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Book Reviews

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an opportunity to refuse to accept the risk if it seems to be too burdensome and to modify the contract according to the special risk. McCORMICK, HANDBOOK ON THE LAW OF DAMAGES (1935) 570. There are some cases, however, involving the liability of public utilities (such as railway carriers and telegraph companies) in which notice was given after the contract was made but before special damage occurred, and in it was held that this was sufficient to create liability for the special damage provided that the notice was given in time to enable the party to avert the special injury or loss by the use of special caution. *Western Union Telegraph Co. v. Hice,* 288 S. W. 175 (Comm'n of App. of Texas, 1926); *Virginia-Carolina Peanut Co. v. Atlantic Coast Line R. Co.,* 155 N. C. 148, 152, 71 S. E. 71 (1911) (opinion of Hoke, J.); *Conn v. Texas & N. O. Ry. Co.,* 14 S. W. (2d) 1004 (Comm'n of App. of Texas, 1929). In the latter case the court emphasized the fact that the carrier was not entitled to withdraw or modify its terms, when apprised of the special risk. See: Note, 19 HARV. L. REV. 531; McCORMICK, HANDBOOK ON THE LAW OF DAMAGES (1935) § 3, n. 4. Again, in the *Hice* case the court emphasized the fact that a carrier or other public utility may be held liable *ex delicto* for the proximate consequences of its tortious act.

In *Raleigh Iron Works Co. v. Lee County Cotton Oil Co.,* 135 S. E. 343, 344 (N. C. 1926), the court stated three rules as to when special damages are reasonably supposed to have been within the contemplation of the parties: "(1) When there is express notice that special damages will reasonably result from the breach of the contract. *Lumber Co. v. Iron Works,* 130 N. C. 584, 41 S. E. 797; *Rawls v. R. R.,* 173 N. C. 6, 91 S. E. 367; *Builders' v. Gadd,* 183 N. C. 447, 111 S. E. 771. (2) Notice may be implied from the inherent nature and character of the article, together with the attendant circumstances. *Lumber Co. v. R. R.,* 151 N. C. 23, 65 S. E. 460; *Pendergraph v. Express Co.,* 178 N. C. 344, 100 S. E. 525. (3) When the facts and attendant circumstances are of such character that the parties may be fairly supposed to have known that the property was designed for a special purpose or for a special use. *Peanut Co. v. R. R.,* 155 N. C. 149, 71 S. E. 71; *Builders' v. Gadd, supra.*"

William L. Struck.

BOOK REVIEWS

CASES ON PUBLIC UTILITY REGULATION. By Francis X. Welch. Public Utilities Reports, Inc. Washington, D. C.

Mr. Welch's book, a revision of and supplement to his 1932 edition, presents a view of the law of Public Utilities as of today. The sweeping changes in the law of that field that have taken place in the last four years have made the new edition imperative. Much obsolete material in the old edition has been deleted, and much new material, covering the latest statutory and judicial changes which have taken place under the present administration, has been inserted. The result is an excellent presentation of the law, plus material of great value to those engaged in utility management.

The chief value of the book, however, would be its attraction to students of utilities who intend to make that field a career. For the average law student who intends to engage in general practice, a study of this book would entail a more minute study of the field than he would perhaps wish to give it. For general use, to study the book and the subject thoroughly would require either fewer hours

than law students usually carry, or a longer period than that in which the course is usually taught. There is no doubt, however, that the book would be an invaluable aid to a lawyer-accountant who would want to have at his command such facts as the theory of valuation, obligations as to rates, yardstick regulations, intercorporate relations, and practice and procedure before the commission and on appeal. Perhaps for the average student there is not a sufficient emphasis on the duty to serve all, discrimination, and, most fundamental of all, the utility concept.

But of course, something had to be sacrificed in the interests of space and clarity, and the author obviously felt that in this particular field it was most vital to be up to date with the law, making the insertion of the enormous amount of legislation and precedent of the last four years an absolute necessity.

On the whole, it can be said without exaggeration that Mr. Welch has made a valuable contribution to the field of public utilities, and that for members of the profession who are in public utility work to stay, and to those who teach this subject, this book will be a reliable and inclusive assistance.

A. R. Martin.

CRIME AND JUSTICE. By Sheldon Glueck. Boston: Little, Brown & Company. 1936.

This book of Dr. Glueck's on Crime and Justice in 280 pages of text and 57 pages of notes, published last May, is an interesting and somewhat disquieting contribution to the voluminous literature upon this increasingly important subject. Before attempting any estimate of its value to improvement in the administration of our criminal law, it is necessary to note its limitations. The author's preface makes it clear that his work is limited chiefly to observations upon certain *defects* in the field of criminal law, and suggests very few remedies for their removal, although he does state and discuss remedies, both quack and genuine, proposed by other writers. His preface modestly declares: "In these pages, I have stressed the ills of criminal justice in the belief that by studying the diseased organ we may be able to obtain some light on the destructive forces at work and, perhaps, some hints as to the therapeutic and prophylactic measures that are indicated."

