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Book Reviews

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BOOK REVIEWS

THE ILLINOIS CRIME SURVEY.—John H. Wigmore, editor, Arthur V. Lashley, director, Chicago. Published by Illinois Association for Criminal Justice in co-operation with The Chicago Crime Commission. 1929. pp. xxxi, 5-1108.

The Illinois Crime Survey presents an analytical study of crime in twenty counties of the State, the city of Chicago and, for comparison, the city of Milwaukee, in the year 1926. The conditions disclosed are appalling. Step by step the careers of the lords of the underworld are followed from lowly beginnings as gamblers, thieves, panderers and gun-men to heights of affluence and power from which they by an unholy alliance with politics, are able to corrupt the courts, defeat justice and exact tribute from the business of a great city. Unfortunately these conditions are not localized. Similar conditions prevail in greater or less degree throughout the United States today. Investigations in Missouri and New York state showed like results and press reports indicate that organized crime exists in all the larger cities at least.

After we have studied carefully the reports of the eminent experts in this remarkable book, we are impressed by Dean Wigmore's terse dictum that the great underlying cause of this state of affairs is in one word—"Inefficiency." In criminal law and politics we still cling to the methods of more than a century ago. Our county governments are local political units working independently of the municipalities within their borders and largely of the States of which they form a part. County officers are concerned mainly with other affairs than criminal detection, and few of them are either trained or experienced policemen. There is no system of co-operation between the counties and the State, or between the States, or between the States and the Federal government in police matters. The city police force is better trained and organized than the county officers, but the heads owe their positions largely to political influence; often it has been shown that there is a connection between the police department and the various criminal classes. Election to municipal office in Chicago and elsewhere is often secured by the illegal activities of "gangsters" at the polls. In recognition of such services, the gang leaders are permitted to conduct gambling houses, houses of prostitution, saloons and to prey on the public generally without interference by the police. In Chicago the police do not catch more than twenty per cent. of those who commit felony crimes and only 5.52% of the entire number are punished. The records of other large cities give approximately the same results.

What happens to the 20% of the suspected felons who are taken by the police? In 1926 there were initiated in Chicago 12,543 felony prosecutions; of these 7,561 were never prosecuted beyond the pre-

liminary hearing, over 6,000 being eliminated by the municipal judges at the preliminary hearing and 1,437 against whom the grand jury found no true bills. 2,501 were dismissed in the municipal courts for want of prosecution, 766 nolle prossed and 2,117 discharged. Into the trial courts went 4,982 indictments which had been found reasonably true by the police, the municipal courts and the grand jury, but the courts found only 2,449 of the defendants guilty. But this is not the end. Out of this number 510 result in probation; new trials are granted; 1,855 were convicted of lesser offenses than the ones originally charged; only 594 were convicted as charged. Of these 173 were released on probation and 27 were further modified, appealed and reversed, or were acquitted or convicted of lesser offenses on new trials, leaving the total number of 394 or 3.13% punished for the offense originally charged. In this one year, (1926), more than 60,000 felonies were committed in the city of Chicago; only 12,543 suspected felons were apprehended, of whom only 2,449 were found guilty of anything, and only 394 guilty of the offense charged. This same process is being carried out every year in every city in the United States.

Since the advent of prohibition the financial resources of the criminal have enormously increased. He still controls gambling, prostitution, drug running, corrupt politics and organized felonies from which he obtains large sums, but the profits won from the smuggling and illicit manufacture and sale of alcoholic beverages are larger. With greater wealth the leaders of the underworld have become veritable feudal barons ruling large gangs which engage in private wars with one another over disputed territorial rights to the sale of beer and other illegal beverages. These mercenary gangs are united by a code of their own to elude arrest and defeat justice. Disloyalty or disobedience to their leaders is punished by death or mayhem. Gang killings in this warfare are frequent, but no one has as yet been punished for a gang murder in Chicago, indicating a complete failure of the detecting and prosecuting machinery. Witnesses have been terrorized or maimed or disappeared from the city and the law gave no protection. As long as the gangsters only killed one another the ordinary citizen hoped that extermination might result where law had failed, but the gangs emerge from the combat more powerful than ever in that the survivor had annexed the rival's territory. An example of how the system works is shown by the reports of the Guilfoyle-Winge-Kolbe alcohol syndicate which does a business of more than two million dollars a year on the northwest side of Chicago. Guilfoyle, slayer of Peter Gentleman, with his sales manager Fisher, started to sell alcohol when the Volstead law went into effect. Later he joined forces with Al Winge, a former police lieutenant and his ally, Matt Kolb, who had a prosperous beer business. When times are good the firm employs 50 highpressure salesmen who assemble daily at Fisher's headquarters to learn the day's price of al-

