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Reviews and Criticisms

IL DELITTO ANARCHICO: Studio di Diritto Penale. By *Giovanni Carabelli,* Turin, E. Toffaloni, 1910. Pp. 44.

Carabelli, in his "Essay on the Crime of Anarchy," makes a study of anarchy with the object of determining whether it is so entirely of a political nature that it should be treated as a political offense, and, therefore, be non-extraditable. While the object of his study may not affect the interest of American readers immediately it is still of medial interest because of the number of political exiles who come to this country. Apart from this, Carabelli's essay as a scientific study of the subject of anarchy will aid many Americans to a better understanding of a confused element which is but little understood in modern civilization. For while anarchy is an important factor it has not in this country, at least, met with the scientific observation it deserves at the hands of the majority of the bench, the bar, or the laity.

Anarchy is a crime which affects mankind regardless of national boundaries. It is an offense against international society in its broadest sense. Carabelli therefore comes to the conclusion that the privilege of non-extradition should be denied anarchists because anarchical acts are not local and particular. Particularity is the basis of extradition. The history of extradition shows a complete *volteface.* Until 1830 political refugees were sought and recovered from all countries. Often in the Middle Ages if the judiciary and diplomatic branches failed to recover an offender, the military and naval forces were called upon. During the revolutions of the early XIX Century, however, public sentiment underwent a reversal and extradition was allowed only where the crime affected the social and general well-being of mankind. This change of sentiment and law was aided by the difficulty of determining when a political act should be considered criminal. Extradition, of course, could not be allowed and denied at the choice of the country to which the refugee escaped without constant confusion and war. When anarchy appeared as a factor in the life of nations, the privilege of non-extradition was claimed for it on the ground that it was a political offense. This clemency is still given in many countries. Belgium, however, enacted a statute allowing extradition upon an attempt on the life of Napoleon III, but England, Switzerland, and Italy have refused to follow this good example. Those who urge that anarchy should be an extraditable offense are undoubtedly right. The reason for so regarding it is, of course, because of its general effect upon society as a whole regardless of political divisions. While many of the reformers urge this as a reason for extradition, some base it not on the universality of the rights attacked, but on the means and methods employed by anarchists. This is using a bad premise to reach a good conclusion, for on such a premise all political offenses would be extraditable.

The history of anarchy is short, covering but a century. It origi-

nated in the economic and political revolutions of the XIX Century. It has become a collective name for all the destructive elements in humanity, reaching full development between the years 1890 and 1900. Human society has always been subject to pathological phenomena, each too different from the others to seem to allow of a single underlying cause. The phenomena, however, have all arisen from the same feeling in mankind. The uprising of the Roman plebs and the French Revolution were caused by the same desire. To-day this underlying tendency to change has taken the form of anarchy:—the attempt to overthrow fundamental and basic institutions. It attacks not only the superficial forms, but the actualities upon which they rest. Anarchy is negation. Spencer and Stuart Mill were its precursors in the fields of economics and liberty. All XVIII and XIX Century literature was anti-religious. Nietzsche, and later Ibsen, were destructive of morals. Marx, Proudhon, and Bacunim were the founders of anarchy and welded into one the wandering elements of destruction. Destruction is the teaching of all anarchists, because they desire the overthrow of authority. But even they are forced to acknowledge that one's liberty must be limited by that of one's fellows, and therefore admit a social pact, and even in their destructive furor cannot deny basic moral coercion.

The anarchistic programme is the abolition of all juristic institutions which enforce the social pact. The anarchistic slogan is the destruction of the atavistic present with its institutions which have lost their force. But such a slogan leads inevitably to the total abolition of all restraint. No purely destructive propaganda can live. The anarchist prophesies that in the future through the destruction of all juristic restraint its need will disappear and a Golden Age will come. This we may call theoretic anarchy and disregard because it does not lead to action except in so far as practical anarchists use it to spread and confirm their beliefs. Practical anarchy is no abstract theory, although it relies upon one. It is the destruction by riot and bloodshed of all existing institutions. The acts of anarchists are destructive of political and social security and are, therefore, against the law. The audacity of effort and brazen disregard of punishment have caused jurists and legislators in Europe to study attentively the anarchical phenomena. This study is detailed and scientific. One of the important questions is that of extradition, for the determination of which it is necessary to know whether anarchy is a political or natural offense, and this in turn necessitates the study of political offenses.

Their history may be briefly outlined. Formerly treated with the greatest severity they are now treated with clemency as arising from a noble but misguided patriotism. Carrara goes so far as to deny criminality in any political offense. Many believe, on the other hand, that a man who uses violence against the State or the will of the majority is guilty of an act that is essentially criminal;—that the divine right of revolution disappeared at the birth of the plebiscite. Lombroso thinks that the criminality of the offense lies in its violence and fraud, and holds that a crime is political when and because it is against the public weal. Garofalo, basing the criminality of an offense on the same grounds,

says that there cannot be any political crimes because all so-called acts are breaches of the peace or good faith and should not, therefore, be distinguished as political because against the State.

