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Reviews and Criticisms

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REVIEWS AND CRITICISMS

THORSTEN SELLIN, EDITOR

CASES ON THE ADMINISTRATION OF THE CRIMINAL LAW. Selected and arranged by *Edwin R. Keedy, A. B., LL. B.* xx+586 pp. Bobbs-Merrill Co., Indianapolis, Ind.

This casebook unquestionably marks an advance. The procedural aspect of problems in this field have in the past either been completely overlooked or treated in a manner calculated to give a picture of the administration of criminal justice as unreal as that now being given of the substantive criminal law. No attempt has ever been made to place before the student a realistic picture of the problems that occur daily in the administration of the criminal law. This book does make such an attempt, and even though the reviewer thinks that the picture is too perfectly posed, too "tin-typish," he, nevertheless is of the opinion that it ought to be enthusiastically welcomed as symptomatic of a significant change in the manner of teaching.

The purpose of the editor has been to give the student a picture of the actual administration of the criminal law. This is sought to be accomplished by grouping the problems, which are presented in chronological sequence, around the particular official or body of officials whose functions might be regarded as creating the problem. Thus cases on confessions, searches and seizures, and entrapment, generally treated in separate courses, are here dealt with in a single chapter entitled "Police Officers." This disregard for traditional methods of treatment is commendable, particularly when it results, as in the case of the chapter on "Police Officials," in presenting problems in such a way as to emphasize their administrative features, make them more interesting, and show their inter-relation.

But the chronological method of presentation has caused a clumsiness of arrangement. Thus early in the book there is a chapter entitled "Trial Court (A)" in which are included cases on "Jurisdiction and Venue." A little later in the book under "Trial Court (B)" are cases on "Arraignment and Pleas" and "Demurrer and Motion to Quash." Still later under "Trial Court (C)," there are cases on "Conduct of Trial Judge" and "Charge to Jury"; and finally under "Trial Court (D)," cases on "Motion in Arrest of Judgment, and Sentence." Mere cumbersomeness of presentation is not in itself a serious defect. But in this instance the chronological sequence has obscured the picture of the official or body of officials whose duties are regarded by the editor as creating the problems presented. For example, one of the most important problems in the administration of criminal justice is the office of prosecuting attorney. The student should have a clear picture of his tremendous powers in order that his attitude may be intelligently critical. Cases dealing with the powers of the prosecuting attorney should, it would seem, be presented together. Yet, on pages 343 and 345, in the chapter entitled "Prosecuting Attorney (B),"

and under the section heading "Nolle Prosequi" are cases dealing with the authority of the prosecuting attorney to enter a nol. pros. Seventeen pages later, in the same chapter and under the section heading "Conduct of Prosecuting Attorney," is a case dealing with the effect of a prosecuting attorney's promise of immunity in return for the defendant's testifying against a confederate; and one hundred and thirty-two pages later, in the chapter entitled "Trial Court (D)" and under the section heading "Judgment and Sentence," is a case dealing with the effect of the prosecuting attorney's promise to recommend to the jury the minimum sentence where the jury refuses to follow the recommendation. These cases, if coupled with other materials, and treated together would bring out with clarity the part that the prosecuting attorney plays in the administration of criminal justice. In view of the method of selecting these officers generally in vogue, and the close connection between the office and politics, a case-book on the administration of criminal law ought to be quite careful to present the problem in its clearest light.

This leads to another criticism and that is that a rigid conception of what a *case-book* ought to be, has led to the omission of much non-case material that would have been very illuminating. The reviewer thinks that the term "case-book" ought to be regarded as one of art, and that material both informative and provocative of thought should not be excluded merely because it is not "case" material. For example, in the section dealing with waiver of jury trial, no indication is made of the fact that in Connecticut and Maryland, under the guise of a waiver, jury trial is becoming archaic. Similarly, in dealing with the office of prosecuting attorney there should have been included some of the materials contained in recent crime surveys. The same criticism applies to other sections.