cohol before starting on their rounds. At these meetings the activities of the Summerfields, rival dealers in alcohol, were discussed, but in spite of warnings, the Summerfields continued to operate. After one of these "pep" meetings, pineapple bomb tossers descended on the Summerfield headquarters, which were considerably damaged. The police made the usual investigation and announced another "bombing mystery." The Guilfoyle gang continued to prosper without competition.

The success of such methods in controlling competition in illegal fields has in recent years led to an extension of gang activities into legitimate business, known as "racketeering." Racketeering is the levying of tribute by violence or intimidation upon labor unions or merchant associations in return for actual or pretended services in maintaining wages or price agreements. The modus operandi is illustrated by the case of the cleaners and dyers.

The retail cleaners and dyers formed an association and a bitter conflict arose between it and the independent cleaning and dyeing establishments because of price cutting and the stress of competition. Independent stores were wrecked by bombs, clothing stolen, windows broken and drivers beaten. Soon it became apparent that in order to operate an independent cleaning and dyeing shop it was necessary to be a protege of Hirschie Miller who was involved with Dion O'Banion in the booze trade and was notorious for his ability to "beat raps," that is, evade punishment. If the independent shop refused to pay tribute neither the law nor the gang protected it. Morris Becker, president of an independent company operating a chain of cleaning and dyeing shops and a dyeing plant testified before the grand jury that an emissary of the association said that he "was going to raise prices." Becker replied that the Constitution guaranteed him the right to life, liberty and the full pursuit of happiness. The agent replied, "To hell with the Constitution. I am a damned sight bigger than the Constitution." Three days later a dynamite bomb wrecked the shop. The secretary of the association, three days after that, asked him to contribute \$5,000.00 to a fund to be used in maintaining prices in cleaning, but Becker refused. Fifteen members of the association were indicted, the agent and two others held especially for terrorism being released on bonds aggregating more than half a million dollars.

At the trial they were released in fifteen minutes because Becker was unable to produce sufficient evidence to convict the defendants of the crimes charged. Clarence Darrow defended the accused. The sequel is illuminative. Mr. Becker has since reorganized his company, now called Sanitary Cleaning Shops, Inc., in which Al Capone, the vice lord and "big shot" among the gangsters, appears as a principal partner. In announcing this fact, Mr. Becker said: "I have no need of the police or the Employers Association now. I now have the best protection in the world."

The Survey discloses that there is an underworld system of con-

trol which enforces its decrees by bombs and murder and is more powerful than the law. During twenty-five years the overlordship of this system has been held by four men in something like royal succession; first by Big Joe Colosimo, a friend of politicians and chief of the south side "red light" district, who ruled up to 1920; at his death, his chief lieutenant, John Torrio, ruled until 1924, who organized rival gangsters into a city-wide bootlegging syndicate. Torrio retired and was succeeded by his right-hand man, Scarface Al Capone, who has consolidated commercialized vice, gambling, bootlegging and certain branches of racketeering into an extremely profitable system of protected exploitation. Capone still rules. During this same period, Mont Tennes has maintained his leadership and control of gambling by his possession of direct news from the race tracks. Recently the Federal government has attempted to institute proceedings against some of the more notorious gangsters of this district, but apparently the only tenable ground found was that they were evading or falsifying their income tax returns. Not only has this dynasty of crime been able to persist in the face of determined crusades against it, but it has increased its power and greatly enlarged its activities.

