Book Reviews

ETHICAL SYSTEMS AND LEGAL IDEALS. By Felix S. Cohen. New York: Falcon Press. 1933. pp. 303.

The Law and the Good

As a layman I am usually inhibited from expressing any exigetical opinion of the law. Nowhere is the line more sharply drawn than between lawyer and layman. Nowhere is hasty judgment more liable to crash into its own approaching reflection than in the invisible mirror of legal make-believe, and nowhere is head-in-the-air academic arrogance more liable to come to cropper than on the slippery path of legal jurisdiction. But Doctor Cohen's legal exegesis is so reassuringly simple, and it is expressed in a tone of such gentle and charming good sense, that my fears are for the moment lulled and I emerge from my lay inferiority complex with a little outcry of spontaneous enthusiasm.

To be sure, if Doctor Cohen is developing any subtle and peculiar theory of law, I am not competent to say just what it is. It seems to me indeed that he is not. His theory of law is one to which no lawyer of whatever juridical persuasion could well object, so far as I can judge. His disarming legal thesis is that the living actuality of law overflows every philosophy of jurisprudence. He remarks that

"The field of ideal law is not a checker-board. It is rather a sea, as vast, as turbulent, as impatient of restraint, as life itself. Rules and decisions and practical standards we set up in our attempt to draw peace and order out of this Heraclitean flux. Actually we can only chart its currents,—to shape them is past human power. By these charts, indeed, we sail, but not by these charts will the sea itself be bound. The success of our sailing will be measured not by conformity to our maps but by conformity to those powers of the deep that govern the realm we have tried to picture."

I cannot see how any special theory of law could disagree with that. The study of law sometimes results in formalism, but I doubt if any legalist would maintain that only the legal forms exist and that the human content is an illusion. Neither would any lawyer, however professionalized, deny that law is a social institution, and not the only one. As Doctor Cohen says,

"The law is one among many institutions. The direction of its powers is largely determined by a process of competition with organized religion, organized education, the family, professional and mercantile agencies of control, and various other social institutions. The disruption of these agencies throws new tasks upon the law; their development relieves it of old responsibilities."

Doubtless different men might differ in their opinions of specific disruptions and developments but hardly in their recognition that the law plays its part in all such incidents.

Disagreement might perhaps begin to be acute when social theory came to be embodied in legal action. It is one thing to say that all things change and quite another to suggest that this truism applies with peculiar force to a certain court's decision. I have never found anyone who denied utterly that courts ever affect law, but there are many who seem to think that too much talk about judicial law is bad for the stability of certain statutes. Doctor Cohen seems to appreciate all the difficulties of this problem. He is neither an absolute humanist nor a human absolutist.

"The object of a realistic legal criticism will not be the divine vision which follows the words 'Be it enacted:' but the probable reaction between the words of the legislature

and the professional prejudices and distorting apparatus of the bench, between the ideas that emerge from this often bloody encounter and the social pressures that play upon enforcing officials. Words are frail packages for legislative hopes. The voyage to the realm of law-observance is long and dangerous. Seldom do meanings arrive at their destination intact. Whether or not we approve of storms and pirates, let us be aware of them when we appraise the cargo."

Here also there seems to be no ground for argument except as to who is and who is not a pirate.

If an impatient reader nevertheless insists that one should not write a book simply to avoid controversy, I must hasten to say that *Ethical Systems and Legal Ideals* does contain a thesis. Its burden of proof is philosophical, however, not legal. This thesis is that the law has as its final cause what students of ethics call "the good," and in pursuit of this ideal the author passes in review a series of theories of legal criticism which seem to give allegiance to less perfect ideals. The reproof which he administers on this account is both gentle and richly merited—so much so that it seems to me just such a restraint of exaggeration and correction of emphasis as the various authorities might easily and gladly accept. Thus it is true of course that the technique of intelligibility which we call logic governs the law as it governs every exercise of the mind, and that "the bad judge is no more able to violate the laws of logic than he is able to violate the laws of gravitation"; and it is also true that this does not erect mere intelligibility—logical form—into the standard by which alone the law is to be judged. As Doctor Cohen says, paraphrasing Mr. Justice Holmes, "Conformity with logic is only a necessity and not a duty." There is considerable point to Doctor Cohen's proposal to call juridical logic "legal aesthetics" on the ground that the pattern-like consistency which some lawyers so admire is rather a rhetorical quality—"unity, coherence and emphasis," as the rhetoricians used to say—than an objective or an ideal. Even his criticism of "peace," "liberty," "justice," and the like is doubtless justified. They are of course partial embodiments of "the good," and if they are intended by their votaries to do service as the-supreme-good-which-contains-all-goods, the question may well be asked whether such a standard can be put into effective circulation in the form only of such fractional currency.

