REVIEWS AND NOTICES

Justice and Administrative Law: A Study of the British Constitution. By WILLIAM A. ROBSON. Second edition. London: Stevens & Sons Limited. Pp. xxxii, 554. (25s. net)

The first edition of this book (published in 1928) was, so the author says, the first treatise on administrative adjudication to appear in England. Professor F. R. Scott gives it credit for formulating in England the new approach to administrative law.[1] No doubt it collaborated with the somewhat later writings of other men in procuring acceptance for administrative law as a recognized branch of English Law, at least for exegetical purposes.

One defect of the second edition is that it follows too closely the lines set by the first. The first edition was the work of an early explorer. Since then the field has been developing; the development has produced a vast amount of new material and, let it not be forgotten, it has thrown new light on material which existed prior to 1928. The scene has come into clearer focus. *Arlidge's* case,[2] which then stood out as a stark silhouette, has been discussed, applied and adapted so often that it no longer stands in splendid isolation; it must be regarded as part of a whole range of authorities. The other peaks may be less spectacular, but it is essential to consider the entire range.

Similarly, cognizance should have been taken of the existence of now discernible ranges centred around *Rex* v. *Electricity Commissioners*[3] and *Liversidge* v. *Anderson*,[4] respectively. Neither case is included in the table of cases.

What is needed in this field is not a new edition of the trail-blazer, which spoke from the preliminary and incomplete surveys of 1928, but a fresh start which reviews the past and guides the future, from the viewpoint of 1947. In the last twenty-five years this field has grown so rapidly that to keep abreast of the developments a book needs a more drastic recasting than this one has received.

A treatise on administrative law should not be a mere exposition of rules of law. It cannot restrict itself to the technicalities of mandamus, prohibition and certiorari, examples of the application of the ultra vires doctrine to delegated legislation, the exact scope of disqualification on the ground of bias and the precise extent of judicial immunity. There must be added a discussion of the administrative process and, if the author can assist in the evolving of basic or minimum standards of procedure, so much the better. But the decisions of the courts provide many of the metes and bounds of the field of administrative activity and, unless the text includes a usable presentation of the topic of judicial control, it has undertaken only half of its task. The rules of judicial control may be technical, arbitrary and perhaps senseless and unjust, but we do want to know what they are. Although what the administrator may do and will do when he is free to do what he likes is interesting and important, we are also in the most urgent need of guidance on those involved principles by which the courts will restrict his power to do what he likes. Neither a blissful satisfaction nor

[1] (1948), 26 Can. Bar Rev. 269.
[2] [1915] A.C. 120.
[3] [1924] 1 K.B. 171.
[4] [1942] A.C. 206.

a bitter dissatisfaction with the existing rules of judicial control can replace, either for practitioners, courts or administrative bodies, a knowledge of what those rules are. To judicial review, the book simply does not give the attention it requires.

The attempt the author makes to penetrate to the fundamentals of psychology, philosophy and political theory involved in the judicial process and in the administrative process is commendable, although many of the results are not convincing. There is too much threshing for the amount of wheat produced and some of the grain appears to be hardly worth the effort. Obvious concepts are illustrated by a wealth of comment, which becomes tedious and does not completely escape from the charge of being rudimentary, specious and even ill-chosen. One passage will illustrate (at page 65):

> "The great majority of public officials may, and often indeed must, delegate at least part of their work to others, even though the responsibility for it cannot be shifted; but one of the conditions which applies to formal judicial proceedings is the rule that the judge shall himself personally hear and determine the matter to be decided. A judge who absented himself habitually from court and installed a friend as a permanent locum tenens or who handed over part of the trial to a substitute would not be permitted to remain on the bench."

The last sentence is transparently true, but is it worth mention as an illustration of the principle contained in the second half of the preceding sentence and is it even good sense to offer it as a contrast with the principle contained in the earlier part of the first sentence? Again and again there are laborious explanations which produce passages that are too often commonplace and sometimes gauche. We appreciate elucidation but too much explanation of fundamentals becomes tiresome.

