

1952

Book Reviews

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Recommended Citation

Book Reviews, 43 J. Crim. L. Criminology & Police Sci. 227 (1952-1953)

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BOOK REVIEWS

THE SIXTH AMENDMENT. By *Francis H. Heller*. University of Kansas Press, 1951. 195 pages. \$3.50.

This book is a study of some of the constitutional guarantees of a fair criminal trial. It is by no means a treatise on criminal due process generally, nor is it even a comprehensive treatment of those aspects of federal criminal procedure which are affected by the United States Constitution. Rather, its limits are those set by the content of the Sixth Amendment.

These limits, which appear to have been determined more by historical accidents of constitutional draftsmanship than by subject matter, are probably explained by the fact that the book is a redoing of a doctoral dissertation in political science. As the sub-title indicates, it is primarily "a study in constitutional development." For this reason, the scope of the book may seem arbitrary to lawyers and other students of the administration of criminal justice. They would have been helped by a few pages of explanation placing the Sixth Amendment in the context of the Fourth, Fifth and Eighth Amendments to the Federal Constitution and cognate provisions of state constitutions.

Within the limitations set, however, Mr. Heller discusses not only the particular procedures guaranteed by the Sixth Amendment in their application to federal cases, but also the extent to which they have become absorbed into the Fourteenth Amendment and hence made applicable to criminal prosecutions in state courts.

The first two chapters deal with the genesis of the Sixth Amendment against the background of criminal procedure as it existed in England and the American colonies up to the time of the adoption of the Federal Constitution. Chapter III deals with the problem of whether the amendment applies to prosecutions in state courts, how far it reaches territorially, what types of proceedings are covered, and similar matters in connection with the scope and application of the Amendment. The next three chapters, which are the heart of the book, consist of detailed discussions of the particular procedures guaranteed by the Amendment, divided, as the chapter headings indicate, as follows: Chapter IV, Trial By Jury; Chapter V, Vicinage, Indictment and Witnesses; Chapter VI, The Right to Counsel. The final chapter comments on the varying importance attributed to particular guarantees at different periods of time, and raises the question of whether the specific guarantees of the Sixth Amendment ought not to be supplanted by a more flexible concept—like that of procedural due process.

Mr. Heller's discussion is thoughtful and lawyer-like (he is a lawyer as well as a political scientist). In fact, it is so lawyer-like, so confined to cases and similar legal source materials, that one wonders just what, if anything, his political science background contributed to the study beyond a rather peculiar limitation of its scope. As a doctoral dissertation, the scope of the study very likely makes good sense; but why publish it as a book? When, in the final chapter, Mr. Heller raises questions as to adequacy of the Sixth Amendment in the light of present-day conditions, he merely raises them, as any lawyer might do. He does not attempt to suggest answers as might fairly be expected from a political scientist.

Even Mr. Heller's legalistic treatment is subject to question at several points. Why, in the chapter on Trial By Jury, does he not come to grips with the problem of the extent to which judges have encroached on the province of the jury as it was conceived in 1791? Why is there not a more adequate treatment of the extent to which legislatures and public officials are restricted

in changing methods for selecting jury panels? Why, when dealing with the right of an accused to be confronted with the witnesses against him, does not Mr. Heller discuss the effect of exceptions to the hearsay rule (see Wigmore's excellent discussion in his *TREATISE ON EVIDENCE*, Vol. V., Sec. 1397, 3d edition, Little, Brown & Co.).

Most of these criticisms come back to my fundamental quarrel with the scope of the book. They should not obscure the fact that Mr. Heller has done a careful case study of decisions under the Sixth Amendment and written his conclusions in a clear and graceful style.

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DELMAR KARLEN

RUSSELL ON CRIME. Edited by *J. W. Cecil Turner*. Vols. 1 and 2, Pp. 1961, 10th edition. London, Stevens and Sons, Ltd., 1950. 10£ 10s.