Probably the most serious defect that this reviewer finds in the case-book is what he believes to be the failure of the editor to accomplish the objective which he set for himself, i. e., emphasis on the administrative features of problems of procedure. A glance at the table of contents would lead one to expect that the materials included under such chapter headings as "Grand Jury," "Petit Jury," "Prosecuting Attorney," "Trial Court," etc., would bring out with clarity problems of administration. But such is not the case. For example, to include under the chapter heading "Trial Court" cases on jurisdiction and venue can hardly be regarded as emphasizing the "administrative features" of problems of procedure despite the title used. Nor is that objective furthered by inserting in the chapter on "Grand Jury" widely varying cases dealing with the sufficiency of the indictment. The emphasis on administrative features is more apparent than real for it lies largely in the chapter headings.

Certain omissions are glaring and the treatment of some of the problems is superficial. Much would have been gained by the inclusion of cases, statutory regulations, and research material dealing with the problems of parole and probation. This omission seems particularly strange in view of the inclusion of materials on pardon. The case material on entrapment and searches and seizure is poor, and

seems to have been thrown in merely to point the problems. The all-important problems of the function of the jury is disposed of in three cases, covering seven pages. The problem of appeals by the state is presented in two cases covering ten pages, with no reference in the footnotes to recent helpful periodical literature.

The footnotes are not so imposing as to be useless, and the reference to case law are good. One wonders, however, why they refer so frequently to old periodical literature and so rarely to new, and also why so much space is given to quotations from opinions.

Despite these faults, however—and it is always easy for a reviewer, particularly of a case-book, to find faults—if one is committed to the policy of giving a separate course on criminal procedure, he would find that this book contains much the best collection of materials in the field.

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LEON A. TULIN.

VERBRECHEN ALS SCHICKSAL. Studien an kriminellen Zwillingen.
By *Professor Dr. Johannes Lange*. 96 pp., Verlag G. Thieme,
Leipzig, 1929.

The author here presents the results of a very interesting and stimulating study in the field of criminal biology. Through the facilities of the Bavarian Ministry of Justice and the German Institute for Research in Psychiatry, he has gathered the data on thirty living pairs of male twins, at least one of whom has been an inmate of a penal institution. Through the comparison of personal data, measurements, and photographs, he has further divided these sets of twins into two categories—thirteen identical, that is, springing from a single ovum, and seventeen fraternal, that is, resulting from the simultaneous fertilization of two ova.

Of the identical twins—whose physical (and not infrequently mental) resemblance is usually remarkable—he finds that in ten of the sets both partners have been sentenced to prison, whereas of the fraternal twins—who are often markedly dissimilar physically and mentally—only two sets show a similar agreement. From this fact the author, although disclaiming a belief in Lombroso's doctrine of the "born criminal" reaches the conclusion that "endowment [Anlage] plays a predominant role among the causes of crime." In relation to crime, identical twins apparently conduct themselves as a single individual, whereas fraternal twins behave merely as two members of the same family.

Although the author emphasizes thus strongly the factor of inheritance, he does not fail to give a modicum of encouragement to the environmentalists. In explaining the title of the book, for instance, he interprets fate as signifying native endowment as modified by environmental influences. The present organization of society, indeed, is a factor, so that to some extent at least our fate is in our hands.

Thirteen case histories are given in some detail, in the main objectively. The parallelism shown in the criminal careers of several of the pairs of brothers is remarkable. A considerable number of

the individuals are considered by the author to be definitely psychopathic. In at least two of the fraternal pairs the criminal partner showed evidence of organic brain disease.

If, as the author indicates, criminal conduct is largely a problem of inheritance, it becomes increasingly important to lay the basis for a scheme of eugenics in any program of crime prevention. The family history as given in the case records is meager, and only the least indication is given as to the factors to which the author attributes the criminal endowment of the subjects. This is not the purpose of the volume, however, but will hopefully be the subject of further researches under the Bavarian Ministry or some well-equipped public research agency.

For the present, Doctor Lange has put forth clearly certain suggestive facts which deserve serious consideration by every student of criminology.

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L'ENFANT DE JUSTICE. Quinze années d'application de la Loi sur la Protection de l'Enfance. By *Paul Wets*, with a Preface by *Count Henri Carton de Wiart*. 508 pp. Association Internationale Pour La Protection De L'Enfance, Brussels, 1928.

