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## Reviews and Criticisms

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## REVIEWS AND CRITICISMS.

SCHULD UND SUHNE; EINIGE PSYCHOLOGISCHE UND PADAGOGISCHE GRUNDFRAGEN  
DES VERBRECHERPROBLEMS UND DER JUGENDFURSORGE. By *Fr. W. Foerster*.  
C. H. Beck'sche Verlagsbuchhandlung, München, 1911. Pp. V + 216.

The author's chief aim in writing this book is to mediate between the old attitude toward, and way of treating, delinquents and criminals, as it is represented by the classical school of jurisprudence, and the new doctrine of dealing with legal offenders, which received its strongest impetus from the American system of juvenile supervision and guardianship. The supporters of this modern method attempt to replace abstract, impersonal legal punishment of the deed by therapeutical and pedagogical measures adjustable to fit the individual wrongdoer. The author raises the question whether this individualizing tendency is really the only correct standpoint toward lawbreakers, or whether there is not also a real regenerative significance in atonement and a real educative power in the subjection to an inviolable objective order? And does not, he continues to ask, our impulsive and easily excitable youth especially require for their conduct such a strong guide as the unchangeable order of things? These questions are dealt with under the following chapter headings: 1. The psychological and pedagogical meaning of punishment; 2. the rights of the lawbreaker and the dispute of the schools of jurisprudence; 3. the idea of guilt and modern determinism; 4. reforms of punishment; and 5. the most important pedagogical problems of juvenile negligence.

The first chapter begins with a discussion of the significance of fixed objective norms. The author admits that the old method of dealing with criminals and especially with juvenile delinquents needs a thorough revision, but he strongly disapproves of having this more humane treatment take the place of legal punishment. The only excuse for such a practice is the fact that our present social and ethical conditions are in a transitional stage. But the continuation of such a substitution would soon lead to a confusion and weakening of the social and civic conscience and consequently to increase lawlessness. Instead, he holds that it is one of the chief duties of a pedagogical or therapeutical criminology to arouse in the imperiled characters strong inhibitory ideas and to deepen their notions of fixed limits and insuperable norms as a means of checking natural impulsiveness and moral unsteadiness. In this regard the due respect for the inexorable law is the best preventive as well as curative means for moral weakness. Just punishment is beneficial not only because it leads the wrongdoer to recognize the antisocial character of his deed, but also because it recognizes him as a responsible personality whose action is not the product of mere external circumstances but the wilful result of his own personal decision and innermost nature. There is finally also a purifying and propitiating element in punishment which should not be overlooked or underestimated. The secrets of conscience cannot be comprehended from a merely intellectual point of view.

The application of these principles to youthful delinquents is of special importance, because here the modern spirit of leniency is particularly inclined to substitute all sorts of means for regular punishment, instead of trying to eliminate the objectionable features from the old methods. The author considers

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the modern juvenile courts in many respects as pedagogically unsound and says: "not education *instead of* punishment, but *first* punishment and *then* education;" and again: "education instead of punishment has the same effect as bandaging a wound before cleansing and disinfecting it."

While discussing in the second chapter the question whether the evil deed or the evil-doer should be punished the author points out that nothing has a more civilizing and refining effect upon people than the due consideration of the rights of the criminal. If the judgment depends upon the judge's opinion of the indicted and not upon a universal law, the door is opened to the most dangerous arbitrariness which would soon do away with all respect for the authority of the law and undermine the people's conscience. But while the law deals with the crime in an objective manner, the criminal himself may very well be treated according to the subjective conditions underlying his deed. The fact that after completing his sentence the criminal is again turned loose upon society is not the fault of the law but a natural consequence of the present social conditions which can be remedied by proper means without conflicting with the law. Here again the rights of the ex-convict must be properly safeguarded and his individuality and mentality should be taken into account. This offers another opportunity for the conciliation and co-operation of the old and the new schools of jurisprudence.

The next chapter is a defense of the indeterministic view of the human will. The author speaks of a lower aspect of will which is inherited and casually determined by environment and education, and a higher factor which is of divine origin: the mysterious voice of conscience. In crucial moments the mind has to choose between the two, and upon this decision rests our notion of personal responsibility and our sense of guilt. The denial of the free will does away with this most powerful instrument of saving the criminal from himself. The author does not wish to detract from the importance of pathological inhibitions of the will, but he warns against ascribing every little human deficiency to this factor and rightly believes that the present tendency to exaggerate the pathological factor is due to the imperfect psychological knowledge of the average normal mind. In mild cases especially, where the best therapeutical treatment depends upon a strong appeal to the person's will-power, a pitying indulgence and excuses of the deed on pathological grounds will destroy the last remnants of moral resistance. Punishment is a mental medicine which in particular should not be denied to the pathologically inclined, because even with them atonement has a certain purgatory and therapeutic significance.