All this is so eminently sensible that the rest of Doctor Cohen's argument produces a severe shock. To be sure, we have had warnings. Thus it is one thing to insist that nothing less than the ideal of all life and all morality will serve as the standard against which to square the law, but it is quite another to rebuke jurists for having rejected not merely ethical judgment but "ethical science," or to assert as Doctor Cohen does that "a complete science of ethics would afford the answer to every problem of legal criticism." In spite of a quarter-century's speaking acquaintance with the philosophic guild, I can listen to such expressions only with profound uneasiness. They seem to pretend everything and mean nothing.

Doctor Cohen's long demonstration—it occupies 117 pages—does nothing to dispel this uneasiness. The idea is that by playing with words as if they were mathematical symbols, even if possible by substituting strings of symbols for the words, we may attain moral truths which have all the precision of scientific formulas. Never, of course, has any "ethical scientist" emerged from such a scientific trance with anything even worth the human wear and tear of getting it. Doctor Cohen emerges with the conviction that he is "scientifically" justified in proclaiming himself a hedonist. But this is a liberty which all sensible people would have been prepared to grant him without any such trial by ordeal and with no reservation but "What of it?" There are, as Doctor Cohen profoundly remarks, two ways of talking about the relation of men to the objects of their desires and aspirations: by reference to the objects and by reference to the men. Both are useful. Neither excludes the other. Hedonism refers to men. And that is that.

It is rather singular that devotees of the "science" of ethics should so resolutely exclude from their laboratory all the data of ethics. Doctor Cohen is almost never contemptuous except when he is slamming the door on anthropology. Apparently scientific ethics is no vulgar observational affair like biology or chemistry but a pure system of notations and operations like mathematics—which may explain why the mathematical notation is the only scientific technique on which the scientific ethics begins to draw.

The incurable sterility of such exercises suggests not only that the investigation of "the good" should proceed in the opposite direction, toward rather than away from moral actuality, but also that the relation of law and morals is precisely the reverse of the one Doctor Cohen indicates. What we learn from his analysis of law is that "the good" is a broader generalization than "the law," that, in fine, law is a particular form of human activity. Doctor Cohen therefore assumes, on the basis of his preconception of ethical "science," that an understanding of the true inwardness of law can come only by contemplation of the meaning of "the good." But for that preconception, however, it would be obvious that "the good" can be discovered only in the complexity and confusion of human behavior, that, indeed, it is the ethicists who need to study law, not the lawyers to study ethics.

Perhaps this is why some of our most valuable insights into the behavior and institutions of modern man have been derived in recent years from the work of jurists and why our greatest law schools have made a unique place for themselves among our most distinguished centers of liberal culture.

University of Texas. C. E. AYRES.

REPORT BY THE COMMITTEE TO STUDY COMPENSATION FOR AUTOMOBILE ACCIDENTS. Columbia University Council for Research in the Social Sciences. Philadelphia: International Printing Co. 1932. pp. 300.

As was shrewdly prophesied twenty years ago,[1] the adoption in this country of Workmen's Compensation Acts is driving us towards the extension to other fields of the principles underlying such legislation. We are tending, at least in our legislation, to minimize the importance of the nineteenth century notion that liability in tort is based upon fault and to recognize that in a considerable number of instances the social interest requires the imposition of absolute liability for harm caused by the conduct of some activity which has in it an element of great danger. The most notable instance of this tendency at the present time is the growing tide of opinion that such absolute liability should be imposed upon the operation of motor vehicles on our public highways. Unquestionably the Report which is the subject of this review will add impetus to this movement. For the first time we have facts rather than guesswork as to the defects of the present state of affairs. To be sure, the facts do not cover the entire field, but at least they furnish a much more secure foundation than heretofore upon which to base our recommendations for legislation and our prophecies as to what may be expected of it.

In 1929 a voluntary Committee composed of some 15 men of distinction, mostly lawyers and law teachers, acting under the auspices of the Columbia University Council for Research in the Social Sciences, appointing as its Director, Mr. Shippen Lewis of the Philadelphia Bar, with funds provided by the Rockefeller Foundation and with the aid of Columbia University and the School of Law of Yale University,

1. Jeremiah Smith, *Sequel to Workmen's Compensation Acts* (1914) 27 HARV. L. REV. 235.

undertook an investigation of motor vehicle accidents. Since the study drew upon detailed information from insurance companies, from court records in six different and widely scattered communities in as many states,[2] and from a follow-up investigation of nearly nine thousand serious or fatal accidents in rural and urban centers,[3] it is a fair assumption that the conclusions reached as to the economic effects of motor vehicle accidents apply generally throughout the country.

This survey discloses that under our present system, only 27% of the motorists in this country carry liability insurance, although in some of the more thickly settled states the percentage runs nearly as high as 50%. However, the greater proportion of insured cars in any state is in the urban centres where accidents are most likely to happen. Thus, outside of Massachusetts, where a compulsory liability insurance law has been in force since 1927, the defendant is insured in about two-thirds of the motor accidents.

