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Book Review. Radzinowicz, L. and Turner, J. W. C. (Eds.), *The Modern Approach to Criminal Law*

Jerome Hall

Indiana University School of Law

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BOOK REVIEWS

THE MODERN APPROACH TO CRIMINAL LAW. Edited by L. Radzinowicz and J. W. C. Turner. London. Macmillan and Co., Limited. 1945. ix and 511 pages.

The advertisement of this book stated that scholars of various English universities "have collaborated in producing this work"—which raised expectations that a new contribution would be published. Actually the book, except for some papers by Dr. Radzinowicz, is a reprinting of previously published articles, some of them going back many years. The Editors, together, account for almost three-fifths of the space; the remaining articles range from 11 pages by Kenny to 88 for Prof. Stallybrass. The book, on the whole, represents a high order of scholarship, and it will be a valuable addition to the libraries of those who have not previously read the articles, or who do not have convenient access to the journals represented.

Since there is no continuity in subject matter or theory, it is impossible within the limits of a review to do more than give the titles of the various papers and make brief comments that may be of some significance to those who read the book. The book opens with a short paper by Kenny on Lombroso. Kenny was certainly not very critical, but he also showed his awareness of the crucial issue in his exception to the positivist views on responsibility. Next, the Editors jointly contribute a paper on *The Meaning and Scope of Criminal Science*, in which they conclude that it consists of Criminology (criminal biology and criminal sociology), Criminal Policy and Criminal Law. They do not show how this classification has any special merit as regards the solution of problems. Their assertion that "the first really scientific contribution in this field was made . . . by the *Scuola Positiva*" merely helps perpetuate the Lombrosian myth. There follow three papers on Punishment, reflecting a rather definite positivistic bent. They fall far short of any adequate consideration of the relevant ethical principles, although one of the writers, Mr. Turner, in a later paper, reveals his appreciation of these important questions. Dr. Radzinowicz exhibits a doctrinaire criticism of the common law theory of punishment in his restrictive view of "liberalism" and in his implication that English scholars lagged behind French criminologists in insistence on the principle of legality. His theoretical predilection is seen in his rigorous division of English penology into three periods. But one need only compare his characterization of the third period (which he approves) (p. 43) with the last sentence from the Rev. S. Smith, who is representative of the first period (p. 40) to see that this is historical over-simplification. So, too, the statute book at the end of the eighteenth century, prescribing capital penalization for more than 160 crimes is accepted as accurate description of the actual administration of the law at that time. There is an uncritical reliance on Ferri and an almost naive reiteration that "modern criminal policy is proceeding empirically . . ." (46) Certainly it may be questioned whether such continued worship of the Italian and German positivists will aid the sound progress of 20th century penology.

Next, Prof. Stallybrass' short paper on *Public Mischief* presents criticism of *R. v. Manley* which, with questionable or no precedent, found the defendant guilty of the above named crime. The author raises important questions but his analysis is too summary to provide adequate answers, and he sometimes exhibits an unexpected tendency to cite a line of cases holding or leaning in a certain direction, and then drawing an opposite conclusion that supports his argument. Dr. Jackson's paper on *Common Law Misdemeanors* is a helpful supplement to Stallybrass' discussion. Dr. Wade follows with a short searching analysis of *Police Search*, and Dr. Jackson with a splendid critique of *Jury Trial Today*. Dr. Radzinowicz next provides five informative papers dealing with *The Assessment of Punishments by English Courts*, *The English Prison System*, *After-Conduct of Discharged Offenders*, *The Persistent Offender*, and *English Criminal Statistics*. It is these pages (110-194) which will be of greatest interest to American criminologists. In the last of the above papers, Dr. Radzinowicz criticizes "the dogmatic classification of criminal law," and he suggests (p. 185) that "motive" would provide a sounder basis. But he nowhere works out the implications of this hypothesis.

