

force, stifling the minds and aspirations of the people. Yes, I believe in self-preservation, but I would preserve it as the founders said, by leaving people free. I think here, as in another time, it cannot live half slave and half free."

Certainly it must be said that the public acts of Hugo LaFayette Black square remarkably well with his words.

Stanley Mosk*

IN SEARCH OF CRIMINOLOGY. By Leon Radzinowicz.
Cambridge, Massachusetts: Harvard University Press.
1962. Pp. vii, 254. \$4.75.

At the 1963 California State Bar Convention, Chief Justice Phil S. Gibson, in the course of an address to the profession, stated: "History will judge the quality of a civilization by the manner in which it enforces its criminal laws." This remark by the Chief Justice indicates the larger problem to which the author of the new book *IN SEARCH OF CRIMINOLOGY* has addressed himself.

In a sweeping appraisal of the origins and growth of criminology, which he defines as "a study of crime, its conditioning, its prevention, and its treatment," the author uses a broad canvas of time and space. Placing the origins of what we would concede to be modern criminology in turn-of-the-century Italy, he traces its development through France, Austria, Germany, Belgium, and the Scandinavian countries. The impetus of this study, both in connection with its impact on the criminal law and its teaching in the various colleges and law schools, passed then from pioneer Italy through Central Europe and eventually to America. Initially the Italian positivists negated free will in their concept of criminal responsibility and based their view upon the needs of society, concerning themselves not with the guilt of the offender but with his potential danger to the community. It is interesting to note that in this area discussion continues to be of paramount interest today, as witness the expanding interest in mental illness as it relates to criminal responsibility. California has recently created a Governor's Commission for just such a study; it is probably, in my opinion, the most expanding and complex concept in our criminal law.

The author outlines the development in Austria of a methodology of investigation under Hans Gross, where a criminal clinic was estab-

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lished which was the forerunner of our present modern police laboratories. In Germany the work of von Liszt, who was primarily a penologist, challenged retribution as the basis of the criminal code. To von Liszt the objects of a criminal code and its penal system were social protection and individual prevention; and its ultimate justification was to be measured by the extent to which these two functions were achieved. This, the author notes, was in direct reaction to the attitude which existed at the time and which found its climax in the well-known saying of Kant that should the world suddenly come to an end, leaving only a hangman and an offender condemned to death, justice would demand that the sentence should be carried out.

The author traced with great interest the original Code of Napoleon in 1810, and cites France as the initiator of the publication of criminal statistics, which eventually was to be such an essential tool of modern criminology.

In America the work of Wigmore gave great impetus to the science of criminology. Reforms in America, such as the indeterminate sentence, the probationary procedures, and juvenile court concept, were initiated and advanced. Rapid progress was made between the wars and with justifiable cause. The author points out that there is more crime in the United States than in any other country in the world and cites the fact that in 1960, 200,000 people populated the prisons of this country, at a cost of \$225,000,000 a year to American taxpayers. However, as to financial support utilized in the study of criminology, any one of several current American projects receive more than double all the European financial support combined in this regard. It is interesting to note that the monies supporting these criminological projects were not state or federal funds, but in fact funds from private sources such as the Ford and Rockefeller Foundations. Indeed, the author asserts that the current advances in criminology in the United States could not be had without such support. Among the major projects currently being advanced he lists the American Law Institute's study and formation of a model penal code, the American Bar Association's survey of the administration of criminal justice by direct controlled observations now being made in three key states, and community projects designed to reduce crime, such as sociological surveys into gang activities. The author notes, however, that criminology is not taught in any school of law, and in fact is taught primarily under the Sociology departments of various liberal arts colleges. He feels a need for a scientific clearing house of criminological research, and indicates his opinion that our institutes of criminology have merely served as advanced training for

skilled technicians, rather than providing an underlying basic philosophical background which he feels is needed.

Certainly the author achieves his purpose of illustrating the origins and development of western thought in regard to its penal laws. In discussing the early positivistic view, he notes that formerly lawyers bade "men study justice", but the positivists bade "justice study men". He also notes that the criminal law has evolved not as just a set of rules and procedures, but as a social instrument wielded by the authority of the State, to secure collective and individual protection against crime. He observes that the Victorian lawyer would not be surprised at the substantive law now being applied in our courts, but in all probability would be stunned at the sweeping changes in the disposition and sentencing procedures for those substantive crimes.

At a recent seminar Justice B. R. Schauer of the California Supreme Court made what I thought were some novel appraisals of our criminal statutes. He seemed to indicate that in the area of mental illness, as affecting criminal responsibility, we might first employ a test: Did the offender commit the act? Once this was determined, custodial care or whatever supervision necessary to prevent the repetition of the act would be instituted. Thereafter new proceedings would be commenced to determine if the offender could return to society and not commit similar violations. Such views would seem to have much in common with earlier schools of thought in the history of the evolution of our criminal law—indeed, they are the continuation of a classic pattern of argument, which has been discussed for generations by the intellectual leaders of our profession. I have recently read a statement attributed to Ingersoll, to the effect that "In nature there are neither rewards nor punishments, there are consequences." This chilling epigram would seem to negate much of our responsibility. This book points out that lawyers, as practitioners of one of the most vital and necessary skills in human endeavor, must continue to strive mightily to make workable and just that set of consequences that flow from violations of criminal law, to the end that justice is individualized and society is both protected and benefited.

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