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Reviews and Criticisms

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CORRESPONDENCE

To the Editor of the JOURNAL OF CRIMINAL LAW AND CRIMINOLOGY:

The July JOURNAL, Vol. 2, page 296, quotes from "Case and Comment," John M. Steele, on the matter of change of venue by state, "which no legislature has grappled with or had courage to modify." Owing to the escape of the murderer of Sam N. Wood, a prominent Kansan, in a county seat feud several years ago, our legislature in 1903 sought to change our bill of rights so as to permit the state to take charge of venue. The resolution was Senate Concurrent Resolution No. 8 of 1903, offered by Senator F. Dumont Smith, lawyer, editor and traveler. The papers reported that it had passed and would be submitted to the people for a vote. It surely would have carried, but the Secretary of State found some technical flaw in its passage and refused to submit the resolution to the voters. An examination of the journals of both Houses shows either a gross failure to report what the Houses did, or a very slip shod doing on their part. It is not clear what did become of the resolution. Since then nobody again has tried the matter and probably nothing will be done until some murderer again escapes in some sparsely settled western county, when people will become aroused.

Russell, Kansas.

J. C. RUPPENTHAL.

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DIE POLIZEI IN STADT UND LAND IN GROSSBRITANNIEN. By C. Budding. J. Guttentag, Berlin, 1908, 206 pages.

This volume contains the results of Dr. C. Budding's study of the police organizations of Great Britain, undertaken by him under the direction of the German section of the International Criminology Association, and constitutes Part I of Volume II of that Association's Contributions to the Reform of Criminal Procedure.

The author has made a critical study of police administration in the cities of London, Birmingham, Manchester, Liverpool, and Newcastle, in Worcester County; Morpeth County and Wakefield West Riding, in England; in the cities of Edinburgh, Glasgow, Dundee and Paisley and in Lanarkshire and Midlothian counties, in Scotland; and in Ireland the Royal Irish Constabulary, the Galway and Clare County police forces and the police of the city of Dublin were studied. In a volume of more than two hundred pages the author gives a detailed account of the organization of the police force in each of these jurisdictions and gives also a critical account of the efficiency of the protection afforded by each.

Because of the large similarity between police administration in England and in the United States, the author's observations are of especial value to police officers in this country. The following are some of the more important conclusions noted by him:

1. The amount of official correspondence is minimized; printed forms are used to a large extent.
2. There is harmony and coöperation between the uniformed police and the detectives.
3. A distinction is made between routine work performed by the subordinates and matters of policy referred to the superior officers.
4. Policemen are not considered officials but only paid employees.

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When not on duty they are free to act as they please, provided that they do not engage in any other business.

5. All superior police officers, except the chiefs, are promoted from the ranks. The superior officers are experienced but lack the higher education desirable for superior officers.

6. English policemen are respectful but not subservient in the presence of superior officers and in their dealings with the public they are courteous and not domineering.

7. They may be dismissed from the service at any time without the assignment of any reason and by such dismissal they lose all right to their pension.

8. The police are not obliged to enforce health regulations, building regulations, or factory regulations, which are enforced by separate authorities.

The author's recommendations for the improvement of the German police deserve careful consideration in America:

1. The police should receive practical and theoretical instruction in police schools.

2. Applicants for appointment should be taken not only from military life, but candidates from civil life also, who have a good education should be appointed:

3. A promotion system from the lower ranks to commanding positions should be established.

4. The police should be relieved from the obligation of enforcing health, factory, and building regulations.

5. Independent police organizations in the rural districts should be abolished and county police forces organized.

6. Only the general principles of the law should be laid down and its administration should be left to the common sense and discretion of the police officials.

7. Modern business methods in the administration of police affairs should be introduced,—printed form letters, typewriting, shorthand, and the use of the telephone.

8. Superior officers should be relieved from the performance of clerical work and should devote their whole time to the determination of matters of policy.

9. Public safety demands that police officers be carefully selected and adequately paid and be subject to public criticism and civil action for their wrongdoings, rather than that elaborate disciplinary proceedings be established for the prosecution of complaints against them.

10. Police officers should be appointed as prosecutors to assist district attorneys.

New York City.

LEONHARD FELIX FULD.

UBER GESETZGEBUNG UND KINDERMORD, WAHRHEITEN UND TRÄGE, NACHFORSCHUNGEN UND BILDER. By *Johann Heinrich Pestalozzi*, 1783. Mit einer Einführung und Anmerkungen neu herausgegeben von Dr. Karl Wilker. J. A. Barth, Leipzig, 1910. Pp. XII+274.

The editor's introduction to this new edition of Pestalozzi's work on infanticide states the reasons which prompted him to the re-publica-

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tion of a book that was written in 1780 and first published in 1783. One reason is the fact that Pestalozzi's book on this topic is one of the least known among the writings of this great pedagogue and philanthropist. Another reason is this: many of Pestalozzi's statements hold true even to-day, and especially his sociological and psychological considerations are, according to the editor, of lasting value. Furthermore, the problem of preventing infanticide is still unsolved, and many of the author's suggestions are no less valuable to-day than they were over a hundred years ago. And finally, the book is in a sense an indictment of haughty overbearance and ingrained prejudice against unfortunate mothers of illegitimate children, an attitude no less frequent, but much more unpardonable in this age of tolerance and freedom of thought than it was among Pestalozzi's contemporaries.

Of course it is also to be expected that many passages have for us only historical or literary value. But as the new edition is primarily intended for laymen and not for legal experts, the editor has restrained from all critical discussions and confined himself in the Notes of the Appendix to explanations of style and to quotations of parallel passages which were either revised, omitted, or added, in another edition of the book published in 1821. In that year it appeared as a part of the complete works of Pestalozzi collected during his lifetime by his friend Joseph Schmid and printed by Cotta.

The words of the title, "*Truths and Dreams, Studies and Sketches*," are very characteristic of Pestalozzi's thoughts and writings; he is neither systematic nor logical, and his appeal is foremost to the emotional side of his readers. It is therefore impossible to speak, on the one hand, of a definite plan or brief of his arguments, and on the other hand, to reproduce the author's spirit of sincerity in his desire and attempt to uplift humanity and prevent unjust suffering among the weakest and least protected of his race. Since such feelings and desires cannot be reviewed, only stimulated, we content ourselves with trying to arouse the desire to study Pestalozzi and to become imbued with his spirit of justice and philanthropy. It is indeed the union of these two, justice and philanthropy, which, according to our author, should be the underlying principle of all criminal codes. Treat the meanest soul with indulgence, magnanimity, and trust, and you will reap surprising results of honesty, reliability, etc. Our judges are gradually discovering the truth of this principle, which Pestalozzi advocated.

