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REVIEWS AND CRITICISMS.

THE INDIVIDUALIZATION OF PUNISHMENT. By *Raymond Saleilles*. With an Introduction by Gabriel Tarde. Translated by Rachel Szold Jastrow. With an Introduction by Roscoe Pound. Little, Brown & Company, Boston, 1911. Pp. XLIV, 322.

This volume in the Modern Criminal Science Series is a translation of what was originally a course of popular lectures before the College of Social Sciences at Paris in 1898. It should be read as an estimate of certain tendencies in the thought of the period in which it was written rather than as presenting much of permanent constructive value. In the preface to the second edition of 1908 the author says that he has retained the chapters as originally written "as an expression of the period. In themselves they may now have but slight value; as an historical document they may still be of use. . . . On many points the volume no longer represents the views of contemporary science; on some issues, it no longer exactly expresses my own opinion, or at least, not as I should now express myself if I were called to give my views." We may accept these admissions at their full value and still feel that it has worth while presenting the book to American readers for what it professes to be.

The underlying thought of the book is developed in the first chapter on "The Statement of the Problem." In the current of opinion on crime and punishment the author sees two opposing points of view, one that he denominates the classical, which regards only the consequences of an act, the objective side of the crime and does not consider the personality of the offender, and the other disregarding the act itself and looking to the nature and character of the criminal and seeing therein the danger to society rather than in the act done.

The classical view, although modified, remains the one most in accord with general opinion and its distinctive features he considers to be its objective view of crime and "its distinctive position with reference to responsibility." The actual changes in punitive practice he regards as a series of compromises between these opposed views and the trend of the discussion is to set forth the theoretical justification for the actual course of development. The author then proceeds to a "History of Punishment," which, however, simply embraces a very superficial and inadequate consideration of primitive punitive practices and a statement of the theory of punishment of what he calls the "classic school." Modifications of this theory grouped under the heading of "the neoclassic school," are next considered, a statement of the theories of the "Italian School" follows and then two chapters are devoted to the question of responsibility. In fact all these chapters, which comprise two-thirds of the book, are little more than a discussion of penal responsibility.

Professor Saleilles identifies the theory of responsibility of the classic school with the doctrine of freewill and the theory of the Italian school

with determinism. Further than this he sets free-will in opposition to causality and treats causality as equivalent to coercion. Naturally, therefore, his discussion of responsibility is largely metaphysical, not to say scholastic. It is difficult to see in it anything of value with reference to the questions of crime and punishment. As far as the question of free-will and determinism is concerned it was long ago pointed out that it is a pseudo problem. There is no necessary opposition between the idea of free-will and the law of cause and effect. There is neither necessity nor justification for regarding the will as a matter of haphazard chance. Because there is a motive for an act it does not follow that the act was compelled and not free. We eat at a certain time because we are hungry and the act of eating is not without a cause, but we do not doubt that it is within our power to eat or not as we will. Certainly neither the deterrent nor the reformatory theories of punishment require a belief in the freedom of the will, at least in the sense that the author assumes. On the contrary, the deterrent theory can quite as well be justified from the determinist point of view. Indeed the belief that certain stimuli in the form of punishments will produce or inhibit certain actions necessarily involves the belief that conduct is influenced by motives. But Professor Saleilles entirely ignores the operation of punishment as psychological motive. It will not do to pass over the inhibitory power of attention involved in deliberation. As recently expressed by James Ward, "it may be objected that deliberation in such cases is just the result of painful experience of the evil of hasty action and only ensues when this motive is strong enough to restrain the impulses that would otherwise prevail. Even if this be granted it does not prove that the subject's action is determined for and not by him; it merely states the obvious fact that prudence and self-control are gradually acquired. Authoritative principles of action such as self-love and conscience are no more psychologically on a par with appetites and desires than thought and reason are on a par with the association of ideas."

It is this pseudo problem that Professor Saleilles sees everywhere confronting him. "Responsibility as ordinarily applied is a conception based upon a preconceived conception of freedom, but it is determined in fact and in its application by a strictly empirical standard. The question of freedom remains the underlying issue; but a deterministic principle furnishes the means of application and remains the sole possible criterion of judgment." "Practically we find ourselves in the presence of two opposed tendencies. The one, the classic school, reduces everything to the conception of responsibility; the other, the Italian School, to a determinism." He rejects the theory of the neo-classic school as invalid and still "the position of the Italian School, however consistent and thorough in construction, yet as a whole, with due consideration of its practical consequences, must be rejected." Confronted with this contradiction, he turns to the popular conception of responsibility and the principle that the social defense must be adjusted "to the ordinary notions that circulate in the body social, to the sense of justice, the distinction between good and evil and accepted views regarding human responsibility." That this principle is valid will be at once admitted. Perhaps it was not necessary to do more than state it; but one would wish that there might

have been some discussion of why it is so. To the reviewer it seems that the author has taken the wrong road when he determines that it is the subjective aspect of the social conception that is significant for the penal point of view. Certainly if the criminal law is anything more than an arbitrary and imposed rule of conduct its nature must be sought in the collective conception of it; and that conception can only be known by an objective study of the group mind as it manifests itself in action. For that group conception lies not in the individual consciousness alone and may not be known through the explanation formulated by the individual consciousness. Yet the author really does recognize these considerations, though not very clearly. He well says: "Whatever may be said or done, government and legislation cannot really run counter to factors and phenomena as they exist, for these form the very structure of society. . . . In every community there is the real spirit which gives it life, and the ideal spirit which determines the goal of life. The government or legislation that disregards the former will find itself in direct opposition to the laws of society, but if the latter be disregarded the situation will be still more serious. . . . The legal life of society must be in accord with its true social nature. It must also express an adaptation of the ideal personality that directs its impulses and its progress to the demands of the natural laws that control its operations." This is profoundly true.

But Professor Saleilles concludes that while it is necessary to retain the conception of freedom as the foundation of punishment because that is the collective social belief, it cannot be used as a basis of practical application because, as he says, it belongs to the realm of faith and not to that of scientific demonstration. He returns to the view that the application of punishment should refer to the potential criminality of the individual. He must be responsible in order that he may be punished at all, but the punishment inflicted should be based on what he is rather than on what he has done. But this theory involves the view that law exists not alone to regulate conduct but to correct the moral character of individuals; it is opposed to the conclusions of legal science. As expressed by Sir Frederick Pollock, "law does not aim at perfecting the individual character of men, but at regulating the relations of citizens to the commonwealth and to one another." Even if we do not accept his theoretical foundation for the individualization of punishment, however, we may recognize as wholly admirable the discussion of the methods of individualization to which the remainder of the book is devoted. The provisions of the French codes and their results are examined and the methods in which individual treatment may be applied by the law, the judge and administrative officials are discussed as practical problems. In this connection the final suggestion of the author that if the problem be dealt with close to the field of practical results correct conclusions between conflicting theories may more readily be attained may well be kept in mind. Looking at the various measures for individual treatment of criminals which are grouped under the term individualization of punishment as they have arisen and are applied, is it not more correct to regard them, not as efforts of the law to correct character by means of punishment, but as educational and reformatory measures entirely out-

side the penal law and based not upon that but upon the general obligation of the state to endeavor to secure social justice? Are they not outside the penal law as are Ferri's "penal substitutes" which abolish causes of crime? Is not their real basis that broad social justice which requires that the criminal, although punished, be given "a fair chance of not being a criminal"? But, however we regard the theories advanced, the book is indispensable for the history of opinion on this subject.

