

1919

## Reviews and Criticisms

Follow this and additional works at: <https://scholarlycommons.law.northwestern.edu/jclc>

 Part of the [Criminal Law Commons](#), [Criminology Commons](#), and the [Criminology and Criminal Justice Commons](#)

---

### Recommended Citation

Reviews and Criticisms, 10 J. Am. Inst. Crim. L. & Criminology 308 (May 1919 to February 1920)

This Book Review is brought to you for free and open access by Northwestern University School of Law Scholarly Commons. It has been accepted for inclusion in Journal of Criminal Law and Criminology by an authorized editor of Northwestern University School of Law Scholarly Commons.

## REVIEWS AND CRITICISMS

---

A HISTORY OF GERMANIC PRIVATE LAW. By *Rudolph Huebner*. Translated by Francis S. Philbrick, with Preface and Introductions by Ernest G. Lorenzen, Paul Vinogradoff and William E. Walz. (Continental Legal History Series, vol. IV). Boston, 1918. Little, Brown & Co.

The history of German law represents peculiar difficulties, because of the long struggle between the Romanistic and the native elements. Emphasis will be laid by students upon one or the other of these factors as their training and organized thought lead them to follow in the footsteps of Savigny or to enroll under the banner of Gierke, and in consequence no treatise will be wholly free from the bias occasioned by the writer's sympathies and allegiance.

The present work is written by a follower of Gierke, but one who does not fail to give due recognition to the importance of the Roman and Canonistic elements in the evolution of the modern system. Professor Huebner's method is admirably adapted to present a brief and clear outline of the development of private law among the Germanic peoples from the folk-laws to the codes. The "vertical" plan, as Mr. Jenks terms it, is followed—that is, each institution is separately treated—though there is an interesting introduction which gives a description in bold outlines of the different stages of evolution and of the general characteristics of German law. With respect to each institution, the author first describes the primitive and early medieval law, next the later medieval law, then the modern development from the time of the Reception down to the latest codes. Institutional history, thus treated, to use the words of Stubbs, "presents a regularly developed series of causes and consequences, and abounds in examples of that continuity of life, the realization of which is necessary to give the reader a personal hold on the past and a right judgment of the present. For the roots of the present lie deep in the past and nothing in the past is dead to the man who would learn how the present comes to be what it is."

The student of English and American legal institutions, as Maitland's work has shown us, must perforce acquaint himself to a considerable extent with Germanic origins. Our law of associations, for example, cannot be viewed aright unless we know something of the *Genossenschaft* and its history; to explain our law of land something must be said of the *Gewere*; the history of our law of chattels is involved with that of the maxim *Hand muss Hand wahren*; a thorough study of our law of dower or community property requires some knowledge of the *Wittum* and *Morgive*. The brief discussion by Huebner of *Schuld* and *Haftung*, involving the almost untranslatable distinction between "sollen" and "müssen," is of importance to one who would seriously study the doctrine of responsibility. For example, the viewpoint of the early customs that every violation of an

obligation was subject to a penalty still continues to color modern legislation, as in the provisions of the German civil code, in this respect resembling somewhat our own common law, which make a lunatic responsible for his torts.

It is a matter of discredit to English and American scholarship that until the publication of the present series under the auspices of the Association of American Law Schools, there was no apparatus available by which the English reader might gain some familiarity with the history of European law. With the aid of Brissaud's *History of French Private Law* and the present volume, read in connection with the histories of English law by Pollock and Maitland, Holdsworth and Jenks, one whose learning in foreign tongues is "a younger brother's portion," may now equip himself with a respectable knowledge of the experience of Western Europe in the field of private law. Let such a one read what Huebner says about the privilege (or disability) of "equal birth" among the high nobility of the German Empire—a privilege that never existed in England or in France, even under the old régime—and much that has been and is obscure in the history of the great war and in the present situation of central Europe becomes appreciably clearer.

