Journal of Criminal Law and Criminology

Volume 6 | Issue 3 Article 12

1915

# Reviews and Criticisms

# REVIEWS AND CRITICISMS.

## PSYCHOLOGY OF TESTIMONY: A REVIEW OF THE PAST YEAR'S CONTRIBUTIONS.

Contributions to the psychology of testimony during the past year have been rather more interesting and ingenious, though less numerous than during recent years. Take, for example, the work of Benussi (1)[1] at the psychological laboratory of Graz, who used a Marey pneumograph to trace curves of respiration while his subjects read off or described the contents of small cards (letters, digits, drawings). On half of the cards taken, in chance order, was a symbol meaning "lie," where the subject had deliberately to falsify his statements concerning the contents of the card. A "jury" of a dozen or more auditors judged each *Aussage* (witness) as "lying" or "telling truth." The net results were: (a) The human jury, taken on the average, made little better than a "chance shot" (about 55 per cent right cases); (b) the mechanical jury (pneumograph) was practically infallible (nearly 100 per cent right cases); (c) it also distinguished between good and poor dissimulators; (d) false statements made with full knowledge that the auditors knew their falsity leaves the same records as truthful statements, so that the emotional status of the liar is the essential element in his detection; (e) attempts of the subject to modify breathing do not destroy the significant feature of the respiratory tracing which consists in this; that the ratio between length of inspiration and length of respiration is in lying greater after than before the statement, and in truth-telling greater before than after the statement.

Hélenè Lelesz (7) showed two pictures of 124 persons of both sexes, aged 10 years up, and secured a narrative and deposition after the usual *Bild-Versuch* (picture test) method. Her data were then subjected to the usual formulas to compute range, spontaneity, fidelity and other coefficients of report, but with the added feature that each subject was catalogued according to his intellectual type (as judged by his report). Five types were discovered: (a) the descriptive, (b) the superficial, (c) the intelligent, (d) the interpretive and (e) the ambitious. The meaning of these terms is fairly obvious. The superficial type reports only the outward aspects of the picture. It is found in 27 per cent of the subjects, and is three times as common in children as in adults. The interpretive (subjective) type, recembling Binet's imaginative or poetic, is found in 24 per cent of the subjects, the descriptive in 10 per cent, the intelligent in 30 per cent and the ambitious in but 3 per cent. This last is like Binet's erudite type, plus a

[1]Figures in parentheses refer to bibliography at the end of the review.

touch of pretense and showing-off. The author believes that a knowledge of the type to which a witness belonged would enable a judge to appraise in advance the probable reliability of his testimony. Her own qualitative evaluation assigns, in arbitrary units, the values: intelligent 300, descriptive 262, interpretive 208, superficial 160.

Feingold (4) experimented upon the recognition (identification) of picture post cards when displayed in a setting of other cards. It was shown that the degree of recognibility is inversely related to degree of similarity. The experiments were then directed toward the question whether identification would be easier if the object were in its old setting or in a new setting, and the ultimate conclusion reached is that identification is facilitated by maintaining the original setting, while little danger exists of making false identifications on account of using an old setting. The bearing of the experiments upon testimony involving identification of suspected characters is obvious enough.

Boden (2) employed a new form of testimony experiment, which he regards as more useful than the picture test. The subject-matter was a prearranged dialogue concerning a business transaction (like sub-letting a house or contracting for the retail handling of an article of commerce). The auditors wrote at once an account of the conversation as they had understood it. There was (unfortunately, it seems to me) no time-interval and no interrogatory. The chief conclusion is that witnesses do very well with such material (better than with the picture test, because of the more realistic, and also more abstract character of the material), yet fail when the presented material is obscure (here intentionally) in that they do not report the obscurity, but unwittingly take sides and color their reports. In a doubtful issue they appear to take sides about evenly. Of course, it is just these obscure points that are often most important legally.