In the 60 pages of Chapter 6 — The Committee on Ministers' Powers — Dr. Robson presents in detail his dissatisfaction with a large part of the work of the Committee and his doubts as to the qualifications and ability of some of its members. Such committees come and go and one often wonders whether the theories they espouse or even those they reject are always so epoch-making as to warrant so much space in a book published so long after. Participants in public controversies should ever be wary of assuming too readily that the subsequent importance of such controversies is to be measured by the intensity of their own contemporary interest in them. The author intrudes his own personal feelings too much into this chapter. Can he not realize that by 1947 the most enduring results of the Committee's activities spring from its Report rather than from the details of the evidence presented to it and the skirmishes that took place in the course of its hearings? Their rejection of many of Dr. Robson's theories may have been a matter of genuine regret, but the impact of the Committee on the subsequent history of administrative law depends rather on what its report contained than on what it should have contained. To have one's well-reasoned theories rejected by such a committee is no pleasant experience but there are occasions when it should lead to the realization that those theories have been thrown into the limbo of forgotten things and deprived forever of even the hope of resurrection.

His ten-page review of his own evidence as given to the Committee contains these two gems:

> "Sir Ellis Hume-Williams K.C. stands out in my memory of the Committee's proceedings as a distinguished member of the Bar honestly trying to understand an approach to the subject which seemed to lie almost beyond his comprehension. . . . The sheer naivety of this suggestion almost took my breath away. I managed, however, to regain it sufficiently to answer: . . ."(p. 329)
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> "Sir Claud Schuster K.C. permanent Secretary to the Lord Chancellor from 1915 to 1944 gave me the impression of being the member of the Committee who had given least thought to the problem and the one who was least able to express himself coherently. It was almost impossible to keep to the point with him as he was always going off at a tangent. After a long and rambling interrogation, the drift of which it is impossible to discover even from the printed record, he asked: . . ." (p. 330)

Nothing is less edifying than a witness's recital of his own exploits before a tribunal and, unless it is absolutely impersonal and shorn of all dramatization, there is a danger that it will become offensive. Personal references of this type do not add to the persuasiveness of a text on Justice or Law.

To men like the present author we look for criticisms and explanations of decided cases; stare decisis being what it is, however, Court of Appeal decisions will not be undermined successfully nor rationalized instructively by anything less than the most powerful and penetrating analysis. Most of us have been bedevilled by the expression "quasi-judicial". The two pages headed "The Cult of the 'Quasi' " do not solve our problems. A twelve-line paragraph which resorts to the trick of using seventeen nouns all modified by the adjective "quasi" may be novel and whimsical. North Americans are not unacquainted with "quasi-beer" and a reference to "quasi-chicken croquettes" is a reminder that quasi-butter, passing under the name of margarine, may yet play some part in the growth of Canada as a nation, but the humour is hardly of the level set by Damon Runyon and Thorne Smith and the sarcasm is not trenchant enough to demolish any strongholds of legal terminology.

The long chapter on Administrative Tribunals, which comprises almost one-quarter of the book, consists almost entirely of a discussion of upwards of two dozen English tribunals. To the English student it may serve as a useful introduction to those tribunals, but to the Canadian it is nothing but paragraph after paragraph of nothing but paragraph after paragraph.

On the whlle the book is a severe disappointment. We need a general text on administrative law, valuable alike to student, teacher and practitioner. The need is urgent. Dr. Robson's book does not provide what we want. It will serve as an introduction, but that is all.

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The Canada Year Book 1947: The Official Statistical Annual of the Resources, History, Institutions, and Social and Economic Conditions of the Dominion. Department of Trade and Commerce, Dominion Bureau of Statistics. Ottawa: The King's Printer. 1947. Pp. xxxv, 1239. ($2.00)

The Canada Year Book hardly lends itself to the usual type of review, in which the reviewer describes the content of the book before him, estimates how successful the author has been in achieving his purpose and, perhaps, adds some personal comments on its subject matter. The more than 1200 compact pages in the 1947 volume are so full of information that one could not hope even to outline the ground they cover; and to attempt anything like a critical evaluation of such an old and tried friend would be sheer presumption. A year ago we wrote of the 1946 volume that it was bigger than ever before; the same thing can be said of the present edition. How long this process of accretion can continue within a single cover remains to be seen, but it must be approaching the limits of practicability.

