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Reviews and Criticisms

MITTEILUNGEN DER INTERNATIONALEN KRIMINALISTISCHEN VEREINIGUNG. 18. BAND. HEFT I. (Bulletin de l'Union Internationale de Droit Pénal. Dix-huitième volume. Livraison I. Von *Dr. Ernst Rosenfeld.* J. Guttentag, Berlin, 1911. Pp. 498.

It is important that our readers' attention should be especially called to these "Mitteilungen der Kriminalistischen Vereinigung," for they are a mirror in which we can see a practically complete reflection of the criminal law reform movement in all countries. Here, better than anywhere else, we can obtain an idea of the battles that are fought out in this realm and of the victories that are won. Here the investigations of a large number of gifted and industrious scholars are brought together and examined as to their practical value. Our horizon broadens here, expands far beyond the limits of our own country and we are thus enabled to compare, to distinguish, hence to know.

The present eighteenth volume contains two original pieces of work: (1) a very instructive examination of "Places of Detention in England," that is, of the detention of juvenile offenders in England, by Dr. Jur. Behrend, and (2) a study of the "Anwendung der bedingten Strafaussetzung in Frankreich," by Marcel Oudinot (L'application de la loi de sursis en France). The volume is accompanied by a supplement containing a German translation of the Japanese military penal code, by R. Fujisawa, which we mention particularly because it seems to us that the military penal codes of the great armed Powers, like Germany, Austria, etc., do not receive sufficient attention from our reformers. Whatever may be said against their relative harshness, the economy of the means used might well serve as a model in some respects for our penal codes—especially for the reform of our jury trials and for the acceleration of the whole criminal procedure.

The largest portion of the book is naturally devoted to discussions of the two great drafts of a new penal code in Austria and Germany. That these two drafts signify a victory for those ideas that the "International Union of Criminal Law" has advocated for upwards of twenty years cannot be doubted, for they are, on the whole, an unexpectedly rich fulfillment of the demands relative to criminal policy that are put forward by this Union. There we find the hotly disputed conditional sentence and the "Rehabilitation" which has come into prominence only within recent years. There we find regulations pertaining to the protection of society from the dangerously insane. There too, "defectives" or "partially responsible" persons are especially treated and, at last, in dealing with juvenile offenders not only punishment but training is made to play a large part, while idlers and drunkards are subject to special measures. What is most striking in both the drafts, however, is the hopeful and certain confidence displayed in the strength and capabilities of the judges of the criminal court, the margin allowed them for the exercise of their own judgment, in a word, the absence of bureaucratic timidity. The defects of these drafts, which appear with particular clearness in these equally learned and brilliant discussions, cannot be dealt with here today, but must wait until the drafts themselves are reviewed.

North Easton, Mass. ADALBERT ALBRECHT.

MATERIALEN ZUR LEHRE VON DER REHABILITATION. Von *Dr. Jur. Ernst Delaquis.* J. Guttentag, Berlin, 1907. Pp. 75.

The idea and practice of rehabilitation plays practically no part in American criminal procedure and from this it might be argued that we should find nothing of value in monographs upon this subject. But this is not true, for a point of some interest is at once discovered by the very fact that there is this great difference between continental criminal procedure and our own. Parenthetically, it might be stated that the situation in England is much the same as it is in this country—there is very little forfeiture of the rights of citizenship or property following the completion of a prison sentence.

In Germany and in France there are many limitations of personal rights as the result of conviction of offenses against the law. This varies in the different German states and some of the differences are emphasized by Delaquis. As would be naturally supposed, this phenomenon is most striking in connection with punishment under the military code. On account of this personal forfeiture being such a factor of the punishment in these countries there has come about a definite movement in favor of restoration to the complete rights of citizenship, which is found more or less expressed in various criminal codes. Delaquis insists that it is a necessity for the prevention of recidivism. He quotes Berenger, who said to the French senate in 1882, "Of all the resources which penological science has placed at the disposal of the law for the amendment of offenders, there is nothing more efficacious nor more active than the hope of rehabilitation. At the same time, there is nothing more moral, more elevated, or more conformable to the ideas of justice and humanity."

One is struck by the great contrast between this state of affairs and our own, where we hear nothing of any such necessity. This would seem strange since, in contrast to English procedure, many of our states prescribe the loss of the right to vote after conviction of a number of offenses. There may be several reasons for this, principally social. We have a greater fluidity of population; we have not the continental system of general citizen registration; we are comparatively primitive in our methods of recognition and recording of offenders; we have very little interchange of data between our different criminal agencies. It is more than likely that when many offenders have served their sentences they assume different names, change their abode, and become to all intents and purposes citizens again. We have no method of checking and preventing this. It may well be from these various causes that we here have no demand for this most worthy measure of restoration to the rights of citizenship.

Delaquis makes a presentation of the fundamental theories underlying rehabilitation, and also gives a summary of the status of this measure in various countries, and finally pays some attention to statistics and bibliography.

Chicago. WILLIAM HEALY.

ESSAI D'UNE THEORIE JURIDIQUE ET MEDICO-LEGALE DE LA PREMEDITATION CRIMINELLE. Par *Visair Cornatlano,* docteur en droit et en medicine. Avec preface de M. Garcon. L. Larose and L. Tenin, 22 rue Soufflot, Paris. Pp. IX, 163.

