Reviews and Notices

Canadian Criminal Evidence: A Manual of instruction upon the admissibility and use of evidence in criminal cases with "Briefs" on evidence. By A. E. POPPLE. Second edition. Toronto: The Carswell Company, Limited. 1954. Pp. lxviii, 694. ($20.00)

Mr. Popple, the learned editor of *Snow's Criminal Code of Canada* and the Criminal Reports, has graced his second edition of *Canadian Criminal Evidence* with a completely new format. Whereas the first edition, published in 1946, was pocket-size and contained 363 pages, the present work is full octavo and has 694 pages. A decided improvement is the use of larger, clearer type in the new work. The author has consolidated in his latest edition the first edition and the supplement to it that was published in 1951. Unfortunately the consolidation has been largely a mechanical one—a simple addition of the contents of two books in an enlarged format—with little attempt to blend the two into a cohesive text or to revise the treatment of the subject matter. The general plan and the major part of the contents of the original work have not been changed, the author having confined himself largely to bringing the text up to date by the addition of later cases. A few topics have been rewritten, however, and expanded considerably: a notable example is the "brief" on Conspiracies, which contains, not only many recent decisions, but a number of earlier cases omitted from the first edition.

The author has attempted to obviate the possibility of premature obsolescence of the text by the pending revision of the Criminal Code by referring in square brackets to corresponding sections of the new code wherever sections of the present code are quoted. But the revision of the code is likely to raise some interesting questions that are not dealt with in the book. Section 296 of the new code, for example, replaces the present section 399 and abolishes the offences of receiving and retaining stolen goods. Under the new code it will be an offence to "have" in one's possession stolen goods knowing them to be stolen. The question will arise as to what evidence the Crown must adduce to prove guilty knowledge under the new section. Will the doctrine of recent possession

be adapted by the courts to apply to this new statutory offence? If the doctrine is held to apply, may it raise a presumption of guilty knowledge only at the time an accused received the goods into his possession, or may the presumption be applied to guilty knowledge at any subsequent time during the accused's possession (see *Clay* v. *The King*, [1952] S.C.R. 170; (1951), 101 C.C.C. 129)?

Section 134 of the new code requires a trial judge to warn the jury that it is "not safe" to convict on the uncorroborated evidence of a complainant in a case of rape and in some other sexual offences. Formerly this warning was merely a rule of practice, which acquired the force of law through judicial decisions, and the author treats it as such in his book. It has been held in some cases that the failure of the trial judge to give the warning in a case where there was ample corroboration was not fatal to the conviction because no injustice was done: *R.* v. *Murray* (1913), 9 Cr. App. R. 248; see also *R.* v. *Welch and Ackerman* (1946), 87 C.C.C. 88. The problem arises whether the Crown may now invoke this principle on appeal when the requirement as to the warning is statutory.

The author divides his work into four sections, the first of which might be designated a "text book" on criminal evidence; the second an appendix collecting a series of "Briefs on Evidence"; and the third and fourth, appendices containing the provisions of the Canada Evidence Act with notes on them. In the "text book" section the author attempts to present a logical treatise on the law of criminal evidence according to its application in criminal proceedings. Mr. Popple's acknowledged learning in the law of evidence is confirmed by the abundance of authorities, both English and Canadian, to be found in his book, but the organization of his material, particularly in this section, is often confusing and repetitious. The discussion of the law is divided into seven chapters entitled: The Case; The Facts; Proof of the Facts; Issues in the Case; Admission of the Evidence; Weight, Value and Sufficiency of Evidence; and Witnesses and Their Testimony. These categories are vague and so broad that they overlap one another; individual topics can be, and are, subsumed under several chapters, with the result that the book is unnecessarily bulky and difficult to use. A case in point is the subject of accomplice's evidence, which is dealt with under chapters 4, 6 and 7 with much repetition of material. "Accomplices" is also the subject of a "brief on evidence" in the first appendix. The topic of "similar acts" is also dealt with in three separate chapters and in a "brief on evidence", again with considerable repetition. Often one finds the same case and its full citation repeated several times on a page, an occurrence that could be eliminated by more diligent editing. An example is the case of *R.* v. *Barbour*, [1938] S.C.R. 465, which is cited in full twice in two consecutive lines and three times altogether on page 34.

The chapter, "Admission of the Evidence", lists alphabetically a collection of notes on various topics in the law of evidence that might have been included, more conveniently and less repetitiously, in the appendix devoted to "Briefs on Evidence", because the "briefs" are in much the same form as the notes and often cover the same subject matter. For instance, there is an extensive note on "Corroboration" in this chapter which is overlapped by "briefs" on "Corroboration" and "Corroborating an Accomplice" in the appendix. This awkward arrangement of the subject matter tends to perplex one, particularly on a first reading of the book; fortunately an excellent index serves the reader, not only by pinpointing any topic in the book, but also by providing a quick reference to other books on that topic.

