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Reviews and Criticisms

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REVIEWS AND CRITICISMS

TRAITÉ THÉORIQUE ET PRATIQUE DU DROIT PÉNAL FRANÇAIS. By *R. Garraud*, advocate at the Court of Appeal and Professor of Criminal Law in the University of Lyon. Volume three, third edition. Librairie de la Société du Recueil Sirey, Larose and Tenin, Paris, 1916, page 725.

This is a revised and considerably enlarged edition of the third volume of a monumental treatise on French criminal law, the first two volumes of which have been reviewed in previous numbers of the *Journal*. What was there said by the reviewers in high praise of those volumes may be repeated of the third volume, which, after the lapse of several years after the publication of Volume II, has now made its appearance. It is hoped that the new edition of the three remaining volumes may appear in as rapid succession as the first three. M. Garraud's treatise is a work which reflects the highest credit on French scholarship, not only by reason of its comprehensiveness but because of the evidences of enormous erudition which it bears, to say nothing of its attractiveness of style, lucidity of expression, and scientific method of treatment. German scholars have heretofore enjoyed a sort of primacy in the field of legal history and criminal science, but in recent years the productions of Garraud, Viollet, Luchaire, Glasson, Planiol, Chénon, and other French writers have gone very far toward depriving the Germans of their once acknowledged leadership. Certainly it may be seriously doubted whether any German treatise on criminal law is entitled to a higher place in legal literature than Garraud's masterly work. Being the work of a "provincial" professor, it constitutes a signal refutation of the once prevalent notion that the great scholars of France were all to be found in Paris. Garraud, with Duguit, Haurian, Du Crocq, Moreau, Michoud, Coumoul, and others have demonstrated that the provincial atmosphere of France is quite as favorable to the production of great jurists as is that of Paris.

It is impossible within the compass of this review to give any adequate notion of the contents of a volume of more than 700 pages, much less to examine and criticize the views of the author on the various controverted questions of criminal law and criminology. More than one-third of the volume is devoted to a consideration of what he calls "plurality of infractions and infractors" in which he expounds the law, more or less technical, governing complicity in the commission of crime. Of greater interest to criminologists and sociologists is the very full discussion of the law in respect to recidivism and recidivists, nearly 200 pages. This is a subject which has occupied the attention of French criminologists much more than those of America, and properly so, because, as M. Garraud points out, more than half the persons tried for crime in France today are recidivists. In this connection the author devotes considerable space to a discussion of the *casier*

judiciaire, an institution which has never received the attention in America that it has in France. Likewise, the subject of suspended sentence (*sursis*) and of parole (*liberte surveillée*), which in recent years has much occupied the attention of French criminologists, is considered at great length from the standpoint both of the lawyer and the criminologist.

In a final part of the volume, entitled "special criminal law" the author deals with the law applicable to crimes against public property and public officers, against the safety of the state, against the constitution, offenses against the election laws, *attentats* against liberty, etc.

M. Garraud's treatise is by no means confined to an exposition of existing French law; his method is, in fact, both historical and comparative. Whenever he enters upon the consideration of a particular branch of French law, he reviews the doctrines of the Roman law, traces the historical development of the French law in respect to the matter, and in many instances tells us what is the German, Italian and English law on the subject. The work is, therefore, one which may be studied with profit not alone by French students but by those of other countries as well. Of particular value to students are the excellent bibliographies and citations to the literature, both French and foreign, of the subjects treated.

University of Illinois.

J. W. GARNER.

WISHFULFILLMENT AND SYMBOLISM IN FAIRY TALES. By *Dr. Franz Ricklin*. N. Y.: Nervous and Mental Disease Monograph Series No. 21, 1915, pp. 90.

The theories of Freud are now fairly familiar to American readers. These peculiar views have led to a sharp conflict among neurologists, and to the elaboration of a new method, namely psychoanalysis, for the investigation of psychoses. The chief points in the Freudian theory are the postulation of a subconscious mind, which, by reason of its conflict with the conscious mind, gives rise to aberrations in conduct which are described as neurotic. This conflict arises because the primitive impulses of human beings are in opposition to the ethical teachings of society. The majority of mankind are able to adjust their instinctive life as it expresses itself in their impulses, to the socially approved forms of conduct. Some individuals are unable to make this adjustment, whether by virtue of inherent defect, or as the result of stress. Such persons become hysterical, neurotic, or victims of phobias. The aberrant impulses which initially cause trouble have their root in the sexual life, when that term is understood in its broadest possible signification.

