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Book Reviews

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G. Richard Bacon of the Pennsylvania Prison Society; Edwin J. Lukas of the American Jewish Committee; Mrs. Charles Argow of Portland, Oregon; Dr. Blanche Weill of New York City; Trevor Thomas of California; and Mrs. Lionel Wurts of Huntington, New York.

The movement to abolish the death penalty in the United States is resurgent. Alaska in 1957 and Delaware in 1958 joined Michigan, Rhode Island, Maine, Minnesota, North Dakota, and Wisconsin on the eight state Roll of Honor and the United Nations lists 38 foreign countries which have outlawed capital punishment. Currently aggressive legislative campaigns are being waged in California, Connecticut, New York, New Jersey, Pennsylvania, Tennessee, Oregon, North Carolina and Massachusetts. The Massachusetts Commission appointed by the Governor to study the question has just submitted a report favoring abolition. Local groups are being organized in the 40 states still legalizing execution for one or more crimes to fight for abolition as morally wrong, contrary to the best thinking of twentieth century penologists, and demonstrably no more effective a deterrent than imprisonment or other punishments.

ILLINOIS ACADEMY OF CRIMINOLOGY

The Annual Institute meeting of The Illinois Academy of Criminology will be on April 17 and 18, 1959 on the campus of The University of Chicago (Breasted Hall, Oriental Institute, 1155 East 58th Street). The Institute will be co-sponsored by The University of Chicago School of Social Service Administration, Department of Sociology and School of Law.

Theme of the Institute meeting will be, "Theories and Realities in Criminology As Viewed by the Behavioral Disciplines." The guest speaker at the banquet meeting at The University of Chicago Quadrangle Club (1155 East 57th Street) on Friday, April 17 (7 P.M.) will be Professor Lloyd Ohlin of Columbia University.

Registration fee for entire meeting is \$2.00. Banquet charge is \$5.50. *Members of the Academy pay only \$7.00 for the Registration and Banquet charges combined.* Please register as early as possible. Checks may be sent to your Secretary, 55 E. Washington, Suite 1035, Chicago 2, Ill.

Detailed Program will be forthcoming at a later date.

BERTRAM B. MOSS, M.D.
Secretary

BOOK REVIEWS

(Dr. Peter Ostwald of the University of California Medical Center has drawn our attention to an inadvertence in his review of "Crime and Insanity"—Richard Nice, Editor—as published in our 49, number 5 (January-February, 1959, 467-478.) The words, "casting of blame upon others is evidence of our sense of inadequacy" should have been attributed to Professor Herbert Bloch, not to Professor Donald Cressey—EDITOR.)

SAMMLUNG AUSSERDEUTSCHER STRAFGESETZBÜCHER IN DEUTSCHER ÜBERSETZUNG. Berlin, Walter de Gruyter & Co. Nos. 71-75, 1957-58.

No. 71: DAS ARGENTINISCHE STRAFGESETZBUCH. Transl. & with an introduction by HEINZ MATTES. 1957. viii, 109 p.

No. 72: DAS CUBANISCHE GESETZBUCH DER SOZIALEN VERTEIDIGUNG. Transl. & with an introduction by GÜNTER BLAU. 1957. xxviii, 187 p.

No. 73: DAS BULGARISCHE STRAFGESETZBUCH. Transl. by THEA LYON. 1957. 63 p.

No. 74: DIE UNGARISCHE STRAFPROZESSORD-

NUNG. Transl. and with an introduction by ERICH HOLLER. 1958. viii, 80 p.

No. 75: DAS BELGISCHE STRAFGESETZBUCH. Transl. by HEINRICH GRÜTZNER & GISELA VON KIECKEBUSCH. Introduction by J. Marchal. 1958. xii, 126 p.

These German translations of the criminal codes of Argentina, Cuba, Bulgaria, Hungary and Belgium are published in the Collection of Non-German Criminal Codes in German Translations (*Sammlung Ausserdeutscher Strafgesetzbücher in deutscher Übersetzung*). Begun around 1890 and originally sponsored by the *Zeitschrift für die gesamte Strafrechtswissenschaft* and the International Criminalistic Association (*Internationale Kriminalistische Vereinigung*), 54 volumes of the series were published before it was suspended in 1942. Resumed after the war in 1952 under the editorship of the late Adolf Schönke, the series is now edited for the Institute for Foreign and International Criminal Law at the Uni-

versity of Freiburg (Breisgau), by Professor Hans H. Jescheck, Director of the Institute and Schönke's successor at the University, in collaboration with Professor Gerhard Kielwein, University of Saarbrücken. Among the volumes published after the resumption of publication are the codes of Yugoslavia, Czechoslovakia, Sweden, Greece, Russia, Brazil, Denmark, Japan, Finland, Greenland, Turkey, Spain and Poland and the criminal laws of some English-language jurisdictions. The series, which is constantly expanding, represents an admirable undertaking and deserves attention far beyond the German-speaking countries. It is the most comprehensive collection of the world's penal codes in a major western language. A comparable French collection, *Les Codes pénaux européens*, published by the French Center of Comparative Law and edited by Marc Ancel and Yvonne Marx, covers only the European codes. First published in 1956, so far it comprises 13 codes in two volumes. (See Gerhard Mueller's review in this JOURNAL, v. 49, no. 2, p. 160, July-August, 1958.) A collection in English is in progress at New York University. The translations from many little-known languages add particular value to all these collections.