Insurance has materially reduced the importance of the issues of negligence and contributory negligence. The Report shows that if the offending motorist is insured some payment is made in 85% of the cases, whereas if such motorist is not insured the figure is only about 25%. In the case of the uninsured motorist, the amount paid, if any, is usually far less in proportion to the injury than in the case of the insured motorist. To illustrate: in fatal accidents there is only a 7% chance for recovering from an uninsured motorist enough money to cover medical expenses, if any, and funeral costs; whereas there is a 77% chance of recovery of such sums against an insured motorist.

Slight injuries are much more likely to be compensated (in fact these are often over-compensated) than are serious and permanent injuries as well as death. Where there is redress in a substantial amount for serious injury or death, as is likely to be the case if the offending motorist is insured, there is usually a delay of one or more years before any payment is made and the sum finally paid to the plaintiff must first bear the deduction for lawyers' fees and other expenses of litigation. Nearly 35,000 are killed and about ten times as many seriously injured each year by automobile accidents.[4] Since about half of these victims are wage-earners, many of them with families dependent on their earnings, one may venture to estimate on the basis of the Report that half a million people each year are seriously affected by automobile accidents and that in addition to the annual toll of 35,000 deaths, upwards of 100,000 persons undergo privation in consequence thereof.[5]

The Committee wisely limited its field by declining to consider methods for preventing automobile casualties, coming to the conclusion that whatever preventive measures may be adopted, there will always be a very large number of deaths and injuries from the operation of automobiles upon our highways. The experience of Massachusetts with compulsory liability insurance and of states with financial responsibility laws gives no basis for the claim that compulsory insurance and compulsory liability would tend to make drivers more careless, and therefore increase the number of accidents.

The Report discusses the remedies which have been attempted. Some states

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2. New York City; Philadelphia; Detroit; New Haven County, Conn; Wheeling, Charleston and Morgantown, West Virginia; Dayton, Ohio.

3. New York; Boston; Philadelphia; San Francisco; New Haven, Conn.; Worcester, Mass.; Muncie and Terre Haute, Indiana; Rural Connecticut; San Mateo County, California.

4. 230,000 were killed in the ten years from 1921 to 1930. In 1930, 33,000 were killed and over a million injured.

5. Not only is there hardship but a heavy expense is thrown upon the public and third parties, friends, tradesmen, physicians, hospitals, and other charitable agencies.

have enacted so-called financial responsibility laws providing that a motorist whose fault has caused an accident shall thereupon be required to furnish security, which is usually in the form of liability insurance, as an alternative to the revocation of his driver's license. This legislation, which is somewhat reminiscent of the old adage that "the law allows every dog one bite," does not appear to have had much effect in reducing the number of uncompensated accidents in those states which have adopted it. The same can be said of the additional feature found in a few statutes providing for a forfeiture of defendant's driver's license if he does not pay a judgment rendered against him. And although compulsory liability insurance which prevails in Massachusetts certainly is a great step in advance, since some degree of protection is afforded to 85% of those injured, yet in the more serious injuries and in the cases of death there is considerable delay in payment of compensation and a good deal of the sum recovered goes into the pocket of the claimant's attorney. Furthermore, it has nearly doubled the amount of automobile litigation. Depending upon the locality, it costs from $108 to $232 a day to operate a trial court, and an automobile damage action usually consumes from a day to a day and a half. Thus automobile litigation now imposes a heavy financial burden on the taxpayers and would impose far more if legislation like that in Massachusetts should become general.

It would be greatly to the advantage of both the public and the claimants if these controversies were removed from the courts and payment of claims were promptly made, even though the payment were considerably less than that now obtained by judgment of a court, since it would not be cut into by attorneys' and other legal expenses. To eliminate the questions of defendant's negligence and plaintiff's contributory negligence would much simplify the controversy, for all that plaintiff would have to prove would be the operation of defendant's automobile as the cause of plaintiff's harm and the extent of such harm.

The Committee therefore proposes as its solution a compensation law, analogous to our workmen's compensation legislation, based upon liability without fault and irrespective of the contributory negligence of the person harmed. The Committee suggests as compensation for disability, temporary or permanent (after an uncompensated waiting period of one week), an arbitrary minimum weekly payment for non wage-earners and a weekly allowance equal to two-thirds of the wages or salary of the injured earner, with a maximum of $25.00 a week. Of course, this would cut down materially the amount recoverable by persons of large earning power. It is urged, however, that such persons can and today usually do carry accident insurance and therefore there is no great hardship in limiting the sum which such persons may recover. The Committee would eliminate from recovery all temporary injuries lasting less than a week, thereby cutting off a large number of claims which are now pressed and for which in its opinion the compensation now usually obtained is excessive. The Committee believes that if these claims are eliminated, no serious prejudice to anyone will result and a great saving will be effected. With the savings so effected, the Committee estimates that at the rates paid under the Massachusetts Workmen's Compensation Act, a compensation law would be somewhat less expensive than is the present compulsory liability insurance law of Massachusetts. If the compensation awarded were in accord with the more liberal provisions of the New York Workmen's Compensation Law, the cost would be at least half as large again as the present cost in Massachusetts.