What are we going to do about it? The compilers of the survey are unanimous in saying that, in combating organized crime through efficient law enforcement, the machinery of the law must have behind it the constant force of intelligent public opinion and suggests a central bureau in which uniform records for crime reporting be kept under the direction of a competent statistician. This office would contain the identification records and affiliations of every known criminal and his court records. At regular intervals the bureau should issue trustworthy reports in simple form to the public informing them of the status of crime situation and the efficiency of the work of the law enforcing agencies. The weakest link in the chain of law enforcement is the inefficiency of the police in catching criminals and discovering evidence upon which to procure their conviction. The fault lies not so much with the personnel as with the system which permits politics and politicians to control the police force. The officers, especially the higher ones, should be selected by civil service examinations and removed only for just cause. There should also be better organization of the county and State police with close co-operation between all these branches and the Federal officers.

Next to the police, the prosecuting attorney is credited with allowing the greatest number of criminals to evade the toils of the law. Too often, important prosecutions are assigned to inexperienced young lawyers who embark on the trial without adequate preparation. Also, as is well known, the prosecutor dominates the grand jury, where he practically acts as judge, jury, prosecutor and administrator. Even after the jury has indicted the offender, the prosecutor may for various reasons and entirely on his own responsibility drop the case with a "nolle prosequi." The most common cause of the escape of danger-

ous criminals is "dismissed for want of prosecution." This usually means that the state's witnesses are not present at the hearing because no real effort was made by the state's attorney or the court to secure their attendance. Twenty-two per cent. of all persons charged with felony are dismissed on this account. The first requisite for remedying this defect is to elect a state's attorney who is an efficient, industrious and incorruptible lawyer as free from political bias as any other judicial officer and give him a sufficient number of assistant prosecuting officers to insure a thorough study and preparation of every felony case before trial.

The office of coroner should be abolished and replaced by a medical examiner appointed as a professional expert with a staff of trained scientists competent in pathology, toxicology, bacteriology and other sciences necessary in the scientific investigation of the causes of deaths, and with adequate scientific equipment. All of these should be under civil service rules.

The courts should be divorced entirely from partisan politics. Judges should be appointed or elected for long terms and receive salaries which would attract the best legal talent. Procedure should be revised and simplified to expedite the administration of justice. Release on bail should not be granted to habitual offenders and bond forfeitures for non-appearance be more rigorously enforced.

The clash between the eighteenth amendment and popular sentiment in urban centers is responsible for much of the disrespect for law and furnishes the gangster with ample funds to maintain his mercenaries and corrupt the social body. The liquor traffic, always a source of evil and corruption, now threatens the very foundation of social order. Some feasible plan to regulate this evil influence would go far toward curbing the power of organized crime. Underlying "racketeering" is the inability of business to legally fix prices and control ruinous competition under the Sherman anti-trust law. This law should be repealed and trade regulated in conformity with modern ideas as in other civilized countries.

Students of social science have long held that the legal methods of dealing with the crime instead of the criminal was a mistake. It was treating the symptoms and disregarding the disease causing them. The aim of criminal law should be to protect society against the criminal, not to mete out punishment for any particular crime with which he may be charged. To carry out this concept would entail a complete revision of the present ideas of punishment and make the term of segregation in an institution for those found guilty of crime dependent upon their ability to become safe and useful members of society. All sentences would be indeterminate. Release would be obtained only on recommendation of a board of experts after a period of detention and examination.

The Survey is carefully and skillfully made by men adept in their fields who are fully aware of conditions as they are and desire earnestly

to improve them. The book is not only readable, but it holds the reader like a modern "thriller." One is left with the impression that if the Ordinary Citizen is not getting the kind of government he wants, he is possibly getting the kind he deserves. Modern municipal politics would not be as rotten as they frequently are if the Ordinary Citizen did not believe that the laws were made for everyone but him to obey, and that the chief function of all elected officers was to grant him special illegal privileges on request. Possibly another light was shed on the situation by the head of a public utility company not in Chicago, who cynically remarked that when buying special privileges for his company he preferred to deal with a known crook rather than a corrupt politician because the former would "stay bought."

G. L. BAILEY.

LEWELLYN CASES AND MATERIALS ON SALES. By Karl N. Llewellyn. Callaghan and Company, Chicago. 1930. Pp. XXXV, 1081.