The difference of opinion concerning what constitutes a political crime is due to the different philosophic concepts of the right of punishment. The retribution theory looks upon punishment as a duty delegated by God to effect justice, which is always one and the same, regardless of time and place. This theory falls foul of the relativity of political offenses, since in one age an act may be a political crime which in another is a duty. To escape this they based the criminality of a political offense upon the duty of preserving the public safety—a natural right. The State must be defended as the preserver of utility and the natural rights, they say;—but the useful varies while penal laws should be basic. Political offenses, therefore, differ essentially from purely natural offenses. The true criterion lies in the fact that the State is a political necessity for the development of society and individuals. The State, therefore, must punish any attack made upon it. The criminality of such an attack is not absolute but relative. A political offense is an unjustified attack upon the State. The injustice of a political struggle is seen only upon a comprehension of all its features. Its determination, therefore, is difficult. The motive of an act is not sufficient to make a crime political, for murder is a natural crime although committed with a political motive. The kind of right attacked is the true basis, that is, if a political right is attacked the offense is political, but but subsidiary to this criterion we must add the motive, because the offense is not political if the political right is attacked incidentally and the motive prompting the act is not political. A further question arises in the study of political offenses when we consider whether a political offense can become a natural offense by resulting in a breach of natural laws. Take, for example, regicide. If the greater includes the less it might generally be accepted that the crime of murder here is more important than the treason and, therefore, the act is an offense against natural law, but on the other hand it has the earmarks of a political offense,—a political right is attacked with a political motive. Query: Is it just, therefore, to punish a man as a murderer who has had no primary murderous intention?

But leaving the confused subject of the constitution of political offenses it is safe to say that all offenses against the public collective entities are divided into anti-social, anti-natural and political offenses. The political element in the anti-social and anti-natural offenses cannot change their nature. Every political offense is local and particular; in anti-social and anti-natural offenses there is no particularity. These offenses affect mankind in general and for them there should be no extradition. Political offenses are offenses against a particular form of government. Carabelli accepts the above definition and concludes that anarchy cannot be a political crime, because, although it is aimed to destroy the State, the destruction of the State is only incidental to the destruction of society. It lacks the particularity of a political offense. It is a crime against society. It is aimed at civilization, and the bases of human

society. It lacks everything which marks the political offense and sets it aside for special clemency. He would, therefore, treat the anarchist as a criminal and in no wise as a political offender. In this he seems to be in accord with the best authorities. His essay is a book that gives a clear analysis of present day thought on the subject.

Philadelphia. JOHN LISLE.

DIRITTO PENALE E SUOI LIMITI NATURALI. By *Ugo Conti.* Reprinted from Studi Economico-Giuridici and published under the auspices of the Faculty of Law of the Royal University of Cagliari. Cagliari, Prem. Stab. Tip. Ditta G. Dessi, 1911. Pp. 42.

This brochure by the Professor of Penal Law in the University of Rome is a review of the respective systematizations of criminal law, proposed by three contemporary writers—Bruno Franchi: "Il sistema giuridico della difesa sociale e suoi presupposti storici e antropo-sociologici" (Scuola Positiva, March, 1910); Sylvio Longhi; "Repressione e prevenzione nel diritto penale attuale"; and Filippo Grispigni: "Il nuovo diritto criminale negli avamprogetti della Svizzera, Germania ed Austria" (Scuola Positiva, May-June, 1911). All three profess to interpret the tendencies exhibited by modern criminal legislation. Franchi and Longhi treat the subject generally, while Grispigni bases his conclusions on the draft penal codes of Switzerland, Austria and Germany. Their arguments in Professor Conti's opinion "imply a readjustment of the old boundaries of the criminal law." The necessity for such a readjustment he fully recognizes, but to the manner of readjustment outlined, he cannot yield assent.

In Franchi's result the domain of criminal law includes crime ("reato") and dangerous criminal tendency ("pericolosità"). This dangerous tendency, as he views it, "arises from the existence, in the perpetrator of a crime, of such anomaly as to produce in him an immanent state of criminality or as to render him a proper subject of care and safeguarding ('cura e tutela'), or may even arise from the existence of mere anomalous conduct in the individual." Both crime and dangerous tendency demand a judicial proceeding—for the former there is a penal judgment ("giudizio penale"), for the latter a judgment of security and safeguarding ("giudizio di securezza e tutela"). These proceedings are preferably separate and conducted in different courts. The penal judgment is based upon an investigation of the crime and the criminal. If characteristics of anomaly appear, the case is the subject of inquiry in the second proceeding. The "judgment of security" determines the existence of characteristics of anomaly, and, this established, makes provision for appropriate measures of security. The punishment is proportioned to the quantity and quality of the crime, the measure of security to the quantity and quality of the dangerous tendency.

According to Longhi, the province of criminal law embraces all crimes ("reati") considered as accomplished facts ("fatti avvenuti") or as facts to be feared ("fatti temuti"). Dangerous criminal tendency is therefore crime. But this dangerous tendency is by no means identical with that involved in Franchi's theory. Longhi does not have it depend upon mental incapacity, but derives it from "manifold elements in rela-

tion to the objective criminal facts." Crime of either character is to be dealt with by a judicial proceeding, from which may result in the one case an adjudication of responsibility ("giudizio di responsabilità"), and in the other an adjudication of dangerous tendency ("giudizio di pericolosità"). The two judgments are "normally cumulative" and the proceedings leading up to them are had before the criminal judge. The "judgment of responsibility" awards punishment, but has place only when the prisoner is capable of understanding and feeling the sanction. The "judgment of dangerous tendency" applies measures of prevention. These may be required in the case of a prisoner with normal mental capacity, either as supplementary to his punishment in case he has been penally convicted, or independently of punishment in case he has been acquitted in the penal proceeding. They may also be required where the prisoner is without normal mental capacity. The test is always the danger of criminal harm which he threatens. The punishment "reaffirms the principle of authority violated by the infraction of the legal command, * * * while the measure of security is an exclusively defensive means of protection."

