

CLIPPING NO. _____ FROM _____

Columbia Law Review

Issued November 1940

SOURCE:

"Handout" No. _____ Bk. XXX

PUNISHMENT AND SOCIAL STRUCTURE. By GEORG RUSCHE and OTTO KIRCHHEIMER, with foreword by THORSTEN SELLIN. New York: COLUMBIA UNIVERSITY PRESS, 1939. pp. xiv, 268. \$3.00.

The authors of this book attempt to prove two points: first, that punishment in general is a function of economic conditions; and second, that the methods of punishment in use at any particular epoch depend on the available means of production and the state of the labor market. This ecumenical thesis is based on studies limited in time to the period from the close of the Middle Ages to the present day, and confined in space to Western Europe, Russia being completely, and the United States largely ignored. Since the purpose of the book is not to present original information but to elucidate a point of view, the authors have made no attempt at exhaustive first-hand study of original documents—though considerable use is made of statistics. The sources are monographs by scholars working in specialized fields, and since many of these are available only in French, German, or Dutch, the authors have performed a useful service in bringing them to the attention of Americans.

The picture the authors present looks something like this: At the close of the Middle Ages, economic changes such as the decrease in soil fertility and the increase in population brought poverty and insecurity to large numbers of people. The exploitation of these masses, technological changes, and growing urbanism permitted a rapid accumulation of capital. Frequent punishments were necessitated to keep down the restless lower classes; brutal punishments (execution and torture) were inevitable because, due to the very surplus of labor which created the problem, there was no use which could profitably be made of the convicts.

* Professor of Law, University of Washington School of Law.

labor power. Amelioration of punishment methods came about not at all through humanitarian efforts, but only because a shortage of labor and the rise of mercantilism made possible the houses of correction. The galleys of France and the relatively successful colonial transportation of England were similar responses to economic needs. The movement toward a predictable criminal law and procedure, which culminated in Beccaria and Bentham, is accounted for in terms of the class needs of the rising bourgeoisie: their need for protection against surviving feudal elements could thus be satisfied without admitting the poor to the benefits of the new criminal guarantees because of their lack of money to hire counsel or pay jail fees or fines. A chapter on the failure of solitary confinement cannot be adapted so easily to the authors' economic theses; the capable discussion of the fine in modern penal practice fits the thesis nicely: the fine is obviously the policy of capitalist countries. The recent attempt at improvement of penal methods by liberal reformers is limited by the need to keep the standard of living within prisons worse than that of the poorest stratum of society, and rehabilitation is ruled out by the ban on prison labor and the difficulty convicts have in finding work. On the other hand, the desire of Nazi and Fascist reformers to revert to long and barbarous sentences is equally limited by prevailing economic conditions, both by the fiscal expense of prisons and by the need, in Germany at least, to utilize all available labor. A final chapter on "Penal Policy and Crime Rate" attempts to show statistically that there is no relation between crime and severity of punishments, the conclusion being that crime, as well as punishment, is economically determined.¹

Thorsten Sellin, in a brief, penetrating foreword, attempts to disarm criticism of this thesis: "Even those who may find in [the authors'] interpretation too strict a confinement to one point of view will find in this book a stimulant of thought which all too few publications in this field of research provide."² No doubt, as Professor Sellin implies, many writers on penal theory are naively liberal. No doubt also, others simply gather data with no sense for the significant. It is surprising how few attempts have been made to employ a Marxian method either crude or subtle in the analysis of questions bearing on law. But I wish the authors had done more than oppose one extravagance with what seems to me to be another, useful as such opposition may be in the dialectical development of thought. Everyone knows that economic conditions are important factors in determining both crime and punish-

¹ On the lack of probative value of such statistics, see MICHAEL AND ADLER, *CRIME, LAW AND SOCIAL SCIENCE* (1933).

² P. vii.

By now, surely, social scientists have learned the lesson of the plurality of factors, and an attempt to assign a proper weight to each.

The brutal punishments at the breakdown of the Middle Ages were of course rooted in part in economic insecurity. But environmental changes cooperated with the intensification of insecurity from another source: namely, Protestantism, which separated man from his fellows as well as his God by the doctrine of election, and separated him from himself by emphasis on his essential unworthiness. Religious teaching led men to welcome and increase the economic changes rather than resist or overcome them.³ This interaction of religious and environmental factors is not a simple dialectical process: each strand influences the others in a constantly changing pattern, as persons shape the culture which is shaping them. The torturing punishments of the fifteenth and sixteenth centuries, succeeding the mild penance and fines of the earlier Middle Ages, were not simply automatic responses to the new economic conditions; they indicated the sadistic consequences of deep psychic insecurity, of the widespread breakdown of Catholicism with its emphasis on charity, and its partial replacement by Calvinism, with its impersonality and its violent emphasis on ineradicable sin. Similarly, the movement of the Enlightenment toward objective criminal justice, with its defined scale of crimes and punishments, was reinforced by a competitive capitalism which dispersed power beyond the official organs of the state. But both impersonal justice and impersonal capitalism were parts of a larger rationalistic culture, which included the impersonal cosmos of Newton and the impersonal poetry of Pope—and many divergent elements as well.

The authors' oversimplification in these earlier periods is somewhat difficult to prove, since the perspective of historians often serves to give a unified appearance to past ages when diversity strikes one only in a close-up. When Drs. Rusche and Kirchheimer come to deal with Nazi penal methods, the extremism of their approach is more readily demonstrated.⁴ They argue that since capitalism has now become monopolistic, that is, administrative, calculability of judicial action is no longer essential to the working of the economic machine. On the contrary, adherence to law would permit the judge to impede the conquest of

³ I rely on MAX WEBER, *THE PROTESTANT ETHIC AND THE SPIRIT OF CAPITALISM* (Parsons tr. 1930), whom the authors naturally discount. See also TAWNEY, *RELIGION AND THE RISE OF CAPITALISM* (1926); cf. 2 TROELTSCH, *THE SOCIAL TEACHING OF THE CHRISTIAN CHURCHES* (Wyon tr. 1931) 641-50, 915-18.

⁴ The wide variations, which the authors do not examine, in American penal policy today (see, e.g., Sellin, *Penal Institutions* (1934) 12 *ENCYC. SOC. SCI.* 57-59) can certainly not be explained by any formula.

power by the new dominant group. It follows that liberal procedural and substantive guarantees have been completely overthrown, with law and punishment determined from case to case, under the screen of the folk-conscience. These assumptions are challenged by Dr. Ernest Fraenkel, a lawyer in Berlin until 1938, whose book, *The Dual State*, is fully documented. Dr. Fraenkel shows that the Nazis have carefully preserved the independence of the regular courts for the ordinary run of cases; this has been precisely because life, including economic life, could not go on without a measure of predictable guarantees. The Nazis have, to be sure, set up side-by-side with the traditional system of courts and prisons an administrative system of secret police and concentration camps, but within their sphere the judges have often courageously insisted on their right to follow the old statute law rather than the declared wishes of the Party officials. Moreover, Nazi brutality, like post-medieval brutality, has roots in insecurities which are only partially economic. Totalitarianism has intensified the secular deflation of individual personality inaugurated by modern science and urbanism; the scapegoats are the same as four centuries earlier—outlaw criminals and Jews. And Hitler has encouraged his officials in sadism as a means of binding them to his regime by feelings of guilty participation.

