BOOK REVIEWS AND NOTES.

Twenty Years a Detective. By Clifton R. Wooldridge. Published by the author, Chicago, 1908. Pp. 608.

This book narrates the experiences of a successful detective in the "wickedest city in the world." It gives a valuable insight into the methods of crime and the ways of detecting and punishing criminals. In addition to the exciting stories which fill a large part of the book there are serious discussions of such topics as graft, our penal system, vagrancy, methods of identifying criminals, the criminal rich, gambling and various other subjects, by one who has had a large experience in dealing with crime and criminals.


The conference was held in the Northwestern University Law school building, June 7 and 8, 1909. At the first general session addresses were delivered by Prof. Roscoe Pound, Justice Orin Carter of the Illinois Supreme Court, President Harris of Northwestern University, and James Hagerman, Esq., of St. Louis. For the consideration of the topics submitted the conference divided itself into three sections: one on the treatment of offenders; one on organization, appointment and training of officials, and one on criminal law and procedure. The proceedings contain a stenographic report of the discussions which took place in each of the sectional meetings, in the two general sessions and in the committee on resolutions. The work of the conference as a whole was reviewed in the May number of this Journal.


This is a little volume in the debaters' handbook series and contains a collection of the best articles written for and against capital punishment. It is a useful compilation for students and debating societies. In addition to the collection of articles there is a select bibliography of the literature of capital punishment.


This volume by the secretary of the Howard Association is made up of a number of unrelated chapters and makes no claim to
being a scientific contribution to the subject. What value it has, grows out of the fact that it is an intimate personal account of the writer covering a quarter of a century, and dealing with all classes of offenders against the criminal law.

At a time when emphasis is being placed, in an increasing way, on the importance of viewing many offenders in court, as possible social assets, it is interesting to find the author declaring against the accepted method of magistrates in dealing with the repeater of the police courts; against the uselessness of short terms of imprisonment for the habitual drunkard and against the fatuous practice of trying to correct the so-called "Hooliganism of the Poor" by increasing the severity of punishment in court instead of providing sane means of filling leisure time.

The reviewer may be permitted at the same time to express disappointment at the author's impatient attitude toward probation as a method of dealing with a certain class of offenders. The subject is too important in every way to be summarily disposed of in a few paragraphs.

BERNARD FLEXNER.

Louisville, Ky.

LA DEFENSE SOCIALE ET LES TRANSFORMATIONS DU DROIT PENAL, par

The title of this book suggests mental adjustments to modifications in law and the discussion fulfils the promise. With the attacks on the "classical" methods we need not here concern ourselves; the constructive argument is of supreme interest in America. The author, who was associated with Professors von Liszt and von Hanel in founding the Association of Criminalists, has won a right as a jurist to a respectful hearing.

The principle underlying his argument is this: "We ought to combat all the manifestations of criminality by judicial or social measures of defense, and the high mission of the state in this domain is to reconcile the possible maximum of social security with the possible minimum of individual suffering." The measure of penalty according to responsibility and guilt cannot be defined, and thus expiation is impossible; all that can be required is protection of social interests. It is not even desirable to wait for the commission of crimes. So long as the courts released children and youth on the ground of limited responsibility they helped to push them into crime; the present policy is to protect them from ruinous influences. The author urges a similar policy in relation to degenerates, epileptics, inebriates, sexual perverts and their kind, who are a menace to social order and security even though they have not yet technically committed crimes. Confirmed criminals should be treated on the basis of their character as a menace to society; and suitable specialization of institutions would enable the administration to restrain
FOLSOM: STUDIES OF CRIMINAL RESPONSIBILITY.

and improve the offenders according to their various dispositions. The book is a vigorous and powerful protest against the immense wrong done to society and to offenders themselves by permitting them to go free after a brief sentence which is measured by the amount stolen rather than by the attitude of the wrongdoer to the community.

The author considers the usual objections to this view based on the danger to individual liberty and shows that nothing he proposes could equal the capricious and arbitrary treatment of offenders under the traditional scheme; and he also shows how the indeterminate sentence can be safeguarded against possible abuses. C. R. H.

STUDIES OF CRIMINAL RESPONSIBILITY AND LIMITED RESPONSIBILITY.

