

BOOK REVIEWS

Crime, Law, and Social Science. By Jerome Michael & Mortimer J. Adler. New York: Harcourt, Brace and Co., 1933. Pp. 440. \$3.50.*

Knowledge has increased so greatly in quantity and complexity since the time of Aristotle that were he alive today with all his genius and energy, he would be able to comprehend only part of it. This partial view of knowledge is something to which every investigator must adjust himself eventually, for the student with a partial view who thinks he has truth by the tail is by way of developing blind spots. And yet paradoxically it is chiefly those who think their partial views are total views who make distinctive contributions. This is not because of the virtue of partial views but because of the frailty of human nature. Most of us are stimulated to work in scientific fields because we think that our specific endeavor will eventually lead to ultimate truth. Without that motive, without that driving force, the intellectual worker becomes the mere critic or administrator alternately cheering opposing teams, never taking sides and because of that rarely making a contribution.

The frailty of human nature and the human intellect in the face of the vast complicated problems of modern science paves the way for a democratic theory of the advancement of science. With no one knowing everything and many people knowing something, we are condemned to be swayed this way and that by fashions in method and fashions in fact. We swing back and forth from empiricism to rationalism because scientists must eat, and the fashion that dominates the minds of those in control determines which scientists are to be paid and which neglected in any generation. The truth will at last prevail, not because of the persuasiveness of its advocates nor the great number of people who accept it, but because it is true. Thus as methodological fashions change, as this or that vein becomes exhausted, truth grows by slow accretion, more and more of it becoming accepted not only by a majority but by well-trained scientific experts as well.

We are in the midst of a period when raw empiricism is the fashion; when doctor's dissertations, based purely on counting, are being turned out by the ton; when most of our adult investigators, having gone through the mill which creates doctors of philosophy, are spending their lives in an energetic elaboration of the obvious. It would not be surprising some day to run across a brilliant statistical analysis designed to settle once and for all the precise proportion of males to females, among the direct ancestors of a given child. At a time like this it is not only heartening, it is absolutely essential to hear such voices crying in the empirical wilderness as those of Michael and Adler in their carefully thought out analysis and devastating attack on raw empiricism, *Crime, Law, and Social Science*. If this is a partial view of the field, and it is, it is at the present time the missing part, and the critic and administrator may hope it is the beginning of a trend.

* A discussion with Karl Llewellyn before either his review or mine was written indicated a certain similarity of point of view, with enough difference to warrant publication of both reviews.

The authors define raw empiricism as "an exclusive emphasis upon observations to the total neglect of the abstractions of analysis."¹ Even if the words "exclusive" and "total" are somewhat qualified, we still have a state of affairs conducive to sloppy thinking and inadequate analysis. An "investigator swimming in a sea of facts" without a theory to guide or prejudice him may be an attractive metaphor, but it leads to nothing of scientific value. In the field of criminology the authors find (1) that the data yielded by observation or measurement are both invalid and insignificant because the concepts prerequisite to observation are not clearly defined; (2) that most of the data resulting from observation and measurement are incapable of having their significance developed by processes of inference or calculation; (3) that even the best researches have succeeded in yielding no more than statistical descriptions because of the utter lack of direction by theoretical analysis; and finally (4) accepting for the moment the principles of raw empiricism, they find that even on the level of descriptive knowledge the findings are largely unreliable because of inadequacies in the observational processes and the application of statistical techniques.² In other words, if the raw empiricists did the best job they could possibly do, it would be bad. Their lack of training in rigorous thinking makes them inadequate even on their own level.

Raw empiricism is an extreme reaction against the methods of rational science which earlier dominated psychology and the social sciences. It gained its enormous popularity partly because it was once a needed reaction but mostly because it is comparatively easy to practice. The result of that comparative ease has been a selective lowering all along the line of the type of intelligence attracted to the sciences. That, in turn, produces the downward spiral which inevitably brings on the rational reaction. Michael and Adler do not believe they are the advance guards of a mere reaction. The vigor with which they press home their attack indicates that they think they are right, and if they have not truth tied by the tail, at least they know how to go after it.

In contrast with raw empiricism they define science as a set of general compendent propositions the validity of which, in a rational science, derives from axioms, postulates, and definitions and, in an empirical science, from empirical evidence. In both cases the processes of logical analysis and inference are precisely the same and neither can exist in the absence of a theory. As the authors put it, a science must exist before it can grow.

What is meant by empirical evidence is described by the authors as follows: "The evidence upon which the probabilities of the theorems of empirical science rest, consists of data of observation and products of inference from these data. The data of observation must be reliable, accurate, and significant in order to justify and permit inferential development. The products of inference must be not only the valid results of calculation but significant as well. . . . The significance of the data of observation and the products of inference depend upon the body of concepts which, as related to one another, constitute a theory or an analysis of the field or phenomenon under investigation. The proper cooperation of theoretical analysis, observation, and inference is the essential trait of empirical scientific method. . . . This use of the term scientific does not deny or ignore the usefulness of exploratory investigation. It merely indicates the limits of that usefulness."³

How far this is from the current fashion among investigators can be seen in the appalling series of cases surveyed in chapters V, VI, and VII. A reader desiring to con-

¹ Page 69.

