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Book Reviews

itself by breaking completely and finally with her husband, and by filing a formal suit for divorce. She also "joined" Narcotics Anonymous, a new movement not as yet accepted by the Probation Department and by other health and welfare agencies. It was the N.A., as "competitor" of this writer, which made her terminate her sessions with him. It seems, however, doubtful whether this patient can be considered as "cured," even though she has not been addicted for a year, and has held some jobs fairly steadily.

To sum up: most patients, and the drug-addict in particular, should be treated through a "frontal" attack on all sides, enlisting the relatives to a maximal degree, and through reaching out; i.e., being permissive and being available at all times, if necessary. This case seems noteworthy because it appears that, among several hundred cases of drug-addicts which the writer dealt with, Dinah was the only patient with whom a fair degree of progress was measured. No claim is made as to any scientific method or measurement or validity as to the treatment of drug-addicts as a species *sui generis*.—Hans A. Illing, Los Angeles, Cal.

BOOK REVIEWS

KENNY'S OUTLINES OF CRIMINAL LAW. Seventeenth edition. By *J. W. Cecil Turner*. Cambridge University Press, New York, 1958. pp. lxiv + 628. $11.00.

The first edition of this book, which has long been the leading student textbook on criminal law in England, was published in 1902. The preface stated that "some excuse seems necessary for adding to the now redundant stores of English legal literature another elementary manual of Criminal Law." The author underestimated his contribution as shown by the fact that in the ensuing 47 years sixteen editions have appeared. His work has been widely read not only in England but in the United States. It has been translated into French and Italian. The author of this review when writing about criminal procedure in the United States and comparing it with English procedure has habitually turned first to Kenny and then to other English treatises.

The sixteenth and seventeenth editions of Kenny have been produced by Mr. Turner. The sixteenth edition, published in 1952, represented many important and comprehensive changes from the previous fifteen. The thirteenth edition, published in 1929, was the last edition done by Professor Kenny himself. The fourteenth and fifteenth editions were edited with but few changes by G. Godfrey Phillips, an English barrister. His main additions were concerned with blackmail, sedition, industrial disputes, and child destruction. There was a sixteen-year lapse between the fifteenth and sixteenth editions, hence Mr. Turner had every incentive to make many changes.

This book is notable for its comprehensiveness. Not only does it cover the substantive criminal law but also criminal procedure, and what is more, criminal evidence. About ninety pages are devoted to evidence and about the same number to criminal procedure, and a little over four hundred to the substantive criminal law. There seems to be no American textbook in one volume giving such comprehensive coverage.

The original author, Professor Kenny, had a special flair for vivid illustration. The revisions of this volume have not destroyed this happy quality. The eleventh footnote on page 183 gives information on the correct methods of kissing. A judge is quoted as instructing the grand jury as follows: "If a man kisses a young woman against her will and with feelings of carnal passion and with a view to gratify his passions or to excite hers, that would be an indecent assault. The kisses of young people in seasons of universal gaiety are not indecent, but kisses given by a man under the influence of carnal passion are indecent."

As in the United States so in England many anachronisms remain in the substantive criminal law, such as blasphemy and seditious libel, common scolds, night walkers, forestalling, regrating and ingrossing. There is need for legislation to correct the many deficiencies, uncertainties and obsolescences in the substantive criminal law. This book should encourage the reform of English law.

While Mr. Turner denies any "claim or pretense" that this volume be regarded as "a work on criminal jurisprudence," the book is nevertheless of a critical and analytical character. It does not, like Archbold, merely attempt to summarize the existing law. The author in separate writings has made original contributions to the law of mens rea and criminal attempts, and weaves them into the book though sometimes in very condensed form. The author has recently published an eleventh edition of Russell on Crime, covering 1900 pages, so that some of the research there involved must have proved useful in preparing the present edition of Kenny.

How does this volume differ from the sixteenth edition? There is considerable discussion of the Homicide Act of 1957. There is consideration of the judicial changes in the law of larceny. A good many new cases, four hundred in all, have been treated, and the volume is fifty pages longer. With respect to obtaining credit by fraud, Appendix I on the "Meaning of Credit" is extremely helpful. Students of evidence will find Appendix II useful. It is entitled "Rules as to Admission of Evidence which reveals to the Jury Facts Discreditable to the Person Accused." Appendix III, on "Forms of Indictment," sets out forms as to capital murder, accessory after the fact to murder, manslaughter, arson, and larceny. There is no appendix, as in the sixteenth edition, on "The Nature of a Crime," but this subject is dealt with briefly in the first five pages of the book.