The student of criminal science will find his greatest interest, aside from the history of the law as to responsibility previously mentioned, in the picture of the primitive German law with its undifferentiated conceptions of wrong. Possibly, too, he may obtain an occasional side-light upon psychological problems, as in the observation of the process by which the husband's absolute right *vitae et necis* in the most primitive law becomes reduced in the Flemish custom of Ardenburg to the rule that he may cut open his wife and warm his feet in her blood, provided only, that he sew her up again and she remain alive. The grim and even ghastly humor of this doubtless apochryphal rule, so reminiscent of the Shylock theme, the poetry and the symbolism of the the early Germanic law, find numerous illustrations of a similar character in the present volume. The thoughtful student will not be satisfied merely to refer such elements to a supposed national psychology. He will see in the operation of the aesthetic impulses one of the mightiest forces in the evolution of society.

Huebner's text book was the best available for the purpose of translation in this series, where the fields of public law, criminal law and civil and criminal procedure are covered by special treatises. Schroeder's and Brunner's histories do not so elaborately cover the subject of private law in its total development, nor do they so industriously correlate the past with the present. Heusler's book is too long, and moreover presents only a cross-section of the law as it is stated in the *Sachsenspiegel*, the *Schwabenspiegel* and the other law books of the middle ages. Huebner's book is not an original treatise, but a text book designed for university students; it meets the needs of the beginner. It is admirably clear in expression, written with a full knowledge of the materials, and its interest and value is enhanced by the author's constant employment of the comparative method.

The translator has performed a difficult and extensive task in a most creditable manner. He has wisely preserved untranslatable terms, though he indicates the English expression having the approximate meaning, thus, *Gewere*, *seisin*, *Schuld und Haftung*, duty and liability. In spite of the necessity thus imposed of preserving the original technical language, the English of the translation is clear and idiomatic. A complete and analytical index renders the book more usable than the original even to one sufficiently familiar with German.

Sir Paul Vinogradoff's introduction is a valuable contribution to the scanty literature in English upon the theory of possession.

University of California.

ORRIN K. McMURRAY.

---

LEGAL AND POLITICAL STATUS OF WOMEN IN IOWA. By *Ruth A. Gallaher*, Iowa City, Iowa. The State Historical Society of Iowa, 1918. Pp. XII, 300.

In this monograph Miss Gallaher has given us a well-written historical sketch of two phases of Iowa State history, namely, the development of the civil rights of women under Iowa law and the progress of the woman suffrage movement; and, incidentally, the acquisition by women of the right to hold certain elective and appointive offices in that state.

The first part of the monograph deals with civil rights, and is necessarily based upon an examination of the Iowa Codes, statutes and judicial decisions; but the treatise is not, and, as the author assures us, is not intended as a contribution to law or jurisprudence. In ten short chapters is traced the development of civil rights from the common law under which married women were denied separate personality and unmarried women did not actually enjoy many of the advantages which the law gave them, down to the present when women, whether married or unmarried, enjoy most of the rights which pertain to men. After an introductory chapter summarizing the status of women at common law, follow chapters which deal with the "personal rights" of women, women in education, industry and the professions, marriage and divorce, and with the property rights of women. Excluding from consideration feminine activities in religious and other similar organizations, the author has confined herself for the most part to pointing out distinctions between men and women established by law or judicial decisions, only incidentally touching upon laws of a general nature applying equally to men and women. Inasmuch as the Iowa criminal law makes little distinction between men and women, either as victims or as perpetrators of crimes, the chapter on "Women and the Criminal Law" is necessarily very brief.

The common law was at first the basis of the punishment of crimes in Iowa, but step by step this has been superseded or modified by statutes more favorable to women, notably in the matter of punishment of sex crimes. The common law fixing the age of consent at ten years, for example, was accepted by the Iowa law of 1838 and remained unchanged for almost fifty years; then, in 1886, the age was raised to

thirteen, and ten years later to fifteen years. Recent efforts still further to raise it to eighteen have been in vain.

In the care of prisoners, especially these awaiting trial or convicted of minor offenses, "the people of Iowa," says Miss Gallaher, "have been, on the whole, slow to realize their responsibility. The early lawmakers paid little heed either to the possibility of reforming men or women convicted of crime, or to the evil effect of collecting old and young offenders, the guilty and the innocent, in jails to await trial." Until 1894 practically the only legal provision concerning the treatment of women prisoners was that men and women must not be confined in the same apartments. In that year, cities of over 25,000 population were required by law to provide separate accommodations at certain police stations for women and children, and to employ a police matron at such places. It was not until about 1870 that the care and treatment of prisoners after conviction began to attract public attention, and not until 1890 that the Legislature passed the necessary appropriation for the construction of a building for women convicts at the Anamosa penitentiary. In 1900, the Iowa Industrial Reformatory for Females was established at Anamosa, and in 1913 a new site and a new scheme for the organization and administration of this institution were provided by legislation. In 1917 the name of the institution was changed to "The Women's Reformatory."

