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Review of Criminology, by E. H. Sutherland

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BOOK REVIEWS

of practice opening to the coming generation of lawyers. Herein lies the significance of the volume under review, from which we have wandered far. The centralization of our government, the creation of Federal Commissions led by the Interstate Commerce Commission and followed by the Federal Trade Commission and others, and now since the war the creation of various Claims Commissions are opening to the lawyer of the future, rich possibilities of original work and large reward. Already rules have been established by the several Commissions and by the Government Departments requiring the registration of counsel before they can appear in contested matters. It is hoped that for the organized lobby of the past may soon be substituted a congressional Bar where counsel can present adequately and openly the vital interests of our modern industrial life as they may be affected by proposed legislation. Perhaps, therefore, one is not too bold in predicting that, in the next generation, we will see developed a vast new field where the legal profession can once more contribute constructively to the development of national life and community welfare. It is with this background and in the light of this possible future that one looks with interest upon any volume, however, modest in design, which is the pioneer of a new form of legal practice.

Roland S. Morris.

Philadelphia.


In some respects this book might have been labelled "Multum in Parvo." In bulk it looks much like, picked up at random, "Tatterdemalion" and "How to Know the Wild Flowers," but it covers as many pages as those two books together. But though the paper is thin, it is not too thin, the print is clear, and mechanically as well as otherwise it is a good book. The range of its contents is as broad as its pages are numerous, as is indicated by its chapter headings, which are: Criminology; Law and Crime; Statistics of Crime; the Victims of Crime; Causes of Crime (5 chapters); The Police System; Detention Before Trial; "Popular Justice"; The Court; The Juvenile Court; Origin and Evolution of Punishment; Ethics and Economics of Punishment; Miscellaneous Methods of Punishment; Prisons—History, Organization and Control; Prisons—Function and Failure; Prisons—Convict Labor; Prisons—Education; Release from Prison; Parole; Probation; Methods of Reformation; Prevention of Crime. There is also a seemingly very complete index of ten pages. The chapter headings epitomise the contents of the book as well as the reviewer could briefly do it, and speak for themselves.

It seems rather unfair for a lawyer to review a textbook on criminology, especially as the author himself says, and quite truly, "Little attention has been paid by law schools, lawyers, or judges to the improvement of the criminal law. No law school employs a professor who gives full time to the study of the criminal law. . . . Most competent and honest lawyers avoid the
criminal law." The law teacher is sure to be violently prejudiced in respect to certain phases and theories of the law and perhaps to tend toward satisfaction with that which, in a way, is his own. On the other hand, he is unfamiliar with the teaching methods in the field of criminology and hence unappreciative of the requirements of a good textbook. In this instance, however, the reviewer finds nothing but good to say of the book.

The opening chapter is, to be sure, irritating to a teacher of criminal law. To put the "Nature of Crime, from the Legal Point of View" into two pages, and do it other than sketchily and insufficiently, is an impossibility. The author defines crime as "a violation of law. If there were no laws there would be no crime." This is true enough; but, in a sense, especially to a layman, torts and breaches of contract are also violations of law and were there no laws there would be no torts in a legal sense. The author's failure to point out clearly any distinction between crimes and other wrongs of which the courts will take cognizance makes his subsequent brief discussion of the "Origin of Crime" extremely difficult for the uninitiated to comprehend. Certainly the reviewer was left in some confusion as to whether the author was discussing the origin, in their relationships, of the acts which are crimes, or the origin of the laws which make them crimes, or the origin of the attitude of sovereignty which distinguishes crime from other legal and moral wrongs. This indefiniteness of expression is not peculiar to Mr. Sutherland. Even the much longer and learnedly illuminating article by Mr. F. H. Severin, 3 Can. Bar Rev. 121, is intelligible only if one has already apprehended the distinction between the fact that political government imposes certain consequences on some acts such as do not follow other acts, and the moral justification for that fact. If the difference is already comprehended, the discussion of justification in the article is clear and forceful, but it would be abstruse and confusing to readers unacquainted with the history of the criminal law. Mr. Sutherland's page and a half discussion of "The Nature of the Criminal" is also obviously superficial compared with his own five chapters on the causation of crime, and seems unnecessary.

However, starting with this perhaps biased disapproval of the opening chapter, the reviewer promptly changed to whole-hearted enthusiasm for the mass of fact presented throughout the rest of the book, the apparent unpartiality with which it is analyzed and stated and the lucidity of the author's explanations.

