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Reviews and Criticisms

REVIEWS AND CRITICISMS.

UEBER DIE VERERBUNG VON DISPOSITIONEN ZUM VERBRECHEN. (On the Inheritance of Tendencies Toward Crime.) BY *Von Dr. Carl Rath*, W. Spemann, Stuttgart, 1914, PP. 138.

In this work, Dr. Carl Rath, chaplain of the penal institution at Siegburg, Germany, attempts to make an analysis of the five hundred inmates and to determine the cause or causes which have made these men confirmed criminals. All of these prisoners were habitual offenders who had been imprisoned again and again. For each individual Rath prepared a list of one hundred and twenty-five questions, relating to the nature of his misdeeds and punishments, his home and social life, and his physical and mental characteristics, and tabulated the answers. A variety of methods were employed in securing the desired information, such as reading all outgoing and incoming letters for a period of two years, and giving concrete arithmetical problems to test mental caliber. The research next takes up the families of the inmates. In many cases the histories were obscure; but, by consulting records of the church and state registrars and the courts, charts were made for ninety-eight families, and upon these histories the main work is based.

The results show that environmental influences (bad example, want) are not primary causes of crime, but that there is a definite criminalistic instinct, which is inherited as a Mendelian recessive. Thus, if D stand for normal instinct, and R for criminalistic instinct, a normal person would be represented by the formula DD, a criminal by RR, and a normal individual, carrying the criminalistic tendency in a recessive condition, by DR.

Matings of DD and DD would give all normal offspring.
Matings of RR and RR would give all criminalistic offspring.
Matings of DR and DR would give one-quarter criminalistic; three-quarrers normal, but one-half carriers.
Matings of RR and DR would give one-half criminalistic; one-half normal, but carriers.

The ninety-eight families are grouped according to this classification.

Rath includes in his first category families in which both parents have been in penal institutions, or families in which the father and at least one of the maternal grandparents have been imprisoned. In all there are eleven families, with thirty-two sons; twenty-eight of whom have been sent to penitentiaries, two died as youths, and two

were shiftless drinkers—practically reaching the theoretical result of RR andRR. The daughters of these families are disregarded in the analysis, for Rath thinks that the criminalistic tendency is in some way inhibited by the female secondary sexual characteristics. However, of the twenty-three daughters, seven are criminal and many others sexually immoral.

The largest group is in the second category, namely, those families in which only one parent has been imprisoned. In twenty-seven families, there were one hundred seventy-seven sons, eighty-nine (or 50.3%) criminalistic. The percentage was the same whether the mother or the father was the one imprisoned, showing that the bad example of a mother was not a stronger factor than the bad example of a father. It is necessary to assume here that the crosses were RR and DR, which would give fifty per cent criminalistic. The RR is given, but in no case does the family chart show where the R came into the germ plasm of the unpunished parent, whose grandparents are given as normal. As a recessive trait may be passed on in a simplex condition for several generations, a study of the great-grandparents would doubtless unveil some family skeletons.

The third group, extremely important hereditarily, consists of families in which neither parent has been sent to a penal institution, but in which at least one son (an inmate of Sieburg) is a criminal. Of the twenty-two families charted there are seventy-three sons; twenty-three of whom are criminalistic, one to a family, with the exception of one large family of ten boys. This approximates the theoretical result of a cross DR and DR, which would give twenty-five per cent criminals. In this category least of all can one lay the cause to environment. The parents were in most cases good people, showing great patience with their single unfortunate child and trying in every way to help him. Brothers and sisters too are often given in the histories as good citizens. These records also go to the grandparents only, and in no case tell anything about the individuals from whom the criminalistic instinct entered into the blood (germ plasm) on the two sides of the house.

