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Reviews and Criticisms

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REVIEWS AND CRITICISMS

DIE URSACHEN DER JUGENDLICHEN VERWAHRLOSUNG UND KRIMINALITAET, STUDIEN ZUR FRAGE: MILIEU ODER ANLAGE. By *Hans W. Gruhle*. Julius Springer, Berlin, 1912. Pp. XIV + 454, with 23 figures and colored table. Abhandlungen aus dem Gesamtgebiete der Kriminalpsychologie. (Heidelberger Abhandlungen.)

The first monograph of the new series on criminal psychology edited by K. von Lilienthal, F. Nissel, S. Schott and C. Wilmanns, comes from Heidelberg. It is a quarto volume of nearly 500 pages devoted to the study of 105 delinquent boys in the Grandducal Reform School (Zwangs-Erziehungsanstalt), at Flehingen in Baden. This fact alone discloses the fundamental importance of this splendid project for publishing research treatises in this field, and the thoroughness with which it is being carried out. Such psychological studies of the average offenders found in various correctional institutions will establish a new and far safer basis for making up our minds about the causes of crime. If we are ever to adjust our theories concerning the influence of heredity and environment to the facts, the extensive study of individual cases offers the best way of approaching a solution. The reviewer is tempted to proclaim Gruhle's volume as the cornerstone in this new edifice. Besides other studies of a like nature devoted to the inmates of other institutions the editors propose to include in the new series, monographs on the statistical side of criminology.

This first monograph is of unusual weight so far as the conclusions which it reaches, regarding the vexing question of nature versus nurture; but it is even more important for the complete way in which Gruhle develops his method of studying the causes of crime. To speak of Gruhle's method as a new way of investigating crime would be too extreme, yet the old methods of analyzing causes certainly take on a new aspect in this work. The central conception of the method is that the investigator, by getting a complete life history of an offender, then studying him in his everyday life, and questioning him from an hour and a half to four hours on many sides of his character and history, will be able to form a trustworthy judgment as to the relative importance as a whole of the instinctive and environmental factors contributing to his criminal conduct.

An individual whose delinquency is explained entirely by his natural tendencies (*Anlage*) is designated as belonging to the "A-Group"; when explained as mainly due to *Anlage* although the *milieu* was also influential, he is put in the group "A-plus-(M)"; as equally by both in the group "A-plus-M"; mainly through environment, "M-plus-(A)"; or entirely by the *milieu*, "M".

This classification is then made the basis for an elaborate study of the importance of various factors found in the environment, family, or personal history and the mental and physical characteristics of the individual, in order to reach general principles for explaining anti-social behavior.

In the first half of the book Gruhle endeavors to present as a whole his group of 105 delinquent boys, 15 to 20 years of age, sent to the Flehingen institution for compulsory training. This group was selected as fairly representative of the more serious type of juvenile offenders who have passed the age for compulsory attendance in the public schools. They are old enough to have

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characters sufficiently formed to be judged and their own views as to their troubles have some weight. The investigator attempts to show this group from as many different points of view as possible, actually tabulating each one in the entire group with reference to over seventy different environmental and instinctive factors bearing upon his delinquency. These factors include, among others, such facts as the birthplace of the parents and the boys, the season of year in which the child is born, the occupations in which the parents were engaged, the illegitimacy of the parents and the boys, the abnormality, illness, drunkenness and criminality of the parents, the size of the families, the partial or complete orphanage of the children, the ages when they began to become delinquent, the nature of their offenses, the kinds of their punishments, their abilities and various traits of mind and conduct, as well as his fundamental expert estimate of the weight of nature and nurture in explaining their delinquency. Nearly all of the points mentioned he analyzes much further than has usually been done, and it is this further elaboration which throws new light on the influence of these factors as causes of criminality. It is only when this method is pursued that we may hope to resolve the conflicting statements of various investigators. Statistical studies have often been content to leave a classification with merely the statement of "drunken father." Gruhle points out how this factor may be important mainly through heredity or through environment or through both, and that this can be determined only through further study of the particular cases. The same is true of illegitimacy, orphanage, and other factors which he illuminates. An exceedingly valuable service of Gruhle's monograph consists in bringing together all of the German investigations down to 1912 bearing upon his topics and using them for purposes of comparison and criticism. In this connection he has a bibliography of eleven pages.

In the second half of the book Gruhle gives in series the history of each of his cases with a statement of the boy's characteristics so far as he has judged them. These are followed by a complete tabular resumé and a colored plate showing the institutional history of each boy as to the time he has spent in various kinds of correctional or charitable institutions. These personal histories of the ordinary run of juvenile offenders are probably the best collection that has been made. It is in this collection of facts that it is hoped the work will have a permanent value in the field of criminal psychology. Whatever suggestions Gruhle may get from his summaries of the facts, he is constantly urging the reader to check them from the study of the cases as presented here in detail.

Turning to the conclusions which he draws from his investigation he offers perhaps the best judgment that is yet available on the relative importance of instinct and environment as causes of delinquency. It is a judgment based in the last analysis upon the expert opinion of the investigator upon each case after making a thorough study of the entire circumstances and personality. Until we are able to test objectively the factors estimated, and that day is probably not near at hand, we must give great weight to conclusions reached by the method used here and published with the facts to test them. In his summary Gruhle attributes the cause of the delinquency among his 105 boys to the environment alone in 9 per cent of the cases, to the environment chiefly in 9 per cent more of the cases, as much to the environment as to natural tendency in 41 per cent; in part to the environment, but mainly to instinct in 20 per cent,

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solely to instinct in 21 per cent. Moreover, he estimates the number who might have been saved from delinquency by a well-ordered environment and the right kind of guidance before they went astray. He places these as follows: With certainty, 30 per cent; probably, 11 per cent; perhaps, 15 per cent; with difficulty, 31 per cent; surely not, 13 per cent. Although he thinks that 87 per cent might thus possibly have been saved if they had been properly cared for from the start, this does not mean that this large proportion can at their present ages be trained to become good citizens.

