Journal of Criminal Law and Criminology

Volume 4 | Issue 1 Article 10

1913

Reviews and Criticisms

FESTSCHRIFT FUR KARL BINDING. Zum 4, Juni 1911. By *many hands.* Erster Band. Verlag von Wilhelm Engelmann, Leipzig, 1911. Pp. 521.

This festival publication in two volumes, of which the first is now reviewed, celebrates the seventieth birthday of Karl Binding, author of the "Theory of Norms," and a number of standard works in criminal law. No finer intellectual appreciation of a long and useful life can be imagined than that which takes form in a work such as this—the contributions of learning of kindred spirits and co-workers laid at the feet of an honored colleague. A more materialistic environment, and a less artistic manifestation of friendship and esteem might think in such a case of a house and lot or a smoking-jacket. Each of the papers (of which there are eight in the first volume, and six in the second) is the work of an expert, and each of them is a valuable contribution apart from its memorial setting. Three varieties of questions are investigated: problems of criminal law technic, questions of general criminal law, and problems of general legal science. The range of treatment is such that each essay requires independent summary, as follows:

THE THEORY OF DOCUMENTS IN CRIMINAL LAW. *By Friedrich Oetker.*

The crime of forgery has been so thoroughly treated by Binding, in his *Lehrbuch des Gemeinen Deutschen Strafrechts,* that little remains to be said. Only here and there may it be supplemented or corrected. Binding's book superseded the older literature, and only the solid parts of the works of John, v. Kries, Weissman, Schultze, etc. have retained their original authority. Recent years have produced nothing of consequence. The late work by Weissmann—*Vergleichende Daostellung des deutschen und ausländischen Strafrechts*—belongs to the field of comparative law.

This essay is intended, therefore, to develop Binding at points where time has shown the necessity of elaboration. In some respects, however, the writer finds some departures from Binding's construction unavoidable. For the purpose of developing his treatise, without falling into a discussion merely of details, the writer analyzes complete and abbreviated documents. To write and to make a document are not equivalent ideas, but when has the writing loosed itself from the writer for the purpose of an independent legal object? When is the document perfect? There is a relation also to be investigated between documents intended and unintended as such, a distinction already made by Binding. Abbreviated documents have been treated by Binding, and this category is principally of importance in its contrast to proof-marks (Beweiszeichen), the latter of which are critically discussed.

The method of attack and point of view of legal problems by Continental lawyers differ essentially from our own. Maine states the course of legal evolution as Themistes, Custom, and Codes. Anglo-American law is primarily a customary law dealing with concrete instances; in

other words, it is an illustrated law. Continental law, on the other hand, is a legislative or unillustrated law, dealing, theoretically, with rounded-out abstractions. Both are similar, however, in their treatment of the ever-existing *lacunae* of legal systems; only the explanations differ. These fundamental differences in method and point of view make it difficult for the Common lawyer fully to appreciate the value of legal writing in the present form of treatment. An exposition which relies for its authority only on the common understanding of the well informed as to the facts of life, with the application of a natural logic to these facts (instead of a fettered legal logic), on text-books, and statutes, and without the use of adjudicated cases at each step of the way, must seem, somehow, to the Anglo-American legist to be lacking in its power to convince.

The present essay begins, inevitably, with the concept and classification of documents. Binding gives the best definition of existing literature, of a document as "a writing in which the expositor (*Aussteller*) engages therein the truth of a statement of fact, having a legal consequence." The actual truth of the statement, however, is not necessary. Dispositive acts, for example, do not require any assertion of fact. Certain notarial acts are a combination of dispositive and attesting documents (like the protocols of court-clerks), and are classified under the dispositive group. The customary classification is dispositive and testimonial (*Zeugnis*) documents, but the writer severs the latter group so that three classes arise: "writings involving testification of the knowledge, declaration of will, or decision of the exposer," etc.

This typical, preliminary analysis suggests the thought that "the more general the principle, the greater is that elimination of immaterial elements, of which it is the result, and the greater, therefore, is the chance that in its rigid application it may be found false" (Salmond). There seems here to be serious divergence among the authorities as to some rather elementary notions, and in the field of criminal law, we shall probably choose to retain the concreteness of our law in preference to a system of general ideas which are found to be difficult of application, and are therefore potentially dangerous to the liberties of the citizen.

The succeeding sections deal with the following titles: public documents with a legally generative content; documents and proof-marks (crests, seals, stamps, etc.); assertions of fact in documents; uttering false and altered documents; alteration of writings into documents and contrâ; and abbreviated documents. In the absence of any general interest in the detail of Continental codes, a fuller account of this essay may, perhaps, be dispensed with.

THE FUTURE OF INTERNATIONAL LAW. By *L. Oppenheim.*

Projection of this future requires an examination into the past and present. International law, as the law of a society of states, as to-day understood, is relatively of modern origin. A sentiment of reverence ascribes the scientific basis of this law to Hugo Grotius. In his undying work, "The Law of War and Peace," he crystalized the tendencies of

thought of the last half of the Middle Ages in a doctrine of atomic equality of independent states, which became and remains fundamental in the theory of international law. While it is true that the roots of this law go back to the earliest periods of civilization—commerce between states, peoples, or tribes being impossible without certain forms to govern it, and the protection of emissaries or heralds being of universal recognition—yet the modern idea of international law was unknown to the ancient world, and only gradually emerged in the last third of the Middle Ages.