So deep and so strong are the processes of the subconsciousness that eruptions into the normal consciousness take place, even during the waking state. Slips of the tongue, mistakes of memory, and the misplacing of objects are interpreted by Freud as expressions of subconscious trends. During sleep the subconsciousness manifests itself in the form of dreams. Dreams are considered by Freud as the

vicarious fulfillment of a subconscious wish. On the basis of this belief the analysis of dreams has become one of the important instruments of psychoanalysis.

Not content with the application of these ideas to abnormal psychology the followers of Freud have attempted to extend their theories to include folk lore and fairy tales. Indeed the unconscious has been conceived of as the underlying reality of all things and has thus become the basis of a philosophy.

Ricklin, of Zürich, has presented in this book an account of fairy tales interpreted from the Freudian standpoint. The book deals, in its seven chapters, with the wish structure of the fairy tale, the symbolism of the fairy tale, and the sexual element in certain fairy tales. The author's treatment of the fairy tale as a fulfillment of a wish is well illustrated by the Japanese tale, "Kokoro," by Lafcadio Hearn.

In the original is related how O-Toyo during the absence of her husband in the service of the liege lord, performed, with her little son, the daily duties and attended piously to all the good, religious customs that were observed on such occasions. Her small boy being her constant joy, she busied herself with him in various ways. The religious observances are described, and the pilgrimage of O-Toyo with her son to the mountain, Dakeyama, where all those go, who wait anxiously for dear ones far away. O-Toyo's husband died however, and shortly after her son died also. All this came to her consciousness in sudden flashes, between which came deep darkness. Then comes the fulfilling wish structure. As the darkness receded and O-Toyo was left alone with her memories she ordered small playthings, spread out children's garments, and alternated chatting and smiles with loud convulsive sobs. She resorted to magic rites, and a wise priest, after a suggestive ceremonial, spoke for the wished-for deceased, whose spirit had now entered into him. O-Toyo received in this way the consoling knowledge that she must not weep for the dead, for their way lead over a stream of tears, and when mothers cried, the flood rose so that the soul could not cross but must wander restlessly. From that hour she did not cry. At the suggestion of her aged parents with whom she lived, O-Toyo became a nun in a little, wee temple with all its little parts, built in the court of the former temple of Armida. There she lived for the rest of her life, surrounded by children who spent most of their time with her, playing as with their equal. After her death they set up a wee little grave stone for her. "This tendency to identification with the wish object, which reaches, in this story, a very intensive grade of the wish-fulfilling activities, has been observed by others in the psychoses, namely dementia praecox."

The tale of the German Cinderella, which the author classes as of the type of wish-fulfilling fairy tales analogous to the dream, presents, in its beginning, an example of the symbolism of the fairy tale. Cinderella has a stepmother who neglects her in favor of her own two children. The father once, going to the fair, promises all three daughters to bring something back for them. The stepdaughters wish for beautiful clothes, pearls and precious stones but Cinderella begs him

to break off for her the first branch that hits his hat on the way home. This is a hazel branch. Cinderella takes it to her mother's grave, plants it there and waters it with her tears. The branch grows into a wish-tree from which the maiden receives everything—the most beautiful gold and silver clothes and the little golden slippers in order to please the prince and with the help of which she finally makes the wish-prince her husband.

The tales which the author discusses from the point of view of the special sexual motives of fairy tales are many and varied in their origin. Among them is that of Grimm's fairy tales, "The White Snake." In it a young man is consumed with love for a proud princess. She has let it be known that whoever wishes to woo her must accomplish a difficult task. If he is unsuccessful his life must be the forfeit. Many have already fruitlessly risked their lives. The young man however performs three tasks with the help of grateful animals. The third task, for example, is that he fetch a golden apple from the tree of life. They share the apple of life and eat it together, and her heart becomes filled with love for him.

University of Chicago.

H. C. STEVENS.

THE INSTITUTION QUARTERLY (March 31, 1916). Published and edited jointly in Illinois by *The State Board of Administration*, *The State Charities Commission*, and *The State Psychopathic Institute*. Pp. 340.

The general purpose of this quarterly publication issued jointly by these three departments of social welfare in Illinois is said by the publishers to be "To reflect the public charity service of Illinois; to publish the results of its investigations and research in the manifold questions of care and treatment of all classes of state wards; and to lead the way toward a harmonious cooperation and coordination of all public and private agencies throughout Illinois, which at any point touch the problems of philanthropy, charity and social betterment."

This particular issue of the Quarterly has been devoted almost exclusively to a study of the jails, almshouses, and relief agencies of Illinois. Miss Annie Hinrichsen, the Inspector for the State Charities Commission, visited the institutions in the classes just named in all of the counties of Illinois, completing the work in the remarkably short period of ten months. The printed reports, as they now appear in the Quarterly, were distributed to the public in less than twelve months after she began her rounds of investigation. It is the belief of the Charities Commission that the only report of any considerable worth is the most recent one. Effort has therefore been made to present live materials at quarterly intervals.

