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Book Reviews

REFLECTIONS ON HANGING. By Arthur Koestler. New York: Macmillan Company, 1957.
Pp. xxiii, 231. \$4.50.

This book, by an internationally recognized master in fictional writing, is not fictional, but a penetrating and thought provoking study about the perennial problem of capital punishment. That matter lies deeply in the heart of the author since in 1937, during the Civil War in Spain, he was sentenced to death under a charge of espionage and only as the result of diplomatic intervention by the British government saved from the fate of being executed. He therefore enthusiastically joined the latest movement in England for the abolition of the death sentence, a movement that climaxed in the introduction, by Mr. Sidney Silverman, M.P., of a bill aimed at such legislative reform. It was not successful, but the strong resonance which it found in the public opinion caused the government to introduce a compromise bill as the result of which the Homicide Act, 1957, 5 & 6 Eliz. 2 c. 11, strongly limited the number of crimes still punishable, in England, by death.¹ It was in furtherance of that abolitionist campaign that Koestler, in the spring of 1956, published in *The Observer* the main body of this book as a series of articles.² They attracted much attention and even somewhat of a storm in the House of Lords. In the same year "Reflections" appeared in England in book form, accompanied by an afterword of Mr. Silverman, describing the legislative history of his

1. This statute changed the English homicide law not only by dividing murder, which in England has no degrees, into the two categories of capital murder and murder simply, the latter being subject to life imprisonment as the absolute, not the maximum, sentence, but introduced also other important innovations. It did not abolish the right and wrong test, established by the M'Naghten Rule, 8 Eng. Rep. 718 (1843), nor add to it the so-called irresistible impulse test, which is sanctioned in certain American jurisdictions, nor introduce the so-called product test which, by *Durham v. United States*, 214 F.2d 862 (D.C. Cir. 1954) was established in the District of Columbia. However, it took over from the law of Scotland the doctrine of diminished responsibility as reducing murder to manslaughter in cases where complete lack of responsibility, because of the defendant's mental state at the time of the homicide, is not proved by the evidence. It abolished the felony murder rule. It enlarged the scope of provocation as reducing murder to manslaughter, and under certain conditions freed the survivor of the parties to a homicide pact from being guilty of the murder of the party who died as a result of the pact.

2. Koestler, *All Right for Englishmen*, *The Observer* (London), Feb. 5, 1956, p. 2, cols. 4-8; Koestler, *Shaking Off the Nightmare*, *The Observer* (London), Feb. 12, 1956, p. 2, cols. 3-6; Koestler, *Guilty but Insane*, *The Observer* (London), Feb. 26, 1956, p. 2, cols. 4-8; Koestler, *Alternative to Hanging*, *The Observer* (London), March 4, 1956, p. 2, cols. 3-6; Koestler, *End of a Nightmare*, *The Observer* (London), March 11, 1956, p. 4, cols. 4-8.

abolition bill which had passed the House of Commons but had failed to win the approval of the House of Lords. The present American edition is enriched by an ingeniously written "Preface for Americans" by Professor Edmond Cahn of New York University. This preface suggests a comparison between the situation in England, described by Koestler, and conditions in the United States.

After presenting a summary of the history of the death penalty legislation and practice in England, and also discussing the reasons why prior movements for its abolition remained without success, Koestler in a scholarly manner goes deeply into the arguments against and for its retention. In the light of his analysis he reaches the conclusion that the abolition is a dictate of logic as well as humanity and, instead of diminishing, would increase the safety of the British public.³ He launches a vehement attack against those outstanding members of the British judiciary, past as well as present, who by their tenacious opposition have always been the greatest, and so far unsurmountable, handicap for the abolitionist movement. He also critically discusses the so-called M'Naghten Rules, their curious history, and their great harmfulness.

A reader who, in view of the literary achievements of the author in the field of fictional writing, expects to find in this book entertainment by impressive beauty of style, will be disappointed in this respect. It is not colorfully or inspiringly written, but in a sober matter of fact style. Because of too many and not sufficiently interesting direct quotations, the book is sometimes fatiguing. However, by its contents it is most valuable, and especially so for lawyers. The argument against capital punishment which it contains is a serious and sincere message by one who has given the problem a most painstaking consideration.

MAXIMILIAN KOESSLER*

3. This sounds paradoxical, but is not so, in view of the fact that in England a recommendation, by the jury, of life imprisonment instead of the death penalty has, at variance with some of the American jurisdictions, including the federal one (18 U.S.C. 1111), no binding effect. The jury's recommendation has sometimes been disregarded by the Home Office in its recommendation on whether the death penalty should or should not be executed; therefore juries, in certain cases, preferred acquitting a murderer, whom they did not want to expose to the danger of being executed, thus setting him at large as a peril to society. This peril could have been avoided by his imprisonment for life.