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## Book Reviews

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## BOOK REVIEWS

A HISTORY OF ENGLISH CRIMINAL LAW. VOL. II. THE MOVEMENT FOR REFORM. Pp. XV, 751. \$15.00. VOL. III. THE REFORM OF THE POLICE. Pp. XVII, 688. \$15.00. By LEON RADZINOWICZ. New York, The Macmillan Co. 1957.

These two volumes are the companions of Dr. Radzinowicz' "remarkable,"<sup>1</sup> "ambitious,"<sup>2</sup> "learned and imposing,"<sup>3</sup> "outstanding,"<sup>4</sup> "most impressive,"<sup>5</sup> "brilliant,"<sup>6</sup> "monumental,"<sup>7</sup> "massive,"<sup>8</sup> "Herculean,"<sup>9</sup> and "classic"<sup>10</sup> work of "undisputed preeminence"<sup>11</sup>—A HISTORY OF ENGLISH CRIMINAL LAW, VOL. I, THE MOVEMENT FOR REFORM (1948), which even critical Jerome Hall described as "a great treatise"<sup>12</sup>. Dr. Radzinowicz treats of *that* history of English criminal law which Sir James Fitzjames Stephen<sup>13</sup> did not cover. Those who had read volume I of the instant work and who had expected to be carried to about 1895 in volume two, and to the present in volume three, may perhaps be somewhat disappointed, since, at the close of volume three, the reader still finds himself anxiously waiting for Sir Robert Peel to clean up the Metropolitan police mess which existed prior to 1828. The mass of sources which the author has set out to utilize and his detail of description—too often, unfortunately, repetitive and unduly cumulative—are without precedent in Anglo-American legal historical writing. Rightly or wrongly, I cannot help being reminded of the young zoologist who went into the jungle to learn all about the elephant. When, many decades later, the decayed skeleton of the long missing scholar

(who had died of old age) was found in his jungle bungalow, there were found, also, on his shelves twenty five volumes (folio size) of neatly handwritten notes, entitled "preface to the introduction of a preliminary survey of a summary description of *the elephant* (first draft)". The manuscript was uncompleted.

No doubt the elephantine preface was as interesting to some zoologists as is Dr. Radzinowicz' work to the dozen or two legal scholars of this world who will regard his work as "must" reading. But let no one be misled by this seeming irreverence. Dr. Radzinowicz is performing an unparalleled task of scholarship which deserves the highest commendation and which will prove its usefulness to generations of researchers to come. His work has sometimes been regarded as a brilliant interpretation of English criminal law history. With that view I disagree. It is a reference work which presents the sources in an orderly and accessible fashion. It is a source book, and an excellent one, indeed. Those among the legal historians, and scholars of historical criminology who believe with Ranke that it is the task of a historian to describe *wie es eigentlich gewesen*<sup>14</sup>, will be fully satisfied. Those who believe that historical writing must be constantly evaluative, especially in terms of reference to the present<sup>15</sup>, will be somewhat disappointed, though we should perhaps give Dr. Radzinowicz the benefit of the doubt until the last volume of his work shall be before us

The *leitmotiv* of these two volumes—and of that aspect of the English criminal law, or rather its administration, which they describe—is very simple: An undue fear of infringement of personal liberty, out of balance with the safety of the commonwealth as a whole, caused the English people to suffer the perpetuation of a completely disjointed and inefficient system of private and semi-public law enforcement, to the material detriment of the public safety, welfare and morals.<sup>16</sup> Dr. Radzinowicz' two volumes of the text render the particulars in a skillful blending of

<sup>14</sup> SCHEVILL, *SIX HISTORIANS* 126 (Chicago, 1956)

<sup>15</sup> As, for instance, practiced by HALL in *THEFT, LAW AND SOCIETY* (Boston, 1835)

<sup>16</sup> To save space I shall not attempt to present a summary of the books' contents. Three "pre"-views

<sup>1</sup> Book Review, 65 SCOT. L. REV. 72 (1949)

<sup>2</sup> ORFIELD, Book Review, 63 HARV. L. REV. 185 (1949)

<sup>3</sup> PLUNCKNETT, Book Review, 12 MED. L. REV. 389 (1949)

<sup>4</sup> WINDEYER, Book Review, 23 AUSTR. L. J. 267 (1949)

