Journal of Criminal Law and Criminology

Volume 2 | Issue 1 Article 13

1911

Book Reviews

BOOK REVIEWS.

MODERN PROBLEMS IN PSYCHIATRY. By *Ernesto Lugaro,* Professor Extraordinarius of Neuro-pathology and Psychiatry in the University of Modena. Translated by David Orr, M. D., and R. G. Ross, M. D., with a foreword by T. S. Clouston, M. D., LL. D. Manchester: University Press. Pp. VII, 305.

One of the brightest younger workers in psychiatry presents in this volume a discussion of the problems of psychiatry, rather than a treatise composed of examples of problems rigorously treated. This holds most decidedly about the discussion of the psychological problems which keeps aloof from all the concrete material so richly discussed, especially since the publication of the Italian text (1906). This fact and the almost undivided arrangement of the six main chapters, and possibly a certain heaviness of style, make this book somewhat laborious reading; but it is decidedly helpful in a certain clearing up and greater precision in the formulation of the problems. It is a book for workers in the field, but not a book of reference and of specific information. From this viewpoint, it deserves hearty recommendation. A. M.

DIE BETEILIGUNG DER LAIEN AN DER STRAFSRECHTSPFLEGE. By *W. Kulemann,* Landgerichtsrat a. D. Leipzig und Dresden: B. Teubner, 1909.

This little pamphlet of some fifty pages is a contribution to the seemingly endless discussion over the participation of the laity in the determination of criminal cases. In this lecture, which was delivered as one of a series on the Gehe Foundation, in Dresden, Kulemann at once concedes the value of lay coöperation in criminal procedure and posits the question as to the method of such coöperation as the only one to be settled. After a brief review of the evolution of popular participation in judicial matters, the author gives a short sketch of the present legal situation in Germany, so far as the organization, competence, and procedure of the criminal courts are concerned, and then discusses the relative worth of the two forms in which, under German law, lay assistance coöperates in criminal trials, viz.: the *Schwurgericht,* or jury court, and the *Schöffengericht,* or court consisting of one learned judge and two laymen. The jury court has numerous advantages, as well as disadvantages, but is an importation from England, absorbed into the German judicial system. It is a cunning combination of monstrosity and formalism. The whole arrangement offers not the ghost of a chance for a righteous judgment. What Germany needs is a return to her own peculiar institutions based upon her own national sentiments. She needs to revivify and restore the ancient feeling between law and nationality. That means the binding of the bench and the people in a single uniform activity. Not the jury court, but the *Schöffengericht,* will be

the court of the future. Appended to the pamphlet is a bibliography of thirty-one books ranging from 1813 down to date.

BURT ESTES HOWARD.
Leland Stanford University.

ZORG VOOR DER VEROORDEELDE IN HET BIJZONDER NA ZIJNE INVRIJHEIDSTELLING. Door *Mr. H. B. ver Loren van Themaat.* P. Den Boer, Utrecht, 1911.

This massive volume of over 900 pages is the fruit of patient toil and of practical experience in dealing with discharged prisoners; and yet this thick tome is only the first part of a large work.

The first division treats of the care of discharged prisoners in general; patronage; objections to the service; its usefulness; its relations to punishment. The second division deals with societies for helping prisoners and their families; their organization, resources, coöperation of women, relations to the churches and to other associations, and in contact with mendicants and tramps. The third division discusses the benevolent aid given prisoners by the state; as by religious services, by furnishing work and rewarding effort by payments, furnishing newspapers and similar publications. The fourth division treats the means used to prepare the way for friendly care of convicts.

The Second Part, which is yet to be published, will deal with the history of prison science in relation to care of prisoners; visitors to prisoners; means for alleviating the punishment in connection with patronage; the attitude of the state to discharged prisoners; placing the discharged prisoner; temporary homes for discharged convicts; history of the Netherland Association for the Moral Improvement of Prisoners; general survey of discussions in national and international congresses.