The standards used by the Commission and their inspector have been only those of common decency without luxury, and the aim of the report has been to present to the people of the State the truth about the Illinois institutions without prejudice either for or against any county, or any institution, or public official.

Pages 1-4 indicate the organization of the various contributing departments, and the contributors to the Quarterly; pages 5-37 present explanations of the work done and summaries of the work as a whole; pages 38-299 give detailed reports on each institution; pages 300-329 show views of certain jails and almshouses in Illinois; and pages 330-340 give a list of certified orphanages, of old people's homes, and table of contents and index.

The whole issue of the Quarterly is a remarkable contribution to the literature of Illinois relating generally to the problems of jails, almshouses, and public and private relief agencies, complimenting when work has been well done, and showing in a most vivid and helpful manner the many points at which the present systems need remodeling for twentieth century social decency and efficiency. Some of the many interesting facts presented are contained in the summary which follows.

The counties of Illinois expend for their jails, almshouses and relief agencies approximately five millions of dollars in one year. Accuracy as to just the amount which was spent and as to the way in which expenditure was made is not possible because of two fundamental lacks in the administration of the work by the counties:—first, the lack of uniformity of records, there being 101 different methods employed in the 101 different counties; second, the lack of any adequate records at all, the state laws requiring detailed data in regard to all recipients of charity not being fully observed in more than two of all of the counties. The cause of poverty is not given in many instances, and no social history recorded.

The present jail law enacted in 1874 following the survey of the State Board of Charities in 1870 requires proper food and drink for all inmates; forbids spirituous liquors except on the order of a competent physician; requires cleanly and sanitary conditions throughout; requires a suitable bucket with a closed top to be cleaned every day, where closets are not present with running water; and also requires separate compartments for debtors and witnesses, males and females, minors and older people. These laws are not generally enforced, the jails being more in accord with the laws of 1827 than of 1874. Under the law of 1827 the Board of State Charities in 1870 found the jails of Illinois were very little better than the vilest dungeons for the incarceration of wild beasts. The chief idea of the jail authorities has been and still seems to be, judging from the new jails, to erect a building from which no man can escape. Strength of walls and cells, therefore, is everything, and cleanliness, health, and physical and moral contagion count for nothing or at least for very little. Out of the whole 46 city jails or police stations of Chicago only a dozen are thought to be fit for any use whatever. Nineteen are underground structures, and through eleven run open sewers which provide the toilet facilities. At times the sewers overflow the floors. When eight or ten men are put into one of these small cells provided with only two planks for sleeping purposes some have to sleep lying on the floor beside the open sewer.

The fee system with all of its attendant evils still prevails in all but three of the 101 counties in the state. This means underfeeding of the prisoners and the fostering of a dangerous anti-social spirit among them. Enforced idleness prevails in all of the jails and predisposes the prisoner for all kinds of moral, mental, and physical contagion.

Although most of the reports of jails contain some mention of "jail improvement" in the great majority of cases this improvement consisted of a new porch, or a new garage, or new hard wood floor, or bathroom for the use of the sheriff and his family. With the exception of appropriations for new jails, not as much as \$5,000 was expended within a whole year for improvements on the jail proper, in the whole state.

Out of the 101 almshouses in Illinois 23 are operated under the contract system, the superintendents being those who will pay the county board the highest price for the use of the land, and who will board and care for the inmates for the least amount of money. The chief evils of this contract method are lack of proper care for inmates, ignorance of conditions on the part of the county board, and the deterioration of the plant. It seems perfectly evident that the almshouse should not be considered a county business project. There should be definite standards for almshouses in the state.

With an appropriation of about a million and a half of dollars for outdoor relief for the year 1914-1915 there are as yet in the state no well defined standards for county charity. Such a standard should be adopted by every county in the state.

Three recommendations are made with reference to the juvenile court, which are as follows: (1) Adequate salaries should be paid to probation officers so that well trained and conscientious workers can give all of their time to the work; (2) There should be a uniform system of records throughout the state including complete case histories of all of the children whose needs are reported to the officers; (3) Counties having more than one probation officer shall have one chief officer with assistants.

The success or failure of the mothers' pension law is thought not yet to be proven. In many counties where it is said to have proven a complete failure the trouble is known to have been in the manner of its administration under incompetent officers. In one county the court house janitor was given the task of investigation of cases by the judge so that he could add somewhat to his salary.