<sup>5</sup> KEETON, Book Review, 16 SOL. 17 (1949)

<sup>6</sup> SCHWARTZ, U. PA. L. REV. 102 (1949)

<sup>7</sup> Book Review, 207 L. T. 83 (1949); Book Review, IR. L. T. 172 (1949)

<sup>8</sup> Book Review, 61 JURID. REV. 102 (1949)

<sup>9</sup> C. G. H., Book Review, 66 S.A.L.J. 129 (1949)

<sup>10</sup> DESSON, 58 YALE L. J. 655 (1949)

<sup>11</sup> PEAIRS, 30 D. U. L. REV. 292 (1950)

<sup>12</sup> HALL, Book Review, 27 TEX. L. REV. 735 (1945)

<sup>13</sup> STEPHEN, *A HISTORY OF THE CRIMINAL LAW OF ENGLAND*, 3 vols. (London, 1883) So far *Stephen's History* remains the leading work on the doctrinal development of English criminal law.

quoted passages from original sources with the author's own binding remarks, which, incidentally, did not always appear acceptable to me; e.g., (III/158): "Between religion and morality on the one hand and the penal law on the other there is a large gap which it is the business of the civil power to fill." Is it? Thousands<sup>17</sup> of footnotes give further particulars to those in the text, to which, in turn, the voluminous appendices give further additions which are lastly particularized by appendicular footnotes. Thus, even the non-Rankian historian will derive great satisfaction from the abundance of detail which permits the drawing of accurate and rewarding analogies to the present, especially with a view to reform. A few examples must suffice:

The account of antipathies and rivalries among different police establishments (II/264-265) is so forceful a historical lesson that without further ado enlightened American legislatures (there are some), federal, state and municipal, should be led to an immediate reform of competing police jurisdictions with all their waste and duplication. The miserable state of law enforcement under the J.P. system—rewarding only to office holders—nearly persuaded me to return to my state (West Virginia) and to preach to the masses until the constitution should be changed, and all J.P.'s and their constables should be run out of the hills. (II/33, 120). The futility of improvement in matters of obedience to law through enactment of more and more penal statutes (II/265-265) was plain in Colquhoun's days, yet our legislatures carry on in the same outworn tracks. Even as enlightened a criminal jurist as Judge Liebowitz could recommend the use of dragnet statutes for better law enforcement as recently as 1933,<sup>18</sup> after such obnoxious methods had appeared unacceptable and futile as early as 1790. (III/127-128: English law has hardly ever been closer to thought crime prosecution than it was then!) English criminal law practice of the eighteenth and early nineteenth centuries worked, although only impliedly, with the concept of the "socially dangerous" norm in-

contain excellent summaries; See KEETON, Book Review, 24 Sol. 73 (1957); ALLEN, Book Review, 73 L. Q. REV. 121 J. P. 111 (1957)

<sup>17</sup> For the formidable statistics on the two volumes see JEROME HALL's book review in the MICHIGAN LAW REVIEW, Which I had the opportunity to read as manuscript.

<sup>18</sup> From an excerpt from Judge Liebowitz' testimony before the so-called Senate "Rackets Committee", 1933; See MICHAEL AND WECHSLER. CRIMINAL LAW AND ITS ADMINISTRATION, 1014-1015 (Chicago, 1940.)

fraction as worthy of punishment (III/182) in contrast to the socially unobjectionable norm infractions of the norm-creating class of society. More than that, (though the leaders of the movement would not willingly admit it) there was a deliberate tendency to discriminate against the lower classes, to prosecute the poor and to legislate against their pleasures." (III/204, my emphasis). It was precisely this pseudo-paternalistic philosophy which brought forth Marxism in the same century and which equipped the Marxist states of the next century with their most formidable weapons against individual freedom. I am, of course, referring particularly to Article eight of the Penal Code of 1926 of the R.S.F.S.R. and the equivalent in other soviet countries. Where can be found a better historical lesson for strengthening the democratic process of penal legislation? And by what stars should such legislation be guided? Although, quite frankly, the English utilitarians have produced much that appears to us today as plain trash, there can hardly be any doubt that among those who influenced English criminal legislation on the way of progress, Bentham (III/431 *et seq.*) and Chadwick (III/448 *et seq.*) can be credited with some of the best sense yet written on the subject. What is needed, then, is a modern utilitarianism which builds critically on a Bentham and a Chadwick—and, incidentally, on the later continental utilitarians, notably, Jhering.