The Hebraic ideal of perpetual peace and the union of all mankind under one God was an inspired insight into the future, presupposing a legal community of states, but this legal confederation was not apprehended by the prophet, as an independent thought. The Greeks, neither, possessed this idea, although in the relations between City-States, it vaguely hovered in their thoughts. International law, as such, was limited to the Greek states, and did not extend to foreign states, and peoples, who were regarded as barbarians. Roman law contained a complex of rules governing commerce with the outside world, but these rules were merely rules of Roman law, and not foundations of an international law. International law, in the proper sense, became possible with the development of an intensive cultural community of interests fostered by commerce; and therefore it may be said that it developed from the ferment of Christian culture, and the necessities of trade.

Such was the background; but the theoretical basis of international law was natural law, which invention is attributed to Grotius, although here he simply stood on the shoulders of his predecessors. The puzzle of how international law was possible, built up on so irresolute a foundation as natural law, becomes clear enough if the development of law itself is regarded without bias. The assertion of the Historical School that law, like language, grows in accord with natural impulse is a chimera.

Grotius did not admit a system of positive international law parallel to his system of natural law. The growing intercourse between states in the eighteenth century brought forth a more positive school of thought, and the works of Bynkershoek, Moser, and Martens prepared a way for the genuine positive theories of the nineteenth century, which did not, however, entirely cast aside the placental matter of the birth of this science.

Positive theory was furthered by the fact that in the first third of the nineteenth century, by the final acts of the Congress of Vienna, the society of states, for the first time, assumed a quasi legislative activity. From this point of time, rules of international law developed by legislative agreement. In this way the perpetual neutrality of Switzerland, Belgium and Luxemburg, and free navigation of great arterial waters, were accomplished; slave-trade and privateers were abolished; diplomatic ministers were classified; the principle of effective blockades, "free ships, free goods," and immunity of contraband goods in neutral ships, were established; rules were made in the interest of those injured on the battle-field; explosive projectiles, weighing less than 400 grams, were pro-

hibited; the Suez canal was neutralized, etc. Another factor of great importance was the creation of the Postal Union, in 1874.

With the end of the nineteenth century, and the first decade of the present century, which brought the first and second Hague peace conference, and the Maritime Conference at London, a new epoch was entered in international law. Previously, notwithstanding important international agreements, international law in essence, was a book law, of greater or lesser authorities, built upon state practice in international concerns, and doubtful and controverted in its details. The tendency is more and more toward legislative statement. To speak only of the more important things, mention is made of a comprehensive ordinance, regulating war on land; a regulation for declaration of war; prohibition of the use of force to collect obligations arising out of agreement; determination of the rights of neutrals on land and sea; treatment of hostile merchantmen at the opening of war; conditions for the conversion of merchant-men into combatant ships; concerning the application of the principles of the Convention of Geneva to conflicts at sea; limitations on the right of capture; prohibition against throwing explosives from air-ships, etc.

It is important to note that the two Hague conferences have established a permanent court of arbitration, resolved on an international prize court, and have also provided for a third conference in 1915. All the resolves of the Hague conferences, and the London Maritime Congress have not yet, it is true, become accomplished facts, but it is certain that international legislation, judicial arbitrament of controversies, and international organization, stand in the forefront of interest, and probably will be advanced by this and the coming generation.

Credit, of course, is given to the United States for its great part in the development of rules of international law, especially the law of neutrality, and its effort to create a permanent international court. The author harbors no delusions about the attainment by short cut of a world-peace. There is yet the problem of the East and the West. Men and states are unselfish only as to the things which concern others and do not benefit themselves, but at last the good triumphs. So will it be, declares the writer, with international law.

STATUTE OF LIMITATIONS ON CLAIMS ARISING OUT OF UNLAWFUL ACTS. (BGB 852, 853) By *Theodor Engelmann.*

One of the most striking phenomena of the present time in Germany, says the writer, is the extraordinary number of cases based on damages for unlawful acts, as may be seen at a glance in looking over the periodical, *Recht,* which publishes the decisions of the courts. A casual observer might, in astonishment, ask if the German people have become more violent, crafty, and negligent, and he might be inclined to think of the parallel "increase of criminality." The expert would explain the situation by the present-day tendency to shift the load of every loss, wherever possible, and the elasticity of the statute. The latter half of the explanation is amply verified by the enormous volume of literature

on this subject. The literary apparatus given in the larger commentaries clearly proves the scientific interest (thus to BGB 823, 826, 831, 833). Binding pointed out that from 1897 to 1906, thirty-one dissertations had been published on the single title of "injuries from animals."

The statute provides (BGB 852) that the "claim for compensation for any damage arising from an unlawful act is barred by prescription in three years from the time at which the injured party has knowledge of the injury, and of the identity of the person bound to make compensation; in the absence of such knowledge in thirty years from the commission of the act . . . ;" and (BGB 853) if a person acquires, by an unlawful act committed by him, a claim against the injured party, the latter may refuse compensation, even if the claim for avoidance of the claim is barred by prescription" (Wang's translation).

"Prescription" here is employed in the narrow sense as against prescription by *usucaption* (BGB 937 seq.). The right is not destroyed, but "after the period of prescription, the obligor is entitled to refuse performance" (BGB 222[1]). If performance is made even in ignorance of the prescription, the value is not recoverable (BGB id.[2]). Prescription does not affect satisfaction out of a hypothek or pledge (BGB 223[1]). Prescription does not exclude set-off, if the claim barred by prescription was not barred at the time at which it could have been set-off against the other claim (BGB 390). The principal function of this device is to alleviate the burden of proof as to stale claims; it is a means to an end, and not an end in itself.