The five volumes under review are typical of the high standard of the collection. With the exception of the Bulgarian Code, they include helpful introductions. The Argentine Code is introduced by a historical survey of Argentine criminal legislation, a careful analysis of its theoretical concepts, the contents of the present code and the movements for its reform. After the old Spanish legislation had remained in force for many years, in 1865 a project based on the reformed Spanish Code and the codes of Bavaria and Louisiana was published which, although not accepted by the national government, was adopted as the official code by many of the provinces. After considerable revision it finally became the basis for the first Criminal Code of Argentina (1886). A revised code, heavily influenced by the Italian positivist school, was published in 1906. It became the forerunner of the code of 1921 which, in spite of repeated attempts at reform, is still basically in force.

The Cuban Code of Social Defense, in force since 1938, is the successor to the Spanish Criminal Code of 1870, which was promulgated for Cuba by Royal Decree in 1879. Like the Argentine Code, and like the codes adopted in Europe be-

tween the two World Wars, the Cuban Code was greatly influenced by modern Italian ideology on criminal law. As may be seen from official statements on the drafts of the new code, the change in the title of the code, from "Penal Code" to "Code of Social Defense," indicated a radical change in the Cuban concepts of criminal law; the drafters of the new code attempted to defend society not so much by the punishment of the delinquent as by his reeducation and readaptation and by the compensation of the victim. In many ways, however, the new code does not fully reflect this new tendency and remains in a transitional stage.

Both the Bulgarian Criminal Code and the Hungarian Code of Criminal Procedure were promulgated in 1951 and have since then been amended. Both codes replace codes enacted in 1896. In general, in reflecting side by side, modern criminalistic thought, harshness and political expediency, they reveal the influence of Soviet ideology in the "People's Republics".

In contrast to the codes of Argentina and Cuba, adopted after the First World War, and the Bulgarian and Hungarian codes which were enacted after the Second World War, the Belgian Criminal Code was adopted in 1867. It replaced the French Criminal Code of 1810. Although in 1815 Belgium became part of the Netherlands and became independent in 1830, the French Code remained in force in Belgium from 1811 to 1867. Of course, the Code of 1867 has been repeatedly amended and supplemented, e.g., by the "Law on Social Defense" of April, 1930. Basically, however, it belongs to the family of the classical 19th century codes of the civil law countries. The amendments recognized the new tendencies which, though they brought to the code divergencies in style and expression, have kept it up-to-date.

For everybody familiar with the German language, the series offers an invaluable tool for the comparative study of developments and mutual influences in modern criminal legislation.

KURT SCHWERIN

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STUDIES IN JURISPRUDENCE AND CRIMINAL THEORY. By Jerome Hall. Oceana Publications, 1958. Pp. 300. \$6.00.

This is a compilation of articles written by Jerome Hall, Distinguished Service Professor of

Law, Indiana University. Of the fifteen articles published, three are published here for the first time. The topics range from Plato's theory of justice to federal criminal procedure. The articles can be grouped under two general headings: jurisprudence and criminal law. However, it would be a mistake to regard these as separate and distinct problem areas, at least from Professor Hall's point of view. The interrelationship of positive law, legal theory, and jurisprudence is his forte. He focuses attention upon the "socio-legal complex," the fusion of fact and value within a social situation.

Professor Hall rejects the several schools of jurisprudence which separate the Is and the Ought, facts and values. His interpretation of Plato is relevant in this respect. He views the *Republic* as Plato's attempt to establish the ideal community based on the ideal man, the philosopher-king; on the other hand, in the *Laws* Plato discusses the actualization of the ideal on earth, where the rule of law replaces the rule of man. This is a dynamic process whereby the potential ideal State is realized to some degree in the actual factual situation. In other places in his articles Professor Hall argues that what occurs in the legal process is what ought to occur. Law "is what it ought to be." Professor Hall belongs to a new school of natural law theorists, including Morris R. Cohen, Edmond Cahn, and Lon Fuller, who regard the crucial issue in modern jurisprudence as one whereby the challenge of the Legal Positivists and the American Realists is met by some system of integrative jurisprudence which maintains that moral ideas have an influence upon positive law.

The nominalistic position, which regards logical positivism as a tool for clear legal thinking, while denying the validity of value judgments which have no empirical referent, is also subject to critical analysis in Hall's writings. Whereas the nominalist denies the validity of universal categories, Professor Hall states that law is organized as a system of knowledge through general rule, doctrines, and principles. His textbook and casebook in criminal law are organized along these lines. His casebook illustrates the essential element in his orientation, namely, that positive law can and must be organized in terms of legal theory and jurisprudence.

