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PSYCHOLOGY OF TESTIMONY AND REPORT.

The following review was originally published in the *Psychological Bulletin*, Vol. IX, No. 7, July 15, 1912, pp. 264-269. Because of its interest to the readers of this Journal it is reprinted here in full through the courtesy of the editor of the *Bulletin*. [Eds.]

"The most ambitious and important contribution to the psychology of testimony, or—to speak psychologically rather than in the language of jurisprudence—to the psychology of report, is the work of the Commission of the Institute for Applied Psychology for the Investigation of Pedagogical Problems of the Psychology of Report. The members, ten in number, including such well-known writers as Meumann, Stern, Lipmann, and Gross, planned to study the educability of report, to determine whether testimony could be improved by training and to such an extent as to make it worth while, and they determined also to use only events as test-objects, rather than to cling longer to the picture-tests and mere verbal tests of the pioneer experiments. Five studies of educability had already been made and some 15 studies had used events as test-materials, but no previous study had combined these two features.

"The Commission decided to employ physical demonstrations as test-material, because these demonstrations can be repeated with exactness, are familiar in nature to school children and command their fullest attention. After elaborate preliminary trials, three apparatuses were selected and with each three demonstrations were made. The apparatuses were (1) a tank of CO₂, stored under pressure in fluid form, (2) an air-pump, and (3) a rotation apparatus. With the last-named, to take but one piece, the three demonstrations were (a) the effect of centrifugal force upon a vessel of water, (b) the flattening of elastic circular rings under rotation, and (c) color mixture. The details of all nine demonstrations are chronicled minutely and illustrated by numerous photographs.

"The observers were 196 girls, aged 12 to 13 years.

"In order to bring about a possible effect of training, each observer witnessed all three experiments (9 demonstrations) given at intervals of one week, and after each experiment its three demonstrations were immediately repeated and the observer corrected his written report. The report itself was made by filling out a printed form in which was included (for each experiment of three demonstrations) a series of 12 questions. These questions were so arranged as to be substantially equivalent from the one experiment to the next. They were also classified into seven categories, according as they referred to events, to the statements of the demonstrator, to duration, to sequence, to localization, to color, and to dimensions. For example: 'What happened when I opened the stop-cock?' 'What did I say when I fastened the rubber tube to the iron tank?' 'What color was the rubber tube?' etc. The original report was made in ink. The revisions (following the repetition of the experiment) were made on the same form but in pencil. The article by Baade (1) deals with the results for the questions on the words of the demonstrator only, that of Lipmann (4) with those on color, sequence and localization only. The results for the other categories will appear later.

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"The net results of the experiment, so far as testimony on verbal features was concerned, was that no demonstrable improvement appeared, either as a result of the repetition of each experiment or as the result of the succession of the three experiments. The earlier experiments did exert a strong influence upon the subsequent experiments, but this influence was sometimes favorable and sometimes unfavorable. Baade has, however, done excellent work in elaborating a system of scoring which promises to afford an exactness in dealing with 'logical memory tests' as great as that now enjoyed in dealing with 'rote memory' tests.

"Lipmann, in scoring the estimates of duration and size, has also devised methods of scoring data which, though too complex to be reproduced here, will be of assistance to those who work in this field. The data show that there is, on the whole, some improvement in these estimates as the result of the successive experiments, but only a very slight improvement as the result of repetition of experiments. In general, durations (8" to 3.5') are strongly overestimated, while extents (19 to 57 cm.) are commonly underestimated. There appeared no positive training-effect in reports on colors, locations and sequences, but the repetitions did bring about a decided improvement in these answers. As a rule, a pupil who displayed much inaccuracy in his original report also displayed relatively much inaccuracy in his 'corrected' report.

"So far as reported, therefore, these elaborate and painstaking experiments yield a negative result, and will be chiefly valuable in clearing the way for further studies of the training of observation and memory, in which more potent and vigorous influences are brought into play to effect the improvement.

"A second experimental study of the educability of report is presented in the work of Franken (2), who employed what he terms the *'Methode der Entscheidungs-und Bestimmungsfragen.'* One hundred questions, drawn from school work, were propounded to 150 pupils, aged 11 to 12.5 years. Each question was given first in a form to be answered by 'yes' or 'no.' ('Do you know what city is the capital of Norway?') After 50 such questions, the series was repeated in a form that demanded a specific answer. ('What city is the capital of Norway?') At this point the pupils of one section checked up their answers; those of the second section were simply told that the next set of questions would be given in both forms. All the pupils then answered a second lot of 50 questions in both forms. Comparison of the answers in the first and second form, in the first and second half of the test, and in the first and second sections then permits conclusions as to the effects of training. Seven coefficients of report are devised and formulas are worked out for each of them. The net result is an improvement in cautiousness in asserting positive knowledge, though answers of 'yes' followed by no-answer or by a false answer still persist. The method is of obvious interest and usefulness.¹

"Lipmann (5) is convinced that the unreliability of reports of children is due in the main to two things: first, the child does not distribute his attention in the same way as the adult (though his attention is usually well enough concentrated on those details that he does report); secondly, the child is uncritical

¹ This article will be reviewed somewhat more fully in an early number of the *Journal of Educational Psychology*.