Two miscellaneous groups follow, comprised of families with criminalistic sons, whose fathers were chronic alcoholics, and families in which mental abnormalities of various other sorts were exhibited in the parents. Alcoholic fathers produced fifty per cent criminalistic sons. The same lack of self-control which causes the father to be a drunkard is no doubt inherited in a different form in the abnormal sons. Most of the crimes were committed under the influence of alcohol, between Saturday evening and Monday morning. The author is also of the opinion that those sons conceived while the father is in a state of intoxication are most likely to be abnormal, basing his belief on the fact that most of the criminals are conceived during the months of the carnivals, when much alcohol is consumed. A nearer cause would seem to be that at this period of "hyper-jubilation" most illegitimate conceptions take place, and these give rise to offspring of poor heritage.

The work of Rath seems careful and exact and is a step in the

right direction. It shows that in many cases environment is not so important a factor in determining the offspring as the germ plasm. That two deserving parents should have a hopeless criminal as an offspring is sufficiently shocking to make us all look at family records with a little more care. Two minor criticisms might be made. Signs on the charts themselves should designate those brothers and sisters who had not been imprisoned, but who were sexually immoral, shiftless, or what not, as described in the text below these charts. Secondly, sons not yet arrived at the age of puberty should have been excluded from the data, as they may later exhibit the criminalistic tendency. All things considered, the study is very commendable.

Northwestern University. S. I. KORNHAUSER,

THE ADMINISTRATION OF JUSTICE IN CRIMINAL MATTERS. By *G. G. Alexander*, Cambridge University Press, 1915. pp. 230.

An enlarged edition, prepared since the English criminal justice administration act of 1914 was passed, of a very capable manual first published in 1911. The author knows his criminal law and practice. The book is peculiarly readable for both layman and lawyer. Most works start from the upper courts and proceed down. This work (and it seems more logical) starts with the justice courts and follows through the trial courts, courts of appeal, House of Lords' Jurisdiction, to the Home Secretary, the last resort of one tried for crime. It explains succinctly the changes wrought, and the present status of procedure as established by the last English revision.

The chapter outlining the procedure in a criminal trial enables one to see the exact procedure almost as if sitting in the court room and to compare its similarities and differences with the American procedure.

The chapter on Criminal Appeals is instructive. The author confirms the opinion we have had that in the desire to laud English celerity we have somewhat overlooked English injustice. When he shows us that during the first four years and nine months that the Court of Criminal Appeals has been in existence, out of 843 appeals heard, in 141 the convict was discharged, we get some insight into the English injustice which before that time went unredressed.

The book considers the whole subject of criminology, passing from crimes and the courts which deal with them to criminal statistics and prison reform. It is well worth having and reading.

Wausau, Wis. C. B. BIRD.

THE CRIMINAL JUSTICE ADMINISTRATION ACT. By *Neville Anderson*.

A hand-book of the late Act as applied to the summary jurisdiction of justice courts. It consists of the code with adequate notes supplemented by a schedule of court fees, table of statutes, etc. The index is logical and useable. The book is a handy manual from which to get quick and accurate information on the topic treated.

Wausaw, Wis. C. B. BIRD,

CLINICAL STUDIES IN THE RELATION OF INSANITY TO CRIME. By *Paul E. Bowers, M. S., M. D.*, 1915. pp. 104. (Privately published by the author at Michigan City, Indiana.)

The author, in his preface, announces his purpose in publishing this little volume "to show the necessity for distinguishing between the criminal acts committed by persons mentally responsible and those irresponsible, in order that the culpable practice of punishing the mentally sick in penal institutions may, in the course of justice, cease." The book is divided into the following seventeen chapters: The Causes of Crime, Criminal Anthropology, Crime and Insanity, Epilepsy, Paranoia and Paranoid States, Dementia Praecox, General Paresis, Manic-Depressive Insanity, Hysterical Insanity, Puerperal Insanity, Senile Psychoses, Cerebral Syphilis, Drug Psychoses, Traumatic Psychoses and Traumatic Psychopathic States, Feebleminded-ness, Psychopathic Personalities and Border-line States, Constitutional Immorality.