A stiff cardboard inset introduces the appendix devoted to "Briefs on Evidence". Here one finds arranged in alphabetical order sixty-seven "briefs" on subjects in the law of evidence. Each "brief" contains a short summary of the law in large type, supported and expanded by extensive notes in smaller type, a treatment that permits quick reference to any subject. It does seem to me that if the whole book were organized as an alphabetical collection of "briefs" it would more fully meet the author's intention to provide a "Manual of instruction", and prove more valuable to the busy practitioner who seeks a handy reference to the law while in the courtroom.

The author's notes on the Canada Evidence Act appear as a series of memoranda of law in alphabetical order, which are often superfluous as being covered in other parts of the book. They also might have been more conveniently subsumed under the sections of the act to which they refer.

An exhaustive reorganization and pruning of material must be accomplished before Mr. Popple's work attains the high standard of scholarship that his standing would lead one to expect; the book, however, will be useful to the Canadian practitioner as a well-indexed collection of Canadian and English cases on criminal evidence, and because it is the only Canadian text dealing exclusively with the subject.

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Archbold's Pleading, Evidence & Practice in Criminal Cases. Thirty-third edition by T. R. FITZWALTER BUTLER and MARSTON GARSIA. London: Sweet & Maxwell Limited. Toronto: The Carswell Company, Limited. 1954. Pp. cxciv, 1691. ($16.25; Noter-up Service, $1.50 extra)

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Archbold is a practitioner's manual and the Canadian practitioner, with a wary eye on the new Criminal Code, will weigh carefully the value of all new texts, especially English ones. *Archbold*, in use for over a century and a quarter, is by no means new in one sense: indeed it is a trusted and veteran guide in its many editions, but it is pertinent to ask whether the latest edition has anything to offer us in this country.

Prosecuting counsel may find that section 8 of the new code, which eliminates common-law, Imperial and pre-Confederation provincial crimes, does restrict the usefulness of the book. What harassed prosecutor has not searched *Blackstone*, *Stephen's Digest*, *Russell* and *Archbold* to find some common-law or antique statutory offence dealing with obnoxious conduct overlooked in the code? And how often has not *Archbold* given the complete answer, with a precedent for the indictment, elements of the offence, and the like? Public mischief (now covered by new section 120) is the best known case, but there are surprising omissions. For example, bribery of public officers is not adequately covered by the old code, to say nothing of contempt of court (still undefined).

But *Archbold* is mainly a manual of procedure, and its principal virtue has been as a supplement, and a very compendious one, to Canadian texts, which are, on the whole, rather meagre in this respect. Moreover, the editors treat their matter completely, though concisely, and in a wholly practical manner, showing what must be proven, and how, in a clear and easily digested form. This value has not been greatly affected by the divergent paths of the criminal laws of the two countries. In fact there has been an occasional advantage in pointing up any contrasts which have developed and in suggesting lines of attack. No doubt, in the more difficult cases, one must look to the specialist works, but *Archbold* has the trick of pointing out the path in a great many instances.

The particular value of a new edition is in line with this concept. Criminal law is living law: in mere mass of case law it has enormous momentum. Not only that, but the extraordinary public interest in crime evokes a demand for constant revision and restatement: and this is supplied. The lawyer cannot depend on an old edition of a criminal text, as we in Nova Scotia do, for example, on last century editions of *Williams on Real Property*. So long as English judicial thinking commands the respect of Canadian courts, we shall find it affecting the course of our law. Confessions, Abortion, Recent Possession and Summary Procedure are topics which come to mind where English views may modify our own.

How well does the new edition of *Archbold* fit the rôle here assigned to it? The new code, although a splendid revision, is by

no means complete, and in the sphere of procedure much is left to rule-making powers. In the omitted cases, we shall still have to fall back on English common-law precedents or statutory analogues, and in this way *Archbold* will keep its place.

This thirty-third edition is well up to standard, a high standard. There are some mechanical improvements which aid reference: the paragraphs are numbered; page headings are more particularized and chapter and section numbers have been inserted there; many italicized paragraph openings have been replaced by boldface type. The paper, however, is not as opaque as in some previous editions, though the text is quite legible and well displayed.

The first and general part of the work has been expanded: the latter part (Book II), dealing with particular offences, has not. The expansion seems largely due to changes deriving from the Criminal Justice Act of 1948, but several topics of general concern, such as *mens rea* and the hearsay rules, have been rewritten and enlarged, to advantage.

Some further improvements might be suggested. The opening paragraph on Confessions (§ 672), for instance, is misleading as it stands: one must read the whole of the matter under this heading to understand the law. The text suggests that confessions are inadmissible except in certain cases, whereas this is an exception to the more general rule that they are admissible. It would seem clearer and more useful to treat confessions as particular instances of Statements by a Party, and then deal with the special cases of statements to persons in authority. The noted summary in *Ibrahim* v. *R.*, [1914] A.C. at page 610, would form a good basis for an orderly development of the full doctrine of confessions as such.

This is one instance of several where the text of an old edition has been allowed to remain too long, modified only by accretions. In most cases, of course, additions to the existing language are all that are needed or desirable, and one cannot expect the editors to uncover every passage where rewriting is wanted. They have done an intensive and excellent job of keeping abreast of recent legislation and case law.