CASES ON SALES. By Mahlon Everett Lewis. The Lawyers Co-operative Publishing Company, Rochester, N. Y. 1929. Pp. 1003.

The importance of the subject of sales and the need of a new edition of Williston's Cases On Sales or of some other case-book containing a sufficient proportion of modern cases are illustrated by the appearance of these two case-books. While both are new to a certain extent in both arrangement and content, the book of Mr. Llewellyn is more than new in the usual sense—it is a "noble experiment".

There are those who consider that there is a better way of teaching law than the case method as we now know it. The writer of this review is one of them. In order to find that "better way" it is essential that experiments be made. Consequently we note with respect departures from the traditional in case-books and lend our co-operation in trying them out if they seem of value.

The writer differs with those who consider that the "laboratory method" has been achieved in the case-book as it has been known in the past. The student gets those cases which the compiler decides to give him; there is little opportunity for him to search and learn for himself. With a little variation he remains the traditional bottle to be filled with material furnished by another. In addition there should be more co-ordination between the law and other fields of thought. As to how these and other desired ends are to be achieved is a serious problem for the compiler of a modern case-book.

Mr. Llewellyn has included something over 750 cases. Part of these are main cases and a part are digested cases. By the use of the digested cases the student has an opportunity to consider more phases of the subject than was possible under the customary system. In addition, the book contains quite a bit of other material, such for example as discussions on the economic aspects of the subject. The author states in the introduction that the material is arranged in the following proportions: "standard main cases, 9; digests, 10; annotations and discussion, 6½; text of statutes, 1."

At least two questions occur to the teacher. First, Is it part of the function of the law school to teach the economic and other aspects of the subject to the student? Is it not rather to be expected that he will have attained a background covering most of this material before he comes to the professional school? Second, Assuming that it would be advisable to teach and co-ordinate such related materials, is there time to do so? There is scarcely time to cover the necessary subjects, as law, during the customary three years' course of study.

Mr. Lewis' case-book attempts to present an exposition of the law of Sales of the present time. The older cases have not been neglected, many old familiar faces are seen, but enough of the recent cases have been included to give the student a view of the modern law and judicial reaction on the subject. Footnotes, references, and comments are fairly full and helpful, containing not only additional case references but citations to pertinent articles in legal periodicals and to annotations in *Lawyers Reports Annotated* and the *American Law Reports, Annotated*. The order of treatment adopted in the *Uniform Act* has been followed and the *Act* serves as a frame-work for the book. The book is beautifully made up.

ROY MORELAND.

A TREATISE ON EQUITY. By William F. Walsh. Chicago: Callaghan & Company, 1930. Pp. XLI, 603.

A TREATISE ON THE SUBSTANTIVE LAW OF EQUITY JURISPRUDENCE. By Fred F. Lawrence. Two volumes. Albany: Matthew Bender and Company. 1929. Pp. clxxiii, 1407.

These two recent works on the subject of Equity Jurisprudence present widely divergent approaches to the material available. Instead of attempting to cover the subject as it is generally done, Mr. Walsh has carefully chosen the branches of equity which are commonly covered in the course in law schools and has covered them comprehensively. Having thus limited the problems to be discussed the author is able to discuss them at length and to contribute an original analysis of them. He does not try to dodge the various questions but faces them honestly and squarely, presenting divergent views, not hesitating to present his own conclusions, much after the manner of Williston in his admirable work on Sales.

On the other hand, Mr. Lawrence has undertaken to cover the whole of Equity. The discussion of many of the topics leaves much to be desired. In attempting to cover the whole field it is apparent that he has covered none of it thoroughly. In many places the text is not enlightening but serves merely as a peg upon which to hang citations in the notes. In this the work often scarcely advances beyond the results obtained in the poorest "finders" compiled for the sole purpose of sale, rather than for the purpose of making an analysis and study of the problems involved.