Aside from the personal views of the author, his work is extremely valuable as a sort of source-book in which one can study at first hand the opinions and arguments of the ablest writers on the subject and the experiments made in all countries. The author was one of the delegates to the International Prison Congress at Washington. C. R. H.

A MANUAL OF MEDICAL JURISPRUDENCE FOR THE USE OF STUDENTS AT LAW AND OF MEDICINE. By *Marshall D. Ewell.* M. D., LL. D. Pp. 407. Boston: Little, Brown & Co., 1909.

The publication of the second edition of Ewell's Manual on Medical Jurisprudence indicates that the hope of the author, as expressed in the preface to the first edition, that "a work which within a moderate compass states all the leading facts and principles of the science, concisely and yet clearly, will prove useful to students of both law and medicine," has been realized. In the 400 pages of this manual are condensed most of the essential facts of medical jurisprudence, as the intention of the writer was to make it a careful compilation rather than an elaborate discussion. At the time the book was first issued but little attention was paid to this subject by the majority of law and medical colleges. Unfortunately, with the exception of a few leading schools, this condition still prevails. There is, therefore, the greater need for a reliable manual, short enough to meet the needs of the student as well

as the general practitioner in either law or medicine. Especially interesting are the chapters on "Signs, Mode and Causes of Death," "Personal Identity," and "Insanity." The second edition has been brought up to date and can be commended to those desiring a general knowledge of medical jurisprudence, while its perusal will be of benefit to all who are interested in the subject. F. G.

DIE MODERNEN STRAFRECHTSIDEEN UND DER STRAFVOLLZUG. Von *Dr. jur. W. Leonhard,* Strafanstaltsdirektor. Pp. 138. Leipzig: Verlag von Wilhelm Engelmann, 1910.

A recognized authority in law and practical prison administration presents here, in sharp contrast with the reformatory doctrines of our age, the retributory theory, with all its consequences. This is the first impression of a reader; and yet the ancient tradition is modified by admissions of the new educational ideas and humanitarian tendencies until the rough bosses are smoothed down. It is a wholesome exercise of critical faculties for those who stand for the reformatory and educational element in prisons to subject themselves to this cold bath of antagonism.

The theory of the author rests on his central and dominating conception of retributory punishment (Strafe), and this is defined and described at various stages of the argument. The purpose of prison punishment (Freiheitsstrafe) is to bend the prisoner under the law, or legally measured retribution of wrong (p. 17). This measurement is made in view of the gravity of the act (pp. 18, 44). Punishment is a deserved evil which should be fixed in amount by law and by judicial decision and enforced by the administration. Punishment is different from reformation and education and is the controlling principle of the prison rule. The offender must be made to feel that his insolent defiance of law and morality has struck against the reality of justice. Retribution (Vergeltung) is the essence of punishment (p. 100). Punishment has nothing to do but to requite (ahnden) upon the offender the wrong he has done, while protecting him as far as consistent with this purpose (p. 101). This plan, consistently carried out, has a tendency to change the character of the prisoner.

American advocates of reformatory and educational methods in prisons will not think they are hit by this author, since the doctrine he assails is not their own. "These pages contain a criticism of the punishment of criminals which aims merely at the welfare of the person punished." The idea that the effect of the punishment on the individual is the chief and final end is rejected. But what American has ever put the welfare of a single criminal over against the welfare of the great community? Even if reformation seemed impossible, we all see that the dangerous man must be prevented from harming the commonwealth.

Much of the criticism is disarmed by the large place which the author, a learned and sensible man, really gives to the change of disposition and conduct of the prisoner; and the admissions in this direction often seem to contradict the general doctrine of the work.

The assumption on which the traditional view of retributory punish-

ment rests is made without proof and without consideration of the mass of evidence collected by Dr. F. H. Wines and Dr. S. Barrows in this country. Anyone who has looked over the actual penalties and court decisions in this country will see how absurd is the claim that retribution can be measured. A comparison of penal codes and verdicts as between European nations would reveal the same absurdity.

