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Reviews and Criticisms

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REVIEWS AND CRITICISMS

THE CRIMINAL CODE OF JAPAN. Translated by *J. E. de Becker*, LL.B., D.C.L., Yokohama. Yokohama: Kelley & Walsh, Ltd., 1918.

JAPANESE CODE OF CRIMINAL PROCEDURE. Translated by *J. E. de Becker*, LL.B., D.C.L., Yokohama. Yokohama: Kelly & Walsh, Ltd., 1918.

Although under the feudal regime in the Tokugawa era, especially under the eighth Shogun, Yoshimune, whose period was 1716-1745, there had been considerable improvement and reform in criminal law and procedure in Japan, still the passing of the Shogunate and the restoration of the Mikado in 1867 inaugurated as great a revolution in judicial as in political matters. Doubtless the existence of the extra-territorial jurisdictions insisted on by foreign powers is one reason why the imperial government moved to adopt for Japan an Occidental jurisprudence even earlier than it determined to inaugurate western political forms. At all events in the year 1867 a commission was sent out to study the English prison system and a French draftsman of a Penal Code to be modeled after the French code was secured to work in association with a committee of Japanese experts. Contemplating that the preparation of the proposed codes would take time, a wholly Japanese commission proceeded with the preparation of a preliminary code which went into effect in 1871, and, revised in 1873, continued in force until the new Franco-Japanese codes—the Penal Code and the Code of Criminal Procedure—became effective in 1881. During this period a separate judiciary was established, judicial functions having hitherto been blended with executive ones and performed by executive officials, a body of professional lawyers (*bengo-shi*) provided for in 1872 and the use of torture as a judicial process was abolished in 1876.

The codes were not finally approved by the Genroin, the representative assembly then existing whose members were appointed by the emperor, until 1890. The same year Japan's first constitution went into effect and the first session of the Diet was convened in the month of November. Criticism of the codes caused the appointment, in March of 1893, of a commission composed of members of both houses of the Diet, law professors, judges, lawyers and prominent financiers and merchants to examine the whole body of general law. The report of this commission embodying some changes was adopted by the Diet and became effective July 16, 1898.

The volumes under review are translations of the two codes, the Criminal Code and the Code of Criminal Procedure. They follow their French models very closely. Prosecutions are, in general, begun by the public procurator, who requires an examining judge to hold a preliminary examination. The judge interrogates the prisoner and the witnesses independently and reduces their statements to writing. There is, of course, no cross-examination, nor can the accused be represented by counsel. The examining judge may discharge or hold the prisoner

for a public trial in the local or the district court. From the trial court there is a right of appeal to the court of appeal, composed of five judges, and in some cases to the Supreme Court, composed of seven judges.

The volumes are prepared and adapted for practical use; they contain simply the text of the codes, are of convenient size and contain broad margins adapted to annotating the different sections.

Warren, Pa.

EDWARD LINDSEY.

BROKEN HOMES: A STUDY OF FAMILY DESERTION AND ITS SOCIAL TREATMENT. By *Joanna Colcord*. New York, Russell Sage Foundation, 1919. 208pp.

The Foundation is congratulated upon issuing this excellent manual with such promptness. While its center of interest is that of family relief and rehabilitation (10 per cent of all charity work involves desertion), the problem of desertion has psycho-pathological and criminological aspects of which Miss Colcord shows thorough mastery. Legal measures are also discussed (Chapter IX).

The deserter is typically a recidivist. The causes of desertion are apt to be more or less permanent in a given case, but desertion itself tends to be temporary—a release from the cumulative irritations of the irrevocable realities of marriage, from which the more varied life of the well-to-do largely spares them. (Similar conditions in differently constituted characters might conceivably have produced alcoholism, dementia praecox, or suicide.) Desertion, if temporary, is not so much the poor man's divorce as the poor man's *vacation*.

