

BOOK REVIEWS

THE CRIMINAL MIND. By PHILIP Q. ROCHE, M.D. New York: Farrar, Straus and Cudahy, Inc., 1958. Pp. xi, 299. \$5.00 *

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An Isaac Ray lectureship awardee earns the honor through his sustained interest in forensic psychiatry and extraordinary contributiveness in that field. One may properly expect to find authoritativeness, wisdom, and clarity in an "Isaac Ray book." Dr. Roche meets such expectations admirably; indeed, I consider his presentation of difficulties and resolutions pertaining to forensic psychiatry in some respects the finest I have read.

In his introduction he declares his intention to present "a point of view and invitation to both lawyer and psychiatrist to re-examine the premises upon which we structure our concepts of mental illness and the *subjective element* of crime." (p. ix). This point of view is stated, analyzed, restated and synthesized in the six chapters with imaginative illustrations from case histories, Sanity Commission hearings and trials. With the expository device of comparison, the author discusses, more than the criminal mind, the psychiatric mind versus the legal mind. He sees psychiatry and the criminal law striving for a common goal, "a goal of social unity and growth through justice," (p. 245) but by disparate systems of thought and in disparate languages.

In the first chapter some of the overlapping and conflicting views of law and psychiatry are defined. The mystical, religious, primitive origins of certain legal concepts used today in determinations of such "word idols" as "responsibility," "intent," "knowledge" and "insanity" are briefly reviewed. Why the psychological scientist must see as moralistic and unscientific the law's traditional approach to purpose and causation is explained. The first of the revealing antitheses which are the skeletal framework of this book is described: the law asks *why* the criminal act was committed; psychiatry asks *how* it came about.

Chapter II, "What Is Mental Illness?" introduces most of the other polarities to which are fastened the substance of Dr. Roche's observations and opinions: insanity and mental illness, public-centered and individual-centered frames of reference, conscious and unconscious mental processes, alloplastic and autoplatic behavior. He proceeds by way of these to the vital issue confronting forensic psychiatry, an issue also confronting, al-

* In memory of Dr. Isaac Ray, the first American forensic psychiatrist, the American Psychiatric Association in 1952 established the annual Isaac Ray Award to promote understanding between psychiatry and the law and to acknowledge outstanding contemporary contributors to the solution of law-science problems. Preceding Dr. Philip Q. Roche, Philadelphia psychiatrist, the award was received by two psychiatrists, a lawyer, and a judge. *The Criminal Mind* is the publication of Dr. Roche's 1957 Isaac Ray lectures.

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though frequently not recognized by, the law. This issue is usually posed cautiously as a question: is criminal behavior a manifestation of mental illness? Dr. Roche offers considerable evidence to suggest that the law, as presently constituted, must answer "No." Perforce, he answers "Yes" for dynamic psychiatry.

"From the standpoint that the individual reverts to a magical orientation in social adaptation, the distinction between the criminal and the mentally ill is arbitrary. Every criminal is such by reason of unconscious forces within him just as every mentally ill person is so dominated by unconscious forces, and the so-called 'normal' people operate in their lives with margins not far from either. Commonly one observes criminality and mental illness in the same person, sometimes alternating, and the legal attitude towards him may come out of chance Criminals differ from mentally ill people only in the manner we choose to deal with them." (p. 29).

The heart of the book is Chapters III, IV and V, collectively entitled "The Criminal Law and Psychiatry in Action," but separately subtitled "The Pre-trial Phase," "The Criminal Trial" and "The Post-trial Phase." Their major thesis is that only in pre-trial and post-trial phases can the psychiatrist function properly as a clinician, assembling, organizing, interpreting and reporting data. Then only, he is and can be (as he should be) unencumbered by artificial or arbitrary tests of responsibility and insanity. Dr. Roche thinks psychiatrists unnecessarily make trouble for themselves by stepping out of the clinician's role to express an opinion about sanity. "[T]he finding of insanity is not a medical function; it is a legal function. . . ." (p. 36).

"The Criminal Trial," 130 pages in length, comprises nearly half the book. It characterizes the criminal trial as a struggle of good and evil, a competitive game of chance played out before an audience. The author continues from earlier chapters his analysis of the psychology of the law, concluding that "it is a psychology that reveals little of the mind of the evil doer, but a good deal of what is going on in the minds of the law abiding. . . ." (p. 84). He examines the familiar criticisms of the *M'Naghten* test, the proposed Model Criminal Code of the American Law Institute, and the *Durham* decision. As are most psychiatrists, he is against the first two and approves the last. In the analysis of these tests, he evaluates the controversial topic of irresistible impulse. Out of detailed descriptions of two trial cases, he evolves excellent analyses of clinical versus legal psychology, conflicting testimony of expert witnesses, biased behavior of some psychiatrists, psychopathic behavior and episodic dyscontrol. The maxim of this chapter is that the criminal trial vitiates the psychiatrist's role as a psychological scientist, as the expert witness he is called upon to be. "It is clear that psychological data cannot be communicated in an adversary setting of a moral issue in the language of science." (p. 133).