Warren, Pa. EDWARD LINDSEY.

LE NORME DEL DIRITTO PENALE E I LORO DESTINATARI. By *Giulio Q. Battaglini.* Roma: Ermanno Loescher & Co. Pp. VIII+258.

To whom are legal rules directed—to the people or to the courts or to both, and if to both which are the primary objects of the address?—is a question which in its various ramifications has been the subject of much debate among Continental writers. In his present volume Professor Battaglini of the University of Sassari furnishes a scholarly contribution to the literature of this subject.

The book, as its title indicates, is mainly concerned with the question as it relates to the rules of criminal law, but the proper envisagement of the problem requires a preliminary survey of the principles of jurisprudence, and to this the first chapter is devoted. Here the author puts in high relief the idea that for its 'addresses' ("destinatari"), the legal rule contains not only a command, but also an authorization. "The function of law is two-fold: imperative on the one hand, authorizing on the other." (P. 28.) *Duty* is the immediate derivative of command (p. 9), while *right* is the character assumed by authorization "in its most significant form." (P. 28.) That troublesome question, the power of the state to bind itself by law, comes in for its share of attention. In declaring that inasmuch as there is no activity of the State except by its organs, it follows that when the organs are bound, the State itself is bound (p. 47), the author expresses a conclusion not unlike the view of Professor Gray in his "Nature and Sources of the Law," pp. 67, 68, 81. There is a sound criticism of the common use of the term "juristic person." It is inexact to confine the application of this term to artificial persons, for it is equally descriptive of the natural person in respect of his legal personality. (P. 54.) Legal personality is described as consisting in the capacity of becoming the subject of rights and duties or at least of rights. (P. 53.) The division of legal persons into original and derivative (pp. 55, 56) has much to commend it. Professor Battaglini rejects the fictionist theory of corporate existence, but does not unreservedly align himself with the realist school. For him the corporation is not a specific entity, but a plurality of persons endowed with an ideal unity. (Pp. 57, 58, 248, 249.)

The second chapter deals with the contrast between rules of criminal law and those of private law. With respect to the basic distinction between crime and civil wrong, the author holds that any attempt to establish a scientific criterion, such as the degree of peril which, in the law-maker's opinion, an act threatens to society (Von Liszt), or the social damage or injury to the social interest with which it is fraught (Carrara, Manzini), is wholly fruitless and that the only sure test is the

practical one of the legal consequences of the act. (Pp. 74-78.) The difference in principle between punishment and enforced reparation ("risarcimento") is skilfully analyzed. (Pp. 79-88.) Of vital bearing upon the author's answer to the principal problem, is the argument that, as opposed to the right of the individual arising out of the rule of private law, the rule of criminal law founds a true right of the state which "abstractly is the authorization to obtain abstention from crime and concretely is the authorization to exact subjection to punishment." (Pp. 91-93.) Among the other points of difference which in the author's opinion exist between the two classes of rules is noteworthy his distinction between absolute, and what he terms dispositive or suppletive rules. The latter are rules which offer a choice between means of equal legal efficacy. Such, for example, would be a statute providing that in the absence of agreement the rate of interest on money loaned shall be five per cent. Rules of this character are never found in the substantive criminal law: there the rule is always absolute. (P. 96.) The exposition of the interdependence of criminal and private law with which this chapter concludes, will be read with interest. On the one hand the sanctions of the criminal law indirectly avail for the protection of property, while on the other, a rule of private law must often be resorted to in order to determine the scope of a criminal statute. (Pp. 96-98.) Thus, a penal disposition concerning treasure trove, requires reference to the principle of private law which defines treasure trove. (P. 98.)

The principal problem is reached in the third chapter. Here are marshaled the various theories which have been advanced towards its solution. The industry and acumen which the author displays in their examination are no less remarkable than the diversity of views with which he is confronted. Jhering, for example, is of the opinion ("Der Zweck im Recht"), that aside from legal rules concerning governmental administration, all law, public and private, is directed, in its form to the organs of the State intrusted with its enforcement, in its scope, to the people. In this sense the direction is primarily to the representatives of the State, secondarily to the subjects of the State. The theory of Max Edward Mayer, Professor in the University of Strasburg ("Rechtsnormen und Kulturnormen" [Strafrechtliche Abhandlungen, H. 50]), is based upon that author's peculiar conception of the place of positive law. What the people are guided by, according to Mayer, is not positive law, but "Kulturnormen," which he defines as "the sum of all those commands and prohibitions which have become accessible to the individual as religious, moral and conventional imperatives—as exigencies of social and professional relations." While positive law is obligatory upon the citizen, it is addressed only to those who administer it. To suppose it to be addressed to the people is a pure fiction. Quite different is the theory advanced by Binding ("Die Normen and ihre Uebertretung;" "Handbuch des Strafrechts"), with reference to the rules of criminal law. This author would resolve every penal enactment into two elements: the norm and the penal statute. Thus in an enactment providing that one guilty of homicide shall suffer a certain punishment, the norm is "Thou shalt not kill"; the penal statute is the literal expression of the legisla-

tor. The norm is a command turned to the people; the penal statute is merely an "affirmative legal precept" ("bejahender Rechtssatz") for the guidance of the punishing authority. Only in so far as the norm is concerned is there a direction to the people. The limitations of space prevent us from following Professor Battaglini in his instructive critique of these and the other theories with which he deals. (Pp. 99-150.) But no one can conclude its reading without feeling that the author has here performed an important service for the cause of legal philosophy. The incidental problem as to whether, assuming that the law is addressed to the people, all the people are included in its address or whether there exist, to use the author's expression, "invalid 'addressees'" ("invalidi destinatari"), also has its theories, and these, too, are the subject of examination. (Pp. 160-194.)

