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Book Reviews

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Book Reviews

ENCYCLOPEDIA OF CRIMINOLOGY. Edited by Dr. Vernon C. Branham and Dr. Samuel B. Kutash. New York; Philosophical Library, 1949.

Pp. XXXVII, 527. \$12.00.

This octavo volume is printed in two columns in very tight 10-point. A printer advises that it is the equivalent of about two and one-half ordinary volumes.

It has materials appropriate to each stage of the problem of crime control: The determination of what behavior is to be defined as criminal; efforts to keep people from coming to behaving in those ways; the discovery of instances in which such efforts have failed and the identification of the person believed to be the one as to whom they failed; formal prosecution and conviction; and the treatment of the person convicted—definition, prevention, detection, prosecution, and,—what? Sentence? Sanction? Therapy? Punishment?

The materials are arranged in alphabetical order according to the principal terms in the titles of the articles. There is an index of subsidiary matters, *e.g.*, "Adjustment Counseling *See* Psychological Services." But since there are no page references, the search may be rather long. And, since the matters are subsidiary, when found the treatment may be too much in context to be of adequate independent value. For example, "Manic-Depressive Psychosis," pp. 237 and 241. So the book is less than dictionary, yet something more than a dictionary; not a complete encyclopedia, but something more than an encyclopedia.

The editors say that they "endeavored to steer a mid-course between detailed discussion and journalistic notations"; that "Every effort was made to cover all basic concepts and theories"; that "Wherever possible, controversial issues within each topic were dealt with from all acceptable points of view"; that "No attempt was made to pass final judgment on anything"; that "This Encyclopedia cannot be a substitute for original sources"; that "It is a compendium of existing facts and knowledge in criminology and deals at the same time with important current trends and departures in this highly complex field"; and that "No significant approach has been neglected."

This reviewer is not qualified to quarrel with these statements. As the editors say, they were "faced with an almost insurmountable obstacle of what to include" in their limited amount of space. As to the quality of the articles and the competency of their authors, this reviewer can only say that, as far as he knows, the articles are sound and worth-while presentations of knowledge and views and that those of the 61 contributors whom this reviewer knows are in truth what the editors say, "leading exponents of a variety of divergent points of view." So the book is more than an encyclopedia in that it is not limited to indisputable assertions on mutually exclusive topics, as perhaps an encyclopedia by definition should be, but rather a series of treatises or theses on selected topics. The result, of

course, is that there is a substantial amount of overlapping. But this gives the value of diversity of view.

This reviewer cannot competently criticize the many articles on psychology and psychiatry. He is struck by the predominantly Freudian point of view. But a glance at the *Handbook of Psychiatry* of Karnosh and Zucker, which he is told is accepted by orthodox psychiatrists as presenting in a nutshell all that is known in the field, discloses at page 19 of the latter work the following statement:

"Coincidentally with the hygiene program came the astounding contributions of Sigmund Freud, which revolutionized the orthodox concepts of mind, opened it by a new technique for exploration, and brought psychiatry as a living subject to the attention of every intelligent man and woman. Psychiatry, at last, left its flying buttresses and ramparts and participated in everyday, human activity."

This statement inclines one to take less stock in the attitude that the Freudians are too often like the stockmarket commentators in that their facile explanations of what has happened are not matched by an ability to predict what will happen in a given case. For example, one may have read *The Alcoholic Woman*, by Benjamin Karpman, M.D., with a feeling that a knowledge of the "history that begins in early childhood or before that" (to quote from the statement of Robert H. Gault on the jacket) of the three women written about in that book would not have been of a great deal of use in deciding what to do with them. A more careful reading of the book, however, after one has come to have more faith in or knowledge of Freud, makes one inclined to believe that there is little else that gives any promise of being of use. It is clear that psychiatrists and psychologists have not refused to accept the aid of Freud merely because Freud has been exploited by charlatans.