This Report has already been the subject of many reviews in law journals,[6] most

6. Summary (1932) 18 A. B. A. J. 221; Book Review (1932) 20 CALIF. L. REV. 463; *Compensation for Automobile Accidents, A Symposium* (1932) 32 COL. L. REV. 785; Book Review (1932) 45 HARV. L. REV. 1428; Book Review (1933) 17 MINN. L. REV. 235; Book Review (1932) 18 VA. L. REV. 816.

of which highly approve the general recommendation of the Committee, although there is some criticism as to details. A sharply discordant note is struck, however, in the contribution by Mr. Austin J. Lilly, General Counsel of the Maryland Casualty Company, who for several years has been an outstanding opponent of such a proposal.[7] Since his objections are the ones customarily advanced by lawyers and economists connected with the insurance companies, it may be well to call attention to the more important of them.

Mr. Lilly says that the analogy between the proposed scheme and workmen's compensation is only illusory, since under the proposed arrangement the absence of any previous relation, as of employer-employee, between the injured person and the one who has injured him, greatly increases the difficulty of promptly investigating accidents and provides a greater opportunity for "fraudulent and collusive claims and malingering of the most aggravated type." Furthermore, he questions the reasonableness of the Committee's estimates as to costs of carrying out such a project, pointing out that wherever compulsory insurance has been introduced the insurance rates have gone up rapidly. Conceding the force of these arguments, is not the exigency one which requires drastic methods, even though they do involve difficulties and dangers which must be met and overcome? Just such pessimistic prophecies were advanced a generation ago by those who opposed the workmen's compensation legislation.

Mr. Lilly objects on the further ground that "The compensation scheme (proposed in the Report) works two ways: it not only imposes a liability upon the person causing the accident, regardless of his fault, but it operates to deprive the victim of substantial rights secured to him by the present law,—that is to say, the right to recover (unquestionably a valuable right in many instances) the full or a substantial measure of his damages. . . . It is believed no proposal has ever gone so far. It amounts, within its field of operation, to social and economic revolution."

As to depriving one of his common-law right of recovery for the full amount of his injury, this was done in the workmen's compensation legislation. The countervailing advantages of prompt payment without suit and the abolition of the defence of contributory negligence here, as there, furnish a moral equivalent for the limitation of the amount recoverable. Likewise, the objection that legislation which imposes liability irrespective of fault is unconstitutional was strongly pressed when our workmen's compensation statutes were first introduced. The same decision can be expected here as was finally reached with respect to workmen's compensation, although it may again be necessary to amend some of our state constitutions.

The Committee disposes of the oft-repeated argument that liability without fault is an unthinkable innovation by pointing out "that the principle of liability for fault only is a principle of social expediency and that it is not founded on any immutable basis of right." In support of this conclusion it should be remembered that we do not have to go very far back in our own legal history to find that liability was at one time based, not on fault in the defendant and the absence of contributory fault in the plaintiff, but on the simple fact that defendant's act directly or indirectly caused the harm which plaintiff suffered. It was only in the nineteenth century that this notion was discarded as the general underlying basis of liability in tort. Indeed, the older principle still prevails in many and varied situations in the field of torts.[8] Our courts have always recognized that there are certain special situations

7. 32 COL. L. REV. at 803.

8. Acting at peril is at the bottom of liability not only with respect to the ownership of trespassing animals and those which the owner knows are likely to do damage other than trespass, but also in the law of conversion and defamation. Vicarious liability, which is today being extended by the doctrines of "family purpose" and "joint enterprise," as well

of inherent danger where liability is imposed irrespective of fault on the part of a person who conducts an activity whereby harm is caused to others; and the present tendency in this country is to extend rather than limit the application of this principle. Furthermore, as the Report points out, legislation has frequently imposed absolute liability in a number of situations where the interest of the public is peculiarly affected by a dangerous activity conducted by a defendant. It seems obvious that the hazards encountered on the highway are sufficient to justify such legislative action.

Harvard Law School. EDWARD S. THURSTON.