In his chapter on Criminal Anthropology the author states what is now generally accepted: "that there are no signs or symptoms which so label an individual that we can say with absolute certainty that he will or will not be a criminal, but we are compelled to acknowledge," he says, "that the stamp of constitutional inferiority is indelibly impressed upon these individuals who constitute our prison populations." He thinks that in our zeal to obtain anthropometric data on criminals we may have lost sight of the efficient factors of crime. Has there not been a tendency to over-estimate the value of mere mathematics and measurements? "We have jumbled statistics until we are practically lost in the maze of confusing and misleading arithmetical calculations. We must bear in mind that the criminal is a human being; that the biological element, the environment, the disease or defects, regulate and modify the mental activities and are of far more value than body measurements. These measurements must give way to psychological investigations."

With reference to the much mooted question of the proportion of feeble-mindedness and other abnormal mental conditions among criminals, Dr. Bowers speaks, as follows:

"After careful observation and study, I feel satisfied in saying sixty per cent of the prisoners admitted to the Indiana State Prison are mentally defective, and these may be classified under the following heads in the proportion indicated; Insane, 12%; Feeble-minded, 23%; Epileptic, 8%; Constitutional Inferiors, 17%."

At the end of the monograph is a brief bibliography which the general reader will find helpful.

Northwestern University. ROBERT H. GAULT.

MODERNE CRIMINALISTIKS. By *Dr. Albert Helwig*, Assistant Professor of the Berlin Juridical Faculty. B. D. Teubner, Liepzig, 1914. pp. 96.

This interesting little volume consists of an introduction, three

chapters and an appendix. The introduction deals in a brief way with definitions concerning crime.

Dr. Helwig states it is a useless task to compare the growth of crime between the present and the former times. No correct comparison can be made as we do not even know the spread of modern crime. We are very ignorant of the criminality of our present time. This may appear strange, since we have had for decades past instituted and published criminal statistics. From these statistics, however, we can only obtain the number of those criminals who have been arrested and convicted for the commission of crime. On the other hand, no statistics can reveal to us the number of so-called "secret crimes," such as perjury, abortions, prevention of conception, pederasty, etc.

He also points the various difficulties encountered in dealing with the psychology of the criminal and his actions for the reason that each investigator, such as the judge, psychiatrist, and police officer, consciously or otherwise, somewhat color their conclusions with the prejudice of their respective professions.

Only one who has lived among criminals is, perhaps, in a position to draw a mental picture approaching the reality of the criminal psyche. The usual memoirs and literature on criminals are to be regarded with caution, especially as the criminal when writing his autobiography, leans toward feigning sentiments of which he is devoid, and uses tints to picture himself in brighter colors than he actually has. One is compelled to give very small credit to the biographies of criminals by prison chaplains, no matter how well meant these are.

Chapter two concerns itself with the identification of the alleged criminal and the methods by which this is accomplished.

The modern criminal makes use of all the inventions and achievements of modern science not only in his art, but to prevent his arrest and conviction. Of course we may feel assured that these devices are also used for their detection and are probably of greater use to the police and courts than to the criminal, since devices are being constantly developed and better methods used for their detection. Among modern methods may be mentioned the Dactyloscope and trained dogs. Dr. Helwig writes at length on the manner in which criminals evade arrest. The criminal often takes the greatest pains to throw the police off his track by false clues, perverted witnesses, disguises, dissimulation of diseases and afflictions, chemicals and other scientific methods. The novice in crime usually commits the crime and then disguises himself, while the master criminal disguises himself first. We find that although we may receive valuable aid from these sources, yet, on the whole, they are not dependable and the police would be in a very bad way if they were dependent solely on this haphazard method of apprehending suspects.

The criminologist, in order to accurately perform his duties, must be assisted by every scientific specialist. These may throw light on the subject where the eyes of the layman can discover nothing. Chemical analysis, microscopic views and measurements, medical and dental diagnosis, and like branches must all be used.

Many pages are devoted to the pro and con discussion of the character and value of the statements of witnesses. In this regard, he states that witnesses should be able to give their testimony in clear language, making a word picture. The impressions that have been made upon their minds will depend largely upon the time of their observations, the interest that they took in the matter, whether lively or casual, and upon their faculties for remembering time, places, and individuals.