Kobler (6), at a meeting of a legal society at Vienna, carried out cleverly a prearranged scene which included interruptions of a colleague's address and a caustic exchange of remarks, verging on insults and threats. Everything was done to secure realism. Several weeks later actions were brought before two tribunals—one of three laymen versed in psychology, who were to regulate the proceedings as they saw fit, the other of three professional judges, who were to follow legal forms strictly. Each tribunal was to examine the same witnesses and to arrive at a finding as to the facts of the original scene, to render a verdict and to determine damages. The two courts reached rather similar results; their findings were condensed, simplified and somewhat distorted in comparison with the actual occurrence. Analysis of the testimony confirms previous conclusions that excitement improves observation and memory of witnesses up to a given point (variable for different persons) and impairs it beyond that point. Dauber's demonstration that agreement of witnesses may mean agreement of erroneous testimony is again confirmed.

Kati Lotz (8) lost her umbrella and concocted an article on the fallibility of human testimony from her experiences in recovering it. Stress is laid particularly upon the point that here were witnesses without the slightest intent to deceive, that they would have impressed

any court as being absolutely impartial and unprejudiced, but that, nevertheless, they were "prejudiced" by their previous knowledge of her habits with respect to umbrellas. The moral is that in reporting a seemingly isolated item about a well-known person, one's account is unconsciously colored to accord with one's general knowledge of the person.

Du Bois (3) discusses in a rambling manner the position of the juror. His general contention is that the juror is asked to perform a delicate bit of work that should demand optimal conditions for passing judgment, but is harrassed and bandied about and generally irritated by conditions of jury duty until his whole mental attitude is out of joint.

Friedrich (5) publishes the prospectus of a sort of continuation course for jurists and public officials in conjunction with courses in political economy and allied lines held at the Cologne *Hochscshule* in 1914–15. The plan calls, among other things, for lectures, discussions and experiments upon the psychology of court officials, the psychology of testimony, the worth of children's testimony, etc. As a plan to acquaint legal authorities with what men of science are trying to do in the fields of criminology and applied psychology, this surely deserves the attention of some of us on this side of the water.

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(The above is taken from the *Psychological Bulletin* for July, 1915.)

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CRIMINAL STATISTICS FOR THE YEAR ENDED SEPTEMBER 30, 1913. [Ottawa.]

Canada has succeeded in a task which the United States has yet to perform. It has collected judicial criminal statistics for the entire Dominion and has published them in a readable and attractive form.

To an inhabitant of the United States, the inability of our national

government to secure corresponding figures is a matter of extreme regret and—shall I say it?—of disgust.

The report is printed in both French and English and contains a summary which has the merit of being short. Following this summary are the tables giving in detail the statistics of criminality by judicial districts and provinces.

Among the most important facts to which attention might be called are the following: In 1912 the number of convictions for indictable offenses was 208 to each 100,000 of population; in 1913 it was 236. The increase was greatest in the class designated Offenses Against Property Without Violence, being 57.90 per cent. It was also large in the class known as Offenses Against the Person, where the increase was 28.23 per cent. In all the six classes, however, there was an increase. There was likewise an increase in the number of summary convictions but whether this increase was out of proportion to population the figures do not indicate. The particular acts to which this increase in summary convictions is attributable are drunkenness, offenses against liquor laws, vagrancy and breaches of municipal acts and by-laws.

An interesting fact is that so few offenders were old-timers. The report states that, out of every hundred convicted for indictable offenses, six were recidivists, eight had been convicted the second time, and eighty-six for the first time. These figures, in fact, seem to me untrustworthy in view of the well-known number of old-timers in our jails and penitentiaries. Two suggestions may be offered in explanation of this low percentage. The number of offenders born in Canada constituted but 52.26 per cent of the total number, while the number of native-born Canadians according to the last census was 77.9 per cent. Immigrants are thus the law breakers and the fact of former convictions is probably in many cases not obtainable. The size of the country, the sparseness of population and the movement of population incident to an unsettled country makes it difficult, without doubt, to secure the record of former conviction.