A summary regarding the relation between abnormality and crime is very suggestive as a criticism of the current views, especially of physicians. He says: "The knowledge that so and so many of the criminal youths are abnormal is indeed very significant for the therapeutic treatment of the social offenders, for the choice of ways which should be used to improve the youths; but this knowledge has no significance for establishing the causes of delinquency." "The abnormal parents really have more children who are abnormal and under the average in capacity, but their children are actually more seldom delinquent because of their natural tendencies than the children of normal parents." Gruhle agrees with Baer that "the criminal type of Lombroso's school is an anthropological error."

In a careful discussion of the relative importance of nature and nurture so far as they influence his group of illegitimate boys, he agrees with Spann, who places the emphasis on their environment as contrasted with Taube, who attributes their greater tendency to delinquency to heredity. While the analysis is admirably judicial, the reviewer must confess that the evidence either way does not appear to him convincing on this question. In general Gruhle finds that *milieu* is more important with those who go astray early in life, while abnormality or incapacity are not emphasized among these early offenders. Those who fall through their instinctive tendency are especially prominent among the early thieves as compared with the group of wanderers. The opposite is true of the abnormal group. Among those who become delinquent after the compulsory school age nature and nurture seem to be equally influential, while incapacity and rough brutal tendencies then become more important.

Among the city children in his group delinquency appears somewhat earlier, truancy and the roving spirit being more apparent. Among the village children immorality and stealing are emphasized as early signs of delinquency, the former continuing to be pronounced in later development. The country children are also punished more severely and show more rough brutal conduct. With 59 per cent of the repeaters their instinctive tendency is emphasized as compared with about 41 per cent of the entire group. Repeaters tend also to be inactive and duller than the average. The group of sex offenders resembles the average delinquent closely.

Some of the facts regarding the Flehingen group are especially interesting. The correlations between drunkenness, abnormality, illness and criminality of the parents is noteworthy. In only seven of the 105 families is there neither a family taint nor seriously harmful surroundings at home, not counting illegitimacy. Forty-eight per cent have either a mentally abnormal or drunken parent. Forty-six per cent have lost either one or both parents. This is an important harmful influence in developing anti-social behavior which has not been sufficiently studied heretofore. The curves for delinquency increase decidedly the

first year after compulsory school attendance ceases. Only 14 per cent are healthy in both body and mind and equal to the average in ability. Fifty-two of the boys have repeated one or more classes in school and three others have practically no school training. Only forty-three had reached the eighth grade or above. It is unfortunate that we are dependent on Gruhle's estimate of the capacity and ability of his group, but it should be understood that the group were studied in the summer of 1907 before the graded systems of tests came into general use. He does not apparently have much sympathy for formal methods of testing individuals and specifically eschews both mental tests and physical measurements. According to his opinion 45 per cent of his group are under the average in capacity, 25 per cent of average capacity, and 30 per cent above. Nineteen per cent he thinks are congenitally feeble-minded. The comparison of these figures with those obtained by tests shows that this is one of the weakest places in his research.

By way of caution in considering the results of this study one should remember the dangers which its method makes likely and which Gruhle does not entirely escape at times, although he recognizes their importance and cautions against them. Comparison of percentages of small numbers is especially hazardous when these differences are not pronounced. For example, a difference of 6 per cent between the group of thirty-two who are over the average in capacity with forty-seven boys under the average, which Gruhle finds of importance, can hardly be significant when one considers that it would be eliminated by change in two individuals in the smaller group.

The most fundamental objection to the method of study used in this type of research is, of course, the subjective nature of the judgments passed on the individuals. One feels, for instance, that a decided advance has been made in studying the relation of incapacity to delinquency through the use of the more objective Binet system of mental tests. To illustrate: Gruhle states that 50 per cent of his children who are over the average in capacity are from families with at least one parent drunken or abnormal mentally, while only 55 per cent of those under the average in capacity are from such families. One wishes most heartily that this matter of over or under capacity depended upon some objective standard independent of the investigator's opinion. Again, when one finds, for example, that the *Anlage* is more important with repeaters the scientist is somewhat cautious, because it still remains to be determined whether the larger percentage of these repeaters influenced toward their delinquency by heredity was due to the importance of instinct or to Gruhle's tendency, albeit unintentional, to class in the *Anlage* group those who were found to be repeaters. Gruhle believes that the supposition that frequent and serious punishment would make him tend to class a boy in the A-group and then later take the *Anlage* as the cause of more frequent and serious offenses is overcome by the fact that his A-judgment in each case was his impression of the entire personality and situation, that it was never consciously made upon the kind or frequency of punishment.

In the opinion of the reviewer Gruhle succeeds admirably in his aim of keeping clear from fixed conclusions regarding nature and nurture as well as from letting his judgments be influenced by the practical effect of his conclusions. It is certainly true that conclusions reached by judging each individual separately and then summarizing are more likely to be unprejudiced than

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those passed in the popular way upon the group of delinquents as a whole, a method which has obscured the public mind altogether too long. It is probably also true that wherever mental tests are not yet available, especially concerning fundamental emotional traits, the method used by Gruhle is the best available today. Such a careful study as this, instead of having the effect of slackening the search for objective standards for comparisons, should increase the enthusiasms for that search since it makes its need more obvious.

The University of Minnesota.