As in previous years, this edition contains a number of special articles in addition to the regular chapter and statistical material. There are articles, among others, on Juvenile Delinquency, Police Forces in Canada, the Ticket-of-Leave System, the United Nations Educational, Scientific and Cultural Organization, the Automobile Industry in Canada, Insurance during the Depression and War Periods and the new Citizenship Legislation. In place of the list of publications issued by government departments that appeared in previous volumes, a Directory of Official Sources of Information has been substituted, a feature which seems to us a decided improvement. New maps and diagrams have been added, and chapters have been re-arranged and re-written, all reflecting the fact that the Year Book, like the country, is gradually returning to a peacetime footing.

No lawyer who has ever used the Canada Year Book will need our recommendation to purchase it. But for the eye of non-Canadian readers it might be added that no other single volume known to us contains so much information on Canada in such convenient form at so low a price.

G. V. V. N.

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Les Rapports Judiciaires de Québec: Répertoire Quinquennal (incluant la Revue du Barreau) 1941-1945. Sous la direction de Louis-Philippe Gagnon, C.R. Montréal: Le Barreau de la Province de Québec. ($25.00)

Nous ne pouvons manquer de signaler aux lecteurs de la Revue une publication récente du Barreau de la Province de Québec. Il s'agit du *Répertoire Quinquennal* des Rapports judiciaires de Québec, incluant la Revue du Barreau, pour les années 1941 à 1945 inclusivement. Ce travail considérable a été entrepris et mené à bonne fin par Me Louis-Philippe Gagnon, C.R., ancien arrêtiste adjoint.

Le répertoire comprend sept tables, qui sont les suivantes: la table des décisions recueillies dans les Rapports de la Cour supérieure et de la Cour du Banc du Roi, la table des causes citées, la table des articles des codes,

la table des lois, la table des auteurs cités, la table analytique de la Revue du Barreau et, enfin, la table analytique des décisions elles-mêmes. Cette dernière table est la plus importante. Elle comporte des rubriques principales et des sous-rubriques de nature à faciliter les recherches.

Nous ne pouvons que féliciter Me Gagnon de son travail de bénédictin. Il est certain que son ouvrage présentera une certaine utilité au praticien, en lui mettant rapidement sous les yeux un tableau complet des décisions de cette période quinquennale.

On ne peut, cependant, s'empêcher de reconnaître que le répertoire aurait gagné en utilité s'il avait mentionné les décisions rendues par la Cour suprême du Canada dans les causes de la province de Québec, ainsi que les décisions publiées par la Revue Légale, l'Insurance Law Reporter, les Dominion Law Reports et les Rapports de Pratique. De plus, il est regrettable que la période de 1935 à 1941 ne soit pas couverte. Cela aurait permis d'établir la liaison avec la *Table générale* des Rapports judiciaires de Québec (1923 à 1935). L'insertion des décisions rendues durant ces sept années aurait pu se faire en omettant, entre autres, la table des auteurs dans le répertoire, d'autant que cette dernière est d'un intérêt douteux.

A mon sens, un autre reproche que l'on peut adresser au Répertoire, c'est qu'il ne contient pas le sommaire des décisions et nécessite le recours constant aux recueils eux-mêmes. Il est vrai que l'étude directe des tables des seize volumes de recueils peut se faire en une heure. Mais, alors, pourquoi ce répertoire? Quoiqu'il en soit, le travail est d'une belle présentation et fait honneur à son auteur. Les réserves que nous formulons visent plutôt le principe qui a présidé à la rédaction de l'ouvrage. Est-il nécessaire de présenter les décisions de nos tribunaux avec un aussi grand luxe de détails? N'aurait-il pas été plus simple de s'en tenir à la méthode suivie par Me Guérin dans la préparation de la Table générale des années 1923 à 1935, quitte à augmenter quelque peu le nombre des rubriques? Est-il tellement utile, par exemple, de savoir que Colmet de Santerre a été cité dans un arrêt de la Cour d'appel en 1940? Les répertoires annuels de Tellier ne répondent-ils pas suffisamment aux besoins du praticien? Autant de questions qui nous viennent à l'esprit à propos de ce répertoire.