This book is from the pen of a man long associated with Child Welfare, versed in its language and profoundly aware of its national and international aspects. One chapter of the book is devoted to an account of certain international congresses of child welfare, another to the history of the Association of Children's Court Judges in Belgium, and a third to the description of the steps leading up to the founding of the International Child Welfare Association. Anyone who wishes to know how the leaders of Child Welfare in Belgium are thinking about the problems of Juvenile Delinquency should read the book. It is written from the point of view of the mechanism of the law, its administration, the personnel of the courts and the available resources for handling delinquency problems.

The title, preface, author's foreword, and first chapter lead one to expect a presentation of the treatment of the individual juvenile delinquent in Belgium as prescribed by the law of May 15, 1912, which established juvenile courts in that country. It is not, however, such a book. The law is analyzed; its legal provisions and the administrative machinery to apply them are clearly presented, but aside from some meagre statistics, the actual delinquent child and his treatment occupies little space. Practically no case histories are given and therefore one cannot judge how the machinery works. What the work of the probation officer might and should be, for instance, is outlined, but one is left to infer what he really does with reference to the individual child. These officers are volunteers directed by the Judge himself. The city of Brussels alone has 442. Judge Wets places little confidence in statistics and even apologizes for the very short chapter entitled "Statistics." Yet it is only here that he presents

something of what actually does happen to the children who come before the courts.

About one-third of the book is given over to a description of the physical equipment and resources of various institutions and agencies such as detention homes, observation centers, psychological clinics, boarding homes, institutions for sub-normal children, and homes for children on parole from state institutions. Some 77 pages discuss the causes of juvenile delinquency and its relation to mental age and "type." No new experimental data or evidence is presented. Several psychologists and philosophers are quoted and some illustrations from cases are given here and there. It is evident that the juvenile court judges have close working relations with many child welfare efforts. Indeed, nearly 100 pages are required to describe their cooperation with and relation to such organizations and committees as, for instance, St. Vincent de Paul, Visiting Nurses, National Committee for Mental Hygiene, the Film Control Commission, committees working against obscenity and indecency on the stage and in literature, and the groups working for better school attendance laws and more effective application of those already existing.

One gleans from the book that there is a vast deal of activity and many organizations and committees in the field of child welfare in Belgium; that there is a very active Federal Child Welfare Bureau which combines under one centralized administration what, in this country, would be shared by several state, local and federal boards of commissions, and a number of private agencies; that the juvenile court judge has great liberty of action; and, that he occupies an enviable place of public trust. Belgium evidently has machinery for the possible prevention and treatment of juvenile delinquency. The author points out several much to be desired changes and additions. He particularly stresses the need of full time probation officers. One is inclined to infer from this book that in Belgium, there is much thinking and planning concerning the *problems* of juvenile delinquency, and that the psychological testing of the individual delinquent, is developed to a high degree of efficiency, but that as yet, the procedures do not include effective follow-up treatment, or case work, for the individual delinquent.

CHLOE OWINGS.

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EMOTION AND DELINQUENCY: A CLINICAL STUDY OF FIVE HUNDRED CRIMINALS IN THE MAKING. By *L. Grimberg, M. D.* 147 pp., Brentano's, New York, 1928. \$3.00.

This is a remarkably uncritical work. By the most charitable interpretation it is difficult to understand how it gained publication in the "Library of Educational Psychology." One might be tempted simply to take the clever method of another reviewer (in a recent number of *The Survey*) and place the author's own words side by side for evaluation. Resisting this, however, one cannot refrain from calling attention to the fact that while Grimberg is evidently working

in the field of endocrinology, and that while he indicates that the law is ridiculously behind in not listening to the voice of medicine, he is vastly self-contradictory even in this matter. For example, he states in one place "And even today prosecuting attorneys will ridicule the findings of scientific medicine. I allude, here, to the investigation of the endocrine system," and yet in the preface he says "As a matter of fact, we are only suspecting the importance of the endocrines, and the actions or interactions of all these glands is mostly a question of debatable theories."

This and a considerable number of other irreconcilable statements, even more than the other reviewer has shown, might be adduced in evidence of the author's lack of self-criticism. But there are some other extraordinary features of the book.

The author speaks of his work as being a study of criminals in the making. Is it possible that he thinks that this study of a series of *girls* (and we cannot find five hundred accounted for in most of the data given) represents many *criminals* in the making? As a matter of fact, exceedingly few girl offenders ever become criminals, and therein lies the difference between males and females. Prison and reformatory statistics ought to speak plainly enough with regard to the facts, to say nothing about the relative number of the two sexes as they appear in the criminal courts.