The author's own solution opens the final chapter:— "Since in public law an immediate interest of the whole community is the subject of legal protection, it follows that the persons delegated to administer this community are directly regarded by the law. From the imperatives or from the obligatory authorizations destined for Authority, arise authorizations or duties of the subjects and vice versa. But the subjects are regarded only secondarily ('in seconda linea') by the rule of public law. On the other hand, in private law, the individual interest is the primary thing and the common interest the secondary. Here, naturally, the subjects are regarded directly by the legal rule. Hence, it may be stated as a general principle that, in public law, the representatives of the state are the primary 'addressees' of the legal rule—in private law, the subjects are its primary 'addressees'. * * * In the rule of criminal law there are imperatives and authorizations for the judge—imperatives and authorizations for the subject." (Pp. 204, 205.) *The rule of criminal law is always "directed primarily to the judge, secondarily to the subjects of the State."* (P. 206.)

Notwithstanding that Professor Battaglini has been careful to define for us the judge to whom his conclusion relates, as the representative of the state who authoritatively decides the concrete case in accordance with the abstract rule of the law-maker (p. 205), we cannot help thinking that consciously or not the author has been influenced by the peculiarities of Continental criminal procedure, and that his conclusion harmonizes better with that inquisitorial procedure than with the adversative procedure of our own law. We fancy that his theory will not appeal strongly to Anglo-American lawyers. But inability to accept the solution will not make us any the less grateful for the light which its working out throws upon this fascinating topic of legal science.

After discussing the application of his theory to different categories of criminal law rules, the author resumes his examination of the incidental problem above mentioned. Since the commands of the law aim at influencing motives, such commands cannot be addressed to infants or lunatics, for the motives of these are not susceptible of influence. (P. 237.) This is true not only as to rules of criminal law, but also of rules of private law even in those jurisdictions where the estate of the infant or lunatic is liable for damages because of an act or omission on his part which if committed by a competent person would be

called a tort. (Pp. 232-236, 241-247.) (The principle of the Roman law excluding this liability prevails in France and Italy.) (Pp. 240-241.) Reparation for the act or omission is demanded by considerations of social utility, but the imperatives of the law requiring this to be effected are turned to the representative of the person under disability. (P. 247.) Infants and lunatics are therefore "invalid 'addressees'" of the legal command. Not so of the authorization. The authorizations of the law are not directed to influencing motives and to them is indifferent the mental and physical nature of their 'addressees.' But the effectuation of the right to which the authorization gives rise must of course be had through the medium of the representative. (Pp. 247-248.) Collective persons, in the author's view, stand on the same basis as natural persons in respect to the address of the law except in one particular, namely, that they are not 'addressees' of the command to submit to punishment, precisely because they are incapable of punishment. According to the Italian law punishment can only be executed upon the individual and the author believes that such ought to be the law. (Pp. 248-251.) But this is a tender subject on our side of the Atlantic and Professor Battaglini will surely forgive his American readers if they refuse to be entirely convinced by his argument in the present regard.

The book in style and arrangement is exceedingly attractive and a wealth of footnotes testifies not only to the scope of the author's reading, but to the wide range of his linguistic equipment.

Chicago. ROBERT W. MILLAR.

HISTORY AND ORGANIZATION OF CRIMINAL STATISTICS IN THE UNITED STATES. By *Louis Newton Robinson,* Houghton Mifflin Company, New York, 1911. Pp. VIII—104.

In the "Survey" for November 11, President Eugene Smith, of the Prison Association of New York, was quoted as to the value of criminal statistics and their inadequacy in the United States. He points out that certain vital questions can receive final answer only by following the subsequent career of the offenders, and thus gaining data for statistical tabulation. He recommends in each state a permanent bureau of criminal statistics, as an independent body, or as a department of the office of the attorney-general or secretary of state. This bureau would prescribe the forms in which the records of all criminal courts, police boards, and prisons should be kept in order to secure uniformity throughout the state. It would inspect and supervise the records and enforce compliance with the requirements. In addition to this state bureau and in co-operation with each state bureau, Mr. Smith recommends the activity of the Federal Census Bureau in the effort to bring about a uniform system of statistical records relating to crime, for the entire country. The latter part of Mr. Smith's proposal is in agreement with the plan presented in the book under review.

The author, in the introduction, states his aim to be "not merely to present the main lines of development but to interpret and criticise the facts." The historical part seems to be very complete, but the attempt to interpret and criticise the facts is a disappointment to the

reader who is seeking to know what adequate criminal statistics must include.

The introduction is devoted to a definition of terms and to pointing out certain difficulties in the gathering and use of criminal statistics. There are two main groups of these statistics—judicial and prison—which the author proposes to examine in the nation and the states. The distinction between judicial and prison statistics lies in the fact that in the case of the former "the unit is some fact regarding the judicial system or the administration of justice," while, in the case of the latter "the unit is some fact regarding the penal system or the administration of this system." In complete criminal statistics are combined the essential facts about the crime and the criminal, all of which are necessary in the study of criminality. Since prison criminal statistics refer only to those actually placed in confinement, the records of the courts are the more fruitful source of information for the student of criminology.

Early in the discussion a much-needed warning is given as to the use of criminal statistics for purposes of comparison. Comparison at two periods when the strictness of enforcement of the law has varied, or comparison of the statistics of two states which differ in the strictness of enforcement may give utterly wrong conclusions as to the amount and nature of crimes. Besides, in the United States the existence of many states, each with its own set of laws and its own standards of enforcement, makes the compilation of adequate criminal statistics much more difficult than in France, England, or Germany.

The author proceeds to discuss the history of federal and state criminal statistics, both judicial and prison, after which, in a concluding chapter, he states his plan for reorganization in the United States.

Genuine criminal statistics began to be gathered by the Federal Government in 1880, when inquiry was made as to the nature of the crimes as well as the number of criminals. Most attention is devoted to the special investigation conducted in 1904 by the Census Bureau and published in 1907. In this investigation the greatest emphasis was laid upon the commitments to penal institutions during the year 1904. in order to "do away with the mistaken policy of basing all the knowledge of criminality in the United States upon the record of those found in prison on a certain day of the year." The federal criminal statistics have been mainly prison statistics, but in 1907 the Census Bureau undertook to collect judicial statistics through special agents sent to certain states and counties. The results have not yet been published.

If we agree that the purposes of adequate criminal statistics are to enable us to determine the nature and extent of criminality in a given area, and to ascertain the changes over a period of time, under the existing methods and laws, then the federal statistics, thus far published, are far from adequate. To be useful for the purposes stated the statistics must refer to a period of time and this period must be definite, but the period is not definite in the case of the 1904 investigation. The report shows 14,049 persons in prison June 1, 1904, sentenced for

the crime of burglary, but their sentences ranged from one year to life. Therefore, the period to which the statistics refer is utterly indefinite, and such figures tell us little about criminality in the United States.