So much concerns the juristic basis of this statute of limitation. The author next discusses in turn, the period of prescription, the beginning of the period, the end of the period, claims for the return of things acquired by unlawful act (BGB 852[2]), and defenses against claims unlawfully acquired (BGB 853), application of the general provisions on prescription (thus BGB 194 seq. 202-205, and 206, 207) to unlawful acts, the applicability of the sections especially under consideration to claims based on grounds other than upon unlawful acts (thus BGB 829, 833, 844, 845 etc.), reservations of Imperial and State laws, and spatial and temporal operation of the sections under discussion. The author's treatment of this very important subject is enriched by copious notes pointing out the current literature. In the main, the detail of the monograph is of little direct interest for us at this time.

(To be continued.)

Chicago. ALBERT KOCOUREK.

A STATISTICAL REVIEW OF THE WORK OF THE SUPREME COURT, STATE OF ILLINOIS, FOR TEN YEARS, JULY 1, 1900, TO JUNE 30, 1910.

This volume, which has been compiled under the direction of the Supreme Court, is so far as the reviewer knows the first attempt made in this country to present in orderly array the work of any Supreme Court covering so long a period.

A total of 5737 cases filed between the dates mentioned above have been treated in 140 tabular statements and "published for the information of the judiciary, the bar, and others interested in the subject."

"Four facts were chosen by the Court to be used as a basis of comparison, viz: The nature and subject matter of the action, the court in which tried, the method of bringing it to the Supreme Court, and the disposition in this court." The different kinds of actions were classified under five heads: criminal, quasi-criminal, law, special statutory, chancery and summary proceedings. There is also a group headed "unclassified."

To illustrate how the matter has been worked out, one may mention that in section 1, dealing with criminal and quasi-criminal cases, ten tables exhibit, by single years, the different criminal actions for the whole period, followed by a summary table for the ten years. This is followed by a table giving the total number for each crime class by years, while another table exhibits the method of review, disposition and trial courts of all criminal cases for each year. The other four "kinds of action" are compared in a like manner, thirteen tables being given to each division.

The work was undertaken, as indicated in the introduction, primarily, for the information of the Supreme Court in regard to the number and nature of the cases coming to it for consideration, manner of disposal and the variations from year to year. This rare example of the desire of a great court to have before it the facts which are necessary to a competent understanding of its own work is highly encouraging. As a rule the courts ignore such aids in the discharge of their important functions. With very few exceptions criminal courts have no such information at hand, while statistical reviews of Supreme Court actions, especially on the civil side are practically unknown.

It is interesting to note that this compilation in regard to 5737 cases has cost "much investigation and careful research through the records of the Court." It was apparently not easy to trace the cases to their final disposition, to group them under proper heads and make the whole presentation hang together. Herein is contained a suggestion that court records generally do not lend themselves as readily as they should to statistical treatment. This is wholly to be expected in view of the rare use of such records in tabular presentation.

How far the entire study meets the need of the situation may to some extent be questioned. The facts are doubtless there. There seems to be some unnecessary detail, and the tabulations could, without great loss, have been presented in briefer form. In saying this, the reviewer is not unmindful of the statement that the details were included, "in order to furnish material for a study as to changes, if any that have occurred from year to year, in the subject matter, distribution, method of disposal and other matter concerning the cases."

The real "out" about the review is that the reader is left to find his way as best he may through the 231 pages, without the help of a line of textual analysis and summary of results. Of course, he has the aid of the explanations contained in the introduction concerning the method of

procedure in arrangement and tabulation. But in order to find out the real significance of the figures, the student must work over the tables himself; and even for the profession, which should be familiar with the work of the court, this may be anything but an easy task. It should have been a comparatively simple matter for those who compiled the volume to have summed in a few pages the actual results of the findings. It is the common rule that statistical work does not carry far unless the apparently barren pages of figures are transformed into textual statements of greater or less length, as occasion demands. It is not likely to be wide of the mark to say that for lack of such analysis the volume under consideration will not have a general usefulness. Nevertheless it is exceedingly encouraging that at least such a first step towards a better court statistics has been taken.

Boston. JOHN KOREN.

L'ACTION CRIMINELLE. By *Henri Urtin.* Felix Alcan, Paris, 1911. Pp. 265.

Henri Urtin departs from the precedent of other writers upon crime, in that he makes the crux of his problem the criminal act, rather than the criminal. He holds, that since throughout history and throughout the world there is to be found a wide divergency in that which constitutes a criminal act, it is necessary to find, if possible, a universal standard. Such a standard is found if we say that every punishable act is a criminal act.

Since crime is an act contrary to the established laws of society, and is punishable by the society whose laws it transgresses, we see that there is no crime without society. Therefore, it must be in the relations of the individual and society that we are to look, both for the causes, and for the remedies for criminal action.

Every individual is a psychical unity made up of elements such as feeling, imagination and reason. If any one of these elements becomes supreme in the dominance of an individual's actions, we have a lack of "psychological equilibrium." The individual, alone, is not capable of freeing himself from the control of one of these elements, thus giving by will an organization and direction to the whole. The will must gain support from something exterior—the law. In order that the law may be effective in aiding the establishment of individual equilibrium it must fully represent all the individual.