Il nous semble que la publication décennale d'un répertoire de ce genre, même considérablement allégé, serait suffisante. Il ne faut pas oublier que le droit est autre chose que la recherche des précédents. Les principes y comptent bien pour quelque chose. L'inconvénient d'un répertoire aux multiples subdivisions est de faire apparaître l'exercice du droit comme une sorte de tabulation mécanique. Tout effort de recherche ou de synthèse en est absent. Les catégories juridiques sont placées dans des casiers commodes; le travail ne consiste plus qu'à sortir la fiche appropriée.

Les avocats, par l'emploi qu'ils font de la jurisprudence, en viennent à croire qu'ils gagneront nécessairement leur cause s'ils trouvent moyen de citer plus de décisions que leur adversaire. C'est la course aux citations de jurisprudence. Le principe, explicite dans le texte du code ou de la loi, reste souvent en plan. C'est le parent pauvre qu'on a oublié de convier.

Si le Répertoire quinquennal est utile par certains côtés, il reste entaché d'un vice radical, qui est de ramener les précédents judiciaires à des cadres trop systématisés, et comportant un excès de classifications. La matière juridique doit rester plus vivante et plus souple.

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Nuremberg: The Facts, the Law and the Consequences. By Peter Calvocoressi. London: Chatto and Windus. Toronto: Oxford University Press. 1947. Pp. 176. ($2.50)

The big names of Nazi Germany lie buried in a criminal's grave and there is none to mourn them. There is only the regret at the immensity of the ruin their leadership wrought for Europe and the world. But out of Nuremberg have come ideas and precedents of great significance for the slow development of an authentic "world law", a kind of law that may go much farther than the rules of inter-state law that heretofore have regulated the relations of states in peace and in war.

The central social and legal results of the Nuremberg trials may be summarized as follows:

> (1) political and military leaders, industrialists and administrative officials who commit "crimes" in the name of the state cannot hide behind the doctrinal fiction that the "state" has acted and that they, as individuals, bear no responsibility;
>
> (2) the planning and waging of an "aggressive war" is a crime against the community of nations;
>
> (3) the wilful murder and destruction of individuals and peoples in pursuit of a general political or military policy is a "crime against humanity" and punishable as such;
>
> (4) there may be "crimes" of a kind and magnitude that it would be impossible for mankind to let them go unpunished and, therefore, whatever may be the strict "legal" antecedents of the rules of law determining such acts as "crimes", the moral antecedents are of unquestionable force and authority.

Mr. Calvocoressi has written a most readable small book about the unique judicial ritual that was Nuremberg. His object is to set out for the general reader the main facts of the charges, the legal basis of the tribunal and its rules, and the consequences for world order and politics of its decisions. The lawyer no less than the layman will find Mr. Calvocoressi intelligent, informed and technically above serious objection.

Like many others who have written about Nuremberg, Mr. Calvocoressi has had to face several questions that the lay mind, and even the legal mind, have posed since first the programme of the trials was instituted by the four great powers — Great Britain, the U.S.S.R., the U.S.A. and France. These questions were concerned with the legal origin of the court and its jurisdiction; the rules of law it applied; the kind of evidence to which it listened; and the position of the individual defendants who were accused of performing criminal acts as officials or on behalf of a state that no longer existed. There can be no doubt that many serious students of law were, in the early stages of the proceedings, disturbed about the theory upon which the trials were based. But it is, I think, safe to say that, as the evidence mounted, theory began to find its rationale in the strong stuff of facts, facts that disclosed such a degree of criminality on the part of specific individuals entrusted with power that even the most inhibited lawyer was bound to ask whether or not organized humanity had within its common legal experience a legal reason for punishment. It was this cumulative impression of the enormity of the evil and the wrong that made sense out of the trials, their law and their decisions.