The "Post-trial Phase" is limited in its entirety to the case of William Conquest and his excursions from prison to hospital and back again. Here are several criticisms of prisons and an enlightening explanation of the ridiculous dilemma that society imposes upon prison officials in expecting that they can administer punishment and rehabilitation simultaneously.

In his lucid summary, in addition to restating the main theses, the author makes a fresh and stimulating proposal for the proper use of the *Durham* decision.

If all writing is autobiographical, the man this book reveals is a concerned, thoughtful, wise, and soberly constructive observer and critic of law and psychiatry. Sometimes he writes beautifully, almost lyrically: for example, the case of the clergyman. (ch. III). The title of the book and some chapter headings may be misleading; the subtitle, "A Study of Communication between Criminal Law and Psychiatry," is more accurate.

CASES ON FUTURE INTERESTS. By PHILIP MECHEM. Brooklyn: The Foundation Press, Inc., 1959. Pp. xix, 406. \$7.00

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In the Preface to this new casebook which deals with a very old subject, Professor Mechem points to the fact that in the crowded curricula of most law schools it is becoming more and more difficult to treat future interests in the "grand manner." As a result of his own experience in trying to teach the subject in thirty hours (considerably less than the number of hours which ought to be allotted to it), he has attempted the development of a vehicle by means of which at least the essential rudiments of future interests may be imparted to the student in an abbreviated fashion. Professor Mechem, after indicating that in so short a course the purpose of training in the subject must be prophylactic, states that his aim, through the use of modern cases to the extent that this is feasible, is to alert "the student to the traps in this area he is most likely to encounter in drawing wills. Unless he has been properly schooled in the matter so as to develop a sophisticated nose, able to smell danger, he may not even know there is a problem. Thus he will be of less than no use to his hapless client . . ." (p. x).

Some years ago Professor Mechem made the pungent observation that "it is a matter of common knowledge that Future Interests is not properly a course but an obsession, and that teachers of it in time develop a complex, akin perhaps to the Jehovah-complex, which leads them to think that the law school exists for the sole purpose of teaching Future Interests."¹ Naturally, those of us who are obsessed have no right to ride herd over the

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1. Book Review, 19 IOWA L. REV. 146, 149 (1933).

rest of the curriculum, however much we might like to do so. And most people who have taught future interests for a few years would be inclined to agree that Professor Mechem has stated in his preface almost all that the teacher may hope, as a practical matter, to accomplish in a two or perhaps even a three hour course. Nevertheless, on the assumption that Robert Browning was right when he said that a man's reach should exceed his grasp, a course in future interests should seek to produce more than tolerably alert draftsmen. Certainly, the effort should also be made to instill in the student enough of the basic elements of all phases of the subject to stir his imagination when he is called upon to deal with a future interests problem as an advocate. With this, I feel sure, Professor Mechem would have no quarrel.

Professor Mechem's casebook consists of seven chapters, respectively entitled "Contingent Remainders and Executory Interests; Herein of Destructibility" (pp. 6-39), "Remainders to the Heirs of the Transferor; Herein of 'Worthier Title'" (pp. 40-53), "Future Interests in Personal Property" (pp. 54-89), "Vested and Contingent Remainders" (pp. 90-160), "Gifts to Classes" (pp. 161-229), "Powers of Appointment" (pp. 230-298), and "The Rule Against Perpetuities" (pp. 299-398). A mere glance at these chapter headings indicates that most of the fundamental aspects of the law of future interests are treated. They are indeed well handled. The principal cases are in large part relatively recent and they have been selected with discrimination. Some phases of the subject matter, however, as for example possibilities of reverter and rights of entry, receive little attention; resulting trusts receive none at all. Professor Mechem justifiably assumes that a course in future interests should be preceded by a course in property where interests in property recognized by the common law have been fully developed (p. 1): "[T]his course assumes that the student has had a sound and thorough introduction to English land law."

In a casebook designed for a two hour course a great measure of selectivity is obviously necessary. This no doubt explains why so few pages are devoted to acceleration (p. 28), the Rule in Shelley's Case (pp. 40-42), gifts by implication (pp. 63-65), gifts over on "death" and "death without issue" (pp. 76-79), stirpital and per capita division (pp. 202-208), and the effect of failure of limitations (pp. 354-362). Since the Rule in Shelley's Case has been abolished in so many jurisdictions, the very brief review of the problems presented by it seems justified. On the other hand, even at the expense of brevity, I think a little more might have been done with the other future interests subdivisions just mentioned. That, however, is a matter of personal choice and it must be admitted that even in a three hour course the teacher cannot devote more than one or two classes to such constructional problems.