In 1868, the Iowa Reform School in Lee county was established for both boys and girls, but very inadequate provision was made for the care of delinquent girls until 1872, when the boys were removed to Eldora and the farm in Lee county was made available for girls. In 1879 provision was made for the purchase of a site for the present Industrial School for Girls. To this school girls between the ages of ten and eighteen may be committed. Certain classes of girls are sent to the Reformatory instead of to the Industrial School, and other girls, at the discretion of the court, may be sent to reputable private institutions in the state.

The second part of Miss Gallaher's book summarizes the history of the woman suffrage movement in Iowa. An introductory chapter briefly outlining the history of this movement in the United States is followed by a sketch of the equal suffrage movement in Iowa by periods down to 1918, inclusive, and by brief chapters on women in appointive and elective offices in Iowa. By 1918 the women in Iowa had acquired the right (1) to vote at municipal and school elections on questions involving the issuing of bonds or the increase of the tax levy; and (2) for women property-owners within certain drainage districts to vote at the elections concerning the administration of such districts. Furthermore, women are eligible for such elective offices as county superintendent of schools and county recorder, but all other elective offices will remain practically closed to women so long as they are without equal suffrage.

While this part of the book has its merits as a sketch or summary, it is in some places little more than a review of executive recommendations to the Legislature and recital of the introduction and fate of

legislative proposals of amendments to the state constitution. Here and there are indications of a serious effort to go beyond these official milestones in the suffrage movement and to analyze the forces and circumstances at work both for and against equal suffrage, but much of the treatment of this phase of the subject is almost superficial. Although thus lacking in some of the essentials of a first-class contribution to the legal and political history of an important state, the monograph gives clear indications of extended and painstaking research on the part of the author, and, as a pioneer work in a little-exploited field, it ought to suggest to students in other states a line of research in the history of their respective states which seems likely to prove well worth while. Such studies, however, must avoid a not unnatural tendency to treat the history of a particular state as if it were an isolated island unaffected by political currents running in neighboring states, a defect which is not wholly absent from Miss Gallaher's commendable volume.

Northwestern University.

P. ORMAN RAY.

THE INTELLIGENCE OF THE DELINQUENT. By *J. Harold Williams*. *Journal of Delinquency*, Monograph No. 1. Whittier State School, Cal.; 1919; pp. 198; 75c.

The monograph in hand represents a study of 470 boys and young men between the ages of 6 and 22 in the Whittier State School, Whittier, Cal. They are all delinquent within the legal meaning of the term or are in serious danger of becoming so. The study is divided into several chapters, as follows: Methods and General Results; The Feeble-Minded Group; The Border-Line Group; The Dull Normal Group; The Average Normal Group; The Superior Group; Offenses and Intelligence; Racial Differences; Heredity in Relation to Intelligence and Delinquency; Home and Neighborhood Conditions; Summary and Conclusions. A bibliography of seventy numbers is appended. The study is liberally provided with tables and case histories. It is an admirable piece of work.

The total number of youths examined includes seventy-one Mexican-Indians and fifty-eight colored boys. By far the larger group, 341 is of native white American stock. No qualitative differences in intelligence were discovered which can be attributed to racial influence. The frequency of delinquency among Mexican Indians is twice as great proportionately as the Mexican population of California, and the frequency among negroes is fourteen times greater than their share in the population. The distribution of mental ages in these groups, respectively, is not widely different.

In the chapter on "Heredity in Relation to Intelligence and Delinquency," Dr. Williams reports the results of an investigation of 300 families which are represented by 300 of the 470 delinquents. The method by which he entered upon the study of heredity is similar to that pursued by Drs. Spaulding and Healy several years ago in Chicago. There is only one case reported by Dr. Williams which can possibly be an illustration of the inheritance of delinquency directly.

