn roots of hatred, prejudice, greed, jealousy, crime, etc., be ultimately and effectually extirpated.

Another valid point made by Burrow—though it cannot be called a new one—is that the diversified psychiatric conditions encountered in private practice as well as in institutions are mere exaggerations of those same conflicts observable in the everyday behavior of individuals who would strongly resent any such thing as their being considered “neurotic” or “maladjusted” in their approach to the exigencies of life. Schizophrenia itself, for instance, is but a quantitative caricature of that extreme degree of introversion which makes it impossible for certain schizothymes to enter into social activity, to assume civic responsibility, or to think of themselves as part and parcel of the community in which they move and have their being. By the same token, a less exaggerated type of the manic behavior studied inside the walls of institutions is to be sought and found among exuberant extraverts who take so vital an interest in matters not directly related to themselves. If we are to understand human beings, we must be perpetually aware of such quantitative distinctions as these.

In justice to Burrow, it must be asserted that his dominant thesis is laudably sustained from the beginning to the end of his provocative study. The formulation of such concepts as he sets forth in *THE NEUROSIS OF MAN* has caused the author (and quite understandably!) to break away completely from the more orthodox run of psychiatrists and psychoanalysts. Indeed, it would be vastly interesting to know what their impression is of the stand that Burrow has taken with regard to the question of behavior. If we follow Burrow in his reasoning, we shall be more cautious henceforth in the use of words like “neurotic” and “maladjusted,” because we shall realize that such terms could perhaps be applied with no less justice to the whole human species than to the relatively isolated “neurotic” or “maladjusted” specimens we happen to be describing at a given moment. Conflicts and inconsistencies in motivation are, then, not to be found exclusively among those who are compelled to seek the aid of analyst or psychiatrist, but rather may be regarded as existing among people generally.

Burrow's approach, as he himself declares in so straightforward a fashion, is altogether amoral. He does not feel that he has any mission to perform in the way of saving mankind from its follies or errors. In order to avoid giving the impression that he is actuated by any moralistic purpose, Burrow has even coined the term *disbehavior* to replace *misbehavior*, because the latter term has taken on a connotation connected with the idea of passing moral judgments. In short, Burrow sees man solely as the victim of his own autopathically motivated neurosis.

The book is written in a smooth and scholarly but at the same time scientific style; and that it makes intensely stimulating reading, there can be no doubt. Moreover, the challenging and thought-provoking conclusions presented here by Burrow may be destined to wield a considerable influence in the domain of behavioral phenomena, though there is perhaps small chance of their invalidating the honest efforts which are being made by less revolutionary psychiatrists to solve eventually the riddle of the human mind.

New York, N. Y.

NATHANIEL THORNTON

DIAGRAMS OF THE UNCONSCIOUS: HANDWRITING AND PERSONALITY IN MEASUREMENT, EXPERIMENT, AND ANALYSIS. By *Werner Wolff*. Grune & Stratton, New York, N. Y., 1948. Pp. 350, 300 Illustrations. \$3.00.

A truly remarkable book, this one, and one that will be noted in the history of graphology. It contains a vast amount of original material together with a historic survey and a very comprehensive bibliography. But it is remarkable not only for these traits; one of the most original achievements of the author is the demonstration, in the signature, of stable configurations of the personality. As this demonstration is not amenable to review it is suggested that every interested reader should look it up in the text. It is quite possible that this configurational method will play a big role in court in the identification of signatures and forgeries. It is therefore brought to the attention of practical handwriting experts and should also be re-examined to establish its validity.

This reviewer would like to mention one of the weaker points of this book which is the relationship of handwriting and the lore thereof (graphology) to social facts and social psychology. It may be suggested that Wolff himself should give some attention to this point in a desirable new edition.

To sum up: One of the valuable publications which the practically and the theoretically interested criminologists should study.

New York

WLADIMIR ELIASBERG

STERILIZATION IN NORTH CAROLINA. By *Moya Woodside*. The University of North Carolina Press, 1950. Pp. 219. \$2.50.