As to reforms of punishment the author demands in the fourth chapter a greater variety and finer gradation of penalties. He recommends in particular that persons who in a moment of passion or levity or grave temptation and inner conflict or other unusual constellation of circumstances have committed a deed which is entirely foreign to their sober character should not be either imprisoned or else entirely acquitted, but be required to engage in some positive activity of a social or charitable nature, perhaps under the guidance or supervision of organized charity societies or the like. He points out that in Holland and England the Salvation Army has already made such a beginning and that in the early Christian era the privilege of "intercession" by the Roman bishops represented the same principle. In connection with such a system of restitution

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he recommends that the present practice of "free penalties" under the supervision of probation officers be extended to adult first offenders and mild cases of delinquency. In this way many a soul can be more easily saved from a criminal career, many a family will not be robbed of its supporter and made to suffer more than the guilty, the welfare of society at large will be furthered by the work of those under probation, and finally the expenses of the state in providing for prisons and their maintenance will be greatly reduced. In advocating a more humane treatment of the prisoners in jail the author devotes seven pages to American institutions, especially to the Elmira Reformatory. He says it is false pedagogy to add to a strong reprobation of the deed a degrading and disdainful treatment of the unfortunates. He absolutely condemns corporal and capital punishment on the psychological ground that they stifle all sense of honor in the criminal, the executioner, and the witnesses and rather promote cruelty and barbarism.

In the last chapter the principles thus far outlined are applied to juvenile delinquency. Many concrete cases illustrate the difference between the old and the modern methods of treating young offenders. A special paragraph is devoted to "the American criminal pedagogy and its cultural basis." In discussing the psychology of juvenile delinquency the author points out that the same offense in different boys may be due to different motives which should be discovered and duly weighted before applying corrective measures. Many offenses are due to a spirit of initiative and adventure; the latter should be guided into useful channels so as to lead to acts of courage, bravery, and chivalry. The same holds true of the "gang instinct." Among the measures of prevention which the author discusses we may point to his emphasis upon less intellectual and more ethical instruction, upon less mechanical, repressive and more personal, inspiring school discipline, as well as to his strong recommendation of boys' clubs for social and recreative purposes. A final paragraph takes up measures of correction and describes in particular the juvenile court, the system of probation and suspended sentence, and reformatory institutions for youthful offenders.

A Report on Administration and Self-Government in the Service of Education in Reformatories by the Rev. Plass, director of the *Erziehungsanstalt am Urban* (Zehlendorf near Berlin) concludes this instructive and suggestive treatise, whose message of conciliation and co-operation deserves the most serious consideration of those who are deeply interested in the social and ethical welfare of our nation.

University of Georgia.

L. R. GEISSLER.

DIE ERGEBNISSE DER ZEITLICH ABGEMESSENEN BESCHRÄNKUNG DER FREIHEITSSTRAFEN IN IHRER ANWENDUNG AUF VORBESTRAFTE RECHTSBRECHER UNTER BESONDERER BERÜCKSICHTIGUNG DER JUGENDLICHEN RECHTSBRECHER—KRIMINALPOLITISCHE STUDIE IN STATISTISCHER BELEUCHTUNG. Von Dr. med. Gustav Beck, in Bern. Erweiterter Separatabdruck aus der "Zeitschrift für schweizerische Statistik," 2. Lieferung, 47. Jahrgang, 1911, pp. 165-208.

Apparently, the main purpose of this elaborate study is to prove by means of the statistical method what really no longer requires proof, that in a certain number of cases definite sentences of imprisonment do not meet the requirements of society, whether it be the question of its protection or the reformation of the individual. In an elaborate introduction, a series of theses is propounded,

only one of which contains an especially noteworthy recommendation. In this (the fifth), the author demands that in the case of offenders who through repeated anti-social acts and punishment have shown themselves to be habitual criminals the courts shall turn them over without trial to an administrative board to which he gives the name of penal guardianship commission (*pönale Vormundschaftsbehörde*). He would give to the same commission charge of the juvenile delinquents who are first offenders, and in consequence this board should work in close co-operation with juvenile courts.