It is obvious that the drift of the book is fatalistic: nothing can be done about crime or punishment without a radical change in the entire social system. Penal reform is a mirage. The Nazi farewell to reform is equally illusory. About this view there are two things to be said. In the first place, it is not likely that persons other than some criminologists take crime seriously enough to be willing to risk a change to a new social order simply in the hope of getting rid of deviational conduct. Conceivably, we might get rid of larceny by changes in property relations, and the book is in that sense a book about larceny; the authors do not seem to think crimes of violence have any special problems, and they fail to tell us what kind of a culture that culture would be that exhibited no deviational conduct.⁵ In the second place, a fatalistic attitude towards the penal problem is not wholly warranted. Of course, self-interest and idealism must combine to get anything done. But marginal improvements can be made, and, as the Nazis show, marginal reactions too. Failure to attempt such improvements or oppose such reactions would have repercussions beyond the criminal field. We are all of a piece, and a fatalistic or brutal attitude towards any sector of our problems must have carry-overs in all other sectors as well. Contrariwise, even relatively futile attempts to reform the criminal law accustom

⁵ One of the questions so insistently posed by Professor Lynd in his fine book, *KNOWLEDGE FOR WHAT?* (1939).

society to an attitude of responsibility to all its members, and cherish the values of humanity and democratic education.⁶ These are the attitudes and values which tend to create a proper milieu for seeking more fundamental changes in society.

P U N I S H M E N T
And
S O C I A L S T R U C T U R E

By
Georg Rusche and Otto Kirchheimer

With a Foreword by
Thorsten Sellin

New York: Morningside Heights
Columbia University Press
1939

PUNISHMENT AND SOCIAL STRUCTURE

CONTENTS

Foreword by Thorsten Sellin	V
Preface	IX
I. Introduction	3
II. Social Conditions and Penal Administration in the Later Middle Ages (1) Penance and Fines - (2) Social Developments in the Middle Ages - (3) Criminal Law and the Rise of Capitalism.	8
III. Mercantilism and the Rise of Imprisonment (1) The Labor Market and the State - (2) Stages in the Treatment of the Poor.- (3) The Rise of the House of Correction.	24
IV. Changes in the Form of Punishment (1) The Galley.- (2) The Early History of the Transportation of Criminals.- (3) The Evolution of the Prison System.	53
V. Developments in Criminal Theory and Law During the Age of Enlightenment	72
VI. Social and Penal Consequences of the Industrial Revolution (1) The End of the Mercantilist Social Policy - (2) The Increase in Crime and its Effects on the Theory and Practice of Punishment - (3) New Aims and Methods of Prison Administration - (4) The New Attitude toward Prison Labor.	84
VII. The Abolition of Transportation (1) Transportation to Australia.- (2) Transportation in Other Countries.	114
VIII. The Failure of Solitary Confinement (1) Solitary Confinement in the United States. - (2) Solitary Confinement in Europe	127
IX. Modern Prison Reform and its Limits (1) Rising Living Standards of the Lower Classes and the Effects on Criminal Policy.- (2) Results and Limits of Prison Reform.- (3) The World War.- (4) Post-War Conditions.	138
X. The Fine in Recent Penal Practice	166
XI. New Trends in Penal Policy under Fascism	177
XII. Penal Policy and Crime Rate	193
XIII. Conclusion	206
Notes	209
Index	257

PUNISHMENT AND SOCIAL STRUCTURE

TABLES

1. Larceny in London, 1821 - 27	96
2. Convictions by Assizes and Quarter Sessions, 1805 - 33	96
3. Larceny in France, 1825 - 42	97
4. Distribution of Punishments in England, 1806 - 33	103
5. Decrease in Number of Convictions, Late Nineteenth and Early Twentieth Centuries	139
A. Germany: Convictions of Persons above the Age of Discretion for Petty Larceny	
B. England: Persons Tried before Assizes, Quarter Sessions, and Summary Courts for Offenses against Property without Violence	
6. Decline in Prison Population, Late Nineteenth Century and Twentieth Century	146
A. France: Prison Population, 1884 - 1932	
B. England: Persons Sent into Penal Servitude or Imprisoned	
7. Distribution of German Sentences	147
8. Distribution of French Prison Sentences	148
9. Fines and Suspended Sentences by the Tribunal Correctionnel in France	149
10. Distribution of Belgian Sentences (Tribunal Correctionnel)	149
11. Distribution of Italian Sentences	150
12. Larcenies Reported to the Police in Italy	150
13. Penal Policy of the French Tribunaux Correctionnels	160
14. Post-War Crime Rates	162
A. England: Indictable Offenses	
B. France: Persons Tried before Cours d'Assises and Tribunaux Correctionnels	
C. Sweden: Crimes	
15. Germany: Offenses Against Property	163
16. Prussian Prison Population and Expenditures	164
17. Increasing Use of the Fine in Germany	166
A. Distribution of Punishments for Larceny	
B. Distribution of Punishments for Fraud	
18. Germany: Commitment to Prison for Nonpayment	171
19. Fines in Various Countries	172

From Reviews:

The Survey: Sober, sound and splendidly documented, "Punishment and Social Structure" may well upset traditional penal concepts just as Beard's classic "Economic Interpretation of the Constitution" helped explode some hoary myths about the Founding Fathers.

Popular belief to the contrary, point out the learned authors, the punishments current in earlier days were neither inspired by sadism nor by moral depravity. With a wealth of evidence to back them up, Drs. Rusche and Kirchheimer argue plausibly that the forms of punishment vary with time and place and are profoundly influenced by economic considerations. ...

Altogether, Drs. Rusche and Kirchheimer probe deeply and diligently into the problem of motivation. Often coming up with facts that should give conservative penologists pause, Thorsten Sellin supplies a brief but acute introduction. (Samuel G. Kling)

Herald-Tribune: ... Drawing upon an impressive mass of authentic source material, much of which will be new to the English-reading student, the authors built up a strong case in demonstrating that "these changes were not the result of humanitarian considerations, but of the economic developments which reveal the potential value of a mass of human material completely at the disposal of the administration.

The latter part of the book is devoted to a discussion of recent policy and programs, including excellent chapters of modern prison reforms and its limits, new trends in penal policy under Fascism, and penal policy and crime rate.

The first of the new American series of publications by the National Institute of Social Research (affiliated with Columbia University), this book sets a high standard in scholarship and good writing. "Punishment and Social Structure" is a real contribution to the literature of penology, which will be of advantage to all who are interested in the field of crime and punishment. (Jay Beck)

The Annals: There is no lack of books on the sociology of crime. This volume goes a different way. It tries to show that specific methods of punishment are dependent upon specific developments of the whole economic process. It is eager to prove that changes in the interplay of productive forces tend to introduce or reject certain penalties. Penalties, the authors assure us, are but parts and symptoms of the entire social or economic system. ...