The author of this interesting and worthwhile publication is a psychiatric social worker from England who made her study at the Institute for Research in Social Science at the University of North Carolina. She states, "An innovation such as eugenic sterilization, calling for changed ways of thought and impinging on deep-seated instinctive feelings, arouses misunderstandings and antagonism and is especially difficult to promote among those illiterate and backward groups where its benefits would be most obvious." Ignorance, prejudice and superstition are the main obstacles for a scientific and realistic approach to the problems of feeble-mindedness, epilepsy and mental disease with which eugenic sterilization has to deal.

It was Justice Oliver Wendell Holmes who declared, "Three generations of imbeciles are enough." There are now twenty-nine states in this country that have laws for sterilization of mentally deranged and socially non-integrated persons.

The study makes interesting comparisons between rural North Carolina and an urbanized country of about the same physical size, England, where no sterilization law yet exists. It can look back on many years of practice and experience, since the present sterilization law of North Carolina was enacted in 1933. Individual rights under this statute are very well protected and a fair and unbiased procedure is secured through hearings before the Eugenics Board and the right of appeal to the Superior Court of the county. This law and similar laws in other democratic countries are quite different from the sterilization law of Nazi Germany of 1933, which was entirely compulsory and was used by the Nazis as a measure of race extermination.

The book reports that since the enactment of the sterilization law in North Carolina a large proportion of health and social workers have familiarized their thinking with sterilization as one of the measures they can recommend and use in certain types of cases. In order to deal with objections that sterili-

zation might encourage promiscuity and immoral behavior and that venereal disease might become more widespread, Moya Woodside refers to Dr. Butler, Supervisor of the Sonoma State Home for the feeble-minded, in California, who has studied several thousands of sterilizations performed in this institution, who states, "The fear of contracting a venereal disease or bearing children, legitimately or otherwise, has no deterring effect on the mentally deficient."

The author considers it unfortunate that some states in this country still sanction sterilization or castration for certain classes of criminals and sexual offenders and expresses the opinion that, although these powers may be only rarely exercised, they create the suggestion that sterilization is a punitive measure. This misconception has been reinforced by the misuse of the measure in Nazi Germany.

Summarizing, the author refers to the change of social attitudes in North Carolina through public health and welfare services, despite the conservatism of a rural people of whom almost a third are negroes. She concludes: "If, in this culture, education and propaganda can bring about, in a comparatively short time the desired modification in thought and behavior, there will be fresh hope for those who still believe that persuasion, not compulsion, is the road to human betterment."

The book "Sterilization in North Carolina" can be wholeheartedly recommended as a valuable contribution to the study of scientifically developed and tested methods of dealing with acute social problems. We are in continuous danger of letting deep-rooted and emotional prejudices interfere with our reaction to scientific findings. Moya Woodside's report is convincing because of its factual nature and its "clinical" approach to a contested and touchy subject.

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MARCEL FRYM

TRIAL OF BUCK RUXTON. 2nd Edition. Edited by *R. H. Blundell* and *G. Haswell Wilson*. London and Edinburgh, William Hodge and Company, Limited, 1950. Pp. lxxxvii, 457. \$3.50.

During the late months of 1935 seventy portions of decomposed and maggot-infested human remains, wrapped in a blouse, a pair of child's rompers, pieces of newspaper and straw, all tied up in bundles of cotton sheeting, were discovered in southern Scotland. Subsequent to uncovering the remains, the police ascertained that Mrs. Isabella Ruxton and her nursemaid, Mary Rogerson, had disappeared from the house of Dr. Buck Ruxton in Lancaster on September 15, 1935. In his house, human bloodstains were found in the bathroom, on the stairs, on carpets, and on a suit of clothes belonging to him. Particles of human tissue were found in the drains. These facts led ultimately to the unique case of *Rex v. Buck Ruxton* in which Dr. Ruxton was found guilty of murder in an eleven-day trial, and hanged.

The case is a notable triumph in forensic medicine primarily because of the character and extent of the dismemberment and mutilation of the two victims. This provided a complex problem of anatomical reconstruction demanding professional work for its solution by expert medical witnesses in a detail not previously required in British criminal cases. On account of Dr. Ruxton's purposive removal of all identifying features from the bodies, a novel circumstantial comparison of the victims' skulls and life-size photographs was used to help place identification beyond reasonable doubt.