Law is the result of the combined actions of the feelings, imaginations and reasonings of the different members of society. This is the law at its best. To the extent that the law represents only particular groups, or mere temporary ends, we have a lack of "legal equilibrium." It is, then, in the lack of a proper equilibrium between the individual and the law that we find the cause of criminal actions. Crime is always an expression of a revolt from the present law. It is a revolt of the past, on the part of the individuals who have not succeeded in adapting themselves to the present synthesis of society as represented by the law; or it is a revolt of the future, on the part of those individuals, who, seeing the

inadequacies of the present penal system for the needs of society, are willing to sacrifice themselves for the sake of progress.

Diminution of crime will result if we can bring about an individual adaptation and a social adaptation. Whenever we have the criminal law approaching social reality, whenever the individual strives to conform to, or unconsciously and naturally does conform to the legal enactments of society, we have a decrease in the number of criminal acts. This two-fold adaption depends on making the law of the state express more fully all the tendencies and desires that are active in society, and in creating in the individual an appreciation of the law, and a habit of discipline. Such a result is possible only through a greater development of the methods of communication, whereby all society is brought into a closer and more intimate contact.

In society there exist innumerable small associations, special groups of people, as of artists, or mechanics, united for the accomplishment of definite and particular ends. Such purposive (*finalistes*) associations are the main means by which the needful intercommunication may be furthered. Each person who enters into one of these groups, does so freely and selectively, because they represent that in which he is interested. Because the member of such a group does voluntarily enter into the association, and because he understands the few, concise, definite laws necessary to its existence, he willingly obeys its laws. Thus obtaining soon an unconscious habit of discipline, the individual, in a short time, becomes the more ready to accept the larger, more complete discipline of the state.

There are in society some individuals, as the anarchist, who are openly opposed to the general law. Such an individual belonging to a large number of these special associations is brought into contact with many groups of people. All of the people in each group agree with him in some particular; moreover the majority of the people of all the groups are agreed upon the support of the general law. Unconsciously the anarchistic individual soon finds himself feeling toward the general law as do the others. "It is thus that imitation being exercised upon the same man apropos of everything, finally imposes on him that which he at first rejected."

Beside these limited, purposive associations which enlist only the particular parts of the individual, and which are more or less subordinate to the state, there also exist associations larger than the state. These associations, representing religions, philosophies, and doctrines rule the individual in his totality, and tend to bind all individuals together. The doctrines represented by these large associations are infinite and relative. The individual, through the limitations of his narrow reason and his personal will, makes a particular interpretation of the infinite doctrine—of the relative he makes an absolute. Thus the "total associations" take on the character of partial associations. But equally true it is, that the partial associations take on the character of "total associations." For, while the individual does primarily bring to the special group that part of his nature which is especially interested by the limited aims of the particular group, he must also bring to it, if in a lesser degree, all the

rest of his nature. It is impossible to abstract any particular part. Thus his whole being is influenced, more or less, by the whole beings of all other members of the particular groups to which he belongs.

It is the duty of the state, not to pass laws protecting every manifestation of the religions, philosophies and doctrines, but rather to maintain a position of "positive neutrality" towards all; a position in which it holds itself continually and fundamentally sympathetic to every conscious and sincere expression of any phase of any doctrine whatsoever.

Nor are we to feel that because doctrines change from time to time, there is only change, and no real advance—no evolution. Each doctrine in its turn leaves upon society the impress of that part of it that is useful. Thus we have the accumulation of a permanent social capital; thus we have both conservation and progress.

The legislation which results in the truest expression of social reality is not due to the conscious reasoning of the legislator. It is rather the result of his unconscious perception of the tendencies present in society. The receptivity of the legislator to these tendencies is the necessary result of the intercrossings of the many purposive associations of which he is a member.

Thus we see that these special group associations are the most practical solution of the crime problem. Through them we get both the adaptation of the individual to society as expressed in the law, and the adaptation of the law to the social reality as expressed in the individuals. It is these associations that, working both upon society in general and upon that particular branch of it known as the lawmaking body, are effective in bringing about the ultimate diminution of crime.

University of Michigan. HARRY W. CRANE.

THE DELINQUENT CHILD AND THE HOME. By *Sophonisba P. Breckinridge* and *Edith Abbott.* Charities Publication Committee, 1912. Pp. 343.

In this work we are made acquainted with the results of a comprehensive and systematic investigation of the home conditions and surroundings of children brought into the Cook County Juvenile Court during the ten-year period, 1899-1909.

The main part of the work is taken up with a study of the various problems presented by the environment of the children who became wards of the court. They are divided for purposes of discussion into the following classes:

The child of the immigrant, who must adjust himself to new and unfamiliar conditions, without finding any help in this direction at home; the poor child, whose poverty subjects him constantly to the temptation to appropriate the property of others; the orphan and the homeless child, who have no protection or guiding counsel and are exposed to all the evil influences of the street; the child from the degraded home, which lures him into the very vices from which home ought most to protect him; the child from the crowded home, who seeks escape from turmoil and confusion by becoming a vagrant; the ignorant child, whose

needs the school has failed to meet, either because of his mental defectiveness, the carelessness or indifference of his parents, or the fact that he is drawn away from a proper education by the necessity of going to work, of by the influence of evil companions; the child without play, who is obliged to find an outlet for his animal spirits through questionable channels; and the child from the comfortable home, who may be unmanageable for a variety of reasons, from inherited characteristics to undue harshness or leniency on the part of his parents.