The book, while it does not do full justice to the American reformatory conception, has a positive value for us: it emphasizes the social purpose of criminal law and penal institutions; it helps to correct the emotional bias of humanitarianism; it rebukes caprice by insistence on the reasonable measure of penalties, and by implication accepts many of the more vital contentions of those who are seeking a substitute for purely retributive treatment. C. R. H.

DIE REFORM DES OSTERREICHISCHEN STRAFRECHTS. Von *Dr. Oskar von Sterneck.* Pp. 196. Innsbruck: Verlag der Wagner'schen Universitätsbuchhandlung, 1908.

How absolutely necessary a reform of the European penal codes has become is shown by the fact that it is advocated even by men who, like Dr. von Sterneck, still conceive the *nature* of penalty to be retribution and its *purpose* retribution and deterrence. Dr. von Sterneck realizes, of course, that in this he stands in opposition to Prof. Franz von Liszt and the whole "Young German" school of criminology, hence in Part I of his book he attempts to defend his point of view—but, as it seems to us, without particular success. This does not, however, render the book valueless, by any means. As the present antiquated Austrian penal law undeniably possesses certain excellent qualities, it is only natural that the apprehension of a premature reform's becoming a *reformatio in pejus* should lead to more or less pronounced conservatism. It seems to us, however, that von Sterneck goes rather too far in his conservatism, as, for instance, when he advocates fining, that most demoralizing and most difficult to adjust of all penalties—one that does not come home to the rich man as a punishment and one that rightly revolts the poor; or when his theoretically retributive views deceive him into regarding capital punishment as still absolutely necessary; or when, disregarding the success with which it has been used, he rejects the "conditional sentence."

Lack of space to-day forbids, unfortunately, our entering more fully into this and other vexed questions; a more detailed treatment is reserved for the next number of the JOURNAL, in connection with a review of the stupendous work by Prof. Franz von Liszt and Dr. P. F. Aschrott, "Die Reform des Reichtsstrafgesetzbuches" in Germany, with comparative references to the proposed reforms in Austria and Switzerland. A. A.

ETHICAL OBLIGATIONS OF THE LAWYER. By *Gleason L. Archer.* Pp. 367. Boston: Little, Brown & Co., 1910.

This book is one which should be welcomed by the young practitioner, and by the established lawyer as well—by the former as an admirable guide along an untried road, and by the latter to freshen his

thoughts on some of the topics and to enable him to refer the younger men associated with him to a reliable guide.

The movement which resulted in the adoption by the American Bar Association of its canons of ethics was but part of a nation-wide movement to higher and more definite ethical standards in all walks of life. But the arrangement of these canons was such as to make them difficult for the student to grasp. This volume classifies all the subjects topically and discusses them thoroughly, so the young practitioner can read the canons understandingly. It also deals with the general questions of professional conduct, beginning with the selection of an office and of associates, its fitting, deportment in it, etc. There is a chapter on legal fees which is valuable, though its treatment of contingent fees is not full enough, and, hence, is not entirely satisfactory. The schedule of legal fees included, too, cannot but prove very helpful to young lawyers. The chapter on "The Lawyer in Politics" is well worth reading by any young man entering on the practice of his profession.

The trouble with most books dealing with these questions is that they assume too much familiarity with the subject on the part of the reader. This book gives the necessary information to the reader coming to the bar, as the young practitioner does, uninformed, guides him along tried professional paths and puts him on his guard against mistakes which might innocently, but certainly, mar his professional reputation. It is a book to be recommended to every law student and young practitioner. N. W. M.

STELLUNG UND TATIGKEIT DES RICHTERS. By *Dr. Adickes*. Pp. 3-27. Dresden: Zahn & Jaensch, 1906.