J. B. MINER.

MEDICO-LEGAL ASPECTS OF MORAL OFFENSES. By *Dr. L. Thoinot*, professor in the Medical Faculty of Paris. (Translated from the original French and enlarged by Dr. Arthur W. Weyssse, professor in Boston University.) Illustrated with seventeen engravings, including four charts and diagrams. F. A. Davis Co., Philadelphia, 1911. Pp. XVI + 487.

Dr. Thoinot's book "*Attentats aux Moeurs et Perversions du Sens genital*," is based on his course of lectures delivered to the students at the Medical School of Paris. They were intended to bring certain subjects up to date, and to create familiarity with other subjects. The whole question of moral offenses, some of which have taken on a singularly different aspect since Tardieu's classical and original work on *Etude Médico-Légale sur les Attentats aux Moeurs*, are in it brought up to date, and the perversions of the sexual instinct are made familiar, which but yesterday were almost denied, and are still unknown to the majority of physicians and students, despite their triple interest—clinical, psychological, and medico-legal.

By this translation not only have the efforts of the French author, as set forth in his preface, been made fully available to the English reader, but the value of the work has been greatly enhanced by the addition of an appendix giving a general summary of wherein the law and practice, of both England and the United States, differ from that of France. These points of difference are well illustrated also by numerous foot-notes marked with the initials of the translator. The moral offenses are exhaustively considered under the three class groups of rapes, indecent assaults, and of public offenses against decency, while the perversions of sexual instinct are considered under two classes. The first being that of the true inversions, that is of the morbid or pathological inversions or perversions, which are natural or congenital, although their appearance may be retarded. The second class are the false inversions, which are artificial; that is are vice inversions or perversions. These are not congenital, but are acquired.

All the classes of moral offenses are fully considered from both their medical and legal aspects, and are illustrated by the records of notable cases drawn from the published literature of the world. In like manner are the perversions of sexual instinct treated, and illustrative cases of uranism or mental degeneration, of exhibitionism, of fetichism, of sadism and masochism, likewise of bestiality, necrophilia, nymphomania, satyriasis and erotomania are cited. The work as a whole is undoubtedly the most comprehensive of any which has yet appeared in English upon these subjects, and may be consulted with advantage by students seeking information in such fields.

Boston.

BENNETT F. DAVENPORT, Medico-Legal Expert.

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FORENSIC MEDICINE. By *Dr. G. Puppe*, Professor of Legal Medicine, Königsberg i. P. 2 Vol. J. F. Lehmann, Munich, 1908. Pp. 692.

The first thing which strikes one very forcibly upon opening Professor Puppe's work are the very excellent illustrations, especially the colored plates. These are in most instances taken from the late E. von Hoffmann's Atlas of Forensic Medicine. The work is an excellent treatise on this subject but owing to the fact that it deals with medicine as related to the German laws, it can hardly be of much value to the American jurist except from a comparative standpoint. The physician, on the other hand, will find it an excellent guide.

Especially commendable are the chapters dealing with the legal phases which may arise in the practice of obstetrics and with the relation of insanity to the law.

It is to be regretted that in discussing the question of syphilis the author omitted mentioning the Wassermann reaction, as in this we have the most reliable test for establishing the existence of syphilis. The author has devoted a good deal of space to the discussion of the subject of social medicine, that is, medicine as it is related to accident and life insurance, a subject not usually dealt with in books of this nature.

The work is supplemented by seventy colored plates and two hundred and four prints and from this point of view it can hardly be excelled. A good colored plate often gives more information than pages of printed matter, especially where anatomical specimens are not at hand.

The work is highly recommended to all those interested in the subject of forensic medicine.

BERNARD GLUECK, M. D.

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DAS MORALISCHE FÜHLEN UND BEGREIFEN BEI IMBEZILLEN UND BEI KRIMINELLEN DEGENERIERTEN. By *Dr. Med. Hermann*. Carl Marhold Verlagsbuchhandlung, Halle a. S. 1912. Pp. 90. Price, M. 2.10.

In this monograph, which is a part of the eighth volume of the series on *Juristisch-psychiatrische Grenzfragen*, Dr. Hermann critically reviews the German literature (British and American contributions are ignored) bearing on the question of moral imbecility or moral insanity, and presents a detailed discussion of his own original investigation of 29 institutional cases, 19 of whom were classified as criminals, 5 as degenerates without intellectual defects, 2 as debilitated, probably morons, 6 as imbeciles, and 10 as idiots.

The moral and intellectual development of these cases was investigated by the aid of Cimbäl's *Untersuchungsschemata*. These contain a series of questions so framed as to test the subject's degree of intellectual development and moral insight. The tests included a determination of the subject's knowledge of various basal ethical conceptions and of various statutes in criminal jurisprudence, and of his ability properly to interpret and sympathetically to appreciate pictures as well as a story with ethical motives.

The study of the idiots and imbeciles indicated that their degree of morality did not run parallel with their degree of intelligence. Among the six imbeciles moral conceptions were lacking in only one case, they were satisfactory in two cases and very good in three cases. Knowledge of the law was completely

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lacking only in one case. The *Einfühlung* of pictures proved to be good in five cases, irrespective of the degree of intelligence.

Hence the conclusion is reached that the moral defect in these persons is due to abnormalities in the affective life, and not defects of judgment; feeble-mindedness if a defect of judgment. The affective consciousness, in all degrees of intellectual development in these cases, is not influenced by logical considerations.

Many of the debilitated and degenerate criminals did not manifest a lack of affective *Einfühlung*, nor did they show moral anesthesia. Even profound degenerates may manifest moral feelings. But all showed evidences of unteachableness. Their uneducability is ascribed to abnormalities of the feelings; to a lack of feeling-dynamic. The ability to learn depends not only on intelligence but on feeling tone.

From a study of these types of criminals the author thus makes the broad inference that criminal and anti-social conduct rests upon a degenerate disharmony in the feeling-dynamic rather than in a defect of judgment.