Other positive lessons can be found in Dr. Radzinowicz' History. Wilberforce's "Society for the Suppression of Vice and the Encouragement of Religion" (III/153) was not at all a bad institution. With some of the know-how of a Virgil Peterson and with modern knowledge, it might have remained as useful and successful as the Chicago Crime Commission and similar American private organizations which aid public law observance through private vigilance and initiative. Other lessons of the history of English Criminal law have been put to great advantage already; it was a Captain Smyth of the Thames River Police, London, who, together with a German Policeman, Major Hans Mueller, organized and directed Germany's first post-World War II "Water Police Academy" in Hamburg. There the German experience of a bygone better period was paired with the great tradition of the force from which Smyth came. Just as Smyth and his predecessors of the old West India Company's "Marine Police Establishment" had been reared in a spirit of efficient

and humanitarian law enforcement, so could he now instruct his German disciples who today form one of the world's best police establishments: "You will spurn with indignation any attempt to corrupt your integrity or to withdraw you from the strict line of your duty . . . the utmost *zeal, vigilance, prudence*, discretion and sobriety must on every occasion be manifested, never resorting to acts of severity or harshness when it can be avoided, and on no account using arms but in your defense." (II/368, in pleasurable comparison with my notes on one of Smyth's lectures to the German "Water Police Academy," 1946).

It remains for further researchers to utilize Dr. Radzinowicz' labors, and those of other historians, in an attempt to discover the basic laws underlying the prime stages of law enforcement in human society. Is there a basic law which dictates progressive stages of law enforcement with the progress of society, and is there an ultimate ideal for democratic society? When the English population, devoid of any police protection in the outgoing eighteenth century, was subjected to the depredations of bands of burglars and marauders, citizens armed themselves with clubs and other blunt weapons, arranged for a watch schedule, and nightly patrolled the streets of the neighborhood in pairs. (III/100 *et seq.*) At the close of World War II much of central Europe lacked any police protection to speak of; the occupying military being far too preoccupied with military tasks during this time. Capital penalties proclaimed for virtually all felonies and many misdemeanors stopped gangs of criminals as little in 18th century England as in continental Europe in 1945. There, too, marauding bands of uprooted and criminally disposed men roamed through cities and villages, and there, too, the stable population resorted to scheduled nightly citizens' watch, armed with clubs, to sound the hue and cry in case of danger. These and other examples invite comparison!

May Dr. Radzinowicz avoid the mistakes of our elephantologist, *supra*, and be blessed with a long and healthy life. An enormous task yet lies before him. Even the instant period (1750 to about 1828) is as yet incomplete. Accounts are needed of criminal law administration in the courts with respect to noncapital, especially petty, offenses. Rules of procedure and evidence, their theory, practical application and effect, the role of the attorney, and many other topics remain to be discussed. Even more important, a historical account of the development of the principles, doc-

trines and maxims of the "general part" of substantive criminal law should be included in the scope of Dr. Radzinowicz' work. It is in this sphere where he will have to trespass heavily upon Stephen's terrain, but that should not deter him. It is my estimate that the instant period could be concluded within two volumes (numbers four and five), but that the period from about 1828 to the present will require many more volumes, if it is to be treated with equal thoroughness, since the availability of sources increases toward the present.

A duplication of type (II/14, line 12) and the omission of a footnote (II/265, note 39) may be attributed to that ever present little devil who, as he sits on every linotype machine, with malice prepense, is intent upon frustrating all black art. But Macmillan does not have a similar excuse for failure to bind pages 151 to 154 of my second volume. The binding cracked between half title and title page. Otherwise, the publisher did a good job.

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LES CODES PÉNAUX EUROPÉENS.

TOME I. INTRODUCTION COMPARATIVE. ALLEMAGNE, AUTRICHE, BELGIQUE, BULGARIE, DANEMARK ET LOI CRIMINELLE GROENLANDAISE. 1956. Pp. LXXI, 1-415.