During the last few years the theory of criminal premeditation has been made the object of numerous studies and discussions, partly because of the

peculiarly dangerous anti-social character of bands of criminals, and partly because criminal jurists have suggested regarding premeditation as an aggravating circumstance justifying more rigorous punishment than would otherwise be warranted. Indeed, premeditation is in some systems of criminal jurisprudence the distinguishing mark between crimes and misdemeanors of varying grades of seriousness. The International Congress of Criminal Law has given some attention to the subject, but the problem has as a rule been approached from a rather theoretical point of view.

In the preface to the present little treatise, Professor Garcon, of the Paris Law School, suggests that a distinction should be drawn between premeditation, on the one hand, and obsession or fixed ideas, on the other hand. Premeditation, he declares, is a phenomenon of normal psychology; whereas obsession is morbid and belongs to the domain of psychiatry. "Unquestionable evidence," says this distinguished criminologist, "may prove that the defendant thought of his crime long before committing it, and that the act was accomplished only after long deliberation. Hence premeditation would appear to be conclusively established. But may not the very same facts be explained quite as well by pathological obsession? The idea of murder may have early entered the mind of a degenerate and taken its root there; he may have fought courageously against it, and for a long time the reasons against it may have prevailed; yet if he commits the crime, it will appear as the result of long, calm deliberation. For if the fixed idea of murder later becomes stronger than the healthy impulses which resist it, and the man's power of inhibition surrenders, he commits the act, which is then interpreted as deliberately conceived. And if finally the murderer experiences the relaxation that follows the accomplishment of the act, he is put down as guilty of the cynicism that marks the hardened and remorseless offender. Thus the same facts and the same testimony would indicate, according to one interpretation, a morbid condition in which all penal responsibility is lacking, or, according to the other interpretation, an aggravating circumstance that may lead the offender to the scaffold."

It is clear that such a problem as this can be best dealt with by one who is familiar both with criminal law and with mental diseases—a combination of qualifications which is possessed by the author of the present study, who reaches the conclusion that "premeditation, as an aggravating circumstance in cases of murder, cannot be subjectively justified, and should have no place in a sound system of criminal jurisprudence."

The study begins with a historical sketch of the doctrine of premeditation in the criminal law of the middle ages and of the principal moedrn nations. The Carolinian code in 1523 provides that simple homicide shall be punished by death, whereas premeditated homicide is punishable by death accompanied by horrible tortures. From that time forward the distinction becomes customary, though not always clearly drawn. But the Russian code of 1866 and the Portuguese code of 1884 eliminate it almost entirely; and the Russian code of 1903, now in force, does away with it entirely. Briefly summarized, the history of the distinction is this: The ancients made no difference between premeditated murder and murder without premeditation, both being subjected to the same penalty. The idea of premeditation, introduced mainly during the middle ages and the sixteenth and seventeenth centuries, has been abandoned in a number of codes promulgated in the latter part of the nineteenth and the beginning of the twentieth centuries.

Then follows a careful discussion of the various doctrines concerning premeditation that have been advanced by the leading criminological writers from Beccaria down. According to Beccaria, in cases of simple homicide or manslaughter the criminal gives no thought to concealing the traces of his misdeed; whereas in case of premeditated homicide or murder everything is arranged in advance: the offender carefully selects the means and methods of action and tries to conceal his crime and to avoid its consequences and prevent his own discovery. This additional peril for society at large, caused by the difficulty which society has in avenging or defending itself, justifies a severer penalty than that of simple homicide. According to this conception, premeditation is the index, not of criminal wickedness in the offender, as some psychologists and criminologists would have us believe, but of a more serious social danger.

Rossi carries the theory of premeditation a few steps further, basing his scale of punishments upon the moral state and the perversity of the delinquent. "Premeditation," says Rossi, "discloses a great danger and causes just alarm. What will restrain the offender who, after having deliberately considered the obstacles that should deter him from crime, has nevertheless passed over them all for the first time? . . . Whereas in a sudden offense the idea of crime has merely traversed the mind of the agent, through a cloud of passion, in the case of premeditated crime he has looked the offense squarely in the face." Romagnosi's further development of the theory of premeditation recognizes in substance that simple homicide and premeditated homicide are similar from a quantitative point of view; the direct effect on the community is the same; but they are different from a qualitative point of view. Criminal tendencies being more accentuated in the second than in the first, it should be more severely punished.

In the second half of the nineteenth century, however, a new theory arises in opposition to the orthodox or classical conception. John, writing in 1871, undertakes to show that it is impossible to determine clearly where the simple will to kill terminates, and the element of premeditation begins. It would be more accurate to say, according to John, the murder is committed with more or less of premeditation; and in that case, what degree of premeditation is requisite to constitute premeditated homicide? The classical theory received another blow in 1875 at the hands of Holtzendorff, who sought to prove that the nature of culpability lies not in the circumstances of an act, but rather in the motives that have caused it; the man who kills out of cupidity, for the simple object of gaining some coveted pleasure, is much more culpable than the man who has been insulted and kills to avenge his honor. Moreover, quick-thinking men of sanguine temperament, will strike at once, under the empire of the first impulse; others with slower faculties and phlegmatic temperament, feel an insult less keenly and yield less readily to the impulse of vengeance. If we attach due importance to the motives of the crime, furthermore, it becomes apparent that a simple homicide may denote, on the part of the offender, a much more perverse nature than in some cases of premeditated homicide. Thus premeditation furnishes no sure criterion.