No one who is familiar with the careful, painstaking life work of the late Dr. Folsom can read the above-mentioned volume without wishing that the author might longer have been spared to finish the work commenced in these studies. It is plainly patent to his friends and readers that most of this work is done in outline only, and is much in need of careful and systematic revision, as well as supplement, before it can have great value to the worker in medico-legal fields.

For instance, in the first case reported there is complete lack of information concerning the family or personal history of Jesse Pomeroy. While this may all have been common knowledge at the time of its happening and in the vicinage of its occurrence, it is quite true that at the present time and in more or less remote districts, knowledge of this early history, if had at all, is vague and indefinite. To the student it is more important to have the facts in the case than the deductions therefrom. Indeed, without these facts the reader can make no reasonable deduction of his own, but must accept or deny the one prepared for him.

The report of case No. 2 represents a fairly typical case of chronic delusional insanity of the now familiar paranoiac type. The autopsy findings show also chronic brain disease, thus confirming the diagnosis of deterioration, if any confirmation were needed. In this case the question of diagnosis is far simpler than that of case No. 6, where a thorough study of the individual, aside from her criminal acts, would scarcely justify any such conclusion as was finally reached. Yet the wisdom of the judicial finding was ultimately proven.

The six cases, however, taken as a whole, show histories more or less typical of the classes of cases which from time to time attract so much attention in our American courts. These cases are always attended with much publicity and lead to numerous and

The introduction to Dr. Grasset's work sets forth its divisions, which are five in number. The first is devoted to establishing the semi-insane as a distinct class. The second, to the refutation of the arguments made against this proposition. The third refers to the clinical demonstrations and medical study of the type. The fourth shows their social value; the last their danger to the social body.

After going over the entire book one is struck by the number of well-known theories (many of which are legendary in character and can scarcely be accepted as scientific facts) here repeated. In no other place are they so collectively shown nor is their reading elsewhere made more agreeable. But while newly dressed and attractively presented, the information contained has, in the major part, long been available under other headings.

Decidedly ingenious is the arrangement of the psychisms into two component parts. First, the "superior psychism," which presides over conscious and voluntary acts. Second, the "inferior psychism," which has a similar relation to automatic and involuntary acts. But one may well ask wherein this differs essentially from the old theory of primary and secondary ganglia and their general relation to the nervous system as a whole. Grasset points out that in certain examinations one is to consider whether one has or has not to deal with a sound or a diseased psychic neuron. The psychic neuron, however, is not established as a definite entity. Without the creation of a normal standard and its plain recognition, how then may we hope to perceive the invasion of a pathological condition?

There can be little doubt in the mind of any reader as to the great value of the work done by those of highly nervous organization. Theirs is a necessary part in the whole complex. They perform a work impossible for the phlegmatic. The demands made by them on their nervous capital are all out of proportion to its supporting strength. Small wonder, then, that a breakdown occurs and that they who have formerly been simply "neurotic" become actually deranged. Criminal acts may follow the change. Shall punishment or treatment follow, or shall the two be combined? As a matter of fact, in the older parts of the United States this ques-
tion of responsibility is yearly receiving more consideration. Those
who have most to do with the criminal see in him many of the same
characteristics reported by Grasset, by him grouped and designated
as belonging to the semi-insane class. From the standpoint of
medical jurisprudence it is a grave question whether this classifica-
tion is at all necessary or even desirable. Certainly the modern
works on mental disease offer sufficient latitude in classification to
satisfy the most exacting.

If a new tendency appears, its chief merit would be in the way
of simplification and directness, rather than toward overelaboration
which in no wise assists the perplexed physician or jurist to deter-
mine questions of responsibility.

A double conclusion seems justifiable. First, that Dr. Grasset
has made a wonderfully interesting collection of material bearing
on the neurotic class. Second, that the class is by no means new,
and that the name suggested fails to clarify or make more definite
our knowledge of those long known to be other than wholly normal.

Matteawan, N. Y. ROBERT B. LAMM.

