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Book Reviews

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BOOK REVIEWS

SOCIETY AND THE CRIMINAL. By Sir Norwood East, M.D., F.R.C.P., Springfield, Illinois: Charles C. Thomas, 1951. Pp. 437. \$8.50.

The book is devoted to a better understanding of crime and criminals. The approach is mainly psychiatric, having for its purpose the ascertainment of the relationship between criminal behavior and mental and character deviations from the normal. The author is not just a medical man but rather a man of science and the pages of his book contain ample evidence of wide reading and deep study. His judgments are given greater validity because they are enriched and sustained by over forty years of observation and contact with criminals from the vantage point of various important official positions in England wherein his duties required that he report and frequently give evidence on the mental state of prisoners. The book consists of a collection of essays published in scientific journals and lectures and addresses before scientific bodies covering a wide range of topics. Obviously, this method of compiling a book makes for overlapping and repetition, but in a treatise of this kind I do not hold this to be of great consequence. In spite of repetition the book is "meaty" and replete with facts, figures, classifications and concepts which demonstrate the author's complete familiarity with his subject. For the average person I would say the book is heavy reading, but for one interested in the subject matter, it is a valuable book for his library.

Among the matters discussed is the problem of alcohol addiction. We are given in some detail the history of the various steps taken in England in the prevention of alcohol addiction, in the custodial care and curative management of alcohol addicts. While these were in the main unsuccessful, nevertheless, it is of importance that an acute awareness of the problem has been shown and that there is the desire to do something about it. Regarding the medico-legal aspects of alcoholism there is set forth the various offenses which may be committed by alcoholists and in which alcohol is a contributory factor. The author also describes the various scientific chemical tests to determine the amount of the alcohol in the breath, saliva, urine or blood which might be used as a basis for medical opinion regarding intoxication. Whether or not drunkenness may under circumstances become an excuse for the commission of a crime, its effects upon premeditation and intent and other legal aspects of intoxication in connection with crime are considered here.

The alcohol addict is defined "as a person with some insight who is unable to forego his addiction or maintain a reduction of its intake to an innocuous amount, in spite of the fact that he is causing injury to himself and others by his indulgence."¹ He is not necessarily a psychopathic personality because his indulgence may be a symptom of other mental disorder. In the absence of psychosis, psycho-neurosis, mental defectiveness, or evidence of psychic inferiority and provided certain factors exist, the most predominant of which is that his addiction cannot be traced to a relevant cause other than an apparently inherent inability to make social adjustments without its assistance, then may it be considered that the alcohol addict belongs to a special type of psychopathic personality. Such persons frequently commit homicide and other crimes of violence.

The author sees in the force of public opinion concerning alcohol intemperance an important influence in combating insobriety and frankly admits that legal and legislative restrictions, social and economic improvement, educational and religious in-

1. P. 203.

fluences, have done more to encourage sobriety than any possible progress of psychiatry in the treatment of individual patients.

Drug addiction is very prominently before the public in this country at the present time and very properly is regarded here as of vital importance. It is not prevalent in England and perhaps, as the author points out, it may be due in part to the difference in the national characteristics of the peoples here and in England. The author states that "drug addiction is related to alcohol addiction by the fact that an underlying psychopathic basis is often responsible for the attempt to deal with the emotional difficulties of life by their aid."² According to one writer, drug addicts are divided into four main classes: specialized addicts, accidental addicts, natural addicts and criminal addicts. Those in the first class are, to all appearances, normal persons and bear none of the ordinary stigma of addiction. Many in the second class are often cured by judicious treatment. In the third class, cure is difficult and relapse is common. The cure of the criminal addict is almost hopeless. Drug addiction is occasionally directly associated with criminal behavior and every narcotic drug addict should be regarded as a potential criminal in the sense that he may find it necessary to commit crime in order to obtain funds to satisfy his craving. Association with drug addicts is one of the commonest causes of its spreading, especially among those whose psychopathic constitution renders them easy victims to addiction.

While the author considers that restrictive laws and regulations have had an indirect preventive effect in regard to drug addiction, he is of the opinion that it is clearly a problem of social hygiene.