The value of the index has been much improved by giving references to page numbers as well as section numbers. Usually the author refers to statutes by their short titles, but now and then unfortunately to their regnal years and chapters.

This book is notable for its clarity, its accuracy, its conciseness, its critical analysis (not however ignoring the lessons of experience) its erudition, and its literary style. It is one of the best legal textbooks ever written, whether in the field of criminal law or any other legal subject.

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THE CRIMINAL MIND. By *Philip Q. Roche*, M.D. Farrar, Straus and Cudahy, 1958. Pp. 299. $5.00.

This book is an "expanded statement" of the author's Isaac Ray Award Lectures. Its main thesis is that difficulty in communication between law and psychiatry is due to differences in concepts and verbal constructs.

Legal concepts such as intent, malice, willfulness and premeditation, says Dr. Roche, are abstractions that "explain nothing." Their usefulness "is limited as a kind of paraphernalia in the rituals of guilt fastening." They are "attenuated demonological concepts which have no consonance with modern individual-centered psychology." The criminal trial is "an operation having a religious meaning essential as a public exercise in which the prevailing moral ideals are dramatized and reaffirmed," "a kind of exorcism" by which the triers contrive "simultaneously and unconsciously to sanction the acting out of the defendant, find vicarious gratification in it, and morally to condemn it."

This psycho-analysis of the public attitudes and emotions in administering and upholding the criminal law provides some valuable insights into the psychological well-springs of our traditional reactions to antisocial behavior, but surely it is something less than the whole truth. All that has been thought and written from the time of Plato to the present on the concept of crime and the purpose of punishment, and all the correctional practices from nith songs to probation, can hardly be explained simply in terms of an emotional catharsis.

Dr. Roche would reject all the law's "verbal impediments to sharing experience," in favor of "a field-theoretical approach to behavior with concepts of process, multiple and reticular causality and with a circular system of social interaction." "To the psychiatrist," he says, "intent has the meaning of a behavioral event, the precursors of which operate within the accused in a structured manner having an instinctual source and having a flow into final pathways of action.... Mental life is a continuous processing of behavioral events in part distributed in *alloplastic* actions upon the environment combined with a variable part absorbed *autoplastically*." Passages such as these are difficult for many lay readers to understand.

Perhaps the most important proposal that Dr. Roche makes is that the psychiatrist should refuse longer to act as a "moral inquisitor" in criminal trials; he should refuse to testify to the ultimate question of mental responsibility, that is, whether the defendant's mental condition was such as to satisfy the test in force in that state (whether he knew right from wrong, etc.). By

restricting the medical testimony to the description of the medical diagnosis, and insulating the psychiatrist from the ultimate question of responsibility, "we are keeping our symbols straight and pure."

Even under the Durham rule, Dr. Roche would have the psychiatrist testify only to the question of mental disease or defect but not to whether the crime was a "product" of such disease or defect. He prefers the Durham rule to the M'Naghten test, mainly because under Durham, "the expert is less imposed upon to transpose scientific observation into value judgments, less restricted to an intellectual exercise focused exclusively on a single aspect of the *subjective element* of a crime." But insofar as, under Durham, the expert is asked to give an opinion on whether the criminal act was the "product" of the defendant's mental disorder, it, like M'Naghten, asks him not for a scientific diagnosis, but for a subjective determination of moral responsibility—a question that the court or jury, and not the psychiatric expert, can and should resolve. The "product" concept he feels is based on the reasoning that mental disease dissipates capacity to form a criminal intent, and so it perpetuates the word-magic of manipulating verbalisms—intent, cause, product. [This last point is probably unsound; the court in the Durham case was careful not to adopt the "criminal intent" rationale that had been offered in State v. Jones, 50 N.H. 369 (1871)].

Not only should the psychiatrist refuse to participate in determining responsibility, but the law itself should give up this concept and adopt the view that all felons are mental cases. "Criminals differ from mentally ill people only in the manner we choose to deal with them."

The most effective use of psychiatric data, Dr. Roche believes, is not in the criminal trial on the issue of responsibility, but before and after the trial—in advising on the question of whether the accused is mentally fit to stand trial and in advising on the appropriate disposition of the convicted, the devising of techniques for rehabilitation and reform of convicted persons and advising on the readiness and safety for release.