Much of the material utilized relates to the Canton Bern and covers a period of ten years. Throughout the chief tables a distinction is maintained between first offenders, recent recidivists and old recidivists, who are, respectively, designated as singularists, new-pluralists and old-pluralists. It may fairly be questioned whether this distinction is altogether happy. It would seem, among other things, to result in a classification whereby offenders of quite dissimilar categories are brought into close relation, statistically. Habitual burglars, for instance, should not be considered in the same class with beggars and vagrants.

While some of the tables are of questionable worth and not altogether free from errors, others are quite significant. For instance, table 4 shows that of 17,287 male offenders, 2,919 have been sentenced more than four times, while 9,629 were punished only once. The statistics of female offenders reveal similar conditions. The purpose of the table is to answer the question how large, in proportion to a given population, the number of delinquents who, according to the thesis alluded to, should be given in custody of reformatory institutions. Assuming that the duration of such custody would average a minimum of three years, the author finds that the number in question would be about 1,400 (in a population of about 600,000). For the whole of Switzerland, this would give a total number of persons thus to be held in custody of about 7,000.

Table 5 contains some instructive material covering the age groups into which the first offenders and the recidivists fall. On the whole, the facts brought out correspond to those yielded by the criminal statistics of other countries. The general conclusion in regard to juvenile offenders is that the earlier the criminal career is begun the greater is the likelihood of its continuation.

The classification of juvenile delinquents attempted by the author on a psychological basis will hardly win general approval. In attempting to account for the causes of delinquency, he lays peculiar stress on lack of education. On the other hand, he seems to overlook general social and economic factors and particularly ignores abnormal mental conditions. Since the author has invented a classification of his own and also groups cases according to a psychological basis of his own invention, it is almost impossible to make any comparisons with other criminal statistical studies.

In conclusion, he gives a selection from what he calls criminal biographies, relating, of course, to recidivists. As no attempt is made to analyze the individual biography the material does not offer much of value.

It may fairly be questioned whether the immense amount of labor expended on this statistical study has been worth while. One can scarcely say that the author arrives at new and specially significant conclusions, nor does he incite the reader to very fruitful speculations. Nevertheless, the student of criminal statistics may find in it some material of use.

Boston.

JOHN KOREN.

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DIE IRRTUMER DER STRAFJUSTIZ, UND IHRE URSACHEN. By *Dr. Erich Sello*, Justizrat, Berlin. Decker's, Berlin, 1911. pp.

This is the first volume of Sello's work and deals with death penalties and life sentences among the judicial errors of modern times. The apprehension that justice might miscarry in spite of the most diligent efforts of the judge and jury to fathom the true facts of a given case always exists to a greater or less extent in the minds of those who have anything to do in a professional way with the law. This just apprehension is kept alive by the not very infrequent accounts of the daily press of some grave error of justice. It was this motive, made more acute by the discovery of some very gross errors in the author's own practice which prompted him to make a systematic collection of data on this subject from the annals of justice of the various civilized countries, and thus we have in Dr. Sello's book a very illuminating work on this subject.

At the first glance at the book one is likely to get the impression that it is of a semi-popular kind, but a diligent perusal of its contents will soon convince the reader of the author's sincerity and of the painstaking labor with which he endowed this volume.

This collection of instances of errors of justice, culled as it is from practically every civilized country of the world, cannot fail to serve to put every jurist on guard as to the many possibilities of error and to the host of contributing factors which may bring about a judicial crime. The part suggestion plays in evidence before law is amply illustrated in this volume and from this point of view it should be of especial interest to the psychopathologist. This potency of suggestion and the part it plays both in the direct and cross-examination of witnesses has been amply discussed by a number of psychologists, among whom Prof. Münsterberg may be mentioned, and in the volume before us we have more or less incontrovertible facts to substantiate this. To the English speaking public those cases taken from the annals of England and the United States will be of especial interest. One will find a discussion of such prominent cases as those of Guiteau and Czolgosz, and the very illuminating English case of William Show, who was hanged for the murder of his own daughter, later findings having shown beyond much doubt that this supposed victim of murder had committed suicide.

The author goes especially into detail in discussing the errors committed in sentencing unquestionably insane individuals, and the frequency of such instances again emphasizes the importance of adequate provision for expert testimony where the least suspicion of insanity arises.