In the analysis of the actual causes of infanticide our author finds that the one general purpose of those guilty of this crime is the desire to conceal their disgrace. To this must be added the severe strain of aggravating external circumstances which are a constantly growing source of mental suffering, distress, and confusion that may even lead to despair and temporary derangement. Here Pestalozzi raises two questions, first, whether the desire to conceal one's disgrace is in itself base or wicked, and secondly, whether by lawfully aiding, instead of hindering, these unfortunate women in their natural desire of secrecy, the morality and happiness of human society would be advanced or injured. The natural desire to avoid shame and disgrace is a shield of womanly virtues and the basis of marital happiness. If, then, this desire leads some poor

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women to kill their offspring, the fault lies in the aggravating circumstances which our civilization allows to exist. If the laws and customs of a nation undermine the chastity of its female population, if they not only allow but actually propitiate illegitimate relations, if they facilitate the men's ignoble attempts to shirk all responsibilities and duties of fatherhood, if they add scorn and disgrace to the other severe penalties, and finally, if the state itself refuses to assume fatherly care of the innocent infants who, with or without legal sanction, are robbed of their natural fathers, their protectors and supporters, if such conditions are permitted to exist in a civilized country, then infanticide is the logical consequence, and its capital punishment is one of the most unjust legal absurdities. Under such conditions infanticide is merely an act of self-defense against unnatural, absurd circumstances and against the child which deprives its mother of her peace, honor, and means of self-support.

The complete answer to the second question is more or less involved in the remainder of the book. Pestalozzi thinks it of prime importance that all crimes which ought to be strongly abhorred should be punished secretly. Therefore the state should appoint secret counselors of conscience (*Gewissensräte*) who by extreme kindness and tactfulness should gain the confidence of pregnant girls, advise them, find a quiet home for them, and discover the father of the child in order to persuade him to assume his duties toward mother and child, either publicly or secretly, so that the state can dispense with special asylums for illegitimate children. In fact, Pestalozzi is strongly opposed to such institutions. In discussing the specific sources which lead to infanticide and in proposing means to remedy them, our author takes up the following points: (1) deceit and faithlessness of the seducing youth; (2) legal fines and severe public punishment and disgrace as compared with relative immunity of the adulterer; (3) poverty of the seduced; (4) helplessness and dependence of the servant-girls; (5) fear of relatives; (6) humiliating hypocrisy of fellow men; (7) consequences of previous vices; and (8) the external circumstances during the time of birth. This is followed by many instructive extracts from actual proceedings against women accused and found guilty of the crime.

In sharp contrast with this cruel reality stands Pestalozzi's beautiful dream of an ideal human society in which the laws of a country are based on the principle that all true human happiness rests on faith in God and love of mankind. In such a land the prevention of infanticide begins with a better education of the masses through schools as well as through happy homes; young men and women are engaged in wholesome sport, and extreme poverty is avoided by teaching and practicing the laws of economy, both in the finances of the state and in the households of the people.

A final paragraph deals with the effectiveness of capital punishment as a preventive of infanticide. Pestalozzi thinks that the sight or thought of an execution can never be vivid enough to help a despairing girl resist the temptation to kill her illegitimate child. His reasons for this are based on a sharp psychological analysis which reveals a clear understanding of the workings of the human mind under such circumstances. He shows that the degree of vividness of ideas leading a girl

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to murder the new-born babe must be extremely great in order to overcome the natural mother-love inborn in her sex, to conquer her emotions of disgust and revolt against such a deed, to make her forget the dangers to which she exposes herself, and to bring about such a confusion of her senses as to render self-control impossible. He finds that the state of mind in which the crime is usually committed is the final end of a long period of restlessness and anguish, enhanced by a mixture of such passions as anger, revenge, indignation, bitterness, and hopelessness. In some cases these long-repressed emotions come to a sudden climax and the act is done in an outburst of rage, while in other cases the passions gradually culminate in unspeakable obduracy and reticence which makes the crime seem deliberate in spite of all lack of precautions against discovery. Complete mental confusion and absolute physical exhaustion is reached in those cases where thoughts of most insignificant consequences are the last and most powerful motives of the deed. Pestalozzi describes with heartrending concreteness how the wish to get rid of the child, at first rejected with great disgust, returns again and again, each time finding less and less resistance, because the many other circumstances have weakened the mind and thus paved the way, until in the fever and the pains of birth, no strength to resist is left, and the wish becomes a deed. For these and other reasons the author has no faith in capital punishment as a preventive of infanticide, and the publicity of criminal prosecutions and executions, instead of proving a deterrent and fostering nobler sentiments, has the opposite effect, it gradually suffocates morality in that it makes bad deeds seem less dreadful and thus prepares the soil for the germs of vice and corruption.

Cleveland, Ohio.

L. R. GEISSLER.

CRIME AND INSANITY. By *Charles Mercier*. Henry Holt & Co., New York, 1911. Pp. X+254. Price, 75 cents.

This little volume may be regarded as a supplement to the author's book on "*Conduct and Its Disorders*," since crime is, as the author considers it, a disorder of conduct. The writer has attempted to show in what crime consists and has set forth his views as to the nature of insanity. Finally he summarizes his views with respect to the responsibility of insane criminals. In the first place neither crime nor insanity would be recognized were it not for certain habits which have grown up in the course of social development. Crime is antagonistic to the cohesion of society and indirectly to the welfare of the individual, and here, he says, arises the function of criminal law; namely, to impress the desire for self-preservation into the service of social preservation. Criminal law is founded on the recognition of the fact that the social instincts are not of themselves powerful enough to overcome unaided the self-regarding instincts.

In the second place the author undertakes a definition of insanity. It is not simply mental disorder. Many mental disorders are not in any way to be considered as illustrations of insanity, the test of which is ability to recognize a mental disorder which affects conduct. But failure to recognize such a mental disorder is equivalent to a functional failure

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in what the author calls the highest mental faculties. In this connection one finds a great deal of crude psychology. Now the author goes on to study the main forms of insanity that conduce directly to crime. First, the insanity that is most frequently associated with crime is that of drunkenness. Next to the insanity of drunkenness, is feebleness of mind. The subject is unable to foresee the consequences of his conduct and, therefore, he is the more likely to engage in forms of behavior which are anti-social. Third, epilepsy; the crimes which arise from this source are those of violence. Fourth, paranoia. Subjects of this form of insanity are usually possessed by the belief that they are the victims of a plot and they often wreak vengeance upon their best friends who are suspected of being implicated in the plot. The fifth form of insanity in this connection is general paralysis of the insane. The sixth, melancholia. The victims of this form are frequently possessed by an unchangeable belief in their own wickedness, incapacity or poverty, and hence they believe that they are a burden upon their friends.

Following this statement the author goes into an elaborate discussion of various kinds of crime. There are various offenses against the public, and as numerous private offenses. Those that are committed to gratify malice and to guarantee personal security; self-advantageous offenses; family and racial crimes. One entire chapter of ten pages comprises a classification of crimes and one is led to wonder what is the reason for its existence. Finally in the last chapter, entitled "Crime and Insanity," the author first touches upon the question of responsibility. Psychologically, crime in the majority of cases is a preponderance of self-regarding desire and action over social desire and action. This social desire he identifies with the social instinct which "is the inherent repugnance to injure others in order to gain advantage to ourselves. It is the honesty that is preserved by an inherent repugnance to act dishonestly; the desire to avoid injuring others in mind, body or estate; the sympathy that is pained by injury done to others; the instinctive aversion to any act that is injurious to the social fabric." Such a statement reveals a befogged mind, and the remainder of this chapter is quite as futile from a psychological viewpoint as is the above quotation.