² Page 69.

³ Page 67.

serve his time and energy might wish to be spared innumerable descriptions of insignificant investigations, but the cumulative effect of presenting them is undoubtedly an artistic job. If the analysis fails to be convincing, the description of researches is convincing by its sheer dullness. Page after page of facts are set forth with little attempt at generalization by the investigators. A clear statement of the problem involved would, in many cases, suggest the answer or the futility of attempting it. Happy the penitentiary inmates so far from the beaten track that they have not been I.Q.ed, weighed and measured. There seems to be no realization that a census is not a science, that an enumeration is not a statistical description; that a fact can be understood only in terms of a prior conceptual analysis.

When they step down from the rigidly scientific field, the authors find themselves on less sure ground and therefore more liable to err. Realizing the very small amount of scientific knowledge that exists about crime or any other form of human behavior, they set up another criterion which, while not ultimately satisfactory, is satisfactory for the present. They call that criterion common sense which, they say, answers questions regarding the adaptation of means to ends by interpreting what it observes in terms of its experience in the world about us.⁴ Procedures based upon common sense knowledge are less useful in practice than a technology based upon scientific knowledge, but "they are, by reason of their greater certainty and sureness more useful than the process of trial and error, which rests, not upon knowledge, common sense, or science, but upon opinions."⁵ It is a little difficult to distinguish, as the authors do, between common sense and opinion. Common sense is certainly not the sense of the common people; in many complicated social fields that sense is frequently wrong. If it means anything it means the sense or opinions of sophisticated people with regard to the fields in which they are sophisticated. In that sense a lawyer has common sense about law, a criminal about crime, and a doctor about disease. An appeal to common sense, therefore, is an appeal to expert opinion and Michael and Adler gain little in persuasiveness by hiding some of their expert opinions behind an attractive, misleading name.

Their use of common sense is responsible for at least one of their errors. In chapter X, "Increasing the Efficiency of Criminal Justice by Common Sense,"⁶ they make the point that while common sense can tell us nothing about the etiology of criminal behavior, it can do a great deal toward increasing the efficiency of criminal justice. Although no one could quarrel with the latter part of the statement, it is obvious that if we mean by common sense what the authors seem to mean, namely, the wise observations of sophisticated persons, it is precisely as efficacious and no more so in determining the etiology of crime and prescribing treatment therefor, as it is in the improvement of administration. While sophisticated inquiry may lead one to declare that improvement in personnel leads to an improvement in administration, the definition of improvement of personnel awaits scientific study. In the absence of that we may set up certain "common sense" criteria such as honesty, intelligence, speed, et cetera, depending upon the sort of job to be filled. And we discover by applying the results of sophisticated inquiry that we actually improve administration. The same type of sophisticated inquiry may very well result in statements about the etiology of crime which, when applied in the treatment or prevention of it, will actually decrease crime or reform criminals. In either case the results of sophisticated inquiry leave much to be

⁴ Preface, xxii *et seq.*, page 14 *et seq.*

⁵ Page 19.

⁶ Pages 316-364.

desired. In both cases, however, they are very much better than an absolute zero. This may account for the fact that some advance has actually been made in both treatment and prevention in spite of what Michael and Adler regard as a total absence of scientific knowledge of crime.

If the authors had paid more attention to unscientific wisdom they would not have omitted another important element in the study of crime, namely, insight. The pure logician is most effective when long experience and insight have given rise to precisely defined concepts that have some relation to empirical evidence. In the early stages of a science, the logician must work in close cooperation with an individual who has the feel of data which makes it possible for him to guess at their meaning with a reasonable degree of accuracy. Perhaps these insights are not possessed by the average student of crime, because he is not encouraged to secure them, depending instead on the so-called objective quantitative approach. Whatever the cause of the deficiency it is clear that the absence of insight is just as detrimental to the production of an empirical science as the absence of logic.⁷

The authors' partial insight, due to a preoccupation with problems of law, leads them to define crime as that "behavior which is prohibited by the criminal code."⁸ The criminal code thus becomes the formal cause of crime. This definition has the advantage of being clear, unambiguous, and of isolating for study a specific class of persons. Its limitation, however, lies in the fact that the student of crime, as Michael and Adler see it, is studying the etiology of crime only in a secondary sense. Primarily, he would have to study the etiology of criminal legislation. If their preoccupation were not with law, and they sought their definition in terms of more basic social and psychological concepts, the science of criminology would be quite different from the one they envisage.