Chapter three is concerned chiefly with the means employed in the conviction of the criminal and the following views are emphasized:

The suspect may be convicted by his own testimony, by mental and physical coercion to make a complete confession, if he does not do so of his own accord; by the direct evidence of witneses; by indirect testimony bearing on his identity; by indirect evidence of witnesses, and by circumstantial evidence.

In olden inquisition days the main object was to prove the prisoner guilty. Now-a-days, cross-examinations are conducted with a view of having the suspect prove his innocence. A prisoner, under modern laws, is not required or compelled to make a statement in the case that may incriminate himself. The accused is usually asked if he wishes to make a statement. It rarely happens that the accused is not willing to give the facts of the case as he knows them. In such a case one may usually surmise that the suspect is guilty, although he may have a very good reason for not wishing to make any statement or remarks.

Importance can only be attached to a confession when it is known to be disaffected for one cannot forget that confession is evidence to be used against the suspect. Police judges and officers are very anxious to have the prisoner confess and resort to physical means such as, suggestive questions and putting the prisoners to severe mental strain, and by physical means such as beating and the like threatenings causing the prisoner to confess under severe mental strain or from fear. This is wrong. Under no circumstances should the prisoner be compelled to make a confession. The art of examination has to be closely studied; many take into account the appearance and conduct of the prisoner during examination. This plays no great role, although a workman or artist often will bear marks of his profession.

Circumstantial evidence can not have too great stress laid upon it as it is ambiguous and causes many mistakes in justice. There are many indirect marks or means of evidence which when followed up will cause an identification of the criminal, such as marks of the finger nails, or of the teeth, comparison of handwriting and by the fingerprints. A full knowledge of the determining circumstances that lead to the commitment of the crime is a great aid to justice.

The appendix shows the reforms that will necessarily come about in criminal court practice and police methods.

This book as a whole is worth far more to police, detectives and police court judges than it is to the scientific investigator of criminalistics. It in no manner touches upon the causes of crime or the

psychology of the criminal. A better name for this monograph would be "Modern Methods for the Detection and Conviction of Criminals."

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"IL MANDATI NEL NUOVO CODICE DI PROCEDURA PENALE ITALIANO." —WARRANTS IN THE NEW ITALIAN CODE OF CRIMINAL PROCEDURE. *Marcello Finzi*, Fratelli Bacca, Torino, pp. 133.

This pamphlet contains a series of lectures on summons and warrants under the new Italian code by Prof. Finzi, of the University of Ferrara. It is written in the usual logical style of continental law writers.

It is composed of two parts, the first on the common practices of the four kinds of "mandati" provided for in the new penal code, the second devoted to the examination of each special kind. Each part contains four chapters.

In the first part, Chapter I, "Definitions," gives the four kinds of "mandato:" (1) di comparizione, (2) di accompagnemento, (3) di cattura and (4) di arresto. The first is a summons or citation directed to the defendant to appear in court; the second is a bench warrant; the third and fourth are warrants to arrest. The first is of a more provisional nature; the second and fourth merely follow the first and third respectively upon disobedience or when necessary. They may issue at any stage in the proceeding, and are technically decrees.

Chapter II, "The Common Conditions for the Issue of Such Writs." The conditions are two, but as the first varies with the different kinds of "Mandati," its discussion is taken up in the second part of the pamphlet. The second condition is proof of a *prima facie* case. The willingness of the accused to come into court and defend the case is no reason for refusing a writ.

Chapter III, "The Authorities Competent to Issue Such Writs." These are the judge of instruction and the "Consigliere" of the court of appeals, the members of the judiciary of equal jurisdiction, including the "consigliere della sezione d'accusa" and of the court of correction and the commission of instruction of the High Court of justice (the Senate), and the praetor.

Chapter IV, "The Contents of Such Writs." Such a writ must give first a description of the accused, name and cognomen, age, status, etc. (If these be unknown, any description will suffice, but this must not be taken to authorize the issuance of John Doe warrants); second, the crime; a short statement of the facts and number of the article of the code infringed; third, date and subscription, viz.: place, month, day and year, the signature of the judge, and the seal of the clerk.