EDITORIAL NOTE. The proposed plan for automobile compensation discussed in the above review is treated with particular reference to New York in a recent publication, THE AUTOMOBILE COMPENSATION PLAN, by Patterson H. French, New York, Columbia University Press, 1933, pp. 262. The study considers, first, the problem of automobile accident litigation from the points of view of (a) court congestion and (b) the "deficiencies in the machinery for awarding damages which result in delay, impossibility of collection and improper adjustment of damages to the losses suffered by accident victims." It then details the compensation plan, discusses its constitutionality under the federal and state constitutions, speculates on the practical "workability" of the plan and its "legal working" in point of procedure, evidence, judicial review and administrative rule and precedent, and closes with a discussion of the "place of the plan in American administrative law." The study is offered as an "analysis" of the problem and the arguments on it rather than as an attempt to reach final conclusions. Yet a general bias in favor of the plan cannot well escape detection in any part of the work. Though scholarly and suggestive, the study seems to be unnecessarily "padded" in some parts and unfortunately "slim" in others. Must every discussion of proposed legislation consider its constitutionality in detail, even at the expense of triteness? And is it profitable in a disinterested study of a pragmatic problem to discuss whether compensation involves "administration or adjudication," "whether the field is essentially administrative or judicial?"

Perhaps a typically adverse reaction to the plan is presented in the *Report of the Committee of the Federation of Bar Associations of Western New York,* 1933, pp. 59. This pamphlet is in effect a brief in opposition to changes in "the fundamental concept of responsibility depending on fault to be determined by judicial procedure." Such a brief, with its arguments on the issues of justice, speed and economy, seems to indicate little more than the opposition of practicing lawyers to the substitution of administrative for litigious determination. For some time, the Report recommending automobile accident compensation will serve as the center of discussion of this problem and thus fulfill a present purpose.

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as by statute, is an instance of absolute liability. Much of our law of nuisance is based on liability without fault; so, too, is liability for invasion of the right that land in its natural condition shall have support from adjoining land and probably liability of one who takes possession of land upon which there is an artificial condition dangerous to persons outside the land. See Palmer v. Morris, Tasker & Co., 182 Pa. 82, 37 Atl. 995 (1897); Restatement of the Law of Torts, Draft T. No. 4 (Am. L. Inst. 1929) § 236, and Caveat thereto. A non-negligent mistake as to title does not excuse a trespass to land or to chattels. The broad rule of Fletcher v. Rylands, L. R. 3 H. L. 330 (1868), has been accepted, it is true, in only a few of our states. Nevertheless, frequently under the guise of nuisance, the doctrine is usually applied to the manufacture, storage and use of explosives and sometimes to other exceptionally dangerous situations. Green v. General Petroleum Corp., 205 Cal. 328, 270 Pac. 952 (1928), and Exner v. Sherman Power Construction Co., 54 F. (2d) 510 (C. C. A. 2d, 1931), particularly the remarks of Judge Augustus Hand in the latter case.

CASES ON CONTRACTS. Second edition. By Arthur L. Corbin. St. Paul: West Publishing Co. 1933. pp. xix, 1304.

THE original edition [1] of this work appeared twelve years ago and has been widely used. The new editon is similar in scope and content to the earlier one but contains a number of improvements. It includes important later cases; it makes frequent cross references to the American Law Institute's Restatement of the Law of Contracts; and it introduces series of questions from time to time that should prove helpful to students and teachers.

The cases in the new edition are well selected. Most of them are taken from American jurisdictions; modern cases predominate. English cases are used only where they are indispensable in developing the origin and history of doctrines now found in the law of contracts. The development of the doctrine of consideration, for example, and the evolution of the law relating to assignments, call for English cases and Professor Corbin has included them. Only three English cases later than 1900 are found; and about half of the English cases included are dated earlier than the year 1700.

The order of topics is about the same as that found in most case books and text books on the law of Contracts except that Professor Corbin, like Professor Grismore, has located the chapters on Third Party Beneficiaries and Assignments well back in the book. These chapters are not introduced until after Conditions, Impossibility, Remedies for Breach, and Methods of Discharge have been treated. There are reasons for and against postponing these difficult chapters, and teachers who prefer to treat them in their more usual position, just after the chapter on Consideration, can easily transpose the order. The ideal order would perhaps be to deal with each topic only after all the others have been treated. Until that is attained, each teacher should be free to determine the order of his course. The inclusion of a section on Restitution and one on Specific Performance under the chapter on Remedies for Breach seems commendable. Cases dealing with Restitution as a remedy for Breach are particularly desirable since that remedy is not usually treated in other courses and its advantages are frequently overlooked by the legal profession.

The most distinctive feature in Professor Corbin's case book, when compared with other case books on contracts, is the addition of a group of stimulating questions at the end of a good many cases. These questions are skillfully drawn and serve to acquaint the student with the problem of the case, to indicate the factors that enter its solution and to call in the background against which the case must be considered. At the end of *Carlill v. Carbolic Smoke Ball Co.*, for instance we find these questions:

"1. In order to accept the offer, was it necessary for the plaintiff to 'buy' a smoke ball?
"2. Was catching the influenza a part of the required mode of acceptance?
"3. In how many persons was a power of acceptance created and how many contracts might be made? See A. L. I. Contracts, §§ 28-30.
"4. Was Carlill at any time bound by a promissory duty?"

A student who has considered these questions in advance is armed for a discussion of the case when he comes to class.

