

1926

## Reviews and Critiscisms

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 Critiscisms, 16 J. Am. Inst. Crim. L. & Criminology 618 (May 1925 to February 1926)

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

- THE STATE POLICE, ORGANIZATION AND ADMINISTRATION. By *Bruce Smith*. MacMillan & Co., New York, Publishers.

The State Police, by Bruce Smith, is a timely and splendidly written contribution that should be read by every person interested in law enforcement. As briefly stated in the preface, "It deals with the position of the police in state administration, their jurisdiction, the powers delegated to the administrative head, the direction, control, compensation and welfare of the rank and file, the distribution of patrol units and the patrol methods which are employed, criminal investigation, identification and crime prevention."

Rural police problems have increased enormously during the past century and consequently better methods must be devised to meet this complex social situation. State police are recommended by the author who conservatively adds, "If after longer experience the verdict of history is to the effect that the state police are not the proper agents to deal with the new social order of the country, the problem of rural crime in the new conditions will have to be faced in some other fashion."

There are very few, even among the most optimistic, who can successfully defend the present sheriff-constable system. Constant changes in personnel operate to prevent efficiency and preclude the possibility of sheriffs or constables becoming efficient crime investigators. There are notable exceptions. As a general rule, however, sheriffs and constables are voted out of office at the end of their first term, hence they cannot acquire the police training necessary to successfully cope with modern police problems. Inefficiency of the sheriff-constable system is demonstrated by the author, who compares this method with the more efficient state police system.

Municipal police are also contrasted with the state police organizations and suggestions are offered showing how each may be improved.

The particular features which serve to make virile and efficient state police are presented without embellishment. Defects in organization and administration are cleverly exposed by object lessons carefully selected from the several state police forces. This book is an honest and critical survey of the state police, unencumbered by unnecessary detail, but full of wholesome information. (From the Nat. Munc. Rev., Jan., 1926.)

November 21, 1925.

AUGUST VOLLMER.

- THE PROBLEM CHILD IN SCHOOL. By *Mary B. Sayles*. The Joint Committee on Methods of Preventing Delinquency, 1925. Pp. 288. \$1.00.

The Problem Child in School is a book of case histories taken from the records of various visiting teachers in New York. The cases

are interestingly narrated and, being real, they have an appeal that fiction never has. The cases narrated were selected to illustrate various types of problem children as the visiting teacher finds them in our public schools. One chapter is devoted to problems arising out of parental attitudes; another to problems arising from feelings of inferiority; still another to problems centering around the subject of sex.

This volume should find its place with "Three Problem Children," also published by The Joint Committee. Parents, teachers, social workers, probation officers, and juvenile court workers, in fact, all who are interested in the recognition of and treatment of behavior problem in children, should welcome the book as it will be of great value in opening new ways of meeting the problems which so often confront them. However, as is pointed out in the introduction, the visiting teacher is not "a wonder worker who applies a newly discovered panacea," and neither does the book offer solutions for problems in general, but rather stresses the need for individual work on each case.

For those who contemplate taking up the work of the visiting teacher, or for those who wish to broaden their knowledge of this work, Mr. Howard W. Nudd, chairman of the National Committee on Visiting Teachers, has added an interesting and instructive chapter called: The Purpose and Scope of Visiting Teacher Work.

Washington, D. C.

MARNÉ LAURITSEN.

MENTAL DISORDER AND THE CRIMINAL LAW. By *S. Sheldon Glueck*. Boston: Little, Brown & Co., 1925. Pp. XXII, 693.

The author has designed this work to fill what he believes to be "a distinct need for a study based upon a conscious attempt to interpret the law of insanity to psychiatrists and social workers and the psychology and symptomatology of mental disorder to lawyers and judges." Certainly it is desirable that both points of view be kept in mind in discussing any phase of the subject of this volume and this the author has been largely successful in achieving.

The author first describes briefly the procedure in criminal cases, the methods of pleading insanity or irresponsibility and the methods of proving such defense, including a brief discussion of expert testimony. A chapter is devoted to the raising of the question of insanity before indictment, after indictment but before trial and during trial. The general nature of legal responsibility and the mental elements thereof, such as intent, motive and volition, is then taken up followed by an historical consideration of the tests of irresponsibility by reason of mental disease in the English and American cases to date together with an analysis of these tests. The author next considers the nature and manifestations of mental disease as related to the tests of irresponsibility. He devotes a chapter to the disposition of persons not tried and defendants acquitted because of insanity. A final chapter summarizes the conclusions of the author and sets forth his proposals for changes and reforms in the law.