PRINCIPI DI PSICOPATOLOGIA LEGALE. By Luigi Mongeri. Milan:

The medico-legal aspect of mental disorders is sufficiently im-
portant to warrant its treatment as an independent subject, and not
merely incidentally in the course of a general text-book on psy-
chiatry. One would expect, however, that in such independent treat-
ment of the legal questions in psychopathology the wider aspects
of the subject would be thoroughly discussed, and an endeavor made
to define the fundamental principles which should be applied in each
particular situation. The author adopts a different standpoint;
after one chapter devoted to the legal provisions of the Civil and
the Penal Code in Italy, with which he compares those of other
nations, he takes up the whole topic of legal psychopathology under
the headings of the various psychoses. A short description of each
clinical group is given; this is followed by a discussion of the civil
capacity and criminal responsibility of patients in this group. The
classification adopted by the author is somewhat hybrid; we find
included both the dementia praecox of Kraepelin and the frenosi
sensoria of Bianchi, while the discarded “secondary dementia” is here
given a respectable position and illustrated by a superfluous case.
The medico-legal aspects of mania, melancholia, periodic psychoses,
and maniac-depressive insanity are discussed under the heading of
each single group, for which there is no adequate ground. It is
obvious that this method involves a large amount of unnecessary
repetition.

While the discussion of the medico-legal questions is always
sober and indicates common sense, it remains somewhat general,
while greater definition would be welcome; thus the author's remarks on the testamentary capacity in aphasia might with advantage have been made more precise. To the jurist the work may be useful as a book of reference with brief descriptions of the recognized forms of mental disorder and illustrative cases; it is rather a psychiatric manual with medico-legal coloring, than a serious exposition of the principles of legal psychopathology.

Ward's Island, N. Y.

C. Macfie Campbell.


Mr. Osborn's book is a study in what is, if not a new, a little worked field in legal literature—that of the application of science and scientific methods in the trial of issues of fact. A court room cannot be made into a scientific laboratory and the facts of science can only be proven in trials, as all other facts are, by the testimony of observers. The law has, however, fully recognized the necessity for such proof. It must be a satisfaction to the legal profession to find such an experienced expert as Mr. Osborn bearing testimony to this fact. He says: 'There is always violent opposition to any innovation in legal processes, but the science of law has kept abreast of the progress of the physical sciences by the recognition and employment of any improved methods by means of which the facts may be more clearly shown.'

The legal profession has not, however, been so progressive in attaining the ability to utilize and present intelligently such testimony in actual trials, and at least a very large share of the prevalent dissatisfaction with expert testimony must be attributed to this fact.

"The lawyer," he says, "should have this special knowledge in order also that he may be able to utilize effectively testimony on the subject that he may wish to present: that he may be qualified to test in advance the force and truth of such testimony, and finally and most important of all, that he may be prepared to cross-examine adverse witnesses with intelligence and skill. A case is always in grave danger if an attorney is trying to get before a jury that which he himself, does not clearly understand. The successful lawyer is he who not only knows the law, but knows the facts, and when he is able to quote the first and prove the second he is ready for trial."

It would be well if these sentences could be brought home to the full comprehension of every trial lawyer who has to present scien-
scientific evidence to a jury. It is to aid in the acquisition of full knowledge of the facts in inquiries as to the genuineness of documents that this book is written. It is therefore a pioneer in its field. With the exception of treatises on Medical Jurisprudence we have no legal literature on any of the sciences in their relation to law, and none whatever of a similar plan and scope to the present work. After a classification of the various kinds of questioned documents the author treats of standards of comparison, of photography, the microscopic and other instruments and appliances used in the study of handwriting and then of the various technical elements of writing such as movements, line quality, alignment, pen position, pressure and shading and arrangement, size, spacing and slant in writing. Writing instruments, the various systems of writing, variety of forms and mathematical calculations applied to questioned writing are next considered. These chapters are preparatory and lead up to a full discussion in separate chapters of simulated and copied forgeries, traced forgeries, and anonymous and disputed letters. Supplemental to this discussion the author treats of ink and paper in relation to writing, of methods of determining the sequence of writing, erasures and alterations, additions and interlineations, of the age of documents and of methods of detecting forged typewriting. Finally, there is a chapter on the conduct of a questioned document case in court.

In the chapter on "Standards of Comparison," Mr. Osborn shows the necessity for a sufficient number of specimens of genuine writing as standards in order to form a correct judgment. The common practice of bankers of basing a conclusion as to a suspected signature on a comparison with only one genuine signature he characterizes as dangerous. Normal variations in handwriting, variations in writing done at different times and for different purposes and under different conditions make necessary the examination of a considerable number of specimens to learn the habits of writing of any writer. Absence of proper standards is the cause of much of the discredit that has at times been brought upon handwriting testimony. Under the rule formerly obtaining, that genuine writing could not be offered in evidence merely for the purpose of comparison, this was often inevitable. Most of the states now, however, permit the introduction of standards of comparison in handwriting cases.