Probably in the development of no other branch of Anglo-American law have treatises played so important and influential a role as in the law of crimes. Certainly, no history of the substantive doctrines in the field can proceed far without reference to the contributions associated with such names as Hale, Hawkins, Foster, East,—and in this country, Bishop and Wharton. There can be no doubt that Russell, *On Crimes and Misdemeanors* is entitled to be included in any such listing. The fact that the work has now reached its tenth edition since its original publication in Great Britain 133 years ago, provides a practical demonstration of its utility and influence over a long span of years.

The tenth edition of Russell contains much to distinguish it from its predecessors. The Editor, Mr. J. W. Cecil Turner, a distinguished scholar whose other work in the field is well known in this country, has re-written a very substantial portion of the text. The result is a considerable improvement in the literary quality of the work and, generally, an enhancement of its significance and usefulness. In comparing Mr. Turner's edition of the treatise to the eighth edition which appeared in 1923, it will be found that apart from the absence of materials on criminal procedure and evidence, the present edition retains the same broad classifications of subject matter. Within those classifications, however, substantial alterations in organization and content appear. One of the anomalies of the present organization places the sections on attempt, conspiracy, and parties to the commission of crime under Part Eleven of the work entitled "Public Nuisances and Offences Relating to Trade."

Mr. Turner makes clear that his purposes are not purely descriptive. He intends that the treatise should contribute substantially to the rational systematization of legal doctrine in the substantive law of crimes. He regrets that the growth of the criminal law "has been so largely conditioned by the emotions of those concerned with its administration" and that this has led to "distortions of legal principle or fallacies of logic." The statement, perhaps unintentionally, suggests the limitations of the purely doctrinal approach to the field. But the demands of system are vital and legitimate; and Mr. Turner, presumably, believes that the study of the historical development of doctrine is itself a systematizing influence. The editor, accordingly, has added considerable historical analysis to the text, and the addition frequently illuminates and clarifies.

It is possible to call attention to only a few among the great number of topics discussed. Particularly notable is the editor's analysis of the felony-murder rule in the English courts. The problems encountered will be discovered in the American cases in at least as aggravated form. It is interesting, too, to observe that the English courts, as well as our own, have not succeeded

conspicuously in dealing with problems of "causation." Realistically, of course, these are not problems of causal relation in the physical sense at all, but present basic issues of how far criminal responsibility is to attach where the particular harm resulting from the defendant's act was not anticipated. Nor is it likely that the difficult problems in this area can be resolved through a more precise definition of the requirements of *mens rea*, as the editor seems to suggest. Foreseeability of harm is surely only one of several relevant factors which must be taken into account if intelligent solutions to these difficulties are to be had.

Recently, in this country, considerable advocacy has been directed to the need for a systematic reformulation of the substantive criminal law. No one, I think, would be inclined to dispute the desirability of an intelligent, orderly, and comprehensive analysis of the ends to be served by a system of penal sanctions and of the techniques most likely to achieve those ends without undue sacrifice of other values of equal or greater importance. But it is an enterprise attended by a good deal of peril. Too often in the law and in other intellectual disciplines, the demands of system have been satisfied at the expense of a healthy pragmatism; and in this area, that is a sacrifice that ought not to be made. It is important, therefore, that we erect no monuments to an *a priori* formula. But whatever the course of the efforts to construct a criminal law of the future, an indispensable starting point is the production, to the extent possible, of a precise and comprehensive statement of the law as it is. To the attaining of the latter goal, the tenth edition of Russell makes a significant contribution.

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FRANCIS A. ALLEN

MURDER, INC., THE STORY OF "THE SYNDICATE." By *Burton B. Turkus* and *Sid Feder*. New York: Farrar, Straus and Young, 1951. Pp. 498. \$4.50.

