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Book Reviews

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90TH ANNUAL CONGRESS OF CORRECTION

The American Correctional Association, sponsoring the 90th Annual Congress of Correction at the Denver Hilton Hotel in Denver, Colorado, from August 28 to September 2, 1960, anticipates being host to approximately 1,500 representatives from the judicial, correctional, probationary and law enforcement fields in all parts of the United States and Canada.

The Congress theme is "Corrections in Retrospect and Prospect". The theme selected concerns the examination of the degree of achievement of previous Congress goals and recommendations, as well as a determination of actions that possibly should be taken to advance corrections in the future.

The first General Session will be held Sunday evening, August 28, under the auspices of the American Correctional Chaplains' Association, Rabbi James I. Gordon of Elmira, New York, presiding. The presidential address by Rev. Gervase F. Brinkman, O.F.M., Catholic Chaplain at the Illinois State Penitentiary, Joliet, will be given at the General Session Monday morning, along with a subsumption of the 1960 Golden Anniversary White House Conference on Children and Youth. The format of the General Session for Monday evening will be developed by the Wardens' Association of America, through Allan L. Robbins of the Maine State Prison.

Tuesday will be workshop day and at the General Session that evening a report on the second United Nation's Congress on the Prevention and the Treatment of Offenders will be made by an

official delegate to the London meetings. At a general session on Thursday morning, September 1, the Model Penal Code will be discussed by representatives from the American Correctional Association, American Law Institute, and National Probation and Parole Association. The annual business meeting will be conducted Thursday afternoon and the Congress banquet is scheduled for Thursday night.

Having responsibility for sectional meetings and workshops are the personnel of twelve committees and ten affiliate organizations, including the Association of Correctional Administrators, Association of Correctional Psychologists, Correctional Education Association, Correctional Industries Association, International Prisoners' Aid Association, Medical Correctional Association and National Jail Association. Two affiliates established at the 89th Annual Congress at Miami in 1959, the Correctional Agriculture Organization and Women Administrators in Corrections, also will be represented again this year. The Volunteers of America, the Salvation Army, the Committee on the Military Offender, and other organizations, are holding sessions at breakfast or luncheon.

Warden Harry C. Tinsley of the Colorado State Penitentiary is in charge of the local arrangements committee. Arthur V. Huffman, Supervising Sociologist, Division of the Criminologist, Illinois Department of Public Safety, Joliet, is Chairman of the Program Committee. E. R. Cass is General Secretary of the American Correctional Association.

BOOK REVIEWS

RACE RELATIONS AND AMERICAN LAW. By *Jack Greenberg*. Columbia University Press, 1959, Pp. 481, \$10.00.

Jack Greenberg, assistant counsel to the NAACP Defense Fund, has produced a scholarly book that will be of great interest to sociologists, lawyers, and law-enforcement officials. Utilizing a social problem approach, the author makes a survey of the decisions, constitutional theory, and social setting of the law pertaining to race relations, and although he is not always able to restrain his enthusiasm for

the results he helped NAACP to achieve, the survey is of considerable value even to those who do not share his sympathies or commitments, inasmuch as they will be forewarned and forearmed as to the theories and doctrines NAACP has relied upon with so much success.

The book is organized on horizontal and vertical planes. The preliminary chapters explore the historical meanings of the broad concepts of equal protection and due process, and the remainder of the book makes a "vertical" approach to the main

categories of social activities in which civil rights problems arise, viz. "housing," "public accommodations," "voting," "education," and "criminal law." The result is that one turns from a general survey of the shifting meanings of constitutional standards to concrete problems. The Appendix contains a helpful selection of statutory citations and other materials including those on jury selection and sentencing for crime, recent legislation, and a select bibliography.