The expert's activity, however, should not be confined solely to the accused. How many innocent people have been the victims of judicial crimes because of the testimony of a hysterical woman or psychopathic children? The suggestibility of children and this class of women is well known and under the manipulations of a dexterous lawyer they can be made to testify to anything. Of especial interest is a famous German case in which one of the accused persisted in his confession of guilt to the very end, and a wholesale judicial murder was only averted at the eleventh hour through overwhelming evidence from outsiders who proved an unshakable alibi in the case of this persistent confessor of guilt. Such a phenomenon can only be accounted for on the ground of a diseased mind, and when, as it happened in this case, the lives of supposed accomplices are endangered, the importance of establishing the mental status of such confessor

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becomes at once apparent. Revenge, malice, prejudice, mob-intoxication are some of the other factors which contribute to the altogether too frequent judicial crimes. Aside from being of inestimable value both to the jurist and psychopathologist, the book can be read with a great deal of benefit and genuine interest by any enlightened person, and in a country like this with our jury system, one can readily see how much good such a work might do. We heartily recommend Dr. Sello's work and believe it should find a place at least in the library of every jurist and psychopathologist.

BERNARD GLUECK, M. D.

Government Hospital for the Insane, Washington, D. C.

UBER PERSONLICHKEIT, AUFGABEN UND AUSBILDUNG DES RICHTERS. Von *Dr. A. N. Zacharias*, Judge of the Court of Appeals of Hamburg. J. Guttenberg, Berlin, 1911. pp. 161.

This book belongs to the rapidly growing literature in Germany dealing with the reform of juristic studies in preparation for the bench and bar. The changes in the commercial and industrial life of Germany like those in the United States have awakened a feeling in both countries that the lawyers and judges have not kept pace with the times, and that their traditional training is no longer adequate. The author seeks to contribute to the solution of the problem how judges are to be better fitted for the discharge of their judicial functions from his personal experience as judge in the most important commercial city of Germany. In his judgment the main defect in the present preparation of the German judge is his failure to understand the life of the people whose controversies he is called upon to decide. Throughout the book, therefore, the author emphasizes the necessity of choosing as judges in commercial cities or industrial and agricultural regions men whose personality and preparation has fitted them for their respective tasks. Practical suggestions are given as to the manner in which a person preparing to be judge in a commercial city can obtain the necessary information and experience.

The author is of the opinion that the study of Roman law, notwithstanding the adoption of the civil code, will remain of the greatest benefit to the judge because of the juristic training it affords. The necessity of a general knowledge of physics, chemistry, and of modern languages is especially mentioned. The author believes, however, that the general courses in political economy (exclusive of courses on Finance) are too general and abstract in their character to be helpful to the judge. On the other hand, he strongly recommends special courses dealing with the actual conditions in commerce and industry.

Persons acquainted with the present preparation of German judges will find the book both interesting and instructive.

University of Wisconsin.

E. G. LORENZEN.

THE HISTORY OF THE PRISON PSYCHOSES. By *Paul Nitsche and Prof. Karl Willmanns*. Authorized translation by F. M. Barnes, Jr., M. D., and Bernard Glueck, M. D., with an introduction by Wm. A. White, M. D., Mental and Nervous Disease Monograph, Series No. 13, pp. 84.

The "insanity dodge" clamor is perhaps more prevalent in this country than in any other. The mere suggestion of a defense of insanity in a criminal case often suffices at once to raise the suspicion on the part of the prosecution of an

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endeavor to dodge the law. All the contentions of the medical profession to the contrary will, however, remain unheeded until those charged with the administration of the law will have acquired a better insight into the nature of the criminal. It is certain that this insight will never be gained by the legal profession if they continue to administer the law according to the crime, leaving out of consideration the perpetrator of such crime. In dealing with the criminal we are dealing with a human being subject to the same emotions, the same desires and passions as any other human being and the mere fact that a man guilty of crime coincidentally or subsequently develops a mental disorder, is not sufficient cause to suspect him of endeavoring to dodge the law. Unfortunately the subject of the mental disorder in prisoners and criminals has been quite neglected in this country and an English translation of this little volume should certainly be hailed with enthusiasm. The authors bring before us a comprehensive review of the so-called prison psychoses, and while from the title it would seem that the authors confined themselves to a discussion of the mental disorders occurring in prison, the book likewise throws a good deal of light upon the nature of criminal man. A perusal of its contents will undoubtedly open a new vista to those interested in the criminal and a more intelligent administration of the law will be the result. For this reason it is heartily recommended.