In discussing prostitution, the author holds that the factors which determine the modern woman to adopt prostitution are environmental and constitutional. Among the former are economic difficulties, maladjustment at home, poor living conditions, the example of luxury, corrupting companions and the like. As to the latter, many are either mentally subnormal, high-grade feeble-minded persons, psychic inferiors, ethical aberrant personalities, aggressive egocentrics, cycloid or psychoneurotic persons. Personality and character traits are dominant considerations.

One may well quarrel with the author's statement that "the chief cause of the prostitution of women is the demand made and maintained by men," but on the other hand he will find agreement in decrying "the doctrine which challenges inhibitions and encourages moral irresponsibility" and "the theorists who declare that there would be no neurosis if a maximum instinctual gratification was allowed."³

Among the factors having preventive effect, the author mentions the segregation of mentally deficient women and girls in appropriate institutions, the early treatment of those suffering from other predisposing mental states, religious teaching, education and efforts to combat the environmental conditions.

At the risk of seeming to accentuate matters relating to sex, I must allude briefly to the chapter on sexual offenders, if for no other reason than because more space is devoted to it than any other subject in the book. The author aptly notes that in regard to sexual activities we must either live on a higher level than the animal world or fall to a lower; that the criminal law is intended to maintain the standards of behavior which are considered to be necessary for the welfare of the community and imposes criminal sanctions on the grosser breaches of sexual misconduct; that there is danger of misjudging sexual offenses by prejudice and ignorance; that sexual

2. P. 218.

3. P. 352.

offenses should be viewed broadly with the biological as well as the psychological and sociological approach and finally and most important that the whole matter is fundamentally connected with morality in general. Conceding that psychological factors often affect sexual behaviour, the author does not agree that sexual crime is usually an expression of mental abnormality. He deems the sexual urge which defies the law as comparable to the urge which impels many thieves, frauds and aggressive offenders to commit crime. Doubt is cast on the alleged deep-seated unconscious psychological factors as the cause of sex deviations. Criminal court judges who are so often puzzled as to the disposition to be made in sex cases should find the author's discussion of the problem quite instructive. I cannot help but note the author's opinion that in our present state of knowledge, enforced detention may be the only method available for dealing with some sexual offenders who are on the borderline of normality and abnormality if social security is to be immediately secured. He frankly states that psychological treatment of the sexual offender has its limitations and an exaggerated idea of its value is sometimes discernible. These observations from such a source bear the badge of authority. While no exaggerated claims are made for psychological treatment yet the possibilities are not neglected.

Of great importance and more consonant with the main purpose of the book than some other portions, are those chapters dealing with the psychopathic personality. I think the author has done a splendid job in his efforts towards exposition and clarification of this subject. It is admittedly obscure and the study of the psychopathic personality is very far from completion.

The author, for practical purposes, has classified the mental condition of delinquents and criminals into these main groups: normal, subnormal, mentally defective, psychopathic personality, psychoneurotic and psychotic.

The psychopathic personality is described as a non-sane, non-insane aberrant individual sometimes differing little from the normal while occasionally so abnormal that he might be regarded as legally insane. These individuals may be of subnormal, normal or supernormal intelligence and many of them are useful and successful. A more scientific definition of the psychopathic personality describes him "as a person who, although not mentally defective, psychoneurotic or insane, is persistently unable to adapt himself to social requirements on account of abnormal peculiarities of impulse, temperament and character . . ." ⁴ but even this definition confessedly may not embrace all psychopaths.

Psychopathic personalities are classified in the following categories: psychic inferior personalities; aggressive egocentric personalities; ethical aberrant personalities; alcohol and drug addicts; sexual perverts; schizoid, cycloid and paranoid personalities; but other authors have suggested different classifications.

The author does not even suggest that this group as a whole is not subject to criminal responsibility but does assert that the majority of the cases involving psychopaths present varying degrees of culpability and that the penalties usually applied to the sane or the insane are often unsuited to them. The term "criminal responsibility" is concerned with acquittal on the grounds of insanity and alternatively with conviction and punishment, and "culpability" with conviction and the degree of blameworthiness by medical standards in cases of minor mental abnormality. Although psychopaths are peculiarly resistant to treatment, the author, nevertheless, recommends detention in a special institution established on lines somewhere between a prison and a mental hospital to protect the public and permit study and possible re-education and reclamation.