After treating of the genesis and development of the German judicature, Dr. Adickes proceeds to blaze the trail for that future development which he deems essential to meet the requirements of modern conditions. His fundamental thesis is that the sole function of the courts is to declare rules of law which shall not only be decisive of the case at bar, but furnish principles to govern controversies to arise in the future. This function is essentially different from the task of performing duties purely administrative. The two rôles require different types of men. No set examination can determine the fitness of a man to declare rules of law. Judges who declare the law should be men of wider experience and broader outlook than can be obtained by the long discharge of routine administrative functions. They should be men familiar with spiritual currents and economic necessities, endowed with a sympathetic understanding of all the relations of life and with a sound knowledge of the general public law in all its operations. Such men will be found more often in the ranks of eminent practitioners than in the list of those who have been appointed to the inferior judicial positions by competitive examination.

The German judiciary, as at present constituted, requires too many judges. With a judiciary composed of 9,000 men, there must inevitably be many of mediocre ability. The large salary list renders it impossible to furnish compensation sufficient to attract able men. This weakness is most apparent in the inferior courts, with the result that liti-

gants are usually desirous of taking an appeal. Germany has ten times as many judges as England and seven times the number of Scotland. Moreover, the German judiciary performs many tasks which in England and Scotland are entrusted to solicitors. Though the German judicature has obtained a position independent of the administration, there has not yet been sufficient separation of their functions. At present only one-third of the work of the courts is purely judicial in character. The development needed is merely the further separation of the courts from the administration by relieving the former of all those administrative duties pertaining to matters of guardianship, the drafting of wills and contracts, the conduct of non-judicial investigations, etc., and confining their task to the declaration of rules of law.

Dr. Adickes enters into no detailed or technical discussion of judicial procedure, but he submits as the end to be obtained by any system of procedure the minimizing of the expense of litigation and the securing of a speedy settlement of disputes. This, he thinks, will be aided materially by reducing the number of courts and by ensuring that courts of first instance where criminal matters are adjudicated or where jury trial prevails in civil controversies shall be presided over only by men of the highest ability. The resulting increase of confidence would render it possible to abolish intermediate appellate courts and to reduce the number of judges sitting in bank on the highest courts. Dr. Adickes concedes the danger involved in transplanting bodily the institutions of another country, but he feels that the universal approval accorded to English criminal procedure should especially commend it to Germany. But he finds the English procedure in the conduct of civil controversies highly defective on account of the great expense entailed upon litigants.

This contribution deals for the most part with conditions so essentially different from those which obtain in our judicial system that its appeal to American publicists lies not so much in its specific recommendations as in the general attitude with which it approaches the discussion of the subject.

THOMAS REED POWELL.

Columbia University.

DELLA RESPONSABILITA CIVILE E PENALE DEGLI AMMINISTRATORI DI SOCIETA PER AZIONI. By *Enrico Soprano*. Pp. VIII, 251. Fratelli Bocca, Turin, 1910.

This is a textbook for the Italian practitioner in corporation cases and as such can be of only relative interest to the American lawyer. I shall attempt a brief examination of those parts of the work only which refer to the penal responsibility of directors of stock corporations under Italian law.

The author gives a brief summary of the historical development of corporations in Europe, and finds the first germ of our present-day organizations in the Banco di S. Giorgio, which existed from 1407 to 1805; upon this was later modeled the Banco di S. Ambrogio of Milan.

The Banco di S. Giorgio had the first characteristic administrative corporate organization, consisting of a board of directors, called pro-

tectors (*protettori*), a great council (*Gran Consiglio*) formed of 480 *grandi azionisti* (great stockholders), all under the supervision of *Sindacatori.*

It is to be observed that both the penal and the commercial codes of Italy provide much more fully for penalties in cases of frauds in corporate organization and management than the most drastic of our legislative measures. The author points out that reforms are under way tending to simplify existing provisions looking to a better recognition of the fact that "the cloth of commercial law is woven from considerations of necessity and practical utility."

As to the difference between criminal and civil responsibility, the writer says: "Criminal responsibility falls upon him who is the author of an act, positive or negative, which the law considers a violation of legal regulations and which it visits by punishment. Civil responsibility, on the other hand, aims not so much to social reparation for the right violated, but to the payment of the damages resulting from the infraction of a subjective right."