Grispigni's view is the purely positivist doctrine that the criminal law includes within its boundaries all crime so far as that reveals the criminal personality of the agent. Crime is to be appraised according to the dangerous tendency of the offender. A single judicial organ proportions the quality and quantity of the criminal sanction, and in the concept of criminal sanction are combined both punishment and measures of security. This writer, however, makes allowance for a small class of normal offenders, to whom a true punishment may be applied.

The keynote of Professor Conti's argument is his insistence that punishment and measures of security must be kept apart: the one belongs to the criminal law ("diritto penale") and the other to the administrative law. Still, in his opinion, the operation of administrative law in this regard may properly be included within criminal law in a large sense ("diritto criminale"). With Franchi he has comparatively slight quarrel. His most serious criticism of that author is directed against the latter's conception of dangerous tendency as depending upon anomaly. For one thing dangerous tendency may exist without anomaly. On the other hand, dangerous tendency arising "from mere anomalous conduct of the individual," and dissociated from the fact of a crime, is not within the purview of the criminal law. Longhi is the subject of vigorous attack. His theory is characterized as in substance treating crime in fact as one thing and dangerous criminal tendency as another, yet "by a pretended unity of conception reducing them both to the common denominator of crime." But, as might be expected from Professor Conti's classical leanings, the brunt of the assault falls upon Grispigni. The theory of the last ignores the distinction between repression and prevention and clashes at all points with the author's penal philosophy. Again Grispigni is reproached with inconsistency in that he admits true punishment for normal persons. Moreover, he is accused of flying in the face of express statements in the introduction to the draft German Code and of putting the "helpless German legislator" in the light of "a positivist revolutionary, when in fact he is quite the opposite."

In the course of the discussion our author takes occasion to renew his opposition to the indeterminate sentence and to reiterate his suggestions regarding "substitutes" for punishment and "complements" of punishment as well as the creation of a penitentiary commission. His views in these respects are explained in the paper prepared by him for the International Prison Congress of Washington, 1910, and have been commented upon by Professor Henderson in a recent number of this journal. (See review of the author's "La Pena ed il sistema penale del Codice Italiano," September, 1911.)

In spite of his differences with the writers under review, it is Professor Conti's opinion that their labors show the possibility of accord between the juridical and positive schools. For his own part he sees in the present tendency of criminal legislation, instead of a state of war between the two schools, a forward movement in which points of agreement are not lacking. But he cannot concede the possibility of any system in which punishment and measures of security are not clearly distinguished.

While disclaiming any intention at the present time of expounding the system which corresponds to his own notions, the author, by way of recapitulation of the argument, gives us a general idea of his conclusions. He believes that criminal law in the wide sense before referred to (that is to say, criminal law proper ["diritto penale"] in combination with the law relating to the execution of the sentence ["diritto criminale penitenziario"] and police regulations ["diritto penale di polizia"]) includes within its scope, crime ("reato") and inherent dangerous tendency ("pericolosità"). It may also extend to dangerous tendency ascertained to exist in relation to a crime due to defect of volition or to defective response of the action to the will. In this larger criminal law repression and prevention find themselves coordinated. In the case of crime there is a judicial proceeding, but in the case of dangerous tendency the proceeding is an administrative one. The two proceedings may, however, be either distinct or united. Furthermore, even in the administrative proceeding, there are various judicial guarantees, "according to the degree of connection between the dangerous tendency and the crime, and the varying intrinsic nature of the tendency." To the crime corresponds the punishment; to the dangerous tendency, measures of security, both of which are executed under the administrative law, but subject to judicial control.

The reader will find the present contribution of interest and value, however much he may dissent from the author's basic views. It is to be hoped that the near future will see fulfillment of Professor Conti's half promise to put into print the complete details of his own system.

Chicago. ROBERT W. MILLAR.

A GUIDE TO CRIMINAL LAW AND PROCEDURE (8th Ed.). By *Charles Thwaites*. Furnival Press. Geo. Barber. London. Pp. 246.

In the language of the author, whose specialty is preparing students for the bar, "the first edition of this work appeared in January, 1886, its object being to assist articled clerks and bar students in pre-

paring for their examinations." It consists of definitions of the requisites of crime in general and of the particular crimes. While the definitions are usually supported by authorities, there is no attempt at complete citation of cases, nor any extended discussion of them. Many of the definitions are statutory and are based on frequent citations of the English statutes. The book is chiefly valuable to English law students preparing for bar examinations, and is apparently well adapted for its professed purpose.

E. A. GILMORE.

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LA LÉGISLATION PENALE DE L'ENFANCE ET LES TRIBUNAUX D'ENFANTS EN SUISSE. Par *Leon Lyon-Caen*. Revue pénitentiaire et de Droit pénal, Vol. 35, Number 2, February, 1911. Pp. 242 and 256.

It is encouraging to learn that the most advanced American ideas regarding the treatment of child offenders at the hands of the law, ideas which have, during the last twelve years, found ever fuller expression in state legislation and ever greater justification in the work of the juvenile courts, are embodied most completely and most forcefully in *l'avant projet du Code pénal fédéral suisse* of 1908. The responsibility of the state for the moral training of its children, and the fact that such training is not a matter of punishment but of education, are most fully recognized and set forth therein.

Its tenor is liberal in the extreme. All minors of less than eighteen are declared outside the jurisdiction of the penal law. Criminal terminology is avoided throughout in speaking of their actions, and acts which would be crimes and misdemeanors if committed by adults, are designated simply as prohibited acts.