BERNARD GLUECK, M. D.

Government Hospital for the Insane, Washington, D. C.

TRIAL OF WILLIAM PALMER. Edited by *George H. Knott, Barrister-at-Law*. William Hodge & Co., Edingurgh and London, 1912, pp. 320.

No greater service could be performed for the criminal trial lawyer, in fact, for the jury lawyer in general, than the presentation in compact form of the notable trials of the last century. To Messrs. Hodge & Company are due, accordingly, the heartfelt thanks of every barrister. In the "Notable English Trials Series" such cases as those of Mrs. Maybrick, Lord Lovat, Dr. George Henry Lamson, etc., either already have been, or very shortly will be, published.

In many respects the trial of William Palmer is the most fascinating, as it certainly is the most mysterious, of them all. Sir James Stephens observes in his celebrated "History of the Criminal Law" that, as a whole, it is one of the most eminently deserving of attention in all legal history. The charge was murder by the administration of strychnine. No traces of the drug were found in the organs of the deceased. Medical and medico-chemical evidence constituted the greater part of the proceedings and the most technical testimony on questions of physiology, chemistry, anatomy, and toxicology was adduced both by the Crown and the defendant. Such leaders of the profession as Sir Alexander Cockburn, then attorney-general, and Mr. Serjeant, later Mr. Justice Shee, were engaged. Palmer himself, shortly before execution neither positively admitted nor denied his guilt, but simply stated, "I am innocent of poisoning Cook by *strychnia*."

To the American reader, perhaps, the chief point of legal interest is the remarkable contrast between the English criminal procedure and our own. The trial court, far from being a mere automaton or "dummy," not only took a very considerable part in the conduct of the case, but very firmly and unequivocally intimated to the jury its opinion of the probative value of the divers facts and circumstances brought out in the evidence.

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The book is well arranged, fully edited and quite worthy of the attention, not only of the legal fraternity, but of all students of human frailty.

University of Illinois.

I. MAURICE WORMSER.

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A MANUAL OF AMERICAN CRIMINAL LAW, INCLUDING FORMS AND PRECEDENTS. By *Lewis Hochheimer*. King Bros., Baltimore, 1911, pp. 337.

This is a summary, not an exhaustive treatise, on American Criminal Law. The first 110 pages cover the substantive law, being the statutory definitions of the different offenses, with adequate citation of authority.

The next 160 pages cover the matter of procedure, both by indictment and information, including appeals and special proceedings, such as certiorari, habeas corpus, and the like, resorted to by the defense in appropriate cases. It also contains many forms. Then follows a table of the cases cited and an index.

It is not an exhaustive treatise, neither does it purport to be. The general practitioner will have to consult the statutes and decisions of his own State, both as to definition of offenses and appropriate procedure.

However, the book is an accurate and succinct summary of the matters which it treats. It will give any practitioner a good general survey of the law on any particular subject. Following this up with a verification of the authorities in his own State should lead one rather quickly to the precise rule upon any point desired. The book, if used in the above way, will be useful to any practitioner.

The author has spent much time to insure accuracy of statement, and apparently has succeeded.

Wausau, Wis.

C. B. BIRD.

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TEXT-BOOK OF MEDICAL JURISPRUDENCE AND TOXICOLOGY. By *John J. Reese*, M. D. Eighth Edition revised by D. J. McCarthy, A. B., M. D. P. Blakiston's Son & Co., Philadelphia, 1911. Price \$3.00.

This concise text-book, designed for the student, attorney and general expert, has been somewhat amplified and modernized by the editor. The chapter on Insanity, the classification of the forms of insanity and the mode of commitment of the insane has been extensively revised. The popularity of the book is such that the reviewer is prompted to suggest, in future editions, the correction of more than three score typographical errors, the abandonment of the Silvester method of resuscitation (p. 161), some mention of iodoform poisoning and a general consideration of the effects of various embalming processes upon the cadaver.

Jefferson Medical College, Philadelphia.

E. A. SPITZKA.

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DIE GESETZGEBUND UBER POLITZEIVERORDNUNGEN IN PRUSSEN. By *Otto Lindemann*, Justizrat im Justizministerium. J. Guttentag, Berlin, 1911, pp. 189.