In treating this part of his subject it would have been more useful if the author had introduced more of the concrete material from the Federal reports and if he had subjected this material to a more searching criticism in order to show the nature of problems in which accurate statistics are needed and in which the present figures may mislead. This is the constructive side of his critical task, to present to us groups of data gathered from both federal and state sources and to criticize them in such a manner that the reader will understand what constitutes adequate criminal statistics and will appreciate how difficult the task of gathering them must be without some such plan of co-operation as is presented in the concluding chapter. In this part of his task, in my judgment, the author has failed to make the best possible use of the material at his command in showing us what criminal statistics ought not to be and thus preparing us for the constructive scheme.

After comprehensive treatment, by individual states, of the history and present status of state judicial criminal statistics, the author characterizes them, in the main, as entirely inadequate, and of the 25 states examined, he finds only three with what he calls good judicial statistics. The tables on pages 66, 67, 90, and 91 show the lack of uniformity and responsibility. In the author's opinion, only one state has good prison statistics. In the final chapter he attributes this situation to four causes:

(1.) The double purpose, administrative and social, in the collection of the facts.

(2.) Ignorance of principles and methods of statistics.

(3.) Attitude of officials.

(4.) Spoils system in appointments.

The author might have distinguished, by the use of concrete facts, between the use of such statistics for administrative and for social purposes, and he might have illustrated the kind of problems to be solved in each field, with concrete data from the state reports to make more definite the points of criticism. Some illustrations of the varieties of forms in which the statistics were reported and the impossibility of comparison would have shown the desirability of uniformity. But most of this defective material in state reports is kept behind the scenes and we are left to depend upon the author's simple statement. This method gives the reader no lesson as to what constitutes the good and the bad in criminal statistics.

Having made the point that reorganization of criminal statistics is desirable in the United States, the final chapter is devoted to a statement of the plan proposed. This plan is the reorganization under the supervision of the Federal Census Bureau in a manner exactly similar to the present method used in mortality statistics. Here the author assumes more similarity between mortality and criminal statistics than the case will warrant, in my judgment, and, therefore, minimizes the difficulties. Besides, he fails to provide, in his scheme of reorganiza-

tion, for some such state bureau as Mr. Smith proposed in the discussion referred to at the beginning of this review, which would form the agency to co-operate with the federal authorities, as the local and state boards of health do now in the case of mortality statistics. The efficiency of mortality statistics, in last analysis, depends upon the efficiency of the local agency by which they are collected. The central agency—the Federal Census Bureau—supervises and sets standards which, is observed by the local health board, allow the local unit to become a part of the registration area in the United States.

Columbia University. ROBERT EMMET CHADDOCK.

KEY, ELLEN. THE MORALITY OF WOMEN. (Authorized translation by *Hamah Bouton Bothwick.*) Ralph Fletcher Seymour Co., Chicago, 1911. Pp. 78.

In this little volume are included three short essays of the well known Swedish writer. Of these the first, which gives the title to the book, is most important.

The author looks for the coming of a new moral standard when love must be the basis for the procreation of children and the maintenance of the family. Even though this new moral ideal should in the beginning dissolve many untrue marriages, and thus cause much suffering, yet all this suffering is necessary. "It belongs to the attainment of the new erotic (in this connection, in the reviewer's opinion, 'sexual' is really meant), ethics which will uplift man and woman to that sphere where now the spirit of slavery and of obtuseness under a holy name abase them; where social convention sanctions prostitution alongside monogamy, and vouchsafes to the seducer, but not to the seduced, social esteem, calling the unmarried woman ruined who in love has become a mother, but the married woman respectable who without love gives children to the man who has bought her." This new ideal will be opposed by the conventional moralist and the advocates of license, the first because to them duty is the basis of the family, the second because it interrupts their debauchery. Al "great love" will become the central point in life and those who experience it will not think that civil sanction alone creates an ethical basis. "Love can dispense with marriage, yet marriage cannot dispense with love." The author believes that the time will come when prohibition of divorce will not keep together those who do not love. Monogamy will remain the rule, with exceptions as there have been in the past. The tenor of this essay, as indicated, is not for looseness of relations. Just as we have long recognized a civil sanction and in many groups are now recognizing the necessity of a physical certificate, so Ellen Key advocates as most important of all what we may call a romantic sanction.

In the second essay on "The Woman of the Future," we find merely the aspirations of the author that under a newer regime, woman still remaining the "one who forms customs," will be less burdened with financial and household responsibilities, and so be free to develop and express the wonderful harmonies of her nature. "But her greatest cultural significance remains, however, by means of the enigmatic, the instinctive and the impulsive in her own being to protect mankind from the dan-

gers of excessive culture. In face of knowledge she will maintain the rights of the unknowable; in the face of logic, feeling; in the face of reality, possibilities; and in the face of analysis, intuition." The reviewer has to confess, being a mere man, that the description of the new woman has a heavy proportion of gush.

"The Conventional Woman" gets over double the attention given to the above. She is the one who sets "appearance before reality, form before content, subordination before principal." Women as yet do not look below the surface. Self-renunciation was the old ideal, self-assertion, the new. Opportunities for culture must be increased. Formal education tends to emphasize the conventional—the old. The "molding" characteristic of present education results in repression of individual personality. "To free woman from conventionalism—that is the great aim of the emancipation of woman."

The essays are written in interesting fashion and the translation is on the whole good. With what appear to be the main contentions of the writer, most of us are probably in sympathy. That the self-development of women has been repressed as compared with that of men is true—more true in Europe than America, probably. As a plea for emancipation, the essays will start many thinking. The high evaluation given romantic love will not be accepted by many. The author's belief in profound, psychical differences between the sexes is open to sharp criticism. We miss any great emphasis on the newer and greater responsibilities such changes will bring about.

University of Pennsylvania. CARL KELSEY.

"OBSCENE" LITERATURE AND CONSTITUTIONAL LAW: A Forensic Defense of Freedom of the Press. By *Theodore Schroeder*. New York, 1911.

In these days of commercialism and "big business," it is gratifying, indeed, for the reviewer to receive a work *"not published to sell,* but for missionary work among leaders of thought." We would, for this reason if for no other, like to agree with the author's modest announcement that his is "the most extraordinary law-book of a century." Unless, however, "extraordinary" be deemed synonymous with "weirdly fantastic," at least one dissent must be noted. Concisely put, the volume constitutes a defense of unabridged license in utterance, the author's contention being that *any* abridgment in any form, shape or manner, of freedom of speech or utterance is not only undesirable but unlawful.