Some one seems to have revised the index with intelligence and care. It is somewhat fuller than formerly, with added cross-references. This has diminished the former rather annoying need to hit on the exactly apposite word before discovering the page you want.

One point remains: How best can one use this text, and indeed any standard work such as *Crankshaw*, *Treemear* or *Snow*, with the new code? Concordances are and will be available, but they are obviously merely aids to fuller study. This reviewer proposes to collate the old and new sections dealing with the dozen or more offences of most common occurrence, such as theft,

drunk driving, false pretences, forgery, break and entry, receiving (now "unlawful possession") and the various assaults, to determine whether they are identical, verbally different or substantially distinct. Where there are differences, verbal or otherwise, further investigation will be required, breaking-up into words and phrases, and diagrammatic study. In procedure it will be necessary to analyze whole parts. In settling the legal force of new matter, *Archbold* should prove very useful, containing as it does the words of many English enactments, and, even where identities cannot be found, parallels and suggestive departures will be there.

To conclude, *Archbold* has two chief virtues: it brings us the latest judicial outlook on the criminal part of the common law, upon which our own criminal law is founded and in the light of which it is, and no doubt will be, interpreted; it brings also the stimulus of a different approach to that law. To say that no criminal lawyer can afford to be without this book is indeed going too far, but it will most certainly assist him to a profounder and more profitable knowledge of his subject.

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The Indeterminate Sentence. By the United Nations Department of Social Affairs. New York: Department of Publication Information, United Nations. Toronto: The Ryerson Press. 1954. Pp. v, 92. ($0.75)

This small volume is a careful survey of the indeterminate sentence in selected countries of Europe and the Americas. Great Britain is included, though Canada is not. The United States is included and the wide variations of practice there are also presented in a useful appendix. A selected bibliography adds to the value of the booklet.

The author, M. Marc Ancel, is a French jurist of note. He is president of a section of the Court of Appeal and is the Secretary General of the Institute of Comparative Law in Paris. The study, a product of the Social Defence Section of the Department of Social Affairs (United Nations), emphasizes the practical application of the indeterminate sentence, dealing lightly with the strictly legal and historical aspects. The essential questions asked were: What are the principles underlying the indeterminate sentence? How much is it used? To what classes or kinds of offenders is it applied? What are the results? These practical considerations require some setting in law and history, which introduces the study.

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In Canada we have two specific applications of the true indeterminate sentence, those sections of the Criminal Code dealing with habitual offenders and to criminal sexual psychopaths. Both allow commitment of the convicted offender to a penitentiary for an indefinite term, with the requirement of periodic review of his condition and progress by the Minister of Justice. Release is effected under the Ticket of Leave Act. Basically, however, the sentence of every offender in Canada is an indeterminate sentence, because any offender incarcerated in any institution for any offence may be released at any time by the Remission Service of the Department of Justice under ticket of leave. (This power does not apply to those serving sentences with statutory minimum terms, which still remain in the new code for a few offences.) Moreover, the whole subject of release procedures is now under study by the Fauteux Committee, for the Minister of Justice; its report should be available this year (see page 18 of this issue).

Because of the high relevance of this United Nations study to these Canadian developments the findings of the study are included here in full. They provide an authoritative and succinct summary of the operation of this important device in modern penal practice.

I. It may be said that at the present time the indeterminate sentence is accepted by an increasing number of positive systems, either pursuant to direct legislation (the written law making express provision for the imposition of such sentences), or indirectly through the adaptation of existing provisions and through greater flexibility in penal and penitentiary institutions.

The system of indeterminate sentences is, moreover, in actual positive law generally admitted as applicable to only three special categories of offenders:

(a) Juvenile offenders, a category which henceforth will probably also include all minors, within the meaning of the criminal law, as well as young adults such as those who at the present time may be sent to a prison school or a Borstal, or who may be subjected to measures similar to the English corrective training;

(b) Hardened criminals with many convictions, persistent offenders, persons with criminal proclivities and incorrigible offenders (the technical statutory definitions varying according to the systems), in other words persons who, owing to their natural proneness to crime, require for that very reason measures of correction and neutralization;

(c) Abnormal offenders in the broadest sense of the word (and not in the medical or psychiatric meaning of the term), offenders suffering from mental or physical disease and drunkards or drug addicts, in other words offenders amenable to curative treatment.

While certain special systems may apply indeterminate sentences to other classes of offenders, these three main categories are those on which the generally accepted rules of the relevant legislation are in agreement.

II. Subject to exceptions in the one or other particular system, the prevailing tendency is now definitely towards *relative* indeterminateness, with statutory maxima and minima (or, sometimes, with special provisions providing only either for an irreducible minimum or a statutory maximum) with variable provisions varying according to the different judicial and penitentiary systems.