In the introduction to this volume, which is concise, exhaustive and interesting, the author has defined the police power, traced its history, outlined the organization of the police authorities in Prussia, and clearly shown the jurisdiction of the various police authorities in the enactment of police ordinances, together with the limitations placed upon their jurisdiction. The author has not expressed any new or original ideas in the philosophy of the police power, but the reviewer

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has never seen a clearer exposition of this subject than has been given in this little book.

In the body of the book the author has given the Prussian police law of March 11, 1850, section by section, and has introduced at the end of each section all of the amendments to date, as well as copious notes, which possess both practical and theoretical value. A subject index at the end of the book adds much to the usefulness of this book as a *vade mecum* for German police officers and prosecuting attorneys.

It is unfortunate that the typography of the book is poor, and this detracts from the excellent work of the author. The book is of great value to police officers in Germany, but possesses little that is of interest or of value to American police officers.

New York City.

LEONHARD FELIX FULD, PH. D.

FORTPFLANZUNG VERERBUNG RASSENHYGIENE. By *Prof. Dr. Max von Gruber* and *Priv.-Doz. Dr. Ernst Rüdin*. J. F. Lehmann, München, 2nd edition, 1911. pp. 191, 230 tables and figures.

One of the exhibits of the international hygiene exposition in Dresden last year was devoted to race hygiene. In this group were included such exhibits as would aid in a clearer understanding of the present biological status of the human race and lead to better and more universal attempts to secure an improvement of the race. The pamphlet under review was intended as an illustrated catalog to the race hygiene group explaining the tables, charts, etc., which made up the exhibit, and which would otherwise have been difficult to understand. Another desire in the preparation of the pamphlet was that it might be of value to general readers as a summary of the present state of our knowledge in this line. Its value as a general treatise is somewhat lessened by the demands of its primary object.

There is no complete analysis and careful correlation of the facts, the text being mainly an explanation and a description of the tables and other exhibits. Of necessity, also, there is comparatively little discussion of facts and causes and few conclusions are drawn. In this lies its principal defect for the general reader. Furthermore, the explanation of tables is sometimes several pages away from the tables themselves, and hard to find. The cuts are prepared from the large tables and charts of the exhibit and the great reduction necessary has resulted in the loss of some detail, and a crowding and indistinctness of others.

A very large number of collaborators and contributors to the exposition, eminent investigators in this country and abroad, brings together in one place an unusually large amount of illustrative matter of various sorts and from various viewpoints. In the recording of this in one place the pamphlet has its chief claim for merit. And whatever the drawbacks, a reading will be suggestive and valuable. It assumes little technical knowledge of the reader. Starting with simple fundamental biological facts as reproduction, it carries him through the more complicated matters of inheritance, degeneration, etc., which can be better appreciated because of the proper biological basis. It is this biological treatment which is to be commended, for the sociological matters which are considered quite largely, and which are important, are at the bottom biological and any consideration and treatment of such facts which

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neglects the biological basis are incomplete and apt to lead to error and to harm.

The scope of the pamphlet is suggested by the following chapter headings plus summaries:

1, Reproduction in animals and plants; 2, Variability. Variation in animals and plants. Statistics and graphic representation, with cautions on the use and interpretation of the same; 3, Selection and mutation. The conclusion is reached that selection produces nothing new "but can only separate those characters which were already present in it [the race] before the selection." 4, Inheritance of acquired characters. A discussion of variability and modifications, with illustrations bearing on the question whether adaptive modifications are transmissible. 5, Laws of inheritance, Mendelism. A discussion chiefly of alternative inheritance studied through hybridization, in which certain different characters do not become blended in the hybrid and give the appearance of an intermediate, but they remain distinct (though often latent in the hybrids) and separate again in later generations into the original characters, or into new combinations of the same original characters. 6, Inheritance in man. Considers the inheritance of family traits, of mentality, of disease and of malformations. 7, Degeneration. Data is presented which suggests a deterioration of the human race. Data such as unfitness for military service in Germany, relation of this unfitness to residence in city or country, dying out of families, reduced fertility or infertility in the human race. Some discussion of causes. 8, Race hygiene. Numerous tables on the relation between the age of parents and infant mortality, number of children and infant mortality, mortality of first and last born children, influence of alcohol on the offspring, close breeding and race crossing. 9, Neo-malthusianism. There is a biological necessity for the production of a certain number of fit children to maintain the race; the present tendency of the best endowed people is to reduce the families or remain childless on account of luxury, convenience, social struggle, with no thought of duty to the race. This leads to race deterioration. There are tables which show the number of children according to the wealth of parents, also to the occupation of the parents, and the like. Suggestions are given as to legislation and possible subsidy to secure the increase in capable and sound offspring necessary to prevent race decay.