Under the Italian code and Italian jurisprudence, a director is responsible not merely for a criminal act, but for the lack of that diligence which is to be expected from a *"bonus et studiosus paterfamilias,"* and, according to the author, such principles of conduct should be strictly applied in the case of powers exercised by directors who perform their functions for compensation. Hence, he holds that, granting such principles, the responsibility of directors includes not only the *culpa lata quæ dolo æquiparatur* of Roman law, but also the *culpa lævis,* and even the *culpa lævissima,* which is not generally recognized in contractual relations.

The writer then presents critically in separate chapters both the legislation and the jurisprudence of Italy regarding responsibility during the period of organization of corporations, during normal corporate life, during liquidation and in the event of bankruptcy. The provisions under this last heading would make useful reading for those among our legislators who are interested in reforms aimed at the responsibility of the real principals in corporate management, who often escape behind convenient dummies. Appropriate study is given to the right of action against directors by stockholders and by creditors, as also to the subject of prescription.

The book has a short introduction by the illustrious president of the Bar of Naples, Prof. Enrico Pessina. GINO C. SPERANZA.

New York.

PROLEGOMENES A LA SCIENCE DU DROIT. ESQUISSE D'UNE SOCIOLOGIE JURIDIQUE. By *Henri Rolin.* E. Bruylant, Brussels; F. Alcan, Paris. 1911. Pp. XII, 167.

The author, who is a judge and professor at the University of Brussels, asserts in his introduction that the so-called science of the law which is now being taught in law schools is still imbued with the spirit of mediæval scholasticism. He insists that a juridical sociology must be developed which will be the true science of the law. He defines

sociology as *"the study of the adaptations of man, which are principally mental adaptations, to life in society."* The law is one of these adaptations whose object is to combat the effects or the causes of certain defects of adaptation. Juridical sociology is, therefore, defined as *"the study of the mental adaptations of men living in society destined to struggle, by means of constraint, against certain 'inadaptations' of the same men."*

The first three chapters are devoted to an analysis of legal phenomena as they now exist which the author regards as being in large part mental phenomena. He analyzes, on the one hand, the mental states of those who are subject to law, showing that the law furnishes them a motive for refraining from the acts forbidden by the law. He illustrates this with respect to the right of property, marriage rights, contract rights, etc. On the other hand, he analyzes the mental states of the agents of authority to whom the law gives the power of restraining people from certain acts. Among these agents are the police, judges and, indeed, all representatives of judicial and executive authority. In connection with these he discusses the lawyers, legal writers and teachers of law, whose function it is to know the law and to expound it.

The fourth chapter gives a review of the evolution of law which is surprisingly comprehensive, when one takes into consideration its brevity. Beginning with the origin of law in the habits and customs of primitive peoples, he traces its evolution through the principal stages to the present day. The fifth chapter discusses, first, the relation between the representatives of the law and those subject to the law. Then legal responsibility involving guilt and legal responsibility without guilt are discussed, this furnishing the basis for distinguishing between penal and civil law and the different branches of civil law. In the last chapter, on the history and the teaching of the law, he emphasizes again the scholastic character of legal treatises and of the teaching of the law. He insists that the history of the law should be written from the sociological point of view and that juridical sociology should form a part of the curriculum in law schools.

The author's insistence upon the importance of treating the law from a sociological point of view cannot be too highly commended. In the introduction he says: "This book is only a rapid survey. Perhaps some day we shall go a few steps further." It is to be hoped that M. Rolin will some day give us a much more extensive treatise on juridical sociology.

MAURICE PARMELEE.

University of Missouri.

CORRECTION AND PREVENTION: FOUR VOLUMES PREPARED FOR THE EIGHTH INTERNATIONAL PRISON CONGRESS. Edited by *Charles Richmond Henderson.* Russell Sage Foundation Publications, New York, 1910. Charities Publication Committee. Price, $10.

Vol. I. Prison Reform. By *various writers.* Pp. 320.

Vol. II. Penal and Reformatory Institutions. By *various writers.* Pp. 350.