The ordinary case-book or docket classification of causes is too simple and usually superficial. "Temperament," for example, is vague and overlaps with drink, and with money and sex complexes. Her own classification includes (1) mental defect, (2) early training, (3) difference in backgrounds, (4) wrong basis of marriage, (5) ignorance, (6) employment, (7) wanderlust (a minor factor), (8) money troubles, (9) ill health and pregnancy, (10) temperament, (11) sex, (12) vice and immorality. The hope of charity is a much exaggerated cause of desertion. Relatives, racial, and neighborhood standards, imitation, lack of proper recreation are contributory social causes. Ordinarily a cumulative combination of some of these factors produces some "last straw"—some match to the suppressed magazine. The man's psychology needs as much attention as that of the woman.

Such causes must be analyzed out and dealt with separately (see pages 104-5) in the case-work plan, embracing the after-care of the whole family, combining elements of psychoanalysis and social synthesis. Proper treatment therefore calls for less emphasis on punitive and repressive methods, but for that very reason demands adjustment of criminal law and procedure to socialized methods and understanding on the part of officials (Chap. VI-VII). Forced "reconciliation" is not generally advocated. Adequate relief does not seem to encour-

age desertion, if coupled with strict hunting down of the delinquent (through unions, employment offices, draft boards, foreign newspapers, etc.), followed by a stiff support order, when necessary. The motive of treatment is, therefore, not punitive, nor money-saving, but social. It is often necessary and quite as difficult to prevent a "reconciliation" as to induce one. "Home staying non-support" is a difficult variant of desertion, requiring special treatment.

The following "Next Steps in Corrective Treatment" are advocated:

(1) Greater co-operation by police to reduce the strain and antagonism thrown upon relief societies by the necessity of detective and deterrent work (pp. 78-85).

(2) What might be called a thorough "socioanalysis" of all family difficulties by domestic relations courts.

(3) Law permitting agencies or state to prefer charges instead of wife, to obviate additional antagonism between the pair.

(4) Extradition treaties.

(5) More intelligent practice in support orders.

(6) Assignment of prison earnings to the family.

(7) More consistency between state laws.

(8) Trained and adequate personnel, including psychiatric work.

The deserter should be recognized as "an offender against the community as well as against wife and children." "Hope for the future lies in socializing the point of view of court officials, police, and district attorneys" through illustrative cases socially interpreted.

Northwestern University.

T. D. ELIOT.

AMERICAN MARRIAGE LAWS IN THEIR SOCIAL ASPECTS: A DIGEST.

By *Fred S. Hall* and *Elizabeth W. Brooke*. New York: Russell Sage Foundation, 1919. 132 pp.

This is another of a promised series of which Miss Colcord's book, reviewed above, is the first, taking up special problems in the field of case-work as covered in general by Miss Richmond's "Social Diagnosis." The present compilation is preliminary to a more important study of the actual working of marriage laws in their social aspects. It is similar to a manual of Juvenile Court Laws issued by the Foundation some years ago.

Criminal and penal phases of the marriage laws are, however, explicitly omitted. The book is valuable as a reference work, more especially to social workers than to criminologists. It is a wholesome thing that marriage laws as well as divorce laws are beginning to get attention in relation to family problems.

A convenient classification makes it possible to compare at a glance the legal provisions of one's own state with the recommendations of Cook, Howard, Goodsell, and the Commissioners on Uniform State Laws. It will be noted that the points covered do not include any experimental or "advanced" legislation; even so-called "eugenic" laws are not discussed. But the authors are not, therefore, opposed to experiment. In fact, it is in order to permit intelligent experiment

and local adjustment that they refrain from advocating national uniformity of laws, either federal or state, except in certain recognized essentials. Steady progress toward uniformity should, however, result from such experiments.

The following are the chief recommendations:

1. Abolition of common law marriage.
2. Raising of marriageable age (not necessarily uniform).
3. Advance notice of intention and publication thereof.
4. Official status for celebrant, and confining his office to the district.
5. Compulsory registration.
6. Voiding of marriages outside of state if made in evasion of local statute. This obviates a chief difficulty of non-uniform laws.

A summary of the legislation proposed by the aforesaid commissioners is as near a "model law" as is offered.

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T. D. ELIOT.