In Part II, Chapter I, "Mandato di Comparizione," is divided into five sections: Section I, "Definition;" Section II, "Conditions for Issue;" Section III, "Service;" Section IV, "Failure to Obey." A "Mandato di Comparizion" is a summons and corresponds to the "Veniat Corcam" of ancient law. An accused can, of course, present

him self before the court without such a writ. As one of the principal objects of the summons is for examination, the attendance must be personal. The summons must be distinguished also from the notification of the procuration of the King or the Procurator General to an accused to present himself within five days before the court for the latter imposes no obligation, but gives a privilege. This writ can be issued in a case involving any delict or contravention. It does not depend upon the decision of the District Attorney. Besides the contents already given for all writs of this kind, this special form contains an order to appear (at the expiration of at least three days in addition to one day for every two hundred kilometres of travel), viz.: the designation of the court, the place, the day and hour, and the penalty for failure to appear, viz.: the issue of the bench-warrant. At this point Professor Finzi inserts a form of this writ. Service should be made by an officer of the court by handing a copy of the summons to the accused, wherever he may be found at any hour of any day. A return must be made showing time and place of service. (553). If such service is impossible, service may be effected by handing copy of the writ to a member of the accused's family, relatives and relatives-in-law in the same house, to any one under his roof, including guests and employer, or to anyone in his service, at his residence, if he has one, or his domicile. Such a person, however, cannot be anyone disqualified as a witness, under fourteen years of age, or weak-minded. The return must show all the facts just set forth:—the impossibility of personal service, and time and place of service upon a person of the above qualification in the accused's residence or domicile (Sec. 64.) If service cannot be effected as above, service may be made upon the "Indaco del Comune," whose duty it is to notify the accused, but the service dates from the service upon the Indaco (Sec. 68). If all these methods of service fail, it may be effected by posting a copy of the summons upon the main door of the town hall of the county of the accused's birth and of the house where he was last domiciled. This method can be used only when the residence or domicile of the accused within the Kingdom is known. Both postings are required. Service, it is needless to say, dates from the second posting. This return must set forth all the elements required for this method of service (Sec. 72). A fifth form of service, available only when the prior four are impossible, is by posting upon the main door of the "Corta," "Tribunale" or "Pretura," where the case is being heard. Here again Prof. Finzi inserts a form of return (Sec. 74). This last method of service of "mandati di comparizione" is notification at the domicile declared or elected. A declaration of domicile (within the scope of this lecture) is made only in case of provisional liberation, while a domicile may be elected only by men domiciled abroad. This "domiciliato" must appoint a special agent, who, of course, assumes no responsibility to notify the accused unless he accepts. Service must be at the place chosen, but may be upon a member of the agent's family, a member of his household, or a servant. The appointment of a "domiciliatorio," of course, does not prevent personal service upon the accused. The special agent is

appointed, be it understood, with powers as in our case. Thus anyone, provisionally liberated, should appoint an agent in the jurisdiction of the crime. If there is no one in the domicile of the agent or "domiciliario" qualified for service, this method of service fails, and the first of the five methods must be used. But Professor Finzi believes that service should be made upon the sindaco of the agent and not of the accused, if service must be made in the third way. The first five methods must be followed in order, but the sixth, upon an agent, and personal service are "pari passu." If the agent die, is disqualified, or removes from the county, the ordinary methods must be used. If the whereabouts of an accused, who has not declared or elected a residence, domiciled abroad is known, it is the duty of the District Attorney. Issuance of the writ may be discretionary or obligatory. It is discretionary (1) because of the crime, (a) violence or resistance with Arts. 187, 190, C. P. (b) offenses with Arts. 194, 197, C. P., (c) conspiracy to commit crime, (d) certain crimes against good morals, (e) personal assaults; (2) because of the crime or punishment, thefts, frauds, and embezzlement, punishable with a maximum punishment of not less than three years; (3) because of the punishment, a minimum of three years; (4) because of the quality of the accused and the punishment, a maximum detention of three months and a person (a) under admonition, (b) under special vigilance, (c) without fixed domicile or residence in the Kingdom, (d) condemned more than twice for delicts, or (e) condemned before for the same crime. It is notable that the new code does not include beggars, tramps, and vagabonds, "Mendicanti," "Oziori," "vagabondi" and "diffamati" in this category. The severer punishment seemed too severe for beggars, and the other classes were too indefinite. The "foreigners" of the earlier codes are included in the sub-division (c). The writ is obligatory under Arts. 313 and 314 C. P. This writ cannot be issued against minors under fourteen years of age. This writ, as we have seen, is discretionary save in a very few cases. It is to advise him of the prosecution, requesting him to appoint an agent; in the meanwhile service will be by posting. Forms of return are given by our author (Sec. 91a and b). Upon refusal to obey the summons, a bench warrant issues, and the penalty imposed by Art. 434 C. P. for refusal of obedience to authority may apply.