It may not be true of this case. At any rate, he thinks the possibility of such heredity is practically negligible. Feeble-mindedness, on the other hand, apparently, is inherited in 31.4 per cent of the cases.

The monograph is a valuable addition to the literature of criminology.

ROBERT H. GAULT.

Northwestern University.

---

CRIME AND CRIMINALS, being the Jurisprudence of Crime, Medical, Biological, and Psychological. By *Charles Mercier*, with an introduction by Sir Bryan Donkin. New York; Henry Holt and Company, 1919. Pp. 290. \$2.50.

Dr. Mercier, in the book under review, defends the doctrine that crime is a product of opportunity and temptation working upon a weak psycho-physical organism. He has no patience with Lambrosianism. He makes what seems to the reviewer the erroneous statement that criminologists in America are followers of the Positive School of criminology; erroneous, at any rate, in the sense in which he uses the phrase "positive school." The attitude of American criminologists seems to approximate very closely to that of Dr. Mercier himself, excepting in this detail, that few, if any, of the outstanding investigators in criminology here will go with Dr. Mercier in his proposition that moral imbeciles "unquestionably exist." Such imbeciles are, he says, instinctive criminals. They are born deficient in a mental quality that normal persons possess (pp. 234 and 235). This viewpoint jars somewhat, in our judgment, with Mercier's general proposition with reference to the nature of crime and criminals.

Dr. Mercier has small praise for the painstaking work of such men as Dr. Charles Goring. Statistics, however carefully they may be handled, yield nothing, he says, toward an understanding of crime and criminals.

He has no confidence in the position taken by the modern-day students of the unconscious as applied to crime and criminals. "It is obvious" he says, "that a state of mind that is unconscious is not a state of mind any more than a solid body that offers no resistance is a solid body. It is nothing. The words are without meaning." Herein it appears that the author is tied to etymology and one is led to suspect, furthermore, that he has not followed the recent literature on the unconscious. Certainly to our way of thinking the concept of the unconscious, as understood today, represents something quite as real as does the psycho-physical background of the so-called moral imbecile which Dr. Mercier discusses later in his book, and in the reality of which he seems to have a high degree of confidence.

In the final chapter entitled "The Prevention, Detection, and Punishment of Crime," Dr. Mercier urges not so much severity as certainty of punishment. As to reform, the only group for whom the ideal can be satisfactorily pursued is that composed of young criminals. The habitual offender is beyond the reach of reform; "he cannot be reformed either by the ancient method of brutal severity or by the modern method of providing him with beer and skittles, with news-

papers to edit and lectures on Sophocles to listen to." The only means by which the youthful criminal can be reformed is "to teach him the delight of congenial labor and the sweetness of obtaining the reward of labor in the respect of his fellows and increased opportunities of enjoying his life by enlarging and deepening and multiplying his interests in things around him."

Northwestern University.

ROBERT H. GAULT.

---

IL PASSAGGIO DELL' AMMINISTRAZIONE CARCERARIA AL MINISTERO DI GRAZIA E GIUSTIZIA. By *Prof. Mario Carrara*. Extract from *Archivio Di Anthropologia Criminale, Psichiatria e Medicina Legale*, (Vol. XXXVII, Fasc. 5). Turin, 1916.

This is a brief publication by a member of the Institute of Legal Medicine and Criminal Anthropology of the University of Turin. It is a brief essay in commendation of one of the first orders of Signor Orlando, the late Prime Minister of Italy, who, in 1916 was Minister of the Interior. This ministerial order transferred the general direction of prisons and all attached bureaus from the Ministry of the Interior to that of Justice and Pardons. The chief point to the essay is its claim that this ministerial order is a direct tribute to and triumph of the Positive School, since for some time past it had been a definite part of the teaching of the positive group. Moreover, it had been the commonly accepted principle in other European nations. In fact, Italy, in spite of her leadership in criminology, had been out-distanced by most European penal administrations in this regard, except those of Montenegro and Roumania. The arguments which Professor Carrara adduces to support the centralization of treatment of the delinquents in the hands of this combined department seem sound and convincing, and they are put in an admirable style which adds art to good sense.

University of Minnesota.