SOCIAL PROCESS. By *Charles Horton Cooley*. New York: Scribner's. 1918. pp. 430.

In this day of social confusion and transition, and of an ever-enlarging social organism, such a book is very timely. Untechnical both in content and in method of presentation, it has at the same time distinct value to the special student of social problems. It is refreshing to find Professor Cooley defining sociology as "a large synthesis of life" (Chapter XXXIII), when it is so frequently regarded from the point of view of some "particularism." His criticism of "particularism" in reform (Chapter V)—a vice of which students and reformers of criminal conditions are not the least guilty (Chapter XV) is in harmony with the general viewpoint taken—"the organic view" that "society is a psychological organism with a life process of its own" (p. 206). Professor Cooley is thinking of the human process at large, with its onward striving (Part I. The Organic View of the Process of Human Life. Part II. Personal Aspects of Social Process), its experimentation, its conflicts and co-operations (Part III. Degeneration. Part IV. Social Factors in Biological Survival. Part V. Group Conflict), its need for foresight and for unity of spirit (p. 90) (Part VI. Valuation. Part VII. Intelligent Process). In this connection he considers a wide range of current social movements and problems, but also brings into relation with his organism of social process many historical phenomena. The "process" of social life is "progress," the "organic whole of onward life" (p. 111). On this process Professor Cooley shows admirable perspective, especially pertinent at the present time; "might and right are *stages* in the social process" (p. 111); there is a healthy critique of "pecuniary individualism" (p. 132); the social conditions affecting crime are presented (Part III. Degeneration). Not the least valuable is the well-balanced view of the relative place of biologic and social factors in social

process (Part IV. Social Factors in Biological Survival). These are points where one might wish to differ from the author, as for example, where "quantity" rather than "quality" is insisted upon as the proper determinant of the eugenic factor in process (Chap. XIX. Social Control of the Survival of Types).

A feature of merit not at all common in sociological works is Part II. Personal Aspects of Social Process, where the individual's relation to the process analyzed is discussed. This is in harmony with the thought underlying Part VI on Valuation, where the criterion of progress is presented as process in its various phases in accordance with "Standards" (Chapter XXXII), which are the expression of human satisfaction in experience. Such standards are the results of social process finding expression in "institutions" because of organic fitness in the social order (Part VI).

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WM. L. BAILEY.

PSYCHOLOGY OF THE NORMAL AND SUB-NORMAL. By Henry H. Goddard. New York: Dodd, Mead & Company, 1919. Pp. 349. \$5.00.

For several years many instructors in psychology throughout the United States have been offering courses in the abnormal mind, but without an adequate text. Here is a volume by a well-known and competent author that will go a long way toward supplying the want. The volume includes descriptions of normal mental processes after the manner of a functional psychologist. The usual types of mental abnormality are described also, with copious illustrations in the form of case histories. As is to be expected, judging from the author's vast experience, there is a heavy list in the volume in the direction of feeble-mindedness, though it is not in this respect a one-sided book. It would be still more useful than it now is if it contained a larger recognition of the immense body of literature on the results of psychoanalysis. The whole work is valuable in this respect among others, that large use is made of the methods and results of mental testing. There are useful chapters on pedagogical applications and moral training.

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ROBERT H. GAULT.

PERSONALITY AND CONDUCT. By *Maurice Parmelee*. New York: Moffat, Yards and Company. Pp. 280. \$2.00 net.

Man, according to Dr. Parmelee, finds himself in an environment to which he is not perfectly adapted, the result being that certain restrictions are placed upon the spontaneous expression of his nature. While some of these limitations are inevitable, in the nature of things, there is grave danger, in Dr. Parmelee's opinion, that human nature may be unduly restricted and suppressed by social legislation. A large part of the book is devoted to a discussion of the sex life, and the argument is directed against the "Puritanism", prevalent in this

country, which represents the sex function as essentially evil in its nature, to be subdued and restrained as far as possible. The undue suppression of the sex impulses imposed by social and theological sanctions results, Dr. Parmelee believes, in great harm to individuals. The author distinguishes between "invasive" and "non-invasive" conduct, contending that individual liberty should not be restrained except where this is necessary to prevent the "invasion" of the rights of others. This principle is discussed in connection with gambling and the liquor habit, as well as the sex impulse.