Chapter II, "Del Mandato di Caltura" is divided into six sections: Section I, Definitions; Section II, Conditions for Issue; Section III, Competent to Issue Such Writs; Section IV, "Contracts; Section V, "Execution," Section VI, "Revocation." The "mandato di caltura" is a warrant of arrest and corresponds to the "capiatur" of ancient law. The object is to insure possession of the accused and its justification lies in the satisfaction of the victim and of the public conscience, which may fear his escape. The issuance of this writ is limited by Art. 26 S. R., which follows Art. 39 of "Magna Charta," "nullus liber homo capiatus nel imprisonetur . . . nisi per legale jueicium parium suorem nel per legem terrae." It can be issued if it is found that an accused may attempt to escape or if he breaks obligations placed upon him. The allowance may, therefore, be effected by the

amount of proof, the probability of flight, and the state of public opinion, in all save a few cases—which is as it should be. In addition to the usual judges, the writ can be issued by a civil judge in cases of forgery and by the commercial court in bankruptcy cases, when there seems to be criminal liability, upon sufficient proof, but it can never issue except upon motion of the district attorney. This writ must contain, besides the usual obligations, an order of arrest and the concurrence of the District Attorney. Professor Finzi inserts a form of this writ (Sec. 126). Such writs may be executed throughout the Kingdom, excepting in certain places under church control or belonging to foreign ambassadors. It must be executed by authority of the District Attorney by the police. They are carried out by the arrest and incarceration of the accused. They must be executed (unless special permission be given) in all dwelling houses between the hours of sunrise and sunset. If the writ cannot be executed, either because the accused cannot be found or is too sick to be moved, a return showing the fact, must be made, and in the latter case, the judge shall provide for his custody. A return must also follow the arrest. It it is discovered that the wrong person has been arrested, the officer may liberate him. This could not be done under the old code, of which Carrara made game by his imaginary conversation with an old woman, whom he asked what she would do if, upon going to the roost for a rooster for dinner, she caught a young hen. She replied: "What would I do? What could I do? I'd let her go and go back for the rooster!" Immediately after the arrest, the judge should hold the interrogatory, unless prevented by some good reason, even if, in case of sickness, he must go to the bedside of the accused. This writ must be revoked whenever the conditions which permitted its issue cease to exist. Thus, proofs may fail. It must be revoked by the judge who allowed it, upon the motion of the District Attorney, and may be reissued. The writ is of no avail, if the accused is liberated from prison upon his own motion or that of the District Attorney, by the judge or praetor, because there has been no crime or there is not sufficient evidence of it. He may be freed by a "non pros." This writ may be superseded by a summons at any time.

Chapter III, "Del Mandato di Accompagnamento" is divided into three sections: Section I, "Definitions;" Section II, "Conditions of Issue and Contents;" Section III, "Execution." A "mandato di accompagnamento" is a bench warrant and corresponds to the "Ducatus coram" of ancient law. It may be a consequence of disobedience to a summons or a mild substitution for a warrant of arrest, leaving the accused at liberty, as it does, but permitting the use of force to bring him to court at a definite time. It can be used only in cases in which a warrant of arrest could issue, but it is not dependent upon the action of the District Attorney. It contains, over and above the formal part, which we have already, an order to bring the accused into court. (Sec. 175). This writ is executed by the court officers, necessary force may be used; no detention prior to the day of appearance is allowed; a return must be made at hearing; it may be replaced by a warrant of arrest.