The writer does not pretend to have read the whole of either of these works. But he has read parts of each rather thoroughly. Their

comparative value to the practicing lawyer or student may be indicated to a degree by a recital of the writer's experience with them in working upon several problems. Take for example the use of the injunction in equity to prevent crime. Mr. Lawrence's discussion of this important problem is so trite and brief as to be valueless to one who really desires information or suggestion. Mr. Walsh devotes several pages to the question and its problems, giving a thorough, illuminating insight into not only the law but the divergent positions which courts have assumed. Again, take the increasingly important question of the right of privacy and the attitude of equity toward the protection of purely personal rights. Mr. Walsh discusses the questions thoroughly; Mr. Lawrence is valueless. Again, take the perplexing problem of part performance and the Statute of Frauds. In this instance Mr. Lawrence does have a discussion that is of some value but it is not to be compared in the same terms with the discussion of Walsh on the problem. It may seem unfair to take these isolated instances by which to compare the two works but this is the way the books will be used by the average reader and "the proof of the pudding is in the eating", the proof of the value of the book is in its value as a working tool. It is the opinion of the reviewer that Mr. Walsh has contributed a worth-while study of the most important phases of the subject.

ROY MORELAND.

MARLASH ON SALES. By Irving Mariash. Matthew Bender & Company, New York. 1930, p. 926.

One may well wonder whether there is a need for a new textbook on Sales at this time in view of the splendid work of Professor Williston, "the master and the builder of our law of sales". But when one considers that the second edition of this work is seven years old and that new decisions and interpretations of the Sales Act are constantly pouring from the judicial hoppers, he realizes that perhaps there is a need for a new book on the subject at this time.

The arrangement of the book has a practical convenience. Mr. Marlash has used the Uniform Act as a framework for his book and has as each chapter a section of the Act, citing the common law as well as the latest decisions of the various states which are in point. Footnotes are copious and informative, and from every state which has adopted the Act, completely outlining most of the cases, valuable alike to the busy lawyer and the student. The Appendix contains the Uniform Sales Act, Sale of Goods Act, Uniform Conditional Sales Act, Uniform Bills of Lading Act, Uniform Warehouse Receipts Act, Federal Bill of Lading Act, and American Foreign Trade Definitions.

ROY MORELAND.

CRIME AND THE CRIMINAL IN THE UNITED STATES. By Harry Best. New York: The MacMillan Company. 1930. Pp. XVII, 615.

Crimes are more frequent and criminals more numerous in the

United States today than ever before and the law seems incapable of controlling the situation by the present means at its command, so that anything that tends to clarify the dilemma is indeed welcome. Professor Best has prepared a careful study of crime and conditions underlying criminality, mainly from a sociological point of view and has reviewed the penal institutions and the various methods of punishment now in vogue. Society's procedure against the criminal from his apprehension by the police, through his indictment or preliminary hearing and his trial to punishment and release is followed step by step. The shortcomings of each stage of the procedure are pointed out and constructive suggestions for improvement are made with a valuable chapter on control of the factors in the causation of crime.

Nearly half of the book deals with the juvenile offender as this class is most amenable to sociological treatment. The author suggests early examination of all children by experts to determine the mental status of each child and the segregation and treatment of those mentally subnormal, especially those having dangerous anti-social tendencies. By this means the reduction of crime in society would be enormous, as criminal tendencies, usually accompanying mental or physical abnormalities, may often be recognized in early childhood. Many children through bad home surroundings, irregular school attendance and lack of proper direction are led astray by evil associations in "gangs" to begin a criminal career. Such children are the great problem which modern society must solve, as it is from this group that the criminal ranks are filled.

Professor Best summarizes the modern attitude toward juveniles in the sentence; "Children and youth for their misdeeds need, not so much punishment, but rather education and reformatory treatment." As the proceedings of the juvenile courts are not of a "criminal" nature, they have, for the most part, been held to be constitutional. Except as to the graver offences, the juvenile court should have exclusive jurisdiction over cases coming before it. Not only does this court dispose of the case to the best interests of the child, but it also has power to punish the adult who has tempted or led the child into wrongdoing. The treatment of each case is an individual problem and the success of the juvenile court depends upon the intelligence and training of the court personnel, which should include a psychiatric clinic and a staff of social workers who could report on the social environment of the delinquent child and supervise his conduct if put on parole.