I am very fond of the whole idea and of the way in which the authors have treated their subject. It is most instructive to view the evolution of our penal systems from the angle of economic developments. The theory of this book does not give the whole truth, in my opinion, since the most complicated processes lie at the bottom of our penal reforms and regressions. This book, however, contributes a new and neglected element to our knowledge, and will be read with considerable benefit. (Hans von Hentig, University of Colorado)

American Sociological Review: The basic idea of the book is sound: the variations in punishment must be explained not in terms of punitive theories, but in terms of changing social structures. ... One of the best chapters of the book is the one devoted to the study of new trends under Fascism; the increase, both in the severity and the length of imprisonment, is well demonstrated. (N.S. Timasheff, Harvard University)

Social Forces: "Punishment and Social Structure" is the product of two German emigré scholars working in the International Institute for Social Research, which transferred its activities from Frankfurt am Main to New York City in 1934 after its suppression by the German Government. . . . The authors do not contend that all penological theory has been a mere reflex of the system of production, but they do insist that penal reform movements motivated by such theory have made little headway if inconsistent with the basic system of productive labor. And this contention they substantiate with a wealth of historical material nowhere else available in English. (H.E. Jensen, Duke Univ.)

American Bar Association Journal: Much of the information it contains is available for the first time in English. In a historical-sociological analysis of penal methods the authors state that punishment, like crime itself, has social causation and has cultural inter-relationships, particularly with the labor market. . . . The chapter on new trends in penal policy under fascism is timely and especially well written. (James Hargan)

Washington University Law Quarterly: Most of what has been written on the subject of punishment has been concerned with penal theory: the philosophical justification of various theories of retribution, deterrence or reformation. A refreshingly new approach is found in this monograph, which might be described as a study of the history of punishment from the viewpoint of economic determinism. Its thesis is that both crime and punishment are affected mainly by economic developments, and that society at every stage of development has devised methods of punishment which correspond to the current system of production. This reviewer is not inclined to challenge that idea. If others are, they will have a difficult time to rebut the mass of evidence which Messrs. Rusche and Kirchheimer have here assembled. . . . It might be objected that the authors try too hard to make out a case; that their material is too narrowly focused upon one viewpoint. Even if this criticism is valid, it must be admitted that it is a viewpoint which eminently deserves presentation, and that it is here presented in a manner both scholarly and stimulating. (Henry Weihofen, University of Colorado)

Jail Association Journal: . . . George Rusche and Otto Kirchheimer have brought an unusually intelligent approach to this study. In dealing with the changes in punishment, the grounds for the choice or rejection of specific penal methods in specific historical periods are brought out realistically in relationship to the economic and social conditions of the time.

The authors have documented their book with an impressive mass of authentic source material, much of it new to American students. To enhance the readability of the book, the notes have been placed in a separate section preceding the index.

"Punishment and Social Structure" should be in every prison staff library and on the "must" reading list of every worker in this field.

Federal Probation: The chapter on new trends under Fascism is particularly interesting. . . . the book is likely to prove more thought provoking than are most of the historical and purely descriptive treatises on the subject. As Professor Sellin points out in his foreword, its chief merit lies in the demonstration of the close interrelationship between punishments and the cultural contact out of which they grow. A great deal of historical material, hitherto inaccessible, has been presented in a comprehensive and consistent fashion. The relevant use of European statistical data makes one conscious of the lack of similar information for research purposes in the United States. (C. Terence Pihlblad)

The Sociological Review: The principal aim of Dr. Rusche and Dr. Kirchheimer's book is to expand and further to support the thesis set forth six years ago by the firstmentioned author that the historical evolution of the various penal methods has been determined by economic factors more strongly than by any thing else. Consequently an endeavor is made to follow up some of the main stages of both the economic and penal histories of Europe with a view to finding out any causal nexus between them. Surely, such an undertaking would have been worthy of praise even if it had not been carried out with such depth of learning as has been displayed by the authors. Granted, their enthusiasm has led them here and there to exaggerate their point, the effect achieved, nevertheless, remains one of absorbing interest. (Herrmann Mannheim, London School of Economics.)

Harvard Law Review: ...to one who has spent the last ten years in prison administration and whose excursions into the field of social philosophy and abstract criminology are infrequent and groping, this work of two German scholars, published by the International Institute of Social Research, seems both new and good. As a matter of fact, there is much historical material in it that has been hitherto unavailable in English and the chapter on "New Trends in Penal Policy under Fascism", if nothing else gives the book fresh interest. It is one that contains grist for the largest sociological mill, but is of special interest to the penal administrator who once in a while stops to ask himself why men punish other men, why we throw our fellow humans into the iron cages we call prisons, why we punish in one way and not in another, why differently in different periods and geographical areas, why the galley in the 16th century and the chain-gang in the 20th, why the work-house in Elizabethan England and the idle-house in Depression-America. (Austin H. McCormick, Executive Director, The Osborne Association).

American Historical Review: ... This volume is devoted to a history of the methods of punishment and the concepts of criminal law from the Middle Ages to the days of the Nazis. Most of the facts here given relative to the evolution of criminal law, ideas of punishment, and prison administration are already well known, but the authors have rendered a very great service in relating the changes in these fields of thought and action to the social environment. They give us our first clear picture of how changing social and economic systems have fundamentally altered the ways of thinking and acting in relation to crime and criminals. In this way the book will be an invaluable supplement to existing literature on the history of crime and punishment. The lesson the authors draw for the future of criminal law and prison reform is clear and logical. The present stupidities and brutalities in dealing with criminals are tied up with the existing social and economic system, and they will not be abandoned so long as the system lasts; "The futility of severe punishment and cruel treatment may be proven a thousand times, but so long as society is unable to solve its social problems, repression, the easy way out, will always be accepted". Unfortunately there is more evidence substantiating this view than one would care to admit. (Harry Elmer Barnes)

THIS CLIPPING FROM
HACKENSACK N. J.
BERGEN-RECORD

JUN 27 1939

Simeon Stylites

By WILLIAM A. CALDWELL

Martin T. Manton stole the good name of the United States judiciary and sold it for a couple of million dollars, and for that he goes to jail for 2 years. Leo Bradford, a 37-year-old Negro who washes cars for a living, stole a bowling ball and sold it for \$2, and for that he goes to jail for 364 days. Here involved is a whole philosophy: that the lowly must be mercilessly repressed when they transgress, while the eminent and esteemed are extramurally punished so adequately by the consciousness of their fall from grace that a nice long stretch in the hoosegow is superfluous.

There is evidence that both phases of the theory are not standing up. The authors George Rusche and Dr. Otto Kirchheimer in the first volume (Columbia University Press) of their immense study "Punishment and Social Structure" have evidently proved for the first time that there is no relationship between the violence of punishment and the incidence of crime. Thus, in their opinion, when Bradford, who lived in Englewood, stole he stole because he had no money; and when Judge Perry sentenced him in First District Criminal Court he did not assure society that there would be no more stealing but only that there would be no more stealing by Leo Bradford for 364 days.

As for the other aspect of the tradition (that getting caught at it is punishment enough for the good), it is being disproved daily by the highest authorities on the subject. For the last year or two the accounts of the Whitney embezzlement, the Jimmy Hines judges' impeachment or resignation, the Manton thievery, the Lauer smuggling, and the borrowings of other jurists have been dotting the pages of this newspaper like a serial story. More than a score of tax collectors have looted the municipal tills in towns of this countryside. There seems to be no relation, either between the leniency shown nice people and the rate at which other nice people commit crimes.

Would It Do To Kill Them?

In the Rusche-Kirchheimer survey of punishment a great deal of emphasis is laid on the connection between social and economic conditions and the crime rate. By this analysis the authors propose that the comparative gentleness of punishment in the early Middle Ages was due to the scarcity of manpower, the cruelty of the Sixteenth Century was due to the excess of human beings over the industrial requirements, the decline in capital punishment and disabling torture in the colonial-expansion period was due to the need of personnel in the frontiers, and so forth.

