Journal of Criminal Law and Criminology

Volume 16 | Issue 3 Article 9

1926

Reviews and Criticisms

REVIEWS AND CRITICISMS

A Criticism of Our Courts of Justice. [Il Ricatto. Eccola, la Giustizia! Rivelazioni e Documenti. Avv. Ernesto Valentini. Tipografia Silvestrelli e Cappelletto. Torino, 1924.]

I. Introduction

Here is a book fresh from the press with a vigorous attack upon the present administration of the Criminal Law. Former President William Howard Taft and many other distinguished men in this country, have often said that the administration of the Criminal Law in this country is a disgrace to the institutions of the land.

Here is a book, which in structure, material, organization, criticism and sustained power, makes an illuminating attack upon the administration of the law and points out ways for the bettering of that administration.

It is written by an Italian lawyer who has resided in this country for twenty-five years and who is a citizen of the United States; a journalist of great distinction; a man of high character, and of an intelligence of great analytic power. It is well for us to read books of this sort from such minds as that of Counsellor Ernesto Valentini. Here is no vague accusation and denunciation; here is no general indictment of the administration of justice because a great many criminals escape; here is no blow upon American institutions because of the delays and of the spectacular qualities of sensational trials. We have, on the contrary, a work from a man who has studied law in Ialy, is imbued with the Roman and the Italian law, has had experience in the practice in courts of justice on the other side of the water and here and brings to the examination of the actual administration of law in this country a point of view comparative and objective, which is very valuable to make us see ourselves as others see us.

A chiel has been among us taking notes and it is good for us to look into the mirror which he sets up. What a figure we have! How amorphous, how stupid, how inane. And withal, how unjust.

The book deals with a case of extortion tried in General Sessions of the County of New York in the year 1912. Curiously enough I was at that time on the rampage. Being young and inexperienced and full of the flush of the enthusiasm of youth and the idealism of a scholar fresh from the University campus, desiring to change the face of the earth over night, I spent several months in General Sessions in the County of New York, studying the procedure and the administration of justice. I wrote an article which appeared in the July, 1912, issue of the Journal of Criminal Law and Criminology called "The Immigrant in the New York County Criminal Courts." Soon after the article was written, although *not* post hoc ergo propter hoc, the Bar Association of the City of New York began an investigation

into the administration of justice in the Criminal Courts of the county and of the various judges sitting upon the bench. All through this book, and particularly at page 226, there are indications of the investigation. That investigation is part of the history of the criminal law in this county; and the book under review grasps and enshrines for future generations, an interesting and vital moment in that history.

II. Justice and the Law

The writer is in deadly earnest. He has a theme; and the theme is the injustice done to two men. Not that the author is particularly interested in those men except as their experiences typify the experiences of the general run of men caught in the meshes of the law. The object of the author is to expose the crushing machinery of the law, to show that the law is blind and cruel. One of the objects of the book is to destroy the continuing illusion of justice. Examples like the instance of the two doctors in the extortion case are demonstrations which lead on to the desecration of false idols and of myths which the people adore. (P. 369.) We are dealing, therefore, in this book, not with a desultory discussion of facts, but with a philosophy interpretative of those facts and with an application of that philosophy to present society.

Life in modern society is uncertain; and particularly is this uncertainty true in the criminal law; an innocent and honest person may find himself convicted just as easily and just as innocently as he may be run over by an automobile. (P. 3.) We are all potential criminals. The criminologists have for fifty years been hammering upon the fact that the accidents of life may make any one of us a violator of the criminal law. And this book shows with earnestness, with intelligence and with a mass of facts well organized, that even though a person may be innocent he may be convicted of a crime. Surely not a discovery. Surely not a new conclusion. And yet, how important it is to re-establish this old truth, older than Voltaire and the famous case that he espoused, and older than the dawn of history itself. Every generation needs a new interpretation and a new establishment of perennial truth.

The author shows himself a master of modern criminological literature, including the classification of criminals. He defines the professional criminals (pp. 291-292) as persons who accept prison as an accident during the course of their employment. And in truth, is this not the correct definition of professional criminals.