The fact is that the author shows himself very little acquainted with modern studies of the various aspects of delinquency and crime, and herein lies one of the greatest weaknesses of the book. Its strengths, and it has some, come to light in his appreciation of the part that emotional life plays in the production of delinquency, but it will take a very much stronger presentation and understanding of psychological work as applied to the study of delinquents, including even the giving of intelligence quotients, and of modern studies of social backgrounds as they bear upon the total reactions of an individual to his environment, to make any study of the relationship of emotion to delinquency at all convincing.

WILLIAM HEALY.

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THE CHILD IN AMERICA: BEHAVIOR PROBLEMS AND PROGRAMS. By
W. I. Thomas and Dorothy S. Thomas. xiv+584+xviii pp.
 Alfred A. Knopf, New York, 1928. \$5.00.

This book is a survey of the programs and techniques which have been developed to handle the behavior problems and maladjustments of children and adolescents. The first chapter describes the varieties of maladjustments which have made these developments necessary. Following chapters are concerned with the treatment of delinquency through the juvenile court, private and public institutions and foster home placement; the work of the child guidance clinics and mental hygiene work in high schools and colleges; community child welfare organization—boys' clubs, recreational programs, the boys' work of the Kiwanis, Rotary and Lions, and the socialization of the police as represented by the New York and Berkeley (California) plans; the treatment of school problems with particular reference to visiting

teacher work and methods for character education; parent education through child study associations, Parent-Teachers meetings and in connection with nursery schools. The last six chapters discuss the techniques employed by the foregoing programs; the use of psychometric tests; personality tests, questionnaires and rating scales; psychiatric approach; physiological and morphological research; the sociological approach, and, finally, a summary of the methods of behavior study.

Despite the wide scope of the survey, each section is very thoroughly covered. The good points of each program are presented, but the weaknesses are also pointed out. In discussing the juvenile courts, for example, the criticism is made that the successful outcome of cases is not appreciably influenced by methods of procedure. In the Cincinnati juvenile court, "Psychological and psychiatric technique is little used, institutional facilities are meagre and little employed, probation is nominal. The typical procedure is to bring the child into court, talk to him seriously, and turn him back into his family and community without supervision. And yet this procedure seems relatively successful, comparable, Dr. Healy thinks, with the successes he and his associates are having in Boston with precisely the opposite policy—the most thorough study of the case and the most consistent use of the rich social resources of the community" (P. 143). The authors therefore conclude that the successes of the juvenile courts "are not closely correlated with the procedure but due to unknown causes."

Again, in speaking of child guidance, the authors express a doubt as to the part played by the clinic in bringing about adjustments. "The proportion of success . . . is not necessarily attributable to the agency under consideration. No control group was studied, i. e., no attempt was made to discover how great a proportion of children having the same difficulties as the children in this group and subject to approximately the same influence, with the sole exception of psychiatric treatment, would make successful adjustments" (P. 149). Until comparisons between clinic cases and a control group are available, the authors believe that the most that can be said for the clinic is that success is "coincident with, but not necessarily attributable to, certain specific sorts of treatment."

To offset this criticism of child guidance, and to assure that a fair statement is made, the authors quote Porter Lee's comments on this point. Briefly Mr. Lee suggests that the fact that maladjustment persisted until the introduction of a new factor—clinical study and treatment—into the situation may be accepted as at least partial evidence that the successful adjustment thereafter may be credited to the work of the clinic (P. 150). It is to be noted that the reader is left free to draw his own conclusions after the presentation of these two aspects of the matter.

Similarly, criticisms are indicated in all the other fields covered by the survey. The two quoted above were selected because they have a wide application. The same remarks might have been made about many of the other programs described. Very seldom are the techniques employed by different agencies, or by similar agencies in different communities, identical, and rarely indeed is it possible for those engaged

in practical work to obtain control groups by which to test their results in the problem cases. What is needed, of course, is an endowment of various agencies with a research fund as well as the finances for carrying on welfare programs.

In reviewing a book of this size (583 pages), there is little space for touching upon all the salient features. It should be repeated that the authors have tried to present both the positive and negative sides with reference to all the programs and techniques included in their survey. It is because they must usually provide the critical element that they are so often forced themselves to formulate the negative argument. The present reviewer does not understand that this is actually their personal alignment or that they are skeptical of all the work which they have described. It is certain, however, that they have raised many questions which can only be answered by further research.