It may be assumed that most law teachers aim to set up an active, critical mental process on the part of their students rather than a merely receptive process. To this end we put many hypotheticals in class. It may be, however, as Professor Durfee has pointed out,[2] that most of the students fail to get all the facts in these rapid-fire exercises. It may be that most members in the class are unable to get into

1. See Book Review (1921) 31 YALE L. J. 220.
2. Durfee, *Broadening Legal Education* (1922) 31 MICH. L. REV. 206.

action at all and merely accept the conclusions of others. The questions Professor Corbin has appended to these cases gives every student an opportunity to do some constructive thinking in advance and to be prepared for further hypotheticals in class.

Professor Corbin has made an admirable case book.

Cincinnati Law School. M. L. FERSON.

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

A BOOK like *Crime, Law, and Social Science* had to come. The time was ripe for it. In recent years there has been an increasing concentration upon the study of criminology and the administration of criminal justice. Survey after survey has swept over the field, beginning in a limited territory in the case of the famous Pound-Frankfurter study in Cleveland and culminating on a large scale in the effort of The National Commission on Law Observance and Enforcement. One after another, crime commissions took to the field everywhere. And there was a family-like resemblance not only in their procedure but in their voluminous findings. Nothing remained apparently but to have a survey of surveys.

The Bureau of Social Hygiene wanted to know whether or not it was desirable to create an institute of criminology and of criminal justice in the United States, and in the event that it was desirable the Bureau wanted a plan. A survey was made by the School of Law of Columbia University as a result of the request, and the report was the original form of this book.

Michael and Adler, therefore, have not tried to give us a new criminology. Their book in fact is a sweeping attack upon existing criminology. They drop a curtain of critical fire upon every front of the entire field. Beginning with Lombroso, the Old Man Adam of the criminological Eden until he fell from the grace of scientific certitude, the authors move all along the line, omitting nothing and sparing no one. And it is intellectually exciting and stimulating for anyone who has gone over the literature of criminology, pedestrian fashion, in the course of several years, to find in this one volume a swift, exhaustive, yet not hurried review of the entire criminological output, critically evaluated and analytically searched for both error and light. As an additional sensation the reader is treated to the startling discovery that we have no criminology, or at least that such criminology as we have is something very different from what we have taken it to be.

Our authors are not simply venturesome heresiarchs who aim to captivate a new following with the glamorous novelty of a fresh doctrine. They are full-sized infidels. Soaring to new Olympian heights they hurl down thunderbolts on all the old gods. And looking over the wreckage you will find nothing left for recognition or respect but the old reliable stock of common-sense generalizations. All that has purported to be scientific in criminology has been shot to shreds by critical shafts and thrown to the winds.

For a long time it has been a commonplace to hear casual critics comment upon the ineffectiveness and the futility of the so-called scientific efforts in criminology. There has prevailed, even in spite of some of the best work that has been performed in this province, a feeling of distrust in regard to the adequacy of the methodology employed. The same feeling has been expressed with reference to the social sciences in general. And there has been a prayerful turn of the eye toward the smoke of incense rising from the altars of physical science. It only remained for Michael and Adler definitely to fix the trend.

The Bureau of Social Hygiene formulated certain questions as problems of the survey, to answer which, the authors say, "it was necessary to undertake an examination and an evaluation of the state of knowledge and of the methods of research in the fields of criminology and of criminal justice. This in turn involved an analysis of the nature of empirical science and its differentiation from other kinds of knowledge; a consideration of the value of different kinds of knowledge in the solution of the various practical problems engendered by the phenomena of crime; the separation of the field of criminology from that of criminal justice in terms of the kinds of knowledge needed to solve their respective problems; and, finally, a definition of the theoretical problems of criminal law, in the light of which the different bodies of knowledge which are useful to the legislator and the judge could be properly related and subordinated." That description of the undertaking is sufficient to enable the reader to grasp the boldness and the scope of the project and the scholarly thoroughness with which it defined itself in the minds of the authors.

The work is divided into four parts. The first is devoted to discussion of the nature of crime and the problems of crime. The following division is given to a study of the conditions of a science of criminology, to an examination of a vast number of researches in causation, treatment and prevention, and to an investigation of the control of crime by trial and error. Part three dwells upon researches in the administration of the criminal law, the nature of the criminal law, and the increase in the efficiency of criminal justice through the application of common sense. The final section presents a statement of conclusions and recommendations and a description of an institute of criminology and criminal justice.

As a result of the critical examination of the bulk of the important research undertakings, the deadly conclusion is reached that in point of scientific validity and significance, they are worthless. Out of none of the research has there come an etiology of criminal behavior.