In other words, Dr. Glueck points out symptoms indicating disease, but attempts neither diagnosis nor treatment, save in a very limited sense. Since he is Professor of Criminology at Harvard Law School and a noted psychiatrist, his work merits critical attention. He has assembled a large amount of valuable factual material indicating gross and widespread abuses in the administration of our criminal law which speaks well for his industry. Our alarm at the sorry picture he presents is somewhat allayed by finding that it relates, almost wholly, to evils existing in those courts, jurisdiction of which is limited to petty offenses. His pessimistic view is well-illustrated by the titles to his eight chapters which, he says, are based upon eight lectures he delivered to a lay audience. These titles are: "The Climate of Justice"; "The Halls of Justice"; "The Lameness of Justice"; "The Blindness of Justice"; "The Knights of Justice"; "The Pawns of Justice"; "The Prospect of Justice"; and "The Horizon of Justice." After reading this book, one gaspingly wonders whether justice is ever done, except by rarest chance, in our courts of inferior criminal jurisdiction. We even feel a kind of unjustified resentment against Dr. Glueck for making this exposure. Still, pointing out evils and defects in any system never has earned much laudation, and the more truth there is in the indictment, the less praise for him who draws it. In

evaluating Dr. Glueck's work, I shall assume his statement of facts to be true. With this assumption, his book is admirable and timely. Anyone seeking the real cause for much "disrespect for law and the courts," so widely deplored, will find it in this book. The ordinary layman bases his opinion of the law and the courts almost entirely upon his observations of the trial and disposition of criminal offenses where American justice appears at its tatterdemalion worst. And if he finds, as this book says he may, that a single word whispered to a suppliant magistrate by a political ward heeler is more potent than the efforts of a skilled lawyer, he cannot be blamed for holding such a court in the utter contempt that it deserves. Courts wholly lost to all respect for themselves can scarcely expect it from others. With these preliminaries, let us look at "Crime and Justice" in more detail.

As might be expected, the author starts with a brief consideration of the three main theories upon which criminal law is based,—the punitive, the reformative and the protection of society,—and suggests that men are "beginning to wonder" whether vengeance should have any place in it. I thought that sensible men had entirely rejected the punitive idea as being both unworthy and ineffective. He seems to think that the reformative notion, in the main, has failed. But, on page five, the Doctor suggests that psychology, psychiatry and kindred "sciences" should be introduced into our law and its administration, even though, as he admits, they are "far from perfect." He follows this by coining a novel phrase, "the culture medium of criminals," and, whatever that may mean, it must be important since he says that failure to take it into account "may explain to some extent at least the miscarriage of contemporary piecemeal 'reforms.'" It is plainly evident that Dr. Glueck favors the intrusion of "science" into the domain of criminal law, even though it is "far from perfect," and is annoyed by the steady refusal of the judiciary to permit entrance of its most conjectural branches. It would be an unusual psychiatrist who, if given a very few slight deviations from the mythical norm of human behavior in the accused coupled with some trivial eccentricity of a remote ancestor, could not emerge from a learned verbal seance with a confident verdict of "complete irresponsibility." Throughout, the author reveals his belief that "personal responsibility" in relation to criminal law is an outmoded concept which should be pitched into the junk pile of obsolete things. He blames the substantive criminal law for retaining it. He says, on page 96: "Basically it is still grounded on naive conceptions of human mind and behavior and their relation to 'responsibility.'" And again, on page 98 he says: "But aside from more subtle motivating forces, the criminal law is unrealistic in not taking into account sufficiently the fact that many criminals suffer from defective intelligence, mental diseases, abnormal emotional makeup, overly strong instinctual drives, and like handicaps."

Unfortunately, the author does not say just how society is to be protected from the grave injuries resulting from these deficiencies and abnormalities. If either of these conditions is established to exist in the guilty defendant, should the law regard it as a defense, and set the accused free to repeat acts which result from "defective intelligence," "overly strong instinctual drives," etc.? Surely the author cannot mean that he would expose society to such a continuing menace. Likely he would favor some sort of confinement of a person so afflicted, but giving it the more euphemistic name of "custodial care." If so, what substantial difference would there be between that method of retiring the subject from circulation than under the name of "penitentiary" that we now have? As our substantive criminal law now stands we call the manifestations of an "overly strong instinctual drive" to acquire wrongfully the personal property of another and make off with it, "larceny," and the "sufferer" a "thief." Does it make any difference either to

society or the person so afflicted what name we use? Is this a duel over nomenclature? For several thousand years at least, society has sternly set its face against anyone acquiring the personal effects of another in that way, and it is not likely to change its attitude. If a human being has the "instinctual drives," emotional makeups," etc., to such an extent that he manifests them by some overt act gravely injurious to person or property we call him a criminal, society demands that it be protected from his activities, and does not care whether the place of confinement be called a "hospital" or a "penitentiary." Nor is it very important whether the treatment he receives is called "curative" or "punitive," so long as it is not cruel.

