

THE GENERAL PART OF THE CRIMINAL LAW OF NORWAY. By Johannes Andenaes. Translated by Thomas P. Ogle. [South Hackensack, N.J.: Fred B. Rothman; London: Sweet and Maxwell, xxiii + 346 pp. £4. 4s. Od.].

This publication must be as useful as any of the growing number of useful publications of the Comparative Criminal Law Project of New York University. For this publication makes available for the first time to the common lawyer limited to English an exposition of the general principles of the criminal law of a continental country. The choice of Norway as the pilot country is most fortunate, for two reasons. The first is that the Norwegian mode of legal thought appears not to be as far from the common law mode of thought as does that characterising some other, more typical, continental legal systems. The other reason is that Professor Andenaes' scholarship was available as a source. These reasons are expanded in an expansive Preface by G. O. W. Mueller, Director of the above Project.

Dwelling a little on the first reason, Professor Andenaes is often at pains to refute or modify criminal law "theories" where they cannot be supported by the words of the relevant penal provisions (*e.g.*, the theory of illegality). He also often canvasses policy and pragmatic considerations as against purely theoretical positions. His antipathy to unnecessary theorising sometimes brings him into confrontation with German penal doctrines, particularly, but occasionally also with other Scandinavian penal thought. One advantageous by-product of this is that the reader is introduced to German penal theories and to other Scandinavian penal thought. Professor Andenaes' exposition becomes part of a mosaic of Scandinavian-German criminal law and thought.

This mosaic, further, is of broad scope as Professor Andenaes' conceives his subject as including criminological considerations. In fact the first 90-odd pages

of the book deal mainly with the extent and causes of criminality and the purpose and methods of punishment (and we are told editorially that the treatment of punishment and sanctions had to be considerably shortened in this English edition). Perhaps similarly expanded conceptions may soon flower in common law criminal texts, fertilised by this example. Criminal law cannot continue with us so divorced from the other parts of criminal science. That contact must be made with other disciplines and some understanding of their work obtained could, as well as being a necessity, act as an horizon-broadening inducement rather than as a barrier.

The noise of the free will-determinism debate is often within earshot during Professor Andenaes' exposition, with his and Norway's solutions deriving generally from the free will position. The guilty are to be punished, only the guilty and in proportion to their guilt. Professor Andenaes is also receptive to the claims of general deterrence, though primarily as a value inculcator. He notes the claims of those advocating treatment rather than punishment, but neither he nor Norway go too far with them as basic criminal policy. The concept of responsibility is still well entrenched. This is all rather similar to Anglo-American attitudes. Norwegian criminal law in fact seems to be based at least as much on subjective-culpability premises as does its Anglo-American counterpart. There is little scope for strict liability, generally no corporate criminal liability, voluntary withdrawal from attempt gives impunity, and mistake of law can result in reduced punishment or an acquittal. On the converse side, attempts impossible both because of the methods used and the non-existence of the object are punishable. Unconsciousness due to voluntary intoxication is no defence, but this is not really a departure from the subjective principle because culpability, though here capriciously punished, lies in having become intoxicated.

The common lawyer, lazily adopting concepts from a hoary latin maxim designed for another purpose, still usually divides criminality into two elements: *actus reus* and *mens rea*. The greater conceptual rigour of the continental jurist is evidenced by Professor Andenaes' four-way division of his subject into the illegal act, grounds of impunity (in which he includes self-defence, necessity and consent), subjective guilt (which he also describes as *mens rea*) and personal prerequisites for punishment (under which he treats non-age, insanity, unconsciousness and intoxication). Professor Andenaes' first two classifications would fall within the common law *actus reus*, the last two within *mens rea*. The distinction between the illegal act and circumstances under which it is not prohibited would seem to be basic and very useful. The distinction between the second two of Professor Andenaes' classifications would seem to be less so. The advantage of the classification can readily be seen in the separation of generalised descriptions of the types of *mens rea* required for offences from personal characteristics precluding that *mens rea*. The danger in drawing the distinction however would seem to lie in the risk that the relation between the personal prerequisites and subjective guilt might be lost sight of. This danger would be minimized if these latter two classifications were treated under "culpability" as is apparently the case in some other continental systems.

There are many matters of interest in this book for the common law criminalist. The less central place given to the case law is not surprising but not so the extent to which the cases cited deal with peripheral matters and the hypothetical with unlikely problems. The distinction drawn between intention and purpose (the purpose, e.g., of obtaining an unlawful gain in larceny) is appealing, although it can lead to difficulties (as indicated by Professor Andenaes in relation to intoxication and co-operation). The extent to which the distinction between justification and excuse is elaborated instructively exceeds that in most common law texts. "Recklessness" (conscious negligence) is treated under negligence which is probably happier than the common law habit of associating recklessness with intention. There is little, surprisingly, on the proof of *mens rea*, particularly how far presumptive proof is permissible, although attention is given to burden and quantum of proof on criminal issues. On insanity, the Norwegian Penal Code does not require a connection between the mental illness and the punishable act (the so-called "biological principle"). This is in sharp distinction to the Anglo-American law on the subject, and apparently to most other continental systems. It would also seem to be a victory for treatment over punishment, although it is not made clear what happens to an accused acquitted on the grounds of insanity. Such acquittals will be proportionately greater than in British Commonwealth jurisdictions for in Norway a doubt as to sanity is sufficient for an acquittal.

One irony that strikes the foreign reader of Professor Andenaes' book is that

many of the cases he cites arose from the German occupation of his country during World War II. In considering the issues raised by these cases he not infrequently refers to the views of leading German criminal lawyers.

There are a few formal matters which might be noted. Some of the references to § of the Penal Code by number alone or by "last sentence" (p. 300) leave the reader in the dark unless he has a translated copy of the Code beside him (which he can have, of course, by courtesy of the American Series of Foreign Penal Codes) or searches elsewhere in the book. There are occasional passages in smaller print than the rest of the text, the reason for which is not entirely clear, although these passages often deal with cases. It is doubtful whether the English law on intoxication can be regarded as leading to the same results as the Norwegian law as suggested on p. 267. A word seems to be missing from the last sentence on p. 115. Is "steps on the gas" (p. 224) not a little too colloquial for some English readers? Some of the abbreviations used in the text might have been explained more (*e.g.*, Rt. R. MbL., S.K.M.). §3 V on p. 15 should read §3 IV and the italic seem to be mixed up on p. 292. The reference to the footnote on p. 245 is ambiguous, and if it is within this book it is incorrect while if it is within Hurwitz's it is unhelpful. The words "Translator's note" at the end of some of the footnotes usually are square-bracketed, but they also get round brackets (p. 2) and none at all (p. 313). But these are trifling matters in a technically quite difficult publication. The translation generally reads easily and clearly.

In sum, a progressive but realistic criminal law, impressively presented. A happy choice by the Comparative Criminal Law Project.