Throughout the whole book the absence of this basic scientific element of success is stressed. Without it, too, both the behavior and treatment content of the criminal law must always be contemplated with doubt. Moreover, the authors warn us that, "unless a science of criminology and scientific work in criminology are possible, etiological problems with respect to the phenomena of crime must forever remain insoluble." In which event we shall have nothing to guide us in behavior study, legislation, crime detection, judicial administration or penal policy, except such wisdom as we have been able to distil from the age-old generalizations of common sense and work-a-day experience.

The authors predict that empirical sciences will not flourish in criminology, psychology or sociology until the raw empiricism now dominating research is abandoned for a correct conception of the nature of science and scientific method. And this means cutting the ties which for so long have held psychological and sociological thought under the influence of Comte, John Stuart Mill, Herbert Spencer and American dogmas of pragmatism. Even legal scholars have fallen under this blight and they can only come out of the dark by shaking off the evil heritage of the nineteenth century. For themselves, Michael and Adler show a marked predilection for the philosophy of Aristotle and Aquinas, thus indicating that they are not unaware of the neo-scholastic influence in present-day thought. An institute as outlined in the book, we are told, would bring erring scholars, philosophers and research students back to scratch for a fresh start.

Crime, Law, and Social Science is a work of high distinction. It is a masterly and much needed critique and will long hold its place as a guide in scholarship and scientific technique.

Massachusetts Prison Association, Boston, Massachusetts. HENRY A. HIGGINS.

CASE STUDIES IN THE PSYCHOPATHOLOGY OF CRIME. By Ben Karpman, M.D. Volume I. Washington, D. C.: Mimeoform Press. 1933. pp. x, 1042.

DR. KARPMAN presents five case studies of persons he had the opportunity to observe in Howard Hall, the Department for Criminal Insane at St. Elizabeth's Hospital, Washington, D. C. Each of these studies represents a rather extensive biography of the individual concerned. The author has collected all material possible and tries to give a complete picture in every case. He discusses his material from various angles, emphasizing particularly the psychopathological and psychotherapeutic points of view. An epitome summarizes "the high points of the case." In certain respects the volume may be considered a source book of unusually well prepared material. The author makes it plain that the "criminal" cannot be judged except as an individual, who lives in certain environments, responds to these environments, seeks his way through life, and deals with obstacles which are not infrequently found within himself.

Dr. Karpman, himself a successful psychotherapist, is rather optimistic as to the treatment of criminal personalities. Even a reader who does not share this optimism will certainly respect it the more since there is full agreement that only recently has one begun to deal with certain problems of crime and the individuals who commit it. There are many problems of which one was formerly, say twenty years ago, either "cocksure" or scarcely aware, problems which are now crystallizing and demanding most serious consideration and action. Dr. Karpman states: "The question of crime can neither be approached with humid sentimentality nor Draconian sternness." To steer a clear course is the important task of all who are concerned with and involved in the multitude of problems offered by crime and criminals.

It would be futile to discuss these five cases here since it probably does not matter, at least at present, whether all agree on the "diagnosis" and since, after all, the author knows his material best.

It may be noted that the volume is sold only "to members of the medical, legal, scientific and other professions having a direct and definite interest in medical and social problems." This statement indicates that in this book there is no sensationalism, a factor which, unfortunately, too often plays a rôle in publications on crime.

Institute of Human Relations, Yale University. EUGEN KAHN, M.D.

THE BARONIAL PLAN OF REFORM, 1218-1263. By R. F. Treharne. Manchester: University of Manchester Press. 1932. pp. xv, 448.

THE events which led to the grant by King John of the Great Charter had shown that the nation, led by the baronage, had the will and the power to assert a claim to criticize and, if necessary, to control the king's government. How could it exert its power peaceably without overturning the machinery of that government? This was the problem which emerged when Henry III came of age, took the government into his own hands, and pursued a policy which was disliked by the baronage, which was oppressive to very many of his subjects, and which was rapidly making the state bankrupt. Henry III was a king who in many respects resembled Charles I. Professor Treharne tells us that he was "a kind husband and father, a liberal rewarder of those who pleased him, a pious and devoted son of the Church, a lover of culture and elegance, and one of the most artistic of English kings," and that "his very virtues turned to his destruction as a monarch." Those words might have been written of Charles I; and the parallel goes deeper. The revolution of 1258, like the summoning of the Long Parliament, was caused by the king's bank-

ruptcy; and the barons in the reign of John, like the leaders of the earlier Parliaments of Charles I, had previously pursued only a negative policy of criticizing the king's methods and of demanding redress of specific grievances. It was not till they had learned to rule during Henry III's minority, it was not till Henry's policy had produced just complaints from all classes of his subjects, that they were forced in self-defence to take the initiative, and to insist on controlling the king's government.