If we were to adopt the author's suggestion of eliminating the concept of "responsibility" from our jurisprudence upon proof that an individual possessed these bizarre characteristics, what would be the result? Is it hard to visualize the country swarming with these "sufferers" inflicting whatever injuries their "overly strong instinctual drives" demanded upon a helpless society? Would there be any security for persons or property? He quotes the late Justice Holmes as seriously doubting whether our criminal laws do any good. And it must be admitted that the Judge made many interesting remarks, though there is no record of his attempting to repeal the criminal code. The isolation of the causes for that sort of human misbehavior that we, in our blindness, have been calling criminal may be an achievement of psychology or psychiatry, but it affords no reason for abandoning our defensive machinery even though some of it may be crudely operated.

Many lawyers will find themselves in complete accord with the author in his strictures upon the *M'Naghten* case, decided by the House of Lords in 1843, wherein the degree of insanity which would be a legal defense to a criminal accusation was declared to be inability of the accused to know the nature and quality of his act and to distinguish between right and wrong. This decision which was given without argument and on a moot question is sometimes said to be the basis of the rule that insanity of such a degree is a defense, and judges have regarded it as a binding precedent. Later on, other judges introduced the "irresistible impulse" concept into our criminal jurisprudence. Briefly stated, it is that though a human being may be perfectly able to know the quality of his act and to distinguish between right and wrong, yet, if, from mental disease, he is unable to control his acts, then he is not "responsible," and should be turned loose. Some states, notably California, have abolished this nonsense by providing for a verdict of "guilty, but insane," and, instead of sending the defendant to a building called a "penitentiary," commit him to a "hospital for the criminally insane." While this, in most jurisdictions, is still the law, it stands upon the erroneous assumption that the object of the criminal law is vengeance. There is, indeed, a Tribunal where the mental capacity of the wrongdoer will be vitally important, but it is not in the domain of civil law. The spectacle of a court of justice setting free a murderer, robber, burglar or rapist to repeat his special brand of crime is absurd. An insane person proved to be criminally inclined is an infinitely greater menace to society than one whom we call sane. Insanity of whatever degree should never be a *defense* in criminal cases, and its only materiality should be to determine what means society shall employ to prevent recurrence of its overt manifestations. The original blunder occurred from a failure to distinguish between crime and sin. Oregon and Mississippi passed acts abolishing the defense of insanity, but the Supreme Courts of those states declared them unconstitutional in opinions of doubtful validity.

The author's criticisms upon our methods of selecting jurors in criminal cases are well-grounded. That hundreds of prospective jurors should be examined interminably by garrulous counsel before what the author calls the "magic twelve" are chosen is downright *buncombe* meriting derisive disgust. Can anyone be