Throughout the book the author lays stress on the importance in expert testimony not of the mere opinion of the expert, but of the reasons on which it is based. He says: "The primary purpose and function of questioned document expert testimony is not to foist a ready-made opinion on court and jury, but to assist the jury in reaching a correct interpretation of the facts before them. The
importance of the bare opinion given by the witness should be constantly minimized and the reasons for the opinion should be elaborated and emphasized. . . Two mere opinions in conflict may neutralize each other, but this is not usually true of two reasons."

This is certainly true and properly understood, and carried out would go far toward meeting the criticisms of expert testimony which now prevail. But precisely here is necessary not only ability and candor on the part of the witness, but also thorough preparation on the part of the attorney, and the ability to understand and afford the witness the opportunity to bring out the facts on which his opinion is based. This is a very different thing from argument from the witness stand; it is but furnishing to the jury the aid it should have both in estimating the value of the expert's opinion and in furnishing a proper basis for intelligently determining the questions on which it must pass.

It is to be hoped that other sciences in their legal applications may receive similar elucidation. A book on the subject of insanity in trials on a similar plan and scope and prepared with equal ability in its field would assist greatly in remedying the present unsatisfactory state of opinion on that subject. Such books are badly needed, and the present work will prove of great value both to lawyer and expert in all investigations of disputed handwritings.

E. L.

_WULFFEN: PSYCHOLOGIE DES VERBRECHERS._


This work is a part of the "Encyklopädie der modernen Kriminalistik"—a series of expert investigations into the history and the scientific basis of criminology—and serves as a sort of introduction, both for lawyers and laymen, to a more comprehensive study and a juster consideration of the minds of criminals and other legal offenders.

The author's aim is twofold: (1) To review the work done thus far and the results already obtained, and (2) to indicate the problems still to be solved and to suggest what seem to him the most promising ways of meeting them.

The general method is to take up in order the following disciplines: Physiological Psychology, Psychiatry, Anthropology, Criminal Statistics, Social Ethics, and Characterology, and to show in how far each subject may contribute to a better understanding of the accused, his deeds, and his motives, implying that such knowledge will eventually lead to a fairer administration of justice and to a greater effectiveness of legal punishment. With admirable insight the author has in each case trusted to the guidance of the
best authorities, whose systems or points of view he presents with clearness and conciseness, stating where they agree and disagree, and wisely suspending judgment where facts are still lacking.

In the case of Physiology and Psychology (Chapter I), he could have made no better choice than to follow W. Wundt's "Principles of Physiological Psychology," "Outlines of Psychology," and "Logic." From these works our author has selected and presented in condensed form such material as seems to be most useful to the practical criminologist. In many cases he has added striking illustrations from law, e.g., irresponsible excess of self-defense as a case of reflex-movement with little or no conscious apperception, etc. In the discussion of the experiments on self-betrayal by delayed, inhibited or significant associations of ideas, he avoids dogmatic partiality and is ready to await further experimentation.

In Psychiatry (Chapter II), our author bases his statements on the works of v. Krafft-Ebing, Hans Gross, Forel, Kraepelin, and other authorities. He quotes many criminal cases illustrating various mental defects and the way in which they may lead to crime. Here he also finds opportunity for deploring the young lawyer's inability to comprehend and appreciate the testimony of expert psychiatrists. He devotes some 25 pages to the psychology of alcohol, quoting various statistical data from the works of Kraepelin and his pupils, Dr. A. Smith and Dr. C. Furer, who constructed tables of frequency for internal, external, and rimed associations, showing that the last kind is by far the most preponderant under alcoholic influence.

In the third chapter, under Anthropology, our author discusses at some length Lombroso's theory of congenital criminals and their relation to moral insanity and epilepsy. Among Lombroso's strongest opponents are cited Dr. A. Baer, Dr. P. Näcke, and Bruno Stern. Sommer's theory receives special emphasis because it separates the question whether some of the criminals have an inherited disposition for crime, from the other question, whether certain morphological criteria distinguish the first class of criminals from other offenders. Sommer affirms the first question, thus far agreeing with Lombroso's theory and showing how even Baer furnishes evidence, against his own will, in favor of this aspect of Lombroso's theory. But the second question is answered in the negative by Sommer, and Wulffen seems to agree with him, indicating that common sense has in this respect vaguely anticipated the same answer.