So far as concerns the forensic aspect of criminality, it is to be observed that most feeble-minded criminals commit misdemeanors with conscious intent and with knowledge of their criminal character, while the degenerate criminals, although they may be regarded as inferior in the psychopathological sense, must not be regarded as suffering from a disturbance of the mind which renders control of the will impossible. The degenerates in their habitual condition are not insane.

The monograph suffers from a lack of crisp, clear-cut summaries of results and conclusions, and from the prevalence of over-long paragraphs; one paragraph covering over nine pages. In this day when books are legion the reading public has a right to demand that authors express their conclusions in succinct, perspicuous statements.

J. E. WALLACE WALLIN.

Psychological Clinic, University of Pittsburgh.

CRIMINAL RESPONSIBILITY AND SOCIAL CONSTRAINT. By *Ray Madding McConnell*, Ph. D., New York. Charles Scribner's Sons: 1912. Pp. vi. + 339. Price \$1.50.

Most prejudices have more lives than the traditional cat. And legal or theological concepts are peculiarly slow to change and prone long to outlive their utility. This is strikingly true of the older, more metaphysical notions of punishment, the sanctions for it, and the methods of applying it. The student of criminology, therefore, welcomes anything which will contribute to making the theory and practice of our penal system more consistent and more positive. Such a contribution, it seems to us, Dr. McConnell has made in this study of criminal responsibility. Its frank and unabashed avowal of determinism and its equally emphatic insistence upon social defense as the only rational sanction for punishment rank the author with the most modern of our modernists in criminology.

Our penal system is complex because it is the growth of centuries of conflicting theories and aims. A dozen different aims have been suggested and followed in dealing with the offender. But they all reduce to four fundamental types, expiation, retribution, deterrence, and reformation. To these the author

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devotes four chapters, showing the insufficiency of each, and of all four taken together. The method of handling the facts and arguments in these chapters is admirable and particularly well suited to teachers' and students' needs. First comes a fair and thorough explanation of the theory with whatever evidence favors it; then follow the objections. To round out a proper and adequate sanction for punitive treatment a fifth aim is added: "Punishment for social utility."

This necessitates a review of the whole question of free will and determinism as bearing on the questions of "freedom in crime," and "criminal motives." This constitutes the second part and the bulk of the book. Dr. McConnell rejects in the most unqualified way free-will in whatever form it is suggested and shows conclusively the mess of fallacy into which the free-willists fall when confronted with actual problems of education or punishment. To accept free-will honestly and fully would not leave either school, court, church or any other institution for teaching, disciplining or counseling, a single leg to stand on. For what rewards or what disciplines can penetrate or influence a spontaneous, self-subsistent, self-sufficient, absolute entity which is remote from our world's concerns? Manifestly such doctrine is anarchy. Hence Dr. McConnell has rendered a notable service in showing up this anarchy which lies implicit in the assumptions of the classical penologists and moralists. Perhaps to the teacher this discussion of freedom in crime is the most valuable part of the book; for we usually find great difficulty in getting the average student to grasp the meaning of determinism and free-will, or to sense the significance of the antithesis and its vital bearing on diametrically opposed systems of criminology. It supplies in clear and readable form just the psychological and philosophical background for an intelligent discussion of these problems and their implications. The author is quite correct in emphasizing that the problem of free-will is not merely an out-worn academic quibble but that it is a practical every-day issue that confronts us at every turn. For upon it depends the whole question of responsibility. How, otherwise, shall we account for the difference in treatment accorded to the sane and insane murderer, the child homicide? Why do we send this boy to a reformatory, that one to a home for feeble-minded, the other to the care of a probation officer?

The last part of the book is given over to the logical developments of having rejected free-will and accepted the sanction of social utility for punishment. Rightly, we think, the author concludes that determinism does not mean fatalism, nor freedom from social responsibility. For freeing the offender from metaphysical or theological notions of personal responsibility does not mean freeing him from consideration as a social nuisance or a social menace. The responsibility is merely shifted to society, and the emphasis is laid upon the necessity for permanent elimination of the offender or for his good social conduct as a guarantee for social protection and well-being. Only by such a shifting of responsibility can we ever hope to secure any serious attention to curative and preventive methods in the battle against crime. "Cure of the individual, if cure can be possible, but in any case defense of Society against his noxious freedom," (quoted with approval from Gray) might be taken as the text and conclusion of the whole book.

A few details of the book are worthy of special mention. Notably the pessimistic view of the reformatory effects of punishment which the author holds

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in common with Ferri, Parsons, Drähms, McKim, etc. Yet he somewhat contradicts his pessimism at times; for example (pp. 120-1): "Such absolutely incorrigible malefactors must be considered rare * * * as regards the great majority of offenders, those who are delinquent as the result of improper training, reformation is the course for society to pursue." With Schopenhauer he lays great stress on intellectual education as the only way to reform the heart. A reference to Superintendent Brockway would have added much to the argument on this point. Similarly a comparison with Lombroso's schemes for utilizing criminals might have strengthened his plea for turning the criminal from "a destructive social force into a constructive one." (P. 123).

Especially timely and incisive is the criticism of attempts to distinguish between partial and complete irresponsibility. Only the most abject ignorance of psychology could adjudge an unbalanced mind normal and therefore responsible in spots. Perhaps one may, with a friend of mine, admire Wagner *in spots*, but when an insane offender comes up for judgment he either is or is not insane, unbalanced; in view of penal or hospital treatment he must be taken *as a unit*, *not in spots!* The author's position on the question of insanity as a "defense" is equally sound. "Mental derangement is an explanation, but not a defense. * * * When we declare the insane person to be morally irresponsible for his deeds * * * we certainly do not mean to imply that he cannot be held socially accountable for them." Social accountability is a far safer guide than personal responsibility in the treatment of the anti-social classes.