expected to "respect" such a grotesque performance? In attributing this glaring defect to "weak judges," the author again is entirely right. He fails, however, to point out the real reason why so many of our trial court judges are "weak." Elsewhere indeed he does discuss the political influence which enters into their selection. But he omits to mention the tremendous influence of the well-organized political underworld which intelligently watches the proceedings in a criminal trial and stands ready to make political reprisals upon any strong and courageous judge in a large city, and defeat him for re-election. This closely knit political underworld has no partisan political allegiance, acts as a unit at the command of the "boss," and too often holds the tenure of the judge in his hands. While good citizens are looking after their business affairs, the underworld also is looking after *its* business, which is to obstruct and defeat criminal justice. This evil thing hangs like a shadow over many judges of criminal courts in nearly all large cities. In addition to this, the trial court judge stands in dread of reversal of a conviction by some appellate court on account of some trivial, super-technical "error" that has crept into the record though that same record shows that the defendant is guilty beyond even the shadow of a doubt. Confronted with this dual threat against his prestige and his job, it is not to be wondered at that so many judges prove "weak." Society is waging a losing battle against crime, and it is time to tell the truth about this matter instead of glossing it over with high-sounding praise. Our federal court judges are free from this weakness, which suggests that we should change the method of selecting our judges from the elective to the appointive. The system of appointing judges for a life tenure during good behavior would be ideal if we could devise some effective means of excluding the slimy curse of political influence. And, while we are at this long overdue job of making our judiciary independent, maybe it would be just as well to emancipate all our criminal law-enforcing agencies from the fear of sinister activities by appointing prosecuting attorneys, sheriffs and magistrates and, also, wardens for a tenure limited only by good behavior. The usual argument against this appointive system is that it would or might tend to fasten upon us an official class that would be arbitrary, oppressive and callously indifferent to human rights. Except in rare instances, that has not been the result of appointing our federal court judges. Nevertheless, it must be admitted that there is substance to this objection meriting serious consideration, especially in so far as it relates to the constabulary and petty magistrates. One can easily visualize the antics of such men "clothed in a little brief authority," and it is a nauseating spectacle. It is quite true that the smaller the man the more likely he is to become afflicted with official megalomania. Yet all this could be guarded against by a simple statute providing summary ouster proceedings for misfeasance, malfeasance, or arbitrary or corrupt conduct in office. Nebraska has such a statute, and it has proved to be speedy and effective. Also, the Constitution of that State provides that charges of judicial misconduct against any district court judge shall be tried before the Supreme Court, and such charges against a judge of the Supreme Court shall be tried by and before all the district court judges of the State. Everyone, except certain lawmakers, knows that the remedy by impeachment is notoriously cumbrous, long drawn out and absurdly ineffective, and usually degenerates into an unseemly political struggle. Such ouster proceedings would subject such charges to expeditious and deliberate judicial scrutiny and decision rather than the rash action of popular clamor by the crude remedy of "recall," or the fantastic and absurdly ineffective remedy of impeachment. If such a statute were enacted and rigidly enforced, then the only fear of these officers would be the wholesome fear of the consequences of *wrong-doing*, which would be just what it ought to be. With this weapon of ouster proceedings accessible to every citizen, the circumference of official head of appointees could be kept fairly normal. No matter what "laws" a poorly informed legislature may

hastily enact, the fate of justice, in final analysis, depends upon the independent courage, integrity, and wisdom of the judge. He should have ample compensation during active service, half salary upon retirement only for physical or mental disability or at the age of seventy years, if he chooses. As Mr. Justice Cardozo says, "there is no guarantee of Justice except the personality of the judge." Until our judges are made absolutely independent in every way, our "fight against crime" will continue to be largely a losing battle. And the same is true of our prosecuting attorneys and constabulary.

Dr. Glueck summarizes the various suggestions that have been made for improvement in the administration of criminal justice. Still clinging to the notion that what might be called the "conjectural sciences" should be adopted even though "far from perfect," he suggests "blood tests to determine paternity" should be recognized by the courts. One can easily imagine the scene in a trial involving the paternity of a child where one eminent blood "expert," after stating his experience and methods, in terminology so unique as to be almost cryptic, testifies that John Jones indisputably is the father of the child, while another equally eminent "expert," after indulging in a similar verbal debauch, testifies that one, John Smith, is certainly the male parent. This square conflict in the testimony of these "experts" undoubtedly would produce a puzzled, gap-mouthed wonder in the spectator at the mysterious "majesty of the law." But this wonder would turn into a far different feeling when cross-examination revealed that each of the eminent gentlemen had been heavily subsidized before giving his testimony. Of course, they manage it differently now so that the "expert" may truthfully testify that "there has been no arrangement about compensations." But let some unsophisticate try to put him off with ordinary witness fees!

The author, of course, refers to the "lie-detector," otherwise known as the polygraph deception test, and resents the refusal of the courts to admit evidence based on its use, although, he says "scientifically valid proof exists of the reasonable, *though not perfect,* reliability" of this instrument. This alleged proof has been taken as genuine by at least a half dozen writers on the subject, even though many instances exist of the failure of the appliance when subjected to a real test. We are familiar with the story of about two hundred imprisoned convicts being tested by it, and of the Chicago banker using it on his employees, but it is far from convincing. In criminal cases, the suspect or defendant could not, legally, be compelled to submit to this test which takes away most of its practical value. And it would be, even though it were reliable, embarrassing if a convicted defendant voluntarily took the test and it showed his assertion of innocence to be true, in the face of overwhelming proof of his guilt. The supposition that a hardened criminal will become so stricken by conscience at telling a lie that an emotion will result that will register itself on a strip of paper taxes credulity to its utmost. Somehow, the author omitted to mention the "truth serum" as a means for eliciting truth. The "scientific" idea of this method is that, if a hypodermic injection of scopalomin be administered to anyone, it will release his inhibitions against incriminatory self-revelation, and yet stimulate his desire to talk If this is true, then, by this simple means, a hard-boiled, habitual, life-long liar, who becomes tight-lipped on apprehension, could be so transformed that self-incriminating truth would gush from his lips in torrents. It is more than likely that some people believe this. It is also true that folks reared in sight of the dome of the capitol at Washington believe in witchcraft. Again, under our Federal Constitution, no one could be compelled to submit to this test.