4. P. 179.

In addition to the psychopathic personality, the author classifies in the group of non-sane, non-insane offenders, the subnormal and psychoneurotic persons. The mental defective as we know him has been omitted from this grouping perhaps because of the distinctive treatment usually accorded the mental defective in the enforcement of the criminal law. Subnormals are the dull and backward persons who are found in all classes of society. They lie between the normal and the high-grade mental defectives. The majority do not break the law. The psychoneurotics suffer from mental conflicts, anxiety states and fears. These cause transition from the normal to the abnormal in emotion and behaviour. Offenders among the non-sane, non-insane group are likely to repeat their offenses and repetition suggests a fundamental difference between the mental make-up of the recidivist and the first offender.

Just like the psychopathic personality, the subnormals or psychoneurotics do not escape responsibility for their offenses, because they are not insane. The psychiatrist's duty in such cases is not the determination of responsibility but insanity as defined by law, *i.e.*, whether the accused was suffering from such a defect of reason as to prevent him from knowing the nature and quality of his act or that it was wrong. The jury's duty is to decide whether or not the insanity has resulted in irresponsibility.

Notwithstanding their responsibility the author believes that culpability or blameworthiness differs in degree among individuals of the group discussed here. By medical standards some deserve less punishment than others and perhaps all less than the normal person. The special institution recommended for psychopathic persons is also urged here for the training and specialized medical treatment of these types of offenders if they do not accept medical treatment while on probation or are too dangerous to be allowed their liberty.

There are several chapters that cannot be dwelt upon because of lack of space. The chapter on crime in relation to senescence, the normal process of growing old, and senility, the abnormal mental state which sometimes becomes associated with the closing years of life, contains many informative observations together with statistics which are illuminating with regard to the incidence of crime among the aged and the type of such crime.

Milestones of Penalty is a chapter which discusses briefly the treatment of crime and criminals from early times to the present day. The famous Borstal Institutions for the detention of suitable persons between 16 and 23 years of age who have committed crimes, represent an important and progressive advance in penology. The student of the subject would do well to acquaint himself with this system of detention. Among the significant advances in penology in England is the fact that more attention is paid to the physical and mental condition of prisoners so that at the present time their general health is considered to be maintained at a high level.

The chapter on Crime and Punishment is replete with sound observations, analyses and concepts of the nature of crime, the classification of criminals, the nature of punishment, the classification of punishments and the relation of psychiatry to punishment. It merits greater consideration than is being given here. Mention should be made, however, of the author's opinion that at the present time, the most useful contribution of psychiatry to the problem of punishment is in connection with offenders who are subnormal, psychopathic personalities or psychoneurotic. He, by no means, however, is among those who believe or maintain that our present procedures, methods and measures in regard to punishment should be abolished in favor of some other plan which might be advanced by the psychiatrists based on the theory of no responsibility where a satisfactory psychological explanation for a crime is advanced.

To quote the author: "We must also accept the fact that punitive measures have been evolved by the wisdom and experience of highly skilled legal and executive authorities and meet with a large measure of success."⁵

At several points, the author, in discussing the concept of normality and abnormality in relation to behavior, stresses the fact that the boundary line between them is ill-defined, but nowhere is the discussion so extensive or profound as in the chapter on Crime and Maturity. Abnormal behavior is not necessarily evidence of a pathological condition, because in many instances it is not associated with any known mental disorder. It is then considered a mere deviation from the normal.

In another chapter the author all but discredits completely the phrenological diagnosis of character advanced by early psychiatrists and the once widely held belief advocated by the Lombroso School in the existence of a physical criminal type. He is also cautious about any alleged association between physique and character.

The author points out correctly, I think, that the modern school of criminology recognizes the importance of both inheritance and environmental factors, but that emphasis is placed upon the psychological association of criminal conduct rather than the anthropological. It is noteworthy that he finds no basis for the belief that criminality as such is transmissible.

