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Book Reviews

BOOK REVIEWS

AN INTRODUCTION TO CRIMINAL JUSTICE. By *Orvill C. Snyder* New York: Prentice-Hall Inc., 1953. Pp. xvi, 776. $8.00.

This book is a text and collection of cases designed for use in a law school course in criminal law. It is doubtful whether it will be of any considerable interest to practicing lawyers, judges, legislators or other persons actively engaged in the administration of the criminal law. The active practitioner, whatever his role may be, is primarily interested in the law as it is reflected in the statutes of his particular jurisdiction. His concern is usually with the meaning of a particular statute; his problem one of statutory interpretation either with or without the aid of judicial expression as to its meaning. True, he is interested in the conceptual basis of the criminal law but primarily to the extent that general concepts lend meaning to the statutory framework within which he operates. Professor Snyder's book is largely conceptual, ignoring almost entirely both statutory changes in the common law and the problem of statutory interpretation. Conspicuously absent in the book is any reference to the text of a particular statute, of a typical statute, or of the context in which a given type of statute is likely to appear.

The active practitioner is most often concerned with procedural, evidentiary or administrative problems. The scope of this volume is largely confined to an exposition of substantive, common law rules and concepts. By definition, the practitioner's greatest problems are those of current importance. The emphasis here is, to a great extent, upon historical development; the law as it was evolved in the past from judical decisions, rather than upon problems created by statutory modifications or legislation in areas untouched by the common law. The practitioner must keep abreast of change and keep one eye in the direction of future developments which will largely influence, and be influenced by, his experience. Especially is this true today when there seems to be a trend in the direction of revision and codification.[1] *Criminal Justice* seldom even glances toward the future.

However far removed from the practitioner's interest, since *Criminal Justice* is designed for teaching purposes, it ought to be judged in that context. Unfortunately there is no fixed criterion. A book found to be eminently satisfactory by one teacher, may be totally unacceptable to another. The question of proper emphasis within a field as broad as the criminal law is not one easily solved. My own view is that the chief weakness of *Criminal Justice* is that it fails to give an adequate picture of the nature of the problems currently being faced in the administration of the criminal law and therefore fails to provide a basis for developing in the student a technique for handling those problems. Perhaps of greatest importance is the failure to reflect the importance of statutes in a field which is today almost entirely statutory. There is room here for only one illustration.

Professor Snyder too often assumes that there is one universal common law of crime applicable to all jurisdictions without particular regard to statutory variations. In the large amount of textual material, the author strives to formulate fundamental concepts using as a basis cases from various jurisdictions without particular regard to the statutory framework within which the particular case was decided. The failure to give proper emphasis to statute is unrealistic and likely to be misleading to the student. For

1. *For example the Louisiana Code (1942), the Wisconsin Code (1953), the A.L.I. Model Penal Code (project now in progress).*

example, students may be led to believe that there is a single concept of "gross recklessness" which exists apart from statutory formulation. The author states that "insofar as it has been defined, the gross recklessness which makes a homicide murder is that evinced by doing an act which endangers not one but a number of persons".[2] In support of the statement there is cited a New York case interpreting a statute which in part reads as follows: "By an act imminently dangerous to *others*, and evincing a depraved mind, regardless of human life. . ." (emphasis mine).[3] Attention is not called to the fact that the term "others" is contained in the statute in its plural form. Several pages later in referring to a situation where an "offender shot at victim to scare him but hit and killed him", the author states that "this act seems to verge on that gross recklessness which makes the homicide murder."[4] There is no explanation of how this can be without a showing that the act endangered "not one but a number of persons".[5] Had the author chosen, he could have cited a Wisconsin case, decided under a statute worded indentically with the New York statute, where it was stated: "We take the true effect of the words to be, that the act shall be dangerous *to other or others.*"[6] (emphasis mine) If the problem is solely a conceptual one, the student should strive to reconcile the inconsistency between the New York and Wisconsin view. On the other hand if the inconsistency is explainable by the context within which the statute is found in the two jurisdictions, the problem is an entirely different one. In fact the New York statute is labelled first degree murder and carries the death penalty. The Wisconsin statute is labelled second degree murder and carries a maximum of twenty-five years.[7] To consider the problem of whether the danger must be to one rather than several persons without reference either to the language of the statute or the context within which it is found is unrealistic and bound to be misleading.