However, since the common view is that penal policy regulates crime it is useful to look at the results of some careful statistical investigation.

In England between 1911 and 1928 there was a marked decrease in larceny, some decrease in embezzlement, and some increase in sex offenses and receiving stolen goods. On the whole there was a 9 per cent decrease in all indictable offenses. In this same period more fines were substituted by legislation for prison terms than before, probation was used extensively, and a shift from short to medium prison terms occurred. The English compiler of these tables concluded that there could be no connection between a lenient penal policy and the crime rate.

France had no such clear-cut trend. Of the crimes examined, embezzlement may be a fair sample. This offense increased from 1900 to 1922 despite a shift from suspended sentences and fines to medium and long terms. From 1922 to 1932 the penal policy was, in experiment, reversed, and became increasingly lenient; embezzlements continued to rise just as before and exactly at the same rate.

In Germany the figures on larceny, socially perhaps the most revealing of all crimes, disclose that from 1900 until the start of the war in 1914 it declined to an accompaniment of milder punishment. After the war (a period of terrible economic and social stress) the sentences were stepped up to greater and greater severity, but larcenies increased rapidly. When the market was stabilized, sentences became even more lenient, and larcenies then came the economic catastrophe which brought Hitler into power and a tremendous increase in all crimes. The authors say that the

ent and police... at their face value... and wholesale amnesties... (Germany granted 255,000 in 1936 alone) throw the whole machinery of inquiry out of gear.

Punishment Is Not Enough

The conclusion pointed is that severity of the penalty affects the crime rate but little and that social and economic factors affect crime and potential criminals more strongly than any other possible influences. The penal system of a society is not an isolated phenomenon. It is bound up unbreakably with the society's measure of security and living standards.

The futility of severe punishment may be proved a thousand times; a thousand times Leo Bradford may go to jail for a year, but as long as society is unable to solve its social problems repression, the easiest way out, will be accepted. Repression at least provides the illusion of security by covering the symptoms of social disease with a system of moral and legal judgments.

Thus, the people who stand in the way of orderly change, orderly progress, orderly readjustment of the economic system are the worst of all offenders. And it turns out that the people who have done so did it for a price. Martin Manton was one of those people. How many such crimes as Bradford's grew out of his bought-and-sold decisions on remote economic cases, we may never know. All we know is that, on any human basis, he has not paid society what he owes it on his own behalf and on behalf of his philosophy.

July 1940

Punishment and Social Structure. By GEORGE RUSCHE and OTTO KIRCHHEIMER, with a foreword by Prof. THORSTEN SELLIN. Published by the International Institute of Social Research, Columbia University Press, Morningside Heights, New York City. 1939. xiv and 268 pp.; 19 tables. (Price, \$3.00.)

ONE of the most important tasks of criminal policy consists in the study of the nature and of the efficacy of the penal repression which a given society, at a given stage of its development, employs in its fight against crime. This system of penal repression is not, however, a stable and fixed phenomenon, but on the contrary undergoes profound and continued changes, in the same way as the society which uses it. In the course of this development certain penal sanctions are suppressed; some of them fall into disuse and die out whether or not they are replaced by other types of sanctions, hitherto unknown. Sometimes these changes occur slowly and progressively, as has been, for instance, the case in England in the last fifty years; sometimes they are introduced abruptly, as, for instance, in Germany after the assumption of power by the Nazis; finally in the case of Soviet Russia it has happened that in the framework of one and the same regime the system of penal repression has been more than once completely modified.

The origin of the changes in the systems of penal repression are analysed by Rusche and Kirchheimer in the book now under review. There is no doubt that this investigation touches not only criminal policy and criminal sociology but also a certain number of other sciences, such as sociology, social psychology, political and moral science.

Rusche and Kirchheimer take as the basis of their investigations the following periods of historical development: the Later Middle Ages, Mercantilism, the Age of Enlightenment, the Industrial Revolution, and finally the post-war world, especially fascism. They attempt to establish what type of penal repression is peculiar to each of these phases and what was the cause of the changes.

To have undertaken this task is a matter for congratulation, particularly as hitherto very little has been accomplished in this sphere, and the authors have made a valuable contribution to this branch of Criminal Science. Furthermore, as Prof. Sellin justly points out in his foreword, even those who cannot accept the authors' point of view will find in this book a stimulant of thought, which all too few publications in this field of research provide.

We think, however, that there are a certain number of gaps in the book. In our opinion the following points should be particularly stressed:

(a) It is not clear why the authors begin their analysis of the relationship between social structure and methods of punishment with the period of the Later Middle Ages. In a work of this kind the omission of the earliest stages of social development and of the ancient world seems to us entirely unjustifiable.¹

(b) The author's analysis of the period of the Middle Ages and of the period of Enlightenment seems to be rather superficial. This defect becomes even more striking when attention devoted by the authors to such a well-known problem as the history of the introduction and suppression of transportation is considered.

(c) The authors have somewhat neglected the study of the relationship between the social structure and the methods of punishment in the after-war phase and in more recent times. First of all the authors wrongly, it seems to us, put the Nazi system of penal repression on the same footing as the Italian penal system. Undoubtedly these two systems have much in common, but they also differ in a considerable number of points, and it seems to us that the problem is too much simplified by considering them as though they were identical. Secondly the authors restrict themselves to a description of certain features only of this joint system of penal repression, which they call fascist. Moreover their explanation of the relationship of these systems with the social structure of Germany and Italy does not go deep enough. Finally, in their review of the systems of penal repression in the after-war period, the authors should not have omitted the study of the changes in the Soviet penal system and of the

systems of some other countries like England and Belgium, where important penal reforms have been carried through. Why, for instance, have no penal reforms been made in democratic England than in democratic France in recent times?

(d) It is, however, not only this arbitrary limitation of the investigations to certain stages of social development which arouses criticism, it is also the method of these investigations. The authors should, use their own words, examine: '... causal relationship between method of punishment and the organisation of society', or, as they put it another part of their work: '... penal system of any given society as an 'integral part of the whole social system'.

By the expressions 'social structure' or 'the whole social system' one must understand, in our opinion, a complex of multiple factors: geographical, economical, social, political, cultural, psychological and moral nature, which together determine the structure of a given social environment. One might have expected that the authors would study the evolution of penal repression in connexion with a social structure defined. It may be that not all the various factors which contribute to a given social structure determine to the same extent the system of penal repression, inherent in this social structure. It seems to us, however, that the formulation of adequate conclusions as to the respective influence of the different factors cannot take place, except after a profound and impartial study of all of them.

The authors, however, have not followed this method of investigation but have simplified the whole problem in the following manner. First of all they have eliminated *a priori* or very superficially analysed, the interaction of all the factors which are not of an economic nature. Secondly they have reduced the economic factor to one of its multiple aspects, notably to the situation in the labour market (the extent of demand and the possibilities of the supply of labour) peculiar to a given phase of social development. In consequence, the authors explain practically all the changes which have taken place in the field of penal repression since the Middle Ages by the exclusive or decisive action of the economic factor, as they conceive it. Even Marx and Engels, formulating their famous theory of economic interpretation of history, understood by economic factor something much wider and much more complicated; such authorities on historical materialism as Labriola and Plekhanov have adopted an even more eclectic attitude. Rusche and Kirchheimer have gone too far and their radical attitude has had a negative influence on their investigations.

