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Book Review. Michael, J. and M.J. Adler, Crime, Law and Social Science

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discusses the advantages and the disadvantages, the application and uses of this judicial guardianship, and especially as a substitute for the English *habeas corpus*, in some detail. The insight into Mexican constitutional history and law afforded by this little book is considerable.

L. L. BERNARD.

Washington University.

LA DESOBEDIENCIA. By Dr. Diego Vicente Tejera (Hijo). La Habana: Jesus Montero, Editor, 1933. 156 pp.

Dr. Tejera is one of the ablest modern students of sociological jurisprudence. His productivity is remarkable. Furthermore, his outlook is not merely theoretical, but his aim is highly practical. He combines the concreteness of the searcher of codes and cases with the broad outlook of the legal reformer who wishes to make his vast learning—for Dr. Tejera's learning is both vast and profound—useful in constructive legislation and in the socialized administration of justice. The present work is a study in the sociolegal aspects of the disobedience of officials engaged in the interpretation and enforcement of the law. In tracing the history of this type of crime he finds that it is a product of the régime of constitutional governments which followed the French Revolution. Recognizing the power of the recalcitrant or corrupted administrative officials and judges to nullify laws to the detriment of public interests, he presents digests of the laws of most of the leading countries covering the crime of disobedience, and particularly of the laws of Cuba, pointing out various effects of such disobedience and remedies therefor. An interesting section of the volume indicates when such disobedience in enforcement may have favorable public effects, especially in cases where lawyers and criminals sabotage the laws by means of formal overt compliance, but insidiously pervert law and justice under the pretense of conformity. In such cases he would give some leeway to courts and administrative officials in order to allow them to enforce the spirit rather than the mere letter of the law. In his commentary on legislation and the codes, the author makes frequent and penetrating references to the social scientists of different periods and countries who have contributed to his theme.

L. L. BERNARD.

Washington University.

CRIME, LAW AND SOCIAL SCIENCE, by Jerome Michael and Mortimer J. Adler, New York: Harcourt, Brace & Co., 1933. Pp. xxix, 440.

This volume by Messrs. Michael and Adler is one of the most significant books of recent times in the fields of social science and law. No one who is active in law or is concerned through some other discipline with the problems of human behavior should forego the authors' clear analysis of the related functions of the several branches of the social studies. In relation to criminal law and criminology the writers' appraisal of the work which has been done and their estimate of what is needed are essential to understanding a subject that has been enveloped in a fog of hazy concepts and misty emotionalism.

The authors' investigation, which led to the book, was addressed to the problem of whether there is a need for a new institute of criminology and criminal justice. The question was to be answered for the Bureau of Social Hygiene by the Columbia Law School. The writers were the School's investigators upon the subject and have embodied their own findings and conclusions in the volume under review.

Whether a new research and planning agency is needed depends, of course, upon the adequacy of the work which has been and is being done by other investigators and experts. It was the authors' task to survey that work in criminology and criminal law. In order to judge it they necessarily had to formulate and apply standards of workmanship and of utility. These standards are not different from those which might be employed in judging the performance of workers in any other of the social studies. The social studies are usually thought of as sciences. Therefore Crime, Law and Social Science resolves itself into a statement of the relation of social science in general to law and an examination of criminology and criminal law in the light of that relation. Criminology proceeds as an empirical science, employing inductive methods as distinguished from the developing and relating of propositions which is the method of the rational sciences.

The characteristic which distinguishes the products of an empirical science from other types of knowledge is their accurate revelation of causation in the matter under examination. It is not enough that they contain suggestive information, such as frequently results from non-scientific observation of phenomena. Truly scientific results are not possible unless the factors to be studied in particular research projects are selected on the basis of an adequate analysis of the total problem or set of problems. Nor will the findings be of value unless the methods of investigation fit the particular problem and are safeguarded against error.

It is the function of criminology as a science to discover the causes of crime and the effects of treatment in the reformation of actual offenders and the deterrence of potential offenders. After a devastating survey of the products of criminological research to date the authors conclude that these are utterly worthless when judged according to scientific standards. This is so because (1) there are no genuine sciences of sociology and psychology upon the results of which criminology might draw and in terms of which its problems might be stated; (2) many of the concepts of criminology as it has been are neither exact nor definitely enough related to each other to possess significance; and (3) the methods of research employed in criminology to date have not been adequate to isolate causes and effects or to measure the correlations between them. The authors, nevertheless, believe that genuine sciences of sociology, psychology, and criminology are possible. They recommend the establishment of the proposed institute with a personnel rigidly selected to insure a truly empirical study of the problems of criminology and thus to guard against intrusion of the errors of previous work in this field.