The positivist school of criminologists also rejects premeditation as an aggravating circumstance, but for reasons different from those employed by Holtzendorff. One of the founders of the school, Garofalo, asks the question, "Is the offender who commits a crime after premeditation more to be feared

than one who commits it spontaneously?" and answers negatively. A third school—terza scuola—started in Italy with Alimena, occupies a sort of midway position between the preceding. Alimena distinguished four types of homicides, constituting a scale of culpability and justifying corresponding grades of punishment. (1) Passionate sudden homicide, such as that which a husband commits upon discovering his adulterous wife in flagrant delict; (2) homicide committed in consequence of a resolve formed before the act, but under the influence of a persisting passion—as in the case of Othello; (3) sudden homicide, but committed in cold blood and voluntarily—everyday vulgar murder, as in the case of a safe-breaker caught in the act; (4) premeditated homicide, planned deliberately in advance, in cold blood—like that of Macbeth.

The second part of the treatise is devoted to a most interesting discussion of criminals in literature and of certain recent notorious criminals like Guiteau. The third part presents the author's own view of the nature and significance of premeditation. Drawing freely for his arguments upon modern physiological and associational psychology, Cornatlano contends that according to the stock of ideas, impulses and representations that constitute the psychic make-up of the individual, premeditation may be either beneficial or harmful, individually and socially. "The intervention of reflection may be beneficial up to a certain point and place a barrier in the way of innate or acquired evil penchants, in the way of momentary desires or impulses; but we refuse to regard prolonged reflection as a positive and affirmative intervention in behalf of crime." Premeditation is not an aggravating circumstance; nor does it reveal the baseness of the criminal's soul. It offers simply a new means of investigation in the field of abnormal criminology. To determine the causes of the criminal act, it is necessary first to study the entire psychic and organic life of the author of a premeditated crime. This, of course, enlarges the domain of medical jurisprudence, which is alone capable of adequately dealing with such problems as these: In the case of premeditated crime, when the author had the power to reject the idea of crime, why did he not do so? What forces led him to harbor an idea so contrary to normal human nature? And if, as often happens, the mind that appears essentially and basically normal has had grafted upon it a series of abnormal processes, how did this happen?

George Washington University. C. W. A. VEDITZ.

WANDTAFELN ZUR ALKOHOLFRAGE. By *Max von Gruber* and *Kraepelin*. J. F. Lehmann, Berlin. Pp. 35 and ten charts.

In order to make propaganda, in Germany, against the abuse of alcohol, different agencies coöperate. Trade unions, the sick funds, the employers' associations for insurance against accidents and other societies conduct a campaign of education. At the last hygienic exhibition in Dresden this question, of the most vital importance to the development of the race, received special attention. The exhibit, put up by the brewing interests, was attacked on all sides on account of the insincerity of its figures. When I go back to Germany, I am astonished to see what has been accomplished by the agitation against the abuse of liquor.

Kraepelin and Gruber are among the strongest enemies of the German habit of consuming liquor, and in order to show people at large the fallacies of the generally adopted ideas about the nutritious value of alcohol, and the economic and social consequences for the household of spending large sums for

beer and brandy, they have published ten charts. Their price is so low that they will undoubtedly find a large distribution. Reproductions of the charts and explanations are contained in a small pamphlet which I have before me. It is computed that Germans spend yearly about $750,000,000 for liquor, one-third of this sum is spent for military purposes. The first chart compares the expenses of working men in Baden and Berlin. At least 12% of the expenses of the first group go for buying liquor. The Berlin laborer spends only 6.9% of his income for it.

Here 227 family budgets have been studied; the opportunities offered to the working men in Berlin are such that they find it possible to spend their time not only in saloons but in places where they find recreation without being obliged to drink.

In chart No. II we find the well-known comparison between nutritious values contained in liquor and other food products. The mistake was not repeated here to assume that there is absolutely no nutritious value, but it is forcibly shown, for instance, how little there is in a given quantity of beer and how dearly it is paid for. It is even conceded that alcohol can be used as fuel for the human machine, but on account of the poison it contains, the nervous system is very soon affected.

It is further shown here how many calories can be bought for 25 cents, and what potatoes, macaroni, sugar and other food products contain in carbon hydrates and protein. Chart No. III shows the influence of alcohol upon eugenics. The infant mortality in families where the parents are both intemperate is shockingly high. It would not be right, however, to make alcohol alone responsible for the figures, for the surroundings, the poverty and the great number of children in these families, where under the influence of liquor the necessary restraint in sexual relations is not exercised, play an important role in increasing the infantile death rate.

Chart No. IV shows the influence of alcohol and tea upon the nervous system. The experiments were made at different times during 2 hours. It is to be regretted that the time was not extended, for, very curiously, we find that the different curves at the end of the second hour converge toward one point. The consumption of alcohol handicaps the work for an hour and a half, while during the last thirty minutes it is above the average. Tea increases the output for the first hour considerably. I do not think this chart shows any conclusive results.

Chart No. V shows the effects of a constant consumption of alcohol on the mental activity of people. The experiments were continued during 4 weeks, those who did not use liquor had a decided advantage over their drinking companions.

Chart No. VI contains a highly interesting study, made in the public schools, of the number of children who in their daily life habitually take alcohol. Less than 14% of all the school children under 14 years of age never get a drop of liquor, and more than 56% drink it every day. The damage due to alcoholic poison becomes here quite evident, the power of perception and the conduct of the children are greatly influenced by its consumption.