This book gives us a detailed and an illuminating account of the manner in which, in 1258, the barons took control of the king's government, and of the policy which they pursued during the year and a half that they controlled it. The king regained control in 1261; and, though the barons again gained control in 1263, they were not united, as they had been in 1258. They were divided in the policy which they wished to see pursued. On the one side was a more conservative party which wished for less radical reforms; on the other, was the party of Simon de Montfort backed by the citizens of London, by many of the smaller landowners, and by a minority of the greater barons, who still stood for the whole programme of 1258. It was clear that civil war was imminent; for Henry was king, and, as such, the rightful head of the government; and he had shown in 1261 that he was clever enough to make the most of his opportunities. For a brief interval civil war was postponed by the agreement of the contending parties to submit their differences to the arbitration of Louis IX of France. When, in the Mise of Amiens, Louis IX gave his verdict for the king on almost all counts, civil war was inevitable. Simon de Montfort promptly repudiated the Mise; for he had only accepted Louis' arbitration on the understanding that the fundamental principles embodied in the Provisions of Oxford were accepted as final. Professor Treharne ends his book at this point; but he promises to deal with the civil war which followed and its results in a later volume. We shall look forward to reading that volume, for Professor Treharne has shown in this volume a mastery of the great mass of modern material which has recently become available for the interpretation of this very critical period in English constitutional history. He has not only given us a clear account of the administrative machinery of the state, he has not only interpreted very ably the constitutional questions at issue, he has also invested this machinery and these questions with a very human interest by the manner in which he has sketched the characters and motives of the principal actors.

Henry III had inherited a skilfully constructed machinery of centralized government, and a body of able and devoted civil servants. He was the head and controller of this system; and his servants served him faithfully. He was restrained partly by the growing routine and tradition of the departments of state, partly by the idea, which is prominent in Bracton's book, that the law should guide the actions of all members of the state, not excepting the king. But these restraints were not sufficient to keep the king from pursuing a foolish and extravagant foreign policy; and the efficiency of his servants, coupled with his chronic poverty, led to much harshness in enforcing the often exaggerated claims made by the Crown. Modern experience shows that bureaucracy, which has been educated to take only the bureaucratic point of view, is capable of perpetrating the most obvious injustices, because it is incapable of judging its own actions by ordinary standards. The revolt of 1258 was no doubt due mainly to "the king's incapacity to direct this centralized system of government along the right lines"; but it was partly due to the over-centralization which made that system's actions harsh and oppressive. Nevertheless, the barons who led the revolt, like the barons who had forced John to grant Magna Carta, did not attempt to destroy the mechanism of central government. "They aimed at seizing and working the machine themselves, not at destroying it or at making fundamental changes in its structure. The explanation of their revolt is to be found, not so much in the nature of the system of government in thirteenth century England,

as in the misdirection of a system of that nature by a King who was wholly incapable of his task."

The barons were the natural leaders of the nation. The scheme of government inaugurated by the Provisions of Oxford was an aristocratic scheme. The middle and lower ranks of the tenants in chief were not represented. But, as Professor Treharne has shown, the leaders did not pursue an exclusively aristocratic policy. "Most of the reforms proposed were for the common good, and, while naturally the class which benefited most was that of the vavassours, the townsmen and the peasantry were by no means neglected. Sufficient was done to show that the baronial reformers worked in no narrow and ungenerous spirit of selfish class interest, but aimed sincerely at a real reformation of the state of the whole realm." Two measures of reform especially should be noted, because they foreshadow future constitutional developments. In the first place, the baronial council made great use of elected knights to hear and enroll the complaints which were to be made to the commissioners appointed by the Council; and in 1263 some of these knights were employed as *custodes pacis,* and given powers which eclipsed the powers of the sheriff. It is in this way that the future knights of the shire were fitted to represent their shires in Parliament at the end of the century, and in the following centuries to become, as justices of the peace, the rulers of their counties. In the second place, the barons inaugurated a simple mode of bringing the grievances of the people to the commissioners appointed by the Council to hear complaints. These *querelae,* which were the ancestors of the Bills in Eyre, were used to redress all manner of complaints; and their efficiency is shown by the large amount of popular support which the baronial plan of reform attracted. It was not till the rise of an elected and representative Parliament that these Eyres, held by the king's servants, at which three *querelae* could be presented, ceased to be the greatest safeguard against oppression by royal and baronial officials, and the strongest guarantee for the maintenance of the supremacy of the law.

It was in these ways that, during the troubled period from 1258 to 1263, the nation was learning the first lesson in constitutional government from its natural leaders—the barons. It learned much during the period of baronial supremacy in 1258-1260, how much Professor Treharne has skilfully and clearly shown; it learned much from Simon de Montfort, as we hope Professor Treharne will shortly show us in his promised second volume. As the result of these two periods of baronial rule, it learned more in the reign of Edward I. If all the periods in our constitutional history could be described as picturesquely as this, if the personalities of the actors, the causes which they advocated, and the constitutional stage on which they performed their parts, could be as clearly portrayed, that effort, without which Stubbs has said the history of institutions cannot be mastered or even approached, would be sensibly diminished.

All Souls College, Oxford. W. S. HOLDSWORTH.