(e) Rusche and Kirchheimer have not established a causal relationship between punishment and social structure, but have only proved that certain phases of social development determine the position in the labour market and has had an influence on the introduction and evolution of some type of penal sanctions. For example, the fact that at a given moment there has been a shortage of labour in the colonies has undoubtedly had a direct influence on the introduction of transportation. It is also clear that the same fact must be taken into account when examining the origin of the introduction of Houses of Correction in Holland at the end of the seventeenth century.

It is undoubtedly very much to the credit of Rusche that he has established the genetic rôle of this factor. He had already done so in 1933 in his article published in the *Zeitschrift für Sozialforschung*, Vol. 3, 1933, p. 63 ff., under the title 'Arbeitsmarkt und Strafvollzug'. This book which has just appeared, as a matter of fact, throws no new light on this subject.

It seems to us that in the field of research on the origins of the evolution of penal systems and on their relationship to other social factors it is still too early to formulate any general theory; one feels that in this sphere there is perhaps more need, than in many other spheres, of contemporary criminology and sociology, for further research along monographic lines.

LEON RADZINOWICZ

Punishment and Social Structure. By G. RUSCHE and O. KIRCHHEIMER. With a Foreword by Thorsten Sellin. (New York: Columbia University Press. 1939. Pp. xiv + 268. \$3.00.)

THIS book is the first of a new American series to be produced by the International Institute of Social Research, a body of German scholars in the social sciences now established in New York. Their previous publications in German have led one to expect from them work that is not only of a high quality but also of an original and adventurous character. The present volume lives up to the standard set by its predecessors. It contains a quantity of material gathered from a wide range of sources which bear testimony to the erudition of the authors. The problem studied is important and extremely difficult to handle, and it is treated from an unfamiliar angle. The authors have been bold, and boldness carries a penalty, in the form of criticism of methods and results, criticism which is quite compatible with gratitude for what has been achieved.

The theme of the book is expressed in the Introduction. "The transformation in penal systems cannot be explained only from changing needs of the war against crime, although this struggle does play a part. Every system of production tends to discover punishments which correspond to its productive relationships." Actually the correlation dwelt on in the book is that of the penal system with the state of the labour market rather than with the system of production. It is pointed out that, when there is a surplus of labour, life is cheap and there is no incentive to use the penal system either for the direct profitable employment or for the training of labour. Punishment tends to be savage and repressive. When labour is scarce it is precious, and the penal system sets it to work in prisons or galleys or colonial settlements or trains it to higher efficiency in Houses of Correction. The periods of surplus population are the later Middle Ages and the early nineteenth century. The period of shortage is the age of Mercantilism. The arguments are well supported by evidence, provided one allows sufficient weight to the fact that, in periods of surplus labour and consequent unemployment, crime tends to increase and thus to provoke repressive penal measures.

But the authors try to press their point too far and to make everything fit in too neatly. They are certainly right to bring Poor Law policy into the picture, but they are not entirely successful in disentangling the complicated issues that result. And when they come to the nineteenth century, with its stream of

between penal methods and economic systems breaks down. In spite of an interesting chapter on penal policy under Fascism, the latter part of the book is unsatisfactory. For instance, solitary confinement is represented as an attempt to make imprisonment repressive in a period of surplus population and a depressed standard of living. It was followed by greater leniency in the age of "relative prosperity." The English historian who realises that the former is typical of the mid-Victorian Golden Age and the latter of the Great Depression and the post-war slump has some difficulty in accepting the argument.

One chapter is devoted to establishing the thesis that penal methods have no visible effect on crime rates. The thesis is probably true, but the figures are rather violently tortured to give it extra support and the task of relating the comments to the tables is made more difficult by errors of printing. In Table 27 the figures of total imprisonments seem to have been put as a percentage of prosecutions instead of convictions, and in Table 29 a figure that should, apparently, be 8 has twice been printed as 18. Also, the authors assume all through that, if punishment had any effect on crime rates, that effect would be exactly contemporary with the system of punishment. It is worth considering whether one might not expect a lag, in which case some of their figures would tell against their argument instead of supporting it.

London School of Economics.

T. H. MARSHALL

CLIPPING NO. 2 FROM

New York Sun

Issued 7/28/39

SOURCE:
story

"Handout" No. _____ Bk _____

When Dictators Punish.

An analysis of recent German penal practice by Drs. GEORG RUSCHE and OTTO KIRCHHEIMER—published under the patronage of the International Institute of Social Research, affiliated with Columbia University—makes an observation that should be of especial interest to those who yearn for security under state paternalism. It is that increasing severity of punishment of all kinds under dictators comes about not so much through the cruelty of the overlords as through certain inevitable consequences of dictatorship itself. The new Russian "purge" of high military commanders is a case in point. As Professor THORSTEN SELLIN of the University of Pennsylvania says in a foreword:

The sanguinary punishments and tortures of old are no evidence of blood-thirstiness or sadism on the part of those who used them. They rather testify to the fact that those who designed them could think of no better, that is more efficient, way of securing protection for the social values they treasured.

In Germany, the authors of this study say, political events have merely accentuated a process of change in criminal policy "conditioned by economic crisis," particularly in greater use of the death penalty and penal servitude and in the increasing proportion of long-term imprisonment. Re-introduction into the criminal law of extensive property qualifications is said to be tied up less with "Aryan legal thought" than with transition from a system of competition to one of "monopoly capitalism." Thus protection of the property of the individual capitalist must yield before the pressure of monopolistic groups in control of the country. Even labor contracts are conceived of as denoting a special kind of allegiance, so that breach of contract becomes a felony. Courts are subject to strong pressure to intensify punishment, the proportion of acquittals steadily declines, prisons become over-populated, political offenses multiply, and even the mass of minor offenses greatly expands.

All this is of course but another way of saying that dictators must dictate; that individual initiative must be made to serve the ruling power or else must be exterminated. Part of the price a people must pay when it gives up liberty in search of promised security is the lash of the taskmaster.

THIS CLIPPING FROM
CAMDEN, N. J.
PUBLISHERS WEEKLY

MAY 13 1939

Rusche, Georg and Kirchheimer, Otto

Punishment and social structure. 282p. (bibl. notes) O (Internat'l Inst. of Social Research pub'n) c. N. Y., Columbia Univ. Press 3.00

This study of penal treatment shows that "the chief factor of punishments is inextricably associated with and dependent on the cultural values of the state that employs them."

CLIPPING NO. _____ FROM

Brooklyn Eagle

Issued 5/14/39

SOURCE:

"Handout" No. _____ Bk XXX

Listing () Notice () Review () Story ()

707

"Punishment and Social Structure" by George Rusche and

Otto Kirchheimer (\$3.00), dealing with the close relationship between forms of punishment and the social and economic structure and needs of society in any particular period.

CLIPPING NO. 12 FROM

GREENSBORO DAILY NEWS

Issued May 28, 1939

SOURCE:

"Handout" No. _____ Bk _____

Listing () Notice () Review () Story ()

"Punishment and Social Structure" is a title of an exhaustive study by George Rusche and Otto Kirchheimer, released recently by the Columbia University Press. It goes back to the middle ages in the study of the theory and practice of penal methods against the background of changing periods and conditions. The book will have more than passing interest to students who are attempting to work out an answer to the problem of crime and prison in this generation.