The volume is concluded with a summary of the author's ideas respecting the responsibility of the insane, which is quoted from "*Criminal Responsibility*" by the same author. First, some persons are so deeply insane that we are not warranted in punishing them for any offense. Second, since the majority of insane persons behave satisfactorily to a considerable degree it is a question for the jury whether insanity in a particular case would or would not influence conduct. Third, since the limits between the sane and the insane aspects of conduct are ill-defined, the sane and the insane should not be punished with equal severity for a given offense. These propositions apply to persons who are insane and who exhibit intellectual defect or disorder. Such persons are completely or partially exonerated if they did not know the nature and quality of the act, provided that this knowledge includes knowledge of the circumstances in which the act was done, and provided, also, that it be borne in mind that that knowledge is a matter of degree and that a person may know his act is wrong without knowing how wrong it is. Fifth, it

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seems desirable that the state of moral insanity should be recognized as a morbid state and that persons who suffer from this form of insanity should not be considered as wholly responsible for their acts. Sixth, the moral imbeciles should be given over to special treatment directed to the removal of their disability.

Northwestern University.

ROBERT H. GAULT.

HEREDITY IN THE LIGHT OF RECENT RESEARCH. By *L. Doncaster*. Henry Holt & Co., New York, 1910. Pages VII+138. Price, 40 cents.

This little volume is an excellent review of the present status of scientific opinion with reference to heredity. The chapter headings, after the introduction, are as follows:

"Variation," "The Causes of Variation," "The Statistical Study of Heredity," two chapters on "Mendelian Heredity," "Some Disputed Questions," which includes a brief discussion of the inheritance of acquired characters, and finally a chapter on "Heredity in Man." Following these chapters are two appendices, the first entitled "Historical Summary of Theories of Heredity," and the second, "The Material Basis of Inheritance." There are forty-four items in a bibliography, including only such titles as will be of most service to the student in this field; a glossary of four pages is appended. The portions of this volume that are of most interest to the student of criminology and to the readers of this JOURNAL, in general, are found in those pages in which the author discusses heredity in man. A knowledge of the facts of inheritance is of extreme importance to mankind and the collection of adequate data in this field is one of the most needed social requirements. We have already a few excellent studies of resemblances between brothers and sisters, parents and children, children and grandparents, uncles and aunts, and among cousins. With a much wider range of investigations in these fields than we have at present there would be some probability of our being able to understand an individual from the point of view of the condition of his relatives.

Given parents of a certain constitution, one can say that on the average a certain proportion of their offspring will have such and such characteristics, but at the present time we are not able with any degree of confidence to state the foundation of our faith. We are in the habit of believing that inherited disease arises largely from the cumulative effect of bad conditions, drink and the like, but Mr. Doncaster considers it very doubtful whether the effect of such conditions is really transmitted. In an extensive study of 1,400 children in the schools of Edinburgh, by Elderton, it has been found that there is no regular relation between the habits of parents and the health and intelligence of the children. Defect in health and intelligence on the part of children may be the result of alcoholism in the parents, or the result of a nervous disorder, which, in its turn, is responsible for the parents' alcoholic habits. This consideration may apply to the problem of the physical and mental inferiority of our slum population. We do not know positively that such inferiority is the effect of miserable surround-

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ings or whether the miserable surroundings are themselves symptoms of a deeper-lying cause. The unfit may gravitate to the worst because the more fit occupy the best places. All of these causes lead to the very serious question of the efficiency of our agencies for improving the conditions of the afflicted from the racial point of view. Under our care, in our charitable institutions, these classes develop improved habits of life and thought. In due time we send them out again into society. There they reproduce their kind. If the prevailing ideas with respect to heredity are correct, we have no assurance that these rehabilitated characters are not contributing, through their progeny, to the unfit and criminal portions of our population. All of this suggests the point which the author finally makes, that in the cases of criminality and insanity "marriage of those afflicted, and to a less extent of their near relatives, involves a grave risk of transmitting the affection to descendants and thus afflicting serious injury upon society." Of course, the author would not intimate that our charitable institutions and prisons of the better grade are undesirable from the point of view of racial improvement, but that they are only a partial good, and in order that they may be of the most service to the race we must take much more strenuous measures than at present for the control of reproduction.

Northwestern University.

ROBERT H. GAULT.

DER POLIZEIHUND ALS GEHILFE DER STRAFRECHTSORGANE. By *Dr. Th. Zell*. J. Guttentag's Verlagsbuchhandlung, Berlin, 1909, pp. 164.

This is a pamphlet which is divided into two parts—a theoretical and a practical part.

The author is a trained specialist in the field of zoölogy, and in the theoretical part of his book he gives a very interesting and very complete account of the complementary functions of man and dog, deducible from the fundamental law of biologic economy that animals having a keen sense of sight lack a keen sense of smell and *vice versa*. An animal weak in every faculty will not survive and an animal strong in every faculty will not permit its enemies to survive. Seeing animals, such as men, look at each other's faces when they meet, and smelling animals, such as dogs, regard those portions of each other's bodies which have the most characteristic smell.

In the second part of his book the author devotes himself to a consideration of the practical problems of the police dog. The author, by the use of a very pleasing style and the citation of many actual cases of the police dog's activity in Germany, furnishes to the reader an excellent account of the manner in which they should be treated, and the protection of the scene of the crime until the arrival of the police dog.

The book under review furnishes an excellent example of the proper correlation of technical scientific theory and practical scientific knowledge with reference to police dogs, which renders the book no less interesting to the general reader than it is valuable to the professional police officer.

New York City.

LEONARD FELIX FULD.

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A TREATISE ON FEDERAL CRIMINAL LAW; PROCEDURE, WITH FORMS OF INDICTMENT. By *William H. Atwell*. T. H. Flood & Co., Chicago, 1911. Pp. 452.

This volume is misnamed a treatise, for it is, as the author indicates in his preface, merely a series of annotations upon the federal criminal code. Nor can it be called an annotated edition of the code, for many sections of the code are printed without any annotation whatever. Only such annotations are given as seem to have been accumulated by the author in connection with his official duties. For this reason the annotation on some points is complete and useful, while on others it is incomplete and of little value. The cases are merely summarized without any attempt at critical discussion.

The volume is of some value for its annotations on special points, but it cannot be highly recommended. It has the appearance of a series of notes taken for the author's own use and of value for such use, but without great value to others. There are some serious errors, as on page 25, where the author takes the position that the "second jeopardy" provision of the fifth amendment to the federal constitution is a limitation upon the states. The volume having been prepared for publication in 1910, there is, of course, no mention of *Bailey v. Alabama* (219 U. S. 219) in the discussion of peonage; but there appears to be nowhere in the work a discussion of the earlier case of *Robertson v. Baldwin*, which is of importance in connection with the subject of involuntary servitude. The volume has no table of cases and its index is unsatisfactory.

University of Illinois.