Two distinct modes of combatting criminality are recognized; one is punishment—in essence expiation, the other is protection—preventive and reformative in character. The first is adapted to individuals who are able to comprehend its meaning and necessity; the second, to individuals who are incapable of understanding and profiting by punishment. Youthful offenders are dealt with entirely by measures falling under the second category—they present a problem, not of repression but of correction, punishment is replaced by protection plus medical and educational treatment.

Minors are divided into three age groups. Those under 14 (children), those between 14 and 18 (adolescents) and those between 18 and 20. The first two groups are treated in practically the same manner, the only difference being in the technique of the preliminary proceedings and in the countenance of more rigorous discipline for the adolescent group.

Action of the court is based upon the nature of the child, not the nature of the offending act. Neither the seriousness of the offense nor the child's power of discrimination enters into the question of the disposition of the case, that depends simply upon what the child *is*, not upon what he *has done*. It is, therefore, incumbent upon the judge to collect all possible data concerning the physical and mental status of the child, his home environment and educational advantages,

and to complete this picture by a thorough biological and mental examination. As a result of such examination the child will be placed in one of the following categories, to each of which corresponds a distinct and appropriate treatment.

First, children and adolescents morally abandoned, morally perverted or in danger of becoming so.

Second, children and adolescents needing special treatment on account of mental deviation, including the feeble minded, epileptics, degenerates, the partially responsible, deaf mutes, the abnormal, and the retarded.

Third, children and adults, sane and normal.

Children belonging to the first group may be sent to an educational institution, placed in the charge of private families, returned to their own families or entrusted to private charitable associations. Adolescents belonging to the first group may be sent to schools of compulsory education exclusively devoted to such children, or if their moral perversion is too great to be handled in this grade of school, to houses of correction, such institutions to be provided and supported by the state. The time spent in these schools is determined entirely by the needs of the child, the law fixing a minimum and a maximum. For schools of compulsory education, the term must be at least one year and no child can be held longer than the completion of his twentieth year. For houses of correction, the minimum is three, the maximum twelve years. A parole system is allowed, which provides for provisional liberty under supervision. If, during a parole of one year, a youth has not abused his liberty, he is definitely discharged, but still has the privilege of the protection of the school authorities when needed. If, however, his conduct has not been as desired, he forfeits his liberty.

There are nine schools of compulsory education in Switzerland at the present time, but the houses of correction are yet to be established.

Children and adolescents belonging to the second group are placed in institutions where they will receive the proper medical and educational treatment.

Children of the third group are sent to the educational authorities, who are judged to be qualified to decide what treatment will be most effective. They have the choice of reprimanding the child or detaining him in a special school. Adolescents of the third group are either reprimanded by the judge or detained from three days to two months in an establishment absolutely distinct from prisons or almshouses, where he must be kept usefully employed. It will be noticed that the needs of the immoral, perverted and abnormal are well provided for, but very little attention is given to the normal offender. For him two months' detention is the limit of the law, no matter what the offense. M. Léon Lyon-Caen points out that in the case of a sixteen-year-old boy murderer this would be quite inadequate, and suggests that the power be given the court to supplement the two months' deteniton, when necessary, by a period at a school of compulsory education or house of correction.

In this very complete act, youths between 18 and 20 are also pro-

vided for. Though these are treated as criminals, their youth entitles them to leniency;—a life sentence is shortened to five years or less and other sentences are equally lightened. Moreover, these youths are not deprived of their civil rights and are, during their minority, kept strictly away from adult prisoners.

The several cantons are vested with the right to create special children's courts and to arrange the methods of procedure for such courts, being instructed, however, that simplicity be adhered to, that the children be kept entirely apart from adults and that the audience be private. It also devolves upon the cantons to provide for suitable officers to watch over the children who are paroled or discharged from the detention schools.

In this legislation the Swiss have outstripped the most liberal rulings of our own counry—they have raised the threshold age of criminality from 16 and 17 to 18; they have made no discrimination against the act of murder and they have provided for leniency of sentences for criminals between the ages of 18 and 20. It is surely out of harmony with the ideal of suiting the treatment to the child, not to the act, to discriminate when the most serious crime is committed. It is also out of harmony with this ideal to withhold from the child a fair chance of development in an environment different from the one in which he has committed an act of such gravity. The code would seem to fail in allowing only a two months' detention for a normal child who had reached this point. Its mistake, however, does not lie in its failure to discriminate against murder, as most of our state laws discriminate, but in its failure to provide adequate protective measures for the child murderer. Physical and mental examination, simplicity and privacy ot procedure, the effort to re-educate and fit for citizenship (in family life preferably, in institutions when necessary) and absolute separation from adult prisoners are all recognized as necessities.

The only strong feature of our system, an indispensable feature from our point of view, for which the code makes no provision, is probation officers. Probation officers are not as yet a part of the Swiss system. It is, however, required that such data be secured as our probation officers are empowered to collect and some cantons are already proposing our solution of the problem.

The cantons are working out the various problems just as our cities are doing—in two the hearings are strictly private, in one, even the child himself, if less han 19, being excluded from all or part of the proceedings. In one it is proposed to create an "Office of Protection for the Young," composed of a president and four members,—a doctor, a lawyer, an educator and a woman to look after those children who are put on probation by the court.