CLIPPING NO. 5 FROM
American Bar Assn Journal
Issued September 1939
SOURCE:
"Handout" No. BkXXXX

Punishment and Social Structure, by George Rusche and Otto Kirchheimer. 1939. New York: Columbia University Press. Pp. 268. This book is a publication of the International Institute of Social Research, which was established in Frankfurt, Germany, in 1923 and affiliated with Columbia University after suppression by the Nazis in 1933. Much

of the information it contains is available for the first time in English.

In a historical-sociological analysis of penal methods the authors state that punishment, like crime itself, has social causation and has cultural inter-relationships, particularly with the labor market. Until the fifteenth century the death penalty, for instance, was rare. The late Middle Ages, however, found no use for the labor power of the convict and resorted to corporal and capital punishment. In the mercantile era, beginning with the sixteenth century, imprisonment was favored because there was demand for the products of the houses of correction, such as the dyewood rasped in Amsterdam. Modern industrial society has reduced the economic role of the convict to a minimum; fiscal motives have shaped the typical punishment of today, the fine.

Reasons are advanced for the choice and rejection of specific penal methods in specific historical periods. Thus England began transportation when her labor market was over supplied while labor power was needed in the colonies, and continued the practice until its economic motive disappeared. Sentences to the galleys are similarly explained. Despite its industrial reserve army, humanitarianism prevented nineteenth century Europe from returning to corporal punishment; accordingly solitary confinement was instituted in an effort to intimidate even starving men from crime. The chapter on new trends in penal policy under fascism is timely and especially well written.

In conclusion the authors maintain that the rate of crime is unaffected by penal methods, as it is economic in origin. A more comprehensive treatment of the subject would be desirable, particularly in regard to the origin and fate of American experiments in this field; nevertheless the reader will find this a stimulating book.

JAMES HARGAN

New York City.

MARCH, 1940

21

Alpha Kappa Delta QUARTERLY
BOOKS

Punishment and Social Structure. By GEORGE RUSCHE and OTTO KIRCHHEIMER, Columbia University Press. A Publication of the International Institute of Social Research. 268 pp., 1939, \$3.00.

The close relationship between forms of punishment and the social and economic structure and needs of society in any particular period is examined in detail for the first time in a Columbia University Press publication, *Punishment and Social Structure*, by George Rusche and Otto Kirchheimer.

Beginning with the later Middle Ages, the book studies the theory and practice of penal methods against the background of changing periods and conditions; mercantilism, the age of enlightenment, the industrial revolution, and, finally, the post-ward world and new trends in penal policy under Fascism. The different forms of punishment—penance, fines, the galley, transportation, prison labor, etc.—are examined in relation to the various periods so as to show the causes and effects of the different methods of punishment.

The relationship between crime and the social environment has been the subject of frequent investigations, but methods of punishment and their development have rarely been studied from a historical approach. This volume uses this approach and makes available a considerable amount of historical information not hitherto presented in English.

Because the book is written from the broad viewpoint of punishment as a part of the whole social structure of a given period, its value and interest is not confined to penologists, but extends to sociologists and all concerned with social phenomena in their larger aspects.

Contents: Foreword by Thorsten Sellin; Preface; 1. Introduction; 2. Social Conditions and Penal Administration in the Later Middle Ages; 3. Mercantilism and the Rise of Imprisonment; 4. Changes in the Form of Punishment; 5. Developments in Criminal Theory and Law during the Age of Enlightenment; 6. Social and Penal Consequences of the Industrial Revolution; 7. The Abolition of Transportation; 8. The Failure of Solitary Confinement; 9. Modern Prison Reform and Its Limits; 10. The Fine in Recent Penal Practice; 11. New Trends in Penal Policy under Fascism; 12. Penal Policy and Crime Rate; 13. Conclusion; Notes; Index.

**Bureau International
de Documentation**
33, Rue de l'Amiral Mouchez PARIS 13^e

CHÈQUES POSTAUX
PARIS C/210784

TELEPHONE 04 27
51 11 11

NEUE VOLKSZEITUNG
10 JUN 1939

Georg Rusche und Otto Kirchheimer: Punishment and Social Structure. Vorreden von Thorsten Sellin und Max Horkheimer. Publications of the International Institute of Social Research. New York 1939. Columbia University Press. 268 Seiten.

Das International Institute of Social Research, das aus dem

Frankfurter Institut für Sozialforschung hervorgegangen ist und jetzt der Columbia-Universität angeschlossen ist, hat mit diesem Buch eine Serie amerikanischer Veröffentlichungen eingeleitet. Der Zusammenhang zwischen Strafsystem und Gesellschaftsstruktur ist ein wichtiges und interessantes Thema. Die beiden Verfasser — von Rusche stammt der erste Entwurf, von Kirchheimer die endgültige Gestalt des Buches — bieten einen fesselnden Abriss der Strafsysteme vom späten Mittelalter bis auf die Gegenwart, besonders im Zusammenhang mit der Entwicklung des Kapitalismus. Besonders eingehend wird das Problem der Gefängnisarbeit behandelt. Die letzten Abschnitte befassen sich mit der modernen Gefängnisreform und ihren Grenzen und mit dem Rückschlag unter dem Faschismus. Auch dem Nichtfachmann wird dieses Buch viel Anregung bringen. A. L.

CLIPPING NO. _____ FROM
Commonwealth Review
Issued November 1940
SOURCE:
"Handout" No. _____ Bk. XXX

Punishment and Social Structure. By Georg Rusche and Otto Kirchheimer. New York: Columbia University Press, 1939. Pp. xiv, 268, tables. \$3.00.

In spite of Thorsten Sellin's charitable "Foreword," this publication adds nothing of great value to the existing penological literature. If there is any truth to the adage that "too many cooks spoil the broth," this volume could be offered as an exhibit. On Dr. Rusche's original work have been added Dr. Kirchheimer's recent sundry observations. How much the American translator Finkelstein has altered the text is impossible to discern, unless a comparison with the original in German is made; to what extent the policies of the International Institute of Social Research under Max Horkheimer have bent the data

The best part of the volume is found in the "notes" extending from pages 211 to 254. Some of the references and interpretations are valuable, but most of these refer to the French, German, and English penological writings. In the main body of the discussion non-European and early European techniques in dealing with criminal units in society are totally ignored. Equally negligent are the authors in not discussing the more enlightened and somewhat revolutionary treatment of the antisocial units under the U.S.S.R. Chapter XI is devoted to the discussion of "New Trends in Penal Policy under Fascism," but there is not even a mention of the new trends in penal policy "under Communism."

Since this volume is "the first of the New American Series, which will be continued," it is hoped that its successors will be more creditable to the name of International Institute of Social Research; otherwise the Institute transplanted from Germany to America will become a high-sounding nothing.

SAMUEL HAIG JAMESON
Professor of Sociology
University of Oregon

CLIPPING NO. 6 FROM

Current Legal Thought

Issued January 1940

SOURCE:

"Handout" No. _____ Bk. ~~XXXX~~

PUNISHMENT AND SOCIAL STRUCTURE. Georg Rusche and Otto Kirchheimer.
Columbia University Press. New York, N. Y. 1939. 268 pp. \$3.00.