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in filling out gaps in his memory and uses freely material supplied through custom, through his own imagination or through suggestion. It follows that the training of the child in correct report must transform his distribution of attention to one corresponding to that of the adult and must develop a critical attitude toward misstatements in filling out gaps.

"Miss Oppenheim (6) has extended the 'rumor-test' of Stern, Michel, and Kulischer by using two anecdotes, given in immediate succession, with the idea of obtaining conditions more akin to those of daily life, particularly of determining whether details of the one story get confused with those of the other. Each story was transmitted through five observers, adult women. The results show strikingly how, even in so few stages as this, rumor becomes extraordinarily unreliable. There is, in general, a progressive abbreviation of the anecdotes; the story becomes less definite and more general in phrasing; each report deviates in two or three points from the preceding; the errors are confusions, substitutions, alterations of temporal and spatial setting; names and dates suffer particularly.

"Schramm (8) compared 16 men and 16 women students at Freiburg University by the aid of Stern's test-story. It was read once to them and reported 24 hours later. This is virtually a test of 'logical memory.' The author concludes that the data point toward a slight superiority of the women, but the reviewer does not find that the differences exceed the probable error of the results.

"Virtually identical is the method followed by Vos (11), who read a 40-element story to boys and girls 9 to 14 years old, and obtained reproductions three days later. From his 800 reports he draws these inferences: report is very good at the age of 9, best at 10, then deteriorates decidedly to 13, but improves at 14. Boys surpass girls, both in narrative and deposition, save that boys are less cautious when ignorant (more liable to give false answers than no answers). Boys are at their worst at 13, girls at 9 and 12. Pupils from the better class of homes do better than those from the poorer districts. There are more errors in the deposition than in the narrative, even though no suggestive questions are asked. The test hinges chiefly on auditory-verbal memory.

"The work of Heindl, Reichel and Varendonck bears more directly on the application of the psychology of testimony to jurisprudence. Heindl (3) sought to measure quantitatively the amount of error in signalitic reports. He used mass tests and talks almost entirely in terms of averages. His method of computation is open to improvement, as Lipmann points out, and despite the extraordinary mass of data obtained (20,000 reports and 80,000 computations), it is questionable whether he has derived the practical conclusions that he sought. In brief, his method was this: observers stated or estimated the stature, age, color of hair and form of face, either of a stranger who appeared conspicuously before them for four minutes or of a well-known person not present during the reporting. Heindl concludes, among other things, that children are perfectly good observers, perhaps more objective than adults, but cannot translate their observation into report skillfully. Sample conclusions are: children overestimate the stature of a strange man by 12 cm., of a strange woman by 5.7 cm., of well-known persons by 5.6 cm., etc.

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"Reichel (7) is a jurist, who writes to impress other jurists with the need of acquaintance with the psychology of testimony. He presents a good account of the present status of forensic psychology, shows in concrete cases how lack of psychological insight may affect the administration of justice, and proposes plans for the study of forensic psychology at universities.

"The contribution of Varendonck appeals to jurists, psychologists and educators alike.

"The literature upon the psychology of testimony was assembled by Stern (9) in 1909 for the period prior to 1908. The same writer has now published a bibliography (10) of 53 titles covering the period 1908 to 1910."

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GUY MONTROSE WHIPPLE.

PENAL SERVITUDE. By E. Stagg Whittin, Ph. D. National Committee on Prison Labor, New York, 1912. Pp. 161. Price \$1.50.

This book presents a thoughtful study of prison labor by the secretary of the National Committee on Prison Labor. The opportuneness of such a volume is indicated by the fact that during 1911 this problem was referred to in the

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messages of twenty-eight governors, and was dealt with through legislation in a large number of states. The treatment shows research and a comprehensive knowledge of the subject; the analysis of causes, effects and remedies is well reasoned; and the book is an evidence that substantial progress is being made in dealing with one of the most complicated problems in penal administration.

Starting with the economic status of prison labor, Dr. Whitin discusses various aspects of the subject, including especially the methods of production and distribution. In accordance with the attitude of the National Committee on Prison Labor, he disapproves of contract labor as a mercenary exploitation of prisoners, and ably advocates the state use system. From an economic point of view the fundamental trouble with the contract system is that the contractor through being spared the so-called overhead costs—building, power, heat and light—and through securing the labor of the prisoners (which is estimated at about two-thirds the efficiency of ordinary labor) at exceedingly low cost, can undersell manufacturers who employ free labor. Attempts at overcoming the ill effects of this exploitation through such means as restricting by legislation the quantity of prison-made goods to be sold in open market, and as requiring them to be branded "prison-made," are said to have failed. The latter method of control has in fact been declared unconstitutional. Even if a state entirely forbids the sale of the products of its prisons within that state, it is powerless, as is pointed out, without a much needed act of Congress, to prevent the sale within its borders of the goods made in institutions in other states.