The author shows that technically at least one of the counts in the indictment, "war crimes", was an old, well-established rule of customary and conventional international law. The count of "aggressive war" had legal roots in the idea of the "unjust war", in the rules of customary international law, in several international conventions and declarations, and particularly in the Pact of Paris of 1928. While the charge of "crimes against humanity" were those crimes related to the commission of "war crimes", as Sir Hartley Shawcross explained to the Tribunal:

> "The Crimes against Humanity with which this Tribunal has jurisdiction to deal are limited to this extent — they must be crimes the commission of which was in some way connected with, in anticipation of or in furtherance of the crimes against the Peace or the War Crimes *stricto sensu* with which the Defendants are indicted." (p. 58)

Mr. Calvocoressi makes two very salient points in his conclusions. Firstly, it would be a mistake to allow any sense of allied guilt for minor crimes of their own — for no one has clean hands in a war — to compromise the inherent sense of justice in bringing the accused to trial. No judge is ever without sin and no human tribunal could meet a heavenly test. It is enough that the world recognized evil when it saw it. It was a triumph of restraint and respect for the ritual of law that revenge was not a substitute for trial. The rules used to judge the accused were rules that already had been long developing in the common legal traditions of our international system. All law grows from conduct and opportunity and the Allied victory provided an opportunity to rationalize the ascendancy of arms into a determination of principles of law.

Secondly, Mr. Calvocoressi points out that any failure on the part of Western peoples to recognize the rightness of bringing these men to trial would simply make martyrs out of them and thus do for those who were hanged what they had been unable to do for themselves. As trials go, this was fairness with a purpose. The enormous documentation, the minute cross-examination, the extensive opportunities for the accused to say their pieces, the incredibly painstaking efforts of the court are all a permanent monument to this common international effort to round off the most violent of wars with the most elaborate symbol of a lawful world.

Nuremberg may still tantalize the conservative legal mind. It should not bother those who recognize that law grows at the expense of some and with risk to all. Even in our own mature municipal legal order the making of rules is often a case of educated guesswork and the crystallizing of habits and values in the course of a specific formulation by a court; and thus the trial of a cause, and the making of a new rule, is in the lap of the Gods — and of men.

All of this Mr. Calvocoressi deals with in swift and clear prose. His history I cannot judge, the purely legal analysis is too general for really critical evaluation, but the total impression is that this is perhaps one of the best short studies of the trials available for the general reader.

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Income Tax Handbook. By ARTHUR W. GILMOUR, B. Com., C.A. Toronto: The Dominion Association of Chartered Accountants. December, 1947. Pp. x, 403. ($2.00)

Mr. Gilmour has provided a very handy summary of the income tax law of Canada. He has collected together the substance of the main statutory provisions, regulations and rulings and has included explanations of departmental practice. These are correlated, arranged according to subject matter and suitably indexed. Detailed explanations are given of some of the most complicated and least understood problems, such as depreciation, depletion, pension funds and patronage payments. The value of the exposition is enhanced by the inclusion of numerous examples. The book is an excellent guide concerning problems in the computation of income and excess profits taxes.

Perhaps the scope and purpose of the manual are best described in the author's own words in the introduction :

> "The object of this Handbook is to afford a brief summary of the more important of the taxes imposed upon business and individual incomes for the year 1947. It does not pretend to be exhaustive, but simply endeavours to furnish a ready reference for the accountant and business man to the various sections of the Income War Tax Act and the Excess Profits Tax Act which impose the taxes as they apply to the year 1947. Thereafter those interested may refer to the text of the legislation for the complete picture."

Lawyers will find the Income Tax Handbook valuable in acquainting them with the broad outlines of the legislation and departmental practice. In the solution of borderline problems, of course, recourse must be had to the statutory provisions and case law and to legal writings.

It is increasingly apparent, however, that tax advisers are of little use if they know only the statutes and precedents. It is at least equally important for them to be familiar with business organization and methods and the effects of the income tax law upon them. It is necessary that they understand the language and methods of accounting — the science which is involved most prominently in the computation of income. This is true not only of specialists but also of general practitioners, who will do well to observe the tax consequences of every transaction. The most useful approach to income tax law is functional, not theoretical. This is Mr. Gilmour's approach. For this reason, his handbook will prove to be valuable as a ready reference to lawyers seeking guidance in the income tax field.