III. The recognition of the indeterminate sentence and its development are in the positive systems the result of the ever wider acceptance of a method for the *treatment* of the offender, which replaces the former prison sentence pure and simple, the retributive penalty imposed by the court. More and more the different systems tend to stress the reformative features of this treatment and endeavour to ensure its effectiveness, especially:

(a) By providing for its application as far as possible in institutions specially equipped for treatment;

(b) By making treatment the responsibility of specialized and qualified staff;

(c) By basing it on a classification of offenders which assures the effective individualization of the measure;

(d) By developing the educative or curative character of the indeterminate sentence and by preparing, from its very beginning, for the offender's ultimate release, by means of a continual process of social readaption, involving in particular apprenticeship or occupational training.

IV. In the different systems, a definite *procedure for the release of the offender* serving an indeterminate sentence is gradually taking shape; this must be such as to assure an effective safeguard of individual rights and especially forestall any infringement of individual liberty. This protective procedure of liberation is characterized mainly:

(a) By a periodic review of the special circumstances of each offender serving an indeterminate sentence and by regular supervision of the effectiveness of the treatment applied to him;

(b) By the fact that the offender's release is ordered either by a judicial authority or by an administrative tribunal offering substantial guarantees of technical competence and independence in its power of decision and in its evaluation of the particular circumstances.

V. The release of offenders serving indeterminate sentences is coming more and more to be regarded as the essential part of the system. In order as far as possible to avoid the mistakes or dangers which might occur if release is improperly granted, the positive systems tend increasingly to admit that this release should:

(a) Depend on confirmation of the individual effectiveness of the treatment by qualified specialists and not only on compliance with certain conditions stipulated by the law for the application of abstract statutory rules;

(b) Be prepared, not only by the application of a treatment and an appropriate method, but by a series of intermediate stages which may include, for example, successive transfer to various classes of institutions or a stage of semi-liberty, and be accompanied by certain measures calculated to assure the success of the release from the social point of view, in particular, by controlled preparation of the offender

for the resumption of his contacts with the outer world, by the choice of an environment that will exert a good influence on him and by the certainty that he will at once find employment or work suitable to his capacities;

(c) Be granted conditionally at first and, as far as possible, according to methods which, though differing from system to system, tend always to be accompanied by an effective measure of supervision or, more exactly in the modern systems, by educative and protective assistance.

Subject to the qualifying remarks made earlier, prompted by the inevitable differences between particular features of the various systems, it may quite safely be said that the principles set forth above are the essential minimum rules observed in modern positive systems in the matter of the indeterminate sentence.

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Legal Medicine. Edited by R. B. H. GRADWOHL, M.D., SC.D., F.A.P.H.A. St. Louis: The C. V. Mosby Company. Toronto: McAinsh & Co., Limited. 1954. Pp. xvii, 1093. ($20.00)

This new treatise on legal medicine, edited by Dr. R. B. H. Gradwohl, the Director of the Police Laboratory of the St. Louis Police Department, will probably be the most useful of its kind to lawyers, and certainly is one of the most complete and practical yet published. Legal medicine has outgrown the two fundamental subjects of pathological anatomy and toxicology, so that many of the so-called classical books in the field are out of date. Indeed, the subject covers so many branches of knowledge nowadays that it has become impossible for any one man to be equally proficient in all of them.

The editor of this volume was the founder and first president of the American Academy of Forensic Sciences and it was apparently in planning the programmes of its annual meetings that the idea for a book, to which experts in various branches would contribute, occurred to him. The collaboration of the twenty-nine contributors to the book is a happy one and makes highly informative reading.

The numerous chapters devoted to the traditional subjects of legal medicine, such as post-mortem changes, common causes of unexpected deaths, wounds of head and body, mechanical asphyxia and pathological findings in poisonings, are clearly written and well illustrated. The technical side of forensic medicine has not been neglected and more than 150 pages are devoted to toxicology and the most recent methods of identifying poisons, including a full chapter on microscopic-crystallographic procedures.

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An idea of the "up-to-dateness" of the book will be given by the fact that a full chapter has been contributed by Dr. James H. Matthews, of Minneapolis, on the use of narcoanalysis in criminal interrogation. Should drugs be used to extract information from a recalcitrant individual? The ancients thought the practice permissible and one learns that there is abundant evidence in Greek and Roman mythological literature that soporific potions of opium, mandragora or wine were taken to produce an exalted mental state or hallucinations as early as 200 B.C. Was it not Pliny who wrote: "It has become quite a common proverb that in wine there is truth". Alcohol, in one form or another, remained the most popular medicament for interrogation until the twentieth century. Progress in this method of investigation has closely paralleled the discovery of new anaesthetics and hypnotic drugs: "laughing gas" was superseded by scopolamine, the "truth serum", and that in turn by sodium amytal and other derivatives of barbituric acid. For those who are really interested, the theory of the method and its technique are explained. The chapter closes with a discussion of the ethical and legal considerations.

Those who object to the mental coercion exerted by the truth-revealing drugs may find the physical methods of lie-detection more acceptable. In the following chapter, Dr. Herbert P. Lyle, of Cincinnati, Ohio, discusses at length the use and reliability of the lie-detector.