The author's argument takes somewhat the following shape: All laws, State or Federal, against obscene literature are unconstitutional. Federal legislation, in the first place, says he, is unlawful "because not within any expressed or implied power of the (*sic*) Congress to enact." The control over postoffices and post roads does not confer upon Congress the right "to try to use the mails as a means to control the psychosexual condition of postal patrons." Nor, says the author, can the statutes be justified as an incident to the power to regulate interstate commerce, because the statutes, in their scope, cover intrastate trans-

mission as well. Secondly, both Federal and State legislation are void under the constitutional prohibition against the abridgment of freedom of speech and of the press. The syllabus of the argument, briefly stated, is that unless there be "freedom unrestricted, there is no intellectual liberty at all as a matter of right," that whatever liberty may chance to continue to exist is "permissive" merely, that this is contrary to the intent of the framers of our State and Federal Constitutions and "an artificial legislative destruction or abridgment of *the greatest liberty.*" The third contention is that inasmuch as "obscenity laws" furnish not even an approximately accurate or certain test whereby to differentiate the book which is obscene from that which is not, that they, therefore, violate the constitutional guarantee of "due process of law." In chapters 13 to 17 inclusive, to quote from the author's luridly-worded summary (pp. 414-415), "it has been exhaustively shown that, whether studied from the viewpoint of abstract psychology, sexual psychology, abnormal psychology, ethnography, juridical history, ethics or moral sentimentalism, or, considered in the light of the mutual destructiveness of the judicially-created criteria of guilt, or their all-inclusiveness and the grotesqueness resulting from their general application, in every aspect we find absolute demonstration that the statutes against 'obscene' literature and art prescribe *no* criteria of guilt." All of which simply means that Mr. Schneider thinks that obscenity is a relative and not an absolute term, and hence all laws prohibiting obscene books, works of art, etc., are void for uncertainty and ambiguity under the maxim, "Where the law is uncertain there is no law." What, says the author, can possibly be a true and sound criterion of guilt? And he proceeds to point out at great length in chapters 16 and 17 various conflicting varieties of what he terms "official modesty." Fourthly, the argument is advanced that an obscenity statute violates the constitutional guarantee against *ex post facto* laws for, says our author, "every indictment and conviction under said statute is always according to an *ex post facto* * * * standard of judgment, specially created by the court or jury for each particular case." Chapter 23, summarizing this contention, is, we might remark in passing, one of the most interesting in the work.

As a corollary to the above arguments, the author insists that the foregoing are still open questions, at least in the United States Supreme Court. His elaborately italicized opinion is that the contentions which he advances "are not only undecided, but free from the embarrassment of even an adverse dictum." And, he adds triumphantly, "If there is any doubt as to this conclusion it must be dissipated by the declaration of the Supreme Court itself in *Public Clearing House v. Coyne* (194 U. S. 507), where it says: 'The constitutionality of this law [against obscene literature] we believe has never been attacked.'" It might be remarked, at the risk of unceremoniously extinguishing our author's burning hopes, that, in the reviewer's judgment, the Supreme Court uses this language in quite another sense than that for which Mr. Schroeder so fervently contends. That sense will immediately suggest itself. To-day, there are few who choose Quixote—like to tilt with windmills and to urge before a busy tribunal an argument which, despite

its casuistry and ingenuity, would probably not receive even passing consideration.

So much for the general contents of the work. Some of its propositions are transparently fallacious. Others demand some measure of consideration.

It seems, to the reviewer, that as far as Federal legislation is concerned, there can be but little doubt as to the constitutionality of the statutes. As stated by Professor Freund in his masterly treatise on the Police Power, the basis of these enactments "rests partly upon the control of the postoffice and partly upon the power over commerce" (Sec. 236; *vide,* also, Sec. 65). The cases of *Ex parte Jackson* (96 U. S. 727) and the so-called Lottery Case, *Champion v. Ames* (188 U. S. 321), are quite in point. While neither, maybe, is an express judicial adjudication of the precise points raised by Mr. Schroeder, both decisions make it clear, beyond the peradventure of a doubt, that the Federal Supreme Court's attitude is in accordance with our usual ideas.

With regard to State legislation, it seems equally clear to the reviewer, that ample warrant for the enactment of obscenity statutes, can be found in, and under, the "police power" of the various sovereign States.

Liberty and license are quite distinct propositions. As well stated by the United States Supreme Court in *Munn v. Illinois* (94 U. S. 113, 145: "Whatever affects the peace, good order, morals and health of the community comes within its scope; and everyone must use and enjoy his property subject to the restrictions which such legislation imposes." To the same effect at an early date spoke Jeremy Bentham (Collected Works, p. 169, pt. 9.) However uncertain may be the precise boundaries of the Police Power, to which Dr. Burgess refers as the "dark continent" of our jurisprudence, they certainly are broad enough to embrace the sale, or even the bare possession (cf. Criminal Code of Illinois, Sec. 223) of obscene publications.

The only other constitutional point raised, meriting serious attention, is the argument that the criteria of guilt are not prescribed in these obscenity statutes "with such precision that every man of ordinary understanding may know with absolute certainty whether or not his proposed conduct is a violation of law." The author proudly points to the prosecution of the notorious eccentric, George Francis Train, for circulating obscenity, which, it subsequently transpired, consisted *in toto,* of Biblical quotations. He points, also, to conflicting decisions and demands to know what conceivable test can be applied which will furnish any approximate guide. It seems to the reviewer that this argument, though clever enough, is unsound. The question is one of fact for the jury under appropriate instructions from the trial court, the issue in every prosecution being whether under all the facts and circumstances, and bearing in mind the nature and character of the entire publication or work of art, it is, or is not, calculated to deprave the average reasonable individual and to tend to vitiate and debauch public morals. In the vast majority of cases a sound and just result will be reached and any aggrieved defendant, it must be remembered, is not without remedy by appeal.

An argument quite analogous to the author's, is that of the "Beef Barons" in their present prosecution under the Sherman Act's criminal provisions. That statute, as interpreted by the Supreme Court in the "Standard Oil" and "Tobacco" cases, forbids only unreasonable restraints of trade. What is *reasonable* and *unreasonable* is nowhere expressly defined in the act. So, Mr. Schroeder vehemently insists, what is obscene is nowhere expressly defined in these acts and it is impossible of ascertainment. These respective contentions, it is submitted, substantially refute themselves. As pointed out by President Taft, men know, or ought to know, when they conspire or combine with the purpose of raising prices, limiting production, or stifling competition by unjust and unfair methods. Just so, men know, or ought to know, when they intend, and when their works are intended, to debauch public morals and taste.

It is quite true that oftentimes the power of censorship is unwisely exercised by judicial or administrative bodies. A notable example is the recent attempt to forbid the circulation through the mails, in any manner, of the able report of the Chicago Vice Commission. Many of the manifestations of "Comstockery," of which the author so bitterly complains, are extreme and prudish. But, upon the whole, few errors are made, and after all, what human institution is perfect? One of the most unfortunate features of Mr. Schroeder's work is his bitter attack upon all "salaried vice-hunters" and "moralists for revenue," as he terms them. This portion of the work, by its own intemperate tone, defeats its purpose.