Vol. III. Preventive Agencies and Methods. By *Charles R. Henderson.* Pp. 440.

Vol. IV. Preventive Treatment of Neglected Children. By *Hastings H. Hart,* assisted by others. Pp. 420.

The conception of these volumes originated with the late Samuel J. Barrows, five years ago, as an appropriate means of commemorating the meeting of the Eighth International Prison Congress in the United States, and the work of preparing them was carried forward under his direction. Upon his death in April, 1909, his successor, Dr. Charles R. Henderson, took up the work and carried it through to completion. The general purpose of the undertaking was to bring together in a number of souvenir volumes a summary of the leading facts regarding the progress of penology and preventive methods in America. The first volume is devoted to the two subjects of prison reform and criminal law. Instead of treating the subject of prison reform in a systematic manner, the editor has brought together a series of essays on various penological questions, together with biographical sketches of the men who may be said to have been the pioneeers in American prison reform, among them being E. C. Wines, Edward Livingston, Dorothy Dix, Francis Lieber and Samuel J. Barrows. The second part of Volume I contains a survey of the criminal law and procedure in the United States by Eugene Smith, Esq., a distinguished member of the New York bar and president of the New York Prison Association. The purpose of Mr. Smith's contribution has been "to present from a penological point of view certain distinctive and characteristic phases of the criminal law in the United States, and especially those that, by reason of the dual form of government existing in this country, arise from the relations of the several states to each other and to the federal authority." The topics discussed include the criminal law of the United States and of the states, the punitive system of the United States, the indeterminate sentence, juvenile courts and criminal procedure. Owing to the limitations of space, it was obviously impossible for the author to do more than give a summary sketch, and this is all that was attempted. The principal purpose, we take it, was to furnish the foreign delegates to the International Congress with a concise account of our system of criminal law and procedure, and for this purpose it is well adapted.

The second volume is devoted to prison and reformatory administration in the United States, mainly in the northern states. It contains sixteen papers on a variety of subjects relating to prison administration by experienced prison administrators and penological writers. Among the topics discussed are: police administration, jails, workhouses, police stations, reformatories and reformatory methods, prison officers and prison discipline, prison labor, educational work in prison, prison hygiene, the criminal insane and the treatment of discharged prisoners. Altogether these papers constitute a useful and up-to-date body of information relating to prison science and administration, such as would be difficult to find elsewhere.

The third volume, entitled "Preventive Agencies and Methods," written wholly by Dr. Henderson, the editor of the series, is the most

systematic in treatment of the four volumes. In this volume we have, first, a discussion of inherited defects, including the defective classes, the insane, the regulation of marriage, sterilization and regulation of immigration. From this somewhat preliminary discussion the author passes to a more detailed consideration of preventive methods and agencies: improvement of physical conditions; economic methods of prevention, including also legislative and political agencies; methods of dealing with prostitution, alcoholism and the drug habit; direct measures of prevention, such as bureaus of identification, police agencies, probation, suspended sentence and the like; legal and judicial agencies; educational influences; recreation, social and religious agencies, etc. The dominating fact throughout Dr. Henderson's volume is that the most effective method of dealing with the crime problem is to prevent crime, and the various methods and agencies by which this can be accomplished, at least to some extent, deserve more consideration than they have heretofore received. It is plain, as the author shows, that punishment, however rationally and justly inflicted, can never be effective in solving the problem; the true and only solution is prevention.

The fourth volume deals with the treatment of delinquent and neglected children and was designed primarily to furnish the foreign delegates to the prison congress with information concerning American progress in this important field of prevention and correction. Six general subjects are treated in this volume: institutions for delinquent children, institutions for dependent children, child-helping societies, family home care, juvenile courts and miscellaneous preventive agencies. The larger number of the papers were contributed by Dr. Hastings H. Hart, though there are a number of other writers. The papers on the juvenile court are especially valuable, among the contributors to the discussion of this subject being, besides Dr. Hart, Judge Julian W. Mack, Bernard Flexner, Harvey H. Baker, F. C. Hoyt, H. W. Thurston and Homer Folks.