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LAW AND CONTEMPORARY PROBLEMS, "SENTENCING", Vol. XXIII, no. 3, Summer, 1958. School of Law, Duke University. Pp. 184. $2.00

LAW AND CONTEMPORARY PROBLEMS, "CRIME AND CORRECTION", Vol. XXIII, no. 4, Autumn, 1958. School of Law, Duke University. Pp. 201. $2.00

These two issues of "Law and Contemporary Problems" seek to examine three very important aspects of the field of criminology. The first issue, which presents a symposium on sentencing, begins with a careful analysis of the aims of the criminal law. This analysis emphasizes the importance of understanding the action of the handling of convicted offenders upon the people, who are expected to assume responsibility in the support of the law. Thus, we are told that the method of the criminal law involves more than the threat of community condemnation. It must involve also the expression of this condemnation in the form of punishment. "Today", continues the article, " 'treatment' has become a fashionable euphemism for the older, ugly word [punishment]. This bowdlerizing of the Constitution and of conventional speech may serve a useful purpose in discouraging unduly harsh sentences and emphasizing that punishment is not an end in itself. But to the extent that it dissociates the treatment of criminals from the social condemnation of their conduct which is implicit in their conviction, there is danger that it will confuse thought and do a disservice". These are wise words and worthy of careful consideration by many sociologists, psychologists, and psychiatrists who tend to overlook or ignore the moral, psychological, and political implications of the method of the criminal law and seek to give more and more of the power of the courts to administrative boards and commissions which are largely beyond the control of the people. These exponents of "treatment" are strongly represented in the symposium.

However, the most valuable part of the symposium is devoted to a discussion of sentencing under the Model Penal Code of the American Law Institute and a critique of this code. Much of the opposition to this code is summed up in the critique in these words: "A high proportion of sentences today are too long—twenty-five per cent are commitments of ten years or over. Such terms are inconsistent with present correctional knowledge and experience. They mislead the public as to the dangerousness of most offenders. Under the Code proposals, they would be lengthened, through the proposed maximum terms, minimum terms, parole terms, and other provisions."

Few would disagree that we should make every effort to rehabilitate the offender—and this the

critique emphasizes—but sentencing must contemplate more than the interests of the offender and his future behavior. The feelings and values of law-abiding people and the community's moral code must also be given due consideration. These receive little attention in the critique or, as a matter of fact, in most of the other articles in the symposium. Although one may question whether this symposium is balanced and unified, as the editors hoped that it would be, it has rendered a valuable service in making the discussion and the critique of sentencing under the Model Penal Code of the American Law Institute available to both the student of criminology and the general reader.

The symposium in the second issue is "designed primarily to focus upon the diversity of viewpoints" prevalent in the area of crime and correction. "To accomplish this, it seeks to present a strong, partisan exposition of the legal, psychiatric, and sociological viewpoints, respectively, followed by a critique of each." Unfortunately, this symposium does not contain a systematic analysis of of the legal approach, and this approach, therefore tends to be smothered by its critique and the article on the psychiatric approach, both of which are written by psychiatrists. However, these are more than offset by the slashing attack on psychiatry and its practitioners which is made in the critique of the psychiatric approach. Although the reader may not desire to go so far as the critique does when it asserts, "Psychiatric testimony should not be admissible in court," this critique constitutes an indictment that cannot easily be pushed aside. One wishes that the symposium had a similar critique of the sociological approach. Certainly it would be difficult to imagine where one could find better examples of fuzzy thinking, vague concepts, shifting principles, and the perversion of science than in the field of sociology.

The sociological approach in the symposium is so handled that it becomes to a great extent a defense of the differential association theory of criminology. This theory, it turns out, is not really a theory after all but "a broad point of view for approaching an understanding of criminals" which must be supplemented with certain personality mechanisms—mechanisms which in other language have been used for many years by psychologists. The impossibility of proving this so-called theory is nonchalantly tossed off as "a crucial problem"—the understatement of the entire symposium.

After this the symposium slides into a morass of misconceptions, distortions, and half-truths entitled, "A Critique of the Sociological Approach to Crime and Correction." This infelicitous performance is really no critique at all. In fact, it rarely rises above a hysterical denunciation of everyone who does not agree with a certain cult of criminology. Perhaps a more careful reading of some of the material criticized might have helped to induce a calmer mood. In any event, it is regretable that this important task was not entrusted to steadier and more competent hands.

Next we are informed that the emergence of the concept "white-collar crime" is "possibly the most significant recent development in criminology." This ecstatic note is sounded in a strange proliferation of scientific pretentions and special pleading. In this, white-collar crime becomes a propagandistic weapon, which under the meretricious guise of science, is to be used for the establishment of a new social order. Apparently sociologists are to be mechanics of collectivism. Some sociologists may want to play this role, but let them not delude themselves into believing that they are being scientific.