W. F. DODD.

THE GIRL THAT DISAPPEARS; THE REAL FACTS ABOUT THE WHITE SLAVE TRAFFIC. By *Gen. Theodore A. Bingham*. Richard G. Badger, Boston, 1911. Pp. 87. Price, \$1.00.

This is another study of the now somewhat familiar, but yet unsolved, problem of the white slave traffic. The author is in a position to be well informed on the subject, having been for three years and a half police commissioner for Greater New York. In a series of brief chapters, with such headings as, "Where Do the 'Lost Girls' Go?" "Girls at \$60 and \$75 Each," "How 'White Slave' Traffic Is Carried On," "A Typical Cadet History," "System Employed to Make Women Immoral," etc., he rehearses facts concerning the recruiting and enslaving of unfortunate girls, mostly foreigners, for criminal purposes.

Mr. Bingham suggests a number of remedies. "Do not hesitate to talk openly and frankly of the social evil in your town. Drive the facts out into the open. If any considerable proportion of our citizens would do this for a year or two we would soon have this horrible problem under control, at least."

A spy system maintained in Europe, modeled in a way after the customs spy service of the United States government, would be helpful in preventing girls from being shipped in from the London "breaking-in ground." Woman reformatories, like that at Bedford, N. Y., should be established for the rescue of women already fallen. In the meanwhile,

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however, he strongly advocates "segregation" as a fitting solution of the problem and cites Toledo and Cleveland as cities where this method has been successfully carried out. He had his plans worked out for New York, and, had he been continued commissioner six months longer, would have divided the city into four districts. In each of these sections there are now houses given over mostly to prostitution. From these buildings any decent families would have been moved, border lines would have been established beyond which women of the underworld would have been prohibited to go. Eventually, police detailed to this district would have been instructed to stop strangers entering it and inform them where they were going. All the glamor surrounding certain phases of the evil in New York would have removed the prostitute from the tenement house, where she is now often found, and with the legalizing of her trade within certain bounds, there would be removed the fear of arrest which now keeps her under the power of the "protector" and thus makes white slavery possible.

Whether "segregation" is a satisfactory solution for the social evil seems very doubtful. It did not work in Seattle, and Chicago's commission has announced a program of suppression rather than segregation. It is a question on which people of equal moral earnestness will differ. Mr. Bingham's suggestions, coming from one of his experience, are worthy of consideration, however, whether we agree with him or not.

Latrobe, Pa.

G. C. FISHER.

THE ADMINISTRATION OF JUSTICE IN CRIMINAL MATTERS (IN ENGLAND AND WALES). By *G. Glover Alexander*, M. A., LL. M., Barrister-at-law. Cambridge University Press; G. P. Putnam's Sons, New York. Pp. 158. Price, 40c net.

Americans interested in criminal law reform will welcome this little volume, since it furnishes, within small compass, information concerning the constitution, powers and procedure of the tribunals that administer the criminal law in England. America's interest in these institutions of the mother country is due primarily to the parallel constantly drawn between our system and that of England to the disadvantage of the former. Since our law and procedure has come to us from England, it is not surprising to find that the systems, in externals at least, are the same in both countries, but here the comparison ceases. To improve our administration we do not need to borrow forms; we have them by right of inheritance, but we do need to borrow the passion for law and order that characterizes the English people, the homogeneity of the bench and bar, which would make any system a success. Within a narrow compass the author has compressed a great deal of information concerning the various courts, from the petty sessions to the court of criminal appeal, a recital of the powers and duties of the attorney-general, solicitor-general and the director of public prosecutions; a résumé of recent legislation relative to the probation of criminals, a consideration of statistics relative to crime and its increase, synopsis of the jurisdiction of the various courts and a list of large works for those who are not content with a mere outline. Over half the book

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is devoted to a consideration of justices of the peace. The importance of this tribunal which may be, and usually is, largely composed of laymen, is indicated by the fact that of the 43,000 criminal causes of all degrees tried in 1908, all but 14,000 were tried in these courts. Of this number, 54,000 were indictable offenses. The fact that so large a part of the criminal business is transacted by the unpaid judges will no doubt surprise those who have not made a special study of English courts. It will not do to compare these local magistrates with the justices of the peace known in America. All of them, with the exception of those who are *ex-officio* justices, such as mayors and ex-mayors, are appointed by the Crown. For the most part, they are men of standing and substance, who have had large business and administrative experience. On law questions they are advised by the clerk, who is a lawyer and salaried official. They are, furthermore, subject to the control of the High Court of Justice.

University of Wisconsin.

H. S. RICHARDS.

TESTS FOR PRACTICAL MENTAL CLASSIFICATION. By *William Healy*, M. D., and *Grace Maxwell Fernald*, Ph.D. Psychological Monographs, Vol. XIII, No. 2, Whole Number 54. The Review Publishing Co., Baltimore, March, 1911. Pp. VII+53.

Mrs. W. F. Dummer, several years ago, devoted a sum of money to the investigation of offenders brought before the Juvenile Court at Chicago. The carrying out of the investigation was intrusted to Dr. Healy, who incorporated the undertaking as the Chicago Juvenile Psychopathic Institute, and who associated with himself Miss Grace Fernald as psychologist of the institute. The offenders are examined medically, sociologically and psychologically. (See this JOURNAL, May, 1910.) In the development of this last phase of the work, Dr. Healy, with the advice of many American psychologists and with the immediate assistance of Miss Fernald, worked out the series of mental tests which form the subject-matter of this monograph.

The aim of the tests is to diagnose the actual mental status of the subjects, to determine their native intellectual capacities, the extent and outcome of their formal education and their preponderant needs and interests in life.

The content of the tests has of necessity been determined by the special conditions under which they were made. Thus, they avoid, so far as possible, forms which put a premium upon linguistic training; they appeal strongly to curiosity and emulation; they need but relatively simple apparatus and they are adapted for use with children ranging from 8 to 15 years of age.

The series of twenty-two tests begins with a picture form-board and advances through a series of four other puzzles (a special picture puzzle, two "construction" puzzles and a puzzle box, this last being a very clever adaptation of the puzzle-boxes so commonly used in comparative psychology), then examines reliability of report, visual memory of geometric figures (as in the Binet tests), learning and associative activity (four forms of test), memory of paragraphs seen and heard, ability to

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open a box after instruction, association by opposites, motor coordination, reading, writing and arithmetic, ability to play checkers, reaction to moral questions, and general fund of information.

The description of each test embodies a statement of its aim, an account of the materials used, the method of procedure followed, the manner of scoring performance, and sample results.

When one surveys the tests as a whole to find out what mental traits, capacities or aptitudes are supposedly measured, one finds such items as perception of differences of form, powers of coordination in handling objects, ability to learn by trial and error, perception of the relationship of parts to a whole, sensory discrimination of form and color, power to plan a bit of work, powers of attention and continuity of effort, ability to analyze a slightly complicated physical situation, power to report faithfully what is seen, suggestibility, imaginativeness, powers of dramatization, veracity, visual memory, ability to establish a set of associations, ability to analyze out the parts of a figure, ability to read understandingly and to recall what is read, capacity for following instructions, accuracy and rapidity of motor coordinative power, willingness to do one's best, speed and accuracy of writing, reading and solving arithmetic problems of appropriate difficulty, power of foresight, powers of intellectual comprehension of a moral situation, range of information, amusements, occupations and aspirations, etc. Truly an interesting list if they could all really be *measured*! What really happens is, of course, that the examiners, after due experience with the tests, are able to sort out the examinees into a number of groups and with sufficient accuracy to serve their immediate purposes—hence the title, "Practical Mental Classification."

