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The Elements of Crime

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Court from three sources, the district court, the circuit court of appeals and the state courts, but even from these courts only a limited classification is reviewed. The future alone will prove or disprove the wisdom of this act. There is of course a risk that review will be denied when it should be granted. The authors however believe that the jurisdiction of the court should be even further limited to federal questions presented in the record so that the court's energy need not be expended in deciding issues not pertinent to its function.

The authors also believe that the Supreme Court ought not be asked to pass on questions of fact. They are charged with "keeping our constitutional system in equilibrium" and should not be compelled to "disentangle confused testimony." "It surely ought to be possible to devise rules of appellate practice whereby the Supreme Court will be relieved from quarrying the facts out of a confused mass of evidence."

The book is written with the clear and forceful style which distinguishes all of Mr. Frankfurter's writing. It is exceedingly scholarly in its treatment and the footnotes are very extensive. It should be of interest to not only any lawyer practicing in the federal courts but to any student of constitutional history.

—T. W. ARNOLD.

THE ELEMENTS OF CRIME. By Boris Brasol. St. Petersburg Imperial University, Russia. Former prosecuting attorney of the St. Petersburg Supreme Court. New York: Oxford University Press, American Branch. pp. xvii, 433 (1927).

What are the causes of crime? Are they removable? These two questions have been answered in various ways. The legal point of view emphasizes the importance of procedure and punishment. The sociologist believes that economic factors, and especially poverty, are the chief contributing factors. The psychologist believes that deficient

mentality is the cause of crime and that there is such a thing as an abnormal criminal type, which can be eradicated by proper breeding and environment.

Advocates of other causes, such as prohibition, compulsory education, and even one hundred percent Americanism, believe that crime can be materially decreased by the abolition of, respectively, the saloon, illiteracy, or that non-conformist frame of mind known as Bolshevism.

Books, giving a realistic analysis of the elements of crime, unconnected with any remedy or cure, have been extremely infrequent. The work of Mr. Brasol therefore, should be of great interest among lawyers and sociologists. A reading of the book dissipates the notion that any single factor is either a cause or contributing cause of crime. Further it shows that most notions about the causes of crime are false. For example, two of the most common of such notions are, (1) that crime is due to poverty; (2) that crime is due to defective intelligence. The statistical analyses of the author indicate (1) that crime actually increases with prosperity; (2) that criminals are more intelligent than the vast mass of orderly law-abiding citizens. In the United States, a prosperous country, there is more crime, including crimes against property, than in countries where the level of subsistence is low, and persons might properly be supposed to be tempted to steal rather than starve.

Does the death penalty discourage crime? The author thinks there is little evidence that it has any such effect. In the same way almost any simple theory of the contributing causes can be disproved. There appears to be two essential factors in making a criminal. First, an anti-social frame of mind, and, second, a weakening of the resistance toward anti-social conduct, which is ordinarily supplied by the sum total of certain complex mental reactions such as habit, fear, religion, moral standards, family and traditions. Given this mental state you have your potential criminal. He may or he may not be intelligent. He may or may not be poor. He is, however, out of step with that thing which the author calls the rhythm of social life. He is a product of social friction.

The causes of crime are infinitely complex. The disintegration of the family as an institution, the lack of generally ac-

cepted religious convictions, prevent the formation of instinctive social habits. Modern education with its lack of emphasis upon discipline, deters the formation of social habit. The emphasis which the press puts upon crimes keeps constant reiteration of criminal suggestion before the undisciplined mind. Legislation which constrains too closely personal habits is apt to create a potential crime. The author mentions the prohibition laws as follows: "Government meddling with private affairs is always a dangerous policy. No state in the world is capable of regulating every manifestation of public taste or individual inclinations. General standards of morality and social manners cannot be radically changed or lifted by the passage of prohibitive laws. In fact, the law making epidemic is a social calamity, especially when the state undertakes to prevent such activities as do not interfere with the safety and comfort of the people as a whole." According to the author's statistics, crime has increased enormously since the passage of the prohibition law. For example, arrests of drunken drivers in 1925, as compared with 1919, have increased in twenty American cities from ninety-five percent as the lowest, to 209% as the highest example chosen.

Given an anti-social frame of mind, the presence or absence of restraining influences may determine whether you have a criminal or not. These restraining influences consist of habit, those complicated beliefs which make up the commonly accepted term, morality, and fear. It appears from this that the severity of punishment is of comparative minor importance, whereas the likelihood of being caught is of tremendous importance.

Is there a cure for crime? The book gives a distinct impression that the problem of crime is unsolvable. Granted that the disintegration of the family, the breakdown of old religious convictions, and the constant changing notions of modern life are productive of anti-social frames of mind, very little can be done about it. Certainly attempts at advocating indefinite things like the benefits of the old fashioned fireside have very little practical effect. The fact is that crime is less prevalent in static society where there are few changing ideas and few economic and social developments. Once accustom society to going along in a rut

and habit will keep it there. In a society where every man's place is easily defined and he accepts it with resignation, crime is much less frequent than in a growing society full of changing ideas and changing economic status.

The proper treatment of insanity cases by the criminal law is discussed at much length. This problem, however, is viewed as it should be, not so much as a factor in causing or preventing crime as in the light of a moral obligation of society to treat these unfortunate people fairly. As the author points out, insanity is a very minor cause of crime because the average professional criminal is an intelligent rather than a sub-normal person.

The book should be of great interest to anyone interested in the problems of criminal law. Dean Wigmore who writes an introduction to the book says that it is the first comprehensive work to contest the one-sided theories of crime advanced by modern psychiatrists.

—T. W. ARNOLD.

A TREATISE ON THE LAW OF OIL AND GAS. By Walter L. Summers. Kansas City: Vernon Law Book Company. pp. 863. (1927).

Until Mr. Summers' book was published there was no text on the law of oil and gas which could be said to be more than a digest of cases. Most of the cases were distributed in the encyclopedia under the heading of mining law and other allied subjects. Mr. Summers' book however is the only practically outlined and scientifically constructed text which has been published. It covers the legal nature of the minerals, oil and gas and the problems arising out of their production. The last chapter contains a few well selected forms, annotated with footnotes.

The fourteen chapters dealing with oil and gas leases are the main portion of the book. In these chapters the author follows the actual legal development of these leases as it took place in courts. In the development of the law on the subject of oil and gas leases one can observe the operation