Chapter IV, "Del Mandato di arresto" is divided into three sections: Section I, "Definitions;" Sec. II, "Conditions of Issue and Authority Competent to Issue It;" Sec. III, "Contents and Execution." A "mandato di arresto" is a warrant of arrest (di cattura) and executed in the same manner. Its difference lies in its expiration at the end of five days after execution, unless the latter writ issues. Its "perenzione" depends only upon (1) the effluxion of time and (2) inactivity. Its issue is always discretionary. It can issue only in cases in which a warrant of arrest might issue, and on the authority of (1) the praetor during instruction, prior to re-opening the instruction, during trial, (2) the judge of instruction during instruction, prior to re-opening instructions, (3) the president of the "Tribunale," if new facts appear at trial, (4) the "Tribunale," in cases of reversal. The action of the District Attorney is not necessary, save in special cases. The writ contains, in addition to the common obligations, an order of arrest and imprisonment. (Sec. 195). Its execution and revocation are governed by the provision controlling warrants of arrest.

Professor Finzi's article is well worth reading as a clear, concise, and logical exposition covering "Mandati" under the new Italian penal code. It is to be recommended as a book of reference.

JOHN LISLE. (Deceased.)

THE DIPLOMATIC PROTECTION OF CITIZENS ABROAD, OR THE LAW OF INTERNATIONAL CLAIMS. By *Edwin M. Borchard.* Banks Law Publishing Co., N. Y., 1915, p. 988.

International Law, as a set of rules governing the intercourse of states with one another, has not yet attained its highest efficiency, because there has been no enforcing power to compel obedience to its regulations and because, up to the present time, no serious effort has been made to elaborate systematically many minor but importatnt subdivisions of the law, together with the method of general and specific application. The question of aliens has been one of these neglected topics; and Mr. Borchard has, in this present volume, made the first attempt to classify and explain in detail the rules governing the protection, the rights, and the claims of subjects or citizens living or traveling abroad. With the greatly improved facilities for travel and communication, and the remarkable development of international commerce and intercourse during the past twenty-five years, the number of persons going to foreign countries for study, travel and business has enormously increased. The law of international claims has acquired accordingly a special significance and importance; and the need of a carefully prepared treatise dealing with the regulations of municipal law in the different states and of International Law affecting aliens has become imperative. Mr. Borchard, a well-known authority on International Law and Assistant Solicitor in the Department of State at Washington, is fully qualified to produce such a work, and he has met the demand in a highly satisfactory manner. Mr. Borchard has treated the subject in a scholarly and exhaustive fashion, making

a careful distinction between the laws and the practice of nations, and showing a fine power of discrimination in his analysis of the various forms of claims and the methods for their adjustment.

The volume is divided into four parts, as follows: 1. On the relation of the state to its citizens and to the alien, where the obligation of the state to protect its citizens and the rights of the alien in the country of his residence are studied; 2. On the nature, exercise and effect of diplomatic protection, where the true nature of international claims are discussed and the difference between public and private claims is made clear; 3. On the object of protection, including a study of citizenship and of those "persons, entities and objects which are entitled to national protection"; 4. On the limitations of protection and its forfeiture. The responsibility of the state and its officials, and of municipalities, in municipal law for violations of the rights of aliens, the methods by which aliens may secure redress for the violation of their rights, and the obligations of states to aliens and to their home governments for infractions of their rights, are carefully studied. Of the discretionary nature of protection, the means of protection, and the collection and distribution of indemnities and arbital awards are all thoroughly discussed.

