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## Book Reviews

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Chicago Avenue, Chicago 11, Illinois. Detailed information concerning the 1959 course for defense lawyers appeared in 50 J. CRIM. L., CRIM. & P.S. 370 (1959).

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## BOOK REVIEWS

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CRIMINOLOGY AND PENOLOGY. By *Richard R. Korn* and *Lloyd W. McCorkle*. New York: Henry Holt and Co., 1959, xii, 660 pp.

Since Sutherland published his *Criminology* text in 1924, textbooks written by sociologists have followed an unvarying pattern in topics, theories, assumptions, and conclusions. The Korn-McCorkle book, while it traditionally combines in one text both the criminology and penology materials, is different in several significant ways.

One of the unusual aspects of the book is the distinction made between (1) the causes leading to the commission of a criminal act, and (2) the causes leading to the assignment of the status of criminal to a person (p. 48). The authors thus avoid the confusion of *crime* and *criminal behavior* which has characterized positivistic criminology in America. They distinguish between the law breaker and the criminal. Crime is discussed as a social and legal status, and defined as an act punished by authorities in political control of a territory (p. 46). In using this definition they make use of a legal approach to crime while avoiding some of the pitfalls of a strict legal definition of crime. They avoid the social definition which states that crime is any violation of a social code, legal or otherwise, a definition which has plagued most American criminologists who are sociologists. Lawyer-criminologists, such as Jerome Hall, Robert G. Caldwell, and Paul W. Tappan, reject the social definition of crime in favor of the legal; however, Korn and McCorkle are not lawyers, which makes their recognition of the legal dimension of crime highly commendable.

The legal aspects of crime are developed in two chapters dealing with criminal law and procedure. They state that "the study of law should commend itself to the criminologist" (p. 118). In general, although these legal materials are not the type which would be assigned to law students, they are excellent in comparison with what usually appears

in texts of this sort. However, the materials on criminal responsibility are most confusing and inaccurate because, in the discussion of criminal intent, they ignore the problem of negligence, the felony-murder rule, the doctrine of objective liability, and the fact that absolute liability or strict liability crimes do exist. The discussion of criminal responsibility and insanity is too simplified and elementary in comparison with the importance attached to the topic in modern criminology and criminal law.

There is an interesting chapter on crime and social structure. In the chapter on sociological theories, the work of Durkheim, a man often ignored in modern criminology, is discussed. Unfortunately, his division of law into repressive and restitutive is ignored, as is his concept of *anomie*. Though Durkheim never applied the notion of *anomie* to criminal behavior, it should be mentioned in that respect. Since Merton's discussion of *anomie* is referred to, and since a social psychological approach to human behavior is found throughout the book, the omission of Durkheim's contribution is difficult to justify. Likewise, there is no discussion of the interpersonal school of psychiatry, as found in the works of Fromm, Horney, Redl, Sullivan, and Bettelheim.

In chapter fourteen the authors integrate the several theories of criminal behavior. They use the concept of "role" to act as an intervening variable between the person and the criminal act, and the concept of "motivation" to relate the person to the role. Motivation is then discussed in terms of group identification and group commitment. This is one of the outstanding chapters in the book, but in it the authors forget their earlier discussion of the difference between *crime* and *criminal behavior*, as they attempt to explain *behavior* without reference to the legal code which makes the behavior criminal.

Another excellent chapter is chapter sixteen

which deals with the history of criminal law and procedure. In it they make use of the works of Esmein and von Bar, European legal scholars whose contributions to criminology are unknown to American criminologists who are sociologists. However, despite this historical orientation, the theoretical differences between the Classical School and the Positive School are inadequately handled. For example, the distinction between a legal definition and a social definition of crime is historically rooted in these two schools, but this connection is never made for the reader. The several theories of punishment are mentioned briefly in various parts of the book but are never systematically treated in detail or analyzed with the rigor which they deserve. The Classical School is analyzed in terms of punishment as a means of reforming the individual offender (p. 580). However, Bentham was not interested in the criminal; he was interested in the crime. He reformed the criminal law, not criminals. He is known as a legal reformer and a man who changed the structure of criminal codes. Bentham and Beccaria were opposed to harsh and arbitrary punishments by judicial authorities, and they supported the principle of legality. According to the Classical School, the purpose of punishment is to deter, not to reform individual criminals. The deterrence theory is most inadequately presented in this book, and there is no reference to "deterrence" in the index. No mention is made in the book of transportation as a means of punishment. The discussion of capital punishment, both in terms of trends in the use of capital punishment and the arguments for and against capital punishment, is not spelled out in detail or systematically treated in one section of the book.