At the outset, Greenberg raises the familiar problem of whether law can put an end to discrimination and prejudice. He rejects the sociological theory of William Graham Sumner that "stateways cannot change folkways" which was the inarticulate major premise for *Plessy v. Ferguson*, and instead accepts Roscoe Pound's sociological theory that laws may not only set standards but also help to create habits of conformity to them. The thesis of his book is that "law often can change race relations, that sometimes it is indispensable to changing them, and that in fact it has changed them, even spectacularly. Indeed, it might be said that in many places law has been the greatest single factor inducing social change. But law alone, like other social forces affecting other institutions, may not be able to alter these relations beyond a certain point, and in some situations it cannot make much difference."

The book itself is carefully integrated and inter-related. Greenberg stresses the relation between law and social change; the interdependence of the political, economic, and social rights and aspirations of Negroes; the practical problem as to choice between alternative sanctions; and the role played by the social forces of education, litigation, and administration. The perspective that emerges enables one to see both the forest and the trees.

To readers of this *Journal* perhaps the most interesting portions of the book are Greenberg's discussion of the role of social science materials in the *School Segregation* cases and the chapter on Criminal Law. Greenberg, who argued the *School* cases in the Supreme Court, denies the assertions that have been made by some Southern politicians that the *School* cases are based on sociological nonsense rather than law and the extravagant claims of some social psychologists that their testimony won the law suits. He convincingly shows that after *Plessy v. Ferguson* there was a judicial erosion of the "separate-but-equal" doctrine and that forces of social change made abandonment of

the doctrine inevitable. Moreover, he minimizes the effect of social science testimony in the record and the influence of those authorities cited in famous footnote 11. To Greenberg, as to Edmund Cahn, the real influence of the social scientists was their part in shaping public opinion and helping to induce a recognition of social change. Once the Court became committed to a consideration of "intangible" as well as tangible inequalities, the flimsy "separate-but-equal" doctrine could no longer stand and the testimony of "experts" was hardly necessary to convince the Court that segregation in public schools has a harmful psychological effect upon school children.

The chapter on Criminal Law points out that the "quiet enjoyment of equal rights to housing, schooling, employment, and other aspects of living depends fundamentally on security of the person from lawless violence." The meaning of due process and equal protection in the criminal process is discussed and the rules as to coerced confessions and right to counsel are summarized. Specific attention is given to civil and criminal suits under the Civil Rights Acts and conspiracy statutes, and the implications of *Screws v. United States* and *Williams v. United States*. Greenberg recommends that the problem as to "willfulness" under section 242 be removed by an amendment that specifically states the rights that are protected, so that the constitutional objection as to vagueness which caused so much trouble in *Screws* will have no merit.

Greenberg also points to familiar statistics as to lynchings and the fact that no convicted lyncher has ever been sentenced to death, and raises the problems implicit in providing a death penalty for rape. Jury selection and criminal procedure in cases involving colored defendants, the problem of prejudiced atmosphere at the trial, inequalities in sentencing, and rules as to extradition, are also high points of the chapter. On the whole, the chapter is a good summary of current problems and the state of the law.

For a detailed review of all the cases involving race relations and the law, Vanderbilt University's *Race Relations Law Reporter* remains the best source. But Greenberg's volume as a survey or summary has great value for the general reader and both his sociological perspective and the social problem study technique should have appeal for even the expert in this field. The lawyer or public official who has a problem in a particular area of

race relations will find the book most helpful. Greenberg's sociological perspective will have great appeal for those who believe that law must be related to its social context, even though some may feel that the appropriate "context" in the *School* cases was regional rather than national and that the Court in effect took the law out of "context."

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INTERNATIONAL REVIEW OF CRIMINAL POLICY, No. 13 (ST/SOA/Ser.M/13). United Nations, New York, 1958, Pp. 184, \$1.75.

This report on prostitution in various parts of the world was prepared for submission to the Social Commission for consideration at its twelfth session. The articles are printed in whole or in summary in English, French, and Spanish.

Although direct comparison between countries is not possible, certain areas of concern and trends can be stated tentatively.

One of the first problems to attract repressive measures was the international traffic in women who were enticed into prostitution (white slave trade). International agreements for suppression were made by the United States and many European countries early in the twentieth century. During the past decade, the movement has been carried to other parts of the world under United Nations auspices. Traffic in women and the exploitation of the prostitution of women is apparently on the decrease and under fairly good control in many parts of the world.