The reading of these chapters is facilitated by tables of statistics relating to the subjects under discussion, the ages and numbers of children brought into court for certain offenses, their improvement under probation and other pertinent matters.

The work is supplemented by excellent appendices by the Hon. Merritt W. Pinckney and the Hon. Julian W. Mack, giving a study of the court in its legal aspects, with a presentation of the authorities and principles underlying it. There is also an interesting and illuminating appendix of family histories of children who have been wards of the court.

Prevention rather than cure is the keynote of the book, and ameliorative measures with this in view are suggested wherever possible.

On the whole, the work is excellent. If there is any defect, it is the small space devoted to mental abnormalities on the part of either children or parents. The authors themselves recognize this lack, and deplore the fact that such data were so very difficult to obtain. It is to be hoped that the Psychopathic Institute, which has recently been established in connection with the court, will soon be able to throw light on these problems.

Ann Arbor. MRS. J. F. SHEPARD.

UBER TRANSITORISCHE GEISTESSTORUNGEN UND DEREN FORENSISCHE BEURTEILUNG. By *H. Zingerle.* Carl Marhold, Verlagsbuchhandlung. Halle a. S. 1912. Pp. 52.

This little treatise contains much valuable material. A number of cases of crimes committed during states of mental disturbance by persons not apparently insane before the deed, and often resuming a normal state afterward, are cited and discussed.

Sometimes the outbreak occurs as the first outward expression of hallucinations and more or less systematized delusions from which the person has been suffering for a long time, but has managed to conceal from ordinary observers and associates. In such cases the act may merely culminate on a delusional basis and be well planned and the traces of it carefully hidden, or it may be committed under provocation of some real or fancied wrong, without thought of meaning or consequences. Again, depressive insanity may fail entirely to be recognized as such until the person suddenly and seemingly without motive commits a crime against his nearest and dearest. The development of many cases of alcoholic insanity may be marked by periods of violence, during which revolting crimes are committed. These are frequently followed by complete or

partial amnesia. The changes of personality and subsequent amnesia in epilepsy and hysteria are well known, and very well discussed and illustrated by the author. Especially in people of neurotic hereditary taint or predisposition, crimes may be committed during periods of physical stress, such as adolescence, menstruation, pregnancy, lactation, or after an operation, accident or severe illness; in short, at any time when the nervous resistance is low, and the person is hypersensitive to irritating influences.

The physical symptoms accompanying these disorders receive needed attention. Police, upon arriving at a scene of crime should be able at once to test and recognize the presence of tremors, disturbance of the reflexes, peculiarities of the eyes, epileptic or hysterical contracture, etc., as some of these may be much diminished or entirely absent later.

A number of differences between pretended and real transitory insanity are well brought out, the most important being in the matter of memory disturbance. The pretender will seem to have forgotten everything even remotely connected with the event, while the partial amnesias are much more common in cases of real mental disturbance. The author gives several cases to illustrate this in detail.

The work shows careful preparation, and is supplemented by a lengthy and suggestive bibliography.

Ann Arbor MRS. J. F. SHEPARD.

CODE D'INSTRUCTION CRIMINELLE. Par *Le Poittevin,* Conseiller a la Cour d'Appel de Paris. Tome Premier. Librairie De La Societe Du Recueil J. B. Sirey Et Du Journal Du Palais. 22, Rue Soufflot, 5e Arr. L. Larose et L. Tenin, Directeurs. 1911.

This is the first volume of an extensive work, namely: An Annotated Edition of the Codes of France. The present part embraces A Code of Criminal Procedure. The notes are all very full, but unlike American annotated codes the number of adjudicated cases cited are very few, because in France there are not very many to cite. When the work is completed it will be a most thorough and extensive treatise on French law.

University of Missouri. JOHN D. LAWSON.

CHIQUEURS, MANGEURS BUVEURS ET FUMEURS D'OPIUM. Etude Medico-Sociale Sur L'abus de L'Opium En France Et Dans Les Colonies Francaises. Par Le *Dr. Raymond Gamel.* Librairie de L'Universitie, Coulet et Fils, Editeurs, 5 Grand Rue, Montpellier, 1912. Pp. 113.

That erroneous conception of France, as the land of *décadence* and *dégénerence,* which is widely current in America, rests largely upon the malobservation of tourists, who find in Paris what they go to seek. While there indeed exists in French literature certain tendencies which point to decadence, the recent virile resurgence of a powerful national spirit has demonstrated to the world that the essential Gallic life is sound at the heart. The years of diplomatic strife with Germany have no doubt

done much in recent years to give nerve and tone to the French nation. Another influence, as strong if not as obvious as the stirring foreign events of the republic, has been the slow, steady pressure of the weight of opinion exerted by physicians, teachers, dramatists, novelists and statesmen, in whom the better consciousness of France has come to an expression. The monograph, which is the occasion for this review, finds its place in the list of scientific studies which have made for the moral regeneration of France. The use in all its protean forms of opium for purposes of intoxication, finds here a comprehensive treatment. As, perhaps, is to be expected from an author who is a physician, the toxicology, pharmacology, symptoms and treatment receive more attention than do the medico-legal or ethical aspects of the question.