A. J. TODD.

---

EMANUELE CARNEVALE E IL PROBLEMA METODOLOGICO DEL DIRITTO PENALE. By *Prof. Marcello Finzi*. Extract from *Filangiere*, February, 1918. *Società Editrice Libreria*, 1918.

This essay is a splendid tribute paid by the Professor of Penal Law and Procedure in the University of Ferrara to the great Professor Carnevale, formerly head of the Jurisprudence Faculty of the University of Sienna and more recently of the faculty of the University of Palermo. Professor Finzi's study is primarily a review of Carnevale's "Perfecting of Juridical Method and the Integral Concept of Criminal Law," but it is also an attempt to place this latest work in its proper order as crowning three decades of consistent work. Professor Carnevale has been successful during this long period in what is commonly called "la terza scuola"—the third school—which has been seeking to integrate and harmonize the two doughty rivals, namely, the classical and the positive schools. The position of that third school may be summarized in the basic ideas upon which

Carnevale's long list of publications has been built up. They are:

1. That crime is a phenomenon linked with all other social phenomenon and in which the social cause preponderates over the organic cause, and that consequently the struggle against crime must keep company with social and moral reform. Hence crime must be considered not only in its political aspect, but also from the moral standpoint, the problem of criminality being essentially a moral problem.

2. Rational punishment in order to satisfy and to influence the social conscience must not only be united with other means of defense against crime, but must adapt itself better constantly to the supreme concept of defense against delinquency.

3. In so far as the penal process is concerned, there is no antagonism between the motive of punishment for crime and that of guardianship and protection of the innocent, but to the contrary, the two are convertible terms. Juridical protection exercised by legal procedure has a unitary character that comprehends by its very nature all the rights which within its sphere come into contrast.

4. With regard to penal law, while it is essentially bound to other branches of the law, yet it is distinguished from them by its own special character, by its content, by the means at its disposal; therefore, it cannot admit an importation of concepts and of methods from other juridical fields which are in contrast with its own specific character.

5. In the study of penal law, its technical aspects must not be allowed to preclude or take precedence over its human and social content.

Professor Finzi's review shows a wide reading not only of Italian, but also of French and German legal authorities. Simply to run through the exhaustive footnotes to this short pamphlet of less than twenty-five pages gives to the American student an idea not only of scholarly method but also some measure of the seriousness with which the problem of criminal law is taken upon the European continent. There, it is very clear, men do not consider it to be a course to be taken in the law school and forgotten as quickly as possible or left to be exploited by the shyster. It is looked upon as a great and worthy "discipline" to which there is no disparagement in any scholar's devoting himself.

University of Minnesota.

A. J. TODD.

---

THE TECHNIQUE OF PSYCHOANALYSIS. By *Smith Ely Jelliffe, M. D.*  
Nervous and Mental Disease Publishing Co., New York and  
Washington, D. C., 1918. Pp. 163. \$1.50.

This book is written for those who wish to begin the study of psychoanalysis and presents the theory and method of this branch of medicine in a clear and most interesting manner. The first chapter is unusual and yet important for beginners in that it utters a warning against undertaking certain types of cases at first, and also definitely places others as not treatable by this method. The next chapter

gives a short statement of the literature, sources and history of psychoanalysis. Chapter III is of especial interest to criminologists, as it deals with the practical problem of meeting the patient and establishing the proper relation for getting the story. Whether one wishes to psychoanalyze a patient or merely get a history from a prisoner certain principles are here set forth which are important. The next five chapters, dealing with the Oedipus Hypothesis, Transference, and Overcoming the Conflicts, are rather technical and may be taken as an exposition of Freudianism.

The physical make-up of the book, like all of this series, is excellent. One marvels at the general learning of the author. Running throughout the book is a vigorous defense of psychoanalysis, its critics being hastily disposed of by being called stupid or infantile.

Boston.

A. W. STEARNS.

---

THE NEWSBOYS OF CINCINNATI: STUDIES FROM THE HELEN S. TROUNSTINE FOUNDATION, VOL. I, No. 4. By *Maurice B. Hexter*. Cincinnati, Ohio, 1919. Pp. 177. 30c.