It is with the utmost diffidence that I venture to offer a few critical suggestions, for Dr. McConnell's untimely death prevented such a recasting of the book as would forestall many criticisms. Hence my suggestions are directed towards students who will use this book and also to those to whom the preparation of future editions of the work may be entrusted. In the first place the lack of an index is a distinct loss to any book. Again, there is considerable repetition in the discussion, notably in Chap. vii. In fact nothing would be lost and much gained by a considerable compression throughout Part ii; chapters xi, xiv, xvi, xvii, xxii might be cut out entirely or boiled down and distributed among other chapters.

In the discussion of aims of punishment I am (more than Dr. McConnell) inclined to lay the emphasis in punishment for retribution rather on the historical than on the philosophical aspect, to avoid confusion with expiation, for retribution for violated principles of "Justice" as the author works it out differs but slightly, if at all, from expiation for a disturbed "Moral Order."

Perhaps it is only a quibble, but when we are told that social defense admits a certain amount of punishment as retribution, and that "On the basis of social necessity, then, legal vengeance is justified." I should much prefer to use the word 'expediency' instead of 'necessity.' Then retribution or vengeance appears only as a confession that part of our people are still savages who need a victim "as an outlet, a kind of safety-valve, for the indignation of the community," etc. We thus avoid the implication of vengeance as a permanent necessity for thoroughly civilized societies.

We are not all of us quite so sure as Dr. McConnell that there are born criminals, "congenital wrong-doers, whose physical and psychical proclivities lead inevitably to crime;" yet that need not alienate us in the slightest from his general thesis nor his conclusions as to practical procedures. Among these latter we

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are glad to note the permanent segregation or the elimination of the incurable or incorrigible, the wider use of reformatories, inebriate asylums, indeterminate sentences, probation, agencies for educating backward children, improving juveniles, aiding discharged prisoners, improving the economic condition of the masses.

The book as a whole stands as an eloquent proof of the author's contention that a man may be at one and the same time a thorough determinist and an unqualified idealist.

University of Illinois.

ARTHUR J. TODD.

QUELQUES MOTS SUR LA LEGISLATION PENALE AMERICAINE. By *Henri Jaspar*; *Revue de Droit Pénal et de Criminologie*, VI, 1. Pp. 5-18.

This is a brief discussion of the principal characteristics of penal legislation in this country. It emphasizes the fact that because this is a new country it has not yet fully developed its system of law and is therefore able to experiment with new things. It describes the division of powers between the federal and state governments and points out some of the inconveniences of this division.

The writer then describes what he considers the four principal reforms, namely, the reformatory, the indeterminate sentence, the juvenile court, and probation. His attitude towards these reforms is best indicated in his closing paragraph which, translated, reads as follows: "The system is entirely new. It is based upon scientific data as much as upon the study of judicial statistics and the analysis of numerous cases of criminals, adults or children, to which until now no serious solution had been given. Without doubt the social, economic and moral conditions of the United States are very different from ours; notably tradition, so strong in our legislators and jurists, exercises much less power there. Also it is impossible to think of propagating immediately, and all at once in our country, institutions as original as these. But it is indispensable to study them and learn from them instead of persisting in ideas and practices which are condemned both by science and by experience. To treat children as criminals, to apply to all of them the same regime of imprisonment, to judge them according to the deed which has brought them to the attention of the court, to apply to all the adult criminals the same penitentiary regime, to persist in believing that the cell is a panacea, all this is to close the eyes to the evidence and to continue in an error which becomes less and less excusable when in a number of foreign countries it has been not only recognized but studied and corrected."

M. Jaspar makes one statement which is a little misleading. He says that in Missouri the maximum penalty for perjury is death. This is true only where the perjurer has committed his crime for the purpose of securing the conviction of some one for a capital offense.

University of Missouri.

MAURICE PARMELEE.

SOCIAL ADJUSTMENT. By *Scott Nearing*. Macmillan Company, 1911. Pp. 377.

Professor Nearing accepts the dictum, "To be scientific is to be popular." To him this means that the man of true science has knowledge that the public needs. It also means that it is the duty of the scientist to present his discoveries so that they may be utilized by as large a public as possible. He regards social

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facts as of such great importance that the responsibility incumbent upon the sociologist is unusually great.

The facts which Professor Nearing presents in this volume are the following:

"1. That maladjustment exists in numerous virulent forms, in many parts of the United States.

2. That maladjustment is (1) due to economic causes, (2) involving social cost, and (3) remediable through social action.

3. That maladjustment can be, and in many instances is being, eliminated by efficient education plus wise remedial legislation.

4. That the vast majority of children are born normal and are made abnormal, degenerate, and diseased by their defective environment.

5. That recent investigations demonstrate conclusively that the portion of genius, mediocrity, and defect does not vary materially from one social class to another, and hence all are capable of the same uplift.

6. That progress is impossible so long as society maintains the fatalistic viewpoint which condemns men because of the sins of the fathers and is blind to the transgressions of the brothers.

7. And, finally, that it is through the promulgation of the new view of the universality of human capacity, the remediability of maladjustment, and the advantages of universalized opportunity, that maladjustment will eventually be eliminated and adjustment secured."

The author emphasizes the economic factor in society; assumes the functional point of view in his sociology and psychology; and accepts the statements concerning the similarity (or even identity) of human capacity in all races of mankind.

The book carries out admirably the purpose of the author, is distinctly practical and will play a part in securing social adjustment.

Northwestern University.

WALTER DILL SCOTT.

IMPORTANT DECISIONS IN THE FIELD OF JUDICIAL PSYCHIATRY. Tenth Series. Collected from the literature of the year 1910. By Privatdocent *Dr. W. Vor-kastner*. Carl Marhold, Halle a. S., 1911. Pp. 53. Price m l.