And of the many other articles outside the field of the reviewer's special interest, he can only say that they appear well worthwhile and provide information unavailable in any other one-volume work of which he is aware. The editors say that the work is "recommended especially for police officers, criminal lawyers, judges, prison officials, social workers, probation and parole officers, educators, religious personnel, sociologists, psychologists, psychiatrists, college deans, and crime prevention workers." With the possible exception of educators and college deans, who may have no specialty in the field, those in the specialties mentioned will undoubtedly welcome a handbook from which they can inform themselves quickly, if somewhat briefly, in the other specialties. Attendance at a recent meeting of citizens to consider how best to deal with the current apparent flurry of sex crimes would have convinced one that the specialists who addressed the meeting should welcome such a book and that it would go far to supply the interested citizen with information that he craves. Law schools will desire to have the book available for students in criminal law, for problems of the non-criminal insane, and for a better knowledge of human behavior generally. The editors might fairly have added specifically legislators who seek to improve their states' systems of crime control or to organize a substantially new system. At one time the United States

Department of Justice attempted to collect materials for the aid of such persons. Perhaps it succeeded and provides such a service, though it is believed not. But such persons could receive substantial aid from such articles as Carl E. Johnson's (whose death occurred in July, 1949) on "Prison Personnel" and on "Prison Industries," Loyd V. Ballard's on the "Jury System," and Marshall B. Clinard's on "Prison Systems," just to select samples on the irrelevant basis that the authors were from Wisconsin.

Law is the special interest of this interviewer. The articles directly concerned with the criminal law are of two sorts, definitions of crimes and articles on "Appeal," "Arrest," "Capital Punishment," "Civil Rights of Criminals," "Classification of Crime," "Court Clinics," and some 24 others down to and including "Youth Correction Authority Plan." There is a difficulty in making a selection of those articles which are "directly" concerned with the criminal law that is somewhat akin to the difficulty in defining "crime" that is commented on in Albert Morris' article on "Changing Concepts of Crime." No attempt will be made to explain the basis on which the selection was made. The important point for the lawyer is that every article in the book is relevant to the criminal law.

The definitions of crime are based largely on the law of New York, and the reference given is usually, though not quite exclusively, F. B. Gilbert, *Criminal Law and Practice of the State of New York*. It is surely proper to consider the law of a single jurisdiction and that of New York is as typical as any. To have pointed out the particulars in which the law of other jurisdictions differs from that of New York would have unduly enlarged the work. The definitions, e.g., that of "Homicide," are inadequate for an understanding of the law. But that also is inevitable, for, as the editors say in the Preface, "most of the topics covered could justify a volume by themselves." Moreover, homicide is not a fair sample, for it contains more than its fair share of technical terms and fictions. The definitions are taken to a large extent from the New York statutes. Most jurisdictions have statutes that define crimes or fix sanctions by the use of technical terms that require an understanding of their common law background. The result is a criminal law that is neither simple nor, in some cases, readily understandable. It is this reviewer's belief that a criminal law based upon one single purpose and one general method to be applied in the usual case could be made much more simple, understandable, and, to the extent that fictions now in use could be eliminated, honest. More on that hereafter.

The more general articles on criminal law and on criminal procedure are less subject to the same comments. They are much fewer and less technical and more space could be devoted to each. It may be questioned whether some of them are more "directly" related to law than others that this reviewer omitted from the list. For example, why include "Court Clinics" and exclude "Behavior Clinics?" Perhaps because of the use of the word "court." Perhaps because the reviewer desired to attract the interest of lawyers and law students, not only to the particular article, but to the book. Certainly because of the difficulty of determining just what "law" is. However that may be, the quality of these articles is high. Some