TOME II. ESPAGNE, FINLANDE, FRANCE, GRÈCE, HONGRIE, ISLANDE, ITALIE. 1957. Pp. 416-1014. By *Marc Ancel* (general editor), with the collaboration of *Yvonne Marx*. Paris. Le Centre Français de droit comparé.

Badly bound as these volumes are, they attest to a remarkable French ambition, vision and competency in comparative criminal law. This has been a French tradition. The knowledge of foreign law and the use of the comparative method have reached respectability and have begun to demonstrate their usefulness in criminal law. M. Ancel and Mlle. Marx furnish the particulars in these splendid volumes. Following a scholarly introduction by M. Ancel, on the importance of the undertaking, the value and method of comparative criminal law and the evolution of European criminal law theory over the past 150 years, the penal codes of the European countries have been presented in French translation and alphabetical order (French), from Germany (Allemagne) to Italy. Each code is preceded by a brief introduction written by the particular translator. Spotchecks show that the translations have been accomplished

with the highest fidelity. This work has a counterpart only in the equally remarkable German series, the *Sammlung ausserdeutscher Strafgesetzbücher*. We Americans still lag behind. But *Les codes pénaux européens* are new evidence that, unless we want to permit our own penal law to continue to rest on the lowest cultural and technical level, we had better do something to keep abreast of events in the rest of the world, by the use of comparative criminal law.

Congratulations to our colleagues in France! We are looking forward to the next volume.

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Yale Law School

THE HIGHFIELDS STORY. By Lloyd W. McCorkle, Albert Elias and F. Lovell Bixby. Henry Holt and Co. 1958. Pp. 182. \$2.60.

This writer has known the work of Lloyd W. McCorkle and F. Lovell Bixby for a long time, particularly in regard to their group psychotherapy experiments in correctional settings. He has shown his respects and admiration by often quoting them in his own writings, since McCorkle and Bixby are probably the pioneers of group therapy in penal settings.

It was, therefore, in keen anticipation that the reviewer studied this group therapy "experimental treatment project," undertaken by McCorkle and Bixby, together with Albert Elias. While much of the setting and the project is unique, as far as group psychotherapy or the "therapeutic community" (as it is called by the British psychiatrist, Maxwell Jones) is concerned, the book is a distinct let-down and disappointment to this writer. The writers seem to thrive in vagueness, particularly in their description of their "treatment philosophy." (Why is treatment called a "philosophy"?) They state, for instance, that if a boy steals he is not punished; instead, "he is given the opportunity to discuss this behavior with both adults and peers." (The authors state that "practically every boy in residence steals.") They add that, "needless to say, this talking it over with both adults and peers can be a rewarding experience for all." However, this writer was left in mid-air; nowhere could he satisfy his suspense; just what is the "rewarding experience"? Did stealing stop after talking it over? Why did it stop, *if* it stopped? (It can be assumed that the boys still steal.) In the following sentence, the writers state that "permissiveness" (their, *not* my, quotes!) is "not used because of the possibility of suggesting the

absence of structure." To quote Kenneth Pray—"there is no absolute freedom"—appears to be a truism and is hardly connected with the fact that the "permissiveness" apparently is used in dealing with the boys' stealing; for nothing seems to be done about it, except for some mystical "rewarding experience." Nor am I certain that I understand the authors' concept of "guided group interaction," to which much of the chapter on the "Philosophy" is devoted. When, for instance, the authors state that "the deep-rooted defenses of the inmate are pierced and he frequently emerges from the sessions in a temporarily 'crippled state' produced by the destruction of a previously important prop of the self," (p. 76) I find myself on the High Seas wishing that someone could explain why "pierced defenses" leave a patient in a "crippled state" (the authors', not my, quotation-marks!).

Now, I wish to emphasize that I am by no means just critical of the experiment; on the contrary, every institution that may contribute to the rehabilitation of emotionally and mentally handicapped children (this writer, incidentally, considers the term "delinquent" as a clinical etiology only) should be commended, the more so, since there are but all too few contributions to this end. Much of the book is descriptive and, as such, the lay reader can inform himself that something was, and is, being done with these wayward youth. This writer is merely curious and wants to know the How and Why; hence the above questions, which the authors did not answer.

