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Reviews and Criticisms

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REVIEWS AND CRITICISMS.

ANLEITUNG ZUR STRAFRECHTLICHEN PRAXIS. (INTRODUCTION TO THE PRACTISE OF PENAL LAW.) By DR. JUR. *Herman Lucas*. J. GUTTENTAG, 1913, Pp. 439.

The book under review was prompted by Stolzel, who in his work on "Training in Civil Practice," encourages just such an attempt along the lines of criminal practice. The author himself felt that while most beginners had a very good theoretical knowledge, there was little acquaintance with the practical part of the machinery of Justice; so that he aims to present in this book the salient features of just this phase of the law in order that court and police officials, judges, lawyers, and in fact all connected with the machinery of justice, may be better trained. In case the book was well taken and proved a success, he contemplated a sequel dealing with Penal Administration. Apparently he was satisfied on this point, for, after its fourth edition there appeared the sequel he had promised.

The author never intended the work for a text-book; he would not have it become a "Pons Asinorum," but a training book in criminal practice to those sufficiently educated students who are diligent and interested in their work. He carries out his aim by treating a number of practical cases concretely, instead of delving into the abstract principles of law, confining himself to the criminal phase because he thinks it more necessary and urgent.

The book begins with the elementary facts to be learned by the student, acquainting him with the basis of criminal procedure. He is told the difference between the various forms of suits and claims, state impeachments, arraignments, etc.

The two opposing principles in the history of law are carefully explained; "the Legality principle" and "the Opportunity principle." According to the former principle, the State not only has the right to punish the wrongdoer, but is obliged to do it, partly for ethical and partly for political reasons; while according to the latter principle, the State may forego the privilege or escape the obligation in consideration of certain practical interests.

In Prussia the latter principle has never been carried out. The Legality principle was introduced in 1879 but had been recognized as the correct principle and practiced for several decades previous. In 1908 an attempt was made to change criminal procedure by toning down somewhat the Legality principle and pressing suit only if public interest was at stake. He adds, "Juveniles might very well be dealt with leniently, by invoking educational and reform methods."

With such a discussion of generalities he now enters into the particular problems with which one has to deal; international extradition, murder, incendiary cases, etc., etc. By the case method of

studying he makes the technicalities involved rather interesting, than dull.

For instance, extradition is illustrated by several very interesting cases, and with it all he brings in all the details of formal procedure involved after the prisoner has been brought back; discusses the form the warrant should take, arraignment, preparation of evidence, summonses of witnesses, the various legal privileges of the prisoners, etc., etc.

In the chapter on Murder he gives a very satisfactory discussion of the methods of studying the manner in which the crime is committed and detecting the culprit.

The chapter on Incendiary cases deals principally with the methods of detecting traces of the perpetrator; urges importance of getting at the motives. As elsewhere, he illustrates his point by appropriate cases, and gives a good account of the psychology of the incendiary, discussing in detail the influence of hatred, revenge, homesickness, etc.

What proceedings are to be adopted against seditious newspapers, the nature of the offence, the best possible steps to take to unearth the real parties responsible for the crime, the great importance of knowing the various laws regarding the press; under what conditions letters, telegrams and other missives may be seized, what discretion is to be adopted by the Courts in regard to their contents; conditions under which houses, etc., may be searched and physical examinations of persons made, all told take up about three chapters.

The chapter on the observation of the mental condition of the prisoner hardly comes up to the standard of the others. The author insists that the fundamental principle underlying all law is that the prisoner have a free determination of the will, and drags up the old insoluble problem of responsibility.

"While it is important to bear in mind the increasing number of nervous and mental diseases, and to see to it that all doubt as to the responsibility of the prisoner is well considered, the judge must also not be led astray by modern conceptions which in so far as they make every man a product of heredity, environment and education, would tend to do away with free will altogether, thus defeating the very end of the law, which is opposed to such conceptions."

"The judge knows what free will is and he will cast aside all those modern theories that are merely theories."

To comment on this is hardly necessary. Certainly the task he has set for the judge, to discriminate between what are the facts and what the theories of modern science in their bearing upon human conduct, is no small one, and I doubt if there are many who will undertake the job. He evinces a lack of acquaintance with modern psychiatry, and would not seem to be in sympathy with the newer trend in modern criminalistics. The best thinkers today have found the problem of responsibility insoluble and regard this long maintained point of view as not at all necessary. They are turning their attention in another direction, away from the question of responsibility to that of social welfare.