Dr. Glueck, entering upon a more practical field, lists the following suggestions for improvement that have been frequently made, namely, (a) abolition of the constitutional provision that the accused shall never be compelled to testify;

(b) abolition of the rule forbidding the prosecutor to comment to the jury on defendant's failure to testify; (c) abolition of the presumption of innocence; and (d) abolition of the rule requiring that defendant's guilt must be established by the evidence beyond a reasonable doubt and substituting therefor a rule that a mere "preponderance" of the evidence shall be sufficient to convict, even though the jury entertain a reasonable doubt of his guilt. Against these four preposterous revolutionary proposals, the author takes a commendably decided stand. Though often urged, they are so obviously unsound as to deserve little attention. It is not likely that we will repeal the constitutional provision against self-incrimination, and go back several centuries when persons suspected of crime were subjected to torture. The evidential worthlessness of confessions of guilt extorted by infliction of pain was long ago demonstrated though too late to save thousands of human beings from judicial slaughter. There is no real substance in the suggestion that the prosecutor be permitted to call the jury's attention to the failure of defendant to testify, since the jurors themselves observe it, unless so *non compos mentis* as to be incompetent to serve as jurors. The proposal that the rule be so changed that the jury might convict the defendant, though doubting his guilt on reasonable grounds, is simply barbarous, and has no place in any sane discussion of this subject.

The author says, "At all events, the time is ripe for a radical re-examination and overhauling of the complicated and ill-arranged structure of criminal justice." This proposal is extremely startling, if it means that the judicial wisdom of centuries is to be cast aside and some empirical scheme instituted. In the main, what is wrong with our substantive criminal law? Specifications not generalizations are in order. Before tearing down our present system, it would be wiser to be sure that there is a better system. Is it not obvious that the defects are to be found not in our substantive law of crimes but in the *administration* of criminal justice? And are not these gross defects largely traceable to the judges of our trial courts? They have the *power* to correct most of these abuses up to the conclusion of the trials before them. They have unquestioned power and authority to prevent such undue delays as result in the death, dispersion, bribery or intimidation of the state's witnesses; to prevent fictitious bail; to prevent nonsensical examinations of prospective jurors for cause; to expedite disposition of dilatory pleas; to curtail frivolous cross examinations; the over-crowding of their court room; and, finally, they have the absolute power to prevent dramatization of criminal trials by the press and cameraman so as to make them "sensational." But is it reasonable to expect that all or most of them will exercise that power and thereby antagonize the press in its quest for profits, and alienate the sympathy of the morbidly curious thrill-seekers who happen to be invested with the right to vote against them? The well-known "lunatic fringe" of our population, though only a noisy minority, is quite a broad band, a voting band. We do not need "new laws." What we do need and need badly is a high-grade, absolutely independent judiciary, especially in the larger cities. And, when the lesser "Knights of Justice," as Dr. Glueck calls them, observed the example of the court they serve tolerating neither undue delay, nor "pull," nor nonsense, nor corruption, it is reasonable to expect that these lesser "Knights" would imitate the wholesome example. Perhaps, even the court bailiffs, if given an order to prevent "demonstrations" at verdicts, would manage to make an effective, instead of a weakly perfunctory, effort to quell applause, and even the nauseous spectacle of an acquitted defendant "thanking" the jurors! What for? For doing their plain duty, or failing to do it? Many courageous judges are putting an end to these monstrous practices, for which they are to be commended.

Although we have need of very few "new laws," there are a few recently enacted which seem wise. Indiana leading, and Illinois and New York following, have abolished the "racket" causes of action,—breach of marriage promise, seduction, and suits for damages for "alienation of affections" of a spouse. This is outside the domain of criminal law and is mentioned only because it is a wholesome sign. But, in criminal law, the legislatures of Ohio, Indiana and Michigan have passed acts requiring the defendant in a criminal case to give the prosecuting attorney advance notice in writing of his intention to interpose an "alibi defense," and providing that, in the absence of such notice, the trial court judge may, in his discretion exclude evidence offered by defendant tending to establish an alibi. Of course, we may expect that, if such evidence were excluded, objection would be made that defendant was denied "due process" of law. It would seem that merely requiring defendant to give seasonable notice of such defense would not be depriving him of it. During the first year of this law in Ohio, "alibi defenses" in Cleveland dropped off 80%, which is very significant. Similar statutes requiring advance notice of an "insanity defense" are being discussed, though necessity for them, if any, is not so urgent.

