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## Book Review. Rusche, G. and Kirchheimer, O., Punishment and Social Structure

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making power in the appellate court regarding appeal practices. Certainly the Court is cognizant of the evils and in a position more readily to correct them than is the legislative branch of the government.

Several times the suggestion is made that sentencing might be made a specialized activity in the administration of criminal justice and entrusted to what the author calls a Disposition Tribunal (pp. 277, 293, 297). The personnel and their qualifications, and the method of functioning of this suggested tribunal is unfortunately left to the imagination of the reader. One may suspect that the writer is merely echoing the views of some psychiatrists or criminologists who have not thought through the difficulties that surely will be encountered in attempting to integrate such a tribunal into existing judicial organization. This inchoate notion may have merit. Whether it does or does not remains for further elucidation. Some readers may regard the last two chapters as partly repetitious. Such claim would have to be admitted. But it would seem that a complete justification can be pleaded by stating that the intricacy of the varied rules of criminal appellate procedure in so many different jurisdictions and courts sufficiently warrants such repetition as occurs in the interest of effective summation.

The book is indexed with the same care and thoroughness which permeates this excellent treatise. It will undoubtedly do much to further the improvement of criminal appeals in America.

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PUNISHMENT AND SOCIAL STRUCTURE.

By *Georg Rusche* and *Otto Kirchheimer*. New York: Columbia Univ. Press, 1939. Pp. vii + 268. \$3.00.

The announced objective of this book is study of "the sociology of penal systems"; somewhat more broadly, to bring penal methods into meaningful relations with the whole social and economic system. In pursuance of this end, the authors select a number of special problems which they subject to historical and sociological treatment. The period covered is from the later Middle Ages to and including contemporary times. The methods of penal treatment discussed in detail are fines, the galley, transportation, and imprisonment.

A more potentially fruitful project for research than that undertaken by these authors would hardly be desired. And the authors have marshalled a mass of highly significant data. Moreover, their discussion abounds in numerous acute observations: as to the effect of mutilation on subsequent employment (20), that "Cruelty itself is a social phenomenon" (23), the implementation of the thought that the living standards of the lowest classes determine prison conditions (106, 108), the influence of trade union pressure on prison employment (152), the conditions of the labor market and the chances of rehabilitation (158), the imposition of fines and unemployment (171), that in cases of prostitution, the fine amounts to a licensing system (175), and numerous others that show insight and awareness of the implications of penal practices and deficiencies.

But despite the importance of the thesis, abundant descriptive

data, and many acute observations, the study falls far short of being an important contribution to our present knowledge. For it becomes rather quickly apparent that the authors' "social situation," and "historical-sociological analysis of penal methods" simmer down to "economic" influence—and "economic" becomes sometimes the conditions of the labor market, occasionally methods of production, often the bias of dominant economic classes—usually the bourgeoisie. As a consequence it is impossible to determine just what their thesis is. The most persistent current of their debate suggests, but never explicitly, Marxist determinism. In light of their avowed purpose, one expects consideration of a manifold of social data (which would seem to include legal sanctions, moral ideas and public opinion); instead one finds a particularistic ideology which leaves the authors open to serious criticism. Even less successful are the methods of analysis. Interrelation of phenomena requires rigorous marking of boundaries and materials. It calls for definite but justifiable restrictions of these maintained. Lack of analysis of method, especially where significant interrelation of phenomena is sought, results in a muddled description, all the more vitiated by suspicion that the authors' economic predilection has added bias in choice of data to lack of intelligible reconstruction of the social situations that form the context of change in penal systems. Thus, with reference to early English law, we are told: "The inability of lower-class evildoers to pay fines in money led to the substitution of corporal punishment in their case."

(9) The fact is that certain crimes, e.g., treason, could not be paid for by anyone and that increasingly through the later Middle Ages, more and more offenses were made non-clergable (a factor ignored entirely) and seriously punished regardless of who the offender was. We are told repeatedly of special hardships imposed on the poor. But Britton and other mediaevalists inform us that hunger was a complete defense of theft for consumption, thus revealing in some regards a humanity greater than our own. To cite another of the many particularistic exaggerations, we are informed with reference to late 18th century English law, that "Since the personal liberty of the upper classes was fully recognized by the existing law, reform could benefit only the common people and the movement for greater leniency faced strong resistance." (80) But leniency did come, and abundantly! And certainly without any accompanying loss of power by the bourgeoisie. The authors are typically silent as to the causes of such amelioration. This singlemindedness makes it impossible for them to understand the revolt of humanitarians against solitary confinement when its results became known. In like vein is the argument that "the reformation of convicts is thus regarded as a good investment" (144). They assert that statistics show that foreigners have a higher crime rate: "since the bulk of this group comes from the poorest elements of society, we have clear proof of the impact of an unfavorable economic position on 'criminality.'" (152) This neglect of such well-known publications as the Wickersham Crime Reports is not surprising in

light of the authors' unfamiliarity with American works dealing precisely with their own problem. "Money had become the measure of all things" (168)—this of France in the early 19th century! The effort in the last chapter to establish that severity of punishment has not affected the crime rate rests upon fragmentary statistics which add little, if anything, to whatever insight or opinion one already has concerning this matter.

This book has a scholarly Foreword by Thorstein Sellin. If only its discriminating observations had been available to the authors at the inception of their work!

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PRINCIPLES OF CRIMINOLOGY. By *Edwin H. Sutherland*. Chicago: J. B. Lippincott, 1939. Pp. vii-651. \$3.50.

What distinguishes the new edition of Sutherland's "Criminology" from earlier editions is the more elaborate statement of the theoretical basis on which Prof. Sutherland has analyzed the wealth of material he has assembled. In his earlier editions Sutherland had already shown—and publications between the second and third editions have confirmed—that a theory of criminology cannot be founded on a biological, physiological, or psychiatric approach. The emphasis in the present attempt to build up a theory of criminal behavior rests on two constant factors: 1) the frequency and consistency of criminal contacts specific to the group of the prospective delinquent, 2) cultural conflict and basic social disorganization. This

emphasis on the group factor is elaborated in a wholly new chapter dealing with "behavior systems in crime."

As in his earlier editions, Professor Sutherland is reluctant to offer a general definition of crime. It seems to me, however, that his recognition of social disorganization as a basic cause of criminal behavior readily opens the way for a definition of crime itself. In fact, his whole analysis rests on a basic conception of the nature of crime, particularly evident in his treatment of so-called "white collar crimes" which constitutes a distinct feature of our culture and receives the special emphasis it deserves. Many white collar criminals escape punishment for one or more of the following reasons: 1) if a statute makes a specific act punishable but the delinquent is powerful enough to prevent the authorities from encroaching upon his activities; 2) the behavior code of the group to which the delinquent belongs does not acknowledge the culpability of certain types of activity; and/or 3) the general public does not judge these activities as wrong.

Nevertheless, Professor Sutherland obviously believes that "white collar crimes" do more harm to society and are more criminal in their very essence than most of the crimes prosecuted by the widely publicized Messrs. Hoover and Dewey.

Sutherland correctly stresses the subjectivity of group evaluation and therefore rejects Sellin's notion of conduct norms as the dominant elements in the search for a definition of crime. His own conception, apparent throughout his treatment of numerous detailed problems,