The one serious criticism which the writer has to offer is that not enough attention was paid to analyzing the figures according to population. This has the effect of leaving the reader in the dark as to many points. For example, when one reads that the number of convictions for Offenses Against the Person increased from 4,678 to 5,825, what is one to think? Does this mean a normal and expected increase due to growth of population or does it mean an increase out of proportion to population? So also, when it is stated that the bulk of crime is in the large centers of population would it not be well to indicate just what proportion of the total population is to be found in these same centers? The report is, however, so much better than anything which we have in the United States that the many beams in our own eyes are prone to make us all indulgent to a defect of this sort.

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UEBER FURSORGEZOGLINGE UND ERFOLGE DER FURSORGEERZIEHUNG, (Concerning Reformatory Cases and Results of Correctional Training.) By *Prof. Dr. E. v. Grabe. Archiv für Kriminal-Anthropologie und Kriminalistic,* 1914. LX, 225-277.

Aside from the Prussian government statistics published in 1911, this is, the author thinks, the only other attempt carefully to follow the results of state training in Germany upon a group of *Fürsorgezoglinge.* He studies a group of 100 delinquent girls in Hamburg, half of whom had passed through the regular reformatory training in institutions and families and the other half of whom had been sent to the workhouse or poor house. Although this method of selecting the group is somewhat questionable and his information incomplete, Dr. von Grabe considers the group homogenous enough in character to make comparisons worth while. The attempt to discover the after effects of correctional training is so important that every particle of reliable evidence in this field is watched with eagerness.

Twelve of the cases were lost sight of after the training so that no further record was obtainable. Two of the girls were sent to institutions for epileptics. This leaves 86 whose subsequent history he summarizes. Fourteen became recognized prostitutes (Kontrollmädchen). Although eight others finished their parole period without punishment, they have already been cautioned or warned. Four have been heavily punished for unchastity and theft. Three have received short imprisonments for theft. One became notoriously immoral. The remaining 56 (65 per cent) turned out well, 49 of them having been followed from two to five years. Of those who turned out well 26 were first brought under public correction when they were over 17 years of age. This good record of those punished late is encouraging.

The Prussian statistics ior girls under *Fürsorgeerziehung* (Correctional Training) from 1904-1909 showed similar percentages, 68.7 per cent turning out satisfactory, 11.9 per cent doubtful, and 19.4 per cent unsatisfactory. Von Grabe thinks this is a good record for the Hamburg group, which he considers worse on the whole than the ordinary delinquents. He recognizes that mere failure to be legally punished again should not furnish the ultimate decision as to the effect of the correctional methods. What is quite as important, it would seem, is the need of analyzing the effect of different groups of delinquents of different forms or correction applied at different ages and for different lengths of time. In this Von Grabe makes a beginning by describing his group as to the forms of their offenses, their family relations, education, etc., but these are not reported for each individual and different subdivisions cannot be compared. The percentages, however, show that the type of group with which he was dealing was city-born, with twice as many illegitimates as Hamburg shows, and an unusual frequency in the family for criminality, alcoholism, separation, etc. The mentality was not tested, and the school records were shown for only 53, but the author considers that the mental deficiency of the group was important.

Minneapolis. LYDIA B. CHRIST.

EL EMPIRISMO FRANCES Y LA RECIENTE REFORMA AL LIBRO IV DEL CODICO PENAL DEL DISTRITO FEDERAL. By *Joaquin Lopez Gutierraz*, Mexico City.

In this pamphlet we find a judicial study of the question of "faltas." A commission has been appointed by the Mexican Chamber of Deputies to consider the amendment of Book IV of the Penal Code of the Federal District for misdemeanors, which includes the City of Mexico. Honorable Joaquin Lopez Gutierrez proposes to examine the origin and basis of the underlying principles of the Code of 1871, and to consider the aim of the Commission:

1. The conversion of minor crimes (delitos) into misdemeanors.

2. Greater certainty of punishment, particularly from the constitutional point of view, of misdemeanants.

3. The completion of the Code, amending where practice has shown the need.

4. The classification of misdemeanors to facilitate the use of the Code.

He divides his book into eight parts, each devoted to an error. In the first part he takes up the distinction between misdemeanors and crimes, disagreeing with the Commission in its belief that the distinction between them lies in the "quantum" of harm done. In the first place, Beccaria in "Del Delitti e Delle peine" defined "faltas" as "a simple act contrary to what should be done or omitted," while "Delitos" were wilful, malicious acts, immediately destructive of social order or offensive to personal honor or security. This Gutierrez accepts citing Cassara also. In other words, he believes as the modern doctrine that the difference is qualitative. From the objective point of view, "Delitos" disturb the juridicial order, misdemeanors do not. He would divide the latter into two classes, those which may result in eventual damages, those which offend public decorum, etc. "Delitos" an infraction of rights as well as of law. "Faltas" are namely acts of disobedience to positive law. "Delitos" are infringements of rights. "Faltas" come within the jurisdiction of the police. "Delitos" within that of the courts. The damage done is to be considered, and the subjective element of intent is the means of differentation. In a resume of this Gutierrez writes:

"Those acts are 'faltas' which constitute pure disobedience to laws, aimed to avoid possible offenses to juridical order, acts forbidden only as a matter of caution, and punished without regard to intention or malice, because they contain a dangerous possibility or effect." (p. 21.)

The second error of the Commission lies in the conversion of the 'falta' of stealing ripe fruit into a crime. This provision of distinctly continental color is dealt with in a peculiarly able manner. This "falta" or "Delito" gives Continental jurists much trouble, but is unheard of in English law. The stealing of ripe fruit has been a "Delito" in Europe from the laws of the Twelve Tables. It is so characterized in the Digest, and in the Lombard, Frankish and Burgundian laws.

In the Austrian, German, Bulgarian, Dutch, Swiss, Norwegian and French Code, it is a "falta." It should be as a crime "sui generis" and the question of "necessitas cogen" should determine the nature of the act.

The third error is making the distinction of personality to a value not exceeding 10 pc. a "falta." This is the result of the failure of the Commission to grasp the fundamental difference between a "falta" and a "delito," the former being necessarily without malice.

The fourth error is similar. The rule of the quantum of damage can never define "faltas" or "delitos." The rule in question can be clearly stated as follows: If the damage exceeds 10 pc., the act shall be punished as a crime with malice ("Delito de culpa"). If the delinquent acted without intent or if in accordance with Art. 488 malice is presumed. (p. 35.)

The fifth error is similar to the third and fourth.

The sixth error lies in the treatment of recidivity. The Code provides that recividity is the repetition of a "falta" of the same kind, and divides "faltas" into four kinds, each punishable with a different penalty. But the Commission has decided that the acts to be reciditive must be analogous and proceed from the same vice or passion. "This is a lamentable confusion of generic and specific recidivity." (p. 41.)

The seventh error lies in the holding of Arts. 33 and 1142, dealing with recidivity contradictory. Gutierrez argues in detail that this is not so.

The eighth error is the belief that "faltas" must be specifically enumerated in the Code in order to avoid the unconstitutionality. Under this maxim "nullum crimen nulla poena sine lege" Gutierrez believes that they come within the police powers and therefore do not require the accuracy of definition required by crimes.

While Gutierrez's work is too technical to be of general practical interest, his lucid statement of his case, his use of the historic comparative method, and his reference to constitutionality is of great interest.

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IL FONDAMENTO DELLA ESTRADIZIONE. (THE BASIS OF EXTRADITION.) By *Aldo Baldassarri*, Ermanno, Loescher & Co., W. Regenburg & Co., Rome, Italy, 1914, PP. 170.

In this volume we find a study of the basis of extradition. As a preliminary observation, we may say that there has been a volte-face in the consideration of extradition within the past century and a half in the juridical aspect of this institution, for prior to the revolutions in Europe, begun by the great French Revolution, extradition of political criminals was generally recognized, while the extradition of social criminals was generally ineffectual. For the return of the former to the scenes of their activity, not only

legal but administrative means were employed, the army and navy being used for the attainment of such results. With the revolutions in Europe, however, extradition took on another aspect, and the return of social criminals was readily enforced by treaty, but the extradition of political criminals was made generally impossible.