Chapter IV deals with criminal statistics of the German empire. By cautious interpretation of the figures, Wulffen shows how they indicate certain chronological and geographical tendencies in the occurrence of crime.

His chief authority for the ethics of crime (Ch. V) is Wundt,
though other writers are quoted. In the discussion of the freedom of the will and determinism lies perhaps the weakest point of the whole work, although the next chapter, on Characterology, is also less satisfactory than those of the first volume.

Of especial criminological value are the last two chapters, the psychology of special crimes and criminal specialists, and the psychology of criminal procedure and execution of judgment (Strafvollzug). In the former the author presents a psychological analysis of the minds and motives of the various criminal offenders from the primitive thief and robber to the modern automobile delinquent. The last chapter shows how necessary it is for judges and jurors to know how the mental state of an accused may be affected by the preliminary proceedings, the trial, and the final punishment. Especially in the case of the main trial he finds much ground for complaint because of the lack of psychological tact and insight exhibited by many lawyers. He deplores the severity of the present penal code and hopes that in some future time capital punishment may be dispensed with. Concerning the treatment of convicts he has words of praise for several American institutions, e. g., the state prison at Jackson, Mich., and the Elmira Reformatory.

The final conclusion of this instructive work may be summed up thus: Immoral and criminal actions are necessary psychological and social factors in the ethical development of the human race and must be understood and treated in the same scientific spirit that pervades the rest of human life and leads through failure to success.

Cornell University.

L. R. GEISSLER.


This work presents a new field for criminology, that is Eastern Europe, which is full of mixed nationalities with many and various political, social, and religious divisions. It is extremely favorable to a statistical study of the various factors in criminality. The first volume of this work is entitled "Criminality in the Balkan Countries." The second volume, not yet published, is to treat of "Criminality in Russia."

In the statistics of crime in the Balkan countries one of the most notable characteristics is the relatively large number of persons acquitted as compared with western lands. Also there is a predominance of crimes of bloodshed. It is not so much cunning and deceit as violence which is manifested in the crime of these countries. The Balkan lands are largely agricultural and are especially sensitive to variations in the price of grain, as Indian corn. Thus from 1887 to
1905 the rise and fall of the price of corn is almost identical with the line for increase of crime against property, showing conclusively a direct relation.

Here crime among women is relatively the smallest of any country in Europe. Economic conditions seem to have little influence on women's crimes, which are mainly against the person and morality, and not so much against property.

Another peculiarity is that married persons show a higher per cent of crime against the person than against property, while the contrary is true with people in general. Widows and divorced women show a much higher per cent of crime than other women. Sexual crimes are comparatively small in number. This is in all probability due to the custom of early marriages.

Since the Balkan countries are agricultural, crimes or offenses against the forest laws and cattle stealing are numerous as compared with other crimes. The influence of education on crime is of secondary moment. It is so closely connected with other sociological factors that its influence cannot be differentiated. The distinguishing characteristics of crime in these countries which have been given are satisfactorily shown in numerous tables.

Washington, D. C.  

ARTHUR MACDONALD.

Probation Work in the Magistrates' Courts of New York City.


This pamphlet by the secretary of the New York Probation Association, who was for several years probation officer in the New York City Night Court, describes the organization and methods of carrying on probation work in the city magistrates' courts in the Boroughs of Manhattan and The Bronx. Miss Miner has worked largely among women offenders, and her experience and observations show that it is desirable to have women offenders, who are on probation, placed under the charge of women probation officers. She declares that her probation work has been most successful with girls from sixteen to twenty years of age who are becoming wayward through bad associations, and with certain cases of young women convicted of public intoxication. Probation, when applied to hardened prostitutes, is useless and tends to bring discredit upon the system. Most of the failures in the application of probation in the city magistrates' courts are said to be due to the lack of preliminary investigation and to the indiscriminate selection of defendants for probationary treatment. The pamphlet gives cases to show that the probation system becomes farcical unless the magistrates use it intelligently. It also points out other defects in the probation system in the New York City Magistrate's courts, as carried on in 1909, and makes recommendations for its improvement. A. W. T.
NAKENS: MI PASO PAR LA CARCEL.