The public control of production, and the sale of prison-made commodities exclusively to the state and its subdivisions and to public departments and institutions, are skilfully treated in chapters VII and VIII. This solution of the problem, which has now been adopted by nine states, is shown by the author to be at once logical and practical. The demands on the part of governmental departments and institutions for equipment and supplies such as can be turned out by convicts, are large and varied; and in this preferred market there is a minimum of competition with free labor. Since the state has control of its prisoners, according to the argument advanced, it may justly use their labor to supply the market which it has created by legislation for the ultimate good of the people as a whole.

Alternating with the more argumentative portions of the study are brief sketches of varying merit—some of them in a more or less facetious, quizzical vein, which are intended as introductions to the serious consideration of the topics treated in the succeeding chapters. The inclusion in the main text of more references to actual working conditions among prisoners, and to the detailed results of their labor in specific industries, would, in the judgment of the reviewer, have been a more graphic and effective method of presenting the subject, and would probably have augmented the value of the book for purposes of education and propaganda.

The appendices give extracts from the messages of the governors during 1911, planks from the party platforms, and a digest of legislation pertinent to the subject enacted in the same year; also a report by the Committee on Prison Labor on conditions and needs in the House of Correction at Jessup, Maryland. There are also maps and illustrations.

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PSYCHOPATHIA SEXUALIS. By *Dr. R. von Krafft-Ebing*, authorized translation of the Seventh German Edition, by C. G. Chaddock, M. D. F. A. Davis Company, Philadelphia, 1908. Pp. XIV + 436.

The general acceptance which the theories of Freud and Jung have gained in recent years among neurologists and psychologists with regard to the importance for psychopathology of the emotional side of the sexual instinct, especially in the direction of its aberrations and suppressions, justifies the translation into English of Krafft-Ebing's *Psychopathia Sexualis*. In fact, the author of this work might reasonably claim, if he has not been repelled by some of the extremes to which the Freudian partisans have pushed their symbolism and interpretation, the whole sexual theory of psychopathology as but the logical outcome, somewhat transformed and amended indeed, of his pioneer study of this field. The notion of a subconscious suppression of sexual experiences which are caused by psychic traumas is not, it is true, to be found in *Psychopathia Sexualis*. It is to be remembered, however, that at the time of the original publication of the book the subconscious had not been recognized as a respectable scientific concept. Both in his recognition of the powerful and pervasive influence which sexuality exercises upon the lives of civilized men, in his recognition of the early development, in some cases, of the sexual instinct; in his careful collection of cases; in his sketch of a psychology of the sexual life which indeed is fragmentary and incomplete, based as it is upon Binet's theory of fetichism, and in his insistence upon the importance of hypnotic suggestion and autosuggestion as therapeutic agencies, Krafft-Ebing blazed the trail which later psychopathologists have followed.

The book which is translated from the seventh German edition is divided into five parts: A Fragment of a psychology of the sexual life; Physiology; General Pathology; Special Pathology; Pathological Sexuality in its legal aspects. After the two brief sections devoted to the psychology of normal love and to the mechanism of its physiological expression, the work proper begins with general pathology, the treatment of which constitutes the bulk of the work.

The sexual neuroses are here classified as *Peripheral* which head is further subdivided into sensory, secretory and motor; *Spinal* which includes affections of the erection center and affections of the ejaculatory center; and *Cerebral* which contain the peculiar matter of this section. The cerebral neuroses include Paradoxia, Anesthesia, Hyperaesthesia and Paraesthesia. Of the great wealth of clinical material which is here collected, the pages devoted to sadism and masochism will doubtless most interest the medical and legal reader. Both of these phenomena are classified as Paraesthesia of the sexual feeling or perversion of the sexual instinct. Sadism is the association of active cruelty and violence with lust, and, as is well known, the acts of the White Chapel murderer and those of Jack the Ripper which sometimes stir our criminal courts, are exaggerated forms of a sexual aberration which in less marked degree is tolerably common. Of less importance from a medico-legal point of view is masochism or the association of passive cruelty or violence with lust. Fetichism, next to sadism, leads to most perverse acts of a criminal nature. Most common are the theft of the fetichistic objects: handkerchiefs, shoes, hair or what not, and the pollution of such objects. Of great interest is the author's treatment of homosexuality. Only too clearly do the histories of these pitiable

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individuals reveal the stigmata of rotten heredity and the evil results of an irrational sex hygiene. Indeed, the whole book is an eloquent and powerful brief for the cause of eugenics. Investigations into the conditions of sexual vice in American cities such as that in Chicago within recent years, inevitably bring to light the fact that large numbers of urnings and perverts of all sorts and persons who make indecent exposures or commit vicious acts in public for a price, infest the districts in which prostitution is permitted and may fairly be considered the by-products of the system. In discussing the therapy of homosexuality, indeed, what he says applies to the whole field of psychopathia sexualis, Krafft-Ebing, upon the basis of the fact that this condition practically always results from masturbatic neurasthenia, wisely urges the necessity of prophylaxis. As he says, p. 321: "In many schools and academies masturbation and vice are actually cultivated. . . . In obedience to affected prudery, the *vita sexualis* is veiled from the developing youth and not the slightest attention given to the excitations of his sexual instinct. How few family physicians are ever called in, during the years of development of children, to give advice to their patients that are often so greatly predisposed!" In view of the instruction in sex hygiene which has been introduced into some schools and colleges and the growing interest in eugenics the dawn of a better day in these matters seems slowly to be appearing.