Baldassarri begins by stating that the "State in order to maintain juridical order within its borders, requires of its subjects a definite course of conduct, and in order to enforce its requirements threatens and inflicts punishments in cases of transgression." The State is free to determine what it shall prohibit, in the absence of requirements imposed upon it by treaties or international law.

Criminal law can be mandatory or prohibitive, and the State has a right to the obedience of its penal statutes, which gives rise to the right to punish any citizen who disregards her. Crime is disobedience to a statute, and entails punishment. Upon the infraction of a penal statute, the State acquires an absolute right over the person of the criminal, with a claim, therefore, against third parties in regard to the right of dealing with him. Thus the State has a right in its internal law to punish those who disobey its penal statutes.

The penal statutes of every State are imperative, not only in regard to its citizens within its borders, but also to foreigners who may be within them, for it is a principle of national law that the State may determine the general norms and conduct of strangers within its borders. By the simple fact of entering a State, foreigners are obligated to obey the laws which regulate individual conduct, and the recognition of this obligation is not based upon the fiction that by their entry into the State, they assume by implied contract the burden of obeying its laws, nor that their acceptance of the protection of its laws subjects them to the duty of obedience; but, on the other hand, it is enough to state that foreigners in entering the borders of the State, enter its juridical order and are subject by that very act, independent of any act of will, to all the general juridical duties that the State imposes upon its citizens; foreigners become temporarily, subjects, because the modern State is authorized by international law to so consider them. For modern States, as for Medieval States, the old maxim is true, "Quisuis in territorio meo est, est etiam meus subditus, Quidquid est in territorio est etiam de territorio, but by saying that foreigners entering the State become its temporary subjects, is no return to the fiction of pro tanto citizenship, nor to any similar concept, but means simply what it says, that men upon entering the territory of the State, become subject to its laws." pp. 26 and 27.

Subjectivity is implied by the concept of territorial sovereignty. It is a correlation to the recognition of the international community of States. If a State is authorized by international law to require obedience to its penal laws, even of foreigners, within its borders, it is required to punish them with punishments similar to those inflicted upon its own citizens. This theory, recognized by the Constitution of the United States, is not a purely academic ques-

tion, as shown by its inclusion in that document and by a study of the history of the Middle Ages. But if States, by their international law, claim the right to transport foreigners condemned for a crime committed within their borders, after the infliction of the punishment, or look upon expulsion as an accessory penalty to be inflicted upon foreigners or as an increase of punishment, this is not contrary to international law, which recognizes the right of the State to expel foreigners for reasons of public policy. "States are therefore obliged by international law to make no difference in their penal laws between citizens and foreigners for acts committed by them within their territories. This gives rise to the question of whether the puntive power of the State must be limited to acts committed in the territory of other States," p. 34.

The non-exterritoriality of penal laws is generally recognized, but has been questioned because of the immunity of citizens for crimes against their own laws committed in other countries; but this principle of the territorialty of criminal law is not without exception, and it is not recognized in all its strictness by international law.

But now let us take up the case where an individual who has committed a crime within his own State, seeks refuge in another, and let us further suppose that the crime committed is one recognized as such by international law. Since Grotius began his teaching, it has come to be generally recognized that a State must either punish the delinquent or return him to the State in which he has committed his crime. With the formation of modern States, this statute has been recognized by law. States also punish (following an international duty) hostile acts against other States, committed by individuals either citizens or foreigners within their territory. This, however, gives rise to a complication in the question of extradition, for suppose the criminal seeks refuge in the State against which he has committed the crime. In order to meet this difficulty, the principle of the active personality of criminal law, which gives every State the right to require obedience to its penal laws of its citizens abroad, has been advanced, but this has not been generally recognized.