As a sort of tribute to the Nestor of legal medicine in the British Isles, the task of outlining the history and development of legal medicine was given to Sir Sidney Smith of Edinburgh University. Canada is not mentioned—perhaps it was thought too young a country to mention—but the fact is that the province of Quebec has had practising medico-legal experts since the turn of the century and the first official Laboratory of Forensic Medicine and Police Science on this continent was founded at Montreal in 1912. The pioneer was the late Dr. Wilfrid Derome, who had studied at the *Institut de médecine légale de Paris* under Brouardel, Thoinot and other famous figures of forensic medicine. It took Dr. Derome a few years of persuasion to convince the attorney general of the day that the activities of the pathologists, chemists, physicists and biologists employed by the Crown on important cases should be centralized under a single head, but finally it was done. Dr. Derome was an indefatigable worker whose textbooks on forensic medicine and firearm expertise, written in French and published in 1920, deserve wider recognition than they have had. The laboratory he founded has survived and similar ones have since been established in Ontario and British Columbia. The Royal Canadian Mounted Police also maintains a police laboratory at Regina and another at Ottawa. Those who are actively engaged or inter-

ested in forensic medicine and related fields are now grouped together in the recently formed Forensic Society of Canada, which held its second meeting at the University of Montreal in June 1954.

Chapters 3 and 4 of Dr. Gradwohl's book, on the legal authorization required before performing an autopsy and the law relating to medical practice, as well as chapter 30 on the law of abortion, outline the trend of legislation in the different states of the United States and I should not think would be of any direct use to Canadian lawyers.

The medico-legal aspects of neuropathology are discussed at length by Dr. Cyril B. Courville, one of the leading neuropathologists of America. The mechanism of cerebral injury is made clear and understandable with the help of illustrations and the important problem of estimating the age of traumatic intracranial lesions is treated in detail. This chapter should be of particular interest to lawyers when a question of insurance is involved, for example, a clause providing for double indemnity if the death is due to accident or injury.

Of all the duties performed by the forensic psychiatrist, the giving of testimony in open court on mental responsibility is most likely to antagonize the community and the legal profession. Disagreement among psychiatrists casts doubt on the sincerity of the profession and the adequacy of the criteria for determining responsibleness. Dr. Val beyer Satterfield, Assistant Professor of Clinical Psychiatry, Washington University School of Medicine, raises this important point in his discussion, in chapter 13, of forensic psychiatry:

> The public is afraid of the criminal and resents fraud and deception. Just as the alibi is distrusted, so are other evasive devices of which the 'insanity plea' is considered one. The public cannot be expected to understand and accept the fact of mental irresponsibility until they can see and believe for themselves and quiet their doubts and suspicions. Children must be educated in, and convinced about, the facts of personality disorders and mental illness in the school and in community mental hygiene classes.
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> The public will accept 'mental insanity' as there is a strong ancient compulsion to believe certain orders of offenders to be 'mad'. Legal insanity is not acceptable to the average mind of our people because of semantic confusion and the cultural lag attachment to morality.

The author goes on to discuss what constitutes legal responsibility. With the appointment of a royal commission on the law of insanity as a defence in criminal cases, referred to elsewhere in this issue (pages 17-18), the subject is certainly of current interest in Canada. Legislators and lawyers should refresh their notions of psychiatry and this exceedingly well written chapter will do just that. Dr. Satterfield and most medical writers feel that "the bur-

den of change of attitude rests upon the legal profession and assert that no change for the better in the administration of justice will take place until the representatives of the law have become more educated in modern psychiatric thought".

The editor has called upon Dr. C. W. Muehlberger, a toxicologist attached to the Michigan Department of Health, to write the chapter on the medico-legal aspects of intoxication. This reviewer considers the writer one of the foremost authorities on the subject and is in complete agreement with his findings, particularly with the conclusions to be drawn from blood alcohol concentrations. From numerous observations reported by biologists and medico-legal experts, Dr. Muehlberger says "that it is quite apparent that there is little question that ability to operate a motor vehicle safely is definitely impaired by the time the blood alcohol level reaches 0.10 per cent". Persons with this concentration of alcohol in the blood may not be staggering, but their reflexes are slowed: the length of time they require to see a hazardous situation and form the proper judgment on the appropriate action to take has been proved to be three or four times that of a sober person.

It is unfortunate that, when amendments were made to the Criminal Code in 1951 on "driving while intoxicated" and "driving while ability to drive is impaired" (sections 222-225 of the new code), a provision was not inserted stating a blood alcohol percentage above which a person is presumed to be "intoxicated" or "impaired". In the United States about one-third of the states have enacted specific laws of this kind, following the recommendations of the National Safety Council's Committee on Tests for Intoxication in its 1938 report: when the blood alcohol value is more than 0.15 per cent the person is presumed to be "under the influence" and the burden of proving the contrary is on him. The significance of that percentage may be more readily understood by lawyers if it is added that, for a man weighing 150 pounds, a percentage of 0.15 of alcohol in the blood corresponds roughly to 6 ounces of whisky, that is, 6 ounces remaining in his body at the time the blood is withdrawn. In some countries the law is even more severe: in Norway, for instance, any driver who has more than 0.05 per cent of alcohol in his blood is presumed to be under the influence, the aim apparently being to prevent drinking altogether before driving a motor vehicle. Without advocating that we should go to any such lengths, I believe that some legislation along these lines should be adopted in Canada if we want to curb the ever-increasing number of automobile accidents directly attributable to drinking.