This summary contains in its 53 pages no less than 77 decisions, arranged according to the paragraphs of the German laws, beginning with the criminal law (pp. 3-13), criminal procedure (pp. 13-19), military criminal law (pp. 19-20), civil code (pp. 20-42, chiefly liability issues and guardianship), civil procedure (pp. 42-52), and finally fees (p. 52), incorporation, and insurance of invalids (p. 53). It would take more space than the original takes to give an adequate epitome of the contents for the American student.

I pick out a few points:

Responsibility does not constitute a legal presumption. Even if the demonstration of irresponsibility appears insufficient, the judge can pass judgment only if the facts before the court leave no doubt in his mind as to the responsibility (p. 4). The court has the choice to turn over the accused to his family or to an educational or reformatory institution; but the decision between the latter two lies in the hands of the administrative authorities (p. 4). Unless a person with a mental defect is under final or provisional guardianship, he or

his caretaker can take up legal procedures, and in that case the caretaker is merely the representative of a competent person (p. 5). An attendant who helped in the escape of a patient who was under an indictment and admitted to a hospital as a dangerous person, is not protected by the excuse that he did not know that he was sent in by the police and was a dangerous person; the request to watch the man is a sufficient obligation to cover the full extent of the responsibility (p. 5).

When a person kills another in *affect* (emotional excitement), the verdict of murder is excluded even if the killing was previously decided upon in plain deliberation. The act is deliberate only when the culprit during the deed can weigh sufficiently clearly the actual effect of the killing, the motives for and against and the steps required to attain the intended result. He is, however, in a state of *affect*, when his action is governed by an emotional excitement which exceeds the natural excitement of one who is about to kill another and which excludes the logical weighing of the above issues. (This decision of the Reichsgericht, of March 26th, 1909, shows how subtle the issue of intent is and how wise it would be to consider the facts of the case not too closely under one single heading—intent or no intent—but also from the point of view of the general make-up of the person and the probable result of punitive or corrective treatment. It certainly would lead to much quibbling and perhaps to real blundering if one tried to settle a series of our notorious murder trials according to the above principle).

The appeal of a patient for indemnity for supposed intentional or careless detention in a sanitarium (p. 10) was declined. The physician has no specific right on merely professional grounds to interfere with the bodily integrity or the liberty of a patient. To do anything against the will of the patient would therefore be illegal, unless it is specifically justified by the circumstances in which the physician has to act. The superintendent of an institution is, however, protected as long as the admission-papers fulfil the rules. As to the committing physician, he has to show sufficient reasons and the consent of the legal representative or the relatives of the patient. As "sufficient reasons" the regulations mention danger to oneself or others. The physician is to use his own observation, but he also can admit statements of third persons. In reality, the patient in this case had made an attempt at suicide, and had threatened to shoot her husband. Three courts declined the appeal.

A number of decisions deal with sexual offenses and thefts; and one with the responsibility of falling asleep on account of a sudden and not predictable collapse of energy.

The decisions concerning procedure deal with the admissibility of informants, the professional secret, insane persons as witnesses (the court is at liberty to admit or refuse them), points about the validity of an oath in drunkenness and the validity of documents without oaths, etc. A court may decline the expert's request for observation of a person in an asylum, when it considers the decision in the ordinary course of the trial feasible. An expert is not allowed to refuse to answer questions on the ground that he is not called upon to do this, or that the court has enough personal experience on the points in question. A revision of an acquittal on account of insanity is inadmissible. Objection to an order by the court for observation of the accused in a hospital is inadmissible.

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Of the civil decisions the following may be of interest. Guardianship cannot be urged where the disorder of mental activity is limited to one or a few definite spheres of affairs. A querulant with circumscribed morbid complaints must be shown to be affected in all his actions, and that his entire relation to life is more or less influenced (a rather startling and extreme requirement). The call for guardianship for mental disease does not presuppose that the person should already have damaged his interests, and it is not to be declined because the person is still reasonable and sufficiently competent in some issues. The problem of marriage and divorce, the rights of guardians, etc., receive a number of interesting sidelights.

The above examples will, I hope, give a fair idea of the character of the information furnished in the valuable little summary, of which the eleventh series has just recently been published.

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DAS UNZUCHTIGE UND DIE KUNST. EINE JURISTISCHE STUDIE FÜR JURISTEN UND LAIEN. Von *Johann Lazarus*. J. Guttentag, Berlin, 1909. Pp. 168. Price M 3.50.

"Because the judicial decision is so little related to the law which is by chance in effect in this or that time or place, judges should consider their decisions as *sub specie aeternitatis* and bear in mind that each decision is a brick in the great building of universal culture. And even though the judge must never lose his perception of the actual life of his time, he must also be able to raise his eyes beyond the crash and tumult of the present, that so soon lapses and becomes past, to the eternal."

This is the peroration which closes this very clear and well-written *Zerlegung* of the relation of the indecent to art, in the eyes of the German law. As the reviewer knows nothing about law and as the legal discussion occupies but a very small portion of the monograph (chapters 1, 2, 4, 8, 22, 24) he will confine this review to a statement of the social and psychological basis from which, according to the author, the law arises and which is the force behind its operation.