The essay consists of three parts. The first part is concerned with the harvesting of opium, the varieties, adulterations, the physiological action, tolerance and the way in which the drug is used. To the latter topic a considerable portion of the essay is devoted.

In the chewing of opium the crude product is used, mixed with some neutral substance, such as wax. Among the poor, the petals of the poppy which have been used to wrap the crude opium and as a result have become impregnated with the taste of the opium and to a slight extent with morphine, are sold for use among the natives while at work in the fields. Among certain of the natives the residue of the pipe is chewed. The opium eaters, opiophags, eat the green seed capsules of the poppy, or pills of crude opium in which are mixed aromatic, laxative, aphrodisiac or other substances. In the Orient the substances most commonly employed are datura, hasheesh, rue, assafetida, and mastic. The phenomenon of physiological tolerance is most strikingly exhibited among the opium eaters. The initial dose of 2 centigrams per day is gradually increased to 10 or 15 centigrams until in isolated cases the enormous quantity of 250 grams, more than one-half pound has been known to have been taken. In drinking opium, infusions, syrups, and decoctions are made from the heads of the poppy, solutions of the extract of opium, black drop (acetum opii) and laudanum. The commonest form in which opium is taken into the body is in the form of smoke. Neither the crude opium nor the pharmaceutical extract can be smoked. It is too rich in alkaloids, which makes it go to the head, besides being too strong and bitter. It must first be transformed by fermentation. The process of fermentation removes the excess of narcotics, narceine, rubber, resin, gum and cellulose. Thus changed, the opium takes the name of chandoo (a word which is derived from the hindustani root *chand,* which suggests the idea of diminution. The metaphor implied by the word is that the chandoo represents the quintescence of opium). The chandoo is allowed to ferment in flat vases of copper or earth for a period of about three months. The fermentation is accomplished by the bacillus subtilis, a common, non-pathogenic, organism called the hay bacillus. The mould, aspergillus niger accomplishes the same fermentation. Indeed, the process of fermentation is really a succession of fermentations, the object of which is to give aroma and taste to the opium. Thus prepared, the opium, like wine, becomes more aromatic and fine the longer it is kept, and also more expensive.

Over the second part of the essay, that devoted to pathology and treatment, the reviewer must pass to the third section of the essay, the Extent of the Evil and the Remedy.

The extent of the evil is discussed with reference to Indo-China, the French colonies and France. In Indo-China the quantity of opium officially consumed per annum is about 500,000 lbs. In view, however, of the frauds, the real amount is probably twice as large. In France, as in America, the seaport cities contain the largest population of opium users. The remedy the author does not find in government monopoly. Rather the result must be obtained by the gradual progressive legislation which would interdict the sale of burnt opium (dross), limit the sale of opium; exclude opium users from public offices as well as propaganda and instruction.

University of Washington. H. C. STEVENS.

PROGETTO PRELIMINARE DEL CODICE PENALE GERMANICO DELL' OTTOBRE 1909 (Parte Generale). Traduzione del *Prof. Giulio Q. Battaglini.* Estratto dalla *Giustizia Penale.* Anno XVIII, 1912 (VIII della 2a serie), Citta' di Castello. Societâ Tipografica Cooperativa. 1912 Pp. 30.

This booklet contains the general provisions of the preliminary draft of the German Penal Code. The Code marks some steps in advance in the field of criminal law and administration. Criminologists and penologists may be willing thankfully to accept progress without feeling unduly elated over the march forward, or unduly depressed over the missed opportunities for forging much farther ahead. The world moves slowly on; it is full of compromises, false and faltering steps and deceit. But optimism is there, too; and truth, and faith, and perseverance and intelligence. Let us, therefore, not despair; but take the bitter with the sweet, and thank our stars that some people, somewhere, some times march on to the conquest of a better life.

This code divides crime into three kinds; misdemeanors, which are crimes punishable by imprisonment for three months or less, or a fine of less than 300 marks; delicts, which are punishable by imprisonment for over three months and up to five years, or a fine of more than 300 marks, and crimini, which are punishable by imprisonment for over five years.

Section 4 provides that "a German who has, outside of German territory, committed an act, which is, according to the laws of the Empire, considered as a crime, nor a delict" may be prosecuted according to the penal laws of the Empire. Compare this section with section 1933 of the New York Penal Code. This provides that "a person who commits an act without this state which affects persons or property within this state, or the public health, morals or decency of this state, and which, if committed within this state, would be a crime, is punishable as if the act were committed within this state." The German Code, it will be noted, is broader; any crime, whether it affects Germans or not, may be prosecuted in the German Empire. Of course, the necessary exceptions are made to this rule, as for example, that there can be no prosecution if the

person is prosecuted by alien laws, or even if the crime is only punishable by them. The New York Code, however, includes misdemeanors.

Section 8 says that no German is to be given over to a foreign ernment for the purpose of prosecution or punishment. This is unfortunate. What if the crime, delict or crimen, which has been committed by the German in America, say, is not punishable by the laws of the German Empire? (See Section 4 above quoted.) That crimen or delict will remain unpunished. True, the number of cases will be small; but the principle is important.