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Sexual Behaviour in the Human Male. By ALFRED C. KINSEY, WARDELL B. POMEROY and CLYDE E. MARTIN. Philadelphia and London: W. B. Saunders Company. Toronto: McAinsh & Co., Limited. 1948. Pp. xv, 804. ($7.50)

Few recent works of a scientific nature have aroused so much curiosity as this report. The avidity with which it has been read and the variety

of the resulting comment testify to the general lack of information on sex matters. Its publication has, to some extent, satisfied this lack. Few scientific undertakings have been so comprehensive in their scope and, if the entire research is to be judged by this preliminary report, it may well prove to be one of the outstanding scientific contributions of our time.

This is a progress report from a case-history study of human behaviour. It represents an attempt to accumulate an objectively determined body of fact about sex, which strictly avoids social or moral interpretations. The study was prompted by the numerous inquiries regarding the facts of life which should be generally known to persons of adult age, referred to the authors by students. The attempt to answer their questions revealed a remarkably small body of scientific information on the subject. The authors, a biologist, a clinical psychologist and a statistician, set about to fill the gaps in our knowledge. Their professional standing in their own particular fields is unquestioned. The magnitude of the enterprise has been fully realized and they estimate that a period of twenty-eight years will be necessary to complete the study. This volume is the product of their first nine years of research.

After screening the literature that has been published in the past on the subject of sex and reviewing those works that are applicable and comparable to the present study, the authors devote two chapters to a thorough explanation of their methods of investigation. The approach to the problem is based upon the principles used in the science of taxonomy. It consists generally of naming, describing and classifying species and the higher categories. The object is to study the characteristics of any particular form of life, for example the size, colouring, shape and wing-spread of an insect, and then to classify that form of life according to its position in biological pattern. Obviously the usual taxonomic techniques had to be modified when applied to such a complicated being as the human animal; the techniques, which are at best empirical, have nevertheless produced facts whose importance will grow with further study.

The facts were obtained by interviewing 12,000 persons and recording the histories of their sexual activities. The techniques of interviewing do not greatly differ from those employed by the average lawyer in his practice. Every attorney will be familiar with the difficulty of obtaining truthful answers to his questions, and the reliability of the answers must be interpreted in the light of the manner in which they were obtained. In order to achieve uniformity, the majority of the interviews were conducted by the three authors personally, each obtaining substantially the same results as the others. The margin of error, therefore, has been considerably reduced, if not entirely eliminated, and it may be taken for granted that uniformity has been achieved.

The cooperation of the subjects will seem remarkable to the reader who has the impression that it is unusual for persons to confide such information voluntarily to a total stranger. It will be an even greater strain upon the credulity of the reader that so many persons have actually confessed to the perpetration of an act which is regarded as a crime in the particular States in which they live. The authors themselves are amazed, but explain their success by the reassurance given the persons interviewed that it is impossible for anyone ever to discover the source of the information. Elaborate precautions have been taken to maintain secrecy by means of a special code designed by experienced cryptographers, the key to which

exists only in the minds of the authors. While admitting that no one has a legal right to preserve the confidence of any information so obtained, the authors claim, as scientists, the benefit of the privilege usually accorded to priests, physicians and attorneys by the courts. The claim is advanced as a pious hope, backed up by the statement that they are prepared to defy the courts and accept the consequences rather than divulge their sources.

The manner of classifying the mass of information obtained from the interviews and the calculations involved in relating this information to the American population will no doubt be of interest to the statistician. The chief criticism is the small sample of the population taken as the basis for the study. The authors admit this, but maintain that it is large enough to give an indication of the general sex behaviour of the male population in certain aspects of its sexual activity. As with any preliminary report, many of the facts given can only be treated as probabilities, subject to confirmation or modification on further investigation.

The authors have discovered that a much wider variation in the frequency of sexual activity exists among male members of the human race than in any other form of life yet investigated. This wide variation has, up to now, been unsuspected; it is accounted for by the numerous factors that affect the sex life of the human being. Considering that our sex laws and customs are based upon the concept that individuals are much alike sexually, this discovery is significant. Doctors have known for some time that there was a certain variation in the sexual capacities and inclinations of various individuals and this knowledge has formed the basis for many manuals on pre-marital instruction. But the variation revealed by this study appears to be much greater than can be compensated for by mere instruction or training of potential spouses.