Chapters 9, 10 and 11 deal with the Preparation of Proceedings, the Finding of the Judge, and the Finding of the Jury.

"The prosecution must not only be eager to arm itself with evidence against the accused, but must also be alert in dropping a case when there is not enough evidence to convict the prisoner."

The various writs and orders involved in stopping proceedings, in securing complaint, etc., etc., are explained.

The judge has four things to find out in passing judgment:

1st. Has the accused committed the act?

2nd. Is he responsible for the act?

3rd. Is the act subsumed under the criminal law, and if so under which?

4th. How is the act to be punished.

The author now deals with all the various problems that may be expected to come up under each phase. Under the last—"How is the act to be punished?"—he says the nature of the penalty is not to be measured by the kind of crime alone, but also by the kind of man.

"It would be unfair to treat the laborer offender, who has a family to support, and the vagabond in the same way." * * * *
 "The Judge must know the man he is dealing with."

"In meting out punishment one must know the disposition and motives of the wrong-doer; the purpose, the inducements that led him to commit the act; the personal and economic relations of the offender; whether he understands the consequences of his act, and whether he evinces any desire to make amend for his conduct."

Here he approaches nearer than any other place in the book to the recent trend in Criminalistics.

In chapter 12 the author conducts an imaginary trial; the most minute details are gone into, apparently omitting nothing of the routine court procedure. Beginning with the charge, he continues patiently through to the pronouncement of the sentence; illustrating questions put to the prisoner, the witness, the speech of the State Attorney, etc.; the consultation of the Court, and in Jury trials of the Jury; just what the Court should do in case of mistaken identity, impersonations, etc.

In the following chapters he takes up the sentence, the questions of appeal and revision, validity of the law, resumption of proceedings and finally the execution of the penalty.

The difference between the appeal and revision is that one investigates into the question of the prisoner's guilt anew, while the other is a legal testing of the decision. Tells how the appeal must be made out, gives a formula. Outlines general procedure prior to main investigation. Gives various formulae for new decisions. Revision can take place only if some standard of the law has not been properly applied at the trial. Brings up many controversial points bearing on the question of revision. When can a plea for revision be entered, and when not? What are we to understand by misapplication of the law? etc.

The sentence is called valid when it can no longer be disputed by any legal means. Explains what the principle "Ne bis in idem" refers to, and when such a principle is applicable. There are conditions under which proceedings may be resumed even in a valid sentence. There was a time when such a thing was impossible in Prussia, when the prisoner had all doors closed behind him after appeal. As it is

now, resumption of proceedings and acquittal can be granted, even if the convict by this time is dead, provided the plea is filed by the right parties. If new findings are in interest of prisoner the results can be published in the press at the expense of the State, and even compensation secured from the State if part of the sentence has been served.

The last chapter deals with the execution of the penalty. In conclusion the author speaks of the evils resulting from the sensationalism and morbid curiosity of the masses at public trials, and speaks at length to court officials on their bearing and conduct.

On the whole we have here a most excellent handbook dealing with the machinery of Justice; rather technical, but quite interesting because of the author's use of illustrative cases. It shows a wide range of knowledge and considerable breadth of experience. His fondness for details is quite up to the German standard; he takes every opportunity possible to show what a difference the precision of statement and expression makes. To one merely on speaking terms with legal phraseology he seems to dwell unnecessarily on technicalities, and in order to make things plain, matters that would seem to be obvious, he too frequently goes to the expense of repeating himself. The book, however, is valuable and should fill a definite place in the service of those who would intimately acquaint themselves with the knowledge incident to criminal practice.

Boston.

VICTOR V. ANDERSON,

THE CRIMINAL IMBECILE. An analysis of three remarkable murder cases. By *Henry Goddard*, Director Dept. of Research, Vineland Training School. The Macmillan Co., 1915, Pp. 157, \$1.50.