The author leads one through the dreary and depressing record of what crime surveys, including that of the Wickersham Commission, show,—of the inexperience and incompetency of public prosecutors and their staffs, of the abuses of the well-known *nolle prosequi,* of the futile legislative efforts to abolish these abuses, of the custom, reported in the Illinois Crime Survey, of electing young and inexperienced men as prosecutors and even judges, of the political activities of clerks, bailiffs and other attendants, in a word the Grand Army of the Betrayers of Justice.

Frankly, Dr. Glueck declares that he is dealing with "the pathology of criminal justice," and he only lightly touches the therapeutic field. Yet, in his last chapter, he does suggest and discuss a few remedies. Chief of these is the establishment in each state of an expertly staffed Ministry of Justice, as, he says, "Departments of Justice" have been created in a few states. He hopefully states that these "might bring about a considerable improvement," but adds that such departments are not entrusted with all the functions necessary to an effective integration of the processes of law enforcement and to taking remedial measures for the ills enumerated. He suggests that these "Departments of Justice" should be "headed by a changing chief executive who would carry out the general policy of the party put in office by the electoral mandate, but permanently staffed with a group of competent civil servants performing technical services," which he outlines under several heads. The first relates to police administration, and recognizes the perils in that field. The second that a bureau of public prosecution be established that would "standardize and supervise the work of district attorneys who would be appointed by the head of the department under civil service regulations." These proposals are somewhat startling, even revolutionary.

In the first place, it would seem most unwise to have enforcement of criminal law depend upon a "general policy of the party put in office by the electoral mandate." There can be but one sound policy and that the "public policy" of having such laws duly enforced or repealed. This cannot be a political issue. A moment's reflection would reveal the tragic disasters that would certainly result. Then the whole scheme appears to be a creation of a novel secondary or auxiliary system for the one we have, with no assurance that it would be better. Numerical increase of personnel never eliminates incompetency. The proposal for "supervision" of the work of public prosecutors, it seems, would at once relieve them of their sense of official responsibility and afford opportunity to "pass the buck" to their superiors. One can easily imagine the weary and tortuous trail he would

have to travel before he arrived, if ever, at the one really responsible for official dereliction. A divided power always leads to a divided responsibility. That is what is the matter with so many governmental agencies now, where no one can put his finger on the official at fault. Plenary power within strictly circumscribed limits coupled with absolute responsibility for its exercise is the only true rule in government. And the American people are not likely to look with favor upon a system of remote control of their local affairs. Under the sixth head, the author would charge such a bureau with the duty of "keeping abreast of needed changes in legislative and judge-made law." Such a bureau, of course, could have no real power and could only suggest "needed changes"; and the only result from its labors one could reasonably expect would be a vast bewildering and confused accumulation of statistical and other factual data wholly undigested, and, very likely, indigestible. For many years we have had "crime surveys" in many states and cities to say nothing of the imposing Wickersham Commission. Any industrious and fairly intelligent person can assemble facts, the really difficult thing is to properly interpret them. Already we have enough *facts,* and everybody agrees that the organ is diseased. What the situation imperatively demands is remedies to cure the disease.

Under his chapter entitled "The Pawns of Justice," the author enters the vast field of the etiology of crime, which leads, of course, to interesting speculations. As far as this reviewer is informed, the Doctor enumerates them all,—lack of education; ill health; congenital weakness; economic stress; broken homes, etc. He even mentions the interesting controversy between the hereditarians and environmentalists, but wisely observes that this controversy "has produced more smoke than fire." Obviously, it seems that the causation of crime has no place in such a book, except insofar as it might be important to a Board of Parole in determining the vital question of whether a prisoner, if paroled or pardoned, would continue his criminal career and so be a menace to society. Beyond this, it is of no consequence to Criminal Justice what causes a given individual to inflict grave injury upon society. The problem confronting society is how to stop criminal assaults upon its members. The grim and alarming fact faces us that, with the comparatively slight chance of apprehension, conviction, and imprisonment, there is, beyond individual self-respect, very little to deter anyone from entering upon a career of crime.