The absence of enthusiastic commitment to any one program, and the restrained objectivity of presentation, insures a fair hearing for all the undertakings which have been reported upon. The book is, therefore, an excellent source book for students where the aim is to furnish an orientation to the varied interpretations of child behavior and the diverse attempts to solve the problems of maladjustment. As such it should be valuable for academic use. Those of us who are working in some one of the professional fields reported in this survey would also do well to read it, for it is highly desirable that we now and then enlarge our perspective by attempting to "see ourselves as others see us."

PHYLLIS BLANCHARD.

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DEUTSCHES GEFÄNGNISWESEN. EIN HANDBUCH . . . herausgegeben von *Dr. Erwin Bumke*. x+537 pp.+10 ill. Franz Vahlen, Berlin, 1928. 28.00 M.

STRAFVOLLZUG IN PREUSSEN. Herausgegeben vom *Preussischen Justizministerium*. xii+293 pp. J. Bensheimer, Mannheim, 1928. 6.50 M.

To give "a true and clear picture of the present-day prison system of Germany" is the aim of the Handbook, which contains twenty-five articles by authors chosen for their high competency. Every phase of prison work has been covered by them. The completeness of the picture is in no little degree due to the editor, Dr. Erwin Bumke.

The introductory article on the historical evolution of imprisonment is written by Prof. Robert von Hippel, whose significant studies in this field will be remembered. Dr. Bumke follows him with an article on imprisonment as a legislative problem. He describes the attempts hitherto made to unify the penal system of the various German states, culminating in the 1927 project for a general correctional code (*Strafvollzugsgesetz*). Mr. Albert Hasse writes on the prisons of Germany and the organization of their administration, a very comprehensive article which deals separately, and by states, with every penal institution in the country. There follow articles on the prison officers by Dr. Otto Weissenrieder, director of the Ludwigsburg prison;

the internal organization of German prisons, by Mr. Felix Busch, director of the Berlin-Tegel prison; the application of the penalty, by Dr. Hansen of Kiel; the legal status of the prisoner, by Prof. B. Freudenthal; the treatment of the prisoner, by Dr. Starke; convict labor, by Mr. E. Wutzdorff; the care of the health in prisons, by Dr. H. Fisher; the insane and feebleminded prisoners, by Dr. F. Leppmann; religious care for evangetic prisoners, by Dr. D. Klatt; a similar article dealing with Catholic prisoners, by Father Meyer; spiritual and religious uplift of prisoners, by Dr. L. Frede; the progressive system of penal treatment, by Mr. R. Degen; the professional criminal, by Dr. W. Gentz; criminal women, by Miss E. Ellering; juvenile prisoners, by Mr. W. Bleidt; the social idea in prison treatment, by O. Koch; conditional release on good behavior, by Dr. E. Umhauer; welfare work for convicts and released prisoners, by Dr. H. Seyfarth; the detention prison, by Dr. R. Marx; military prisons, by Mr. Dörken; police prisons, by Dr. Hagemann; and finally, an article on the Austrian prisons, by Dr. Mayer.

The Principles for the Application of Prison Treatment of June 7, 1923, are also reprinted in full in an appendix. All told, this is one of the finest volumes, perhaps the finest, of its kind this reviewer has ever seen. Rich in valuable material, both descriptive and historical in nature, and authoritatively written, it will long remain the best single source of information for the student of German penology.

What Dr. Bumke's volume does for Germany as a whole, the book published by the Prussian Ministry of Justice does for that state. It contains thirty-four articles and covers a somewhat wider field than that of the Handbook. In addition to the subjects mentioned in the latter volume, we find here articles on the press and punishment, the prison in literature, the defendant's lawyer and the detention system, the criminal of conviction, the prison system in public economy, the evolution of prison architecture in Prussia, the "Lighthouse," etc. Many of the authors who contributed to Dr. Bumke's volume reappear in this publication. In a general way, what has been said about the value of the Handbook applies also to this volume for the area it covers.

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THORSTEN SELLIN.