Chart No. VII draws a comparison between the mortality of English saloon keepers and waiters on one side and the rest of the people, which is considerably higher in the first class. A very instructive chart shows the policy of the English life insurance companies to have separate departments for

abstainers and drinking men, whose mortality is quite a good deal higher.

Chart No. VIII shows to what an astonishing degree alcoholic excesses must be blamed for the many deeds of violence committed on Sundays. The other half of the page gives a statistic of the places where these crimes were committed; the saloon can be blamed for more than three-fifths of all the cases.

Chart No. IX gives the result of a study made in 120 German prisons in 1876, of the participation moderate and immoderate drinking had on the commitment of crimes. To our surprise, we see that people who occasionally drink show a higher percentage of criminality than the habitual drinkers. While the former's percentage in the commitment of crimes against persons, crimes of passion and immoral acts, were far above the average, the latter showed a larger percentage in cases of arson and thefts. The last table shows the life of a heavy drinker from his 18th year until his final commitment to an insane asylum. Born as an illegitimate child of intemperate parents, he did not learn a trade, became a heavy drinker, and very soon came into conflict with the law. The inadequacy of the German administration of justice can be beautifully observed by studying the diagrams. Finally he is committed to the insane asylum, and society is henceforth protected against the man who, through the constant abuse of liquor, had probably for years been irresponsible for his acts. The fight against alcohol is a fight for the preservation of the race, by a constant propaganda of information, and by giving to the working people an opportunity for recreation under decent conditions, without any consumption of alcohol, much will be gained. The most hearty coöperation of the trade unions and the socialistic party, which was caused by the hostility against the landed proprietors, will result in reaching at least the industrial workers, and convince them above all of the poisonous effects of strong liquors. The most astonishing example of the fair mindedness of the employers I observed years ago in Berlin in a great brewery. The men were formerly allowed a certain amount of free beer; the consequence was that the cases of sickness and accidents were very fast increasing, the men showed less power of resistance and could not do a man's work. The company began to furnish to its employes free of cost milk and tea with very satisfactory results. In the army and navy the consumption of liquor is decreasing, and when once the students also accept the truth that it is no sign of a gentleman to be able to consume a certain quantity of alcohol without ill effects, I believe the fight against alcohol is won.

By publishing the ten charts, discussed above, the two authors will have

Chicago. VICTOR VON BOROSINI.

PLEADINGS, EVIDENCE AND PRACTICE IN CRIMINAL CASES. By *J. F. Archbold.* Sweet & Maxwell, London, 24th ed. 1910. Pp. CXXVII+1587. Prices 26-4.

This is the 24th edition of what has been, for the last eighty years, a standard English book on the subject. In 1822 Lord Archbold prepared the original edition, the plan and classification of which has remained substantially unaltered to date. It became at once the standard in English. In 1831 Lord Jervis, Chief Justice of the Court of Common Pleas, prepared the 4th edition, and thereafter all to the 9th edition in 1843, thereby permanently establishing the work as the one standard in use. The substance of all of the excellent works of criminal law from Brackton, through Hale, Hawkins and Cole, was included. Lord Jervis was one of England's greatest criminal lawyers in practice and a

most discriminating trial judge upon the bench. The aim seems to have been through the subsequent editions to maintain this high standard of excellence, and apparently with success. Mr. Craies, just recently deceased, the senior editor of this last edition, was one of the highest authorities on criminal law and was frequently consulted by the government on questions of both prosecution and legislation. He was practically the sole author of the late revision of the perjury statutes. His assistant, Mr. Roome, is a young barrister who has acquired a considerable criminal practice and is a thorough student of the English criminal law and procedure.

As is well known, the term "criminal lawyer" in England does not carry the opprobrium which in some minds is attached to that title in this country. The reason no doubt is that a criminal lawyer there does not become noted because of success in accomplishing miscarriages of justice or ability to persuade jurors to self-stultification. The scope of his labor within which he establishes his reputation is that boundary beyond which no lawyer may justifiably go, to-wit: the endeavor to ascertain the real truth and apply the proper rule of law thereto, to the end that the government shall never invade the rights of any man, either innocent or guilty, protecting the innocent by securing a complete vindication, and securing to the guilty immunity from punishment beyond the measure authorized by law.

The work is in one single volume of fifteen hundred and eighty-seven pages, the contents divided into two books.

Book I, treating of pleadings, practice and evidence generally, first deals with the indictment, information (used in certain limited cases in England), coroner's inquest, pleas, replications, etc. It gives a complete and succinct statement of the form and necessary contents of each, passes thence to the several proceedings in the stage of a case, including appeals, restitution of property, compensation and appeal. Then follows a discussion of evidence generally, what must be proved, manner of proving, competency, privileges, credibility, number of witnesses, method of examination, procuring attendance and payment.

Book II, comprising two-thirds of the book, deals in the same manner with specific offenses. It gives the statutes creating them, indictment, pleas, evidence and other procedure peculiar to each, and the substantive law defining each offense. The offenses are classified: first, those against individuals, which are further classified into wrongs against property and wrongs against the person (I search in vain to find included under this head wrongs to reputation), and, second, wrongs against the public, further classified into treason, sedition, coinage offenses, perjury and other offenses against public justice, blasphemy and crimes against public worship, offenses against the peace, against public trade (which includes offenses by employers and workmen, the Pure Food Act and bankruptcy frauds), offenses against public morals, including public nuisances and the like, and libel (classified as a public wrong).

The next parts relate to substantive law and procedure in conspiracy, incitement and attempt, principal and accessory, abettors, etc.