The opinions of the Swiss in regard to the best system of dealing with the problem vary from the one extreme of preserving the criminal character of the proceedings to the very radical view of M. Kuhn-Kelly who wishes to rule out all vestage of a court and judge and have delinquent children dealt with by a "Commission for the Protection of Youth" entirely independent, not answerable to any other authority.

The committee would consist of five members,—the president (not necessarily a lawyer), a physician, an educator and two others. The physician and educator would examine the child physically and mentally and the other two members of the commission would collect all data possible to procure about the child. A meeting of the commission would then be held and from the accumulated information, the president, together with the physician and educator, would decide on the disposition to be made of the child.

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WILLENSENTSCHLIESSUNG UND RECHTSPRAXIS. von *Dr. J. Salgo,* Budapest. Halle a. S. Carl Marhold, 1911.

Of late there has been a tendency to replace the concept of responsibility by the concept of free determination of volition; similarly the term "diminished capacity of responsibility" has been transformed into "diminished freedom of volition for choice." Dr. Salgo shows how little is gained by this transformation, and that the physician is in as bad a plight as before, and is really asked to decide a purely subjective question. In most of the cases in which the issue is especially delicate the decision is no longer a medical issue. With regard to the diminished freedom of choice he points out that that is tantamount with a negation of insanity and with an admission of culpability. It is obvious that in these points the same difficulty exists in Europe as with us, and that we have to learn to put the question in a form better adapted to the fact that although the law recognizes only the alternatives of guilty or not guilty we have in reality many degrees of guilt, and that outside of guilt we must also consider the rights of society to be protected against mere *liability* to crime. Salgo, therefore, pleads in favor of a serious consideration of the elimination of anti-social or asocial individuals from society. He justly points out the wild and profuse talk about personal liberty as not specially relevant since we learn more and more how much stronger the individual constitution, habits, and impulses are than the actual free determination and choice between right and wrong. If error should occur they would be as open to correction as the occasional errors of justice on other foundation which are taken with much greater equanamity and without the howl usually raised where individual freedom is put under control on account of incapacity of conduct.

Johns Hopkins University. ADOLF MEYER.

DER GEISTESKRANKE, UND DAS GESETZ IN OSTERREICH. von *Dr. Heinrich Obersteiner.* Halle a. S. Carl Marhold, 1911 (pp. 23 to 42).

The Austrian authorities are working out new laws with regard to guardianship, the care of the insane, and the criminal code. Obersteiner, therefore, reviews the discussion of the Association of Austrian Alienists in 1907 and 1908, and the recent discussions of the Vienna Society. Laws must have an element of growth, which is determined partly by the claims of the public and the claims of the specialists. The fear of the asylum is at the bottom of most regulations. The law of

1874 requires that the certificate not only of a practitioner but of the health officer he obtained, and that the physician in charge of the institution has to notify the court within 24 hours. It soon became obvious that the possibility of a provisional admission to a hospital was necessary to avoid delays. All this circumstantial procedure is the product of mere agitation of propagandists for fear of the so-called "railroading," and it is certainly interesting that not one case of prosecution concerning unjust commitment is on record in Austria, but, on the other hand, frequent accounts in the papers of crimes due to nothing but the great difficulty of getting patients to a hospital before they have committed murder or similar acts. The new proposals make special provisions for insane or alcoholic individuals who have committed an act liable to more than six months incarceration, but not prosecuted on account of insanity. These persons can now be sent to an institution for as long as they remain dangerous. The same holds for persons who have been found guilty of a similar crime, but are considered deficient in the realization of the wrong of the act or in the control of their will, and to have shown a reduction of responsibility. To make such measures possible special institutions either as annexes for the criminals connected with institutions for the insane or annexes for the insane connected with the prisons or independent institutions would be required.

The law with regard to the relation of insanity to crime is now formulated as follows:

Paragraph 3: Not punishable is whoever at the time of the act did not on account of mental disorder, mental defect, or disturbed consciousness possess the faculty to realize the wrong of the act or to determine his will in keeping with this realization.

Paragraph 4: If the capacity of the culprit to realize the wrong or to determine his will in keeping with this realization is diminished at the time of the act owing to protracted morbid condition, death penalty is to be converted into a life sentence. If the accused is liable to a term in prison which would aggravate his condition if carried through in the usual manner, the Court may order that the punishment shall be executed in keeping with the peculiarities of the person.

These punishments shall be carried out in special institutions or in a special division of the prison or jail.

Paragraph 57 adds: If the culprit acts in a condition approaching irresponsibility with regard to reduction or weakness of the capacity to realize the wrong of his act or to determine his volition in keeping with this insight as far at least as his condition has not been produced by responsible drunkenness prison sentence may be transformed into a sentence to jail; fixed terms of detention and fines may be reduced to one-half of the law limit.

This condition evidently tries to do away with the easy dismissal of such cases as "not guilty."

The new proposal does, however, include some regulations less desirable—for instance, the procedure is very complicated; and one expert who need not even be an experienced alienist is accepted as sufficient. Moreover the law allows the accused, who is supposed 'not to be cap-

able of determining his volition,' to choose confidential experts with an unlimited array of rights and no responsibility, beside that of the professional secret! Moreover the law provides the admission of justice of the peace and lay judges in the constitution of the senate deciding on guardianship, a step which seems to be a premium on lack of experience. Special provisions are made against alcoholism and morphinism.

Obersteiner further suggests that the Austrian practice of demanding an expert report from the university faculties ought to include some provision for remuneration for those who are doing the work.