Our author does not confine himself merely to arguing that obscenity statutes are unlawful. He contends that they are also undesirable, and despite his own statement that "the masses are mostly ignorant," insists that any and all restrictions should be removed. This is a typical *reductio ad absurdum*. The author cannot apparently comprehend the frightful dangers inevitably consequent to the unrestrained publication and circulation of erotic and prurient literature, of inherently vicious and salaciously suggestive pictures and paintings. With human nature what it is, the author would (*mirabile dictu*) tear down all safeguards, and would permit an unrestrained wallowing in the mire.

The form of the work is poor, due, says the author, to his attempt "hastily to make a book by the use of a paste pot and some magazine articles, when I should have rewritten the whole." This, however, does not account for, nor does it pardon, the intemperate language, the highly colored illustrations, the sophomoric declamations, and last but not least, the unjust, unseemly, indiscriminate attacks of the author,—himself a practicing lawyer,—upon courts and judges. Such extravagances as referring, sarcastically, to our "most learned judges" (p. 338) and to speak of "the judicial 'intelligence' so utterly devoid of real enlightenment" (p. 338), to take two random examples upon one page, nauseate the open-minded reader.

Examples of hyperbole and emotionalism might be given *ad libitum;* yet, says our author, he did not shape his argument "with a view to

seducing intellectual bankrupts into an emotional approval of his formula of freedom." The reviewer fails to see how any person not an "intellectual bankrupt" could be "seduced." In very truth, this work is "a legal curio very unlike any other law-book ever published."

The author asks, in conclusion, an "opinion upon the propriety and legality of permitting the *general public* to have such a book as "'Obscene' Literature and Constitutional Law." The question, if seriously asked by you, Mr. Schroeder, answers itself. Devote your legal learning and your very considerable erudition to a better and worthier cause! Your present book is dangerous in tendency, and its very ingenuity makes it the more objectionable. I. MAURICE WORMSER.

University of Illinois.

DIE REHABILITATION IN DEN ST. GBG. OSTERREICHS, DES DEUTSCHEN REICHES UND DER SCHWEIZ. By *Dr. Ernst Delaquis;* Osterreichische Zeitschrift für Strafrecht, II, 4 und 5 Heft. Pp. 282-306.

Delaquis advances these three ideas:

I. It is not effective to absolutely exclude certain crimes and certain delinquents from rehabilitation.

II. Legal rehabilitation postulates an established betterment—rehabilitation through mere lapse of time does not meet the requirements.

III. It is neither desirable nor sufficient that rehabilitation should operate only the restoration of civil honor-rights (Ehren rechte) and the like. It must operate on the sentence itself.

The English and American law on the subject of *"infamia"* and the restoration of rights, forfeited for crime, or as a consequence of the criminal status, is in need of illumination. J. I. KELLY.

Chicago, Ill.

DIE STRAFBAREN HANDLUNGEN GEGEN DIE SITTLICHKEIT IN BG. ZU EINEM österr, St. G. B. von 1909. By *Prof. Mittmaier.* Osterreichische Zeitschrift für Strafrecht, II, 4 und 5 Heft, pp. 250-282.

This is a very full and clean discussion of a very filthy subject. Valuable statistics are appended. The paper is broader and more philosophical in treatment than its name would imply. The writer treats the general characteristics of sex irregularities and sex crimes as well as the specific offenses. Certain unnatural crimes (e. g. necrophilism) he thinks incapable of spreading so as to become an element of social corruption. The acts themselves are insane and repulsive. These he considers the crimes of hysterical psychopathics and he says that he has never heard of a case of bestiality which should rightly have been treated with punishment. This extreme view he does not entertain with respect to the more common unnatural practices. In considering prostitution and "white slavery," he says that it is a mistake to confine the male parasites, who live from the vice of women, in workhouses under the Vagabond Act of 1885. In this, Austria stupidly follows France and Belgium. These "unspeakables" are not weak in will like mendicants,

but on the contrary are highly enterprising and socially dangerous. The *Zuhälter* needs strict penal discipline and is a corrupting influence in the workhouses. J. I. KELLY.

Chicago, Ill.

DER OSTERREICHISCHE STRAFGESETZENTWURF UND DAS SCHULPROBLEM. By *Count Gleispach.* Osterreichische Zeitschrift für Strafrecht. II, 4 u. 5 Heft., pp. 209-250.

Count Gleispach discusses the Draft of the Austrian Penal Code. He defends the draft against the charge, that it is a compromise of the conservative and radical criminologists. He views the draft as embodying what is practical in the needs and life of the people and yet not disdaining criminal theory.

He says it is not fully correct to sum up his position with the words: "We make laws for life and not for the 'schools' and we direct ourselves in everything to life and its needs," although he does not dispute the truth of that statement. The opposition between life and the schools is little flattering to the "schools," but is not a general reproach to theory. Life and its needs can only indirectly guide the legislator. Life and its needs mediately but not immediately answer questions of criminal policy. The practical needs are not capable of fine enough differentiation. When they answer "what," they do not always answer "how." The condition of American criminal law offers sufficient examples of this.

He maintains that there is an intelligent *via media* in the application of criminal theory in the draft. From its practical function it is noncommittal unless the occasion demands.

"It is not usual for modern statutes to authenticate themselves and give expression to their object."

The draft prescribes criminal capacity (or rather lack of capacity for criminal responsibility) by the so-called mixed method, according to biological and psychological marks. Only the psychological capacity is here important: the absence of it excludes capacity for criminal responsibility.

It is the capacity of insight into the "wrong" of the act and the capacity to determine the will in accordance with this insight. The "wrong" is not to be taken in a juristic-legal sense—in the sense of contrary to law, right and norm. "Wrong" is the quality of the act which makes it anti-social (gemeinschädlich). The insight into the wrong of the act is present when one says: "If another, in my place, should so act it would be intolerable in the proper intercourse of human beings. My maxims, my valuation of interests, applied universally, are in opposition to the objects of the culture-community of mankind."

The second capacity is that of determining the will conformably to the insight. This raises the whole question of the freedom of the will. He says the matter is indifferent to the draft. The truth will lie on one side or the other without regard to the text of the draft of a law. And for a draft to place itself on one side or the other has not even the weight of an argument *pro* or *contra.*

In spite of its necessary incompleteness the draft overlies a foundation of well-ordered guiding thought. As a practical measure it must keep touch with the law in force. It is intended for a complex nation extending from the Adriatic to the Russian frontier. There are infinite differences in the *Kulturniveau* and an Austrian is no friend of his country who wishes to introduce, what may be well enough abroad, only because through false pride he wishes to seem advanced.

He denies any historical truth in the statement that the smallest measure of restraint is a sign or a postulate of the highest culture. The greater the judicial latitude the smaller is the protection of individual liberty.

J. I. KELLY.

Chicago, Ill.