Valuable space is consumed in advocating that the oath of an expert witness like a psychiatrist should be different from that of an ordinary witness and, of course, there is merit in the contention.

It is interesting to note also that in England the crime of murder is not graded either by definition, indictment, judge or jury and that individual public opinion has generally been opposed to any change. Where the issue of insanity is raised it is the jury's duty to determine the question according to the legal definition of insanity. They do not assess minor degrees of mental abnormality. These become important to the Executive when application for clemency is made.

The topics—Psychiatry and Degrees of Murder and the Significance of Personality in Male Murderers—are interesting reading made more so by actual case histories.

In my opinion the greatest value of the book lies in the sound and objective manner in which the author evaluates the accomplishments of psychiatry in the administration of justice in the criminal courts and generally in the field of criminology. He deprecates "twittering sentimentalists" and advocates stern measures if necessary. He distinguishes between mere change and advance in social affairs. He holds that psychiatrists as well as psychologists are not sacrosanct and when they complain that the law does not prevent crime and that their recommendations should be substituted for legal punishment, the retort might be made that since they often fail to prevent insanity the lawyers should attempt to do so. The author also notes that the law has been more successful than medicine in the prevention of inebriety. He holds that psychiatrists must not assume greater knowledge than they possess regarding the diagnosis and treatment of the pathological criminal and calls for evidence of the mental condition of accused persons only from medical men with special qualifications as psychiatrists. He deprecates the bias sometimes shown in favor of the criminal and emphasizes that the protection of society from the criminal and of the criminal from society should be the concern of both the state and the psychiatrist, insisting nevertheless, upon maintaining the complete independence of the latter in his researches and opinions. He points out that criminal responsibility and

5. P. 209.

the medical concept of culpability are two different things and advocates leaving the former to the lawyers and the courts on the premise that the legal method of dealing with accused persons who are insane is in practice as equitable as is possible in the present state of medical knowledge although in the matter of punitive treatment of psychopathic personalities and others improvement might be had if the public would only accept psychiatric guidance.

The legal rules regarding the criteria of insanity, known as the McNaghten rules, have often been the subject of criticism but the author is not found among its critics. In his opinion they have worked out pretty well in practice, and at any rate, until the psychiatrist can provide a practical, reliable and effective alternative he is in favor of continuing the present practice and procedures, as well as for the additional reason that juries and the public understand them. The reform needed today according to the author is not a reform in the law regarding criminal responsibility but an improvement in quality of the evidence of forensic psychiatrists.

One should not suppose that the author has no faith in psychology or psychiatry. He often dwells upon the importance of the psychiatric approach to crime, especially after the jury has spoken and sentence is to be imposed. His introduction of the concept of modified responsibility and lessened culpability is interesting and he points to the English law affecting Youthful Delinquents, mental defectiveness, some cases of drunkenness, infanticide under certain conditions and murder cases in which the juries recommend mercy, as examples. Anyone who has presided in a criminal court, especially in the so-called lower ones knows that in practice a species of modified responsibility is indulged in by the judges when considering the circumstances and exercising wide discretion in the imposition of sentences.

On the age old debate between determinism and free will, the author does not take sides, but as in other situations of this kind, finds elements of support for both sides of the conflict, and believes right and justice more approachable by taking the middle course. He lays at rest so far as he is concerned, the popular notion that crime is a disease and that every one who commits crime is a mentally abnormal person and therefore not responsible. It is refreshing to note the important place given by the author to the religious approach in the prevention and treatment of crime and criminals in this day and age of advancing materialism.

With practically all of these observations, any person who has had actual experience with psychiatry in the administration of the criminal law can be in whole-hearted agreement. The warnings and admonitions of the author are timely and necessary lest the progress of the science be hindered and delayed by pretensions which far exceed accomplishments. No one familiar with the place which the practical application of psychiatry has even today in the workings of the criminal courts can doubt its helpfulness and value in the attainment of maximum justice for the individual offender. One can be optimistic in the thought that as time goes on its usefulness and value will increase. Its approach, however, should be the approach of helpfulness rather than of conquest.