The law considers that indecent which offends the sense of shame by reference to sex. Your sense of shame is offended when you feel ashamed, when some defect in your own person becomes noticeable to another. You feel ashamed about other persons only when you are responsible for them or when they are so intimate that you completely share their feelings. What is essential is this: *something gets exposed*. If the exposure gives rise to a feeling of unpleasantness this unpleasantness is shame. Exposure implies concealment and mankind most conceals the sex-life and the organs and objects that are concerned with the functions of the body. The nude, hence, is a form of exposure; but it is indecent exposure only when it arouses shame. There is thus a difference between exposure and exhibition (*Offenbarung*) and indecent exposure (*Missoffenbarung*). The sense of shame is aroused by both; but it is offended (*verletzt*) only by the latter. Such offense differs from offenses against decency or good form (*Anstandsverletzung*) in that the latter presupposes guilt, while the former does not; the former turns on an "esthetic" incongruity between custom (*Sitte*) and conduct, and stands half-way between morality and the penal

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esthetic. So standing, it varies like fashion, according to epoch and social class, and the feeling for it needs no legal protection. The law often confuses an offense against decency with an offense to the sense of shame. The latter has a much deeper root in human nature, and is far more constant and uniform among all peoples. Its development is, of course, modified in various ways. It may be transferred from real to esthetic objects, restricted by habit and necessity, sharpened or dulled by various interests of life, set aside in the cause of utility. On the other hand, it plays an important role in sex-defence. The exposure of vulnerable areas, must in the early days of the race, have been a weakness. And the necessary intensity of the sexual impulse must have exposed the race to that weakness in high degree. The shame-sense, leading to the covering of the body, may then have worked well defensively. But in so working it becomes a fact (however distinct conceptually) intimately connected with the stimulation of sensuality, and hence needs all the more to be protected against offense.

A protective law against indecency, hence, is quite justified. By indecency (*Unzucht*) is meant "forbidden sexual action, more properly, one that is in itself prohibited." "Indecent" (*Unzüchtig*) must, therefore, mean "anything offensive to morality in a sexual way, though the offense be due only to accompanying circumstances." (pp. 31-57). According to law it is anything of which the verbal or pictorial reproduction is prohibited by sexual morality. It is the use of writing, drawing or presentation to set forth things which cannot be set forth because of their sexual character: i. e., it is the indecent exposure of sexual matters. Such exposure offends the sense of shame.

What bearing have this sense and the law defending it on art? Inasmuch as this sense is but one of our interests, the law must not defend it at the expense of any of the others. There exists, of course, a historic conflict between the puritanic cult of goodness and the cult of beauty. The law must have regard for neither extreme. The field of art is as broad as human experience and the poet and painter may not except the nude, the exotic, the sexual, from artistic portrayal. The field is, of course, not free from things that do offend the sense of shame; nor does artistry inhibit indecency—witness the pornographic section of the Naples Museum, tales by Aretine, and verses by Ovid. The law's task is to render justice to both the artistry and the shame-sense.

The sense of shame and the moral sense are distinct. The latter can, like our sense of decency, be offended only where responsibility is assumed; whereas the former may be offended by irresponsibles like lunatics, animals, etc. A work may offend both together or either independently. Different though they are, they can not be readily separated, for the sense of shame is not a private one, but a common one. It is what the French mean by *la pudeur publique*. But what is common or public shame? Actual shame is always that of an individual, and individuals vary. Who or what shall be the measure? Here the law must have recourse to itself; the *common* sense of shame is the sense intended by statute; the sense that may be offended by sexual exposure. The indecent, hence, is what offends this sense of shame.

Is the indecent that which excites lust? Not merely—some pictures and writings are so bad as to fail altogether in stimulating sensuality. These dull the sense of shame, and so, hurt it. On the other hand, many works of art do evoke lustful feelings, but contain nothing obscene. Lustfulness is, in fact, not essential to indecency, but may be considered as accessory. Everything turns

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then on *interest*, and crimes may be classified as objective or subjective accordingly. A crime is objective only when committed ignorantly by the criminal, subjective when committed knowingly. With respect to act, the doer is to be punished—although the work is objective—on the *subjective* basis. This involves a consideration of the purpose, condition, and tendency of the work of art. Some authorities consider that certain purposes are invariably implicative of indecency. Such purposes are those of the originator of the work alone, however; those of the propagator are to be considered only as accessory. What is essential is this: "the purpose must have received recognizable expression in the work itself" (p. 54). For there are also unintended effects, for which the author is not to blame, and good intention mitigates these, though it does not excuse them. Culpability occurs where the author intentionally stirs the lower impulses, for the sense of shame then becomes more responsive, and where he uses a legitimate aim as a cloak for indecency. Often, of course, the reverse occurs and indecency is used as a means to draw the attention to high truths. In either case there arises a possible quarrel between these two purposes, and a consequent vacillation in the sense of shame. Culpability diminishes with respect to the thing itself, when it is misapplied; or when it loses circulation, or when the sense of shame is modified by habit. Certain organs are of course so intimately associated with sex that habit can have no modifying influence; in such cases purpose only can determine indecency. But as a rule, it is significant for art that custom may dull the sense of shame, leading to the acceptance of nudes in sculpture and painting, etc. The sense may be further inhibited by circumstances, such as the mood evoked by the occasion on which a possibly shameful object is viewed; by the object's historic background; by the "sense of the classic;" (the latter, though inhibiting shame, is no license for circulation); by interest (e. g., scientific interest in a lunatic's antics, which may lead you to risk getting your sense of shame wounded), scientific or historic; by the use of foreign language. Whatever the interest be that inhibits shame, it need not be praiseworthy, e. g., curiosity, joy, hate. Moral disgust, on the contrary always intensifies the sense of shame. With all this art has little to do. If it is good, it yields an esthetic experience, and the esthetic experience is a revelation of the divine, not an exposure of the indecent. Anything, hence, may be the subject matter of art. But, the greater the novelty, the precision, the definiteness, the closeness, of its relation to the sexual, the greater of necessity must be its esthetic power that shall silence shame." (p. 65).