A bibliography of about 500 titles covering the various phases of the subject, and indicating sources for further study adds to the value of the pamphlet.  
Northwestern University. GEO. T. HARGITT.

DI UNA CONCEZIONE UNITARIA DEL DIRITTO PENALE. Per *Eduardo Massari*; pp. 10.

This is a review by Eduardo Massari of Silvio Longhi's "Repression and Prevention in the Criminal Law of the Present." Longhi is one of the most distinguished thinkers and writers on Criminal Law in Italy. This book, says Massari, is the apex of the pyramid of interpretations, analysis and synthesis which Longhi has been building for years.

The work is voluminous—it consists of 1028 pages. It contains illuminating discussions of all the problems in criminal law and criminology which have come up during the last century. The classical and the positive schools of criminology have justice done them. There are fine narratives of the battles between these two schools, and of the influence of the schools upon each other, and upon legis-

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lation. Longhi expounds the fundamental doctrines of criminal law—imputability, *dolus*, *culpa*, attempt, conspiracy, accessory and accomplice, motive, modifying causes of guilt, personal and real circumstances of the criminal act, recidivism. The author scientifically interprets criminal law as it is without the preconceptions of any school, and deduces what it may in the future be. Accordingly he makes a comparative examination of legislation and giuridical thinking during the last century, and finds that the old limitations have gradually been widening. A rectification of the confines, therefore, is necessary.

The essential propositions of criminal and penal law Longhi lays down are as follows:

The bases of present penal law are repression and prevention. All those who are capable of understanding and feeling the sanctions of law are subject to penal law in its strict sense; all those who by their actions, independent of whether they are intellectually or morally capable, show that they are dangerous, that is, likely to commit other crime in the future, are made subject to the rules of society made for its protection. The act that is the moving force of repression must have occurred, the act that is the moving force of prevention is only feared, considering the dangerousness of the offender. This dangerousness is arrived at by a study of many elements which are ascertained giuridically.

The most important facts which the author discriminates are the following:

1. Imputability: Facts demonstrate that volition is the essence of penal responsibility. And so the positive school is wrong in making the criterion social responsibility and protection. But the positive school is right in so far as some crimes are concerned, namely in those which are neither voluntary nor involuntary and which are rebellious to treatment by the common penal law.

2. So in the case of those crimes which are only possible, prevention is the rule that governs, as in the criminal insane, and semi-insane. Institutions for the reception and care of these unfortunates are to be found in England, the United States, France (1893), Japan (1889), Norway (1902), Switzerland (1895, 1903 and 1908), in the Argentine Republic (1904), in Austria (1909), in Germany (1909) and in Italy. Under the head of prevention there fall also the laws against alcoholism, habitual criminals, vagabondage, idleness, begging, and juvenile delinquency.

3. Sanctions. Taking a comparative view of legislation it is seen that there is one class of reactions in relation to actual crimes, and another class in relation to preventive rules. The first class has a retributive character. The absolute will of the judge is repugnant to it, but a determined legislation gives it spirit. It is relatively fixed, has the object of punishing, and is entirely independent of the will of the convict. The second class of reactions, on the other hand, admits the principle of indeterminateness. Its object is to cure, to eliminate, to reform, to put to the proof; and it allows of the power of the judge, or of some other authority, to decrease or to increase the stay out of society of the offender.

Longhi's book is distinguished from the works of Wangha, Cuche, Hoos and others. It makes good use of these works, but it is marked off from them by a strong individuality of conception, and an organic wholeness. The central point upon which the demonstration of the author turns is the affirmation of the penal, rather than the administrative, character, of immediate prevention against crime.

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The proposition runs counter to the current opinion, but the evidence adduced by Longhi seems to bear out his position. .

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L'IDENTIFICAZIONE DEI DELINQUENTI E LA FUNZIONE DI POLIZIA—NELL'ATTUALE MOMENTO GIURIDICO E SOCIALE. Per *Dott. Giovanni Gasti*. Tipografia delle Mantellate, Roma. Pp. 22.

This lecture by Dr. Gasti on the identification of criminals, and the function of the police at present considered from the social and the giuridical points of view is the first of a series of lectures given at the School of Scientific Police at Rome.