Division II of the Draft treats of Punishments, Measures of Security, and Civil damages. Capital punishment by decapitation still reigns. But section 14 reads: Imprisonment is either for life or "Temporarily." The maximum period of imprisonment less than for life is fifteen years. This is "humanitarian," and some might say, even sentimental. To require that a person stay in prison for fifteen years, or for life, with no intermediate sentence is unintelligent and retrogressive, to say the least. It is arbitrary, and ignorant of a Legislature to prescribe before hand in that fashion the limits of imprisonment. That should be left to the judge, or, much better, to a special board. The stay of some may require a period of sixteen, or seventeen, or twenty or thirty years, and yet not for life. The psychological treatment of the criminal has blazed a new trail.

Section 21 provides that males shall be separated from females, and juveniles from adults.

Section 22 provides for cellular segregation. This is as it should *not* be. Even though the term here prescribed at the beginning of the imprisonment is short—three months for jails and six for penitentiaries —the proceeding is unscientific and can lead to nothing but detriment to, and deterioration in the prisoner.

Sections 26 and 27 are good. They provide for the indeterminate sentence, and for conditional liberation and revocation of liberty. Whenever a prisoner has served two thirds, but at least one year, of the sentence imposed upon him, he may be paroled. Supervision of paroled prisoners is provided for by the next section.

Section 30 is progressive. "Fines must be imposed by taking into account the economic and financial condition of the convicted one." And the next sections go further along the same road by empowering the judge, in his discretion, to allow the prisoner his freedom and to pay the fine in installments within one year. But the limit of time should be extended. "If the judge feels that the fine cannot be paid he may convert the sentence into a prison one (Sections 33 and 34). This is bad. The fine should, if advisable, be remitted, and the prisoner be set free. The act of the prisoner may not merit imprisonment but only a fine. But if the fine cannot be paid the alternative should not be imprisonment, but either liberation without restrictions, or conditioned upon payment of the fine in installments after liberation.

Section 38 and sections following recognize the suspension of the execution of sentence. But the privilege of suspension is accorded only to first offenders, who have been sentenced to imprisonment for no more than

six months. The suspended sentence should be provided for, but it is not. Moreover, the suspension of the execution of sentence which is provided for is applicable only to first offenders, whose sentences are as short as six months. This is not enlightened. Both suspension of sentence, and suspension of the execution of sentence, ought to be allowed to second offenders, and even to third and to fourth offenders. Each case is an entity which must be studied by itself; no general, or universal rules may be made. The Legislature of New York State has provided for the suspended sentence and for the suspension of its execution, and made them applicable only to first offenders. But the Legislature did not abolish the common law power of the judge to suspend sentence or the execution of it for as long a time as the judge pleases, and for the benefit of whomsoever he pleases, whether the prisoner is first, second, fifth, or hundredth offender. This, at least, is the opinion of one of the Judges of General Sessions in New York City.

Section 51 announces a principle which should be bruited abroad, and extended in application. The principle is that of rehabilitation. After the expiration of a period of time varying with the crime, from two to ten years, a misdemeanant may apply to the court which sentenced him, and the court may, upon proof that the discharged prisoner has led an exemplary life after his discharge, order the record of conviction cancelled. This section is liable to a double criticism; first that the discrimination between misdemeanors, and felonies (delicts and crimini) is fallacious and unjust; and second, that the tribunal of rehabilitation should not be the tribunal of sentence but a new one, specially established for the business of listening to, and passing upon applications for rehabilitation. A bill for a Court of Rehabilitation which meets both of these criticisms is now before the Legislature of Oklahoma.

Section 63 is good. It establishes that the mental state of the convicts should be regarded in sentencing them to institutions fit for them.

Section 68 fixes the age of responsibility at fourteen. The New York Code, section 816 reads: "A child under the age of seven years is not capable of committing crime." And section 817 reads: "A child of the age of seven years, and under the age of twelve years, is presumed to be incapable of crime," but, the section continues, the presumption may be rebutted. At twelve, then a child is put on the same footing as an adult. The Germans are ahead of us on this ground.

Section 81 recognizes the personality of the criminal. It puts into practice the chief contention of the new criminological school. "In passing sentence within the limits prescribed by law, regard must be had to all the circumstances determinative of a heavier or a lighter punishment of the prisoner, in especial to his criminal character as evidenced by his act, to his motives, his objects, the incitements to his act, to his personal and economic connections, to the grade of his discernment, to the consequences of his act, and to his conduct after the act, especially, repentance shown and desire manifested to repair the consequences." This is one of the most valuable, if not, indeed, the most valuable of all the sections of this Code. No wonder the men who have struggled for upwards of thirty years for the principle of the individualization of pun-

ishment were elated when this new Code was drafted, in the teeth of violent opposition from some old school German scientists, strong and honest, but benighted.

New York City. ROBERT FERRARI.

THE GIRL THAT GOES WRONG. By *Reginald Wright Kauffman*, New York. Moffat, Yard & Company. Pp. 266.

One wonders what to say about such a book as this. From the introduction it is easy to see how sincere is the desire of Mr. Kauffman to try to make the public believe in the responsibility of the community for the terrible social evils which he depicts. It is, however, a serious question whether such experiences as the poor girls have suffered in the sixteen cases he cites are best given to the public in the guise of readable and interesting *stories*. Will not too many read them as they would any fictitious tale and quite forget that Mr. Kauffman says they are true? The serious-minded person will be more likely to be stirred to action by the writings to which reference is made in the introduction, the report of the vice commission, the publications of the American Society of Sanitary and Moral Prophylaxis, and similar reports. Others are hardly likely to be inspired to action in behalf of these victims of ignorance and lust.