III. Uses and Customs of the Grand Judicial World

The author says that absolute right, abstract justice and an impartial judge are illusions deprived of their pristine strength and color (p. 172). Is it possible to arrive at abstract truth under any system of evidence, Continental European or Anglo-American; and is it particularly possible to arrive at abstract justice in a court where the Anglo-American rules of evidence are in force? The author devotes one whole chapter to a consideration of these rules of evidence and the effect of the application of them. He takes the record in the case,

quotes the record, analyzes it and shows how absurd our method of doing justice is. He takes up the manner of questioning the witnesses (p. 186) and shows how stupid, inane and futile objections are made to these questions and how there is difficulty in getting into the record answers that will bring out the truth. The Continental European method is not by question and answer, but by direct narration. The witness takes the stand and tells the story in his own way. This unquestionably brings in a great deal of hearsay evidence, which under our rules is taboo. The author shows that the introduction of such evidence is not one-half so dangerous as the futilities and the perils of the suppression of truth caused by the question and answer method and the exclusion of all hearsay evidence and all evidence which cannot be brought in under the question and answer method (see p. 187).

There is a great deal of loss of time on immaterial matters, which the direct narration method would obviate. The instant case took fifteen days to try. Under the Continental-European method it might have taken three or four days to try. More testimony and evidence would have been brought in. It is true that hearsay evidence would have been introduced, but the vital question presented by the author is whether the introduction of that hearsay evidence would have been more dangerous or would have produced better evidence than the suppression of testimony, which the rules of evidence caused. The three men involved were convicted, even in spite of the exclusion of hearsay evidence. The exclusion of hearsay evidence is primarily for the benefit of the defendant (as the author, by his masterful exposition, arrangement and analysis of the facts and his powerful reasoning upon these facts has clearly, thoroughly and forcefully demonstrated). What can be said of a system which convicts two innocent persons because of the application of the very safeguards which have been erected for their protection? Break down those barriers erected for the supposed protection of the defendant. Hearsay evidence is a double-edged sword. It may be used for the benefit of an individual or to his detriment. The suppression of evidence, whether germane or seemingly remote, may be on occasion infinitely dangerous and productive of the conviction of an innocent person. There are occasions and places when the unlimited introduction of evidence is the only solution of the difficulties of the problem to be solved.

The author flagellates the system of twistings and turnings to get at the facts; lambasts the system which by indirections—oh, memories of Polonious!—seeks to find directions out. The circumlocutions and perambulations to get at the truth! On pages 193 to 200 the author gives examples of how it was impossible in the trial under the rules of evidence, to get at the interest a witness had in the case, to show the acts of a witness against a defendant before the trial; and to reveal the background of the case and the public interest in it. Under the Continental system, all of these matters could have been presented in normal natural way by the witnesses as they gave their testimony in narrative and unbroken form.

Surely if a system produces the suppression of truth, that system is in itself condemned. Supressio veri suggestio falsi.

If these are the fruits of the body of the trial, what can be said of the jury, the judge of the facts. Men's judgments and verdicts reside in human nature and in the experiences of life—not in the fantastic abstractions of the law, or in the large and ponderous jaws of statutes (p. 260). The author is here in agreement with one of the best living minds. How many times has Supreme Court Justice Oliver Wendell Holmes given us the illuminating thought, that decisions are not the result of logic, but of experience. The presentation of facts to a jury becomes more difficult and more of a sacred obligation when we consider the prejudices and the passions of men, and the low ebb of natural powers.

And to all these defects of a trial will be added the culminating defects of the summing up and of the charge of the judge. The unscrupulous taking advantage, even by prosecuting attorneys, of every means, is one of the shames and the mockeries of the administration of the law. And in criticism of the charges of judges the author points to the intricacy, the abstractness and the falsity of the principles of law in some cases, and the lack of clarity in the presentation of that law to the jury. We require in a judge, not only knowledge of the law, but a pedagogic ability to make that law understood of lay men. How seldom is this combination found?

IV. The Implications and the Consequences of Trials under the Rules of Evidence

Such is a trial according to the rules of the game. And this game is played with curious, casuistical rules which defy all logic. Can such a trial seek and find the truth? Such a trial is not an investigation into the truth. It is a combat, a fight (p. 260).