We in America are accustomed to hear in large cities constant tirades against police inefficiency. We hear the adverse criticism of our own police so often, and laudation of the foreign police so continuously that we really have a fixed idea that our police is the worst in the world, and any other a thousand times better. But let us take heart. We are not alone in disparagement of what is ours. Dr. Gasti begins his interesting and thoughtful lecture by deploring the fact that Italians are always minimizing the good of their force and magnifying the worth of the police systems of others. There are, says he, good qualities and defects in all systems, and comparative judgments which are overwhelmingly unfavorable to the Italian system are not justified.

There are certain factors which are now operating intensely all over the world, and these are they which make the work of the police in all countries so difficult. They are giuridical and social factors. Among the former are the ever increasing guaranties of personal liberty, public and private. These guaranties are the result of an elevated giuridical and civil conscience of the citizens and subjects and also of the keen responsibility which functionaries are now so strongly feeling. But every such loosening of the law is a binding of the arms of the police. Again, the statutes are becoming more bland: punishments are growing less severe. We see laws whose mildness sometimes approaches weakness, and sentimentalism. These laws are efficacious for first offenders. But habitual criminals laugh at them. Among the social factors are the facilities for inter-communication and transit between the different nations; the phenomena of urbanism; the difficulty of getting members for the force; the progress of science. The criminal rushes away from his country into another; the police move slowly and have no efficient system by which the offender may be detected in a foreign land. So it happens that there is a dangerous exchange of the most pernicious criminals between transatlantic countries especially. The great increase in population in cities produces moral infection and crime, far beyond the infection and crime of more sparsely settled places. This great increase is dealt with by the police with waxing difficulty. We in New York have lately had a strong illustration of this. Two men, "Gyp, the Blood," and "Lefty Louie," were wanted for the murder of a notorious gambler, who, it was alleged, had been killed the day he was to appear before the Grand Jury to testify to facts which would indicate that the police were in league with gamblers and were protecting them for a consideration. They left town, and roamed about New York state for a month, and then came to live right in the city in a two-room flat. Their wives lived with them. They went out often. They even once went to police headquarters where at least half a dozen detec-

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tives knew them by sight. Detectives followed their wives, who always cleverly eluded the officers. The women took taxicabs, street cars, automobiles, and the detectives lost them. For one month these two men ranged the city free.

The author believes there ought to be two presumptions of law—one of innocence for the first offender, and one of guilt for the recidivist, and the habitual criminal. He does not doubt the wisdom of more lenient laws, the object of which is to make the anti-social man adapted to social life. But he stands firmly upon the ground that those who have proved themselves dangerous to society ought to be more harshly treated for the protection of society itself. He does not believe in moral responsibility as a criterion of penal law, but in social responsibility which is based upon the dangerousness of the offender to society, and his rehabilitation.

The presumption of innocence is, in the view of the present writer, only hypocrisy. Our theory and our practice are at variance. We shoot at the Continental system when we ought to be strengthening our own fort. At the least, the Continental system conforms to common sense, and common act. Too much coddling of the individual means too much neglect of the community. We may as well recognize rights where they ought to be recognized. The interesting logical problem presented is that these very men who go into raptures over the palladium of individual liberty tax criminological positivists with sentimentality because the latter wish the personality of the criminal to be studied, in order that proper measures of security may be taken against him.

The weakening of the police systems caused by these social and giuridical matters, and the fact that laws generally now make some distinctions in severity of punishment between first and habitual offenders and recidivists, demand that some method be put into use to strengthen the elements of order in society. Italian criminals in Italy do not now very commonly assume false personalities to escape punishment as relapsers or habitual offenders; but foreign criminals who escape to Italy do, and Italian criminals will more and more do so as the laws become more enlightened and the distinctions above noted are well recognized and unswervingly acted upon. If a man changes his name and his abode, and that part of his physiognomy susceptible of change, it is impossible under ordinary circumstances to discover the genuine below the specious. The old methods have to be thrown into the scrap heap. New times bring new conditions. And new means must be employed to meet these conditions. The proposals of the lecturer are that the Bertillon system of identification be adopted and perfected; that a cosmopolitan organization of the police be effected, that international congresses be held by which ideas can be exchanged, and personal acquaintances made, that the duty of exchange of functionaries be recognized, that an international periodical bulletin for the search of offenders be instituted, and that, in short, the relations of the different police systems of the world be continuous and helpful.

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