It is impossible for a stranger to judge a book like this. The writer of this note visited the prison described, in the spring of 1909, and was shown about everywhere as freely as he would be in America. The criticism of this volume attacks with asperity the cellular isolation, the neglect of food and clothing of prisoners, and various abuses. None of this did the visitor see last year; yet, it may exist. The author of the book admits that Dr. Rafael Salillas made important improvements, but contends that gross evils persist. A newspaper critic of November, 1909, declares that such a revelation in the United States would stir the public to indignation and produce instant reform. He does not, however, know the situation. The word of a prisoner or ex-convict is too heavily discounted the world over to weigh against the denials of wardens, chiefs of police and state boards. But we may well flatter ourselves that such an exposure would here lead to official inquiry. The shameful and dangerous condition of many of our city lockups and jails shows how impervious is the conscience of our people where law-breakers are concerned. Even when our city authorities know these evils, they either fail to apply any proper standard or they accept disease-breeding conditions with fatalistic apathy. Therefore the caustic style of José Nakens might be legitimately employed even in our cities.

C. R. H.


The author of this volume starts with the question, "What is Criminal Responsibility" (p. 1-18), and gives a statement of the English and foreign laws (p. 19-79) and a general survey (p. 80-90). This leads over to the questions: "Should Insanity exempt from Criminal Responsibility in any circumstances?" "Should all lunatics without exception be exempted from Criminal Responsibility?" Then comes the discussions of the general legal problem, of the knowledge test, the "freedom of will," "power of self-control," "moral insanity," "partial insanity," the mitigation of punishment, the critical moment when insanity excuses, conclusions, and a discussion of the evidence and of lunacy experts.

In the main, the book is a defense of the knowledge test and the formulation of the law as it stands since the MacNaghten case.

The book presents a legal argument with little sympathy for the "law as it ought to be," and without casuistic material of the actual working of the conflicting principles in comparable cases.
OPPENHEIMER: CRIMINAL RESPONSIBILITY OF LUNATICS.

with contrasts, and concrete discussion of results. While to most of us the issue turns on what is finally done with the individuals under consideration, Oppenheimer limits the discussion strictly to the concept of "criminal responsibility," even to the extent of preferring the question: "Is the person responsible in the sense of being liable by the law of England as it is, to be convicted of the crime with which he is charged," to that formulated by Sir James Stephen: "Is this person responsible in the sense of being liable . . . to be punished for the act he has done?" The term criminal responsibility is taken in its legal sense only (and only as far as it concerns conviction), "not in a metaphysical" and not even a practical sense of the term—hence the somewhat disappointing character of the book as mainly an argument about various laws involving the concept of "criminal responsibility of lunatics," rather than a review of the facts and a discussion of their legal and practical and medical aspects of dealing with the crimes of the insane.

The feeling which calls forth so many debates just now is that the legitimate expectations of the practical mind are not fulfilled by the current practice and that possibly the law is not as it ought to be—a statement easily justified, e.g., with regard to the self-contradictory and straddling New York law. The question how should we frame a satisfactory law and procedure would certainly have to be preceded by a study of the cases in which one law or procedure or another has obviously failed to satisfy common-sense at its best, followed by an inquiry as to how different methods might have done better justice and what role the concept of "criminal responsibility" could reasonably play. If an inquiry into mere principles satisfies a reader, he finds not only a most interesting summary of the various pertinent laws but a very able criticism of practically all except the English principles.

The collection of laws and their survey offers many remarkable facts. From the Chinese law which holds the insane (and their relatives) responsible for their acts (although usually with commutation of the punishment, and the law of Basel and a few other Swiss cantons, which does not mention insanity, but only the inability to be aware of the criminality of the act or lack of self-determination, we pass through all gradations to the sweeping statement of the French code which directly and unreservedly identifies insanity and irresponsibility.