The above proposals have many points which are improvements on the German proposals. It does however seem deplorable that the bugaboo of railroading still puts unnecessary difficulties in the way of prompt removal to a hospital which had best be kept under control by clearly fixing the responsibility and providing safeguards for the exceptional patients who want to object on the ground that it is infinitely rarer that a person is taken to a hospital without cause and without benefit to him than that an innocent person is put under arrest and even under trial. A campaign of popular education and the request to the legal profession to judge of this matter on ground of facts and not on ground of imagination would be well in order in this country as well as abroad.

Johns Hopkins University. ADOLF MEYER.

DIE NORDAMERIKANISCHEN GESETZE GEGEN DIE VERERBUNG VON VERBRECHEN UND GEISTESSTORUNG UND DEREN ANWENDUNG. *Dr. Hans W. Maier,* Zürich-Burghölzli, Juristisch-psychiatrische Grenzfragen, VIII. Band, Heft ⅓. pp. 1-24.

Maier reports on the data collected by the Swiss Minister to the United States in 1909. The approval of the preliminary report by the members of the medico-legal association at Zurich, November, 1910, led to the fuller publication of this official material. After reference to the family "Zero" and to "the Jukes" and to the fact that improvement of the *care* of the defectives has already led to an addition of 56,000 years of state care for the 7,000 dependents in Indiana with its 2,500,000 inhabitants, Maier passes to the law limiting the right to marry. In this respect European laws give the applicant the benefit of doubt and exclude only extreme cases of defect. The Connecticut law of 1895 (epilepsy and imbecility), the Michigan law (insanity, idiocy, syphilis and gonorrhoea), the Ohio law of 1904 (alcoholism, epilepsy, imbecility and insanity), the Kansas law of 1903 (for epilepsy, imbecility and insanity, leaving out women above 45), the New Jersey law of 1904, and that of Minnesota, all demand not the demonstration of the disease but a clean bill of health. Maier favors especially the Michigan law. California is the only state with a statute introducing castration as such for imbeciles or prisoners; but the Attorney General U. S. Webb interpreted it in favor of the Indiana law which demands merely sterilization.

The experience of Dr. Sharpe with vasectomy led to the Indiana statute of 1907 making mandatory the appointment of a commission of experts consisting of the physician in chief of the institution and two experienced surgeons and sterilization of irrecoverable criminals,

idiots and dements, with a maximum fee of three dollars for the operation. Up to July 31st, 1911, 873 male criminals, and at least two women, have been sterilized. Of the ensuing discussion Maier has seen but favorable accounts and he assumes that the general introduction of the principle is but a question of time. Oregon added hereditary forms of insanity and specifies criminals convicted for the third time. The Governor vetoed it with merely formal arguments. Illinois refused the proposed law; Connecticut in turn enacted a law specifically for the state prison and for the two state institutions for the insane. The law demands a study of the heredity and specifies the operations (as vasectomy and oophorectomy), and prohibits the operation for general use for any but unconditioned medical reasons.

In the main the report errs in assuming that these laws are really rigidly enforced.

Johns Hopkins University. ADOLF MEYER.

LA POLICE DES MOEURS DEVANT LA COMMISSION EXTRAPARLEMENTAIRE DU REGIMÉ DES MOEURS. Par Louis Fiaux. Tome III. Paris, 1910. Pp. 744.

The present volume is the latest in a series of works by M. Fiaux on the system of police regulation of prostitution. In 1888, he published *La police des Moeurs en France et dans les principaux pays de l' Europe.* In 1902 he issued the first volume of a *Histoire Generale du mouvement pour l' abolition de la Police des Moeurs;* and in 1909 issued the second volume of this work. In 1907 appeared two volumes containing the proceedings and documents of the commission established in 1903 to investigate the system; while the volume now before us contains the Report of the Commission with the draft of a bill recommended by it, and a discussion of 224 pages by M. Fiaux, who was a member of the Commission.

The Commission was appointed as the result of a discussion in Parliament on abuses by the Police des Moeurs at Paris and Rennes; and its report gives the result of an exhaustive investigation into the prophylaxis of venereal diseases and the means for protecting publice morality. The general conclusion of the report is that the system of regulation does not reduce the morbidity from venereal diseases. The legislation recommended by the Commission proposes to do away with the system of regulation, and to provide measures for the protection and reformation of minors engaged in prostitution, preventing public provocation to debauchery, to suppress pandering and to provide medical treatment for venereal diseases.

M. Fiaux's introductory discussion, while criticising the report in some details, in the main supports its conclusions and recommendations, denounces strongly the abuses of the system of regulation and urges its abandonment.

This exhaustive investigation and report is an indication of the serious attention being given to the problems of prostitution, and is well worth examination by all interested in the efforts being made in this country to deal with the social evil on a rational and scientific basis.

University of Illinois. JOHN A. FAIRLIE.

JUDICIAL STATISTICS, England and Wales, 1909. Part I.—Criminal Statistics. Darling and Sons, London, 1911. Pp. 195.

One can best begin a review of this volume, it seems to me, by giving in full its second sub-title, which is "Statistics Relating to Criminal Proceedings, Police, Coroners, Prisons, Reformatory and Industrial Schools, and Criminal Lunatics, for the year 1909." Even this sub-title does not tell the whole story. The book includes not only these statistics for the year 1909, but also a written introduction to the statistics and tables in which comparisons are made with the criminal proceedings of previous years.

The introduction was prepared by Mr. H. B. Simpson of the Home Office; and it is carefully pointed out in the letter of transmittal that the suggestions and conclusions which he makes must not be taken as the official views of the Department.