The value of this little volume does not lie primarily in the very thorough analytical study of the life histories of three high grade imbeciles who committed atrocious murders, but in the emphasis which is laid throughout the book upon the importance of contributory evidence such as is furnished by a study of conduct, in attempting a diagnosis of mental defect by means of any of the clear-cut scales of mental tests now in vogue. That this detailed study of the daily conduct of these individuals corroborates the findings brought to light by the Binet-Simon scale, only proves how remarkably reliable this set of tests really is. This study furthermore stresses the importance which a thorough acquaintance with the use of these tests has in evaluating the results obtained. Goddard's contributions to the subject of mental deficiency are well known to medical readers and he needs no introduction, but it is highly gratifying to note in this book the application of his studies to the problems of law. It is common knowledge that the mentally defective form a large percentage of our criminal population, but as far as we know, this is the first time that a plea of "Mental deficiency" has been recognized by court and jury, and one of these three cases calling forth a verdict of not guilty on account of criminal imbecility. We agree with the author that the value of this verdict cannot be overestimated. "It establishes a new standard in criminal procedure. It recognizes that weakness of mind, as an excuse for crime, is of the same importance as disease of mind; puts feeble-mindedness in the same category with in-

sanity, and requires that it, like insanity, be considered in all discussions of responsibility."

That a general recognition of these principles on the part of the legal profession, as well as the public in general, would result in a much more intelligent administration of the law, as well as in a material diminution of the crimes committed by these defectives, there can be little doubt. In fact, an actual illustration of the tremendous importance which the timely recognition of these defectives play in the prevention of crime is given in Tronson's case, one of those reported in this book. This irresponsible imbecile was arraigned before the court about a month before the commission of the murder, at the behest of the unfortunate victim of his atrocious deed, and after having been kept in jail for about a week was allowed to go by the presiding judge who advised him, very learnedly no doubt, to go out in the harvest fields and take a good sweat, and when he got back to look for another job and he would be all right. About a month later, he murdered his unfortunate victim. What the course of events would have been had this imbecile been recognized at his first appearance in court is not difficult to conjecture.

The report of these exceedingly interesting cases, so learnedly studied from every angle cannot help but stimulate interest on the part of the legal profession in this highly important problem of mental deficiency, and for this reason, we highly recommend this book, alike to the physician and jurist.

BERNARD GLUECK.

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

ANNUAL REPORT OF THE NEW YORK CITY DEPARTMENT OF CORRECTION.

By Commissioner *Katharine B. Davis*, 1915. Pp. 197.

Commissioner Davis' first annual report as Commissioner of Corrections, New York city, is, in the first place, the most readable report of its sort that has come to our attention in many a month. It is attractively printed on a high quality of paper, in beautiful type, and the arrangement of the subject matter is superb.

Under the heading "Institutional Service," Dr. Davis shows what has been accomplished in the course of her administration in the way of abating the drug nuisance in the New York city institutions. She describes also the New Hampton Farms, which have recently been opened, as well as the provisions on Hart's Island for the utilization of the labor of prisoners in construction and repair work. The plans in contemplation for the erection of buildings are discussed.

In the course of her administration the Commissioner has obtained the passage of a law providing the extension of indeterminate sentence and parole, applying both to the work house and the penitentiary. This law provides for the appointment by the mayor of several parole officials, each one of whom will be allowed a sufficient salary to enable him to devote his entire time to the work.

The number of keepers on December 31, 1914, was 257, and the population of the institutions was 6,425. This allows a keeper to twenty-one men, and the commissioner urges an increase so as to bring the ratio of keepers to prisoners up to that which exists in state reformatories.

The Commissioner has worked out an admirable accounting system,

so that reliable information may be obtained relating to the cost of every activity; such as, feeding, clothing, guarding, heating and lighting, medical service, etc., all of which foots up to \$244.27 per year per prisoner.

As to her general policy, Dr. Davis says, as follows:

"My personal experiences have proved to me the value of experiment with methods of organization, discipline, and self-government. On taking charge of the department on January 1, 1914, I realized that many changes were desirable and set about to survey the situation and to determine a policy and to plan our course. To this plan we are steadfastly adhering. We are willing to experiment, but we believe in experimenting slowly and without incurring dangers which come from too great impatience with difficult conditions and too great anxiety for improvement more rapid than is warranted by the human and physical machinery at our command."

Northwestern University.

ROBERT H. GAULT.

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