This practical classification is, in fact, given us on page 51 of the monograph; the thirteen working-groups are made up thus: psychoses, imbecile, moron, subnormal mentality, dull from known physical causes, and eight groups depending on degree of native ability (poor, fair, ordinary, above ordinary) and formal educational advantages (poor, fair or good).

The reviewer finds himself on the whole quite favorably impressed with this work. He would wish, however, that the standardization of the whole series of tests, as regards material, method of giving instruction and method of scoring, had been carried to a more satisfactory conclusion. It is quite true that the authors attempt to tell just how each test is administered, but it is certain that no one could take this monograph as it stands and duplicate the series with any confidence that he was reproducing Dr. Healy's conditions. If there appears to be any demand for it, arrangements should be made with some firm of instrument-makers for putting the material on the market. Methods of procedure should be more accurately defined. Forms of performance should be established.

Cornell University.

G. M. WHIPPLE.

REVIEWS AND CRITICISMS

TRAITE ELEMENTAIRE DE DROIT CRIMINEL, A L'USAGE DES ETUDIANTS EN DROIT DE DEUXIEME ANNEE. Par *C. Degois*. Librairie de la Societe du Recueil Sirey, Paris. 1911. 8vo, pp. 1015.

No one who has had occasion to consult the French commentators upon legal subjects can fail to have been impressed by the differences in method of treatment which distinguish their work from common law text books. With some striking exceptions, for which the names of Thayer and Wigmore especially stand, our American texts are largely convenient abstracts of decisions, the result of which they aim to state in more or less happy generalization. The English works, though displaying far greater acuteness of analysis, are built up entirely upon the English leading cases. With the Continental authors, on the other hand, the statement of a proposition of law is supported as a rule, not by reference to adjudged cases, but by an elaborate analysis of the principles involved and of the reasons for and against the conclusion reached, in which opposing views of other commentators are frequently set forth at length. It is not remarkable, accordingly, that the French commentaries should be marked by a clarity of expression, a felicity of style and an originality and force which render them as conspicuously readable and convincing as their American prototypes often are to the contrary. You refer to an American law text book; you read a French one.

Professor Degois' "Elementary Treatise on Criminal Law" is quite in the French vein. Intended as it is for the use of law students in their second year, it covers a far wider range than any American or English book of similar character. One would not, for instance, find in our texts the extended and illumining discussion of the proper theoretical basis for the punishment of crime which occupies the forty pages of Prof. Degois' introduction. The student is made familiar at the outset with the presently accepted theory that the fundamental justification for the punishment of criminals, and the ultimate aim of that punishment, is the defense of orderly society rather than the vindication of an absolute theory of justice. There follows an equally acute analysis of the objective and subjective conceptions of the application of criminal law, wherein the doctrines of Lombroso and the modern Italian school are considered, and the weaknesses of Lombroso's original theory of the born criminal are laid bare. The French law student reviewing these discussions cannot fail to have a far broader understanding of the economic, moral and social elements entering into the theory and application of the criminal law than we give to his American cousins. Nor can it be doubted that the proper appreciation of these elements would advance the cause of criminal law and criminal procedural reform in this country.

This book extends over more than one thousand pages of compactly printed matter. French criminal law is fundamentally statutory, being made up of the Code Pénal and the Code D'Instruction Criminelle, with additions and amendments by positive legislation since. No act can be a crime in France unless it is in contravention of some express penal law or statute: "pas d'infraction, pas de peine, sans text." There is

no French common law of crimes. The specific crimes are defined in the Code, which sets out the elements respectively constituting them. Prof. Degois does not enter into a discussion of any of these specific crimes or of the codal provisions concerning them. He has nothing to say about murder as such, or theft, or treason. Their treatment is reserved for a work more extended than this, which avowedly is limited to general principles. But the general and necessary elements in all crimes are stated and discussed at length, as, for instance, the necessity of a penal law prohibiting the act, the execution of the act to the stage which the law considers an attempt, the absence of justification, the existence of a legally responsible and punishable agent. In the development of these principles one notes marked divergences at times from common law notions. The theory of personal jurisdiction recognized in Continental systems generally has, of course, its application in the criminal law of France. A Frenchman committing a crime anywhere is amenable to the French courts. The law applied is the French law, without regard to the foreign or local law (p. 126). Indeed, the French courts will undertake to punish even a foreigner for a crime committed on foreign soil, if the crime be an attack on the credit and security of the French state, as, for instance, plotting to restore monarchical government (p. 122 *et seq.*). Against a Frenchman who has committed a crime abroad the courts will render judgment in his absence by default or "contumace" if he cannot be extradited. But the fact that he has already been punished by the local law at the place where the crime was committed will relieve the Frenchman from a second punishment at home (p. 119). The principle of territorial jurisdiction is, of course, also maintained, though the foreigner who has committed a crime in France will not be punished there if he has already been punished by the courts and the law of the nation to which he belongs. To one bred at the common law this emphasis of personal jurisdiction seems not justified by any theory of social defense, especially where the alleged criminal never returns to France and his past record or crime can never constitute a menace to any French community by his residence there (cf. the author's comment at p. 99). It follows from the French theory that a Frenchman who has committed a crime in a foreign country may never be extradited from France. France will not surrender him, because the French courts are competent to punish him (p. 131).

The section devoted to persons not criminally responsible contains some passages of interest with regard to the punishment of minors. The French law fixes sixteen as the normal age for complete criminal responsibility, but by a recent statute (1906) minors as old as eighteen may receive in some cases the same character of correctional punishment visited upon minors under sixteen, instead of the penalties usually visited upon adults. Children, under sixteen, guilty of criminal wrongdoing, may be put in the custody of their parents or confided to charitable organizations or private individuals; or they may be specially imprisoned, apart from adult criminals, in houses of correction where they receive moral, religious, and technical, or professional, as well as elementary education. Provision for Juvenile Courts was made in France only in

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1910, due credit for the originality of the idea of such courts being given to the United States (p. 261).

Some three hundred pages are devoted by Prof. Degois to a review of the various kinds of penalties and punishments established by the French law, which seems especially fertile in devising penalties and especially careful in their application. Punishment by deportation is, of course, unknown to us and so are many of the provisions for civic degradation, including the deprivation of all general, political, public and family rights. Complete civil death was formerly the result of conviction of certain serious crimes; this has been abolished since 1854, but there are still certain special civil incapacities, as, for instance, incapacity to receive or make gifts, incapacity to make a will, and incapacity to administer one's own estate. The importance to be attached to repetition of the same offense in determining the degree of punishment to be visited upon a criminal has, of course, been recognized by the French legislators and courts and is discussed here at some length. The indeterminate sentence receives some notice with special reference to its application in New York (p. 411). Prof. Degois presents objections to the system, which do not, however, appear weighty. He thinks that every good object which it would serve is attained by the French system of conditional liberation, which corresponds to the parole system. The suspended sentence has, as is well known, been in practice in France since the passage of the "Loi Berenger" in 1891. The conditions of its exercise are fully discussed (pp. 556 to 569) as also the operations of the pardoning system (pp. 570-587).