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H. C. STEVENS.

VERBRECHUNGSPROPHYLAXE UND STRAFRECHT. By Johannes Nagler. Wilhelm Engelmann, Leipzig, 1911. Pp. VI, 265.

Prof. Nagler's work is the fourteenth volume in the "Kritische Beiträge zur Strafrechtsreform" series, the aim of which is to provide the classical school of German penologists with a regular outlet for systematic and especially for critical studies similar to the "Mitteilungen" of the International Criminalistic Society, which represents the modern or sociological school. In the editors' announcement of this series it is distinctly stated that they do not propose to write in defense of their own school. They feel that the application of the classical theories in the existing penal institutions and practices is sufficient guarantee of their safety and practicability; they aim to subject the views of their opponents to systematic criticism in the light of the classical viewpoint. In other words, their aim is to counteract the influence of the sociological school, which, in their opinion, would subject the whole penal machinery of the state, evolved after a long and successful struggle to its present satisfactory position, to experiments which they deem dangerous and futile because based upon what the classicists believe are but a mass of generalities and half baked principles.

The present volume deals with the prophylaxis of crime. Nagler's attack on the sociological theories of prophylaxis is directed, broadly speaking, along two well defined lines; first, the criminal anthropologists and sociologists, for the most part, he claims, are too hazy in their own mind as to the meaning and value of the terms which they employ, and secondly, though there may be some desirable, clear-cut features in their theories, their agitation is rather superfluous because these features have been recognized all along by the classical schools having received all the attention which was possible to give them under the circumstances amidst which the classical penologists labored. These conten-

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tions the author endeavors to prove by submitting to a lengthy analysis the principle of social prophylaxis and its relation to the classical penal law in the light of the latter's evolutionary history.

The notion of social defense has been only rediscovered, or rather re-emphasized by the Italian school of criminal anthropologists; it is much older than the school which grew up around it, being in fact, one of the oldest principles recognized in classical penal law. What characterized the new school was the misplaced emphasis on the defense principle; agitation of the latter narrowed itself down to an avowed attempt to reconstruct the whole penal machinery or society's reaction against anti-social acts on the part of its criminals upon the principle of *difesa* or *tutela sociale* exclusively.

In other words, just as the middle ages saw only the criminal, and as the classical school of penology, reacting against this view, saw only the man, so, the positivist Italian school claimed as its particular merit the discovery of *homo delinquens*, in favor of whose study it proposed to emasculate the whole penal system. Penology is not to concern itself with the deed, but, primarily, with the agent thereof; this is the pivotal center of the new school.

In the course of his introduction Nagler remarks that even on this, its fundamental principle, the new school is far from having reached a harmonious viewpoint. He finds the statements of its adherents about their platform and about what they propose to do rather indefinite and, at times, quite contradictory. At any rate one fails to find the coherence or concreteness which alone could inspire confidence in a program of reconstruction so revolutionary as the one proposed by the criminal anthropologists and sociologists. Even in the very latest important document emanating from this school, the thesis of A. Prins (*La Défense Sociale et les Transformations du Droit Penal*, 1910), presented before the last congress of the International Criminalistic Society, Nagler misses "*die prinzipielle Erfassung der Grundbegriffe*," although the work is concerned chiefly with the fundamental principles of the school. He therefore proceeds to analyze the principle of legal protection against criminal wrongs, after first giving an historical account of the development of the principle of social defense in general. Numerous quotations are introduced from the writings of both schools to show that the theory of protection is really coextensive with the history of legal law and in no sense a modern discovery.

Special chapters are devoted to an exposition of the difficulties and some of the dangers of protection as a working principle. The more relevant points are emphasized by copious references to the works of the classicists, who alone have had the opportunity of testing their theories in the crucible of actual practice. Finally the author turns his attention to the relations between the principle of prophylaxis against crime and the theory of penal law as it is in force today. In this part of the work, Nagler, broadly speaking, maintains that the classicists do sufficient justice to this fundamental principle of the Sociological school and that to give it greater emphasis under existing circumstances would be to jeopardize the safety of society with chimerical schemes.