The discussion of probation is too condensed, covering only two pages. Correctional procedures—classification systems, prison labor, prison education, prison counseling services—are covered in one chapter, a treatment which is too brief for a text. On the other hand, two chapters are devoted to the prison community, and an excellent discussion of the world of officials and inmates is presented to the reader. Group therapy plays an important part in the treatment section of the book, and the authors make good use of the principles of group dynamics.

The authors discuss the progressives, those who wish to treat inmates, versus the traditionalists, those who wish to punish the criminal, without

resorting to a moralistic or social reformer argument. The absence of a social reformer point of view throughout the text gives it a more professional touch than is sometimes present in criminological writings.

This book is most sophisticated in terms of the psychological materials which it uses. It neither completely accepts the Freudian position, as do most psychiatrists, nor does it completely reject the Freudian position, as do most sociologists who are criminologists. It represents an integration of sociological, psychological, and legal materials in one book. Such a treatment, however, may not find favor with many sociologists who refuse to recognize that psychology and law have anything to do with criminology. The weaknesses of this text are apparent only because of the overall quality of the book, through which Korn and McCorkle have made a valuable contribution to criminology.

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INTERNATIONAL REVIEW OF CRIMINAL POLICY,  
No. 14. United Nations, 1959. 165 pp. \$1.75.

This UN study comprises four articles on prison labor and prison standards in under-developed countries, followed by reports on UN and other international sessions on crime prevention and treatment and a final section of three reports of judicial and criminological topics pertaining to the U.S.A., Italy, and Viet-Nam. French and Spanish translations are appended to each section.

The first report, by the Commissioner of Prisons, Colombo, Ceylon, points out that problems of prison labor in under-developed lands can be understood only in the context of their distinctive social, economic, and cultural patterns. The problems, in general terms, relate to the provision of adequate training, adaptation of prisoners to penal labor, organization of prison industry, remuneration, post-institutional adjustment, and the integration of prison labor in the national economy, regarded in relation to the ultimate goal of rehabilitation.

The economic and social context includes the disintegration of traditional Asian patterns of living by the imposition of alien Western ways, lack of industrialization and voluntary welfare associations, and overpopulation. The author cites the principles of prison labor adapted by the First UN Congress on the Prevention of Crime and the

Treatment of Offenders, 1955, and summarizes prison labor remuneration practices in various countries as a background for the entire problem.

A second article, in French, with a two-page English summary, deals with the integration of prison labor and national economy.

A third report by the UN Secretariat is based on statements submitted at the Second UN Seminar on the Prevention of Crime and the Treatment of Offenders for Asia and the Far East, held in Tokyo at the end of 1957, at which representatives from Burma, Taiwan, Indonesia, Japan, the Philippines, and Thailand dealt with systems of prison labor and remuneration in those countries. There is no attempt at evaluation or comparison between the six national systems, but the report does present a ten-page summary of prison labor organization and the disposal of prison-made goods. All six countries have legal provisions for prison payment for work performed, with wide variations in the type of goods produced and work organization.

The fourth article is a study of Pakistan's experience in the implementation of the *Standard Minimum Rules* for the treatment of prisoners, as drawn up by the International Penal and Penitentiary Commission in 1929, revised in 1933, endorsed by the League of Nations in 1934, and revised by the UN in 1951.

When Pakistan achieved her independence in 1947, many reforms were introduced into the prison system in order to better the lot of the prisoners. Prior to 1947, prison administration had been governed by a somewhat rigid British jail manual of 1916, but a 1950 Punjab Jail Reforms Committee's recommendations led to more humane treatment of offenders, though the difficult financial state of the nation precluded the implementation of all the suggested changes.

The author, Col. B. H. Sayed, Inspector General of Prisons, West Pakistan, claims that public attitudes are still retaliation-oriented and that both the police and the press are opposed to a "soft" reform approach. There is a further need, he claims, to revise Pakistan's Penal Codes of 1835 and 1894, which prescribe simple imprisonment and "rigorous imprisonment," the latter having overtones of the British concept of imprisonment with "hard labor." Col. Sayed favors the removal of the distinction, together with the substitution of probation instead of prison for first offenders. He also favors the UK practice of

pre-sentence reports from welfare officers, as well as an end of the penalty of transportation for life which is imposed for such crimes as murder and dacoity.