In view of the fact that so little is known about human behavior, humility is an essential element in any study of crime and correction. There is little humility in this symposium but a great deal of arrogance and too often the making of a point at the cost of intellectual honesty. It appears that some psychiatrists would have us submit to the rule of a few psychiatric "experts." This greatly distresses some sociologists—not because there will be an inordinate amount of power in the hands of a few "experts," but because these "experts" may not be sociologists.

Neither at present, nor in the foreseeable future, can any single approach, or a combination of all approaches, provide us with all the answers in the field of criminology. Is it not sensible, then, that we press along all approaches, and while being understanding and tolerant of one another's inadequacies, utilize to the full all available resources to advance our knowledge of the very complex problems of crime and correction?

In accordance with the plans of the editors of *Law and Contemporary Problems*, this symposium presents some strongly partisan expositions on crime and correction. Despite the hopes of the editors, however, it does not seem that this symposium will "further cross-disciplinary communication, understanding, and appreciation." Perhaps

this is too much to expect of any symposium in a field that is so torn by bitter conflicts among deeply embedded vested interests.

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POLITICAL AND CIVIL RIGHTS IN THE UNITED STATES. (2nd. edition) Two volumes. By *Thomas I. Emerson and David Haber*. Buffalo: Dennis & Co., Inc., 1959, pp. 757 and 779. $36.00.

A giant two volume collection of cases and materials is not suitable for a brief analytic review and a second edition of an already established work needs no such review. Those familiar with the first edition will find the revision remains the most comprehensive collection of cases and materials on political and civil rights. Readers of this JOURNAL, however, will be disappointed to learn that the authors felt space limitations compelled them to omit from the second edition the section on rights of individuals in criminal proceedings. The authors apologize for this, their most "painful omission" by pointing out that the material "is treated in courses and texts on criminal law and is more readily available than most other aspects of the field." The other omissions acknowledged by the authors are extended treatment of the rights of aliens and systematic discussion of the activities of private associations. In addition, no significant attention is given to the impact of the military departments on political and civil rights, a problem of growing importance in these days of large citizen armies and extensive military activity.

Although I do not seriously quarrel with their allotment of space, I wonder if the extended treatment of academic freedom, involving as it does essentially the same considerations as other aspects of freedom of expression, is worth the price of having to disregard organized society's use of coercive sanctions. The nature of police and prosecuting procedures are equally significant in distinguishing between a police and a free state as are the restraints on legislatures. Moreover, some of these materials, the law of arrests, limits on police questioning, and so on, are no more readily available than many of the included Supreme Court decisions. Less attention to what the Supreme Court justices have said and more attention to the activities of other governmental agencies might have made for better balanced coverage of the problems of civil and political freedoms in the United States.

What is covered is covered extensively. The materials are grouped under the headings of the right to security of the person (perhaps it could be more accurately titled the problem of federal civil rights enforcement), the right of franchise, freedom of speech, academic freedom, freedom of religion, and discrimination. The leading state and federal cases are generously reprinted so that a full understanding of the underlying dilemmas can be appreciated. Key provisions of basic laws and pertinent executive orders and rules of administrative tribunals are made available. There are extended excerpts from leading journals, including W. G. Eliasberg's "Remarks on the Psychopathology of Pornography" which appeared originally in the April, 1942, number of this JOURNAL.

The authors' notes and bibliographies are outstanding. They trace the background, furnish a compilation of major legal references, introduce some of the relevant non-legal materials, and focus attention on the ramifications of central problems.

My quarrel is with the publisher. It is that of a teacher who has been deprived for all practical purposes of an excellent text. In their first edition Emerson and Haber stated that their primary purpose was to provide a collection of materials for classroom use and only secondarily to produce a reference work. The first edition was just that. For a cost of $10 we had a volume of 1200 pages of cases and texts. The second edition gives us 1500 pages in two volumes but a cost of $36. Even in these days few, if any, teachers would dare to assign such an expensive book as required student reading. For this purpose the book would be better if it were less comprehensive, less handsomely printed, and less expensive. The second edition is an invaluable text, that is too valuable. It will have to be used primarily as a reference book to be found only in the libraries of major institutions and in the collections of the more affluent professionals for whom it is a tax-deductible expense. They will find the authors' notes, the bibliographies, and the other materials priceless!

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A THERAPY FOR ANXIETY TENSION REACTIONS. By *Gerhard B. Haugen, M.D.; Henry H. Dixon, M.D.; and Herman A. Dickel, M.D.* New York: Macmillan Company, 1958, x + 110, $3.50.