Even if Murder, Inc. were merely the product of the imaginative mind of a writer of detective story thrillers, it would make fascinating reading. But the book is far from fiction. It deals primarily in cold facts—facts that were established in the court room. To those who are well versed in the ways of big time professional racketeers, the book presents many remarkable facts. The prosecution of several paid killers by the Kings County, New York, District Attorney was made possible through the talkativeness of Abe "Kid Twist" Reles who had been a member of the gang. Reles then followed through and took the witness stand giving damaging testimony against his one time confederates. Other gang underlings followed a similar course. During the trials alibi witnesses broke down when cross-examined and admitted the fabricated character of their original testimony. Even cold blooded killers lost their composure in the court room and on one occasion a defendant, in a fit of temper, revealed damaging evidence against himself. Heading the list of public enemies who finally paid the death penalty for a vicious career of crime was Louis "Lepke" Buchalter. Indicted in 1940, Lepke was not placed on trial until sixteen months later in September 1941. The death sentence was imposed on January 4, 1942 and after all possible legal steps to save him had been exhausted, Lepke was finally electrocuted in March 1944. Burton Turkus, a co-author of the book, was an assistant District Attorney of Kings County and can take justifiable pride in his successful prosecution of Lepke and lesser lights of the infamous gang known as Murder, Inc. In establishing the false nature of an alibi presented by one of the killers, Happy Maione, the prosecution was materially aided by a New York law which required the

defense to reveal in advance of the trial the details of any alibi to be offered. "The state legislature had only recently granted prosecutors permission to obtain this information," said the authors, "after it had been demonstrated time and again that when an alibi is suddenly sprung in a courtroom, a D. A. has no way at all of checking its truth or falsity." In Illinois, the Chicago Crime Commission has strongly urged the enactment of a similar law during each of the past several sessions of the legislature. On each occasion it has been defeated largely through the vigorous efforts of a small bloc of legislators known to have affiliations with hoodlums including important members of the Capone gang.

The greater portion of the book relates to the activities of the gang known as Murder, Inc. The factual information given by Reles and other confederates together with their testimony which stood up under the grueling cross-examination of defense attorneys, provides a valuable contribution to any study of the organized crime problem. When the authors depart from the facts developed during the investigation of New York's Murder, Inc., however, they are not always on such solid ground and a few rather glaring errors tend to weaken the book. For example, in relating the warfare between the rival racing wire services, Trans-American Publishing and News Service, Inc. and Continental Press, the authors state "By 1942, Trans-America had won out in Arizona and Nevada, with California still holding out." The warfare between James M. Ragen, the head of Continental Press and members of the Capone gang did not break out until the latter part of 1945 and Trans-American Publishing and News Service, Inc. did not come into existence until early in 1946. In speaking of Continental Press it is stated "The end for Continental everywhere came in August, 1946" with the killing of Ragen. As a matter of fact, within a few months following the murder of Ragen, Continental Press once again enjoyed a monopoly over the lucrative wire service business and continued to reap fabulous profits until the Federal tax on handbook operators went into effect on November 1, 1951. And it was not until March 1952 that Continental Press decided to go out of business. Regarding the gangster, Johnny Torrio, who got his start in Brooklyn, the authors state "When Prohibition came . . . Johnny Torrio headed west and took over Chicago from Big Jim Colosimo." Actually, Torrio served as Colosimo's lieutenant for the greater part of a decade before the advent of Prohibition and was well established as a powerful underworld figure in Chicago for many years before the Noble Experiment went into effect.

The book devotes a considerable amount of space to a vigorous attack on the findings of the Kefauver Senate Committee which investigated organized crime. The authors are on sound ground when they criticize the Senate Committee's conclusion regarding the operation of a Mafia in America. The facts developed by the Senate Committee do not fully support this conclusion. But the authors fail completely in establishing their major premise that the modern underworld organization in this country is a single national syndicate which "is bound by a government of its own, just as tightly as General Motors or the National Baseball League and that this government has absolute power." During the period covered by Murder, Inc. Chicago remained one of the strongholds of organized crime in America. Hundreds of gang murders were committed and there is documentary evidence to establish that some of the Capone gang leaders reaped millions of dollars from organized criminal activities. Yet the book, *Murder, Inc.*, fails to reveal any facts whatever to show that any of the organized criminal activities in Chicago were ever directed by the so-called National Syndicate. If such facts were available to the authors

they certainly should have furnished them since they severely criticize the Kefauver Committee for its failure to conclude that a single National Syndicate with absolute power rules over organized crime in America.