The propriety of distinguishing between the principle of protection and that of defense is pointed out. Failure to do so has been the cause of considerable misunderstanding. The French and Italian terms, *défense* and *defesa*, respectively, are frequently given either of the two meanings indiscriminately. This

is wrong. The act of defense is not one merely of insurance against evil, as implied by the term protection; though the two principles are only different forms through which the same fundamental instinct, survival, manifests itself. Take the German science of penology for instance; from its beginnings in the 16th century, and even earlier, as traces of it appeared in the course of the previous century, it contained the germs of both principles. During the 18th century German penology became contaminated, chiefly through French influences, with the peculiar notions of social prophylaxis which were in the air at that time and which, according to the author's view, remained a foreign body in the midst of the staid foundations of German penology. (P. 20.) The cleansing of the German penal law of this foreign contamination towards the end of the 18th century, the author explains, led to the development of the agitation for prophylaxis as a separate movement and the exigencies of propaganda placed this new agitation in an attitude directly antagonistic to the fundamental penological principles in vogue. This was, he explains, an excess of zeal which neutralized even what chances for good the new movement may have had otherwise. The new agitation seemed satisfied with nothing short of a complete reconstruction of the whole ponderous superstructure of penal law and practice upon the single principle of social prophylaxis. Moreover, the new movement claimed this principle as its own special discovery in spite of the fact that the writings of the older classicists are replete with statements which show that they were fully aware of the need of prophylaxis and of its value as a guiding principle.

The early advocates of the new school, particularly the Italian positivists, proceeding from the naturalistic viewpoint of complete determinism, were led to minimize the value of *Strafrecht* and stake every reaction of society against the anti-social elements in its midst on the principle of *Sicherungsrecht* exclusively. The older penal law recognizes both principles and is unwilling to build upon one to the complete exclusion of the other, like the sociological penologists. This narrowing of the field, the author condemns as unjustified and even dangerous; but he does not deny that the agitation resulted in some good. He states, for instance: "Wie immer man sich zu den Kriminal-Anthropologen stellen mag, jedenfalls haben sie bei aller ihrer Einseitigkeit das grosse Verdienst, den ungepflegten Sicherungsgedanken wieder hervorgezogen und durch energische Betonung zur Geltung zu haben." (p. 31).

Towards the sociological turn which the new movement assumed in France and in Germany the author is equally unsympathetic. He accuses the sociological school of a careless disposition to condemn beforehand everything emanating from the classicists as reactionary and points out in reproachful terms its humble origin from the rather discredited positivistic movement with which he thinks the sociological school has a great deal more in common spiritually than its modern supporters are willing to admit. For one thing, the sociologists fight the classical school after the fashion of the old Italian positivists and very largely with the same weapons. Like the latter in their day, the sociologists are very fond of verbal excesses, gloating in generalities and wild abstractions so that it is frequently impossible to learn their attitude toward certain specific problems. When they do endeavor to particularize, the sociological anthropologists disagree as badly among themselves as with their antagonists. If, instead

of shooting over their mark and threatening the whole penal system in vogue in the vain ambition to have it rebuilt according to their own fancy, the sociological penologists had been more moderate, it is likely that the reaction which they called forth on the part of the classicists would have been less severe, and their chances for doing good might have been correspondingly enhanced. As it is, by the rashness of their conduct, they have brought about too great a spirit of hostility between the two schools with the result that their agitation has been looked upon with extreme suspicion, their activities counter-checked and largely neutralized.

The theory of the Lyon school, which looks upon the social medium as the real etiologic substratum for crime, has won many adherents; it has been braced bodily by the Socialists, with whose materialistic conception of social relations it is in perfect agreement. The Socialists agree with Lacassagne that "Man makes laws, but the social medium makes the man," and are in complete accord with his statement, made before the first Congress of Criminal Anthropology, that "the social medium is the culture broth for crime; the microbe is the criminal, an element which assumes importance only from the day it meets the broth and causes it to ferment." According to this theory, the penal reforms should be directed towards improving the medium and its conditions of functioning, as has been pointed out at the same congress by the founders of the French sociological school.

The sociological anthropologists proper, that is, those within the ranks of the International Criminological Society, are closely allied to the Lyon school; for, although they endeavor to be more broadly eclectic in their survey of the etiology of crime, they are inclined, like the latter, to over-estimate the role of social conditions. They, too, conduct their campaign under the "war cry" of social defense almost exclusively. The author's criticism of their activity in this connection seems to be that they are not making the best use of their energies. The classicists, so maligned by them, Nagler maintains, are as fully cognizant of the principle of social assurance or protection and its problems as the sociologists themselves. The present volume is devoted largely to the task of proving this very point. The real difference between the sociologists and the classicists, according to the author, is one of difference in emphasis rather than in theory. The latter "value the individual factor of personality more highly; they turn to the 'self' in the first place in their search for the cause of crime; for them the man is more than a mere automaton, subjected to the interplay of surroundings without power of control. They recognize the power of personal will." And he adds (p. 41-2):

"Die sonstigen Faktorengruppen (die physiologischen, psychologischen, sozialen) haben daneben die Bedeutung der Anstösse und Gelegenheiten, die den Menschen in den (vom Verbrecher zu ungunsten der Rechtsordnung gelösten). Interessenkonflikt stürzen; sie sind mithin für die Entwicklung und Formen der Kriminalität noch bedeutsam genug. Folgerichtig suchen die Klassiker die Verbrechensverhütung nicht ausschliesslich, ja nicht einmal in erster Stelle durch die Verbesserung der Umwelts—etc. Faktoren, sondern vor allem in der *moralischen* Stärkung der Gesamtheit."