The principles of criminal law are legality, a harm, conduct, *mens rea*, a fusion of *mens rea* and

conduct, a causal relationship between the conduct and the harm, and a legally prescribed punishment. Professor Hall regards the preservation of these principles as essential to a democratic society. Many of the legal reforms introduced by the sociological positivists are thought to be a threat to the principle of legality and thus to civil liberties. Criminal procedure has a built-in dilemma, i.e., the easier it is to establish guilt, the more difficult it is to establish innocence. We can profit by a consideration of the history of criminal procedure in the light of Hall's argument, especially as a contrast to the current attack on procedure by Mr. William Seagle who feels that we are allowing the guilty to escape.

Professor Hall argues that an adequate theory of punishment is going to integrate the retributive, deterrence, and reform theories. Any one theory by itself leaves out essential aspects of the problem which makes it defective and subject to abuse.

Opponents of the McNaghten Rules will gain little comfort from his discussion of mental illness and criminal responsibility. Professor Hall opposes the reasoning of Judge Bazelon in the *Durham* case and the report of the American Law Institute on a Model Penal Code. He regards human responsibility as a logical, ethical, and psychological necessity. The individual is responsible for his voluntary conduct. Hall defends the common law concept of *mens rea* against Holmes' notion of objective liability, the use of the concept of negligence in criminal cases, the felony-murder rule, and the use of the concept of strict or absolute liability in criminal cases. He also objects to the irresistible impulse test and regards it as an untenable and unscientific test of human responsibility.

Throughout these articles runs the thread of social science and sociology of law. Whereas he makes a distinction between the Is and the Ought, between prescriptive and descriptive norms, he insists that legal scholars are forced to make value judgments in policy matters. He argues for the wide-spread use of social science materials in any attempt to find answers to legal questions; however, unlike the Realists, he does not wish for the lawyer to abdicate his role in policy-making processes to the sociologist, psychiatrist, or economist. He wants the lawyer to make use of social science materials, but a discriminating use. Although Professor Hall is a

most outspoken critic of the psychiatric position in criminology, he is also one of the scholars who has taken seriously the notion that we can learn something from the psychiatrist. This can occur only if the lawyer neither abdicates his role in society to the scientist nor uncritically rejects science in his attempt to solve legal-social problems.

To Professor Hall social problems are legal problems. His chapter on culture, comparative law, and jurisprudence is an excellent statement of the relationship between law and society. He outlines an approach to the study of law which would analyze socio-legal problems in terms of the structure and function of the family, the character of public opinion, the nature and mobility of the population, the power structure of the society, the ideological structure, and the state of science in the society. Legal processes are social processes and an expression of social organization, a view shared by earlier sociologists such as Maine, Tonnies, Durkheim, and Weber.

It is most unfortunate that the work of Professor Hall is neglected in this country by professional criminologists and sociologists. He is much better known in England, on the Continent, and in the Far East where he had occasion to lecture in 1954-55. These articles are most difficult to read, and perhaps this discourages all but the most serious readers. To those who are willing to put forth the effort necessary to comprehend the book, the rewards are plentiful. This reviewer would recommend for those who are not familiar with criminal law or jurisprudence that they begin by reading Chapter 15 of Hall's *General Principles of Criminal Law* and the Introduction to his *Theft, Law and Society*. It is hoped that the publication of this book will bring to a wider audience of professional criminologists and penologists the challenging ideas of one of our foremost scholars in some of the most crucial areas of criminal law and penology.

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KRIMINALBIOLOGISCHE GEGENWARTSFRAGEN.
(Current Biological Problems in Criminology)
Vol. 3. Papers presented at the 9th Conference of the Kriminalbiologische Gesellschaft. November 8-10, 1957. Freiburg/Breisgau. Edited by EDMUND MEZGER and THOMAS WUERTEBERGER. Stuttgart, Germany: Ferdinand Enke Verlag, 1958, pp. vii + 121 plus 11 plates. DM 18.-

This third volume is devoted primarily to childhood and preadolescent delinquents. The first part deals with diagnostic and therapeutic material, the therapy being called *Bekaempfung* (fighting delinquency!); the second part presents three case histories, the authors intending to show the *Persoennlichkeitsbilder* (structures of personality) of juvenile *Rechtsbrecher* (law violators). As can be seen from the verbiage of the authors, some of whom being well known psychiatrists outside of Germany (such as Ernst Kretschmer, Heinz Leferenz, and J. Hirschmann), *Kriminalitaet* (criminology) to these medical men is a legal, not a clinical term, thereby following in the tradition of the German jurisprudence rather than the progressive school of Freud and, particularly, Aichhorn. However, this is not to say that the authors, numbering eleven, do not apply their medical and psychiatric armamentarium. All papers are scientifically and hence soundly based. They deal with diagnosis and prognosis of the *Verbrecher* (criminal) and with psychological pitfalls in establishing tables of prognoses.

Two interesting papers deal with the treatment of juveniles in the absence of the therapist and while on trial for an offense. The entire volume stresses the *Fruehkriminalitaet* (early criminal tendencies) of the preadolescent delinquent. As the volume's title indicates, the papers deal with problems of the present rather than aim to present a definite solution to the problems under discussion. Most of the papers are well written.

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