Proper emphasis in the teaching of criminal law will always be a subject upon which there is disagreement. The difficulty is compounded when a person attempts to write a book which will be suitable for use in 48 different jurisdictions. Professor Snyder has devoted a great deal of effort within the limits set for himself. The task undertaken has been done well. My disagreement is one of scope and emphasis. My premise is that the teaching of criminal law ought to reflect current problems of the criminal law; ought to stress techniques for handling those problems. Measured by such a standard, *Criminal Justice* falls considerably short.

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MAN INTO WOLF: AN ANTHROPOLOGICAL INTERPRETATION OF SADISM, MASOCHISM, AND LYCANTHROPY. By *Robert Eisler*. Introduction by Sir David K. Henderson. New York: Philosophical Library, Inc., 1951. 286 pp. $6.00.

This book is the publication of a lecture delivered by Dr. Eisler before the English Royal Society of Medicine. The thirty pages which constitute the core of the theory and a summary of the evidence are followed by extensive

2. p. 612.
3. N. Y. Penal Law sec. 1044.
4. p. 616 n. 30.
5. p. 612.
6. *State v. Hogan 36 Wis. 226 (1874).*
7. Wis. Stat. (1951) 340.03.

notes and five appendices. The thesis is an explanation of murder, rape, other crimes of assault, cruelty, and war throughout the history of man—a theory of violence.

Violence in man is attributed to his archetypal character (the inherited collective unconscious) which has survived from his ancestors (theory of C. G. Jung). The explanation is this: Man was originally a peace-loving, vegetarian living in sexual communism. With superior intelligence, the instinct of imitation, and the necessity for survival in colder climates, some species of man donned clothing and "aped" the beasts of prey. He became conivorous, cruel, and sexually jealous. Strong males monopolized the females. Modern man is a crossbred species from the matings of the weaker carnivorous males with the females of the peace-loving vegetarians. Thus the desire for violence is an "inherited memory" from our carnivorous (not original) ancestors. Vegetarianism, nudism, pacifism, and "simple living" are "symtomatic defence reactions against the archetypal lupine urge. . ." (p. 50)

Evidence for the theory is based on the classics, mythology, dreams, and largely outdated scientific writings. Other than the assumption of archetypal characteristics, the theory rests on the validation of several propositions. These are highly speculative. They are neither borne out by modern physical and cultural anthropology, nor by contemporary psychology which relegates the theory of imitation to an unimportant role.

Limitation of space prevents an evaluation of the numerous propositions subsidiary to the general theory. Some of these appear to be highly insightful. Proof of the central thesis, however, is unconvincing. Proof is from heresay evidence which supports the thesis while ignoring that which refutes it, done in much the same fashion as those who developed the stage theory of classical social evolution. It poses a complicated series of dubious propositions to explain what can otherwise be attributed to more varifiable facts. And on the other hand, it oversimplifies the problem by attributing virtually all violent acts of man to the manifestations of an instinct.

Granted that a developing science is nourished by the uninhibited speculation of brilliant minds, it astonishes this reviewer that a contribution is seriously received which fails to refer to the contemporary works of others. Murder, assault and war are behavior patterns of man. They are psychic responses taking place in a system of social relationships. There is no reference in this book to the contributions of modern psychology, psychiatry, sociology or cultural anthropology on these subjects. An able classical scholar is not expected to contribute to the scientific problems of modern physics. If only to a lesser degree, he also is now unable to contribute to the behavioral sciences of man.

University of Connecticut ARTHUR LEWIS WOOD

CHILDREN OF DIVORCE. By *J. Louise Despert:* Doubleday & Company, Inc., Garden City, N.Y., 1953. Pp. 282. $3.50.

This well-intentioned book is written for parents and relatives of children of divorce. It offers vivid pictures of the child's reactions to insecurity, and leads us into the chambers of the few judges and into the offices of the very few attorneys who have a heart for the child, in addition to their knowledge of the law. Those lawyers and physicians who can forego, for once, the need for exact case histories, will enjoy reading Dr. Despert's book.