A point of much less theoretical significance must be discussed because it has occasioned considerable comment among criminologists and others in reviews and in private conversation. Attack on the recommendations of the final chapter is centered on the personnel of the proposed institute which has been considered so ridiculous by some students as to warrant the assumption that the whole proposal was set forth in jest. Be it said in the first place that Messrs. Michael and Adler know too much from a common sense point of view about the academic mind to risk irony as a method of persuasion. In the second place one must add that those critics who attacked the recommendations simply failed to read the last section with care. The criticism is based on Michael and Adler's recommendation that the staff of the criminological division of the institute consist of a logician, a mathematician, a statistician, a theoretical and experimental physicist, a mathematical economist, a scholar from the field of psychometrics, and a criminologist who has a wide acquaintance with the literature of criminology, preferably one who is not himself engaged in criminological research.⁹ Although the authors do make that statement on page 405, it can only be understood in the light of what was written on page 404, and it is not too much to expect that a scientist whose ire is roused by reading a right-hand page might turn to the page on the left to see what light it throws on the proposal. On page 404 the authors state that ideally the members

⁷ At present we find such insight in naïve autobiographies as *You can't Win*, by Jack Black or in novels such as *Crime and Punishment* by Dostoevskii. The criminologist has much to learn from the imaginative approach.

⁸ P. 2.

⁹ Page 405.

of the staff of the criminological division should consist of psychologists and sociologists who among themselves combine the knowledge, experience and techniques possessed by a logician, a mathematician, a statistician, a theoretical and an experimental physicist. They then say that in the absence of a group of psychologists and sociologists which possesses such knowledge and training, they feel that the staff should be composed of the logician, et cetera. They are making an educational judgment with which this reviewer happens to disagree, but which at least is within the realm of the possible. They are stating simply that it is easier for the logician, mathematician and company to acquire the requisite knowledge in the field of criminology than it is for the criminologist to acquire the logical, mathematical and experimental techniques. One may disagree with that as this reviewer does, but if one is candid he must admit that this disagreement is based on personal prejudice or common sense and not on scientific observation and inference.

The book is a vigorous attempt to state an important and timely point of view. Perhaps nothing more clearly shows its aim and purpose than the closing paragraph of Part III. "This survey of the fields of criminology and criminal justice has unity if viewed with reference to the task of the statesmen. It is he who must have the welfare of the state at heart. He should be the scientist who seeks to know the true good of the community; he should be the artist who attempts to create the means to realize this good. The fields of knowledge which we have surveyed, largely by formulating theoretical questions, . . . represent the knowledge which the statesman must possess in order to shape the law as a means to the common good." This is a challenge not only to the intellect but to the moral will.

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Cases on Contracts. 2d edition. By George Purcell Costigan. C. C. H. University Casebook Series. Chicago: Foundation Press, 1932. Pp. 1112. \$6.50.

Cases on Contracts. 2d edition. By Arthur Linton Corbin. American Casebook Series. St. Louis: West Publishing Co., 1932. Pp. 1304. \$6.50.

Second editions of two of the leading Contracts Casebooks have appeared within the last few months, those of Costigan and of Corbin. In each book there has been a reduction in size of several hundred pages. The geographical distribution of cases is substantially the same, drawing principally from British, New York and Massachusetts reports. Corbin has a larger number of cases in the text; Costigan in his footnotes produces more extensive summaries of facts and quotation from opinions in cases cited. Each book preserves the traditional topical classification, though Corbin has followed the "realists" to the extent of subdividing material on Constructive Conditions according to certain types of contracts, such as installment sales of real and personal property, service, and construction contracts.

Damages as a distinct topic is included in each book, a useful addition in view of the gradual elimination of separate courses in Damages from the curricula. Corbin completes the picture of Remedies by adding material on Specific Performance and Restitution.

The annotations by the editors are the striking features of both books. Each editor makes it clear that the case printed is not the only or last word on the problem in-

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volved, that on nearly every problem diversity of solution is possible. Costigan cites annotated reports, decisions, and often quotes extensively from opinions, textbooks, and legal periodicals. It seems unfortunate that access to much of his material is not facilitated by parallel references to the National Reporter Series, and in the case of law review articles to Selected Readings on the Law of Contracts. It is also unfortunate that publication preceded the completion and renumbering of sections of the A.L.I. Contracts Restatement.

Corbin's footnotes contain fewer quotations and he has seldom cited textbooks and legal periodicals. He has cited wherever pertinent the Contracts Restatement, in the preparation of which he had a conspicuous part. The unique feature of the book is the inclusion after many cases of several searching questions designed to compel a thorough analysis of the case and comparison with other cases and the rule embodied in the Restatement. It should prove an interesting and valuable experiment in teaching, as well as an advance notice to the student of what is to be expected in class other than demonstrating that he has read the case by reciting an abstract. It may result in first year students discovering sooner than many of them do the desirable method of preparation for the class room, and what aid can be derived from the class room program.

The result of a course depends on the ability, method, and application of instructor and students, as well as the case book or other material used. The use of Costigan's book should facilitate the instructor's efforts to impress on the students the fact of diversity of opinion and acquaint them with the available printed evidences thereof. One using Corbin's book should be impressed with the desirability of independent reflection as well as reading, and should also be familiarized with the consensus of professorial conclusions contained in the Restatement, which may become an important source of authority. Whether he adopts one or neither of these books, the instructor in Contracts can derive from each of them considerable aid in preparation for his teaching.

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