This review would not be complete if one did not mention three of its most important chapters by the editor himself. As Director of the Police Laboratory in St. Louis, Dr. Gradwohl is

particularly qualified to write on blood identification, the examination of seminal fluid and the proof of nonpaternity by blood tests. This last chapter is followed by a thorough legal discussion of the value of blood tests in paternity proceedings by Sidney B. Chatkin, who has had wide experience in court and possesses a rare understanding of both the legal and scientific phases of the subject. The chapter makes enlightening reading. The Chaplin case, for example, which may have caused some people to doubt the correctness of blood test exclusions, is fully discussed. The blood tests carried out there constituted absolute proof of nonpaternity and in the face of them it is difficult to understand how the jury decided that the defendant was the father of the child.

The shortcomings of the book are relatively few and if the reader wishes more information on any subject he has only to consult the extensive bibliographic references that follow each chapter. In the last paragraph of the preface Dr. Gradwohl says: "... no one can write the last word on the subject of legal medicine, but it is hoped that the collected thoughts of so many outstanding authorities will go very far to bring the reader of this book, whether he be a pathologist, a toxicologist, a practicing physician, a law enforcement officer, a lawyer, or a teacher, well to the front in an understanding of these problems. The book is offered in the hope that it will be a worth-while contribution to this highly diversified and important subject, legal medicine." In this reviewer's opinion, he has fully succeeded.

J. M. ROUSSEL*

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The Criminal Code 1953-54 (Can.) Ch. 51 and The Canada Evidence Act R.S.C. 1952, Ch. 307, as amended by 1952-53, Ch. 2. Toronto: The Carswell Company, Limited. 1954. Pp. xxxiii, (pages of Code unnumbered), 120. ($4.00)

Criminal Code and Selected Statutes: A Special Edition Reprinted from the Statutes of Canada. Ottawa: The Queen's Printer. 1955. ($7.50, Canada; $10.00, other countries)

The legal profession will shortly have two editions of the new Criminal Code to choose from, apart from the version in the Statutes of Canada. The edition by the Carswell Company, which has been on the market for some time, has the advantage over the other in price. Being "pocket size", it may also be better for anyone who likes carrying his code around in his pocket, though it is questionable how much of that kind of usage its heavy paper

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cover would survive. The edition by the Queen's Printer, which I had hoped to see by the time this issue went to press, but haven't, will be more expensive—$7.50 in Canada as against $4.00—and no one, since the death of Annie Swan, the Pictou giantess, is likely to want to carry it in his pocket.

For the government volume is apparently to be in the same quarto size as the Statutes of Canada and contain, in addition to the code, twelve related statutes, whereas purchasers of the commercial volume must be content with the code and the Canada Evidence Act. Another advantage offered by public enterprise to compensate for the higher price is that its version of the code is printed from the same plates as were used for the annual statutes —thus frustrating error—and, anyway, section 19 of the Canada Evidence Act says that every copy of an act of Parliament printed by the Queen's Printer is evidence of the act and its contents. In fairness to the Carswell Company, though, I should add that a pretty careful spot check did not reveal any very serious discrepancies between its version and the authoritative one.

It may or may not be worth mentioning that the small format of the Carswell volume (and perhaps considerations of cost) have forced the publishers, as in their well-known *Snow's Criminal Code of Canada*, to take the marginal notes of the original acts from the margin. Both in the Criminal Code and the Canada Evidence Act the notes have been removed to the body of the text and printed in bold face type, though the treatment is not consistent in the two cases. It may just happen that the results will confuse some people, particularly outsiders not familiar with the form of Canadian statutes. The federal Interpretation Act seems to make some distinction between marginal notes and the centered headings that appear in most statutes, for section 14(2) provides that "The marginal notes in the body of an Act and the reference to former enactments shall form no part of the Act but shall be deemed to be inserted for convenience of reference only", but says nothing about headings. An introductory note explaining what the publishers did might have been justified.

One could no doubt go on carving statues on cherry stones almost indefinitely. My real purpose here is not to assess the relative merit of two editions, one of which I have not seen, but to draw them to the profession's attention. As Mr. Punch said a hundred years ago to Master John Bull: "Which ever you please, my little dear. You pays your money, and you takes your choice."

G.V.V.N.

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Narcotics and Narcotic Addiction. By DAVID W. MAURER, PH.D., and VICTOR H. VOGEL, M.D. Springfield, Illinois: Charles C. Thomas, Publisher. Toronto: The Ryerson Press. 1954. Pp. xv, 303. ($8.25)

Drug addiction and its related evil, drug trafficking, are problems of increasing importance in Canada. Any book, therefore, that deals with narcotics and narcotic addiction is bound to be of more than passing interest to all persons who are concerned with drug control, particularly when the authors are so eminently qualified to deal with the subject as are Dr. Maurer and Dr. Vogel.