Mr. Simpson's most important conclusion is that there has been a steady increase in criminality during the last ten years. In regard to his position I can do no better than quote his own words.

"It is no doubt probable that an increase or decrease of crime in a single year as compared with the preceding year may be in part attributable to industrial causes and the condition of the country generally, but it would, I think, be impossible to obtain any series of figures bearing on the general condition of the country that would at all coincide with the remarkable series of figures relating to crime which is now under consideration. These point to a steady increase of criminality during the last ten years which is more marked than at any previous period for which similar statistics are available. It is impossible to avoid the conclusion that during these years some cause favorable to crime has been regularly at work which before then either did not exist at all or did not exercise sufficient influence to affect the figures."

It is interesting to know to what he attributes this increase. He says that judging from statistics furnished by the police relating to habitual criminals at large that it is not due to an increase in the number of this class and is explainable therefore only on the ground of a more general prevalence of criminality in the community as a whole. This growing prevalence he in turn accounts for by reference to the compassion and pity which have lately been lavished upon the criminal. At times, he says, it seems as though the reading public was ready to accept anything which the criminal might say to impugn the administration of justice. This is, he feels, a false attitude which has come about through the mistaken notion that crimes are simply the revolt of the poor against the rich and that criminals are the romantic characters which are portrayed in present-day fiction. As a matter of fact, it is not the so-called "propertied class" that suffers most from the acts of criminals but ill-paid clerks and working men and women, and the criminal is simply a man very much like the rest of the world and very greatly influenced by the attitude which the community adopts toward him.

Two other points of interest discussed in the introduction are the decrease in offenses for mere violence and the increase in the percentage

of persons imprisoned in default of the payment of a fine. This last situation is hard to explain, since the new offenses created by recent legislation are those which would be committed by well-to-do persons. The only explanation which he suggests is that prison is losing its former terror.

From the prison returns, one can gain a fairly good idea of the importance of the short sentence. Of the 221,199 persons received in prison during the year 1909, 152,869 were under sentence of less than six weeks' duration.

It may not be out of place here to note that Mr. Simpson bases his conclusions in almost all cases on the figures for persons tried for offenses or on offenses dealt with by the courts rather than on the number of persons actually convicted of crimes. This seems to me to be a mistake and a practice not in accord with the best theory.

One misses, I may add, the careful and detailed analysis of the statistics which one is accustomed to find in American statistical reports. The tables can be made to yield a vast amount of useful and suggestive information, but the student will have to do the necessary grouping and summarizing himself.

LOUIS N. ROBINSON.

Swarthmore College.

THE PREVENTION OF DESTITUTION. By *Sidney* and *Beatrice Webb*. Longmans, Green and Co., 1911. Pp. 348.

The interest of students of criminology in this essay on poor relief lies in its constructive program of prevention. It is very difficult, spite of our proverbs about the "ounce of prevention," to secure sustained attention for it. The dear public pays millions for patent pills and physicians' fees, but neglects the causes of disease until it is too late. For ages men of all classes, even statesmen, have indulged an unwarranted confidence in fear of penalties as a deterrent factor, against which psychologists and educators have protested in vain. The pauperized spirit is akin to the vicious and criminal mind and both arise in the same family conditions. Radical measures are necessary to avert these connected evils; the prevention of disease, the eugenic selection of better stock, the supervision and control not only of children but especially of adolescents, the abolition of sweating and unemployment, and the adoption of a social policy which will at once raise the standard of living in the urban quarters where crime impulses flourish as in a hot bed. Malaria is mitigated by quinine, but leaves weakness, malaria disappears when drainage is perfected. Punishment is quinine; a constructive social policy destroys the germs. When the entire population is trained to regard law merely as threat and repression, it tends to lawlessness; when law means a constant and positive method of promoting health and happiness, lawlessness diminishes, loyalty increases. The book here noticed has awakened severe criticism; its conclusions are yet to be tested by reason and experiment; but much of the plan is already on a sound basis and all of it deserves sober consideration.

University of Chicago. C. R. HENDERSON.

DIE JUGENDLICHEN VERBRECHER IM GEGENWAERTIGEN UND ZUKUENFTIGEN STRAFRECHT. By *Prof. Dr. Ernst Schultze,* Direktor der Kgl. Psychitriaschen und Nervenklinik in Greifswald. Wiesbaden, Verlag von J. F. Bergmann, 1910. Pp. 74.

The author approaches the problem of juvenile delinquency from the experience of a specialist in diseases of the nervous system. He analyzes the older code and the proposed legislation with direct purpose to deal with the offender in full view of his character and history, leaving legal precedents to lawyers. It has been claimed by certain antagonists of the reform party that lawyers have nothing to learn from medical men, and there is general complaint among physicians, teachers and practical prison men in Germany that jurists treat them with scant courtesy. The argument of this pamphlet is that codes and procedure must stand or fall by the test of efficiency, and that this test can be applied not only in courts but in institutions and clinics, and in city life. The cure for meaningless legal phrases is the honest attempt to study objectively, with all the appliances of modern science, the personal characteristics of offenders. It is true the author is writing only of youth, but the principle is applicable everywhere. On the whole the Bourbons are compelled to yield ground, the new projects of law and the rapid development of juvenile courts in Germany are cheering signs of the dawn of light. Not only men of different professions but also women are coming to be partners of judges in this movement, and their co-operation is creditable not only to themselves but also to those jurists who have encouraged it for the sake of their country's welfare. It means a fresh life, a renaissance for legal science.