SCRITTI IN ONORE DI ENRICO FERRI PER IL CINQUANTESIMO ANNO
DI SUO INSEGNAMENTO UNIVERSITARIO. R. Università di Roma,
1879-1929. 526 pp. Unione Tipografico-Editrice Torinese,
Turin, 1929. 80 Lire.

Shortly before Professor Ferri's death in April of this year, the fiftieth anniversary of his career as a university teacher was celebrated in Rome. It was a fine tribute to a scholar who has so powerfully influenced penal philosophy in the last half century. Greetings from all parts of the world were showered upon the guest of honor and this jubilee volume of essays was presented to him by his friends and admirers. The fifty articles contained therein differ considerably in length, interest and scientific value. The mere titles, with the names of the authors, will give some idea of the breadth and the depth of the volume.

Enrico Altavilla, Psychological and juridical analysis of the victim's consent to his homicide; *Gustav Aschaffenburg*, Problems of criminal psychology; *Agostini Berenini*, A propos of the crime of speeding; *Mario Carrara*, The biological basis of partial imputability; *Carton De Wiart*, Enrico Ferri and Jules Le Jeune. Their influence on penal reform in Belgium; *Bruno Cassinelli*, Legal responsibility in present law and judicial practice; *Salvatore Cicala*, The wasting of the patrimony in civil and criminal law; *Cesare Colucci*, Experimental science and human pain in eugenic, pedagogical and medico-legal themes; *Lisi Gaetano Conturso*, The penal problems in the thought of Tolstoy; *Giuglielmo Cuboni*, The opportunity of a new Italian penal code; *Mariano D'Amelio*, Penal norms for the safeguarding of radio-electric communications; *Enrico De Nicola*, The two schools of penal law; *Sante De Sanctis*, On the psychology of the instinctive criminal; *Benigno Di Tullio*, The specific factor in criminality; *Gennaro Escobedo*, Procedural frauds; *Eugenio Florian*, The psychological factors in penal procedure and their influence on the concepts governing it; *Ettore Fornasari Di Verce*, Where no problem of imputability exists; *Raoul Alberto Frosali*, Orientation of recent projects for a general German penal code; *Stefan Glaser*, New tendencies in penal law; *Giuseppe Gregoraci*, Continued crime and multiple crime; *Michele Herneti*, Contribution to the psychology of prisoners; *Otto Krell*, A non-jurist's thoughts on the basis of crime; *Teresa Labriola*, Enrico Ferri; *Nino Lcvi*, Criminal statistics and the reform of penal legislation; *Mario Manfredini*, The functions of punishment; *Enrico Morselli*, Moral perversions and criminality during the critical ages of the male; *Edward Neymarck*, Ferri's ideas in the project of the Cuban criminal code; *Salvatore Ottolenghi*, The application of measures of safety; *Alfredo Palazzo*, Fraudulent insolvency; *Nicola Palopoli*, The theories of imputability and the presumption of a free will; *Raffaele Petti*, Crimes and punishments in the Constitution of Frederick the Second; *Mario Piacentini*, For a more efficient repression and prevention of crime it is necessary to lower the coefficient of impunity; *N. Polansky*, Technical criminal procedure; *Alfredo Pozzolini*, Cases of justification as cause for the exclusion of the crime in Italian legislation; *Léon Rabinowicz*, The problem of measures of safety and the modern evolution of penal law; *Juan P. Ramos*, Enrico Ferri's school in the Argentine Republic; *Emil Stanislaus Rappaport*, The two phases of Enrico Ferri's scientific work; *Domenico Rende*, From Francesco Carrara to Enrico Ferri; *Luis Reyna Almandos*, Enrico Ferri; *Rodolfo Rivarolo*, Enrico Ferri and the positive school of penal law in the Argentine Republic; *Jean A. Roux*, Enrico Ferri; *Quintiliano Saldaña*, Penal pragmatism; *Arturo Santoro*, On the pretended "plurimità" of penal actions; *Thorsten Sellin*, The house of correction for boys in the Hospice of St. Michael's in Rome; *Prosanto K. Sen*, Penal law in native India; *Diego Vincente Tejera*, New orientations in the crime of abandonment of juveniles; *Ladislao Thót*, On the Latin-American criminal law; *Hermilio Valdizán*, The crimes of a primitive man; *Giuseppe Vidoni*, The schools for psychologically abnormal juveniles.

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