In a number of instances, Mr. Borchard calls attention to the lamentable fact that the general rules do not apply with sufficient force and clearness to special cases, and that the need of more specific legislation on many points is imperative. For instance, in regard to requisitions which the Hague Rules say cannot be "demanded from localities or inhabitants (in lands under imilitary occupation such as that under which the greater part of Belgium now lies), except for the needs of the army of occupation." "They must be in proportion to the resources of the country." All supplies must be paid for "as far as possible" on the spot in cash, or receipts given by the local commander of the district, who alone has the power to order the requisitions. "The weakness of these Regulations," writes Mr. Borchard, "lies in the fact that no definite limitation is imposed upon a military commander, and the owner of private property is only in a little less precarious condition than heretofore. There is no guide to what may be considered the "needs of the army of occupation," and because of the fact that payment need be made only "as far as possible," the right of indemnity is problematical."

Mr. Borchard's work will undoubtedly take rank among the best of modern works on International Law and will become the standard authority on the special field it covers. All persons interested in those civil or criminal cases within the United States, in which aliens are a party, will find this book an invaluable source of information, where the practice and policy of the Federal Government has been made a special study. The volume is well supplied with carefully arranged footnotes referring to important cases, judicial opinions, and statements of important state officials. There is also an appendix containing an alphabetical bibliography of original and secondary source material on aliens, grouped by countries, and an excellent index.

Northwestern University. NORMAN DWIGHT HARRIS.

THE MALLINGERER; A CLINICAL STUDY. By *Bernard Glueck, M. D.* Senior Assistant Physician, Government Hospital for the Insane, Washington, D. C. Reprinted from *International Clinics*, Vol. 3, Series 25, pp. 52.

This important work by an author who has become well known in recent years as a student of the insane among delinquents yields the following conclusions:

"1. The detection of malingering in a given case by no means excludes the presence of actual mental disease. The two phenomena are not only not mutually exclusive, but are frequently concomitant manifestations in the same individual.

"2. Malingering is a form of mental reaction manifested for the purpose of evading a particularly stressful situation in life, and is resorted to chiefly, if not exclusively, by the mentally abnormal, such as psychopaths, hysterics, and the insane.

"3. Malingering and allied traits, viz., lying and deceit, are not always consciously motivated modes of behavior, but are not infrequently determined by motives operative in the subconscious mental life, and accordingly affect to a marked extent the individual's responsibility for such behavior.

"4. The differentiation of the malingered symptoms from the genuine ones is, as a rule, extremely difficult, and great caution is to be exercised in pronouncing a given individual a malingerer.

Northwestern University. ROBERT H. GAULT.

LA FILOSOFIA PENAL DE LOS ESPIRITISTAS (THE PENAL PHILOSOPHY OF THE SPIRITISTS) by Fernando Ortiz, Professor at the University of Havana. "La Universal" de Ruiz y Ca., 1915. pp. 126. $1.00.

Professor Ortiz, author of many other very important books, is a student who has always had a great deal of interest for religious and philosophic questions. This led him to find out what Allan Kardec and other spiritists thought of the theories of criminology. To his great surprise he found that to a great extent the materialistic theories of Lombroso and those of the spiritists reached the same conclusions, though starting from fundamentally different premises.

Professor Ortiz is not a spiritist himself and therefore he does not support a blind prejudice. He found an interesting field not yet studied by others, he investigated it, and now he publishes the results of his researches. His book is very interesting indeed and the astounding accord between the spiritists and the modern criminologists is most impressive.

Evidently enough the author does not intend to *prove* anything; a theory is not true because several people *think* in the same way, but because the *facts* give unmistakable evidence of its truth. That the spiritists on certain subjects think just as the founders of present criminology may be a very interesting incident, but does not show that the latter are right, unless facts prove it. And that Wallace and Lombroso, besides being among the founders of scientific criminology,

have been spiritists, does not prove that they were right in both lines of thought.

But it might be very interesting to connect more intimately the movement of ideas of the criminologists with the evolution of religious thought; it might perfectly be that we would find in the latter the fundamental principles of many modern theories of sociology. Professor Ortiz with this monograph has shown that this is true for criminology and for many other current sociological theories: and this has a most captivating interest from the point of view of the history of human knowledge.

New York University. VITTORIO RACCA.