It may be helpful, however, in discussing the subject as it is dealt with by Dr. Maurer and Dr. Vogel, to attempt to put in focus some aspects of the problem as it seems to exist in Canada. Drug addiction was extensively debated in the Senate and in the House of Commons last spring when the Opium and Narcotic Drug Act[1] was amended. Members from all parties in Parliament spoke, with special emphasis on the problem of dealing with the addict, as well as the trafficker, and on the measures most appropriate to control both. The Honourable Paul Martin, Q.C., Minister of National Health and Welfare, has from time to time spoken in Parliament on Canada's narcotic problem. As he has stated, in discussing this subject, there is a great deal of confusion and misunderstanding about the kind of people who are addicted, their motivations and what can be done to help them.[2]

The number of persons in Canada who are addicted to narcotic drugs has been estimated at something in the neighbourhood of 3,000, with their geographic distribution confined to the larger cities, the majority being in the city of Vancouver, and the remainder distributed among Toronto, Montreal, Hamilton, Windsor, Winnipeg, Edmonton and Calgary. There is little or no problem of drug addiction in the Maritime Provinces or in other than the larger urban areas in this country. It is moreover significant that, although the greatest concentration of drug addiction is in Vancouver, there is no problem of drug addiction in any other seaport city of Canada, with the possible exception of Montreal, where the number of drug addicts is reported to be very few.

Drug addicts, in so far as they exist in Canada, can be roughly classified in three groups. There is, firstly, the drug addict who is a chronic medical case requiring the continual administration of drugs for his condition. These persons are not ordinarily included in any discussion of drug addicts for the reason that their addiction is only related to a serious medical condition and they seldom, if ever, constitute a problem to the enforcement authorities.

[1] R.S.C., 1952, c. 325, as amended by S.C. 1953-54, c. 38.

[2] Hansard (House of Commons Debates), Vol. 96, No. 119, 1st Session, 22nd Parliament, p. 5314.

The second group are what are often called professional addicts, medical and nursing personnel who, presumably through their contact with narcotic drugs and convenience of access to them, have become addicted. The number of these persons is small in proportion to the total number of the profession in this country and for practical purposes they too can be ignored in any discussion of the social problem of drug addiction and trafficking.

The third classification—and this is the group that is ordinarily referred to in any discussion of drug addiction—consist of persons who do not need drugs in connection with a medical condition but have developed a mental or physical dependence upon them. Federal legislation denies these people legal supplies and they are driven to the underworld or other illicit sources for their needs. The problem presented by this group involves, not only law enforcement, but also an understanding of the underlying causes of drug addiction. It is now generally recognized by medical and social authorities that drug addicts are mentally disturbed and emotionally insecure people. Drug addiction is the manifestation of an underlying condition and not its cause. Any solution of the addict's problem must therefore involve more than the withdrawal from the use of drugs. It must have regard to the reasons that made him addiction-prone, environment, a broken home and personality factors, as well as a host of other causes that may singly or in combination have resulted in the individual becoming a drug addict.

The solution of the drug problem involves, in addition to strict criminal-law enforcement, suitable measures for the treatment and eventual rehabilitation of the addict. Unfortunately, the solution does not lie simply in providing compulsory quarantine for a sufficient length of time to permit the withdrawal of the individual from the physical and the destructive effects of the drug itself. This limited object is accomplished with imprisonment, but almost invariably the drug addict who has been successfully withdrawn from dependence on the drug will return to it almost immediately upon his discharge.

Unlike most diseases, there is no recognized medication and approved therapy for the cure of drug addiction. Each addict presents an individual problem. Each requires psychiatric therapy in a varying degree to enable him to appreciate the cause of his addiction, to say nothing of the rehabilitative measures needed to overcome those causes and to re-orient him in society. The problem of dealing with these individuals is, moreover, complicated by the fact that a great many presented problems to the social as well as to the enforcement authorities long before they became addicted. A great many had never at any time in their lives been responsible and useful members of the community in which they

lived. The ramifications of a treatment programme for such people are neither few nor simple.

Various measures have from time to time been proposed in Canada for the more effective handling and treatment of the drug addict. These proposals range all the way from complete isolation in more or less permanent quarantine to the provision of free drugs. The proponents of this latter proposal suggest that the provision of free drugs to addicted persons will deny the trafficker his market and thus eliminate him from the problem. When an addict has to spend anywhere from ten dollars to several times that amount a day for drugs in the illicit market, he cannot provide the money he needs other than through criminal activities. The proponents accordingly suggest that if drugs can be furnished free or at a nominal cost, the addict will no longer need to depend upon crime for his needs and will be free to obtain useful employment. Whatever may be the logic of this solution, the authorities who have had the greatest experience with drug addicts are unanimous in declaring it to be fraught with more evil than it is designed to eliminate.