In discussing the question whether insanity should exempt from responsibility under any circumstances, Oppenheimer takes issue with Smith, who advocates the execution of certain insane criminals or homicidal lunatics. Oppenheimer insists upon "guilt" as the only possible justification of punishment, and punishment as the only justification for taking life. He assumes that the defense of in-
sanity is met with only in the most heinous of crimes and never in minor indictments, which is certainly not true for the European continent, but possible for England and probable in the United States, because their commitment to a hospital is obtainable without any further ado, or because the prosecution for minor delicts is oftener avoided as too troublesome to bother with under our cumbersome judicial methods. The plea of insanity, as a mere plea, is indeed rarely made, unless there is a chance to evade the hospital or to escape something worse. According to Oppenheimer, if insanity is accepted, punishment should be excluded because the taking of life might otherwise have to be justified under far less plausible conditions as well. What shall be done instead of punishment is a practical issue which Oppenheimer does not take up. Personally, the reviewer feels that we might safely trust the abnormal individual with the burden of the consequences of his abnormality, without exposing him to great unfairness. A person who has once or repeatedly shown a liability to misdeeds which are beyond his control ought to be made to feel his responsibility toward society, instead of being declared “not guilty” and then let free or kept in check in the face of the verdict, and yet at times for no other reason but for having committed that dangerous act. The general tendency to leniency would surely obviate any obvious injustice. But these are, of course, not issues of “criminal responsibility” in Oppenheimer’s sense.

The first problem naturally turns on the difficulty of defining what shall pass as insanity. Savage says: “The physician claims as a general principle that an insane person, whatever his delusions or other mental symptoms may be, must be considered altogether irresponsible for any criminal act he may commit.” (Good instances of difference from this opinion are given in C. F. Folson, Studies of Criminal Responsibility and Limited Responsibility, privately printed, 1909.) The trouble is that the term “insane” is too loose and relative, covers many degrees and imperceptible transitions and therefore, even in France, with its out and out identification of irresponsibility and insanity, the judge, not the physician, presumes to be the one to decide whether the existing disorder is insanity, and therefore implicitly irresponsibility. French reports are said to record many cases in which a confirmed lunatic has been condemned, because the judge can, after all, decide “according to his own sweet will and pleasure.” With the physician, the problem is apt to become merely one of whether the person is normal or abnormal; the law, however, calls for a distinction of responsibility or irresponsibility, which finally turns on a psychological issue, and is therefore, according to Oppenheimer, outside of medicine—a view at variance with the conception of those of us who include psychology among the biological and medical sciences.
To trace the relation of the mental disorder to the act is "a task which lies quite outside the province and competence of medical science." "The problem becomes a legal one at the exact stage at which it passes beyond the ken of the physician," and Oppenheimer assumes that he has thus given a clear line of demarcation between medicine and law. "It ought to be enough for the professional witness to show that . . . the prisoner does not possess sufficient intelligence to understand what he is doing, not sufficient self-control to restrain his impulses, not that freedom of will which would enable him to regulate his conduct . . . ; it is for the judge and jury to draw therefrom the inference in relation to the deed with which the prisoner is charged" (p. 137). In this it is difficult to see how the physician could argue about these general questions except by taking up definitely observed instances of the person's actions and utterances. Why, then, should he not be competent to analyze the act under consideration as well? Oppenheimer wants further to limit these psychological tests to the persons with insanity. "I have not a single word of praise to say in favor of those codes which lay down general psychological canons of irresponsibility"—i.e., a plan which might, according to the reviewer's own judgment, serve well because it would eliminate the quibbling over what shall be called insanity and what not, inevitably leading to a petitio principii. A satisfactory formulation of the problem of "intent" would do away with part of the difficulty.

The knowledge test, characteristic of the English law, can be reduced to two elements: that of the nature of the act and that of the act being wrong, legally or morally or both. The knowledge of the nature of the act presupposes, according to Oppenheimer, awareness of the identity of the actor and the true nature of the material objects. There must be a knowledge of the abstract principles of the law or an ability to surmise or divine the provisions, and "to subsume a concrete act under its proper legal category," a knowledge of the criminality of the act and—Oppenheimer considers this an excellent formula which concentrates the legal theory of criminal responsibility in a nutshell—capacity to understand the law's threat. Much of the criticism of the knowledge test comes from the mistaken notion that the test should be a criterion of insanity, while it aims directly at responsibility itself. Blandford criticizes the test for going beyond what can be decided by medical science. However this may be, Oppenheimer considers it "easier to reproduce another man's thought, sane or insane, than his feelings, his emotions, his impulses, his desires, or the dictates of his will." . . . The freedom of will and the power of self-control appear to him infinitely more difficult to argue about. Concerning partial insanity and partial responsibility, Oppenheimer insists on the ne-
cessity of having clean-cut boundaries in law, and comforts us with the statement that "it is long since an undoubted lunatic was hanged."