The basic factors deciding the characteristics of any form of life are heredity and environment. The factors affecting the sexual activity of the human being are classified into three groups: biologic, psychologic conditioning and sociological. The most important biologic factor is heredity, but precise information on it is lacking. Other biologic factors that influence sex activity are age, nutrition, general health, and a number of other circumstances. As regards age, the authors report that activity is at its peak in youth and steadily declines with advancing years. The belief that a man is in his prime at the age of 40 has thus been reduced to the category of an old wives' tale. The influence of the endocrine glands upon sex activity is a work in itself and is mentioned only in passing. Similarly, psychologic conditioning is almost imponderable as a factor, although it is well known that all living organisms are modified by the experiences through which they pass.

As regards the sociological group, the authors believe that the patterns of sexual behaviour of the individual are merely reflections of the pattern of the particular social level to which he belongs. The numerous combinations of factors that affect sexual activity will take a long time to classify and, with the limited material available, the authors have restricted their findings to the factors concerning which they have obtained most information. The main factors discussed are, therefore, age, marital status, age of adolescence, social level, geographic and religious background.

The most important sociologic factor is the law. The origins of our laws on sex are traceable to the social and religious philosophies that form the basis of our marital code. In these philosophies, there have been two

antagonistic interpretations of sex, the hedonistic doctrine that sexual activity is justifiable for its immediate and pleasurable return and the ascetic approach that regards sex primarily as a means of procreation to be enjoyed only in marriage and then only if reproduction is the goal of the act. The authors suggest a third possible interpretation of sex as a normal biologic function acceptable in whatever form it is manifested. No arguments are advanced for this theory and the authors are content to let the facts speak for themselves.

Since English and American marital codes and sex laws are the direct outcome of the reproductive interpretation of sex, they accept no form of socio-sexual activity outside the marital state. Even marital intercourse is more or less limited to particular times and places and to the techniques that are most likely to result in conception. In view of the recent judgment of the House of Lords in *Baxter* v. *Baxter*, and the opinions expressed there, the remarks of the authors are particularly interesting. Their contention that American ideas regarding sex are by no means uniform is borne out by the diversity of the sex laws in each of the forty-eight states of the American union. Thus, adultery which is no crime in Nevada, may be punished by five years in jail in Connecticut, while sodomy, which is no crime in New Hampshire, renders a person liable to life imprisonment in Georgia or Nevada. The interpretation of these laws indicates an even greater lack of uniformity of thought. Thus, certain sex techniques, practised even by married couples, have been severely punished in some places, while the manipulations which occur in petting, a practice common among the younger generation, have been interpreted by some courts as assault and battery.

The patterns of the different social levels have been found to be fairly constant and, while admitting that the divisions of the population are difficult to define, the authors have measured these levels by the number of years of education of the individual, the occupational class to which he belongs, and the occupational class of his parents while he lived in the parental home. Using this yardstick, the facts reported show that hetero-sexual activity is much lower among males at the college level, while the incidence of masturbation is much higher. It is suggested that this is accounted for by the lack of opportunity at the higher levels, which, in turn, is caused by the customs prevailing in this group.

A definite relationship has been found between the age of adolescence and sexual activity, and the theory that early involvement in sex activity produces impotence and other undesirable results in later years seems to have been exploded. On the contrary, the reverse seems to be true; the figures indicate that those who develop earliest generally remain active the longest.

The geographic location of the subject interviewed was also found to have a direct bearing upon the type of sexual activity in which he indulges; for example, animal contacts were found to be more prevalent in rural areas than among the urban population. The religious background of the subject will also influence his activity; and it appears from the report that the more devout the person, the less sexually active he will be.

In classifying the sources of sexual outlet, the norm used by the authors is the climax or orgasm. The frequency of the orgasm is the criterion by which the incidence of sexual activity of all types is measured. In most cases the interviewer will easily identify this phenomenon and,

indeed, in a subject such as sex it is probably the only identifiable point which lends itself to classification. Despite the fact that the orgasm is generally accompanied by associated phenomena such as ejaculation, it remains, nevertheless, a purely subjective experience which makes comparison extremely difficult. In the same way the science of medicine has recognized that it is impossible to compare the pain suffered by one person with the pain suffered by another.