Abolition of recognized houses of prostitution is another trend that is spottily world wide. This movement gained headway in the United States prior to and during World War I and has spread rapidly through Europe, South America, and Asia since World War II. Some countries have attempted an in-between measure of regulation of prostitution without brothels (street solicitation primarily), but in general the trend has been toward abolition of any official recognition. Prostitution as such has not been prohibited but there is no pressure (as was true with brothels) to recruit girls to become prostitutes; ease of locating prostitutes is to some extent reduced; and women may be arrested if they become too conspicuous in public solicitation. The uncertain status of the prostitute tends to lead to clandestine prostitution.

A third movement, especially since World War I, has been toward reduction in venereal disease infections. Not limited to prostitutes alone, the movement nevertheless pinpoints the prostitute as the main source of infection. Various efforts are directed toward identification of infected prostitutes and their treatment. The current method of quick treatment has reduced the incidence of disease to some extent but has not stamped it out. Some studies show that prostitutes have been reinfected and treated many times.

Prostitution has changed in character but has not declined materially and certainly has not disappeared. In countries that report declines, the reduction usually is offset by an increase in "good time" girls, who are not professional prostitutes but who are promiscuous in return for gifts, recreation, liquor, and other luxuries that they cannot afford on low wages.

No account is taken of the trend in the United States toward sexual relations between dating couples of equal social status. The attitude is lenient toward this activity, although it is often illegal according to state laws. One may question its omission from a discussion of public policy with regard to sex relations, since some of these dating alliances are only one step removed from the position of the "good time" girl. Even though the girl may not be promiscuous in the sense of associating sexually with a number of men during a given period of time, she may readily go from one to another as she changes dating partners. She affords a sexual outlet to men, exposes herself to some danger of venereal infection, and in time may become habituated to shifting of sexual partners. It may be that this trend is more common in the United States than in other countries where the distinction between "bad" women and "good" women may be more sharply drawn.

Call girls also are not discussed, although they fall within the classification of prostitutes.

The wide array of information in the report removes any illusion that prostitution is on the way out or that venereal disease is virtually stamped out.

Appended to the report is a classified bibliography on criminology covering current material in many countries.

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ZUR PSYCHOLOGIE DER EINZELDELIKTE, VOL. IV: DIE ERPRESSUNG. By Hans von Hentig. Tuebingen, Germany: J. C. B. Mohr (Paul Siebeck), 1959, vi, 318 pp., DM 28.

The latest volume of von Hentig's series on the socio-psychological analysis of various types of offenses is off the press. It deals with blackmail. As the author points out at the beginning, blackmail has been often written about, but the blackmailer has remained a *Schattenbild* (vague figure), and therefore it is hoped that studies of this hitherto little explored "field" of social deviation, that of the blackmailer, will be forthcoming. Of these the present examination is one of the first.

In his usual methodical way, von Hentig starts in his first three chapters with the problem, and continues with statistics (both recorded and estimated) and with the *Randgebiete* (allied forms) of blackmail. The author believes that the blackmailer's *raison d'être* lies in the public's mistaken assumption that the executive branch of our government concerns itself not only with the enforcement of laws but also with rumors and with other acts not controlled by law. Yet there are other forces at work, such as *Klatsch* (love of gossip), jealousy, and envy which are often "clever detectives," and work "Sundays and holidays" not missing anything. One of those who takes advantage of these forces is the blackmailer. His effectiveness, according to the author, can be seen in the statistics of suicides (which are more significant than the amount of money spent to quiet him). However, since the fear of blackmail may prevent many offenses, the blackmailer becomes the "unwilling guardian of the law," even though he is extremely dangerous and even though he may violate the law unscrupulously, since he knows that there are more blackmailed individuals (who have committed crimes) than "criminal" blackmailers. Thus the threat of the blackmailer *fuehrt in die verstecktesten Winkel des Seelenlebens und der gesellschaftlichen Struktur hinein* (reaches into the deepest recesses of individual lives and the life of the community).