New York City W. G. ELIASBERG

MODERN TRENDS IN FORENSIC MEDICINE. Edited by *Keith Simpson*, M. D. Mosby, St. Louis (also Butterworth, London), 1953, 327 pp., $12.50.

Dr. Simpson and his collaborators have rendered a timely and distinguished service to forensic medicine. They have redefined its limits and scope, in the areas of haematology, toxicology, bacteriology, serology, and electroencephalography. Their understanding of the limitations of conventional microscopy as this is applied in criminal science may well prove enlightening to our American experts, in so far as they are not familiar with the methodology of their British colleagues.

The collaborators represent a broad range of disciplines: medicine, anatomy, pathology, physiology, criminology, jurisprudence, and anthropology. To this reviewer one of the high-lights of the volume is Mr. Walter M. Levitt's paper on the relationship between civil law and medical practice. This paper beautifully integrates criminology, jurisprudence and medicine, and the points are illustrated with copious case material.

Los Angeles HANS A. ILLING

FAIR TRIAL: FOURTEEN WHO STOOD ACCUSED, FROM ANNE HUTCHINSON TO ALGER HISS. By *Richard B. Morris*. New York, Alfred A. Knopf, 1952. Pp. xv, 494. $5.00.

In his skillful analysis of the background and case histories of fourteen notable American criminal trials, Professor Richard B. Morris of Columbia University has eschewed any attempt at literary, legal, or historical pyrotechnics. He has aimed at diligently collecting and calmly presenting such particulars on each courtroom scene as might enable the reader to form his own judgment on the fundamental question of whether or not the accused received a fair trial. His survey of the American judicial scene makes one telling point: because justice is an idea that changes with the political, economic, and moral climate of a particular time, many innocents have been the unfortunate victims of its abuse and painful growth.

The fourteen cases in *Fair Trial* cover such varied crimes as sedition, treason, espionage, murder, manslaughter, and piracy, and involve such varied personalities as the spirited Anne Hutchinson, courageous John Peter Zenger, ambitious Aaron Burr, the passionate Chicago Haymarket dynamiters, and stolid Alger Hiss. Lawyers and laymen alike will find absorbing materials in the case histories. Backgrounds, proceedings, and commentaries are presented clearly and succinctly, free from distracting technical jargon. Yet for all of Professor Morris's cerebration and air of detachment, he is not adverse to making a few subjective judgments. He indicates, for example, the judicial questionability of the trials of Anne Hutchinson, John Brown, and Alger Hiss; and praises the court's handling of the Parkman murder case, the Sickles verdict, and the acquittal of Duff Armstrong.

Professor Morris's penetrating study shows that many confusions and abuses in America's legal tradition have been sloughed off and many trial wrongs have been righted. However, criminal cases, particularly those where public opinion has been aroused, still occasion unfair trial practices and doubtful interpretations of due process. The wealth of factual and interpretive information in this vividly-written book will provide useful background materials to those pondering over the omnipresent legal conundrums of how to insulate our judicial system against an emotional public opinion, intellec-

tual prejudice, and tortuous rules of evidence, and how to assure the accused the absolute guarantee of a "fair trial."

Air Research and Development Command HAROLD M. HELFMAN
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THEFT, LAW AND SOCIETY. By *Jerome Hall*, The Bobbs-Merrill Co., Indianapolis, 1952. Pp. 398. $10.00.

This second edition of Prof. Hall's book *Theft, Law and Society* is a revision of the volume published in 1935. In the revised edition the author has included recent and important material on the socio-legal aspects of theft which make the present volume even more valuable than the 1935 edition. The author has revised the entire material, but has completely reorganized Part Two dealing with "Receiving stolen Property" and "Auto Theft". Here the author has validated the material presented in the earlier edition. In addition Professor Hall has included a new chapter dealing with "Embezzlement" which throws new light on the crime.

In *Theft, Law and Society* the author has combined the social and legal aspects by using historical information, cases at law and the complicated area of the administration of criminal law. Professor Hall's work stands on its own merits and needs no commendation to the thoughtful student of crime.