Chicago Crime Commission

VIRGIL W. PETERSON

PSYCHIATRIC ASPECTS OF JUVENILE DELINQUENCY. By *Lucien Bovet*, M. D. World Health Organization: Monograph Series. Columbia University Press. 1950. Pp. 90. \$1.00.

This is a magnificent review of the causative factors of not only juvenile delinquency but of criminality. Discussing the etiology of delinquency, Bovet quotes Piaget on the child's "reification," on "adult coercion" and on the need of the child to "feel from within" the necessity to "do as you would be done by"—this decisively important basic approach to a really ethical education.

The author covers somatic and constitutional factors in delinquency, as well as disturbances in the psychological development of the personality, and describes delinquency as a "bio-psycho-social phenomenon," in the words of Lafon. He states that the psychological common denominator of delinquency can be found in the "feeling of insecurity to which any criminal tendency, from whatever source, gives rise," and that guilt leads to more anxiety, thereby completing the vicious circle—*anxiety, aggression, guilt, anxiety.*

The "Summary and General Conclusions" is a classic condensation of our present knowledge about anti-social behavior and the widest possible distribution of this publication of the World Health Organization in Geneva is strongly recommended.

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MARCEL FRYM, J.D.

PENNSYLVANIA MANUAL OF PAROLE PROCEDURES AND SUPERVISION. Edited by *G. I. Giardini*, Supt. of Parole Supervision, State of Pennsylvania, Harrisburg, Pa. 1951. Pp. 355. Multilithed.

Really good manuals of parole procedures and parole supervision have been conspicuously absent. It is therefore a distinct pleasure to review one that is both comprehensive in coverage and progressive in theory and practical application. The thoroughness of this manual reflects the solid basis of experience and professional knowledge upon which it is based.

The manual is well organized, with technical information concerning the history, organization and policies of the Pennsylvania Parole Service presented in the first ten chapters. The introductory chapter contains an excellent statement of the philosophy of supervision, with emphasis on the positive rehabilitative aspects of supervision. This philosophy is well summed up in the practical maxim adopted by the Board of Parole: "The purpose of parole supervision is to keep the parolee on the street as a law-abiding citizen." An intelligent discussion of the use of authority in parole supervision is early presented. It is significant to note that the use of firearms and other weapons by parole agents is prohibited, with an eloquent statement of the philosophy behind this policy.

Chapters on "Administration," "General Policy," "Release Procedures," and "Classification and Pre-Parole Summaries" are detailed in coverage and will prove most informative not only to the newly-appointed parole agent but to correctional workers everywhere interested in the mechanics of the Pennsylvania system. Good case illustrations are included, and an excellent outline of the type of information needed by institutions for classifi-

education purposes, together with suggestions for its gathering, are contained. One chapter is devoted to procedures in the supervision of special "probation and parole cases," the law giving the Parole Board power to supervise probationers when a court so orders. Other chapters deal adequately with the complexities of the Interstate Compact Agreement, and the more specialized relationship of the parole authority to the Pennsylvania Pardon Board in matters of clemency and pardon. Chapter XI, "Procedures in the Enforcement of Parole Regulations," might well be read by parole boards and parole agents everywhere.

This chapter shows clearly the need to leave much discretion in the hands of the parole agent with regard to the handling of serious problems in supervision, including technical violations. This, of course, presupposes highly competent agents. This section reflects the trend toward more flexible application of regulations, and recognizes the fact that parolees adjust at different emotional, economic, and social levels. Regulations cannot be applied mechanically, but must be adjusted, within limits, to the individual, ever keeping in mind, suggests the Parole Board, the philosophy underlying regulations. This chapter also contains an excellent section on the law of arrest.

The final chapters on record writing, handling violation reports, and the ending phases of parole supervision are excellent. The chapter on the final phases of supervision shows fine sensitivity to the meaning and value of the termination process, both to the parolee and the agent. The last chapter discusses statistical procedure, and although of primary interest to those working in the Pennsylvania system, also provides a sound guide for anyone planning either a revision or introducing new statistical procedures. A good general index concludes the work.