are longer and more adequate than others. Lawes' article on "Capital Punishment" should be read by every lawyer in a capital punishment state; by every lawyer, in truth, for we are all in the United States and we have capital punishment for federal crime. Judge Holtzoff's excellent article on "Civil Rights of Criminals" reminds one of some of the consequences of conviction that lawyers are not likely to give sufficient weight and should be read thoughtfully. Pihlblad's article on "Classification of Crime" and its effect on the consequences of conviction should also be read thoughtfully by any lawyer whose interest in crime goes beyond a particular case, of whom it is said there are not many, and even by those whose interest is in but one case. Is it true that the present classification is based on an impossible logical position, is meaningless, and that it would be better to have no classification at all? That many "criminals" are not so in any realistic sense? Interesting, if true? The article by Nicholas Atlas on "Criminal Law and Procedure" is a remarkable job of selection, condensation, and articulation, written at the legal level but with the basic problems sufficiently intimated. See his remarks on classification, on purposes of punishment, etc. One cannot comment on each article. The article by Dr. Eliasberg on "Expert Testimony," however, seems to call for special attention. If I understand him, the author points out the use of feelings of guilt for social control and that, in societies in which individual rights have come to matter, objective proof of guilt is required, which makes a place for an expert. Such an expert must recognize humanistic psychology rather than exclusively a psychology in which there is no room for such concepts as guilt, negligence, malice, etc. There will then not be the clashes between the expert and the lawyers due to the apparent assumptions of "free will" by the latter, and the former can make contributions beyond those of the average understanding, for example, that a witness is shaping his testimony to his group loyalties. At this point the reviewer became rather obfuscated, for one runs into allusions to the development from "absolute causalism to probability statistics," a distinction between human and material knowledge, the cause of our Belief in Reality, whether ideas of the remote past are remembered except in a figurative sense, and to "objective psychology . . . which is at the same time explanatory and experimental." The reader gets the feeling that he has not brought enough to his reading to enable him to understand some things of importance that he should be able to grasp. That is a wholesome feeling for a lawyer to have. The article is not as smoothly written as that of Nicholas Atlas. One as he reads it rather feels that the author has attempted to put too much of his knowledge into it, with the result that he dips his oars so deeply in spots that he rather muddies the waters and makes the article jumpy. Nevertheless, this getting beneath, or above, or beyond the legal level is provocative and indicates sources of illumination that the lawyer needs. And this suggestion of non-"legal" knowledge brings us to the many articles that so far have been left without comment as not "directly" related to the law, and to the subject of the relation of extra-legal knowledge to the practice of law and to legal education.

What skills and knowledge should a lawyer have? He must have an appreciation of scientific method. He should also have some general knowledge of why

people misbehave and of the need for and availability of more particular knowledge,—of when to call an expert witness, for example; of when to have a psychiatric examination of a client? of where to go for information on administrative reorganization for the improvement of our efforts of crime control; and, most importantly, of current thought on behavior difficulties and the ways to protect society from them.

The many articles in the *Encyclopedia* will give one a good beginning on acquiring this knowledge. Just to take a few in alphabetical order: "Maturation," "Medical Service in Prisons," "Mental Deficiency," "Mental Mechanisms," "Mental Tests and Measurements," "The Negro in Crime," "Organizations" (a list and description of those working in the field), "Penal Reform," "Penology and Corrections," etc., etc. There is a great deal in one relatively small book.

To generalize about these articles, one can say that they have two aspects. They are negative and destructive, on the one hand, positive and constructive, on the other. Their negative side has the purpose or effect of destroying faith in "punishment" as an end or method of the criminal law. The extent to which punishment is an end or method of the criminal law may be arguable, but certainly it plays a substantial if not dominant role. This is briefly covered by the article by Atlas on "Criminal Law and Procedure." Since the law is intensely practical and need not limit itself to one end or method, and since judges and legislators do not see any need for specifying any philosophy, it is difficult to discern any specific purpose or means. If one assumes on the conceptual level that there are five bases of criminal liability,—intention, recklessness, negligence, constructive intent, and absolute liability, all more or less qualified by motive, one can say that the last three, objective rather than subjective as they are, indicate the law's intuitive and groping awareness of unconscious motivations and that a man can be dangerous whose intentions are good. Or one can say that they are reversions to or vestiges of primitive retaliation which the public is led to accept by the use of legal fictions. One can argue that the criminal law should be limited to instances of character defect revealed by a conscious choice to do evil, as distinguished from—whatever the opposite of "character defect" is—constitutional? defect. Or one can argue that the criminal law and the very word "crime" should be abolished, as Dr. Foxe argues in his article on "Criminoses," which word he would substitute. He certainly is on the right track, for we can never have a scientific criminology in administration so long as public administrators can ignore individual appraisalment by recourse to "the law" or to such an imprecise thing as "punishment." Such a passing the buck will not put men to work. The authors of the various articles assume that the law is based upon punishment. They are fortified by the phrase found in the first definition in the book and repeated throughout, "is guilty of a felony, punishable by." The reviewer believes that the time has come boldly to assert and write and teach the law on the theory that its aim is the prevention of crime, and its method restraint and therapy, and this notwithstanding the evidence collected by Waite in his book, the title of which is forgotten for the moment, that this is not always the law in actual practice even in the case of those laws which

purport to have that basis. If we are to proceed by rule and exception, why not treat the worse as the exceptional?