Iowa State College WALTER A. LUNDEN

THE CHILD GUIDANCE APPROACH TO JUVENILE DELINQUENCY. By *Eugene Davidoff* and *Elinor S. Noetzel.* New York, Child Care Publications, 1951. Pp. 173.

There are many difficulties to be met with in our attempts to help the delinquent child. One difficulty could be avoided, to wit: pedagogues, theologians, social workers, psychologists, child guidance clinics, psychiatrists —each talks his own language, and does not care to listen to what the fellow-worker has to say. Instead there is much animosity, much self-righteousness, much belief in one's own wisdom, and very little curiosity to look over the fence. In psychiatry itself, this state of affairs is mirrored in the neglect of clinical and etiological pictures. Those dealing with psychopaths are as much convinced that every delinquent child is psychopathic as, on the other hand, those accustomed to see neurotics or just stray children believe that they are holding the true ring.

The present book is a laudable step toward overcoming this deplorable condition. It is based mainly on the authors' experiences in the Syracuse Psychopathic Hospital. The techniques devised in dealing with early or later conduct disorders, especially also in dealing with pathological liars, are developed. The needs of children with mere conduct disorders are differentiated from those of neurotic, psychopathic, psychotic, mentally deficient and epileptic children. This book makes worth-while reading for all those interested from one angle or another in the juvenile delinquent.

New York W. ELIASBERG

SOCIETY AND THE CRIMINAL. By *M. J. Sethna.* Bombay, India: Leaders' Press, Ltd., 1952. 423 pages.

This book, by a barrister-at-law of Bombay, is a general treatment of crim-

inology and penology. Theories of crime, preventive and punitive treatment of criminals, and various phases of juvenile delinquency are included.

To an American the most interesting parts of the book are those that discuss crime in India. Scattered through the book are sections on the criminal tribes and their treatment, the history of punishment in India, the Indian prison system, and the provisions for juvenile delinquents. The influence of England is clearly brought out in changes made in penology in India during the past 125 years.

The greater part of the book, however, is devoted to a discussion of theories regarding the origin of criminal behavior and causes of crime (treated separately and with little connection between the two). The author has read widely, especially in English and American sources. Unfortunately, he has not had access to many books published since 1940. He is also apparently unaware of the progressive nature of scientific investigation in England and America, whereby old theories are discarded as new ones are developed. He thus accepts incompatible portions of the theories of Lombroso, McDougall (Instincts), Adler, Jung, Freud and many others and presents them without integration.

In the field of prevention he places great stress on compulsory moral education of children and the abolition of poverty, in the belief that these two measures would prevent much criminal behavior. In treatment he stresses reformation rather than punishment alone and also advocates what he calls compensation, or the obligation that the criminal should recompense his victim for the injury received.

The reviewer is in no position to judge whether this book is representative of the status of criminology in India. If it is, the conclusion may be drawn that Indian criminal philosophy is heavily influenced by religious philosophy and that little progress has been made toward original thinking in the field. It may well be that the imposition of English legal philosophy and procedures upon a very different culture has prevented the development of indigenous theories or procedures.

Rockford College RUTH SHONLE CAVAN

THE LAW OF HOMICIDE. By *Roy Moreland.* The Bobbs-Merrill Company, Inc., Publisher, Indianapolis, Ind. 1952. Pp. VIII, 338.

Some years ago Professor Moreland became particularly interested in cases in which a defendant has been convicted of criminal homicide or of battery as a result of death or harm caused unintentionally other than cases based upon the perpetration of felony or other "unlawful act" or resistance to arrest. The result of an intensive study of this area was a contribution entitled *A Rationale of Criminal Negligence,* which appeared first in a series of law review articles and later in book form. It formed the nucleus of the present volume and is sufficiently well known to warrant the limitation of attention here to new materials plus such changes as are found in the original part of the field.

This book is divided into five parts: I, The Law of Homicide Prior to the Eighteenth Century; II, Homicide at Common Law; III, Statutory Regulation of Homicide; IV, Defenses to Homicide; and V, Recommended Legislation.