The last part of the book covers second offenders and habitual drunkards, the authors quite sanely having included these together.

While the book is confined to English law, yet it is of practical value to an American practitioner. Works of this kind, pre-eminent in their field, tend to simplify the law, prevent confusion, and avoid reversible error in trial, in

short help to accomplish certainty. The making of a similar book as to American criminal law, by one capable and willing, would be a distinct contribution to the cause of securing efficient criminal practice. While the statutes of the several states vary in detail, the substance is not so variant as to make such an attempt hopeless. In the meantime the use by our practitioners of this *vade mecum* of the English practitioner would work toward uniformity.

Wausau, Wisconsin. C. B. BIRD.

CODE PENAL annoté par *E. Garcon.* Tome Premier (Art. I a 405), Paris, 1901-06; and Premier Fascicule du Tome II. (Art. 406-463), Larose et Tenin, Paris, 1911, Pp. 376.

The review of an annotated Code must be directed rather to the annotations, as a mechanism or apparatus, than to the Code which in the present instance was promulgated over a century ago. Of two annotated works that of more recent date should have the advantage. This is not necessarily true in France where annotations frequently have the double purpose of citing the cases and of exposing the *doctrine.* The text (484 Articles) of the French Penal Code may be contained in a small volume. As annotated by Dalloz, the Penal Code is an immense tome. With the present annotator two tomes are necessary, of which the first and part of the second have appeared. The first 405 Articles required five years of preparation (1901-1905). After an interval of five years (1911) appears a further installment of 58 Articles. Certainly the end of the work is not yet in sight, with twenty-one articles yet remaining besides the additional penal legislation, codified and uncodified, which it was thought necessary to include in the Dalloz annotated code.

According to Dalloz, the *ensemble* of French penal legislation to be annotated is composed: first, of the laws brought together by codification into a single body in the Penal Code; second, of special laws which are not part of the Penal Code but complement its provisions; third, of special laws unrelated to the Penal Code but which contain repressive dispositions.

M. Garcon is professor of Criminal Law and Comparative Penal Legislation in the Faculty of Law of the University of Paris. He has set about his task rather as commentator than as digest maker. He claims sole responsibility for the merits and demerits, if any. As digest maker he has had the collaboration of the editors of the *Recueil Général des Lois et des Arrêts* and of the *Journal du Palais.* In his preface he says: "In the measure possible, I have sought to maintain the criminal law in its liberal traditions—to speed new ideas to the extent that they seem just." He admits that where the jurisprudence or case law has declared itself it should override *doctrine,* in the sense of independent arbitrary interpretation. He devotes much of his annotation to doctrine and he recognizes no slavish subjection to *stare decisis* either for himself or the courts. He says: "The jurist who applies himself to seek out and expose the doctrine which results from judicial decision does not abdicate his reason: he reserves the right to approve and to censure freely." On the continent they stand *by* the decisions only as long as reason commands it. With us we stand *in* the decisions long after reason has departed from them. Abroad, prior decisions are ignored without formally overruling them. Foreign courts are not prevented from exercising the sociological function contended for by many in this country. In continental countries there is no clamor for the recall either

of judges or of decisions. Happy, indeed, is the continental judge with his larger sociological field and his immunity from the *hook* which threatens the American judge whether he takes judicial notice of social needs, or whether he stands rooted in the decisions. *Stare decisis* created the common law out of the shadowy nothingness of custom. Without it the paradoxically *unwritten* part of our law contained in thousands of *printed* reports would never have come into being. This immense code, for it is a code, has only one rule of interpretation—*stare decisis*. Possibly we should codify what we have acquired and dismiss that now unruly servant, finding a more flexible substitute. With us the worship of *stare decisis* may even crowd reason out of the field of persuasive authority if there is any truth in the muckraker's charge that decisions have been *planted* in corrupt jurisdictions and thence innocently carried from state to state as honest adjudications.

M. Garcon says that he has used the materials of his predecessors and has attempted "merely to bring my contribution to a work which must always be done over, since the material is ever undergoing modification. The Selections of Decisions (*recueils*) have in general furnished little in the way of criminal decisions. The source from which I have principally drawn is the rich collection of the Bulletin of the Court of Cassation. I have always consulted the text itself of the decision."

In addition to the Bulletin, the annotator seems to have consulted some ten *Recueils de Jurisprudence* and *Repertoires,* and some twenty-five treatises.

The execution of the work may best be judged by comparison with the Dalloz annotated code. Dalloz has many advantages in typographical make-up. He has a notably better page heading with the Article, Book and Title numbers and the Section rubric. Garcon has simply the Book and Article numbers at the head of the page. In Dalloz there is better use of type throughout. The text of the Article in Garcon, although set up clear across the page, is not sufficiently detached from the double column annotations. The Dalloz page is larger, and he does not break his three columns for the text, but uses bold-face type for the Article and for the numbers of his paragraphed notes.

On the exceptional case provided for in Article 27, namely the delay of execution of a pregnant woman until after her confinement, both annotators give three notes. Dalloz cites one case, decided in 1811; his other references are to the Article Punishment (*Peine*) in the Dalloz Repertoire. Garcon gives the Roman Law origin, with citation, the recurrence of the principle in the Ordonnance of 1670 with citation, and the more liberal provision in the law of 13 *germ. an. III.* together with four decisions from 1805 to 1807. He also gives the decision of 1811 cited by Dalloz and the Article in the Repertoire. This article is therefore better annotated in Garcon than in Dalloz. To give the origin of a principle, without too much unsupported doctrine, is commendable in the annotator. There is public policy in many of the principles derived from antiquity. Public policy is not always evident to a *nisi prius* judge. Not long ago it was held that there is no public policy in a provision against the remarriage of a divorced woman within ten months following the dissolution of her marriage.