From what we have already said, the extent to which this work goes in range beyond any corresponding American text book for students is doubtless quite apparent. But we have noticed the character of barely more than one-half its contents. The remaining one-half takes up the subject of criminal procedure in considerable detail, setting forth the organization of the police for the detection of crime, the nature of the proceedings which may be instituted for the punishment of the criminal, the conduct of the preliminary examination, the course of hearing upon the merits, the methods of appeal. In this is included a full statement of the nature and organization of the courts and of the departments of justice in charge of prosecutions. There are many points in French procedure which differ radically from that of our American states. In the trial in the Cour d'Assises, the court of first instance for hearings upon the merits, after the preliminary examinations and the possible appeals therefrom have been concluded, most of the examining of witnesses is done by the presiding judge of the court. Indeed, counsel for the defendant can examine only through the presiding judge, by submitting to him the questions they desire answered and asking him to propound them; they may not examine the witnesses directly (p. 839). The president may refuse to propound questions thus submitted, and, if his colleagues sustain him, the remedy is by appeal. The jurors may take notes and examine witnesses freely. The defendant may himself be put on the stand by the government, though he may refuse to make any statement. Unlimited challenges are allowed

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until only twelve names remain in the jury box; those twelve must then serve as the jury and none of them can be challenged. Provision for appeal is as complete as in this country, resort being possible first to the Court of Appeal and then, on matters of law only, to the Cour de Cassation. Apparently, however, abuses by delay and reversals of conviction on technical grounds are not common. For this, credit is doubtless due to the absence from French procedure of the technical rules of pleading and evidence by which the administration of justice in this country is oppressed.

The usual limitations prohibit more detailed notice of much interesting matter in Prof. Degois' book. Enough has been said, however, to indicate its scope. The book abounds in concrete hypothetical cases, put to illustrate general propositions and calculated to arrest the attention and stimulate the interest of the student. The arrangement is orderly and the analysis careful and acute. In clearness and readability the work measures quite up to the high standard which generally distinguishes French law texts.

New Orleans.

MONTE M. LEMANN.

DIE SOZIOLOGISCHE STRAFRECHTS LEHRE: EINE KRITIK. By IV. Von Rohland, Privy Councillor and Professor in the University of Freiburg. Verlag von Wilhelm Englemann, Leipzig, 1911. Pp. 136, Price, 3 marks.

This work constitutes Volume XIII of "Critical Contributions for the Reform of the Criminal Law," edited by Prof. Birkmeyer of Munich and Prof. Nagler of Basel. It is a strong criticism of the positive or sociological doctrine of punishment. It defends, in other words, the old retribution theory of punishment as essentially sound. The work is, however, of a much higher order than the usual apologies of the theories of the classical school. It takes up and discusses carefully the influence of the newer sociological doctrine of the criminal law upon criminal acts and the punishment of crime. It follows this with a criticism of the fundamental ideas of the sociological theory of the criminal law, and especially of its ideas of crime, responsibility and punishment.

The point of view of the author may be, perhaps, sufficiently characterized by saying that his chief contention is that the point of view of sociology is fundamentally different from the point of view of law; and that the sociological viewpoint cannot, with safety to society, be made the basis of our criminal law. Sociology regards crime simply as a social phenomenon. It is interested in what is typical in it, that is, in its social factors, not in its individual elements. The law, on the other hand, is interested most in the individual elements in crime and is not interested in it as a social phenomenon. The plea of the writer, then, amounts to this, that the sociological point of view and the legal point of view are fundamentally different, and that the science of law cannot be regarded as depending upon sociology. This would apparently make legal systems, although the author does not say so, independent of the natural biological and psychological forces in the life of society which

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the sociologist is interested in studying, and which he uses to explain crime as well as all other social phenomena.

University of Missouri.

CHARLES A. ELLWOOD.

PRISON LABOR IN GOVERNORS' MESSAGES. Prison Labor Leaflets, No. 3, 1911. National Committee on Prison Labor, 27 E. 22nd street, New York City. Pp. 24.

Convict labor has long been a social problem of great importance. In recent years the subject has received wider attention, partly on account of the increasing cost to the state in caring for these wards, and partly because of the change in public opinion concerning the collective responsibility for crime and its prevention. This pamphlet, published by the National Committee on Prison Labor, is made up of those portions of the governors' messages of twenty-eight states that bear on the question of the labor of prisoners. Perhaps the chief significance of the pamphlet is the fact that it reflects the widespread interest in the subject and indicates the trend of opinion toward correctional methods of treating prisoners. The experience of some of the states proves that it is possible to make returns from the labor of prisoners sufficient to offset the expense of their imprisonment. Furthermore, it seems possible to couple this desirable result with correctional methods that render a real service to the prisoner.

The pamphlet is useful and deserves widespread circulation.

Northwestern University.

F. S. DEIBLER.

CRIME PREVENTIVES. By A. H. Hall, Minnesota Academy of Social Sciences, 1910. Pp. 10.

This is a brief pamphlet read before the Minnesota Academy of Social Sciences. Mr. Hall assumes collective responsibility for the existence of crime and advocates the extension of regulative authority along three lines, as means of crime preventives: Stricter regulation of marriage, with the view of keeping "life pure and unpolluted at its source." Stricter guardianship over childhood, to the extent of penalizing parental delinquency where the proper development of the child requires it; and the extension of state activity in furnishing an environment that will make possible "the enjoyment of a full individual and social life and eradicate all that mars it."

The pamphlet contains nothing new or original concerning crime preventives, and hence is of little scientific value.

Northwestern University.

F. S. DEIBLER.

BERUFSSWAHL UND KRIMINALITÄT. VON Dr. Wilhelm Stekel, WIEN. Archiv für Kriminal Anthropologie und Kriminalistik. May, 1911. Pp. 268-280.

The ancient psalmist in his haste declared all men liars—some modern scientists, more at leisure, are apparently endeavoring to extend the category to universal criminality. One of these, Dr. Stekel, in this article on the "Choice of a Profession and Criminality," presents one of

the latest and most daring attempts to convict a large number of heretofore supposedly innocent people. He begins his article with the thesis that "every neurotic patient battles with suppressed criminal thoughts." In that he makes the cause more inclusive he differentiates his theory of the origin of neuroses from that of Freud, who limits the causes to suppressed sexual thoughts. In another respect, too, he differs from Freud by insisting that "without the involvement of the psychical in general no neuroses appear," and further "the neurotic patient is attacked with his disease because he wastes his energies in a war between criminal tendencies and opposing ethical ideals." To substantiate his thesis he brings forward several illustrations. One is the case of a man who occupied a responsible position and who gradually lost his power to work or to sleep and finally fell into a heavy mental depression. The cause of all this was his wife, whom he had married as a matter of honor, and who, because she was impecunious, rendered more impossible than ever his ambition to become independent. The particular criminality in this case became known through the man's ultimate confession that he had considered a plan to rid himself of his wife and son by poisoning them with illuminating gas. Against these besetting thoughts he had battled until neurasthenia supervened.