Baldassarri believes that this right can be sustained as a result of citizenship. We may say, however, that it is admitted by all that international law recognizes the right of every State to enforce its commands upon strangers within its lands, in regard to statutes relative to direct offences against the State and upon its citizens in foreign lands in regard to rights of international community. This action gives rise to the question of the punishment of a citizen who has committed a crime in one foreign country and escaped to a second. The second State can, of course, refuse him admittance and can command him to leave, but if the State is part of the international union and is therefore obliged not to exclude from its territory subjects of other States, it still can refuse him admittance or expel him for reasons of public policy. The State of refuge,

therefore, does not fail in the duties imposed upon it by international law, when it leaves undisturbed in its territory a foreigner who has committed a crime in the territory of another State, or when it prefers to refuse him or expel him, whatever may be the serious results of such a course of conduct in its struggle against delinquency; but it can also follow a definite course and co-operate in seeing that the State which is entitled to punish him, obtains possession of the criminal, but with the recognition of the existence of an international community, it must be admitted that in regard to certain crimes, there is a duty imposed upon the State of refuge to return the criminal. This duty may be shown implicitly by custom, or explicitly by treaty. Grotius and Puffendorf both believed in the juridical duty to States to return criminals, but it has later been placed upon the basis of opportunity. It is to the advantage of the State to return the criminal. Baldassarri does not believe it is an international duty, when no obligatory norm of international law can be shown, for this would mean the abandonment of practical reason for "the formation of such a norm constitutes a noble ideal which is irrationally under the present conditions of international community." (pp. 114-115.) Likewise, the acceptance of an offer of extradition is no duty. Grotius believed that the State of refuge had an alternative duty either to return or punish, but if there is no obligation to return, there can be even less obligation to punish. This is, of course, an impossible conclusion, because what laws would the State enforce!

Baldassarri belives that treaties of extradition contain the only basis for this right. He says, at page 147, "even prior to the nineteenth century, there were treaties of this kind, but during this century treaties of this kind have assumed greater importance, especially during its second half. For with the increased rapidity of means of communication, the possibility of delinquents escaping from the borders of States where their crimes have been committed, in attempts to escape punishment, also increased, and this resulted in the recognition by the States of the necessity of assuming the duty of facile and expeditious reciprocal help in the struggle against criminality; whence treaties of extradition multiplied until they united many countries practically in an international union.

"The treaties of extradition of the various States have substantially and even literally identical provisions, but this gives no right to deduce the existence of a general international law or of an international law common to a considerable number of States, as if the States were obliged to observe the determinate principles in agreements of this sort. Such uniformity in the contents of the treaties of extradition is easily explained by considering that they served to satisfy identical interests in all the States that have signed them. But the treaties of extradition are the basis of all the reciprocal rights and duties. The State of refuge which, before the signing of the treaty, was free to act as it saw best in regard to refugees and therefore could either return them to the State authorized to punish them, provided it was not prohibited by international

law, became by treaty, bound to return them, while the State, authorized to punish the delinquent which prior to the treaty had no right recognized by international law to obtain possession of him, then has such a right. But from this, no doctrine can be drawn to impose a duty upon the State to return delinquent refugees to the State authorized to punish them merely from the alliance of mankind in the struggle against malefactors." (pp. 147 to 154).

Philadelphia. JOHN LISLE.

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PENA E COMPLEMENTO DE PENA. (PUNISHMENT AND THE COMPLEMENT OF PUNISHMENT.) *By Ugo Conti.* Reprinted from *Rivista Penale*, LXXX, FAS. 5, PP. 27.

In this article Ugo Conti deals in his usual clear and logical manner with four subjects of vital interest to all students of criminal law and criminal legal philosophy, (1) "Criminal Law and Criminal Politics," (2) "The System of Punishment," (3) "The System of Measures of Safety," "The Complements of Punishment in a Strict Sense," (4) "Complements of Punishment in a Broad Sense."