Dean Wigmore long ago pointed this out in illuminating and in vigorous phrase. A judicial trial carries with it investigation into the circumstances from which the act came and solid demonstration of the connection between this act and those circumstances (pp. 227-228). Instead of this investigation and this demonstration of the connection, a trial is a farce, "is less than nothing" (p. 232). And there is no investigation of the motives of the act and the psychology of the man. Could those men at the bar of justice have done the act incriminated? Is there any investigation into their psychology, into the motives of the men, into the life, the experience, the environment in which they lived? A trial, says the author, ought to be a complete presentation of the history of the life, the mind and the motives—the complex conflicts—of the man.

These are all principles of modern crime, which this author applies to a trial in the County of New York. The criminologists have been voices crying in the wilderness. The practical men have resented reforms. But even the practical men are becoming affected by the new criminological ideas.

V. Translations

The book contains translations from English into Italian. In every case these translations are made not only accurately, but with idiomatic raciness and animation. The technical matter is always difficult to translate, but it is done here with seeming immeasurable ease and with exactitude. Easy writing means hard thinking.

VI. The Ramifications of Law in Modern Society

The law cannot be studied by itself. The attempt to do so in the past has failed and it will ever fail. The law schools are beginning to understand that law must be studied in relation to other subjects, to politics, to social science. Law is not the product of spontaneous generation. It has a past and is the outcome of stimuli operating upon it from various directions. The most vigorous of these directions are those of politics and social science, economics, psychology and biology. Law cannot be understood without reference to these elements that make it what it is. A study of law therefore, as law, is meaningless. Law must be studied in its natural abode; in its habitation where it lives. It is part of a system complicated and involved; and it cannot be understood without understanding the elements of this system. Law cannot progress any more than we can understand it unless it does keep abreast of the political and social sciences in order to be influenced by them, and in turn influence them.

VII. Psychology and the Analysis of Persons and Races in the Book

This book has in many places the attractions of a romance. The author deals with the personalities involved in the trial, not from the superficial point of view but from the point of view of the novelist, of the student of human nature who desires to dive deep into the motives and the passions of men. He makes interesting and profound analyses of the characters as they come up on the scene. He seeks out the possible reasons for their action and describes the possible thoughts they may have had. And such a study is important in this case where circumstantial evidence plays such an important part. Inference, inference, inference. And psychological analysis is the only open sesame.

The author makes not only character studies of the individuals but makes philosophical reflections on races. Interesting examples can be found on pages 124 and 176. The book is a revelation of Italians to Americans and of Americans to Italians.

VIII. Conclusion

The author has the merit of understanding the fundamental principles of the modern study of law. If the schools would only apply those principles and apply them consistently and continuously, law students would become practitioners imbued with the proper conception of law, its evolution and progress and with the proper regard for the

changes of the future. The book before us shows the various ramifications, the various tentacles, that reach out to enclose the law. When these tentacles are too strong the law is choked. We cannot destroy these instruments of destruction unless we look at them clearly and understand them perfectly. We cannot make the law progress and keep abreast of the times unless we understand sympathetically the various elements operating upon the law. Mr. Valentini in presenting this final principle makes a contribution to the future progress of law which should be recognized and applauded.

New York. ROBERT FERRARI.

VERHEIMLICHTE TATSBESTÄNDE UND IHRE ERFORSHCUNG. (The Investigation of Evidence.) By *Dr. Hans Schneickert,* Instructor in Criminological Psychology and Criminatistics at the University of Berlin and Director of the Bureau of Identification of the Polizeipräsidium of Berlin. A. W. Hayens' Erben, Berlin, 1924.

Treats the subject historically, mentioning the trials by ordeal and torture, in which there is nothing particularly new. He next discusses the value and the legal attitude toward testimony given under promises of secrecy and his conclusion appears to be that such promises should be very cautiously given, and that an absolute legal guaranty of secrecy is well-nigh impossible.

He discusses secrets, such as legal, medical, confessional, of the press, of business, state secrets, etc., and the legal attitude thereto. The means for ascertaining the truth in criminal cases is taken up and constitutes the major part of the report. The German code no longer permits coercion, force or torture, to elicit the truth or a confession. In his opinion, criminals as a rule, sooner or later confess and expose their misdeeds. He enters into a brief discussion of the methods which have been tried for the purpose of eliciting the truth.