"Crimes in general are committed in consequence of the particular constitution or nature of the offender himself, or from the particular situation or environment in which he has his being, or to which he happens to be exposed." Society must not only study carefully these factors in order to prevent crime, but there still remains the problem of what to do with the criminal which is by no means satisfactorily solved. In fact as only one person is punished for every twenty

crimes committed, it would seem necessary first to improve the police force by greater co-ordination between county, city, state and federal police organizations and making it possible for better trained officials to head the various sub-divisions, as well as higher qualifications for the rank and file. Out of ten persons arrested for crime only one is found guilty, which means either that nine innocent persons are falsely accused or that the meshes of our legal net are much too wide. The author adopts the latter alternative and characterizes our police methods and criminal procedure as being decidedly out of date and in need of reform. His suggestions for improvement are those generally approved by advanced thinkers in the legal profession and include the requirement of special training and qualifications for the public prosecutor and a stricter limitation of his present power to drop or discontinue a case without record, or to accept a plea of guilty of a lesser offense than the one charged. Bail for the accused should be more rigidly scrutinized and should only be granted by a higher court in cases of second offences especially where crimes of violence are involved. The coroner should be replaced by a trained medical examiner who would report to a prosecuting officer his findings in violent or sudden deaths. He would allow the court to comment upon and instruct the jury as to points of evidence and facts brought out in the testimony. Every possible means to avoid unnecessary delays and postponements should be used and no effort spared to make the trial follow the commission of the crime as speedily as will conform to the best interests of justice. At present entirely too much effort is made to the advantage of the accused.

The author is opposed to capital punishment and believes that it will soon be abolished everywhere. Imprisonment, as now carried out, is a costly method, but it offers temporary protection of society against the offender and possibly it may reform him, or scare him and his kind from taking anti-social paths. Little has been done in this country as yet to develop a full penal system in any of the states. Our city and county jails are, for the most part, filthy and unsanitary places of detention for prisoners awaiting trial, or for minor offenders. In them physical and moral degradation are fostered during hours of enforced idleness and association with all sorts of depravity. They should be replaced by state institutions conveniently located to serve the needs of several counties in which the keepers would be paid suitable salaries, the conditions humane and sanitary and the prisoners provided with useful labor and possibly, education. All prisoners should undergo physical and psychological examinations and the sub-normal mentally and physically be separated for suitable treatment in appropriate institutions. First offenders should be segregated from habitual criminals. As far as possible these institutions should be self-sustaining so that the farm colony type of institution is especially well adapted to replace the present jail and workhouse.

Both state and federal penal institutions seem gradually to be coming to the farm colony plan and the questions of education and

vocational training are receiving greater attention. Each state should have at least one receiving house or clearing station where all prisoners should be received after sentence and studied by a body of experts for classification and appropriate handling. The recommendations of this body should have great weight as to granting of pardon or parole. As the indeterminate sentence is coming into use more and more, it is essential that expert knowledge of the prisoners' fitness to be at large in society be furnished to the regular parole boards to enable them to exercise their powers intelligently.

Professor Best clearly and concisely presents the problems connected with prison labor, with the benefits of vocational training and employment to the prisoner and he advocates the extension of the present "State use system" under which the State employs the prisoners to make articles for institutional consumption, such as clothing, furniture, foodstuffs, printing, brick, etc. Any surplus should be sold in the open market at regular prices. Under this system the prisoner is not only fitted to earn an honest livelihood on his release, but also is paid a compensation, if he is able to produce more than the cost of his keep, which is given to him on his release.

The theories and practice of releasing prisoners on probation, parole, and suspended sentence are briefly touched on, showing that the success of these measures lies largely in the training and experience of the probation officers. The work of private aid societies, such as the American Prison Association, the Big Brother and the Big Sister movements and many organizations interested in the welfare of the ex-convict, are of great service in finding employment and giving moral support to paroled and other prisoners who are capable of rehabilitation.

Primarily the book is intended for use by students of social problems, but the lawyer and the jurist will find the suggestions for reform of criminal procedure interesting. It also presents the general reader with a general oversight of the workings of the criminal law, conservatively indicating the necessities for reforms in our police agencies, courts and penal institutions.

G. L. BAILEY