The distinction between law and police is recognized as necessary, but it is almost impossible to obtain when there is any opportunity for confusion between the two, for the distinction must be treated not only theoretically but practically, and its juridical concepts must be developed with due regard for the needs and means at the disposal of the State whose legislation is concerned. Criminal law, as an objective and procedural matter, gives both the abstract and the concrete definition of crime with presumptions of a biological and sociological order and provisions for resultant remedial measures: punishment and the complements of punishment. In order, however, to determine the law properly, three questions must be first answered: The first of these questions is that of the nature of punishment. Punishment is the penalty inflicted upon the individual for a crime; crime is a violation of the juridical order, and the punishment must restore the order which has been disturbed. Punishment is inflicted by law and is aimed at the prevention of crime. It is inflicted only in cases in which its threat has been useless. It is therefore directed to prevent crime in a generic sense, and also to prevent a new crime by the same criminal; but even if both the general and specific prevention is lacking, punishment must be inflicted as a means of repression. The juridical order is the sum of norms which regulate the activity of the State and of individuals in the attainment of individual and social aims. Its results must be a general condition of security. When a crime has been committed, there is no other way of re-establishing public security except by the infliction of punishment. Expiation, a concept belonging to religion and morals, is not enough, neither is vendetta, a concept opposed to custom and law, but there must be a reaffirmation of the authority of the State in regard to the act of rebellion. Punishment also presupposes individuals capable of un-

derstanding the value of admonition and penalties. Inasmuch as punishment relates to crime, it must fit the crime, and punishment in order to be effective, must also be preventative. The system of punishment must therefore comprehend three phases. It must be related to its threatening effect and must be measured in regard to the crime in its application and execution. Capital punishment should be restricted. Imprisonment, with all its defects, is the only possible punishment in modern states, and imprisonment should not be cellular, excepting in cases of short sentences, because its disciplinary value is so small.

Imprisonment must also, in order to be reformative, be accompanied by the necessity of providing for the maintenance of the prisoner and the institution. Fines are only practical in addition to some other reformative penalty. In cases of certain businesses and professions, injunctive punishment can be adopted, preventing the criminal from following the trade which has led him to commit the crime.

Apart from the system of punishment, the needs of social protection must also be considered. Society is preserved by law and law is effected by the State, especially the criminal law which aims at the restoration of public security destroyed by crime. A crime must therefore be punished by a corresponding penalty, so that in the infliction of a definite pain upon the individual agent through whose acts third parties are harmed, the law which has been broken, may be reaffirmed. The State enforces its authority by restoring the juridical order affected, and punishment, an attribute of justice, connotes repression and prevention. This brings us to the conclusion that besides punishment, which is largely repressive, criminal law should recognize the complements of punishment which are largely preventative. In this regard prevention should be more general than specific, although it should not lose sight of its reformative character—in other words, punishment should be correction, not corruption.

The preventative complement of punishment is not entirely a question of police jurisdiction. In certain cases, repressive punishment, with the exception of capital punishment is ineffective per se, and in such cases punishment and its complements must both be used. To apply in such cases only preventative measures would be to do away with any reaction for the crime, which cannot be permitted except in cases in which the crime is proved not imputable.

In the treatment of imputable criminals, the use of preventative punishment alone would necessitate the abandonment of the certain for the uncertain, and create a dangerous condition both for society and for the individual. A definite punishment must be inflicted for every crime committed, although preventative measures should be used as far as possible.

With regard to the two elements in every crime, the "man-person" and the criminal act, the former becomes an entity in relation to the crime committed, but the revolutionary idea of the

positive school that it contains the whole concept of the crime, cannot be accepted.

Lombroso with his anthropology, Ferri with his sociological classification of criminals, and Garofalo with his idea of temibility, cannot be accepted in all their conclusions, for the fact must also be considered. Recidivity is also an element. In other words, the complement of punishment must be largely an administered matter.

Thus much with regard to the complements of punishment in a strict sense, that is, the use of measures of prevention and reform without regard to the infliction of a penalty in specific cases; in regard to the complements of punishment in a broad sense, Conti prefaces his remarks with the statement that in this case there is no crime committed, but only an element of criminality ("fatto di reato"), a mere extensification of a criminal will, or else of a defective or diseased will resulting in the same relation.