The main part of the work embraces the discussion of mental disease as affecting criminal responsibility. This is by far the ablest portion of the book and the discussion is scholarly, broad and comprehensive, evidencing much thought and in general a thorough grasp of the elements involved on both the legal and medical sides of the question. The author concludes, in agreement with previous writers, that the general legal rule is that "to constitute an illegal act criminal, the actor must have had that condition of mind possessed by the person of ordinary intelligence and ordinary mental health, and that either intention or volition may be affected by mental disease so as to exempt from criminal responsibility." In seeking to aid juries, however, in applying the general rule to the facts of particular cases, the charges of trial judges developed various tests of irresponsibility which, intended at first as illustrations, became hardened into rules and had the effect of narrowing the general principle and introducing confusion. Especially is this the case, he finds, in the American jurisdictions. This conclusion is no doubt correct, although, as pointed out by legal writers, when the facts of each particular case are kept in mind in considering the language of the opinion, as it was used only with reference to those facts, the apparent confusion is lessened. Nevertheless, it remains true that sometimes what is said with reference to one state of facts is adopted with reference to another to which it was not intended and should not apply. Admitting that some tests or measures are necessary in order to guide the jury in applying the general rule, the author criticizes those actually in use, the main defect being that attention is too exclusively directed to the cognitive processes, some jurisdictions rejecting entirely any lack of control test. "All these tests," he says, "without a sufficient background upon which they may be projected, are too artificial, requiring certain symptoms to be present before they will exempt from responsibility; they overlook the fact that the symptoms are but manifestations of a generally disordered mentality, ignore the fact of the essential unity of mental process, and disregard the fact that no disorder of mental activity can exist without affecting the efficient operation of the mind as a whole." After all the author finds the principal need to be that "of supplying the jury with a simple, scientific background of the nature of mental process and disorder generally, upon which they could project the testimony of trained psychiatrists and in the light of which the tests would be much less artificial, arbitrary and unjust in their application than they are today." But this is a function of the "testimony of trained psychiatrists" to supply. The expert testimony should be utilized precisely to furnish the jury this background. It should cover the scientific facts involved and not be merely an expression of opinion as to the mental state of the defendant. The tests themselves, as the author recognizes, represent an absorption into the law of medical and psychological views prevailing at various periods. But he complains that the process of such absorption does not keep pace with the development of views in those sciences. But it must be remembered that the law cannot and should not absorb views on scientific subjects until

they are fully accepted by the general opinion of experts in the sciences involved. It is only when opinion becomes so settled as to be generally acquiesced in within the science that the law can or should adopt it. Are all of the views set forth by the author and embraced in the model charge to the jury proposed by him within this category? We doubt it. It only remains then to utilize the testimony of experts which, in the present state of knowledge in the sciences concerned at least, will inevitably be more or less conflicting.

The author proposes that the verdict of the jury be, not "guilty" or "not guilty," as at present, but that the defendant is "a sane and responsible offender" or "an insane and irresponsible offender," and so on. This is putting the cart before the horse and overlooks the fact that the object of the trial is to ascertain primarily, not the mental condition of the defendant, but whether or not he has committed a crime. The investigation into his mental condition is incidental. The author overlooks, as is common nowadays, the fundamental purpose of a criminal law; that the commission of certain acts shall not become common—not that any certain individual shall not commit them. Society is endangered—not if Tom Jones steals five dollars—but if all the Toms, Dicks and Harrys steal property.

The author believes the law should recognize a partial responsibility, but his discussion on this matter is not clear. He states the general rule to be that mental disorder or defect cannot be considered with reference to the existence of malice, deliberation or premeditation. The reviewer believes this is not correct, though admittedly the decisions are confused and conflicting.

The author recommends that in insanity cases experts be appointed by the court to testify and paid by the state. This is not supported by any adequate discussion; a few paragraphs only are devoted to asserting that expert witnesses on mental disease are biased and prejudiced and their testimony is affected by the fees paid them. The mere fact that experts do not agree in their testimony is not an indication of bias but rather the reverse. Conflict of testimony in trials of issues of fact is entirely normal; if there were no chance for honest conflict there would probably be no trial. And when the testimony is on matters of opinion, conflict is manifestly much more likely and some degree of bias almost inevitable. This is only to be expected and does no harm. Bias and prejudice are serious matters in judges, or triers of issues but not in witnesses where their existence can be shown in cross-examination and allowed for by the tribunal. There is no reason to suppose experts appointed by the court would be any better qualified or less biased or influenced by prejudice than those selected by parties and the suggestion is objectionable in that it is an attempt to give an artificial weight to the testimony of certain witnesses aside from its intrinsic value. The assertion that the testimony of medical experts as a class is affected by their fees is a reflection on these witnesses that is unjustified. The mere fact that the alleged abuses exist mainly in cases where the question of insanity is involved points to the true difficulty which is that the questions involved are complex, of great

difficulty and, in the present state of knowledge, provocative of honest difference of opinion.

The review of the disposition of persons not tried and acquitted shows a bewildering variety of method in the different states, with varying degrees of inadequacy. This is probably inevitable under our system of legislation. The author presents some recommendations which, however, do not seem to be very practical.

This brief review of some of the discussions and conclusions of the book will serve to give some idea of its character and importance. The author's views are presented in a conservative, thorough and comprehensive manner and are well worth the attention and consideration of all in any manner interested in the subject. A valuable reference feature is an appendix containing a summary of the statutes of various states so far as they have dealt with any phase of the subject.

Warren, Pa.

EDWARD LINDSEY.