The part the trafficker plays in addiction may in part at least distinguish Canada's drug problem from that of the United States. On the theory that the trafficker engages in a deliberate policy of recruitment by furnishing free drugs to unaddicted persons, usually juveniles or teen-agers, in order to maintain and increase his market, the view is often expressed that were it not for the trafficker there would be no problem of addiction. Although it is quite correct to say that to the degree that drugs are not available to addicts there would be no problem of addiction, the experience of the enforcement authorities in Canada does not support the view that the trafficker deliberately addicts people. On the basis of experience, the authorities in this country incline to the view that the trafficker furnishes drugs to an existing market but does not deliberately attempt to create a market. In other words, the supply of drugs will follow the need and, in turn, addicts will be attracted to the area in which drugs are most readily available. The operation of this spiral of cause and effect may explain why at present the majority of the addict population is in one city, Vancouver. By the same token the concentration could shift to another part of the country without any obvious reason. The efforts of the enforcement authorities have caused drug traffickers to be most wary in their dealings, and drugs as a rule can be purchased from traffickers only by persons whose bona fides have been well established. If there is any recruitment, it would seem to be in the attraction of addiction-prone people to persons who are already addicted, again an example of a spiral of cause and effect.

The reported prevalence of drug addiction among school at-

tending juveniles and teen-agers in other countries has caused the situation in Canada to be most carefully examined. There is, however, no evidence here of drug addiction among this group. The records of convictions of persons under the age of twenty-one for narcotic offences show that almost invariably they were not attending school and, moreover, had long records of juvenile delinquency and were well known to the enforcement authorities before they became addicted to the use of drugs.

This brief account, considerably oversimplified, attempts to put the narcotic problem in Canada in perspective. It has demonstrated perhaps that, if the problem of drug addiction is to be successfully met, there is need for informed, intelligent and consistent action at the community as well as at the enforcement level. The problem should be stripped of its false veneer of drama and mystery, and exposed for what it actually is. A frank treatment of the subject in terms the lay public can understand is long overdue.

Narcotics and Narcotic Addiction is a partial answer to this need. According to the dust-wrapper, the book was written for a specialized and therefore limited audience, who presumably already have wide knowledge and experience. Some of it—notably the chapters on Opiates and Their Synthetic Equivalents, Non-Opiate Sedatives Considered Addicting, Stimulant Drugs, and Identification of Drugs and Proof of Addition—is technical and probably of interest only to the trained scientist. Apart from this, the book is a veritable mine of interesting information that will be intelligible even to the uninformed layman.

Chapter I for example—The Nature of Drug Addiction—is a provocative comparison of drugs, tobacco and alcohol, both as regards addiction to them and their social acceptance. The implication of this discussion is that differences in the legal control and social acceptance of these substances may well have resulted in an addiction problem that to some extent might have been averted if the legislation had been accompanied by an educational programme from the time the need of national control was recognized. In this connection the authors state:

> While the authors wish to make it clear that they certainly do not recommend the unsupervised use of opium for non-medical purposes in any culture, they believe that the reader must be prepared to view the problem broadly and to integrate the element of social acceptance into any equation evaluating the use of any drug. This is essential if we are to meet the problem sensibly and objectively. Many of our past mistakes in dealing with drugs have stemmed from a national tendency toward morality and sentimentality in matters where those qualities can only obscure the fundamental problems of education, cultural adaptation, and the adjustment of the individual to life. Our own Prohibition Amendment was a monument to the confusion of morals with manners and self-restraint.

The implications of this will be of interest to any critic of the approach of our modern legislation, which denies drugs for other than medical or scientific purposes and makes the possession of drugs for any other purpose an offence, but at the same time fails to recognize addiction as a kind of illness, which deserves treatment irrespective of how it developed. There are many who feel that the apprehension, conviction and imprisonment of addicts for the illegal possession of drugs, unless accompanied by treatment procedures, is unlikely to provide any permanent solution to the problem of addiction.

I mean to imply no criticism of the authors for not producing altogether the kind of book I, the reviewer, would have liked to see. They are recognized authorities in the field and what they have done is a valuable and interesting contribution. But they are also well qualified to produce the sort of book that is needed to create a community interest in meeting a complex problem for which society has not, so far, found a solution. Perhaps they will now turn their knowledge and experience to that task.

R. E. CURRAN*

Justice is not a Cloistered Virtue

But whether the authority and position of an individual judge, or the due administration of justice, is concerned, no wrong is committed by any member of the public who exercises the ordinary right of criticizing, in good faith, in private or public, the public act done in the seat of justice. The path of criticism is a public way: the wrong headed are permitted to err therein: provided that members of the public abstain from imputing improper motives to those taking part in the administration of justice, and are genuinely exercising a right of criticism, and not acting in malice or attempting to impair the administration of justice, they are immune. Justice is not a cloistered virtue: she must be allowed to suffer the scrutiny and respectful, even though outspoken, comments of ordinary men. (*Ambard* v. *Attorney-General for Trinidad and Tobago*, [1936] A.C. 322, at p. 335)

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