What I have extracted from this book proves its value. One might become captious because of many repetitions in the text emphasizing certain thoughts and ideas over and over again. Perhaps the book should have been written in a more engaging style so as to make easier reading. Sometimes the point sought to be made is obscure and kept from the reader but this may be because the scientist likes to let the facts speak for themselves. Sometimes I am afraid the author has slipped away from the main thesis but in a book of this kind this is unavoidable and this article probably has the same fault.

I should say that the author has written a book which has fulfilled its purpose, and for anyone who likes to think deeply about the matters discussed it is worth while to have a copy always at hand.

GEORGE B. DE LUCA†

ECONOMIC ASPECTS OF SECTION 102. By Tax Institute, Inc. New York: Tax Institute Inc., 1951. Pp. 301. \$5.00.

From time to time, the Tax Institute, a non-profit research institution, conducts panel discussions by qualified experts in order to clarify difficult problems. This book is a compilation of the proceedings of two panel discussions conducted by the Institute on section 102 of the *Internal Revenue Code*.¹ The first panel is called the fact-finding panel. Its function was to present and elaborate on business decisions and actions taken by corporations in the light of the statute. The second panel dealt with the question of policy. This panel discussed weaknesses of the law and its administration and suggested revisions thereto. In addition, a comprehensive questionnaire was sent to some 1,700 tax practitioners. The questionnaire and the replies thereto are also set forth in the work.

This book contains a wealth of background information on the operation and effect of the statute not to be found elsewhere in compiled form. As the title indicates, the panel discussion is aimed at the economic rather than the pure tax aspects of the statute. It is clearly set forth, simply presented and easily understood. Therefore, it should be read not only by taxmen and general practitioners but also by businessmen. The result might well be to reduce ill-advised business actions which in the opinion of many panel members are caused solely by fear of the statute induced by lack of knowledge. Unfortunately, as panel members point out, the Treasury has failed, except in rare instances, to set forth any clear guide-posts and rules as to valid reasons for the retention of funds. This failure has been due in part, it is thought, to the fear that if such guide-posts and rules are set forth, they will serve as a manual for tax avoidance. And, further, in one of the instances when the Bureau of Internal Revenue did issue such a ruling, chaos resulted. This occurred in 1946 when the famous "70% rule of thumb test" was promulgated. The result was that numerous corporations which failed to distribute 70% of current earnings felt they were in immediate peril of the penalty surtax.

While the individual opinions of the panel members vary widely in some instances, there is a general over-all concurrence on certain points which are worthy of mention. For example, one is that although tax considerations should not really influence business judgment, section 102 has done so in the sense that it is responsible for adverse economic influences, such as increased inventories, debt financing, hasty expansions and mergers of the small business into the large. A second viewpoint is, as one member puts it, that economic "booms and busts" are accentuated because of the lack of a financial cushion to ride out periods of depressed business. Another is the feeling that only closely held corporations are in any real danger

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1. This is the section imposing a penalty surtax ranging from 27½% to 38% on undistributed net income of a corporation formed or availed of to avoid the imposition of surtax on its shareholders.

of being subject to the statute. In the case of the publicly held corporation, it would be practically impossible to establish the necessary element of intent to avoid the imposition of surtax on the shareholders.

The section of the book dealing with the discussion of the policy panel is particularly noteworthy in that the criticisms set forth are constructive. Thus, numerous suggestions for revision of the statute are contained therein which Congress and the Treasury might well heed. The outstanding criticism perhaps is the one relating to the present policy view of the courts and the Treasury to recognize only immediate needs of the business as a valid reason for accumulation of earnings. It is proposed that similar recognition be afforded accumulations for long range expansion.

This book should not be considered a handy guide for the tax practitioner. As stated heretofore, it deals primarily with the economic aspects of the statute and is not a hornbook of valid reasons for the retention of earnings. Yet it is replete with excellent background material and hence can be a valuable aid to the clarification of the thinking and planning of the taxman as well as the general practitioner and businessman. Such clarification will go far toward the elimination of the economic ill-consequences which result from the exercise of hasty judgment motivated solely by fear of the penalty surtax and which are proof of the old adage—"penny-wise but pound foolish."

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