"The crippled veterans from our armies in France and Italy should be given a monopoly of the newspaper selling business, and boys under sixteen should be eliminated entirely from such work." Mr. Hexter effectively substantiates this statement in a pamphlet of 177 pages, illustrated with maps, diagrams and graphs.

On completing the pamphlet one feels that no defense remains for continuing the demoralization of youth through this channel.

He effectively disposes of the widowed-mother's ghost with the statement that only fourteen per cent of newsboys are children of widows and only four per cent of these boys are from homes below the poverty line, the remainder being from families in which the income from sources independent of the boys' earnings are sufficient for the family budget; further, the average earnings of a newsboy are twenty cents per day.

The health aspect of the problem is as astonishingly revealing. Newsboys present cardiac troubles, tuberculosis, chronic indigestion, throat troubles, venereal diseases, out of all proportion to other boys of the same economic group. The lurid, but convincing rehearsal of violation of the persons of newsboys substantiated by quotations from court records, reveals the blackest aspect of the problem, and leaves one aghast that children are left amongst such temptations and demoralizing elements through consent of us who buy our papers at the news stand. In fact the pamphlet drives home the conviction of connivance on the part of all of us through our tacit acceptance of the service.

Mr. Hexter's pamphlet reveals a knowledge of the whole literature on the subject, both in the United States and England, and contains an overwhelming volume of evidence based on original research. It is not only admirable itself, but appeals to the decency of every

citizen to once for all abolish a practice which results in the degradation of thousands of boys annually.

United Charities, Chicago.

AMELIA SEARS.

---

PUBLICATIONS RECEIVED

"Crime and Criminals." Being the jurisprudence of crime, medical, biological, and psychological. By *Charles Mercier*, with an introduction by Sir Bryan Donkin. New York: Henry Holt and Co., 1919. Pp. 290. \$2.50.

"Alcohol and the Human Race." By *Richard Pearson Hobson*. New York and Chicago: Fleming H. Revell & Co., 1919. Pp. 205.

"Punishment and Reformation." A study of the penitentiary system. By *Frederick Howard Wines*. Revised edition with additional chapters by Winthrop D. Lane. New York: Thomas Y. Crowell Company, 1919. Pp. 478. \$2.50.

"Bulletin of Massachusetts Commission on Mental Diseases." The William Leonard Worcester Memorial Series, Vol. 2, No. 3. Danvers Anniversary Number. Pp. 313. October, 1918.

"Report of Psychology Committee of the National Research Council. By *Robert M. Yerkes*. Reprint from the Psychological Review. Vol. 26, No. 2. March, 1919. Pp. 83 to 149.

"The Social Work of the Court." Being an annual report and proceedings of the National Probation Association. 1918. Pp. 168.

"The Right Man in the Right Place in the Army." The Adjutant General's Department Committee on Classification of Personnel in the Army. Washington, D. C., 1919. Pp. 68.

"The Child and the War." By *Cecil Leeson*. London: P. S. King & Son, 1919. Pp. 69, 1 S.

"Occupational Therapy Applied to Restoration of Function of Disabled Joints." By *Bird T. Baldwin*, Major S. C., U. S. A., Director of Occupational Therapy, and Chief Psychologist Walter Reed, General Hospital. Washington, D. C., 1919. Pp. 67.

"Psychology of the Normal and Subnormal." By *H. H. Goddard*. New York: Dodd, Mead & Co., 1919. Pp. 341. \$5.00.

"The Field of Clinical Psychology as an Applied Science." A symposium. Reprinted from the *Journal of Applied Psychology*. March, 1919. Vol. 3. Pp. 81-95.

# Celebration Legal Essays

Published in honor of

**John H. Wigmore**

Price \$5.00

---

---

¶ This volume contains the series of legal essays appearing in the Wigmore Celebration issues of the Illinois Law Review, prepared by distinguished legal scholars throughout the world, in honor of John H. Wigmore and in commemoration of the completion by him of 25 years of service as Professor of Law in Northwestern University. No similar tribute has ever been paid an American legal scholar. The essays represent the progressive legal scholarship of the present generation, and contain matter of interest to every lawyer, judge and law teacher.

¶ The bound edition is limited and the price of the volume is certain to advance in the near future.

---

---

FOR SALE BY

**Northwestern University Press**

Northwestern University Building

CHICAGO, ILLINOIS