The variation in incidence in orgasms, therefore, must not be interpreted too literally, since it does not take into consideration the physiological or psychological factors that accompany it. To use an example, the intensity of activity required by one person to achieve one orgasm might well exceed the total intensity expended by another in achieving five orgasms. Similarly, the amount ejaculated by one man in one orgasm might well be much greater than the combined ejaculations of five orgasms in another person. Before we accept the authors' figures, therefore, we will require corroboration of a more scientific nature. The facts reported, however, are not without significance and, indeed, the authors deserve credit for the first attempt ever made to classify sex behaviour.

The penologist will be interested to note the remarks of the authors concerning the variations in the concept of sex crime which occur among persons whose duty it is to deal with it. The concept is related to the background of the person whose duty it is to consider it. The legislator, belonging generally to the higher social level, penalizes non-marital intercourse but does not make masturbation a crime. The police official, who comes largely from grade school and high school segments of the population, rarely enforces the law prohibiting non-marital intercourse, but will consider masturbation a perversion and will likely push such a case through court and see that the boy is sent to an institution. The outcome of his charge against the boy may depend largely upon the background of the judge who tries the case. When the boy arrives at the reformatory, the educated superintendent of the institution may regard his activities lightly but the guards of the institution, having lower level backgrounds, may punish him severely every time he is caught engaging in the act.

In the total male population, single and married, between adolescence and old age, 24% of the total sexual outlet is derived from solitary sources (masturbation and nocturnal emissions), 69.4% is derived from heterosexual sources (petting and coitus), 6.3% is derived from homosexual contacts and not more than 0.3% from relations with animals of other species.

A most delicate subject has been treated in this book in factual terms. The tactful handling of the subject matter should not offend any but the most prudish sensibilities. As a factual reference guide, it is undoubtedly most comprehensive, the most detailed study of human sex behaviour that has yet been published. The facts contained within its covers should be of inestimable value to physicians, scientists, social workers, penologists and all those whose daily duties oblige them to deal with problems of sex.

While we may not be prepared to accept as absolutely reliable all the facts contained in this work, they must, nevertheless, be regarded as a fair index of the manner in which people behave. The conclusion to be drawn from the facts will depend upon the education, background, and moral and social outlook of the person who draws them. There is a great temptation in reading the book to jump to conclusions, substituting one's own conclusions for the facts the authors have actually recorded. The

report must be read carefully and cautiously if one is to avoid falling into error. Whether or not such information should be made available to the public at large, and especially to those who are mentally unprepared to assess it, is a matter that can only be decided by public policy.

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BOOKS RECEIVED

The mention of a book in the following list does not preclude a detailed review in a later issue.

Administration of Justice: Chapter IX of the Official Year Book of the Union of South Africa and of Basutoland, Bechuanaland Protectorate and Swaziland. No. 23 – 1946. 1947. Pp. 22. (1s.)

Canada 1948: The Official Handbook of Present Conditions and Recent Progress. Prepared by the Dominion Bureau of Statistics. Ottawa: The King's Printer. 1948. Pp. 266. (25 cents)

Inter Allied Reparation Agency: Report of the Secretary General for the Year 1947. Brussels: The Inter Allied Reparation Agency. Pp. 75.

Law in Action: An Anthology of the Law in Literature. Edited by AMICUS CURIAE, with an introduction by Roscoe Pound. New York: Crown Publishers. Toronto: Ambassador Books Limited. 1947. Pp. xiv, 498. ($3.75)

The Law of Trade Unions. By H. SAMUELS, M.A. Third edition. London: Stevens and Sons Limited. 1948. Pp. xv, 96. (6s. net)

Policemen and People. By ELIJAH ADLOW, Associate Justice of the Municipal Court of the City of Boston. Boston. William J. Rochfort, Publisher. Pp. ix, 89. ($1.50)

A Text-Book of International Law. By ALF ROSS, LL.D., Ph. D., with an Introduction by J. L. Brierly, O.B.E., D.C.L. Toronto: Longmans, Green and Co. 1947. Pp. 313. ($6.00)

Trade Unions in Canada: Their Development and Functioning. By H. A. LOGAN. Toronto: The Macmillan Company of Canada Limited. 1948. Pp. xvii, 639. ($4.75)