A careful reading of the whole of the Quarterly will be rewarding to any interested in these subjects. It may be secured through the Editor in Chief and Manager, Mr. A. L. Bowen, Springfield, Illinois.

Colgate University.

ROY WILLIAM FOLEY.

PROBATION MANUAL. State Commission on Probation, Boston, Mass. 1916, pp. 98.

This is the third edition of the State probation manual published in "the home of probation." It is intended primarily as a handy guide

to judges, probation officers and others dealing with delinquent and neglected children and with adult offenders in Massachusetts. It opens with a brief historical sketch of the system as developed in that state and an outline of the main features of the local laws and practices. Then follow the most important portions of the laws enacted up to and including 1916, which relate to probation, drunkenness, non-support, illegitimacy, delinquent children and other pertinent matters. The three leading court opinions handed down by the Supreme Court with respect to probation are given in full. The manual concludes with a list of the local courts and their territorial jurisdictions. Accompanying it is a directory of the names and addresses of all probation officers in the state, about 140 in number.

The manual has been prepared with care, and is convenient and to the point. The probation officers of every state should have a booklet of this kind for reference.

As there has been so little judicial interpretation of probation laws, the gist of the three court opinions may be of interest and help to persons in other states. The case of *Commonwealth v. McGovern*, 183 Mass. 238, holds that the written statement of probationary conditions required to be given to each probationer by the probation officer is not in the nature of a binding agreement between the probationer and the Commonwealth, and that such terms and conditions are subject to modification from time to time. If the conditions are not reduced to writing, as they should be, they are nevertheless binding, and the court may at any time impose sentence because of violation. The case of *Marks v. Wentworth*, 199 Mass. 44, prevents the courts from indefinitely keeping cases on file. Upon the demand of the probationer he is entitled to an order or judgment finally disposing of the prosecution by commitment to an institution or otherwise. The question at issue in the case of *Renado v. Lummus*, 205 Mass. 155, concerns the right of a probationer to appeal after having declined to appeal at the time of the finding and before being placed on probation. The judge of the police court after placing the defendant on probation, denied his request for an appeal. The right of appeal in a police court is only from the sentence. In this case, the defendant had been required, as one of the conditions of his probation, to pay a fine, and he claimed that he had paid it, but the police court held that he had not paid it. The question before the higher court therefore resolved itself into one as to whether the defendant had a right to appeal from the finding of the police court that he had not performed this probationary condition. Held that as the right of appeal is statutory the petitioner's claim was properly denied.

Brooklyn, N. Y.

ARTHUR W. TOWNE.

EIGHTH AND NINTH ANNUAL REPORTS OF THE MUNICIPAL COURT OF CHICAGO, 1916, pp. 164.

The tremendous amount of business handled by the municipal courts of a city like Chicago makes efficient and progressive administration essential if these courts retain the respect of those interested

in social welfare. The report of the last two years of that court, under the leadership of Judge Harry Olson, indicates both a high purpose and practical new methods of attacking its problems, which are worthy of commendation to all who are interested in the advances being made in this field. Since its last report three significant steps have been taken: (1) The establishment of the Boys' Court, wherein charges against all boys from 17 to 21 years of age are brought; (2) the establishment of the Small Claims Court, in which are brought, for summary disposition, all cases involving suits for money for \$50 or less; (3) The establishment of the Psychopathic Laboratory under the direction of Dr. William J. Hickson, to which are referred defendants and sometimes witnesses suspected of being mentally deficient or diseased.

The Municipal Court disposed of 200,000 cases in 1915, of which 130,000 were handled by the criminal branches. Besides the usual tabular reports of this business and its cost, the report contains a summary of the decisions of the Supreme and Appellate courts affecting the Municipal Court and its practice, and also 37 pages devoted to the work of the Psychopathic Laboratory. In the first year and a half of this laboratory Dr. Hickson handled 2,700 cases, and the report on these cases "covers the diagnosis of the mental status of the largest number of individuals charged with crime ever reported in this country."

Three things are emphasized in the experience of the psychopathic laboratory: The prevalence of feeble-mindedness among those charged with crime, the high rate of dementia praecox as a criminal psychosis, and the prevalence of a type of dementia praecox with feeble-mindedness grafted upon it. That the director has either discovered an unusual prevalence of dementia praecox among the feeble-minded and borderline cases (sociopaths) referred to him, or has made free use of this diagnosis is indicated by his table. Among 1,189 cases in these groups from the Boys' Court, for example, about one in six are diagnosed as suffering from dementia praecox.