However this may be, one would expect an encyclopedia in which "punishment" is a very important concept to have a separate article on it, labeled as such. It hasn't. It is indexed rather as a subsidiary title with references to fifteen main titles. A concept subsidiary to fifteen titles may be claimed to be basic. The following titles, among others, might also have been listed: "Follow-Up Studies," pp. 168, 170, 171; "Frustration and Aggression," p. 184; "Behavior Clinics," p. 39; "Adolescence," pp. 8, 9; "Capital Punishment," p. 43; "Classification of Crime," p. 62; and "Colonial Crime," pp. 71, 72. One cannot help but wish that Morris' excellent article on Changing Concepts of Crime had been put under the title "Punishment."

With "punishment" eliminated as a legitimate end or, in the case, efficient means, one can pass to the positive or constructive aspect of the articles. The numerous articles cannot be mentioned, even by sampling. One can only say that it is encouraging to see how many earnest, learned, people are at work gathering the knowledge that is essential to the basic problem of predicting human misbehavior. See the articles by Monachesi, "Prediction of Criminal Behavior"; Sheldon and Eleanor Glueck, "Follow-up Studies: Their Nature and Value." Even more important for the philosophy of the criminal law are the articles on why people misbehave, *e.g.*, that of Mowrer on "Frustration and Aggression" and that of Hinsie on "Mental Mechanisms." When reading them one may wonder whether legislators in prescribing "punishments" and judges in sentencing are in effect practicing medicine or psychology. If they are, they are outside of their fields. Surely there is a place for lawyers in working out organization and procedure for prescribing treatment. A treatment board should not be made up entirely of "experts" in psychiatry, psychology, or sociology. Men of broader wisdom are needed, at least until a science of human behavior has been developed. But neither should treatment be prescribed entirely by lawyers, ministers, journalists, or sociologists. They should be served by appropriate specialists. The two together, working on and having full responsibility for individual cases, could, perhaps, work out a science of human behavior. There is no need for having one official group of men working under a philosophy of mass deterrence and another, but unofficial, group such as those who wrote this *Encyclopedia* laboriously studying individual cases under a philosophy of restraint and cure. It is believed that the latter philosophy has now been officially adopted in most states and that the time has come to carry it into effect under such legislation as that described under the last title in the book, the "Youth Correction Authority Plan."

It would not be very exciting or stimulating to review an encyclopedia which merely collected established knowledge for the use of those who merely wish a reference on incontrovertible matters. But a book which collects and presents points of view on matter on which common knowledge is positively wrong or incomplete

can be exciting and stimulating this Brotherhood Week to one who has an interest in his brother who is a criminal.

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CASES AND MATERIALS ON CREDITORS' RIGHTS. By John Hanna and James Angell MacLachlan. Brooklyn, New York: The Foundation Press, Inc., 1948, 1949.
Vol. 1, pp. XVIII, 762; Vol. 2, pp. XIII, 645.

Almost twenty years have passed since Professor Hanna first edited what this reviewer described at the time as a "perhaps epoch-making casebook."¹ This prediction was based on the fact that Hanna in his *Cases and Materials on Creditors' Rights* had given the law teaching profession its first single package casebook containing everything in the creditors' rights-insolvent estate field from the enforcement of a judgment by a single creditor to the discharge of a bankrupt. In between, among other materials, were fraudulent conveyances, assignments for the benefit of creditors, receiverships in equity, and, of course, bankruptcy. Sparked by the pressing need for training in insolvency law during a major financial depression, many law schools utilized Hanna's book as the means of turning a minor course in bankruptcy into a major course covering the entire field of debtor-creditor relations.²

The expansion of the National Bankruptcy Act between 1933 and 1935 to include composition and extensions for non-corporate debtors, agricultural compositions and extensions, the reorganization of railroad and other corporations, and finally municipal debt readjustments, made a second edition of the casebook imperative.³ The complete revision of the statute by the Chandler Act of 1938 called for a third edition, in the preparation of which Professor Hanna was joined by Professor MacLaughlan (then McLaughlin) of the Harvard Law School.⁴ And now, approximately ten years later, the two editors once more have given the profession the benefit of their rich experience over many years of teaching by publishing a new fourth edition, this time in two volumes.