University of Chicago. C. R. HENDERSON.

MISDAAD IN SOCIALISM; TEGELIJK EENE BIJDRAGE TOT DE STUDIE DER CRIMINALITEIT IN NEDERLAND. By *Dr. W. A. Bonger.* Amsterdam, 1911. Pp. 40.

This essay originated as a refutation of some recent assertions by a well-known Netherlands jurist, Dr. J. Slingenberg, judge of the municipal court in Amsterdam, and developed into general study of recent Dutch criminality from the statistical point of view. Judge Slingenberg, in a report made to the Congress of Criminal Anthropology, advanced this charge: "There is a direct relation between criminality and class-conflicts, in the sense that the sharper the conflict the greater the increase of crime." The first and chief proof offered for this was that in the Netherlands the years 1897-1901, in which general elections were held (the Socialists being a principal party), there was an upward jump in the crime figures. Of this broad assertion and its supposed basis, Dr. Bonger easily makes short work. By a series of tables he demonstrated the absurdity of the generalization. He then proceeds to an elaborate study of recent Dutch criminal statistics, from the point of view of economic and social causes, and with great skill points out the impossibility of deducing fixed and uniform explanations and the danger and fallacy of certain *a priori* assumptions.

This essay exhibits Dr. Bonger as an able master in the statistical

study of crime and its causes—that tempting field into which so many venture rashly. Dr. Bonger's great work, "Crime and Economic Conditions," is now under translation in the Modern Criminal Science Series, published under the auspices of the Institute. The American public will welcome this much-needed volume, the only one in English which systematically examines the crime problem from that point of view.

Northwestern University. J. H. WIGMORE.

MENTAL MECHANISMS. By *William A. White,* M. D. Nervous and Mental Disease Monograph, Series No. 8. Pp. 171.

The above monograph of 150 pages is a most interesting contribution to the literature of applied psychology. Assuming a structuralism, a subconscious mind as filling "between the mountain peaks," any inquiry into the accuracy of the representation is relegated with forceful authority to the realm of metaphysics, which is taboo. The plan of the monograph involves the portrayal of analogy between ideas or constellations,—sometimes conscious, sometimes subconscious,—and the wheels of a mechanism; and this portrayal, from the literary standpoint is excellently and vividly drawn.

The final chapter makes certain representations, which coming from so eminent an authority should certainly find audience among those interested in the relations of the insane to the state. This chapter is an elaboration of a paper read before the American Public Health Association in Milwaukee and has previously been published in briefer form. Mentioning the relation of venereal diseases, and of alcohol to insanity the author passes on to certain common experiences which have in the past received less than their due attention as causative factors in the psychoses of various forms of insanity. The failure of the individual to live down the griefs, the shocks, bad habits, and low ideals, develops a biased mental attitude. These attitudes develop in two familiar sorts of environment,—the school room and the home. In the home, sickness, alcoholism, crime, child labor, outside employment and overwork of the mother, remove from the unfoldment of the child nature one of the most important and most necessary restraining influences. The energy which should have been expended by the mother upon the rearing and careful training of the child is deflected to other ends. The European laws governing the employment of women are commended.

Regarding sterilization of criminals, Dr. White says, "It is hard to find any justification for such legislation unless it be the good intention back of it, and we all know the fate of so many good intentions. * * * The whole question of heredity is altogether too vague in its application to man to warrant any such radical measures." Insanity is an acquirement. The symptoms have been added to the germ, not developed as an innate necessity. "If a change in environment will change the shape of the skull in one generation, as has been recently shown by Professor Boas, what may we not expect from hygienic surroundings and proper educational methods?" A method of education which will correct bad habits, which will foster good habits, which "will develop the best which is within the individual, but more important still, which will develop a

properly balanced structure that will not be forced out of equilibrium by the first breath of opposition," is the great preventive principle. "Many of the psychoses that later go to the making of classes of chronic insane, criminals, paupers, prostitutes, tramps and ne'er-do-wells * * * have their incipiency in the school room * * * and develop very often under the very eyes of the teachers." These psychoses are preventable, and the failure to observe them is due to the lack of preparation of teachers, mothers and physicians. A paragraph is devoted to the lack of training of physicians. * * *. "Medical courses are open to somewhat the same criticism as the miser." Attention is called to a law passed by the New York Legislature which takes out of the hands of the poor authorities the care of the insane previous to commitment and putting it into the hands of the health officer. The practical things which may be done in any community are summed up in seven recommendations:

1. Legislation placing the responsibility for care of the insane previous to commitment in the local health office.

2. A psychopathic ward in every municipal hospital of cities of 100,000 inhabitants. This ward should have an out-patient department.

3. An after-care society for the assistance of persons discharged from the hospital.

4. Legislation for the control of labor of women and children.

5. Popular education regarding insanity and its causes, from the hospital as a center. Its officers should give series of popular lectures to the members of the surrounding community.

6. Field work from the hospital into the centers where insanity has developed and to co-operate with the after-care society.

7. More liberal support by city and state of scientific research work especially along the lines of etiology and prophylaxis.

This chapter is to be considered as the application of previous discussions regarding the causes of and the process of development of the psychoses. The rapidly increasing population of the insane hospitals demands more widespread and careful study of the contribution of the everyday, routine habits to the upbuilding of the mental complexes, and this monograph is designed partly to stimulate, partly to satisfy this demand.

University of Illinois. A. H. SUTHERLAND.