KASTRATION UND STERILISATION VON Geisteskrauken in der Schweiz. Von *Dr. Emil Oberholzer,* Juristisch-psychiatrische Grenzfragen. VIII. Band, Heft 1-3. Pp. 25-144.

This paper is of quite a different character from the preceding; it reviews in detail nineteen cases in which castration or sterilization was carried out, or was seriously discussed, in connection with cases of two Swiss institutions for the insane. To an American reader the full account of all these cases might at first sight appear as excessively broad and too long to command the attention of the reader; but I should like to insist that it is just this concreteness and breadth that gives the reader a chance to judge of all the elements in the decisions; and if we consider the profuseness (of frequently uncontrolled statements) in our daily press, we ought to be willing to appreciate similar breadth if accuracy is guaranteed. It is a superstition on the part of editors to think that vividly written accounts of individual cases would not be read. So much for the casuistic character of this paper.

With regard to the facts, several cases are instances of infanticide. In the first one, that of a girl of 26, sterilization was refused by the authorities. The patient comes from a family with a record of alcoholism and imbecility; she became the victim of her brother-in-law, and the second time of another man, who received a verdict of four months in prison. The circumstances of the seduction and of the second childbirth and infanticide point plainly to mental deficiency; and the problem is whether in the absence of any tendency towards prostitution, and owing to the incapacity of self protection, sterilization would not remove the risks involved in allowing the patient to support herself at large instead of making her a permanent burden of the community, and an inmate of a hospital, while really she only needed protection against sexual assaults. The abstracts of the (written!) decisions by the Board responsible for orphans, and by what might correspond to the Board of County Overseers, show the whole inconsistency in handling such a problem. The Board of District Overseers refuses to take the patient into the Almshouse on account of the risks of further indiscretions, and to some extent it is guided by the thought of atonement for the crime by detention in an institution!

In the second case, the killing of a second illegitimate child at birth,

by an imbecile, in whom sterilization by bilateral resection of the tubes and with a wedge-shaped excision from the uterus was finally performed, there was no evidence of actual moral defect, and ample capacity on the part of the woman to earn her living.

The third case, an alcoholic with a family history of insanity, was morose during her second pregnancy, and killed her child while angry in intoxication. She proved to be imbecile, and her husband obtained a divorce. Sterilization was refused and the same Board of Overseers that had refused case 1 received her in their Almshouse—a good evidence of inconsistency.

In Case 4, one of imbecility, a long series of sexual excitements, and menstrual disturbances led to ovariotomy—and death from the operation—a very unusual occurrence, probably from accidental complication. Here the indications were partly medical.

Case 5, was an imbecile who had gone through two illegitimate pregnancies, was sexually uncontrollable, and required either permanent detention or castration. With the consent of the patient, the nearest relatives, the guardian and the home authorities, the state was relieved of the burden of maintenance; the patient became more controllable, and at least less harmful through her propensities.

Case 6, one of imbecility with frequent menstrual disorders; ovariotomy was performed on a medical indication, first with transplantation of one ovary into the abdominal wall; but later, owing to continuation of the menstrual pains, that was also removed. The result is freedom of dysmenorrhœa and greater adaptability of the patient to outside life. She required hospital treatment twice afterwards, but she could be discharged more readily than before.

Case 7, shows a similar improvement concerning the ease of early discharge, which relieved the state of the burden of many days of support.

Case 8, 19 years old, was one of moral imbecility and excessive sexual propensity. She submitted to sterilization *and abortion* in the second month of pregnancy. Here an additional step was taken which might meet with far more objection than the mere act of sterilization. The patient could be discharged to work in the country.

Case 10, is remarkable owing to the fact of sexual precocity with intercourse from the age of 13; the patient was surprised in the act by her father and taken to the institution just about the time when the parents thought of giving her some instructions as to the nature of sexual life—a very good evidence of the lack of insight and näiveté of parents. In this case legal authorities suggested sterilization, but the fact that the girl was only 15 induced the hospital authorities to decline, and to demand at least postponement until the patient had reached her full development.

Case 14, is that of a married woman with catatonic insanity, of marked heredity, and infanticide morbidly based on aversion against her husband. With permission of the patient, the husband, and the guardian, sterilization was permitted, but put off much to the aggravation of the patient's disturbances of feelings, but finally carried out.

It is probable that this patient would never have been ill but for the discrepancy with the husband; she thought herself that it must have been the hatred of her husband that made her kill the child. The patient could be discharged again, but was later readmitted.

Case 15, is one of epilepsy, with a very bad family history, and two illegitimate pregnancies, and great propensity to illicit relations. Castration at 25 led, within two years, to the abolition of her sexual cravings, for which she herself is grateful.

The four other cases are men. The first one demanded castration himself owing to uncontrollable sexual excitability and perversion. Sexual fancies decreased within a few months, and states of vague anxious moods without special cause occurred for a time. Apart from the medical result the social security in this case is obvious.

The second case is similar, but complicated by alcoholism. It was possible to discharge the patient and he became socially less dangerous, but finally was readmitted owing to alcoholic insanity.

The third case demanded castration owing to neuralgia of the testes, and excessive sexual tendencies.

In the last case with sexual precocity (masturbation from the third year—coitus from the seventh year, and various sexual assaults on girls and boys) and profound moral defects (stealing), the supervisors of the poor proposed castration. It was declined, and decided to keep him in the institution, but he escaped, and succeeded in supporting himself, and to establish himself with a fairly moral career, with shame of his previous life, and successful efforts to succeed in his life and occupation. In this case sterilization became unnecessary.

Taking it all in all, the frankly recorded material shows the conditions for sterilization, but also the fact that a great deal of judgment is required which cannot easily be formulated in the words of a statute. It is of interest to note that among the parents of these patients hardly one of them would have offered sufficient provocation and opportunities for legal sterilization before the birth of these victims. We thus are not yet dealing with a panacea, but the problem deserves more extensive casuistic study, rather than mere figures of the hundreds of cases which have been operated on without any account or further analysis of the reasons and the results.

ADOLF MEYER.

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RELIGION UND STRAFRECHT, INBESONDERE DIE GOTTESLASTERUNG. Von Dr. jur. et rer. pol. Adolph Moser. Breslau, 1909. Schetter'sche Buchhandlung (Franck & Weigert) Inhaber: A. Kurtze. Pp. 105 Mk 2. 60.

This is an interesting, instructive, learned book, well fortified with authorities, tracing the effect of religion on the fundamental conceptions, penalties and development of criminal law in classic, medieval, and modern times. The author shows that in the old world the law and religion were in close union; that, at first, the two fundamental conceptions of criminal law, the crime and the punishment, were religious conceptions, the crime being conceived as a transgression against the Divinity and

the punishment being considered as a means of expiation. The criminal appeared as an enemy of God. Not to share in his guilt the people must suffer him no longer in their midst. The people in early times naturally thought also that they must protect their religion and its services from repudiation or contempt. In the later development of political government and civilization, religion is valued as a bulwark of the state but "only so far as the security of the state seems endangered by acts hostile to religion." Religion, says the author, is an advantage to civilization only when a purified conception of religion is in keeping with an elevated viewpoint of civilization.