The Prisons Act of 1894 is seen as constituting a barrier to progress in treatment of prisoners. Short sentences for juvenile offenders are described as accentuating crime and lacking in any remedial value, and legal revisions are recommended. Other paragraphs point to the need for more modern buildings and the fact that new Pakistani prisons will conform to the *Standard Minimum Rules*. In such areas as personal hygiene, clothing, food, exercise and sport, the rules are being followed. Solitary confinement and reduction of diet as punishments are not imposed in Pakistan. Prior to 1947, prison administration and personnel policies were very inadequate and unsatisfactory, though various improvements (e.g., training schemes) have been subsequently introduced. But in an underdeveloped country the general shortage of trained psychologists and welfare workers is reflected in prisons as elsewhere.

A system of remuneration for work remains to be initiated in Pakistan. In some prisons, excursions and visits to local places of interest are arranged. Little progress has been made in establishing minimum security institutions, though plans for open agricultural centers in West Pakistan have recently been announced. After-care of prisoners has made relatively little headway, but a press campaign has been in progress in recent years to enhance public support for penal reforms.

Later sections of this volume give a summary account of various meetings and congresses held under UN auspices, dealing with prison labor crime prevention and treatment, and a final section of five pages summarizes U.S. Public Law 85-752, establishing institutes and councils on sentencing.

The entire volume should be of interest to criminologists and others seeking a current review of world-wide trends in their fields. Such UN reports are one source of valuable, up-to-date information on international developments in law and penology.

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SOURCES OF OUR LIBERTIES. *Richard L. Perry*, Editor. New York Univ. Press, 1959. 456 pp. \$5.00.

This volume is the result of a belief that the major legal foundations of our present liberties are not sufficiently recognized in the United States. In pursuance of this belief, the Committee on American Citizenship of the American Bar Association recommended the compilation and interpretation of the principal documents which have served as a basis for our individual liberties. Mr. Richard L. Perry was selected to undertake this study. The theme and scope of the study are contained in Mr. Perry's statement that, "The liberties of the American citizen depend upon the existence of established and known rules of law limiting the authority and discretion of men wielding power of government."

Included within this volume are thirty-two British and American documents which have served as sources of our present-day liberties. From Magna Carta of 1215 to the United States Bill of Rights of 1791, the development and establishment of the rule of law is traced and analyzed. Each of these historical documents is reproduced. In addition, in each instance Mr. Perry provides a careful yet concise interpretation of historical origin, important provisions and later effects of the particular document. Thus, for example, in discussing the Mayflower Compact or Habeas Corpus Act the immediate circumstances which led to the formulation of law are described, the significant provisions of the document delineated, and the effects upon later legislation and jurisprudence analyzed. The interpretations offered are amply substantiated by reference to historical and legal sources.

In tracing the development of American liberties as finally codified in the Constitution, the author stresses the pervasive importance of Magna Carta, the further confirmation of personal rights in seventeenth century English legislation, and the varied practical and legal considerations which surrounded the establishment of the American colonies. The effect of life in the New World upon the structure and operation of government is emphasized. For instance, it is noted that the right of "legal judgment of his peers" enumerated in Magna Carta, Article 39, came to be recognized in America as the right of trial by a *jury* of one's peers.

The major part of the volume is devoted to a consideration of colonial charters and state constitutions as these documents have served to promote the later establishment of our liberties.

From these documents and from Mr. Perry's interpretation, two points stand forth. First, the lack of uniformity among the royal charters and the varied conditions under which settlement was effected. In this respect, the unusual grant of religious freedom to the Rhode Island Colony and the misplaced and hence illegal settlement at Plymouth serve as examples which were not, however, singular in British North America. Secondly, the clear and evident relationship of the colonial charters as well as the later state constitutions to the accomplishment of the Constitutional Convention is depicted and analyzed by the author.

Mr. Perry has in a most competent manner traced the legal foundations of our individual liberties. As a social scientist, one is only inclined to ask for an ascertainment of the social conditions and intellectual forces necessary and sufficient for the establishment and continuation of the rule of law, here in the United States and elsewhere. Perhaps a further study could be devoted to this end.