The next great step in the development of the thesis is the statement that all neurotics exhibit a peculiar type of mind, which he calls "psychical infantilism." Of course, then, to support this portion of his general thesis the author must condemn all children to the state of criminality. He agrees with Freud that the child is "*polymorph pervers*" and adds the further statement that "the child is also universally criminal and this in the widest meaning of the word." In further support of his statement he quotes the names of Lombroso, Haeckel, Alfred Adler and Jung, and adds, furthermore, several illustrations showing how children are consumed with thoughts of murder, arson, incendiarism, fratricide, patricide, and a host of other equally terrible crimes. For example, while admitting that the boy plays soldier partly for fun, he nevertheless insists that the young innocent is really satisfying his bloody instincts by mimicking a murderous occupation. He then mentions the case of a four-year-old girl who was asked by her father what she would do if she should receive a little brother that night. "I would immediately kill him," replied the child. This is surpassed by the three-year-old who threatened "categorically" that he would "chop off the head" of his infant brother. Out of such infantile threats, Dr. Stekel builds up his belief in the essential criminality of the child.

His next step toward proving widespread criminality amongst men is his inclusion of what he calls pseudo-epileptics under the class of potential criminals. He says "all these pseudo-epileptics suffer from severe criminal impulses, which vent themselves in the form of epileptic seizures." "The pseudo-epileptic fit is a substitute for crime."

Finally, however, the author comes to the real body of his article in the consideration of the relation of criminal tendencies to the choice of a profession. Professions, so he thinks, are chosen for five principal reasons. First, because the father has pursued that particular one. This may be motivated by filial affection alone, but is frequently accompanied

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with a desire to surpass paternal achievement. More interesting is the second reason, which betrays the tendency of children to choose professions different from that of their fathers. The third reason brings us back to the theme in hand. Many men, the writer believes, choose their profession in order to subdue erotic or criminal impulses. The most usual example of this class is the surgeon who is "often inherently a Sadist who has feasted upon the most bloodthirsty fantasies." A nose specialist is cited who feels the greatest pleasure when, in an operation, the blood spurts over his hand. Other equally gruesome instances are noted, all tending to show how inhuman impulses are often turned to philanthropic account. The fourth class is precisely opposite to the third. Here the profession is chosen in order to give outlet to the unknown criminal tendencies. A glovemaker is cited who insists that his highest pleasure is to set a kiss upon a beautiful hand. In the fifth class are all those who choose their profession in order to protect themselves against their criminal tendencies. Of this class the detective is the typical example, the one who has peculiar insight into the minds of criminals because of his own criminal thoughts. This class the author thinks forms the most important link in his chain of evidence for his thesis.

In conclusion, Dr. Stekel hastens to assure us that he has no thought of including all professional people under the class of potential criminals or of thinking for a moment that all reasons for choosing professions are exhausted by the five reasons given above. The purpose of his article, as stated in the last paragraph, is expressed in the hope that it may serve to arouse other investigators to study more carefully, first, the connection between both the choice of a profession and neuroses, and, secondly, the special relationship between criminality and neuroses. This excellent purpose would seem to justify what in the main would otherwise appear to be a rather sensational article; or at any rate, one in which conclusions are based upon such slender evidence that it can hardly, in its present state, be taken for a serious expression of a scientific theory. However, as the author desires, it is suggestive, and considering the curious and unexpected abnormalities that are constantly coming to the surface through the studies of psychiatrists and neurologists, it is in no wise impossible to accept the explanations herein suggested for certain psychoneuroses.

University of Pennsylvania.

ARTHUR HOLMES.

A TREATISE ON AMERICAN ADVOCACY. By *Alexander H. Robbins*. Central Law Journal Co., St. Louis, 1911. Pp. 311. Price, \$2.50.

This volume relates to both the civil and criminal practice as conducted in the American common law courts, under our jury system. It is a one-volume work, and is necessarily not exhaustive. The object of the work is to advise the American practitioner as to methods in the conduct of a trial, and to point out the dangers and pitfalls to be avoided. It teaches the manner and preparation for trial, the use of witnesses, expert and otherwise, in the trial, and the attitude to be taken by counsel toward all persons in any way connected therewith. It necessarily

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produces no set rule of action, but contains valuable advice to be applied by the practitioner to the individual case on trial.

The volume ends with much worthy comment upon the ethical relations between attorney and client, and is clean and wholesome. It contains much of value to the every-day practitioner, but especially to the beginner and inexperienced.

Chicago.

BERNARD L. LEE.

LA RECIDIVA. By *Giacomo Matteotti*. Fratelli Bocca, Milan, Italy, 1910. Pp. 434 and Appendix.

Matteotti's work on recidivism deserves honorable mention in the series of the "*Biblioteca Antropologico-Giuridica*," which counts so many of the leading works of modern criminologists. It is a clear analysis of the data of recidivism and a trenchant criticism of the various theories of its causality and of the methods that have been applied or suggested for its control.

As the author summarizes it, his work is to present clearly "the manifestations of this phenomenon, its various forms, the causes that produce or modify it, and from this to ascertain the essence and significance of recidivism in modern society especially in relation to the punitive function of the State"; and as "crime, and especially the repetition of crime, is one of the gravest ills of society, it is natural that society should react against it and seek to overcome and eliminate it." Hence the necessity of studying the penal or penologic means available against this scourge. Recidivism is but one form of that tendency in human conduct to repeat certain acts; its characteristic, however, is that in recidivism the acts repeated are the subject of reprobation.

Law from the most ancient times has recognized such tendencies by providing special penalties for the repetition of a given offence; but it was considered more as special provision for exceptional cases rather than, as in our day, a characteristic tendency or factor to be distinguished from the mere repetition of a given misdeed.

Recidivism was naturally of small importance in ancient times because the very nature of the penalty imposed for a large number of crimes precluded repetition. Rome in its oldest procedure knew no penalty other than death and until relatively recent times the thief paid for his first offence with his life. So branding on the forehead put possible victims on their guard against the nimble fingered, who lost thereby an opportunity to repeat their practices. Nor were the methods of the Middle Ages, decapitation, etc., less brutally effective against recidivism. Horrible as we must judge them, however, they must be considered in their effects in relation to the times in which they were applied and, so considered, may possibly not be the subject of wholesale disapproval.

The nineteenth century marked a tremendous change in the conditions of the masses and intensified the regard for "human personality"; philosophers theorized on eternal laws of inalienable rights and Beccaria and Howard came forth with the message of penal reform; corporal punishment diminished and temporary incarceration supplanted the older drastic penalties. "Hence," adds the author, "the old obstacles to the

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manifestation of that latent energy, of that potentiality to sin again which belongs to a certain type of the criminal, were swept away."