Our learned author is not everywhere animated by that scientific candor which guarantees thorough freedom of mind. There are passages in this book which betray in him the ardor of partizanship, as when he speaks with con-

tempt of what does not meet with his approval, instead of allowing the facts in the case to speak for themselves. Frequently he assumes a haughty air and frowns down upon those who antagonize his school in a manner not altogether compatible with the traditional open-mindedness of a truth-seeker. Indeed, not only does the author's self-conceit lead him to over-estimate the work of his own race, but he is specially inclined to speak slightly of the work of other nations.

One example of this may be cited, showing the intemperance of language into which Nagler permits himself to lapse. Speaking of the American reform system "about which so much noise is being made now-a-days," he claims that it has really been built "auf deutscher Gedankenarbeit," a fact which others have failed to observe; he hastens to point this out and does so in the following characteristic manner:

"It (the reform system) has not cropped out of the heads of Sanborns, E. C. Wines and Brockway, but has been merely advanced by them into practical shape along the lines of the German improvement-idealism."

With greater justice could an Athenian, equally hide-bound, claim that Darwin has done no more than "weitergeführt" (this being the expression the author uses) the notions of the Greek philosophers on antiquity. Did not Heraclitus proclaim that everything in nature is in a state of perpetual change? And did not Empedocles advance the even more startling principle that the living world is made up of incomplete products and is continuously subjected to the process of change and selection through adaptation? The germ of many another modern theory may be traced back to Greek thought, yet it would be as ridiculous to claim that they emanated from it as is our writer's contention in the present instance. He states further: (p. 248-9.)

"Instead of referring to the imported article suited to American conditions, its admirers might turn more profitably to the German models of the 19th century. Here, in Germany, where we have witnessed the breakdown of our efforts at improvement, it has come about that we have become superstitious about the same system in a foreign dress. The favorable opinions of the Americans, upon which so much confidence is placed in the matter, is not worth much."

It is in very much the same spirit that the author examines the sociological viewpoints of penology, only to reject them on the score that much of it is not new when compared with what has been said or done in classical penology; and what is new appears to Nagler too vague, untrustworthy, even pernicious. The author's bombastic conclusion, in the last chapter of his work, is also characteristic: (p. 263-264).

"Conscious of its own worth and of the solid foundation it has gained through experience, the classicists refuse to turn their science into a servile handmaid of some foreign discipline, 'auch (nicht) der nachgerade zum Unfehlbarkeitsbewusstsein emporgestiegenen Naturwissenschaften zu erniedrigen;' they obey no foreign dictatorship, but want to remain masters over their own domain, which gives and takes its scientific exchange with foreign lines of research, according to its own needs for further development."

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J. S. VAN TESLAAR.

REVIEWS AND CRITICISMS

LA RESPONSABILITE DE LA PUISSANCE PUBLIQUE. By *Rene Marco*. Ferdinand Larcier, Brussels, 1911. Pp. 443; price, 6 fr.

This is a general treatise on the responsibility of the sovereign power of a state and of its agents as it exists in Belgian jurisprudence. The subject is considered in three parts. The first two hundred and twenty-five pages are devoted to a discussion of the responsibility of the state as it exists in Belgian law. The legal principles involved are examined in the light of both the constitutional provisions and the judicial decision bearing on them. The second portion of the book—one hundred and thirty-seven pages—is devoted to the fundamental, theoretical problems in connection with the responsibility of public authority. An exposition and criticism of the doctrines of an irresponsible and a responsible public power is made and the effect of these two doctrines on Belgian jurisprudence is analyzed. The final division of the book—eighty pages—is devoted to the equality of the burdens and the responsibility of public power.

In the first division of the work, thirty pages are devoted to a consideration of the administrative problems involved in maintaining order within a state or municipality itself, as well as of the problems involved in connection with penal servitude. In keeping with the purpose of the work, this is a theoretical discussion of the legal principles existing in Belgian jurisprudence, setting forth the scope and limitation of the power of the state or municipality in coercing its citizens, and the right and grounds of the individual to proceed against public authority. The work is purely a legal treatment and does not pretend to touch any of the sociological problems connected with the subjects of crime and criminology. It will be of service only to those interested in the fundamental legal principles involved in the limitation of public power and particularly as this limitation exists in Belgian law.

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F. S. DEIBLER.

UNA DISPOSIZIONE POCO NOTA DEL DIRITTO PROCESSUALE PENALE ITALIANO (L'Art. 184 Cod. Proc. Pen.) By *Marcello Finzi*. Societa Editrice Libreria, Milan, 1911. Pp. 41.