Article 28 reads: "Sentence to the punishment of forced labor for a term, of detention, of imprisonment *(reclusion),* or of banishment imports civic de-

gradation. Civic degradation is incurred from the day that the sentence becomes irrevocable and, in case of contumacious sentence *(par contumace)* from the day of the execution in effigy." Here is an article treating primarily of the relatively unimportant matter of civic degradation yet it mentions sentence *par contumace* and the execution of that sentence in effigy—presumably where the accused fails to appear for his trial. M. Garcon takes it for granted that his readers know all about contumacious sentence. Surely it is the annotators duty, by notes or cross references, to indicate where the details of this unusual proceeding may be found. Dalloz gives the cross references in bold face type right after the body of the article and guides us at once to the Code of Criminal Instruction. Garcon annotates the enumerated punishments, etc., and the citations for the formalities for the execution of the sentence in effigy which one would naturally not expect to be executed on a straw man. Both annotators indicate the trail to the principal institution which is in the Code of Criminal Instruction and in the Dalloz *Repertoire,* Article, *Contumace.* In the Dalloz Annotated Penal Code the result is more quickly attained.

Articles 341-344, treating of kidnapping, etc., are annotated as a group by Garcon and separately by Dalloz, who has the greater number of notes. Garcon has 89 numbered notes as against 148 by Dalloz. The 89 are much fuller and at their head is an alphabetical index which may have been suggested by the similar feature made use of by Dalloz at the end of his longer annotations. Despite the numerical difference in the notes to the four articles there is practically the same quantity of annotation in the two codes.

Article 373 provides: "Whosoever shall make by writing a calumnious denunciation against one or more individuals, to the officers of justice or of administrative or judiciary police shall be punished by imprisonment from one month to one year and by a fine of from one hundred to three thousand francs."

This article seems better calculated to excite the French love of litigiousness than to suppress it. On this article, Dalloz has 540 short notes; Garcon has 414 longer ones. It is, of course, possible that the quantitative value of this article may arise from the jurisprudence itself. There is not a quantitative correspondence between the two codes throughout yet the Dalloz idea of the relative value of Articles for annotation seems to have been, in some degree at least, a quantitative guide.

Article 434 treats of incendiarism: it would be inaccurate to designate the crimes here grouped by the general term arson. To this Article Garcon devotes 197 very full notes in 30 pages; Dalloz has 392 short notes in eleven pages equivalent to about 15 pages of Garcon. All of Dalloz notes have citations or cross references. Doctrine is practically absent from Dalloz and abundantly present in Garcon. The writer on jurisprudence would get more theory from Garcon; the lawyer in search of French decisions would get better results from Dalloz; and this remark is not restricted to the particular article under discussion. In its last paragraph, Article 434 fixes capital punishment "if the fire causes the death of one or more persons who are in the places burned at the time the fire breaks out." Garcon's note 12 explains the doctrine and in part is to the effect that the text applies the theory of eventual wrong *(dol eventuel)* and "makes the voluntary incendiary responsible for all the consequences of the fire, consequences which he could and should have foreseen." The text of the article is not as broad as the principle of natural and probable consequence

applied by the commentator. If the text does not include responsibility for the death of firemen engaged in extinguishing the fire it does not rest unrestrictedly upon the theoretical principle cited. Note 13, is again largely doctrinal and has to do with the limitations in the Article on the right to burn one's own property. The commentator says that one has the right to destroy old furniture to get it out of the way or to destroy an infected house. The owner may destroy his property through emotional caprice. The mode of destruction is indifferent. It may be destroyed by fire if the fire be not communicated to another's property and if no prejudice be caused to insurers, mortgagees and pledge creditors. The doctrine developed stresses inaccurately the *jus abutendi.* In the original and most perfect definition of ownership *"jus utendi, fruendi, abutendi,"* the last word is used in the sense of exhausting the utilities of the objects of ownership, not of *abusing* them. Jurisprudence denies the abuse of every right. There are abuses of the right of private property and there is no socialism in taking the true measure of that right.

In Garcon's Annotated Code there is more of legal history and of the philosophy of law than in Dalloz. For practical purposes and as a search book Dalloz remains the more convenient work.

Chicago. JOSEPH I. KELLY.

LES TRIBUNAUX D'ENFANTS EN HONGRIE RAPPORT, Présenté par le *Dr. Roustem Vambery,* Procureur du Rei. Professor Agrégé à l'Université de Budapest Délégué par le Ministère Royal Hongrois de la Justice, Au 1. Congrès des Tribunaux pour Enfants. Pp. 34.

The physical and moral well-being of the youth is the best guarantee of the nation's development. Yet the increase in juvenile crime in the last half century has been proportionately greater than the augmentation of crime in general. This situation is traced to industrial and hygienic causes and to the faults of the penal code which punished rather than corrected the adolescent delinquent. The change in the law's attitude toward the young offender is due not only to our having discarded the idea of vengeance but also to the development of a positive public sentiment toward this class of law breakers. It is the century of the child.