This writer feels also that McCorkle and Bixby have had wide enough research experience to enable them to recognize the weakness of a book which lacks both index and bibliography. In this case we have only a few scant footnotes, referring, for the most part, to the authors' own writings. For this reason, it appears to this writer that the book will have a wider appeal to the lay reader than to the professional. But the latter will naturally *expect* to find some profit arising from an experiment of this nature. Perhaps a second edition will yet rectify some of the "Treatment Philosophy," even omit the word "philosophy."

HANS A. ILLING

Los Angeles

ZUR PSYCHOLOGIE DER EINZELDELIKTE. Vol. II: DER MORD. Vol. III: DER BETRUG. By Hans von Hentig. J. C. B. Mohr (Paul Siebeck), Tuebingen, Germany, 1956, pp. viii + 287, DM 22, -, and 1957, pp. ix + 221, DM 18,50.

The author's first volume of this series, "Diebstahl, Einbruch und Raub," has been reviewed here previously and what I stated then is certainly applicable to the succeeding two volumes: erudite and profound scholarship, a talent for the organization of the material presented to the reader, eminently readable text and lucid language (considering that the author is a bilinguist), and being valuable (without becoming voluble) to a host of disciplines involved with the disposition of crimes: judges and the legal profession as a whole, criminologists, sociologists, anthropologists, psychologists, and psychiatrists. I imagine it would be difficult for any reviewer not to commend these volumes even for readers who want to enjoy non-technical non-fiction. I also imagine it would be difficult to exercise any constructive criticism (other than the previously mentioned, namely the omission of a bibliography) in view of the breadth and depth of the author's knowledge of the literature as well as court-cases of both hemispheres!

Volume II, dealing with murder, contains eight chapters of unequal length. Its main hypotheses are *Die Tat*—the deed—, *Der Taeter*—the criminal (although von Hentig does not imply the criminal by the word *Taeter*, but merely the person who commits the murder),—and *Der Mordgadanke*—the idea of the murder. Each of von Hentig's hypotheses is worked through in typical fashion of *Gruendlichkeit*. For instance, in *Die Tat*, psychology and police science are closely interwoven. Described are the situations, time, place, and the mechanics of the murder. To illustrate some of von Hentig's hypotheses: he holds that an existing *Konfliktlage*—a situational conflict—is not static. The *Konfliktlage* can be worsened or diminished through influences (*Kraefte*), which enter into the picture from the outside world. There are several groups of such influences, which occur frequently and are of "practical importance." If the investigator neglects or ignores these points within their causal connection, they will interrupt the development of a case, often fatally. Quoted is a case of a murder by poison in 1864 where the act of murder might not have happened if the "idea" of a timely (*rechtzeitig*) divorce had taken hold in the mind of the murderer. Again, several women-murderers might not have taken the extreme step if their legal advisors had found it feasible, and had encouraged them, to take a divorce action. And so on. Von Hentig calls these moments, in which the murderer reaches his decision to commit the act, *reaktionsverstaerkend*—reaction-conditioned. Place

does not permit enumerating additional interesting and factual data.

The third volume deals with fraud, and is dedicated to Robert H. Gault, the editor-in-chief of this JOURNAL. There are nine chapters, and much of the material is a mixture of psychology and sociology, with chapters dealing not with the *Betrueger*—the impostor—but with the *Betrogenen*—the deceived, among whom von Hentig distinguishes between the "willing" and the "silent" victim. Generally speaking, the author is modest, in spite of his profound erudition, in stating that his study is brief because the multitude of phenomena concerning fraud is still unsifted, and much more research needs to be done to explain and to know it "all." Of American sources the author has relied greatly on David W. Maurer's "The Big Con," John C. R. MacDonald's "Crime is a Business," and Edwin H. Sutherland's "The Professional Thief."

HANS A. ILLING

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KRIMINOLOGI. (ON SCANDINAVIAN CRIMINOLOGY. By Ivar Agge, Gunnar Boalt, Bo Gerle, Maths Heuman, Carl Gunnar Janson, Olof Kinberg, Sven Rengby, Torgny Segerstedt, Thorsten Sellin. Stockholm, 1955, Pp. 429.

This text on Criminology is essentially a series of independent essays by scholars who follow quite different specializations, such as legal, medical, psychiatric and sociological. Each section represents the particular point of view of its author. Professor Thorsten Sellin, of the University of Pennsylvania is author of the first chapter—an historical survey of the field of criminology.