Besides research in criminology, the principal investigations coming within the purview of the authors' survey have been the studies of criminal law administration represented by the writings of experts such as Fosdick and Moley and by the crime surveys. These have brought forth much descriptive knowledge which, however, yields no results in terms of scientific statements of the causes of inefficiency or of relative efficiency in administration. Nor is it necessary to reach scientific conclusions in this field. Common-

sense interpretations of the data gathered by observation are possible here and form a sufficient basis of proposals for improvement of efficiency. Further work along these lines is recommended for the new institute, with, however, a diminished emphasis upon useless statistics and an increased realization of the need for legislative action in the directions indicated by past studies.

Administration presupposes ends to be attained. The immediate purposes of criminal law administration are defined in the laws which largely control it. The ultimate purpose, however, to which these are subsidiary is not established by legislation or even by the findings of such a science of criminology as the authors envisage. The final end of criminal justice is defined in the rational sciences of ethics and politics. It should find expression in the substantive criminal law in the form of statements of derivative purposes to be attained by administration. If retribution—i. e., moral atonement—be the purpose of the treatment of offenders, the criminal law should stick rigidly to the appropriate prescriptions. Criminology then becomes unnecessary from a practical standpoint, since the legislators who might use its findings should be unconcerned with the causes of crime or with the practical effects of punishment. It is obvious that the criminal law takes no such view. Neither, on the other hand, has retribution been eliminated as an end in the administration of criminal justice. The authors rightly criticize the substantive criminal law as an unintelligible jumble of inconsistent propositions. It badly needs reformation and restatement.

The authors do not hesitate to state categorically that the basic politico-ethical proposition upon which all law must be based asserts that human happiness is the ultimate purpose of the functioning of political institutions. From this proposition it is derivable that reformation and deterrence rather than retribution should be the purpose of criminal law and its administration. It follows that the science of criminology is needed in order to reveal the conditions of its attainment.

The weakest part of the book is the section in which the authors seek to demonstrate the inevitability of the utilitarian end of law and the resulting unsoundness of the retributive theory of criminal justice. The state, they argue, is a political institution which must serve social ends and cannot by reason of its very nature be diverted to the service of an abstract moral value. They cite numerous authorities to support their view, from Aristotle on down. All of these, however, contributed to the development of Western culture. It is impossible to see in the argument more than a rationalization of the prevailing attitude in the authors' cultural environment. Since this attitude does prevail, it forms a safe foundation upon which to proceed, but it cannot command the inevitable adherence of all who think. Many who agree with the authors with regard to its eternal soundness find it necessary to draw upon nonrational resources in combating certain oriental attitudes and the dissenting philosophy of predatory "supermen" who from time to time attain power and influence in the Occident.

Similarly one finds it necessary to question the authors' high hopes for truly empirical social science. Mathematical economics, which they cite as a present example, seems peculiarly barren of permanent results in the face of changing social attitudes and methods. It seems more than likely that the social studies should resign their pretensions to being principally empirical sciences and become avowedly the means of applying the lessons of

experience through the shrewdest, keenest intelligence possible to the solution of human problems. The separation of the study of causation from the devising of measures for effectuating policy seems quite impossible. The effort to attain the unattainable, rather than the inadequacy of the methods employed in some of the studies previously undertaken, may account for the relative failure of criminological research when measured by scientific standards. Social causes and effects, it would seem, are always causes and effects in the here and now and are inseparable in their very conception from the setting which conditions them. Since that setting is certain to shift, no permanently valid conclusions can be reached. It may be possible, it is true, to determine with exactness by empirical methods such facts as the effects of imprisonment for varying periods in certain types of penal institutions. Such knowledge will be temporarily useful. If it can be made indisputable, it will be more valuable than common-sense conclusions to the same effect. It is, however, likely to be deceptive. The very meaning of imprisonment, for example, and therefore probably its effects, will change with the attitude of people toward it. It seems unlikely that such factors can be measured and accounted for by empirical methods. Assuming, however, that they can be, the conclusions of an empirical science which engages in such studies will be of hardly more than momentary accuracy, so that studies made at different times cannot be fitted together in a useful manner. For that reason investigations of the sort which have been made in the field of criminology, even if the concepts and methods are improved, ought to be subsidiary to particular purposes rather than parts of a larger effort to build an empirical science. We may need empirical social scientists, but they must remain humble servants of those who are concerned with official and unofficial legislation. They cannot hope like the physical scientists to build a body of knowledge which possesses independent validity and therefore ultimate as distinguished from immediate utility.

Much more might be written about the contribution which Messrs. Michael and Adler have made. Perhaps in time we shall owe the abandonment of sloppy methods of investigation in the social "sciences" to them. If not, the fault will not be theirs. Their insistence that rational analysis must precede valid empirical study is urgently needed. Their separation of the rational science of jurisprudence from the study of legal institutions renews a distinction which often is ignored. Their recognition that the practical utility of research is dependent upon its relevance to ends which need to be served is admirable. One question only whether in the social studies the validity as well as the utility of the findings of such research is not conditioned by the values that determine the very meaning of the concepts with which research begins.

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