It goes almost without saying that the author of this valuable book treats of inter-state rendition of fugitive criminals; of the wretched condition of many of our jails, houses of detention, reformatories and jails; of juvenile delinquency; of fictitious bail; of criminal lawyers; of delays in bringing indicted persons to trial; of police administrations; and of many other outstanding defects in our administration of criminal justice. There is no doubt that the picture he exposes to view though disquieting and depressing, is authentic. He points out the disgraceful administration of the parole system, and cites apparently reliable statistics disclosing that the percentage of recidivism is much greater than many suppose. For example, he states that, in the past two years, in New York, of 4254 indeterminate-sentence prisoners paroled, at least 68 per cent were found to have had previous arrests, 1432 of them three or more. In Massachusetts, during the statistical year ending in 1934, of 3654 male offenders sentenced to jails and houses of correction 58 per cent were reported to have had prior commitments; of 1675 sentenced to the state farm 89 per cent had served prior sentences of incarceration; of 83 sentenced to prison 70 per cent had previously been imprisoned; of 110 sentenced to the reformatory 64 per cent had served prior sentences. He sums it all up by saying that "when it comes to the repetition of crime by those already punished, the situation is appalling." This high percentage of recidivism ought to moderate the lavish distribution of "paroles" by politcally appointed boards of parole.

Turning loose upon society hordes of criminals who present a thin disguise of "reform" but concealing a real purpose to continue their criminal activities is itself a crime against society. The large number thus given their freedom under the fiction of "supervision by probation officers," makes one wonder whether it is worth while to prosecute anybody at all. If the criminal fails to escape the law by flight, or by the stupidity of grand juries and examining magistrates, or by pressure of political underworld, or by delaying his trial and bribing or intimidating witnesses, or by the incompetency of "weak judges," or the stupidities of trial juries, his case is by no means hopeless for, in very many states, he may yet approach the boards of parole with confidence. Too often, they will "give him another chance,"—to commit more crimes. Moreover, the notion that a man who deliberately commits a heinous crime involving gravest moral turpitude, if but imprisoned for a few years will thereby be transformed into a law-abiding, useful and honest citizen ever mindful of the rights of others is, to say the least, queer. Many of us decline to believe that incarceration has such miracle-working power.

In connection with this whole subject of Crime and Justice, it may be worth while briefly to consider the recommendations of the Attorney-General's Conference on Crime, which was held in the City of Washington in December, 1934. It was attended by 557 delegates representing 88 professional and civic organizations, all states of the Union, all the Nation's largest cities, and 75 of the 96 federal districts. It held ten long sessions addressed by judges, prosecutors, chiefs of police, wardens of penitentiaries, psychiatrists, and many others besides the Attorney-General and J. Edgar Hoover. The official report of its proceedings contains 469 printed pages. The resolutions of this conference, which were unanimously adopted, recognize the scandalous, incompetent and disgraceful administration of the parole system and make nine sound recommendations for its betterment. But, when it came to reforms in criminal procedure, it made only six suggestions for improvement, namely:

1. Giving accused the privilege of electing whether he shall be tried by jury or by the court alone;
2. Permitting empanelling of extra jurors to serve in case of the disability of any juror;
3. Permitting trial by information as well as indictment;
4. Providing for jury verdicts by less than unanimous vote;
5. Requiring defendant to give prosecutor advance notice of insanity or alibi defense;
6. Adopting rule to permit court and counsel to comment to the jury upon the failure of defendant to testify.

The only possible relevance of these facts to the subject under discussion is that, in the opinion of this important conference at least, our criminal law does not need much "overhauling or re-examination." Still, it must be admitted that it too often happens that "the mountain labors and brings forth a mouse." Some may think that this Conference might have said something about these "weak judges" of trial courts about whom everybody knows but of whom few speak, least of all the lawyers who practice before them. But this would have been impolite, and this Conference was bent upon amiability and numerous bouquets were interchanged.

In revealing the "pathology of criminal justice," Dr. Glueck has rendered a distinct service to society. That this pathology exists does not admit of doubt or denial. Let us now consider therapeutic agents; and suppose we begin by eliminating "weak judges." If we accomplish that, there is substantial ground to justify the belief that most of the other evils will disappear.

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HANDBOOK OF ANGLO-AMERICAN LEGAL HISTORY. By Max Radin. St. Paul: West Publishing Company. 1936.

Professors of law are aware of the obvious defects of thrusting upon the first-year law student the case method of study without any other legal background and asking him to search through the maze of a decision, couched in legal terminology and procedure entirely foreign to him, for a set of facts and a rule of law. Many American law schools, recognizing this situation, saw the appropriateness of a historical approach to the study of law and are properly offering an introductory course in English and American legal history as a foundation upon which the law curriculum can be built. Those professors teaching such a course will find Mr. Radin's history especially adaptive and ample for classroom needs in that it will orient, guide, and stimulate the student in his later legal studies, thus removing much of the bewilderment and confusion to which he would otherwise be subjected in his first semester in the school of law.

Something must be said of the form of the book which presents a unique arrangement in historical writings, yet which is highly commendable and satisfactory. The treatise is written in typical Hornbook style, containing a succinct and concise paragraph of historical facts in black-letter type, and then a more extended comment on the paragraph in ordinary type. Notes and references for further study are freely annotated at the bottom of each page.