The book, being designed for the general reader, is free from technicalities and obscure references. It may serve to call the attention of the public to the importance of the problems involved in the control of the natural impulses, and no doubt this is the author's design. From a more scientific standpoint, however, the book may be said to contain no ideas which are new or important. Indeed, the old and troublesome problems of the control of the natural impulses deserve more careful treatment than Dr. Parmelee has given them.

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D. T. HOWARD.

PROCEEDINGS OF THE NATIONAL CONFERENCE OF SOCIAL WORK AT
PITTSBURGH, 1917. Pp. 675.

The country is rushing into forms of organization that are novel and inspiring. Society must be sectioned differently when the objective is military power. What institutions will, or should survive from our previous social order? Will the family go the way of ancient fortresses?

This year's discussions, at the National Conference of Social Work, were devoted in large measure to strengthening the barriers about family life. This is true especially of the division on The Family and The Community. Care for the families of soldiers, a subject on which the chief contribution was made from Canadian experience, would be picked by many as the problem of greatest present importance. However, the committee chose to discuss first the requirements and possibilities of volunteer social service. Organized social work has its own National Army to amass and train. At the general session of the division, indeed, scarcely any reference was made to the war directly. Yet what more useful technical preparation could be made for the present emergency than to establish and improve the standards of social case treatment? In similar way does the discussion of mothers' pensions relate itself to the type of social legislation of the future which we may well anticipate.

To serious students of the recent trend of organized charity this series of papers should commend itself especially.

More quickly than any other social movement, perhaps, the work of conserving the public health has adjusted itself to the requirements of the war. The place and importance of the physician and the nurse are understood at once, not only by the specialist, but by the general public as well. Armies must be kept in prime condition and the dread

effects of battle must be mitigated, even to ultimate readjustment of the handicapped to the life of peace.

The greatest gain, however, has come through the recognition of public health as being a national necessity. That this fact is quite as important in times of peace is recognized in the title of the leading paper of this section on health. Hence the idea uppermost in the sessions of the division of health are of the nature of "stimulating reactions" for our permanent good. Nursing, economy of diet and infant mortality present war-time problems, to be sure. But these subjects are of magnified significance as peace issues, also, along with others treated in the present series: The relations of health and social welfare, the co-ordination of health activities, and the opportunity which the health movement affords for journalism.

The participants in this series of meetings seemed to feel that they were turning over virgin soil. Too long have both field and implements been ready. The attack upon rural social problems has been sharpened and given direction by the necessity of the war.

In no other division of National Conference discussions has there been manifested in recent years greater inclination to undertake new lines of inquiry than in the one devoted to child problems. This may be due to the magnitude of the field, viewed from the standpoint of organized social effort. Of late, since the possibilities of a comprehensive program for child welfare have been conceived, the needs within specific departments have been searched out with particular confidence and determination.

Of this attitude the series of discussions at the Pittsburgh conference are representative. Co-ordination of studies of child problems, and next steps in promoting comprehensive legislation were made subjects of leading addresses. Similar recognition was given outstanding questions in juvenile court administration. But the occasion was distinguished chiefly by three thoroughgoing discussions of illegitimacy. Here is a deep-rooted obstacle to child conservation. The war has emboldened practical people in their attack upon it.

A series of discussions of mental hygiene was designed as an effort toward better understanding of problems heretofore classified under the terms *insanity and mental defectiveness*. The evolution of the modern term *mental hygiene* should be understood and recognized as a preliminary to reading these papers. The relationship of this movement to the rest of social work is put by the chairman of the division in phrases well worth remembering: briefly, this type of service is based upon an evaluation of the mental factor in community problems. The principles involved in activities on behalf of mental hygiene and the gradation from national to local agencies, and from intensive case work to general reform, are set forth in these discussions in an unusually thorough manner.