The International Institute of Social Research was established in Frankfurt am Main in 1923 as an affiliate of the University. In the spring of 1933 the Institute was closed by the German government. In 1934 the Institute transferred its main activities to New York City, where it is affiliated with Columbia University. The present book is the first of a new American series, and deals with the close relationship between forms of punishment and the social and economic structure. The authors start their study with the penal structure of the later Middle Ages and trace the growth and development to the present. The Foreword is written by Thorsten Sellin, who feels that the work is valuable not only as a "stimulant of thought" but also because a considerable amount of historical information is presented which was not hitherto available in English.

CLIPPING NO. 2 FROM
American Historical Rev.

Issued April 1940

SOURCE:

"Handout" No. _____ Bk. XX

Punishment and Social Structure. By GEORG RUSCHE and OTTO KIRCHHEIMER. With a Foreword by Thorsten Sellin. (New York, Columbia University Press, 1939, pp. xiv, 268, \$3.00.) This volume is the first of the American series of publications issued by the International Institute of Social Research, established in Frankfurt-am-Main in 1923 as an affiliate of the university there, closed by the Nazis in 1933, and transferred to Columbia University in 1934. It is devoted to a history of the methods of punishment and the concepts of criminal law from the Middle Ages to the days of the Nazis. Most of the facts here given relative to the evolution of criminal law, ideas of punishment, and prison administration are already well known, but the authors have rendered a very great service in relating the changes in these fields of thought and action to the social environment. They give us our first clear picture of how changing social and economic systems have fundamentally altered the ways of thinking and acting in relation to crime and criminals. In this way the book will be an invaluable supplement to existing literature on the history of crime and punishment. The lesson the authors draw for the future of criminal law and prison reform is clear and logical. The present stupidities and brutalities in dealing with criminals are tied up with the existing social and economic system, and they will not be abandoned so long as the system lasts: "The futility of severe punishment and cruel treatment may be proven a thousand times, but so long as society is unable to solve its social problems, repression, the easy way out, will always be accepted." Unfortunately there is more evidence substantiating this view than one would care to admit.

HARRY ELMER BARNES.

American Bar Association
Journal, Vol. XXV, No. 9
September 1939

PUNISHMENT AND SOCIAL STRUCTURE, by George Rusche and Otto Kirchheimer. 1939.
New York: Columbia University Press. Pp. 266

This book is a publication of the International Institute of Social Research, which was established in Frankfurt, Germany, in 1928 and affiliated with Columbia University after suppression by the Nazis in 1933. Much of the information it contains is available for the first time in English.

In a historical-sociological analysis of penal methods the authors state that punishment, like crime itself, has social causation and has cultural inter-relationships, particularly with the labor market. Until the fifteenth century the death penalty, for instance, was rare. The late Middle Ages, however, found no use for the labor power of the convict and resorted to corporal and capital punishment. In the mercantile era, beginning with the sixteenth century, imprisonment was favored because there was demand for the products of the houses of correction, such as the dyewood rasped in Amsterdam. Modern industrial society has reduced the economic role of the convict to a minimum; fiscal motives have shaped the typical punishment of today, the fine.

Reasons are advanced for the choice and rejection of specific penal methods in specific historical periods. Thus England began transportation when her labor market was over supplied while labor power was needed in the colonies, and continued the practice until its economic motive disappeared. Sentences to the galleys are similarly explained. Despite its industrial ~~army~~ reserve army, humanitarianism prevented nineteenth century Europe from returning to corporal punishment; accordingly solitary confinement was instituted in an effort to intimidate even starving men from crime. The chapter on new trends in penal policy under fascism is timely and especially well written.

In conclusion the authors maintain that the rate of crime is unaffected by penal methods, as it is economic in origin. A more comprehensive treatment of the subject would be desirable, particularly in regard to the origin and fate of American experiments in this field; nevertheless the reader will find this a stimulating book.

JAMES HARCAN

Did You **KNOW?**

By Jay Beck

*Editor's Note: Readers are cordially invited to send contributions to this department. Any interesting or curious fact concerning jails and prisons will be accepted and printed with suitable acknowledgment.**

The earliest institution created for the specific purpose of ridding towns of vagabonds and beggars was probably the Bridewell in London (1555).

The word "villain" was originally applied to a member of the lower social classes. Since the majority of criminals were from the lower classes, this word came to take on its present meaning.

Until the 15th Century, the death penalty and serious mutilation were used only in extreme cases to supplement the complicated and carefully differentiated systems of fines, but now they became the most common measures.

We are told that in England 72,000 major and minor thieves were hanged during the reign of Henry VIII, and that under Elizabeth vagabonds were strung up in rows, as many as three and four hundred at a time. The population of England was then only about three million. This situation prevailed throughout Europe during this period.

An English statute of 1547 provided that all vagrants who refused to work or who ran away could be adjudged slaves of their masters for two years; second offenders could be sentenced to slavery for life, and third offenders to death.

The German decree of 1687, which founded the Spandau House of Correction, frankly announced that the object of the institution was to promote the production of textiles and to remedy the lack of spinning wheels in the country.

The naval wars among the Mediterranean powers toward the end of the 15th Century created an urgent need for oarsmen. The number needed for a single ship was 350 for one of the big galleys, and 180 for a smaller boat. Often, pressure was brought on the courts for enough prisoners to maintain the crews at full strength.

*These items were selected from "Punishment and Social Structure," by Georg Rusche and Otto Kirchheimer, Columbia University Press.

Sometimes, the administration went to the length of organizing man hunts for oarsmen. Thus, the intendent of Orange writes that he was particularly eager to catch Huguenots who had behaved insolently during a religious procession.

A French decree of 1664 sets the minimum galley sentence at ten years. The argument was that the men must first get their sea legs, and then it would be foolish to set them free just when they had begun to be useful to the state.

Galley servitude declined in the eighteenth century for various reasons. In France, the great technical improvements in the art of sailing led to the substitution of forced labor in the *bagno*.

Seventeenth-century opinion generally held that the galleys were more humane than previous criminal practice, since such punishment served the interests of the convict as well as the state. But that the convicts did not hold that opinion is revealed by the frequency of self-mutilations inflicted for the purpose of avoiding the galleys. The practice became so extensive that a French decree of 1677 established the death penalty for it.

England became the first country to introduce systematic transportation of criminals, a method of punishment used to remedy the shortage of labor in her colonial expansion.

Governor Dole of Virginia wrote to the King in 1611, asking that prisoners under sentence of death be sent to the colony for three years. This he thought would be a good way to populate the new country. Prizes were even offered in order to encourage the importation of convicts.

Once transportation of convicts ceased to pay (because of Negro slavery), the colonists in America realized "that it was a shameful business unworthy of them."

The number of convicts shipped to North America was very considerable. The Old Bailey (London) alone supplied at least 10,000 between 1717 and 1775.

Eleven years after transportation of convicts to North America was ended by the American Revolution, 750 convicts were transported to Botany Bay in Australia. Since contractors were paid according to the number of prisoners embarked, not for the number landed, the mortality en route was very high.

In Van Diemen's Land, Australia, the percentage of convicts was 46.8 in 1824, 41.6 in 1830, and 39.6 in 1838.

ing about a Job; and The Give and Take of Living. An appended book list covers topics of interest to girls, from cosmetics to careers.

Adolescents, bewildered by the changing world as well as by their own development, will find the book an illuminating guide. Its sane consideration of the things all girls think of commends it to everyone who wants to lend a hand in this difficult business of growing up.