Now a work of art is made of parts. Whether any one of these parts is shameful is determined, in the first instance, by the nature of the whole. When whole and part are not closely related, or are separable, the part is to be treated as an independent unit. Where they are not so, and any relation exists of part to whole, in which part determines the whole, indecency in the part constitutes indecency in the whole. Sometimes the relation is problematic, as in the case of the Decameron. If the setting is neglected or negligible, a story is to be treated as an independent work.

Independent treatment of parts and wholes is a modification of a work of art. Such works are, of course, otherwise changed; they are worked over and reproduced. A copy, different from its original requires a different judgment as to its decency. So also a poem taken by itself and the same poem in a context. So also anything published serially, or in translation. There are to be consid-

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ered the effect of isolating parts, of the use of foreign terms, etc. Sometimes indecency in a work supervenes on the loss of literary quality or esthetic power. This may come about by means of accompanying circumstances as well as by partition. There is a *relative indecency* evoked by environment, or by use of the object as a means to an alien end. With this in consideration "an indecent work is one that tends in itself or under favorable circumstances to offend the sense of shame," while a work not indecent would never do so, even though it may be an incidental cause in such an offense. In the latter case indecency would be only relative.

The converse of the independent treatment of parts and wholes is the composition into wholes of separate works. There is an indecency of composition to be set over against the decency of distribution in a unit composed of picture and text. Thus the word *Apres* by itself, and the sleeping Venus of Giorgione by itself, are each decent. The former as subscription to the latter makes an indecent whole. Of course, the converse is also possible.

The manner of circulation and advertisement may definitely affect the decency of a work of art. They may turn a relatively indecent into a concretely indecent work by preventing the action of corrective circumstances. The legend has much to do here: "for sports," "for men only," may convert the entire status of a work. Another important influence is the particular public for which a work is intended. What may be indecent to one social group may be the reverse to another, and the social group may be designated by the price of the work. Work may be offered to few or even definitely selected individuals; it may be printed in very limited editions, be exhibited briefly in very limited space without further advertisement, may be advertised only in places frequented by selected classes. These, together with the use of a foreign tongue, are modes of appealing to different social orders—chiefly such as have scientific and esthetic interests. Appeal to the illiterate is determined by the language used and the mechanics of printing. While again, the ability on the part of the public appealed to, to appreciate other qualities checks the appeal to indecency. A Roman laborer will have an esthetic experience when a Berliner will see only a piquant nudity.

That children need particularly to be protected goes without saying. And as for women, the belief that they must be more restrained than men in matters of sex has given rise to a double standard for the two sexes. This duplicity is being modified by the spread of culture and a judge must take account of the modification in passing judgment on indecency. People without any sense of shame whatever fall beyond the limit of this inquiry. Indecency exists only where the sense of shame is offended by indecent exposure.

But withal—whose sense of shame? It has already been seen that individual variations are great. An offense is committed, according to law where somebody is actually vexed, either on his own account, or another's. But what is this somebody? He is a *normal* individual. A normal individual is not an average individual. His place is "between the average and the ideal." He is any man who is not abnormal. And with respect to the sense of shame anybody is abnormal, "in whom it is not offended, not only because of his moral defects or under-developed sense of shame or sexual abnormality, but also because his interests are such as to inhibit his shame-sense while observing objects in the plastic arts or in reading poetry offensive to most people." (p. 107). Occupa-

tion and interest, indeed, may here constitute abnormality; and consequently, experts cannot be experts on the sense of shame. The indecent can be that only which offends the sense of shame of any normal individual. But how is the normal individual to be recognized? The judge must to a large extent, take himself as the standard of normality. If he has prejudices, he must set these aside, and failing this, he must call in experts.

The one matter of which complaints of indecency are most likely to be frequent, is for obvious reasons, the nude. It is hence of great importance to distinguish, in judging, between nudeness and denudation. Indecency always is an exposure, hence a denudation. This may be verbal, since a discussion of what is usually not mentioned is an exposure. But in whatever medium, the nude, being unusual in the daily life, is likely to stir lustfulness. This, we have seen, is independent of offense to the sense of shame; the latter can occur only when no connection of nude and sex has been emphasized. This emphasis comes by way of undue prominence of those parts of the body with respect to which the sexes differ. The consequence is that the nude as such, is and must be indecent (p. 119). Art, however, by its intent, clothes the nude with decency. The nude so clothed must be the customary or conventional nude of each of the arts. In sculpture, e. g., the exposure of pubic hair is indecent; but custom and esthetic effect may work considerable modifications. In painting, the details of the sexual are permissible where the esthetic effect is strong, and being farther removed from nature sculpture, painting has a freer hand. Engraving, for the same reason, has a still freer one. And as for photographs, those of works of art are to be considered as works of art, even when the works of art are not themselves painting or sculptures, but dances and stage pictures. Photographs of actual nude persons, however, particularly of women, constitute under all circumstances an indecent exposure.

So much for the nude as such. There are nudities, like Aphrodite Kalipyges, that are sexual by exhibition of sexual organs, and others, like Titian's Venus of Itrurio, which are so in expression. To make such permissible a very high degree of artistic power is needful. Pictures of disrobing again, always constitute intentional exposure, but these, too, may be justified by artistic effect.

The sense of shame varies not only with the nature of the individual and the social order; it varies also with the period and the place. So far as the judge is concerned, temporally the standard of the present must determine his standard. Changes in this standard must be regarded as abnormal until they become normal. The same thing holds good with respect to place. The judge must consider only the general shame-sense of a given state, for it is the unity of culture that is the efficient determinant as between the decent and the indecent. In every case that comes up for judgment, the justice will have to determine two points: (1) Is the object in question a work of art? (2) Does it offend the sense of shame by means of indecent exposure? The determination of these points will involve all the questions here touched upon. It is best done, as we have seen, upon considering the judge's decision "*sub Specie aeternitatis*."

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