Although the general plan of presentation has not varied from the date of the first edition, the volumes comprising the present fourth edition certainly contain the most logical arrangement of materials possible, if the subject matter is to be studied in a series rather than functionally.

Volume 1, which was published in the fall of 1949, follows the previous Hanna-MacLachlan arrangement and treats in succeeding chapters, Enforcement of Judg-

1. 17 CORN. L. Q. 718 (1932).

2. This same period also produced STURGES, *CASES AND OTHER MATERIALS ON DEBTORS' ESTATES* (1933) and BILLIG AND CAREY, *CASES ON INSOLVENT ESTATES* (1932).

3. Reviewed by the present writer in 25 GEO. L. J. 246 (1936).

4. Reviewed by the present writer in 26 VA. L. REV. 395 (1940).

ment, Fraudulent Conveyances, General Assignments, and Creditors' Agreements. The material on fraudulent conveyances has been extensively revised and as now presented "points up more sharply the separable branches of authority relating to fraudulent retention of possession or ostensible ownership on the one hand and on the other hand to inadequacy of consideration or actual intent to defraud."⁵

In order that Volume 2 may accurately reflect its title, Receivership and Corporate Reorganization, the material on Receivership, which in the earlier editions followed Creditors' Agreement, has been removed to Volume 2.

The subject of Bankruptcy, which the editors announce in their preface to Volume 1 that they have "held within the compass of four hundred ninety pages,"⁶ appears to have grown to some 550 pages by the date of actual publication, a none-too-unusual experience in casebook building. Although it may be difficult to understand why there was much bankruptcy litigation in the decade of the "fabulous forties," the present reviewer counted at least forty recent bankruptcy cases, all decided since the publication of the third edition of Hanna and MacLachlan in 1939, which the editors have set out in full. Three new decisions, together with a discussion of the Referees Salary Act of 1946—the most important bankruptcy legislation since the Chandler Act—make the present edition a thoroughly modern and readily adaptable teaching tool.

Volume 2, which was "prepared and published first because the dearth of adequate materials is more immediately acute in this portion of the full course,"⁷ is the first casebook devoted entirely to receivership and corporate reorganization since Douglas and Shanks brought out their Cases and Materials on Corporate Reorganization almost two decades ago. If one accepts the Hanna-MacLachlan plan of considering in a sequence the several methods of administering the estate of an insolvent or financially embarrassed debtor, it is quite consistent to precede the study of corporate reorganizations under Chapter X and railroad reorganizations under Section 77 with some consideration of their common ancestor, the Federal equity receivership. To this end, Hanna and MacLachlan use the same breakdown of equity receivership law which they employed in earlier editions—(1) Jurisdiction, (2) Claims, and (3) Reorganization—as a preliminary to materials covering the whole range of Chapter X and its predecessor, the widely discussed Section 77 B. A detailed analysis of these materials would be beyond the scope of this review. Suffice it to say that rarely in the long course of legal history has such a comprehensive body of law been developed in as short a period as the less than two score years which have elapsed since Sections 77 and 77 B became part of the National Bankruptcy Act. Of this material the present editors have made a scholarly selection and they have arranged it under many of the same topical headings utilized in the third edition—(1) Corporation Eligible, (2) Jurisdiction, Venue, Good Faith, (3) Persons and Property Subject to Reorganization, (4) Claims, (5) Voting by Secur-

5. Preface, p. VII.

6. *Id.*

7. Preface, p. VIII.

ity Holders, (6) Communication with Security Holders and Protection of Proceedings, (7) Claims against Management, (8) Plans-Fairness and Feasibility, (9) Jurisdiction Reserved on Confirmation of Plan, and (10) Sequels to Reorganization. The categories are similar to those appearing in earlier editions, but the contents are new and fresh and they represent the best that judges and legal writers have given us in the sunshiny days of prosperity that followed on the heels of the statutory enactments which, as far as the Federal courts are concerned, have all but completely folded the "Chancellor's Umbrella."

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