Philadelphia, Pa. RUTH L. FRANKEL

Are Criminals So Different?

CRIME AND THE MAN, by Earnest Albert Hooton, Harvard University Press, 403 pp. Price \$3.75 postpaid of *Survey Midmonthly*.

IN his non-technical summary of the results of the Harvard Survey of the Relation of Crime to Race and Nationality in the United States, Professor Hooton tells us that his staff examined 10,953 prison and reformatory inmates; 2004 county jail prisoners; 743 criminal insane; 1227 insane civilians; and 1976 sane civilians. There were 107 anthropological facts and thirteen sociological items available for the study of each individual. Twelve years were occupied in this investigation in an attempt to show that there is a relationship between social behavior and physical characteristics.

Criminals were compared with non-criminals of the same ethnic origin; and criminals convicted of one offense were compared with criminals of the same ethnic group who had been convicted of different offenses. Whereupon, Professor Hooton found that criminals have thicker head hair than civilians, show more extremes of straight and curly hair; less gray hair, more spotted whites of eyes, higher foreheads and deeper nasal depressions, more prognathism, more pointed chins, more prominent cheekbones, less highly evolved ears, and more facial asymmetry. Further, each of the offense groups shows its craniometric and physiognomic differentiae from the total.

Professor Hooton began his research, he says, "partly through idle scientific curiosity, partly through dissatisfaction with the futile and almost childish attempts of Lombroso to establish a tenable hypothesis by essentially unscientific methods, even more largely from disgust with the sanctimonious statistical deviousness of Goring, who succeeded in obfuscating the entire subject of the relation of organism to behavior and in misleading a whole generation of simple criminologists." Because of the adverse criticism which has been directed against previous anthropological studies the author has prepared himself for a "raucous reception" by sociologists, penologists, and sentimental humanitarians. However, while he may have employed more defensible statistical procedures than his predecessors in this field, this reviewer cannot so readily accept some of his assumptions or

the validity of his conclusions. For instance, his assumption that a prisoner is a criminal of a particular type merely because he is currently serving a sentence for a particular offense. Apparently no investigation was made of the previous records which might well have put these offenders into other "criminal type" groups. Professor Hooton's conclusion that heredity is the main factor in determining the extent and kind of crime must have been arrived at from material not included in his book. Certainly the establishment of an association between particular races and certain types of crime might much more logically indicate the tremendous influence of cultural interaction and conflict. Of especial significance, environmentally, is the material on Negroes which is divided into two groups—the full blooded Negro and the negroid. While anthropometrically and morphologically distinct, they are not sociologically well differentiated and there is almost no difference in the distribution of kinds of criminal offenses between negroids and Negroes.

Readers of "Crime and the Man" will enjoy Professor Hooton's clever presentation of an uninteresting subject and especially his entertaining, illustrative drawings.

JAY BECK

Director, Social Investigation Unit,
Department of Correction,
New York City

Time and Mores

PUNISHMENT AND SOCIAL STRUCTURE, by Georg Rusche and Otto Kirchheimer, Columbia University Press, 268 pp. Price \$3 postpaid of *Survey Midmonthly*.

SOBER, sound and splendidly documented, "Punishment and Social Structure" may well upset traditional penal concepts just as Beard's classic "Economic Interpretation of the Constitution" helped explode some hoary myths about the Founding Fathers.

Popular belief to the contrary, point out the learned authors, the punishments current in earlier days were neither inspired by sadism nor by moral depravity. With a wealth of evidence to back them up, Drs. Rusche and Kirchheimer argue plausibly that the forms of punishment vary with time and place and are profoundly influenced by economic considerations. They point out, for instance, that the substitution of galley labor for the death penalty was not due to humane motives but to the necessities of trade and commerce. In an age when able bodied oarsmen were badly needed sentence to the galleys was prompted by the quest for profits.

So with other forms of punishment generally attributed to more pious motives. To erect a vast and impressive colonial empire, the English exported criminals to remote colonies and military settlements. Indeed such was the demand for workers that a new crime soon made

its appearance—kidnapping. Seizing children of the poorer classes and selling them off into slavery, kidnappers in the seventeenth century were soon doing a thriving business.

Even the failure of the Pennsylvania system of strict solitary confinement is attributed to man's lust for profits. Under such a system it was impossible to maintain a maximum of industrial efficiency in the prisons. The success of the Auburn system—which provided for solitary confinement at night and collective labor in the work shops during the day—is traced to the fact that it permitted the greatest possible exploitation.

Altogether, Drs. Rusche and Kirchheimer probe deeply and diligently into the problem of motivation, often coming up with facts that should give conservative penologists pause. Thorsten Sellin supplies a brief but acute introduction.

Baltimore, Md. SAMUEL G. KLING

The Changing Pattern

HOW TO PROMOTE COMMUNITY AND INDUSTRIAL DEVELOPMENT, by Frederick H. McDonald, Harper, 260 pp. Price \$3 postpaid of *Survey Midmonthly*.

THAT this book comes out of the South is a fact important in itself. Rapid industrial expansion, new industrial opportunities, the grading up of whole populations from low level subsistence agriculture to higher though more unstable industrial living standards, are a characteristic of the New South. Nowhere else in the nation is there comparable development.

Mr. McDonald, a civil engineer of Atlanta, Ga., makes an important distinction between community planning and community development. The former is a long-range activity for moulding communities into improved appearance and convenience. It is a civic activity and a primary function of local government. The return on community planning is a deferred one. Its costs begin immediately and continue. Its results are effected throughout the community and affect its facilities far into the future.

Community development, on the other hand, has to do with added commerce and population. It is a business activity with relatively quick business returns. It is a primary privilege of private enterprise. Development builds communities where planning moulds them.

Perhaps the keynote of Mr. McDonald's book is found in this paragraph: "The first mistake is the belief that mere moving can better an enterprise or the community to which it moves. The other error is where moves that are sound and necessary are opposed by political, business or labor influences in the belief that such moves can occur only at the expense of their local areas."

The book as a whole is a rational analysis of the problems involved in busi-

PUNISHMENT AND SOCIAL STRUCTURE is the product of two German emigré scholars working in the International Institute of Social Research, which transferred its activities from Frankfurt am Main to New York City in 1934 after its suppression by the German Government. The work was begun by Rusche in Germany in 1931, and completed in the United States by Kirchheimer. It is an historical study in the sociology of punishment. The authors' thesis is that the dominant factor in determining the penal methods of any epoch is the basic economic needs of a commodity-producing society. Enslavement as a form of punishment was dependent upon a slave economy, but under feudalism this form of punishment was inapplicable, and, as no other form of using the labor power of the convict was discovered, a return to older methods of capital and corporal punishment was necessary. With the rise of mercantilism a new demand for goods was created, and the labor of the convict was now made available in a new type of penal institution, the house of correction. Galley slavery was a temporary method dependent upon a form of water transportation, and penal transportation likewise marked a passing stage of colonization. Modern technological society, however, demands a system of free labor, and has reduced the economic role of convict labor to a minimum. The authors do not contend that all penological theory has been a mere reflex of the system of production, but they do insist that penal reform movements motivated by such theory have made little headway if inconsistent with the basic system of productive labor. And this contention they substantiate with a wealth of historical material nowhere else available in English.