Professor Ivar Agge conceives of criminology, not as a unified and independent body of knowledge, but rather as dependent upon various fields or disciplines and as drawing its data from them; and, moreover, as a synthesis of knowledge from study of the origin and nature of law, the nature and causes of law violation, techniques of apprehension and identification of the law breaker, forensic medicine and psychiatry, punishment and treatment of the offender as well as social policy with respect to crime prevention. Criminology must be rigidly limited to the study of law violation and to the social reaction to law violation. He rejects the position of some criminologists who would extend it beyond these limits.

The second section, by Docent Bo Gerle, is concerned with the biological basis of criminal

behavior. Studies of criminalistic families are reviewed here to support the hypothesis of an hereditary basis for criminality.

Probably the most significant chapter is the one dealing with the problem of personality structure as a factor in delinquency. Brief discussions of "criminal psychology", crime producing situations, and guide lines for the applications of psychiatry to the treatment of the offender are also included. Much of the substance of these chapters is drawn from American sources but the materials from Kinberg, Hurwitz, and especially from less well known Scandinavian psychiatrists such as Sjöbring and Langfeld, would be new to American readers. The section reflects the strong influence of the psychological-psychiatric interpretation and the dominant role of the psychiatrist in dealing with the offender in Sweden, and for that matter, in all Europe.

The third monograph is the work of Torgny Segerstedt, Professor of Sociology at the University of Uppsala. Two collaborators, Boalt and Janson, have also contributed a chapter to this section. Segerstedt attempts to present a systematic theory or interpretation of criminal behavior in terms of the concepts of behavior uniformities, social norms, and conforming and non-conforming behavior. The writer contends that the sociologist must adhere to a sociological level of explanation rather than drag in biological and psychological factors by the back door. Personality traits are important only as they help to explain why some individuals are prevented from internalizing conventional norms or induced to internalize unconventional ones. It is quite useless, says Segerstedt, to debate which explanation is correct. They are simply different levels of interpretation. The position taken is essentially that of Sutherland, Clinard, Lindesmith, Hartung and other sociologically oriented writers. Probably Segerstedt would give somewhat more weight to the personality factor than would some American students such as those mentioned above. This section impresses the reviewer as one of the best presentations of a sociological interpretation to be found in the literature. It is to be hoped that it may be made available to American readers in English.

An additional chapter, by two sociologists on special criminological problems, containing mostly American materials dealing with the ecology of crime, delinquency and prediction, are also included in this section. Two chapters on criminal statistics by Heuman and Rengby make up the

fourth section of the book. Probably the description and analysis of Swedish criminal statistics would be of greatest interest to American readers.

The final section of the volume, "Fundamental Problems of Criminology", is authored by Olof Kinberg, dean of Swedish criminologists, and already well known to American colleagues through his numerous books and articles in English, German and French periodicals. This section is drawn from the publication series of the Criminological Institute.

To Kinberg, criminology is primarily a clinical and empirical body of knowledge. The roots of criminal behavior are to be found primarily in the personality structure of the individual delinquent. Of utmost importance is the problem of "social danger" or criminal risk presented by the offender or potential offender. Kinberg does not ignore milieu in producing individuals of high criminal potential, but the differential reaction of individuals with a typical personality structure is the matter of primary importance. For his interpretation of personality Kinberg draws heavily on the typology of the Swedish psychiatrist Sjöbring who postulates four basic personality components: capacity, validity, stability and solidity. These components are conceived as the stuff on which the development of personality rests. Their over or under development is the source of asocial behavior.

The final chapter, "Critical Reflections Concerning the Theory of Differential Association" will be of interest to American students and would be a welcome addition to the literature relative to this issue if it could be made available in English. Kinberg here takes strong issue with Sutherland and colleagues who are exponents of the differential association hypothesis.

*Kriminologi* contains a great deal of material already familiar to American criminologists since it leans heavily on American sources. It is not directed to American readers, however, but to judges, prosecutors, administrators of correctional institutions and other functionaries in the Scandinavian countries.

The book is marred from the American point of view by the absence of either an index or a systematic bibliography.

G. T. Pihlblad

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