The limits of this review do not allow more than a brief outline of the scope and purpose of this well-conceived series of contributions to American penology. Necessarily, in a work like this, to which there are so many contributors, there is more or less of duplication and overlapping. Moreover, it is to a considerable degree a work of compilation rather than a systematic, consecutive treatise, a fact which debars it from being regarded as a work of patient and thorough scholarship. But it was never intended to be such, and in this light it must be judged. It constitutes, as we have said, a useful body of knowledge, and those who conceived the idea and carried it through are entitled to the commendation of all persons who are interested in the general problem of combating and dealing with crime. J. W. G.

CASES ON CRIMINAL PROCEDURE. By *William E. Mikell.* St. Paul: West Publishing Co., 1910. Pp. xviii, 427.

It is very difficult to review a case book. Apart from matters of detail one can do no more than express a prophetic opinion regarding the suitability of the cases and their arrangement for instruction purposes. The test of the value of a case book is its practical success in the class-

room. The book is a good one if the cases arouse interest and discussion on the part of the students and are so selected and grouped that they are suited for developing legal principles. If any of these elements is lacking the book is a failure, no matter how much learning appears to be inside its covers. Where the classification of a case book depends upon a logical analysis of the subject, that may be discussed in a review, but where, as in a case book on criminal procedure, the classification is based upon the chronological order of the proceedings the opportunities of the reviewer are slight.

The present case book is one of the American Case Book Series, regarding the general plan of which there has already been much comment. Prof. Mikell also compiled the case book on criminal law for this series. The book on procedure contains seventeen chapters, the subject headings of which, as is not always true in a case book, correctly indicate the points of law developed by the cases in the chapter. In two chapters the editor logically distinguishes between the legal formalities of the sentence and the degree and kind of punishment imposed. One chapter is entitled "Appeal, Writ of Error and Certiorari." The cases in this chapter are selected for the purpose of showing the differences between the various kinds of appellate review of criminal trials. The editor has but one case on appeal, *Hornberger v. State,* 5 Ind. 300, and this case discusses the statutory formalities rather than the nature and distinguishing characteristics of an appeal. There is no reference, either in text or note, to the English Criminal Appeal Act, although this act and the cases under it strikingly indicate the character of an appeal as distinguished from a writ of error.

Most of the chapters are introduced by extracts from the early commentators. The cases, one-third of which are English, are closely edited, all irrelevant matter being omitted. There are extensive and carefully prepared notes. Where a case in the text represents one side of a question, on which there is a conflict of authority, cases accord and *contra* are cited. The notes also contain abstracts of cases elaborating points raised in the text. Statutory changes are also noted. Forms of indictments are given in the appendix. The typography of the book is good and the citations have been verified. E. R. KEEDY.

Chicago.

YOUNG GAOL-BIRDS. By *Charles E. B. Russell, M. A.* London: Macmillan & Co., 1910. Pp. 236.

This book is a collection of sketches of the careers of youthful criminals. The author has at heart the widening of public interest in the question of the disposal and after-care of the youths who pass through the police court in England, and his work represents a study of that question. The method of presentation is almost wholly anecdotal, and from that standpoint is interesting. Mr. Russell has back of him a great deal of experience in the handling of these cases, and his judgments show a shrewd application of the knowledge which he has gained by his long experience. His criticisms of many of the generalized attempts at reform by the Borstal and other systems are well-considered from

the viewpoint of one who sees practically how these things work out.

All told, however, the work is anything but thoroughgoing from a scientific standpoint, and, consequently, will fail to convince many students of the general subject. The main defect lies in the fact that, while there is a distinct effort by the author to estimate the whys and the wherefores of this or that individual's success or failure, he gives us only the most superficial account of the individual's physical and mental capacities. To be sure, he speaks, perhaps, of the one-legged or hump-backed type, but there are many other physical disabilities which stand in the way of social restitution. The author gives us no evidence that these less-obvious physiological characteristics have been taken any account of. And then a strong point also may be made with regard to the absence of study of the psychological status of the young criminals sketched. It certainly must be of paramount importance in the estimation of the effect of environmental conditions to know as much as possible of the innate mental capacity of the individual to profit by ameliorative measures, as well as those psychological peculiarities which might lead him to follow his own criminal bents, or readily to be a victim of vicious social suggestions. The author, then, has not given us a study of criminals which will be particularly helpful for further work in generalizing upon the subject, or for pushing practical measures of relief.