The next chapter is Mr. Turner's excellent study of *The Mental Element in Crimes at Common Law*. It is probably the most important contribution to this volume, and I wish it were possible to discuss it in detail. He is not as clear as one would like in his distinction between "the mental element involved in the conduct of the accused" and that involved "in his realization of the consequences." (p. 204) The like difficulty in distinguishing "recklessness" from "intention" is apparent from his statement that "in many cases the same facts may equally well indicate either." (208) This is theoretically untenable despite the undoubted fact that in actual adjudication it may be difficult to determine whether the defendant acted recklessly or with intent. Finally, it would be interesting to know why Mr. Turner insists that "in modern times criminal liability is no longer based upon a moral standard," (223) but has given way to "a newer one which bases the liability of the accused person on his foresight of the consequences of his action." (215-16) If such modern liability does not represent "a moral standard," how would he characterize it? These questions are not raised in any adverse criticism of Mr. Turner's paper as a whole; on the contrary, as noted, it is a very scholarly essay.

Dr. Jackson follows with a short study of *Absolute Prohibition in Statutory Offenses*. It is an accurate statement of the present law, but one wonders why he and Mr. Turner, who concurs in his views, are content with strictly liability in penal law. As a vigorous critic of it, I should welcome their further analysis of this problem. Mr. Turner in his succeeding paper on *Attempts* accepts the Carrara-Salmond theory without realizing that it stipulates no more than what is required to prove any crime, i.e., that "sufficient" external data must be relied upon. His criticism of the courts mishandling of "impossibility" is especially good.

Mr. Seaborne Davies' excellent study of *Child-Killing in English Law* is especially significant for its methods of historical analysis—which are rather similar to those employed in *Theft, Law and Society*. Mr. Turner then writes on *Assault* and he criticizes the court's adherence to the older definition, i.e., an attempt to commit a battery. He insists that the correct definition must include appre-

hension by the victim. While his criticism is warranted, his own proposal is equally particularistic. The common assumption is that "Assault" is univocal whereas it includes both the traditional and Mr. Turner's situation. This is evident in the unsatisfactory disposition of cases where the intended victim is blind or asleep since nothing can be gained by treating these as "attempts to commit batteries"—that is what "Assault" has traditionally meant. Hence it should be recognized that "Assault" has more than one meaning. In his final contribution, Mr. Turner discusses *Two Cases of Larceny*. The paper reveals a thorough grasp of a technical subject. Mr. Turner holds that *Middleton's Case* was not based on precedent, and he implies that he does not approve it. His chief comparison is with *Pear's Case*. It seems to me that larceny by a finder is a closer analogy, and I also wish Mr. Turner had discussed *R. v. Hehir*.

The next chapter is Prof. Stallybrass' well-known comparison of English Criminal Law with the Italian Draft by Rocco. Although Prof. Stallybrass does not thoroughly examine any of the general principles of criminal law, he provides apt summaries of most of them, together with references to related Italian law. Many of his observations are of questionable validity. Dr. Radzinowicz contributes the last chapter, in an interesting discussion of *International Collaboration in Criminal Science*.

In conclusion, hearty congratulations are to be extended to the University of Cambridge not only for sponsoring a notable series of studies in Criminal Science but also, and even more, for courageously and far-sightedly establishing a Department of Criminal Science and thus lending the weight of its ancient prestige to encouragement of the study of the oldest branch of law and related subjects.

JEROME HALL

Indiana University Law School

PROBLEMS OF THE POSTWAR WORLD, by Thomas C. T. McCormick (Ed.). N. Y.: McGraw-Hill Book Co., Inc. (1945). Pp. viii, 526, \$3.75.

Those who assume that all symposia have in common the characteristic of duplication of material and matching of weak with strong contributions will be pleasantly surprised to discover a volume of twenty articles of almost uniform high scholarship on "Economic Policy," "Government and Society," and "International Relations,"—a volume which is, in addition, ably edited to provide continuity. Although each article merits careful consideration for its timeliness, style, and research, the following must be mentioned for their special interest: "Income and Employment," by Dr. Walter A. Morton; "Taxation after the War," by Harold M. Groves; "The Bases of an Economic Foreign Policy," by Paul T. Ellsworth; "The United States and the Far East after the War," by Frederic A. Ogg; and "The Pattern of Postwar Pan-America," by Russell H. Fitzgibbon.

The outstanding article in the symposium for students of the administration of justice—particularly in relation to criminal law—is Professor Thomas E. T. McCormick's, "The Negro" (pp. 242-266). Using the statistical approach in a thoroughly competent manner, Professor McCormick analyzes and explains the problem