In part I the author gives a concise picture of the origin of the law of homicide and the development of the malice aforethought concept. In this part of the volume he is entirely "orthodox", but from there on he does not

hesitate to leave the beaten path. He says: "The retention of 'malice' in the law of murder is a constant source of trouble and confusion." This follows a statement to the effect that "it should be excluded completely." Often more is lost than gained by the abandonment of a term which has back of it centuries of judicial interpretation, but Professor Moreland is convinced that would not be true of this one, although there is something to be said on the other side.

Despite many inconsistencies not only in the opinions, but in the decisions, of judges who were striving to formulate the idea, the malice concept seems to be emerging in rather clear-cut outline. It requires a combination of two elements—one positive and the other negative. For the positive element it is necessary to find the *presence* of either an intent to cause the particular harm or harm of a similar nature, or a wanton and wilful disregard of the creation of an unreasonable risk of causing such harm. For the negative element it is necessary to find the *absence* of any circumstance which would constitute a legally recognized justification, excuse, or mitigation for what was done. And despite an occasional deviation (such as the felony-murder rule) the tendency is to regard this combination both necessary and sufficient for the purpose, not only in homicide, but in mayhem, arson, blackmail, malicious mischief, and wherever else malice is encountered in the criminal field.

In his use of the phrase "negligent murder" Professor Moreland repeats the terminology used by him in his earlier work. In fact he has employed this expression so frequently that in referring to this part of the law he says it is "commonly called the negligent murder doctrine." The more usual analysis have been to consider that conduct may be so wantonly disregardful of a known risk of death or great bodily injury that it passes beyond the boundary of even criminal negligence and into the separate category known as malice aforethought. The phrase "negligent murder" has made its appearance on rare occasions, but it is an unfortunate term which seems to have resulted from an attempt to over-simplify the homicide field.

In this part of the field the position taken by the author in regard to the substantive law is quite different from that found in his earlier work. His original analysis was that the slayer's "knowledge of the danger" was the factor which made murder out of what otherwise would be manslaughter by criminal negligence. In the present volume he abandons that position and would have the distinction rest entirely upon the degree of danger. While not so worded by him this seems to suggest the following classification: (1) ordinary negligence (insufficient for manslaughter under the majority view), (2) criminal negligence (sufficient for manslaughter), (3) super-criminal negligence (sufficient for murder). And these distinctions are to be made with no requirement of awareness of the danger involved. He insists the difference is one of degree only and not a difference in kind. His earlier analysis was more convincing. In fact the trend seems to be in the direction of greater attention to the element of awareness rather than less. Thus, the tendency is toward the use of "reckless" and "recklessness" in identifying the type of negligence sufficient for manslaughter. And the very use of such a term implies awareness of the risk involved. If there is added a "wanton" or "wicked" disregard of the known risk, the conduct becomes "malicious". Thus, if an unintentional homicide has resulted from an act which created an unreasonable risk of death or great bodily harm, the preferred analysis would seem to be this: (1) if it was a mere case of inadvertence, the act was negligent, but it was not the kind or degree of negligence required for common law manslaughter; (2) if the act was done

by one aware of the existence of such a risk, the negligence was criminal and sufficient for guilt of manslaughter; (3) if the act was done in "wanton" or "wicked" disregard of a known risk of this nature, the state of mind was malicious and sufficient for guilt of murder. A man may be driving at such speed on a slippery road that he is aware of the risk involved without being "wantonly" or "wickedly" disregardful of the safety of others. That is not true of one who shoots through the cars of a moving train without knowing or caring whether anyone will be hit or not.

The "preferred analysis" is suggested with no claim of clear-cut support in the existing case law—just as the author makes no such claim for his position. In the present confusion what is needed is vision of the goal which ultimately should be reached, and on this point the author and the reviewer are as far apart as the poles. Perhaps the reader may find a happy medium more to be desired than either.

At times the style is provocative. Reference is made, for example, to the "fallacious theory, often enunciated, . . . that a criminal assault is an attempted battery, . . ." The author is well aware of the fact that this was precisely the original concept of a criminal assault, as distinguished from an assault in tort law—a concept never abandoned. This wording is to emphasize the significant change made in the modern common law when the concept of criminal assault was enlarged by adding to the original basis the tort theory of placing in apprehension of an immediate battery (where this was not made impossible by a statutory definition in narrower terms). The effort seems to be rather in the nature of a crusade to bend the development of the law in directions favored by the author. This, needless to say, required an extensive probing into the law as it now stands.