Henry Drummond says, in "The Ascent of Man," "the philosopher requires fact, phenomenon, natural law at every turn to keep him right; and without at least some glimpse of these, he may travel far afield. So long as Schopenhauer sees one thing in the course of Nature and Rousseau another, it will always be well to have Nature herself to act as referee." One not uncommon criticism of the teaching of sociology has been that it is necessarily a speculative philosophy of ideal relations, too removed from the practicalities of life. Mr. Sutherland's purpose seems to be that of supplying an insight of the fundamental actualities of crime and our methods of dealing with it as a predicate for the searching out of further facts intelligently.
Unlike so many dealers in figures, he points out the inherent deceitfulness of statistics and offers what there are only for what they may be worth. When one remembers the statements that used to be made in prohibition and anti-prohibition propaganda based on the number of arrests in wet or dry states, the population of various infirmaries and institutions, etc., it is delightful to read that “even if the statistics could be made accurate, they would not justify conclusions regarding anti-social tendencies,” and that “the statistics of crime are known as the most unreliable and the most difficult of all statistics.”

We may know, for instance, that in one state there is a markedly larger proportion of convictions to indictments, or to arrests, than in another. But no definite deduction therefrom is possible. It may be that one state permits the use of evidence illegally secured, while the other does not. If this be true the figures are less significant than otherwise. Or it may be that the drastic penalties of one state tend toward acquittals, or that juries are less wisely and honestly chosen in one than in the other, or that judicial caliber has differed, or that any one or more of a dozen various factors produce the differing results. “In the first half of the year 1922 only one-half as many persons were arrested for gambling in Chicago as in the first half of the year before; no one would suspect from this that gambling had decreased.” But what was the cause of the decreased arrests does not appear from the figures. A Detroit judge recently dismissed well over 500 cases in a single day. They were on complaints for violation of the parking ordinance and were all dismissed as a rebuke to the police, for some reason. Although that particular judge is not notorious for unwillingness to punish generally, those particular dismissals may make startling figures in a mere table of comparisons.

Mr. Sutherland could not go into discussion of all the possible affecting factors of all statistics. But he does so well stress the fact of unreliability at the outset that any reader should be prone to examine all conclusions in the light of his corelated knowledge—and if the book induces in its students that tendency only, it will justify its publication. He discusses the deterrent effect of the death penalty at page 367 ff. There are comparative statistics given. As an example of his trenchant comment is this: “In 1917 the legislature of Illinois passed a bill to abolish the death penalty, but the governor vetoed the bill and it did not become a law. Murders increased very greatly in that state after 1917; if the bill had become a law doubtless many persons and newspapers would have presented the figures as absolute proof that the abolition of the death penalty increased murders.” But there is little specific statement of the variant factors such as negro immigration or Tong activity which may affect the figures. However, in another part of the book, under the title “Statistics of Crime” is a general discussion specifically applicable. Were the book made up of such particularly detailed considerations of each topic as Mr. Sutherland’s own excellent essay on the death penalty in the February issue of the Journal of Criminal Law, it would necessarily extend into volumes.
Recognizing this limitation, the author seems to say all that could be said and to say it well. His style is lucid, his presentation clear and his attitude calm. On so contentious a matter as the death penalty, for instance, he says simply, "The only conclusion furnished by the statistics is that the evidence regarding the deterrent value of the death penalty is decidedly inconclusive; whatever evidence there is tends to show a relatively unimportant relation between the death penalty and murder rates. The argument of the advocates of the death penalty that it is valuable as a means of deterrence is not substantiated." As to the police, he recognizes that "Far too much criticism has been hurled at the police, and far too little understanding of the difficulties of the police work prevails." But he points out thereafter undeniable faults in police activity and defects in the system.

He cannot discuss convict labor as does Tannenbaum, nor jail conditions as does Fishman in his "Crucibles of Crime," but he does refer students to the ampler comments of such writers. Not the least valuable part of the book is the complete and inclusive bibliography which follows each chapter. If the author does not advert to Aschaffenburg's theory of the purpose of punishment, to the reviewer most intriguing, it may be an omission, but cannot be called a defect and the reader is referred to Aschaffenburg in the logical place.

The puerile, futile, or shrewd and irrelevant arguments of Messrs. Tully and Darrow in their recent public display anent the death penalty could have produced only cacophonous applause of disgusted laughter from an audience familiar with this book. It would seem to be excellent for teaching purposes and it will give to any reader an understanding of conditions which, if widely enough disseminated, would effectually eliminate much evil.

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University of Michigan.


It was known that Professor Keedy had assisted in the preparation of Reinhard's Cases on Agency. The Reinhard collection was a satisfactory one. It stood up well in class-room use and it embraced the kind of materials necessary for theoretical and practical treatment of the leading ideas of Agency. There are prima facie and substantial reasons for believing that the present compilation is an improvement on the earlier collection. This collection of cases has been in preparation for several years. It is not a hurried and little considered compilation such as could be put together in a few months by one acquainted with the field. It represents many years of study and reflection on the problems of Agency and on the aptness of individual cases for pedagogical use.

In two outstanding particulars the present collection differs from the Reinhard compilation. It contains a comparatively large number of cases decided within recent years. The justification for this feature is not novelty