Professor Mechem's casebook is the embodiment of a realization of what many casebook editors may have recognized but have lacked the

courage to act upon. The truth is that a casebook containing more cases, pages and footnotes than it is possible to cover in an allotted period of time is frustrating not only to the student but also to the instructor. There is an attendant feeling of compulsion to hurry superficially through the materials presented, a process quite obviously in conflict with the type of training which makes thoroughness as nearly instinctive as possible and which one would suppose should be basic to all teaching in law. This Professor Mechem's casebook will avoid, and for a two hour course in future interests I unhesitatingly recommend it.

MARKET POWER: SIZE AND SHAPE UNDER THE SHERMAN ACT. By G. E. HALE and ROSEMARY D. HALE. (S. Chesterfield Oppenheim, Editor.) Boston: Little, Brown and Company, 1958. Pp. xix, 522. \$17.50

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Few law offices today can avoid exposure to or involvement in the numerous complexities of the antitrust laws. Since a tantalizing variety of problems arises in the clients' day to day conduct of business, nothing could be more welcome than a reference work which not only gathers the case law and commentary but provides the most important economic background and perspective. The *Trade Regulation Series*, under the distinguished editorship of S. Chesterfield Oppenheim, has in its third published volume provided a gracefully styled, widely ranging, vastly informative book on monopoly in our business system. The title, *Market Power: Size and Shape Under the Sherman Act*, is perhaps unnecessarily formidable, but no one reading this book will find a prosaic, dully statistical treatise. Happily to the contrary, we have a provocative combination of knowledge without dogmatism, lucidity of thought and expression without superficiality and a questioning approach without uncertainty. Professor Oppenheim states in his foreword that the goal set for each author in the *Series* "is a text designed to present the law with the greatest possible clarification, as a guide for the general practitioner who has little experience in this field, for the economist or business executive who wants to be oriented in one of the areas covered, and for the specialist who desires a ready reference tool." (p. viii). G. E. Hale, of the Illinois Bar, and Rosemary D. Hale, who is a lecturer in economics at Lake Forest College, have achieved all of these things in their book.

Following a lucid introduction which puts into focus the problem of market power in the United States and its relationship to economics, the social sciences, and our ethical concepts, the reader is presented with a most careful and thorough delineation of all aspects of the subject. Various theories of horizontal and vertical integration are discussed in turn and in

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great detail. The subject matter first includes an analysis of the extent of concentration, the abuse theory, price discrimination, exclusive arrangements, tying, refusals to deal, the question of intent, the structure theory, oligopoly, elasticity of demand, performance, workable or effective competition, and other related matters. Vertical integration with appropriate historical analyses of industries that have figured in important case law is next discussed, followed by a careful dissection of the problems of diversification, dispersion, wealth and attempts to monopolize. The various available remedies with their attendant problems are very helpfully explained, and the volume then concludes with a forthright statement of the authors' views and personal recommendations.

The Hales recognize the lack of an acceptable scientific standard for the definition or measurement of monopoly power. Because of this fact they express serious doubts and reservations about the various methods which have been suggested by economists and courts for applying the antitrust laws to the activities of single traders. They raise the possibility of fixing an absolute limitation upon the size of corporations rather than attempting to control their share of a particular market, and they discuss the idea of a direct subsidy to assist companies whose competitive existence is deemed desirable. Recognizing that these thoughts, too, have their imperfections, it is argued that they at least make "explicit the egalitarian rationale of some recent judicial pronouncements." (p. 404). Even more controversial is the authors' conclusion that section 2 of the Sherman Act should be abandoned because its enforcement, insofar as the improvement of the country's economy is concerned, is "something like trying to repair a watch with a steam shovel."¹ (p. 404). This does not mean, however, that the effort to control or destroy monopoly should be given up. Competition has its wasteful defects but, on balance, is productive of "a higher standard of living and greater individual freedom than interventionist systems." (p. 405).

One of the valuable aspects of the book is the emphasis placed on the economic ramifications of this critical area of our society. These are set forth with full documentation of the appropriate case law. Although the authors do not claim to answer all of the questions involved, the arguments are fairly stated on both sides so that the reader may not only reach his own conclusions but also find the supporting authority. This book is bound to be, therefore, of immense help to anyone who has to do with business problems. It is a refreshing challenge, too, to see that such matters may be discussed without being ponderous and with happily apt references to a variety of writers ranging from Omar Khayyam to Henry James. A full table of cases and a careful index complete the invaluable service the Hales have rendered.

1. The Hales' view that §2 has not afforded a rational and practical means of curbing monopoly has already met with strong disagreement. See, *e.g.*, Fuller, Book Review, 59 COLUM. L. REV. 220 (1959).

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