Section 184 of the Italian Penal Procedure Act may be translated as follows:

"The judge who holds to bail any one charged with a crime, can when the circumstances demand it, at that time or subsequently until trial, order the accused to remain away from a definite locality, under pain of the conversion of the bail into a commitment."

Marcello Finzi has written a microscopic thesis on this statute, treating it from every point of view, with a thoroughness, which seems to the reviewer, unnecessarily painstaking. His object is to have the section revised. His revision would extend its scope and state categorically what seems to us to be included in the section as enacted. This extension is bad, the addition of procedural details unnecessary. It would allow the judge to admit to bail subject to "limitations of residence or other restrictions of personal liberty." It would provide for change of restrictions, for notice to the police, for enforcement. The right to alter the order is, of course, inherent in the existing law, as it can be revoked at any time. There is no doubt of this, as Finzi admits. The wisdom of allowing the judges to make a conditional bail, restricting a man's liberty in any way seems unwise. He can always revoke the bail, and the legislative

result of a power to fix conditions, would of necessity give him the practical power to force the accused to accept these conditions, where if the only alternatives were commitment or bail, the accused would not hesitate between them. And, in fact, with conditions specifically allowed, the accused would be forced to accept burdensome conditions where an appeal to admit to bail would be under the present procedure. This would be the practical result. The wisdom of allowing the judge to admit an accused to bail, restraining him from frequenting the scenes of his criminal activity is, however, undoubted. It is not a device to impose sentence without trial as the power to impose any restrictions on personal liberty would be. Furthermore, public security seems to demand it in these days of clemency when it is hard to hold without bail.

Finzi's proposed section goes further, however, and approaches an indeterminate sentence act. Such a law should, of course, be clearly stated and not hidden in a procedural clause affecting to bail. It seems to us, furthermore, that the existing section, by necessary cross-reference to sections governing the admission to unconditional bail is clear as to procedural details. Finzi's examination of the acts accompanying the judge's order, his power, the cases in which it may be exercised is minute. It seems that he proves that the existing section fulfills the duty demanded of it.

The wisdom of such a provision is undeniable. It is self-apparent. Similar statutes have existed in the Italian states since 1786, when Tuscany led the way followed by the Kingdom of the two Sicilies in 1819 and Parma in 1820. Strange to say, no similar law can be found in Germany or England. In the United States, it has been unknown, though the municipal police often enforced such regulations. It only remains to be added that the adoption of such a provision would materially benefit the control of our criminal population in great cities by removing many semi-criminals of weak character from temptation at the time when they are most prone to fall lower in the social order; i. e. when there is a charge hanging over them. And it would do this, too, without incarceration, which, all hold, exerts a pernicious influence on character.

Philadelphia.

JOHN LISLE.

DIE STRAFVOLLSTRECKUNG in den bayerischen Gerichtsgefängnissen und Strafanstalten. By R. Degen, K. Landgerichtsrat, and Dr. O. Klimmer, K. Amtsrichter, im Bayer. Justizministerium. Munich and Berlin: J. Schweitzer Verlag (Arthur Sellier), 1911. Pp. 379.

On first impression, a more solemn, a more withering, and a more unemotional duty could not be imagined, than the labor of reviewing a collection of penological proclamations, decrees, statutes, and ordinances. The effort of mastering an original Chinese chrestomathy, in comparison, might spread a radiant intellectual glow; but, as there is a hidden poetry in the Euclidean geometry, so here one may expect to find, concealed under a dry integument, a stirring human interest. "Once the step-child of legal science, and a *terra incognita* of judges and public prosecutors, the special department of prison knowledge has gradually disclosed scientific treatment, and attained a deserved position." (P. 177.)

"Within the last ten years there has been effected a thorough re-organization of the penal establishments of Bavaria. Older prisons which have proved

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insufficient to meet the demands of the present day in the matter of punishment have been abandoned and new ones based on the modern science of penology have taken their place. Hand in hand with this change, a new unified administration has been substituted for the antiquated prison methods which had prevailed, and the cell system of Nuremberg. Finally, in conformity with the thought of a progressive age, and in the attainment of a desired uniformity in the matter of penal execution, the earlier administration for jails has been replaced by a new system. The provisions relating to penal execution as against the liberty of the offender in Bavaria follow the lines of the so-called principles of the *Bundesrat*. They utilize, however, the practical information derived in the last decade in the field of prison science, laying emphasis on the education and betterment of the prisoner and the prevention of recidivation, and thus serve the important social mission which has come to be recognized as involved in the form of penal execution." Thus the preface.