The author shows that blasphemy was punished under heathen polytheism as well as under later monotheism, was punished under both the Greeks and Romans; that in Greece religion formed the foundation of the oldest criminal law; that for blasphemy, the Greeks did not leave the punishment or revenge to the offended gods alone; that both Alcibiades and Socrates suffered from a charge of being unfaithful to the ancient faith; that death was often inflicted for crimes against religion because the ancients thought that, by the execution of the criminal, the guilt and with it the revenge of the insulted divinity were taken from the shoulders of the people; that the Romans, for policy sake, sometimes tolerated foreign religious cults which implied no repudiation or contempt of the Roman religion but that the Christians, who abhorred polytheism and would not take part in any heathenish religious rites, were regarded as contemners of the gods of the state and therefore were persecuted. Tertullian said: Nec Romani habemur, qui non Romanorum deum colimus.

The author traces the growth of laws and prosecutions for religious offenses among the Jews, in Christian Rome, in Europe during the Middle Ages and in modern times and also the gradual growth of milder laws and greater liberty in the sphere of religion. He is not entirely free from bias in his judgments or in his estimates of men prominent in this progress, but that is hardly to be expected in a theme so prone to excite the prejudices and innate passions of the best.

In his conclusion he says: "A criminal law for religious offenses is a bitter necessity * * * As a text of the paragraphs against blasphemy soon to be enacted I propose: 'Whoever shall publicly exhibit with a coarse, malevolent intention, his disregard (contempt) of God in word, writing, pictures or in any other manner, shall be punished with imprisonment for one year. If milder circumstances exist, there shall be a fine of eight hundred marks.'"

Louisville, Ky. E. J. McDERMOTT.

UBER DIE PSYCHOLOGIE DER EIFERSUCHT. Von *Dr. M. Friedmann*. Wiesbaden: "Grenzfragen des Nerven-und Seelenlebens," J. F. Bergmann. Pp. 112.

This work of an eminent neurologist in Mannheim is, to our knowledge, the first attempt that has been made to subject the powerful passion of jealousy to an exhaustive scientific examination. It is scarcely necessary to point out how important a deeper comprehension of this

emotion is to criminologists. Dr. Friedmann begins by describing in detail, on the basis of psychiatrical literature, the pathological forms and expressions of jealousy and, in addition to the jealousy of the inebriate with which we have long been familiar, we learn of various other forms, an especially interesting fact being that just the most frequent categories of pathological jealously may often remain for years hidden from the eye of the layman. Still greater stress, however, is laid by the author on the psychological investigation of the passion in normal psychic life where it exercises a disastrous influence, in family life as erotic jealousy as well as in professional work and public life as the feeling of rivalry or "Strebungseifersucht" (the jealousy of aspiration, ambition).

If we go on to examine the psychic processes that we are in the habit of calling jealous we find at first, under Dr. Friedmann's guidance, no simple feelings and emotions at all but rather more or less intricate complexes. The factor or process that is always present and which will indeed appear to us as the essential element in jealousy is a double one: a feeling of uneasy excitement at the sight of a rival and an impulse to push him aside. If we continue our examination we find that just these feelings spring from a psychic phenomenon of the most universal kind and one that originally was certainly not very passionate in its nature: if we watch someone engaged in some occupation for which we are prepared by strong desire and constant practice we feel a sympathetic impulse to action. We should like to take the other's place, consequently we wish to push him aside. But such a feeling does not become jealousy in the ordinary sense until certain other motives and feelings combine to support and increase it. It is most important in this connection if the other acts in the same capacity and has the same occupation as ourselves, and if he meets with great success, especially success that exceeds our own. "Then we are seized by the fear that he will injure us, our wounded self-love causes us to feel envy and annoyance, often the other attacks our interests directly, the instinct of self-preservation leads us to defend ourselves."

The case is similar with erotic jealousy. If a lover sees that another is trying to obtain the favor of the person he loves it will excite him and he will wish to get rid of his rival. But his feeling does not become serious until he believes that he has reason to fear, that is, when he begins to lose confidence in the object of his affections.

These additional categories of feelings that arise in the relation to the rival have an actual basis. Important interests and injury to our self-love are involved. How does it happen then that it is the sympathetic impulse to action that is pushed so far into the foreground?

Just in this respect the psychological consideration of the matter has given us remarkable explanations. Though the emotion of excited rivalry may at first appear merely as a secondary emotion in the whole complex of representations and feelings, yet it presses more and more to the front and determines directly the persistency and bitterness of so many rivalries; often too it determines the choice of criminal means.

The clash of interests, envy, mistrust, etc., certainly form the basis

and content of the whole emotion, but they lead to action, to decisions, only by way of reflection. It is the competitive impulse to displace the other that contributes the active leaven; it urges on to action and it alone operates with the power of direct sensual experience. "It gives the impulses to action which, so to speak, have been lying ready, and how important that is we can see, for instance, in every systematic feat of strength that develops, as if of itself, into a sport and athletic contest."

This then is the prime factor. "The second is that the competitive impulse proves to be capable of excessive increase." This is partly due to the nature of the impulse to activity but much more so to the character of the given situations. "Once the combative mood is aroused it must irritate the other into resistance and it attacks him at his most sensitive point, his successful work. But this struggle kindles a fire that feeds itself; the quarrel becomes more and more vehement and gradually additional strong emotional values enter into it." Honor and reputation are at stake, sharp personal contrasts are formed. This is a dangerous stage; such feelings take deep root and die hard.

And now comes the third factor. Just as jealousy in itself lacks a definite content, so, too, it does not tend to a conclusion, an agreement. "Disputed objects disappear from the world every day. Fear and envy may thus be laid low, but not jealousy. It continues to flourish as long as there is any rivalry, any competition in sight, and under our social conditions that never ceases to be the case."

In this way the demoniacal strength of jealously is explained; but it is far from possessing such strength from the outset. It operates rather as the irritation that sets the chain of emotions free and brings the excitant into the whole tense situation. It does not become a psychic power itself until it has been constantly nursed and cultivated.

The practical significance that lies in these psychological conditions is clear, the more so when we think how powerful and far-reaching an element jealousy has become in the most different fields of human activity: in the family circle, in all technical and administrative works, in art and science and, above all, in public life, where jealousy as an emotion of the masses is spreading in all directions.

As regards the means of curing jealousy the excellent and painstaking book itself should be read.

ADALBERT ALBRECHT.

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