1. The word association method, as employed by O. Lipman, Adolph Stöhr, Hugo Münsterberg and others. Details are not gone into; nor is specific reference made to the very recent tests and tryouts with the word association method in this country by Kent and Rosanoff and others. He considers this method of considerable value in criminal investigation.

2. Paralyzing or inhibiting the mental censorship or subjective inhibitions by various means, as by suitable questioning, appeals to judgment, to the intelligence, to the emotions. Caution is suggested in order not to exceed the law covering unauthorized coercion, force, threats, etc.

3. Uberrumpelung (catching one off guard). This procedure so keenly practiced by lawyers in cross-examinations, is discussed as one of the legal methods for arriving at the truth. Even here great caution must be observed in order to avoid erroneous conclusions as to the emotional manifestations under this procedure.

4. The use of hypnosis. The author questions the value of hypnosis for purposes of eliciting an uninhibited statement, or a confes-

sion. He thinks that any person who will make a statement under so-called hynotic influence, would make the same or like statement in a normal waking state, and furthermore, the hypnosis methods have no legal recognition, although occasionally admitted as corroborative evidence.

5. The use of the sphygmomanometer, the pneumograph, sphygmograph, etc. He admits the scientific possibilities of these devices, but their practical value is not yet established. The muscular disturbances under emotional stress, recorded and measured by these devices, have not yet been scientifically interpreted. He refers to the work done by Lombroso and the more recent work done in this country.

6. The galvanometer. He places the significance of the findings based on the use of the delicate mirror galvanometer in the same category with that of the sphygmomanometer.

7. The drug narcosis method. Makes reference to the work done by Dr. House, but questions the value for purposes of arriving at the truth. He quotes a very inaccurate newspaper report of the House method, which is no wise reflects the actual facts.

8. Fingerprints. The author suggests interesting possibilities along the line of ascertaining familial relationships from a study of papillary lines and ridges, especially when this is taken into consideration with the findings based on blood tests. For a further discussion see his "Signalementslehre, München, 1922."

9. Blood tests. He discusses isoagglutination tests and group agglutination tests, well-known to the physiologists, and their value in determining human blood and for revealing familial relationships. He indicates which findings would prove of negative and which of positive value as evidence.

Remarkably enough, the use of the compound microscope in criminal investigation is not even mentioned, although this instrument is extensively used in Germany. Retinal photographs of murderers, spirit photography, thought photography, telepathy, occultism, table rapping, clairvoyance, chiromancy and other frauds are mentioned only to be condemned. He states that table rapping is essentially an American product, while the French lead in telepathy and in spirit and thought photography (the Darget report in Librairie Nationale, Paris).

He describes rather fully a remarkable machine, the invention of Dr. Scherbius, which is intended for doing undecipherable code writing or typing. With this machine ("Enigma") innumerable letter combinations are possible and the decoding of a message or report is impossible without the key and a machine. It is claimed that by this machine 22,000,000,000 code combinations are possible.

He also mentions the possible value of the "Electrical metal finder" in searching for buried and hidden stolen property. This device was used during the World War for locating subterranean grenades and bombs, and by the submarine service for locating mines, approaching destroyers and warships. (Zeitschrift für Technische Physik, Berlin, 1914, Heft 5). This device is also used for the purpose of locating minerals, water pipes, water currents, etc.

A most interesting and valuable addition to the study of criminalistics.

Berkeley, Cal. ALBERT SCHNEIDER.

CRIMINOLOGY, By *E. H. Sutherland*. Philadelphia, Lippincotts, 924, p. 643.

This is an elaborate survey of present opinions and knowledge relating to the causes and prevention of crime and the treatment of criminals. The author cites approximately 450 different writers and investigators in these fields. He considers criminology a division of social psychology. Consistently, therefore, he looks askance at any "unilateral explanation" such as economic determinism, eugenics and psychiatry.

No volume on criminology will entirely please everybody in all its details. But here is the most thorough-going work of the sort that has yet been produced in this country and it is bound to be extraordinarily useful.

ROBERT H. GAULT.

National Research Council.