The first part of the book sets out the prevailing conditions, the type of people, the outside influences upon them, and the result of the interaction from which was created a complete system of law. The second part concerns itself with a presentation of a brief history of the many separate subjects of the law, such as procedure, criminal law, tenures, reversions and remainders, alienation, inheritance, chancery and equitable interests, trespass and tort, assumpsit and contract, agency, corporation, the sea law and the law merchant, and the family. The holdings of the outstanding English cases are referred to and the changes sought by the passage of the most important English statutes, with their resultant effects, are discussed. In general, the treatise sketchily presents the Roman occupation, the Germanic invasions (by the Jutes, Angles, and Saxons) the conquest by the raiding Danes, and a more detailed and thorough treatment of English legal history from the Norman Conquest to the present status of the law in America.

The author's regard for historical accuracy is, in some degree, shown by his readiness and straightforward manner in correcting erroneous impressions prevailing in the minds of many and even in writings of historians. He says: "Of Magna Carta it may be said that its constitutional importance is slight, but its importance for property law enormously great, a result that is the direct reverse of what is commonly supposed." Again his indictment of many historians for their apathetic research and consequent faulty conclusions, as to the influence of Roman and Canon Law on the Common Law, should arouse them to a more scholarly investigation. Of the Roman and Canon Law he says: "The exact extent to which these systems have furnished matter for the Common Law to absorb will never be known so long as those who investigate these questions deliberately avoid any acquaintance with either Roman Law or Canon Law."

A distinct feature and an invaluable addition to the book is a thirteen-page English and American chronological chart which sets forth the kernel of all historical data from the Norman Conquest (1066) to our own day.

Mr. Radin, Professor of Law at the University of California, and author of various historical and legal treatises, has truly accomplished his purpose set out in the preface of making legal history "something more than the archeological musuem it has often appeared to be." The book is recommended, whether one is a law student, professor, lawyer, or layman as being both interesting and enlightening.

Arthur C. Gregory.

THE SALE OF FOOD AND DRINK AT COMMON LAW AND UNDER THE UNIFORM SALES ACT. By Harry C. W. Melick. New York: Prentice-Hall, Inc. 1936.

Mr. Melick, in preparing this text, presents the first complete book on the legal aspects of the sale of food and drink yet published. With logical sequence and orderly arrangement the early common law in England and the United States is given as a foundation for a better understanding of the modern law of the subject under the Uniform Sales Act in this country. Not only are leading cases reviewed and critically analyzed but special attention is paid to the most recently adjudicated cases in the various states. Clear, accurate, and understandable comments as to the reasons for and the effect of the court's decision are given. Conflicting cases are compared, contrasted, distinguished, and reconciled so that broad definite principles of law are lucidly enunciated.

No longer is it necessary for the lawyer desiring information on this phase of the law to consult many books on the law of sales and torts, and search through digests and numerous decisions; but the answer can be found in one volume, thus conserving many hours which might be lost in research. Furthermore, much material is discussed which might otherwise be overlooked or neglected by one who is not acquainted in the giving of legal advice, or in the prosecution and defense, of such a case. A feature of the book is the liberal annotations of cases and frequent citations to many periodicals, which might serve as "leads" to an unlimited study of any particular phase of the law on the subject in any one state.

The best evidence of the orderly arrangement, thoroughness, and masterly treatment of the text is the text itself. However, the following chapter headings are indicative, in some manner, of the character of the book: Origin and Development of Implied Warranties of Quality; Implied Warranties of Quality Under the Common Law in the United States; Implied Warranties of Quality Under the Uniform Sales Act and the New York Statute; "Reasonably Fit for the Purpose" and "Merchantable Quality" Under the Uniform Sales Act; Sales Between Dealers; Retailer's Liability Under the Sales Act for Food in Sealed Containers; Defective Containers; The Privity Doctrine in Implied Warranties; Manufacturer's and Bottler's Liability to Consumer on Implied Warranty; Liability of Keepers of Restaurants, Hotels and Inns; Husband's Right of Action, Based on Breach of Implied Warranty, for Loss of Consortium Where Wife is Purchaser; Negligence; Damages.

Mr. Melick, as a member of the New York Bar and for many years a corporation lawyer specializing in cases involving the sale of food and drink, has combined in this book a wealth of knowledge and legal learning and has permeated it with practical experience. The systematic exposition of the phase of law contained in this book is truly a further contribution to the ever widening organization and methodical arrangement of subjects going on in the field of law, to make legal information from the decisions more readily accessible to the lawyer.

Arthur C. Gregory.