This, I am afraid, is not altogether true. Guitean and Pendergast are cases in point. Public sentiment may have been right in these cases to demand its satisfaction. But the law should be adapted to meet such emergencies in order to avoid general confusion and actual breaking of the law. As a physician, I can easily see that where we deal with an irredeemable and permanent characteristic of an abnormal individual, with the pride and the conviction of his cussedness, a definite measure of "punishment" may be the normal and justified demand of the public that looks for the deterring effect of justice, whereas, it would probably be easy nowadays to prevent a brutal attack of retaliation upon a person who had committed a crime in a transitory attack of genuine mental disorder. The issue might at least be debatable and would probably not often be raised. It would undoubtedly be safer for society to uphold the dread of punishment even in the "irresponsible" and to make the decision after the act instead of as a general amnesty.

In the discussion of evidence he gives a praiseworthy approval to a departure of American jurisprudence in discussing the presumptions of the law. "Persons prima facie must be taken to be of sound mind till the contrary is shown;" but there are differences of opinion, where insanity is proved, whether slight proof is sufficient, or whether "the proof of insanity to acquit should be as strong as the proof of guilt to convict." At any rate a prisoner who sets up the plea of insanity has to prove: "(1) That he is of unsound mind. Having satisfactorily established this, he must show further (2) that he fulfills that condition under which alone the law excuses a madman who has done an act otherwise criminal." That the onus of either issue should lie on the accused, appears to Oppenheimer out of harmony with the teachings of medical science, and justly so for the second issue. "It ought to be laid down as a rule of evidence that those proved to be of unsound mind should be assumed, till the contrary be shown, not to know the nature and quality of their acts and that that which they were doing was wrong." Another presumption is that "even in the case of an acknowledged lunatic," it is said, "the offense is presumed to have been committed in a lucid interval, unless the contrary be shown." To this he justly opposes the principle that strikes root in the United States that "where previous insanity is proved, the prosecution must show that the crime was committed during a lucid interval." Oppenheimer's semi-legal discussion of how a lucid interval, and an intermission and a remission should be defined is itself proof enough for the desirability of this departure from English precedent.

The last chapter makes an appeal to limiting expert testimony.
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to experts called by the court; if possible, with the privilege of examination in a hospital.

We deal, in this book, with an author of unusual erudition, as shown in his quotations, literary and legal, with a remarkably simple and clear diction, a wide grasp of the laws, but lacking in the essential objectivity which only the casuistic method can bring, and, with all his ingenuity, turning in a circle under the cover of the perplexing number of issues.

My own feeling is that a solution will demand, first of all, a clearer subdivision of issues, and rules which will make it obligatory to raise all the essential questions, with regard to each of at least the following three issues: The guilt or intent problem, the punishment (as threat or otherwise) and the preventive measures, apart from what punishment entails.

We must rise above a mere definition of words. It is a question worth debating, whether the word insanity, and probably even the word responsibility, had not best be banished in order that we may get at the real facts. No test and no definition in biological and sociological problems can cover all cases adequately; therefore, why should we look for it and neglect the more essential points over the vain effort? The question is, rather, whether a test can do harm, so that it would have to be eliminated. The great variety of laws serving in other countries certainly gives me an inspiration to expect salvation from other directions, rather than from debates over definitions or terminology of tests.

The great effect of such a purely legal discussion is the implication that words and their definition by themselves determine the decisions. The decisions are always made by the judge or a jury, or at least some human beings chosen with some sense and led by the available rules. Law which leaves out human judgment is like science which leaves out common sense. In justice to Oppenheimer, we must say that he has produced a very readable and able legal thesis on the concept of criminal responsibility, but incidentally a demonstration of the uselessness of expecting our salvation from words and concepts alone. If another thesis would inquire as ably into the question why we do not adopt the English formula of the verdict, "guilty, but insane," instead of the hopelessly misleading verdict of "not guilty, on ground of insanity," or into the problem of crime of passion and under provocation, or into the question why the jury has no third alternative beside the verdict which means death and that which means complete freedom—we might gradually get nearer a solution satisfying common sense and physicians alike. That this might be obtainable by singling out the incompatible issues and settling them by themselves instead of lumping them into one issue of guilty or not guilty, would furnish another fertile topic of constructive legal study.

A. M.