JOHN C. BALL

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POWER AND MORALITY. By *Pitirim Sorokin* and *Walter Lunden*. Porter Sargent, Extending Horizon Books, 1959. 202 pp. \$3.50.

"The well-being and survival of the human race are today largely determined by a mere handful of the top rulers of the great nuclear powers. . . . The greatest autocrats of the past had but a fraction of the tremendous power held now by a few members of the Politbureau and the top leaders of the United States ruling elite" (p. 9).

Does the President of the United States have the degree of power which is implied in the above lines? Several years ago a very persuasive President stood for what came to be described as "packing the Supreme Court." The people—a much greater power than he—stood in his way with loads of letters, and he had to realize his purpose by normal means.

More recently another popular President found his limitations. The majority in the Congress was described as "spendthrift" in excess of the President's wishes. He was reenforced by letter writers who told members of the Congress what to do. Still more recently a bill that was offensive to the President, and that seemed about to become a law, was supplanted by another which was more

to the President's liking. This was on the insistence of letter writers who wanted a law "with teeth in it." The "victory" of the President in each of these instances was really the victory of letter writers whose power was greater than his own. One who is familiar with legislation in the United States, Canada and Great Britain can find a mountain of such cases, all of which indicate the relative weakness of heads of state. The dictator needs to look out for letter writers, too, but he is less concerned with them than is the President, for example. Of course the latter, in 1960, has more power for both good and ill than a head of state in 960 A.D. or B.C. So has the citizen. It's a different age!

But the authors of the present book are concerned with the atom bomb which the President alone (in the U.S.A.) has the power to drop. But dropping the bomb implies a state of war. Even the President can't get us into that state without the say-so of the letter writers. And, though they support the war, he can't carelessly drop the bomb as a child might drop a rag doll. The letter writers might be unwilling to go along with him on that—and the President knows it.

The authors make considerable use of ancient and medieval "records" to show that ruling families surpass their subject populations in addiction to murder. Of course, every historian has to rely upon records of one sort and another. But there are records and traditions! Recently Thorsten Sellin published an article<sup>1</sup> which related, in part, to the alleged escapades of an English King, which should make us wary—if we are not so already.

Moreover, can we compare highly selected with non-selected groups? Those old ruling families were highly selected by birth, or military aggression, or uncommon cleverness and opportunity—or by all these circumstances together. (Chap. III) We might be able to select a hundred or so from the general population of any nation as it was several centuries ago, who were as diabolical as the ruling families.

Besides, is it quite fair to compare, by implication, the power for good or ill of a chief of state in 1960 with that of his counterpart in 960 A.D. or B.C.? Of course, no! Assume the quality of sainthood today and centuries ago—the more ancient chief couldn't, overnight, even declare a

disaster area and set the wheels turning. But the President or Prime Minister now can do it a thousand miles away at the flick of a finger.

The authors urge "Government by Scientists, Sages and Saints" as our savior from criminality and other social ills (Chap. XI, Pp. 160-83). We would need a fourth category: Administrators. Becoming at least a scientist or a sage in our century, maintenance of the status and becoming a 20th century administrator—it's too heavy a load!

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DAS FEHLURTEIL IM STRAFPROZESS (Wrong Sentences and Wrong Acquittals in Criminal Trials). By *Max Hirschberg*. Stuttgart: W. Kohlhammer, 1959. 183 pp.

This book deals with wrong sentences in the ordinary trial and, in the second part, with wrong and wrongful sentences and acquittals mainly in the political trials of the Weimar Republic in Germany. A final chapter takes up political wrong sentences in other countries, particularly the United States.

The method of this book is to present case histories in the way in which we find them in medical publications and to analyze the characteristic factors. Such factors, the leading causes of wrong sentences, are: the uncritical evaluation of confessions, the uncritical evaluation of the testimony of the accomplices, the uncritical evaluation of testimony in general; wrong recognitions; the defendant's lies evaluated as proof of his guilt; inability of the court and the juries to evaluate correctly the expert's opinion. Summarizing the analytic findings, chapters 2, 3, and 4 deal with probability and certainty in the criminal trial, with dangerous flaws of the laws and procedural rules, and with the psychology of the court in criminal trials.