Of course, this is not the case of non-imputable crime, although somewhat related to it. In such cases, the complement of punishment in a broad sense may be used, and in this case it is legitimate as a police means of safety.

Conti recommends the use of the complements of punishment for crimes as a means of security in addition to punishment, and recommends their use in a broad sense in cases of potential criminals. If an individual is potentially a criminal of a dangerous type, he cannot be permitted indefinite freedom. In other words, Conti's conclusion is that crimes and potential criminality should not be confused. A crime is a fact, a voluntary act in violation of the juridical order, and as such it must be met by a definite quantum of punishment. The punishment must fit the crime, but in addition to its objective element there is the criminal to be considered, and in his regard the complements of punishment must be applied; and while the punishment must fit the crime, the complements of punishment must fit the criminal. Punishment is repression, the complements of punishment are prevention, and while they are more or less co-ordinative, the former is judicial and the latter administrative.

This conclusion seems inevitably correct, and while clearly logical and philosophically admirable, we must express a doubt of its practical value, for while we are all willing to agree that in the sense used by Conti, the punishment must fit the crime, still if imprisonment is the only possible punishment, and if imprisonment is necessarily corruption, it seems that the reaction to the criminal act and the requirement of the criminal, are in direct opposition, and we must admit that the attempts to first punish the crime and then reform the criminal, usually leave the individual so dealt with, thoroughly convinced of the inconsistency of those whom he conceives are his representatives of the State. Either our premises that the punishment must fit the crime and the criminal must be reformed, contain some latent error, or our methods of punishment or reformation are sadly at fault.

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NEGRO YEAR BOOK. An Annual Encyclopedia of the Negro. *Monroe N. Work.* The Negro Year Book Publishing Company, Tuskegee Institute, Ala., 1914. 448 pp. 25 cents. By mail 35 cents.

In the introduction to the Negro Year Book the publishers state that they wish it to be "a succinct, comprehensive and impartial review of the events of the year which affect the interests and indicate the progress of the race, * * * together with a compact but comprehensive statement of historical and statistical facts arranged for ready reference."

The value of a work of this character depends upon the *reliability of its facts* and the *arrangement of its material.*

The reviewer's first impression upon taking up the book was decidedly unfavorable. His copy lacked pages 418-429,—the index pages,—a vital part of a ready reference Year Book; the pages had very little margin; the sections are crowded together; in short, one's first thought could be nothing else than that but little care had been taken in preparation. It is hoped that the publishers will be able to place a better printed Year Book on the market in another year, for it will never have the circulation it deserves until it is gotten out in better form. The arrangement of the material might be considerably improved, *e. g.,* valuable information concerning lynchings is given on page 28 and pages 315-317, and a bibliography on crime is given on page 412. There is no reference on any of these pages to any of the others.

The above criticisms are given because upon reading the Negro Year Book one finds that Editor Monroe N. Work has gathered together facts concerning the Negro with which every citizen of the United States should be familiar and that he also has been very careful to verify them in nearly every instance; although even here in many cases he should have been more exact in his citations.

The best prepared parts of the Year Book are those on the "Civil Status of the Negro," "The Civil Rights of the Negro," and "Education."

It is most encouraging to read of the number of things that the Negroes are doing themselves for themselves in education and in industry.

Not much space is given to crime. The statistics given are mainly from the Census Bureau. It is interesting to note that there is a much higher rate of crime among Negroes in the North than in the South; that the Negro had (in 1904) a relatively lower percentage of crime than the immigrant races then coming to this country, and that in 1904 the commitments for rape per 100,000 of the total population were: All whites, 0.6; colored, 1.8; Italians, 5.3; Mexicans, 4.8; Austrians, 3.2; Hungarians, 2.0; French, 1.9; Russians 1.9.

Chicago. JOEL P. HUNTER.