The Hungarian law concerning delinquent minors adopts the corrective measure—reprimand, probation, education, or detention—to the needs of the individual. No sharp distinction is drawn between educative and punitive methods. The provisional law of 1908 and the further law of 1910 provided for the selection of judges for the juvenile courts, the use of hours separate from those when adult cases are heard, and a committee to defend the child at his hearing and to care for him during the period of his arrest. The work of the probation officer is recognized as the most important part of the system.

Recently the most noteworthy innovation is the study of the social conditions which have led to the child's delinquency. The age of the child should not be the measure of his responsibility, which is the product of age, environment and ancestry.

In considering the future work of the Juvenile Court the author points out that the jurisdiction of the various criminal courts must be strictly defined. Eventually all matters concerning accused minors may probably be considered by a single tribunal. In accordance with this there should be appointed a judge

for such a court whose sole work would be its administration. His legal erudition would be of less importance than his knowledge of criminal psychology and of pedagogy, and his interest in the work would be a necessary qualification.

Detention, as a form of disposition of the delinquent, must be accompanied by some corrective education; detention is justified as an alternative for probation only when the morals of the individual are endangered by his liberty or when the morals of society are so endangered.

This little pamphlet is a brief survey of the status and needs of the Juvenile Court in Hungary. To those who know the Juvenile Courts of America, the similarity of opportunity and limitation is striking.

University of Washington. STEVENSON SMITH.

Die Psychologie des Verbrechers, and Strafe und Verbrechen. By *P. Pollitz.* B. G. Teubner, Leipzig, 1911. Two volumes. Pp. 280.

This brief notice is a souvenir of a most instructive day spent with the author in visiting a reform school and a prison in Germany in 1911. Dr. Pollitz is a specialist in nervous diseases and the successful director of a prison. His two books cover in small compass the most vital subjects of criminal psychology and of prison science, and it is remarkable how much solid information he has condensed in the 280 pages of printed matter in the two volumes.

Perhaps the discussion of the characteristics and best modes of dealing with "defective delinquents" is one of the most illuminating and suggestive parts of the work. The Massachusetts law of 1911 on the separation of this group from normal convicts for particular treatment, and similar advance in the State of New York, show what other commonwealths are sure to take up before long. The spirit of recent German theory and practice is admirably interpreted, while a very good understanding of American experiments and tendencies shows his breadth of view. C. R. HENDERSON.

University of Chicago.

TYPEWRITING IDENTIFICATION. By *William J. Kinsley,* New York. Pp. 20.

This pamphlet is an interesting and important report of a comparatively new kind of legal investigation, that is, the proof or disproof of typewriting.

There are many jurisdictions in the United States where cases of this kind have never been heard and there are many lawyers who are so incredulous because uninformed on the subject, that they will hardly give such a question serious consideration.

The most forcible answer to such incredulity is the report of the case of *People v. Risley,* printed in this publication, in which a distinguished lawyer was accused of fraudulently writing or procuring to be written two words in typewriting in a court paper. The case did not turn on the question whether there was a fraudulent alteration, but whether the fraudulent alteration was made on a particular typewriting machine owned by the defendant.

After a fiercely contested trial, the jury decided that the seven letters were written on the particular machine belonging to the defendant and returned a verdict of guilty. Mr. William J. Kinsley, of New York, photographed the documents and testified as an expert witness regarding the typewriting as also did representatives of the Remington Typewriter Company of Ilion, N. Y. The nature of the inquiry in this case and its result goes far to show the possibilities of proving a typewriting in a court of law.

The question is, in fact, simply a question of scientific comparison. For this purpose enlarged photographs are absolutely essential if the facts are to be clearly shown as they were at this trial. It is fortunate indeed that typewriting can be identified in view of the present extended use of machine writing, and it is sincerely to be hoped that typewriting manufacturers will assist in promoting the ends of justice by continuing to individualize their own machines as manufactured, as they have done in the past. As is well known, a machine inevitably begins to individualize itself as soon as it begins to be used until it is as full of characteristics as a battle-scarred veteran who also may have begun his career with numerous birthmarks and individual characteristics.

It is a hopeful sign that courts are now almost universally permitting full and free illustration of cases of this class and hearing detailed testimony with reasons so that it is possible to instruct even an untrained jury so that they may themselves reach a correct conclusion. This relieves at least this branch of expert testimony from the common criticism that it is a "mere opinion."

This pamphlet also refers to other typewriting cases of interest in which it has been possible to discover and prove the facts in what at first sight in numerous instances appeared to be abstruse, difficult and hidden problems.

New York. ALBERT S. OSBORN,

ONE THOUSAND HOMELESS MEN. By *Alice Willard Solenberger.* A study of Original Records. Charities Publication Committee, Publishers for the Russell Sage Foundation, New York, 1911. Pp. XXIV—374.

Mrs. Solenberger's study of "One Thousand Homeless Men" is based on the case histories made in the central district of the Chicago Bureau of Charities between the years 1900 and 1903. Not long after beginning her work, Mrs. Solenberger realized the value of the accumulating histories and took steps to secure data not only for purposes of investigation by the Bureau but as a basis for constructive work with men of this class. She recognized the fundamental importance of the attitude of the investigator in obtaining reliable data and trained her workers with a view to the greatest possible accuracy. Judging from results, these workers must have possessed unusual sympathy, tact and judgment. Realizing the value of independent confirmation of the tales presented by these men, Mrs. Solenberger caused inquiries to be sent by hundreds to their home towns, to the municipal and charitable agencies at these places and to the families of their friends. Moreover, leaving the Bureau in 1903, Mrs. Solenberger by no means lost her interest in the cases but through correspondence followed up as many as possible, to learn the results of the treatment applied. These thorough methods give unusual value to the statistical tables presented in the book.