Some of von Hentig's speculations centering around the *Grundfragen* (basic problems) arising from blackmail stem partly from cultural differences (from British, American, German and French reports of "local" mores), and partly from his analyzing the problem into its legal, social, and psychological phenomena. Therefore, the author quotes Sir Patrick Hasting's *Cases in Court*,

Busch's *Erpressung und Betrug*, Mellor's *Le chantage dans les moeurs modernes at devant la loi*, and the American anthology, *The Professional Thief*, edited by Edwin H. Sutherland. Primarily, however, he analyzes German sources, which include American "incidents" of blackmail, since the American "Gangster" has always fascinated the German public (e.g., Dillinger's "triumphal" reception in Hamburg after having escaped the Al Capone gang). Thus, von Hentig is careful in pointing out the various differences between English blackmail (connoting tribute paid to hoodlums, to the "Lord of the Forest", etc.) and American blackmail, in which such words occur as "mouse," and "muzzle," indicating extortion on a homosexual basis.

Of the ten chapters, the balance is devoted to the methods of blackmail, kidnapping, the various media used in blackmail, and the time and place of the blackmail action; there is also a chapter analyzing the types of blackmailers and a chapter describing the types of blackmailed "victims," and an evaluation of the loot demanded and received *Beute* (ransom). In every chapter, von Hentig methodically documents such social and psychological case histories as those of the *Deklassierten und verkrachten Existenzen* (degenerates and "black sheep of good families"), with judicial opinions of various courts and with sociological or psychological analyses of various writers in various disciplines. Sometimes blackmail cannot be attempted because of motives about which the author speculates. For instance, he cites Polly Adler's *A House is Not a Home*. Here was the case of a beautiful, but quite frigid, member of Polly Adler's famous call house, who had associated herself with Polly Adler for the purpose of blackmailing her later. However, since a prostitute cannot file a criminal complaint against a call house madam without suffering some moral injury (particularly since Polly Adler's business had been known to the police for a long time), von Hentig speculates that the girl had wanted to denounce her boss for reasons of "lesbianism." It is interesting to note that among 100 individuals convicted of crime in Germany, the percentage of women decreased from 18.9% in 1889 to 11.7% in 1937, while among those convicted of blackmail the percentage of women has remained fairly constant between 1889 and 1956, namely about 15%. It also seems significant that the majority of sentences on conviction of blackmail were either fines

or moderate jail sentences up to six months. The motives for blackmail seem to consist primarily of unwillingness to accept work, lust for money or luxury, gross neglect and lack of intelligence, and desperate situations not necessarily the fault of the blackmailer. No less significant appears the prior criminal record of a majority of blackmailers, usually one of convictions of fraud or theft. A particularly favored method of the blackmailer is the impersonation of a police officer through wearing a uniform or having an identification card to display to the victim.

Von Hentig feels, in summary, that it is not blackmail (a complaint rarely appearing before the courts) which appears to be the main problem concerning a "scientific" evaluation of the law offender's motives. It is the fearful and hateful symbiosis which binds the torturer and the tortured together. It is the tension between these two which may overwhelm them. It may involve the common man or the High and the Mighty, and it leaves a broad trail of destruction seen as murder, suicide, insanity, depression, or premature death, not on the part of the extortionist but on the part of the victim. While blackmail, says von Hentig, is as *haeufig wie der Sand am Meer* (common as sand on the beach), hardly a trace of it can be found in criminal files.

In evaluating the present volume, this reviewer has to confess that he is influenced by his past experiences with the writings of the author. His works are scholarly and profound and comprehensive, and eminently readable and lucidly written. The many interspersed excerpts from court files or case histories give the writing a spice which prevents dull reading.

The reviewer's only complaint is von Hentig's habit of omitting any bibliography, except for the numerous and copious bibliographical footnotes. Any student of criminology in attempting to find a source of the author's researches will do pretty well to locate a reference through a sketchy footnote (since the makeup of German and American bibliographies differ markedly). In every other respect, however, a rich menu such as is presented here to the criminologist, criminal lawyer, sociologist, and psychologist, and allied professionals, should be translated into English as quickly as possible, because much of the material presented in this, as well as in the previous volumes, is not otherwise available to the American scientist.