WILLIAM HEALY.

Chicago.

UBER KRANKHAFTE MORALISCHE ABARTUNG IM KINDESALTER UND UBER DEN HEILWERT DER AFFEKTE. Von *Prof. Dr. G. Anton.* Carl Marhold, Halle a. S., 1910. Pp. 30.

This essay is a very careful and well-balanced study of a question of vast import to medico-legal circles. The author summarizes the opinions of many of the world's best thinkers on this subject. The term "moral insanity" is now eighty years old and is still under discussion. Foreign writers find it difficult to use an equivalent term in their own language, and so the English phrase has gained widespread use. Quite different grounds have been taken by various students. Anton states that the larger proportion of authorities insist that so-called "moral insanity" is always accompanied by some grade of intellectual weakness, including, of course, members of the different groups of the feeble-minded. And the majority of these authors maintain that the intellectual weakness is not at all in correspondence to the changes in the emotions and moral nature. Some have expressed the opinion that, both in the normal type and in the pathological individual, there is a departure from the moral norm without any proved weakness of intelligence. At any rate, says Anton, there is a unity between psychologists and psychopathologists in the opinion that there is in some cases no correspondence of degree betweeen disturbance of intellect and weakness in the sphere of emotions and morals. Frequently the defect of intellect is so slight as to be hardly provable, and certainly the limitations of what is now called feeble-mindedness must be enormously extended in order to include all these cases in this rubric.

The author himself goes into consideration of distinctly pathological conditions, where, however, the main disturbance is in the field of morals. He makes many concise statements with regard to specific cases and general conclusions which are well worth considering by those who are interested. In his concluding and summarizing paragraph Anton states that the phrase "moral insanity," even though it does include many different types, yet can stand as a definite and valuable term applicable to those pathological processes and abnormal conditions of development which elect preferably the emotional and moral life of the individual and, consequently, influence his conduct. One of the most valuable features of this essay is found in the bibliography, which covers, in fine print, some seven pages and includes certainly nearly all of the world's literature on the subject. This part of the contribution alone would amply justify its being in the hands of all criminologists.

Chicago. WILLIAM HEALY.

DIE KRIMINALITAT DER JUGENDLICHEN UND IHRE BEKAMPFUNG. Von *Prof. M. Liepmann.* Kiel: Verlag von J. C. B. Mohr, Tübingen, 1909. Pp. 48.

This pamphlet is directed to the proposed reform of criminal procedure in Germany and is written with particular reference, of course, to the way juveniles are now handled there. The author's general standpoint is found in the statement that he considers youthful criminality to be principally a social and educational question. He draws attention to the increase of the number of juvenile offenders and names three conditions which are necessary for betterment of the situation. The first of these is that there should be a greater understanding of the psychology of the delinquency of youth. Next there should be energetic opposition to the causative factors of criminality; and, third, there should be a betterment of the methods of punishment and of the whole criminal procedure. With regard to the last point he asks, "Does anyone believe it possible, by any given short term of prison sentence, to counteract the tendencies which give rise in children to robbery, arson, etc.?" About the psychology of the situation he offers a few suggestions which mainly have to do with the study of the lack of development of normal powers of inhibitions in the juvenile offender, but this whole subject is treated in such a sketchy way that it is not fair to the author to pick out any single statement. The whole problem of handling the young offender is ripe for consideration from all points of view, and should be demanded quite independently of any question of reform of the legal phases of penal procedure. While a cursory view of the subject is presented in this essay, still it is a very thoughtful piece of work.

Chicago. WILLIAM HEALY.