After this rapid survey, Matteotti enters into a lengthy and careful examination of the data of recidivism, taking up the statistics of the various countries and showing in a great many instances the unreliability of such data. He distinguishes recidivists and acts of recidivism (*recidivi* or *recidive*), a distinction which, according to the author, justifies the following conclusions:

1. Delinquency among first offenders does not in general increase, but oscillates between narrow limits and at times tends to diminish.
2. The number of acts of recidivism greatly increases, while the number of recidivists does not.
3. Approximately one-half of all crimes are committed by recidivists; it is to be considered, however, that after a first offence, the larger percentage of offenders (70 to 75 per cent) does not offend again.
4. On the other hand, for those who are already recidivists, an additional offence is the rule, especially for those who have undergone several convictions.

Next the author inquires into recidivism as manifested in various crimes, such as homicide, larceny, etc., and finds recidivism prevalent especially in crimes against property, in which class are included those offenders who make a regular living through such offences.

Passing to a consideration of the factors of crime and recidivism, the author dwells especially on the fact that as far as penal law is concerned, the principal factor to be considered is not so much the sociological or anthropological one as the *permanent* factor described by him as "the will, the criminal tendency such as is permanent in the individual at the moment of the commission of the crime, irrespective of how it was acquired, through heredity or environment." Hence his program is to study the statistics and data available in the light of the more important and the more easily controllable factors, beginning with those whose effect is more immediate and external and so both easily observable and more easily affected by social influences. From these passing then to the more permanent and intimate factors and distinguishing, in so far as it is possible, the effects which are direct and immediate ones from those which are indirect and mediate, and ascertaining in what measure they contribute to recidivists, i. e., to the formation of the permanent factor, that is, of the individual character or the intimate tendency to criminal life, and in what measure they contribute to acts of recidivism—that is, to the number of external criminal manifestations.

Among such factors the author first studies our penal systems as a factor of recidivism. Thus, impunity, which is unfortunately the not infrequent result of our methods of procedure, while it tends to affect the statistics which record repetitions of offenses (*recidive*), results in fact in the formation of a permanent factor—the tendency to crime. Appeals, pardons and short-time sentences are cited by the author under this head. As periods of imprisonment tend to grow shorter, we have an increase in the number of criminals coming out of our prisons; and this explains why, though the number of criminals has not increased, the number of criminal manifestations by recidivists has greatly augmented.

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Metteotti's inquiry leads to an indictment of the prevailing prison systems of Europe as useless against recidivism.

In considering the economic and social factors of recidivism the author points out how easy it is to find in the former the causality of any human act, and hence deductions made upon data of this kind, which interest sociologists, economists and political parties, may well need scrutinizing.

As regards age in relation to recidivism the author finds its maximum manifestations in adolescence, reaching its apogee in relation to population in the twenty-fifth year, with a rapid and constant decrease thereafter until the age is reached for crimes of senility. Males reach the maximum of recidivism much earlier than females, with an earlier and more rapid decrease in the former and constant and less steady diminution in the latter.

It would be too arduous a work to review briefly the author's exposition of the theories of recidivism to which he learnedly but not pedantically devotes the ten chapters of his Second Book. They constitute a critical presentation of the various schools from the classic-abolitionist to the modern positivist. Of special interest to us, rather, is his Third Book on "Penal Methods Against Recidivism."

The immediate object of punishment is the preservation of legal order. Our modern means to obtain this object were summarized essentially by Seneca:

"Aut ut eum quem punit emendet, aut ut poena eius ceteros reddat meliores, aut ut sublati malis, securiores ceteri vivant."

Of these, that which may be summarized in the word intimidation is represented by the body of penal laws which the state, in the observance of the minimum of the morality required by society, enacts as a deterrent or as a standard beyond which the acts of its citizens become "criminal." But before penal law can come into play with the individual, crimes have to be committed; the penalty applicable thereupon in order to be useful must be such as will be a deterrent not so much on first offenders as on recidivists. This can only be accomplished if the penalty will affect the permanent personal factor, that is, the cause of the crime as it exists in the offender; it must, in order to be useful, subject him to such discipline as will reach the personal factor and keep him under such discipline until a normal social condition is reached that will make it safe to restore him to all the rights of the socially normal citizen. Hence, penal laws and their application find their largest field in the battle against recidivism; and from the results in that field may best be gauged their efficacy and justness.

By these standards, penal law has most failed and has most to strive for in its provisions regarding *minors*.

Modern penologists, especially in America and England, have bent their energies towards this very problem. "Practice and theory," says the author, "concur in the opinion that sentences against minors should resolve themselves according to the individuality of the accused and of his environment, either into a conditional liberation . . . or . . .

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especially in cases of recidivism, in placing the offender in a reformatory . . . there to be held . . . for an indeterminate time . . . until he can reenter as a member of "an honest and laborious society."

A different problem faces us with adult offenders—for their character has largely been formed and fixed. Present methods against such offenders tend only, according to the author, to increase recidivism—as the discipline applied against them is generally short prison terms. Substitutes for these, such as domiciliary detention, exile, etc., are ancient. Those still in force are suspension or deprivation of civil rights, and pecuniary fines. The author greatly favors this last as a means toward "compensation for the damage done, first, and, secondly, as service to the state." The difficulty with regard to applying this form of penalty is found in our economic inequalities. But this could be met by careful classification of the crimes where such penalty could be fairly applicable. The author's examination on this subject is both novel and interesting.

But, of course, the great weapon devised by modern penology against recidivism is the conditional sentence, which we may proudly claim as an American product. Justice, as heretofore viewed, called for a specific and predetermined penalty for each crime, but, as Metteotti says, what is needed "is a penalty that is not predetermined and that may be as simple as a few days of labor or mere censure."

Penology, however, has gone beyond this by the creation of what may be called preventative institutions, such as inebriates' homes, epileptic colonies, vagrants' farms, and institutions for the criminal insane. Against the spirit of these, and in inexcusable contrast, are some of the existing jail methods—such as the lockstep and stripes, the limitation on convicts' letter-writing to their families, the hair-cropping and numbering of prisoners.

If these are intended to intensify the penalty for recidivists, they are more than ever objectionable. Anything that intensifies the penalty or rigor of the punishment, including solitary confinement, is the worst means against recidivism, for it intensifies the spirit of rebellion and nothing more. The great, the one effective means against recidivism is *work*; work is at the very basis of social life and penal law must strive to instil this conception into the recidivist as the basis of his own life, as a member of that society against which he has transgressed. But such transgressors must not live at the expense of the honest and law-abiding; they must work and make their work productive. The author admits that the organization of prison labor is not a simple matter; it needs special study as regards its application in cases of recidivists to make it as far as possible a continuing education in a given line of work, rather than desultory teaching at this or that trade.

The author closes his work with a consideration of the lines of difference between recidivists and incorrigibles, advocating indeterminate but not short term periods of discipline for the former and perpetual exclusion for the latter, and finally he makes a strong and stirring appeal for the creation and extension of societies to look after discharged convicts, which can, of themselves, do so much to reduce recidivism.

New York.

GINO C. SPERANZA.