This is an unusual book. It should have a deep effect on all those able to read it, and it would be desirable to have an English translation soon so that American jurists, lawyers, and experts could study it. The main value is in the painstaking collection, through two centuries, of errors in the administration of law, in France, in Germany, and in the United States and England. Of great value also is a bibliography of 195 numbers.

Some of the theoretical theses will have to be

<sup>1</sup> Sellin, *Two Myths in the History of Capital Punishment*, 50 J. CRIM. L., C. & P.S. 114 (1959).

deepened though. The author demands certainty instead of probability in the criminal trial. However, if we would take this precept at face value, this would mean the end of the criminal trial altogether. The author is, of course, correct in objecting vigorously to logical and ethical looseness in accepting proof. But he has overlooked that there exist not only probability and truth but also verification. We approach truth to the degree that we are able to verify hypotheses derived from the original hypotheses. The *reductio ad absurdum* is also a method of verification. The trial in Dostoevski's *Brothers Karamazov* should remind us of the fact that absolute certainty is not within the province of human thought. It should also enable us to find, i.e., to come to a conclusion in any trial that is brought before the court.

The evaluation of evidence and proof is a matter of experience of those called upon to judge to the same degree as it is a matter of increasing scientific knowledge. Sum-total, the bipartite alternative, either truth or probability, cannot be maintained. It is true that the unconscious motive and motivations of the courts and the jurors play a role, but the author does not give practicable advice as to how these motives could be made conscious or made innocuous in some other way. Indeed, this seems to be an unsolvable problem.

It is a valuable suggestion that the court should preserve, in writing, the factors for and against a verdict of guilty; especially the jury trial needs some reform in this direction.

The author has had extensive experience with the testimony of children, particularly in sexual offence trials. This should be read in detail. The author, as a practicing lawyer, was able to obtain a new trial in the case of death in connection with abortion. He analyzes the lack of scientific knowledge of the expert as well as the logical laxity in the way the court made use of this so-called expert's opinion. In other cases no new trial could be obtained, but the author shows convincingly in a painstaking analysis that these were wrong convictions. The case *Ziethen* should also be read in detail.

To repeat, this book is a rich source of experience for all those cooperating in the administration of justice, among them the experts. Its German text is written with noble emotion but nevertheless strictly scientifically and lucidly.

W. G. ELIASBERG

New York, N. Y.

THE SOCIOLOGICAL IMAGINATION. By C. Wright Mills. New York: Oxford University Press, 1959. 234 pp. \$6.00.

Professor Mills, who has distinguished himself with a number of previous publications, is sitting in judgment over his fellow-sociologists and, in so doing, hits hard and well. No honest social scientist to whom sociology and allied fields are just a matter of career, status, bread-and-butter, or stubborn one-man-theory hunting ground can do anything but applaud Mills' courage and endorse the truth of findings.

Briefly, Mills suggests eight "precepts and cautions," namely: To avoid the fetishism of method and technique and to avoid the mannerism of verbiage and the "Byzantine oddity of associated and disassociated Concepts" (a disease which, in this reviewer's opinion, sociology has suffered for many years in catastrophic dimensions and which has, in many instances, made a mockery of Ph.D. dissertations); to "urge upon others the simplicity of clear statement;" do not be a fanatic and take as your task the defining of reality; do not study merely one small milieu after another but study the social structures in which milieux are organized; realize that to carry out a fully *comparative* (italics mine) understanding of the social structures that have appeared and that do *now* exist in world history you must avoid the *arbitrary specialization of prevailing academic departments*; keep your eyes open to the image of man and to the image of history, and continually work out and revise your views of the problems of history, the problems of biography, and the problems of social structure in which biography and history intersect; know that you inherit and are carrying on the tradition of classic social analysis; and do not give up your moral and political autonomy by accepting in somebody else's terms the illiberal practicality of the moral scatter.

Since criminology is based on social and psychological sciences, the above-cited precepts apply the more so since many administrators as well as their subalterns are steeped in archaic traditions and concepts. Some of these concepts deal with the "cultural lag," which Mills tears to shreds as meaningless. In correctional work and settings we should be mindful of Professor Mills' concept of the integration of history, biography, and social structure or, as Mills aptly puts it,

“the sociological imagination enables us to grasp history and biography and the relations between the two within society. That is its task and its promise.” In this reviewer’s opinion, Mills’ book is one of the most valuable sociology has produced in the last decade.

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