In analyzing the data at her command, Mrs. Sollenberger divides the one thousand cases into seven groups. These are men crippled by disease; men claiming industrial accidents; insane, feeble-minded and epileptic men; homeless old men; chronic beggars; tramps and homeless vagrants; and runaway boys. There are also tables concerning one thousand homeless men showing their ages, nativity, education and conjugal condition. There is one table giving the defects and disease of six hundred and twenty-seven men and one table showing the causes of crippling, excluding the cases where it was caused by illness or where a man claimed industrial accidents.

In the body of the book, Mrs. Solenberger gives a discussion of these various classes adding chapters on seasonal and causual labor and the interstate migration of paupers and dependents. Mrs. Solenberger recognized that among all these classes, the men may be divided, first, into those who are self-supporting but who through accident are obliged to ask for some temporary assistance; second, those who are temporarily dependent and become self-supporting, having been tided over temporary difficulties; third, chronic dependants which group contains the crippled, deformed, feeble-minded, etc.; fourth, a parasitic class which contains the impostors, beggars, confidence men, etc. These classes merge into each other and the three first groups constantly contribute to the fourth.

In five appendices, supplemental tables are given. The cheap lodging houses are discussed and a separate consideration is given to the homeless man in Minneapolis. The figures for Minneapolis were obtained through the Minneapolis Association of Charities in 1910.

Mrs. Solenberger has no special thesis to prove by her statistics and it is this which gives the peculiar value to the book. It is a fair-minded study of facts obtained through careful collection of data confirmed by independent investigation wherever possible. The individual stories given, show the sympathy and insight which guided Mrs. Solenberger in her work. The book points to many of the causes of homelessness. It makes no attempt to show remedies but points out various avenues along which solutions of the problems probably lie, for the one thousand homeless men include classes who offer not one, but many problems to the social worker.

In the light of the emphasis laid in recent years on mental defectiveness, we cannot but wonder when looking through the book, whether the eighty-nine insane, feeble-minded and epileptic men really include all of those who belong particularly to the feeble-minded class. The impression gained by reading the chapters on chronic beggars, wanderers, tramps and runaway boys, leads one to feel that among them are many who have abnormal mentalities which have predisposed them to this kind of life and we wonder whether the enlightened custodial care of this most difficult class in the community is not going to solve some of the problems raised.

Mrs. Solenberger's book should be read with care not only by workers in Bureaus of Organized Charities but by the social workers whose interests lie in any of these classes. It affords much that is illuminating and much that is suggestive.

KATHERINE BEMENT DAVIS.

Bedford Hills, N. Y.

THE PRESENT DAY PROBLEM OF CRIME. By *Dr. Albert G. Currier.* Published by The Gorham Press, Boston. Pp. 179; price $1.10.

Because the problem of crime is a complicated one, and must be discussed from many angles, Dr Currier's book will serve a useful purpose. The author disclaims a scientific treatise, and his work can hardly be called a literary production. Neither is there evidence of any practical contact with the genus criminal of which he writes. The style and method of the writer are purely didactic. It is, nevertheless, an important contribution to the increasingly large output upon this important theme.

The general reader, particularly, will find in the volume, a fund of information as to the history of the movement for improved prison conditions; the

increase of social legislation for the treatment of delinquents, and the adoption of measures for the prevention of crime. The practical movements cited are those which have impressed the author, rather than those which one of wider knowledge and experience would suggest as of greatest significance. The somewhat common error is found, in speaking of Judge Lindsey as the "Father of the Juvenile Court," regardless of the fact of Chicago's prior claim, and Judge R. S. Tuthill's pioneer work in this field. Considerable pains is taken to give a comprehensive classification of the well-known causes of crime, and generally accepted means of prevention.

The author declares his optimism as to the forces of society now marshalled to solve the problem of crime, though the references he makes to the "wicked, desperate criminal," if one believed it to be a reality, would be somewhat depressing.

The introduction of an extended chapter at the close of the volume concerning the life and work of Lord Shaftsbury gives a first impression of extraneousness. The reader soon feels, however, that many of the industrial and social causes of crime that were forced upon the attention of the English Parliament, still continue in every country. The powerful personality and the persistant faith and tact of a Lord Shaftsbury, is needed in every commonwealth to awaken its legislators and citizens to cope with complicated questions of crime, prevention and cure.

Dr. Currier's book will furnish renewed inspiration for this fight and should be read by every thoughtful citizen.

Chicago. F. EMORY LYON.

POLICE SCIENTIFIQUE ET ANTHROPOLOGIE CRIMINELLE. By *S. Ottolenghi.* Revue de Droit Pénal et de Criminologie, VI, 2. Pp. 89-94.

In this article Professor Ottolenghi of the University of Rome criticizes the opinion expressed by Professor Reiss of the University of Lausanne that criminal anthropology has nothing to do with scientific police methods. Reiss thinks that the science of police methods should include only such things as the methods of identification, the gathering of the traces of crime, etc. In other words it should be a study of the criminal in action. Ottolenghi also emphasizes the importance of the study of these things but insists that the science of police methods should include also the study of criminal anthropology and psychology. He believes that the knowledge so gained is sometimes useful in identifying criminals and is at all times useful for understanding the nature of the criminal in a way which the study of his actions alone can never reveal.

University of Missouri. MAURICE PARMELEE.