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LES CODES PENAUX EUROPEENS, TOME III. (Liechtenstein, Luxembourg, Principaute de Monaco, Norvege, Pays-Bas, Pologne, Portugal). By *Marc Ancel* (general editor) with the collaboration of *Yvonne Marx*. Paris, Le Centre Francois de droit compare, 1958, pp. 1019-1622.

This is the third volume of the now famous French series of foreign (European) penal codes in French translation. See Schwartz and Ancel, *The Collection of European Penal Codes*, 106 U. PA. L. REV. 329 (1958). In the accustomed high editorial and linguistic quality, see Mueller, Book Review, 49 J. CRIM. L., C. & P.S. 160 (1958), this volume takes us to some of the smaller European countries about whose penal laws less is known in America than, for instance, about the codes of France, Germany or Italy. Yet, with more leisure for experimentation, some of the smaller nations have achieved remarkable accomplishments of penal legislation, certainly worth our attention. For example, in 1920 Liechtenstein introduced probation, parole, rehabilitation measures and other innovations of social defense, long before some major nations were ready to move in this direction. We must welcome, therefore, these French translations which introduce us to foreign penal law in that foreign language which is probably most widely known among American scholars.

A glance at the code of Liechtenstein (1859) is like a look into fairy land: a death penalty which has been dormant since 1798! Stagecoach drivers who under threat of a 100 francs fine must not transport passengers in an irregular manner! (sec. 322) A criminal court which for years had no occasion to impanel a jury for a felony trial, etc! A happy land which shared with Austria her language and her penal code (except for the modernizations above mentioned), but not her sad fate through two world wars.

The code of Luxembourg (1879) is in basic agreement with that of Belgium (1867), though there are some divergences both in the text and in case law, and probably was less receptive to social defense innovations than its Belgian progenitor.

The Monagesque code (1874) is an adaptation of the Code Napoleon of 1810, primarily to cater to the particular needs of the principality.

The Norwegian code of 1902 is one of the most original pieces of criminal legislation today. It was the first Twentieth Century code, and the first which no longer felt itself bound to a strictly classical penal theory and which introduced

modern measures of social defense. It quickly set the pattern for other modern European penal codes.

The code of the Netherlands of 1881 rests on the classical doctrine, and subsequent amendments kept it so much abreast of the times that Dutchmen seem to have no special desire to draft a new code.

The Polish Penal Code of 1932, as republished in 1949, is one of the most remarkable modern codes in force. (See also the American translation, LEMKIN & McDERMOTT, *THE POLISH PENAL CODE OF 1932* (Durham, N. C., 1939)). It was theoretically so well thought through that it could survive all the political upheavals which Poland underwent. This Code came close to being replaced in 1955 when a draft code, patterned after the Soviet code, was introduced. But the 1956 October revolution saved the fate of the 1932 code.

The Portuguese Penal Code (1886), finally, is a piece of thoroughly neo-classical legislation which posits freedom of the will in its very first section. But it, too, underwent several major reforms in

the Twentieth Century and is, on the whole, in line with the current recognitions of criminology and penology.

The translations were made, or official texts rendered, by Mlles. Marx and Robichon for Liechtenstein, M. Weiler for Luxembourg, Mme. Depitre and M. Cannat for Monaco, Mm. Boissin and Lambert for Norway, and the latter for the Netherlands as well, and Mme. Langrad and M. Plowski for Poland. Having undergone the experience of translating foreign codes, I know that their labors deserve every credit of the profession. Inspired by these French efforts, as well as those of the Germans, see Schwerin, *Book Review*, 50 *J. CRIM. L., C. & P.S.* 55 (1959), the Comparative Criminal Law Project of New York University has now undertaken to render reliable English translations of foreign penal codes, for the benefit of American scholars and reformers. The first two volumes, France and Korea, are now in print; numerous others have reached various stages of completion.

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