The Binet-Simon test for 10-year-olds, which consists of copying a design from memory, has been used as one of the means of distinguishing dementia praecox grafted on feeble-mindedness from drug habits, chronic alcoholism, and hysteria. These drawings have been termed "mental finger prints," and seven pages of illustrations of these drawings are given. This qualitative diagnosis is reminiscent of methods followed by certain of the continental psychiatrists, of whom the report states that Dr. Hickson is a disciple. Lately these methods have come under the criticism of advocates of a more exact scientific procedure.

The court wisely recognizes that punishment formerly was largely automatic and routine. "Now the greater difficulty of shaping a fit sentence quite overshadows the traditional responsibility of the judiciary." In determining upon the proper method of control, the opinion of a diagnostician with much experience and common sense is undoubtedly a valuable aid. If a court desires to promote the

scientific understanding of its problems, however, it may contribute far more by establishing a fellowship or two in some reputable graduate school, than by compiling the results of an expert's practical and hasty diagnoses. Such a research program might be relieved of the stress under which this laboratory is conducted—a condition, which the report admits, in the vast majority of the cases will only "permit of a rapid and sure diagnosis, where the time at our disposal is limited to minutes while the judge waits for the diagnosis in order to dispose of the case." Such a research assistant might also caution against the diagnosis as morons of a group of 728 cases the average mental age of whom was 11.11 years.

Although the scientific study of delinquency has been neglected on account of the immediate demands upon this laboratory, the work of Dr. Hickson and his assistant has doubtless been of much aid to the judges in adapting the methods of control to the needs of the individual indelinquents.

Carnegie Institute of Technology, Pittsburgh. J. B. MINER.

PUBLICATIONS RECEIVED FOR LATER REVIEW.

1. The Significance of Psychoanalysis for the Mental Sciences. *Nervous and Mental Disease Monograph Series* No. 23. By *Dr. Otto Rank* and *Dr. Hanns Sachs* of Vienna. Authorized English translation by *Dr. Charles R. Payne*. New York; Nervous and Mental Disease Publishing Company, 1916. Pp. 127.

2. La Identificacion Dactiloscopica, Estudio de Policiologia y de Derecho Publico. Por *Fernando Ortiz*. Segunda Edicion. Biblioteca Cientifico-Filosofica Madrid—*Daniel Jorro*, Editor, 1916. Pp. 373.

3. The Evolution of Governments and Laws Exhibiting the Governmental Structures of Ancient and Modern States, their Growth and Decay and the Leading Principles of their Laws. By *Stephen Haley Allen*. Princeton University Press, Princeton, 1916. Pp. 1199.

4. The Mentality of the Criminal Woman. A Comparative Study of the Criminal Woman, the Working Girl, and the Efficient Working Woman in a Series of Mental and Physical tests. By *Jean Weidensall*, Ph. D. Educational Psychology Monographs, No. 14. Edited by *Guy Montrose Whipple*, Baltimore, U. S. A. Warwick & York, Inc., 1916. Pp. 327.

5. Recreation in Relation to Other Social Problems. By *Goldie Basch*. The Lilian Edwards Prize Essay. Durham, N. H., 1916. Pp. 14.

6. The Increasing Cost of Crime in Ohio. By *Thomas H. Haines*, Ph. D., M. D. Publication No. 10. June, 1916. The Ohio Board of Administration. Bulletin Number Four of the Bureau of Juvenile Research. Pp. 10.

7. The Intelligence of the Feeble-Minded. By *Alfred Binet* Sc. D., and *Th. Simon*, M. D. Translated by *Elizabeth S. Kite*. Publications of the Training School at Vineland, New Jersey. Department of Research. No. 12, June, 1916. Pp. 321.

8. The Development of Intelligence in Children (The Binet-Simon Scale). By *Alfred Binet*, Sc. D., and *Th. Simon*, M. D. Translated by Elizabeth S. Kite. Publications of the Training School at Vineland, New Jersey. Department of Research. No. 11, May, 1916. Pp. 329.

9. University Training for Public Service. Department of the Interior—Bureau of Education. Bulletin, 1916, No. 30. A Report of the Meeting of the Association of Urban Universities, November 15-17, 1915. 1916. Pp. 94.

10. Society and Prisons. By *Thomas Mott Osborne*. New Haven. Yale Univ. Press, 1916. Pp. 239.

11. Slavery of Prostitution—A Plea for Emancipation. By *Maude E. Miner*. New York. The MacMillan Company, 1916. Pp. 308.

NOTICE.

Owing to conditions that have arisen in the manufacture of paper since the beginning of the European war our printers are unable to obtain paper of the color heretofore used in the cover of this Journal. We have been compelled, therefore, to change the appearance of the cover with this number.

ROBERT H. GAULT.