This work is, as already suggested, a compilation of the existing prescriptions governing prison discipline in Bavaria supplemented by exhaustive explanatory notes, or, in the condensed form of expression of the Germans, a *Handausgabe*. It is in four principal divisions: proclamation regarding the administration of prisons for lighter offenses, including civil prisoners, etc. (*Gerichtsgefängnisse*); ordinance governing the administration of prisons for more serious offenses (*Strafanstalten*); rules governing admission of prisoners to penitentiaries, etc.; and provisional release of prisoners (*vorläufige Entlassung*). An appendix follows, consisting of sixteen separate ordinances, proclamations, and collections of excerpted statutes upon which the above administrative regulations are based. It may be remarked here that these regulations are State supplements, principally to the Imperial Criminal Code of May 15th, 1871, and the Imperial Code of Criminal Procedure of February 1st, 1877. Both of these Codes are likely soon to be replaced by new legislative drafts which are now under consideration. The German mind is always fundamental (*Grundlich*) and before it undertakes a practical labor it demands a full exposition of the underlying reasons, limitations, and justifications of the thing to be accomplished. Dr. Angell in his recent reminiscences tells us of a German who was writing of the history of the chimneys of a German city. He began with Greece and Rome, and after a long discussion of his subject, concluded that neither Greeks nor Romans had chimneys. But in this case there is as yet lacking an imperial statute relating to penal execution. In 1879 a draft of such a statute was submitted to the *Bundesrat* but it did not reach the *Reichstag*. The *Bundesrat* did, however, concur in a decree of October 28th, 1879, fixing certain important general principles for the punishment of offenders as a temporary expedient. (Pp. 177, 319.)

What is likely to impress a reader of this book in this country, familiar with the proposition that the bulk of our law is judge-made, is the legislative skill displayed—the art of legislative expression. We have as much to learn here of the Germans as in the domain of ideas. It may be safely surmised that work of this kind is done by experts, and not by men whose principal occupation is cab-driving or doing odd jobs in county offices. Although there is wanting a complete imperial governing act, the State of Bavaria has been able to work out a remarkably consistent, progressive, and comprehensive set

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of rules regulating prison punishments. Refinement of classification is one of the marks of a developed science, and classification is simply consciously applied discrimination in separating the essential differences in a subject matter. At an early day crime was crime, and it was not apparent that there might be a wide range of offenses differing in their degree of danger to society, much less calling for a difference of treatment as to the offender. The Bavarian system has pushed the analysis of punishment to the last degree. There is not only a thorough-going classification of the kinds of offenders, the kind of prisons, and the classes of punishments, worked out in a method of detail that goes far enough, and yet not too far; but it is expressly provided that "the objects of punishment cannot be attained unless all the personal qualities of the prisoner are taken into account." The house regulations, however, are as rigorous and precise as a military manual—a species of legislative detail neither workable nor desirable in any other department of the law. Thus, for example: "the bed-clothing shall be changed every month;" juvenile offenders are addressed as "*Du*" and others as "*Sie*"; every prisoner shall have a bath "at least once a month"; certain prisoners may once a day have a half-litre of beer or (foot-note) milk.

These regulations may be summarized as the practical application of the syncretic theory of punishment represented by von Liszt. They regard the social aspects of crime and are governed by an enlightened humanitarian principle; not a false humanity that puts all blame upon society and coddles the offender, but a principle which recognizes that criminal punishment should inflict a distinct evil on the man who opposes the commands of the State. The retributive feature is not abandoned, but combined with measures for the offender's social re-establishment, and based on the practice of the individualization of punishment, especially as to young prisoners. As representing a late working solution of a world-wide and enduring problem, by a first-rate government, this book probably will be of interest and value to all prison administrators.

ALBERT KOCOUREK.

Chicago.

VERBRECHERSPUR UND POLIZEIHUND. By *Dr. Friedo Schmidt*. J. Pfeiffer, Augsburg, 1910, pp. 81.

This book has been written from a thoroughly practical point of view. The history and the physiology of the dog and his general function in the field of criminology have been clearly and adequately treated by the author in a dozen pages. In the body of the book Dr. Schmidt considers in detail, but from a practical point of view, the nature of the odors from the human body, their transmission from the palm of the hand and the sole of the foot, and the production and the dissemination of the odors of the feet in walking. The criminal leaves more traces of his bodily odors behind him because he very frequently suffers from excessive perspiration, due to great muscular activity, mental disquietude and indulgence in alcoholic liquor. The chemistry and the physics of odors are carefully treated in great detail, but with such practical illustrations as to make the chapter readily intelligible to the police officer.

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The criminal may attempt to defeat the efforts of the police dog by offering the dog poisoned food, by distracting his attention by the use of a bitch, by neutralizing the characteristic bodily odors by the use of chemicals, by careful washing of the feet, and by the use of a perfume which is distasteful to the dog. None of these expedients will defeat a well-trained police dog. Even the use of perfume does not deter the dog from following the scent, and the dog is still able to detect the bodily odor of the criminal in spite of the perfume. The effect of the use of rubber shoes, of new shoes, of the shoes of another, of bicycles, and of other vehicles by criminals is also carefully described, with many illustrations from practical experiments. The proper care and feeding of police dogs and the proper care of clues and substances left by the criminal are also discussed.

At the end of the book, Dr. Schmidt enumerates fifty of the more important conclusions which he has reached regarding the value of the police dog. These conclusions summarize in an admirable manner the latest conclusions of criminologists regarding the police dog and its proper functions and activities.

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LEONHARD FELIX FULD.