The presentation is challenging. It is a book to be read by those whose interests touch in any way upon the law of homicide.

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SOCIAL TREATMENT IN PROBATION AND DELINQUENCY. (2nd Ed.) By *Pauline V. Young*, McGraw Hill, 1952. Pp. 536. $7.00.

In both theory and practice the treatment of juvenile offenders has experienced significant changes since the first edition of Dr. Young's book which appeared in 1937. This present revision, largely rewritten, is based on extensive research since then into changing concepts of treatment, the facilities therefor, the role of the probation officer and the increasing literature on the subject. Four entirely new chapters have been added. The author speaks from long experience as social worker and teacher. Out of a conviction that delinquency "has to do mainly with social situations and social relationships" this second edition is written from the sociological standpoint. Here is a book every student of maladjusted youth and caseworker with them will find of inestimable worth. Illustrative case material, much of it new, drawn from probation and child welfare agency records, is freely used.

The volume is divided into four parts. The subject of Part I is Social Case Study. The preliminary investigation is all important. If made in haste and poorly written up, it may result in the commitment to correctional institutions of individuals who should have been placed on probation. Or on the contrary, cause to be placed on probation, persons quite unsuited to

that type of treatment. Excerpts from preliminary juvenile court hearings give a glimpse of the many acts of delinquent behavior which bring youth to the attention of the courts. These acts "are symptomatic of troubled, rebellious, impulsive youth. Many of them, if their needs were met by home, school and community, would undoubtedly be able to live lives devoid of conflict and confusion."

Race, nationality, religious faith, intelligence and educational level have little bearing on the incidence of delinquency. Delinquent boys and girls come from all kinds of families and home situations. Girls constitute about one fifth of the cases coming into juvenile courts. Poverty is no longer considered a primary cause of anti-social conduct. On the contrary, studies tend to show that delinquency decreases in bad times when unemployment is general and increases in good times when work is plentiful. A New York juvenile court judge speaking of the large number of poor children brought into court, observes that we are easily led to "overlook the fact that the ranks of the poor from which they are recruited far outnumber those of the rich." Family disorganization and lack of satisfying social relationships are considered primary factors in delinquency.

The newer concepts of social case work are now stressed in definitions of probation. "Probation may be viewed as a process of discovering and developing capabilities of boys and girls and motivating them to take responsibility for themselves as members of the community, within the framework of the rules and with all its limitations." Or, quoting Kenneth Pray, "Probation is an experimental period of social adjustment during which time the individual is expected and is helped to learn to live within authority." The practicability of social case work in an authoritarian atmosphere, as in probation, is no longer generally considered a debatable question. Though admittedly difficult, many courts, adequately staffed with properly trained personnel, are doing effective case work.

"Legal Aspects of Probation," is the subject of Part II of the volume. Emphasis is on "Individualization of Justice and Socialization of Court Procedure." The reader is reminded that the juvenile court hearing delinquency cases follows the principles of equity, stressing remedial justice. Emphasis is on the offender rather than the offense; "not on punishment but on education, training and protection from further missteps." The juvenile court judge has a far more varied and complex job than a judge in criminal court. He has an administrative as well as a judicial function. The welfare of the juvenile as well as the best interests of society are dependent on him. He is the "central figure" in the administration of juvenile justice. Juvenile court judges who have stated their views "agree that a judge of the juvenile court must bring to his job qualities not required by other judges—warm personality, insight into socio-psychological problems conditioned by a world in upheaval, tolerance toward all human weaknesses, and above all, an ability to deal effectively with children of all races and creeds, all levels of social and emotional maturity, and various types of transgression."

Various methods of treatment of cases in juvenile court are set forth. Under certain conditions they may be dismissed without a hearing. In others probation supervision may be required. The use of this form of treatment is increasing; a slow but steady decrease in institutional commitments is in evidence. Frequent use is made of foster home placements. Juveniles are not usually fined but are often required to make restitution or reparation of valuables stolen or property damaged by acts of vandalism. The Federal