All in all, this is an excellent manual and doubtless future revisions will be equally progressive.

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BEN S. MEEKER

THE HABITUAL CRIMINAL. By *Norval Morris*. Published for the London School of Economics and Political Science, University of London. Harvard University Press, 1951. Pp. viii, 395. \$5.00.

This book, by the Senior Lecturer in Law at the University of Melbourne, deals primarily with English laws governing habitual criminals and their conduct after release. Habitual criminal is defined on page eight as "one who possesses criminal qualities inherent or latent in his mental constitution (but who is not insane or mentally deficient); who has manifested a settled practice in crime; and who presents a danger to the society in which he lives (but is not merely a prostitute, vagrant, habitual drunkard or habitual petty delinquent)."

The Prevention of Crime Act of 1908 is described in detail as to its provisions, implications, and administration. Under certain conditions habitual criminals, rigidly defined in the Act, might be held in "preventive detention" over a prolonged period of time, the first portion of the sentence to be served under regular prison conditions, the latter part in a more lenient situation of detention. Depending upon their behavior, they might be given a conditional release or held until the end of their sentence which might run as long as ten years. Gradually the flexible features of the system were lost and a rigid custom developed of usually sentencing the criminals to the minimum term of five years and releasing them conditionally after

three-fourths (later two-thirds) of the sentence had been served. As the law operated it seemed to catch only an insignificant portion of minor offenders rather than the dangerous criminals against whom it was directed. The author concludes that 80 to 90 percent of preventive detainees reverted to crime after their discharge.

The Criminal Justice Act of 1948 superseded the 1908 Act. This Act provided for a period of correctional training for habitual criminals, which might be followed by preventive detention of five to fourteen years if later criminal acts were committed. Emphasis is placed on study of the criminal during the first part of his term, correctional measures, and provision for conditional release.

The last few chapters present data on 32 preventive detainees sentenced under the Act of 1908 and 270 sentenced under the 1948 Act as either preventive detainees or correctional trainees. These data reveal the habitual criminal as a person with few occupational skills, little work experience, disorganized marital life, and poor physical condition, who when released from prison finds it extremely difficult to live independent of the institution. Crimes for the most part are against property. The author attempts to measure the effectiveness of detention by equating the length of time in prison with the length of time after release before a new crime is committed. No relationship was found. An attempt was made to develop the concept of "criminal maturity," or change in type of crime with increasing age of the offender. The criminals seemed to progress with age from vagrancies, larceny, and some types of assault in their younger adulthood to forgery, robbery, and extortion in later adulthood—at least the average age was 24.5 years for Poor Law and vagrancy offenses and 34.9 years for robbery and extortion, with other types of crime filling in the intervening years.

In a final chapter the author makes a plea for prediction studies modeled after the American studies made by Sheldon and Eleanor Glueck. The book also includes an extensive account of laws in other countries pertaining to habitual offenders.

The book, based on the author's thesis for the degree of Ph.D. at the University of London, is very informative to anyone interested in the ever-present problem of the recidivist.

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RUTH SHONLE CAVAN

SELECTION FOR PAROLE. By *Lloyd E. Ohlin*, New York: Russell Sage Foundation, 1951. Pp. 143. \$2.00.

In this monograph are to be found the results of a program designed to place the selection of offenders for parole upon a more efficient basis. This program, implemented by the state of Illinois in 1933, constitutes the most comprehensive attempt to utilize the suggestions contained in the pioneer work of Burgess (1928) and the Gluecks (1929). The work of these social scientists indicated that it was possible to predict actuarially the response of types of criminal offenders to specific peno-correctional programs. Underlying such research is the assumption that persons who possess somewhat similar social and personality characteristics will, when confronted with similar situations, tend to react to such situations with a high degree of uniformity. If such an assumption can be demonstrated to be correct, it would seem to follow that the work of any agency, official, administrative board, etc., created for the purpose of selecting persons to be subjected to specific types of treatment would be made more effective. Ohlin's report contains data that suggest that it is possible to render more accurate and