The plea for a general system of sane education in sex hygiene is a wise one. It is true that "the silence of the puritan has been the ally of the vicious."

These painful stories are told with no desire to exaggerate their horrors, and as a rule the language chosen does not call for criticism, though in one or two places, as in "Things that We Ought to Have Done," there are sentences that make one cringe at the attempted lightness of manner in treating a frightful topic. The book might well spare the opening lines "Maria Peripatetica." The wandering "Marias" of the streets are a sad race of sister women. If this book can do anything to help to educate the public to see that prevention through proper education and plenty of rational amusements, is better than attempted suppression it will help to solve some of these world-wide problems. The white slave business could surely be lessened. Mr. Kauffman shows how easily the white slave trader is developed and how surely he ensnares his victims. Law alone cannot stop that. Education in sex hygiene would be vastly more helpful. It is painful to think of the ignorance of our girls; still more painful to think of the ignorance of their mothers. How are we to overcome all that?

Bedford, New York. ISABEL C. BARROWS.

LES TEMOIGNAGES D'ENFANTS DANS UN PROCES RETENTISSANT. By *J. Varendonck*. Archives de Psychologie, 11; July, 1911, 129-171.

We have here an account of what, as far as the reviewer knows, is the first instance on record in which psychologists have appeared in a murder trial to give expert testimony concerning the relia-

bility of other evidence submitted to the court. The circumstances attending the case are sufficiently interesting to warrant a statement of the details of the crime and of the evidence under criticism.

The district in Belgium in which the crime occurred had been aroused by three previous similar crimes—violation and murder of young girls—committed within a single month. When the 9-year-old Cecile De Bruycker (*C*) was killed on Sunday, June 12, 1910, in daylight and within a short distance of her home, the countryside was in consternation and rage. The child's movements were known up to 4 o'clock, when she was playing with two other little girls, and the crime was committed between 4 and 5 o'clock. On her failure to return home, her mother, after futile search, went to the homes of her playmates, Louise Van de Stuyft (*L*), aged 10, and Louisa Van Puyenbroeck (*L. V. P.*), aged 8. These girls were wakened from sleep and stated: "*C* played with us, but *we haven't seen her since.*" This declaration constitutes, in the opinion of the author, the only correct statement made by these children. The village was roused, the police summoned. At 3 in the morning, the police commissioner arrived, woke *L* again from sleep and questioned her at length (no record being made of this examination). *L* then conducted him *to the place where she last played with C.* Soon after they discovered *C*'s body a short distance away. As soon as the body was discovered, *L*'s declarations were extended and amplified: she now stated that "a tall, dark man, with black mustache" had offered *C* a penny to go with him. She (*L*) followed, and soon afterward found *C* dead in the ditch. She ran home, afraid, went to bed that night without mentioning the occurrence because she was afraid to tell what had happened.

On Wednesday, the police received an anonymous letter asserting that Amand Van Puyenbroeck (*V. P.*) must be the assassin. Thursday the examining magistrate interviewed him and put him under arrest. He was taken by train to the prison in a neighboring town, but at some risk of his life at the hands of an infuriated mob. From this moment, declarations implicating *V. P.* succeeded with striking rapidity and yielded a large amount of circumstantial and hearsay evidence against him.

L, as already noted, was submitted to two examinations by the police commissioner, one just before, and one shortly after the discovery of the body. The next day, June 13th, both *L* and *L. V. P.* were subjected to a third examination, this time at the hands of the examining magistrate. Both children showed glaring discrepancies and alterations from their first and their second declarations. The questions propounded by the magistrate were couched in a highly suggestive form and were based upon the assumption that the first statements of the girls (expressing entire ignorance of the murder) were incorrect. Thus the magistrate said: "You certainly know the assassin, tell me who it was." "I do not know him," replied the child. To which the magistrate said: "Didn't *C* mention the miscreant's name—as Dick, Jan, Francois, or Jules?"

The child then evidently chose one of these names to relieve herself from the pressure put upon her, for she made the round-about statement: "Elvire Van Puyenbroeck told me that *C* had said that the man's name was Jan." Now, later, when Elvire was examined, she asserted that she knew nothing about the affair. "But you must," retorted the magistrate," for you told *L* that you heard *C* call him Jan."

It was not until after this name had been thus lugged into discussion that the anonymous letter appeared. It must be explained, further, that the accused, Amand V. P., was sometimes known as Jan. Also that he was the father of *L. V. P.*, whose testimony helped to involve him. Rather extraordinary was the fact that the subsequent testimony included the assertion that the "man" stood within 2 meters of the girls when he offered the penny and yet was not recognized by his own daughter or by a neighbor's child. Almost equally extraordinary was the circumstance that, if the later evidence is to be believed, these children, after witnessing the outrageous death of their playmate at the hands of a man they knew, ran away and played for an hour in the street before his house, and then went to bed without mentioning the crime, because they forgot it or because they were afraid (both explanations were made).

Despite these seemingly impossible obstacles in the acceptance of the guilt of *V. P.*, the intense social pressure for the conviction of some one was now focussed upon the definite attempt to convict him. The sudden flood of clues and bits of "evidence" which appeared as soon as he was arrested, and which were plainly the product of rumor, imagination and general excitement, was explained on the ground that "now tongues were released from their previous fear of V. P."

Again, acting on this belief, which was soon universal, that the little girls knew every detail of the crime, there appears on the scene a woman named Dierens, who had semi-official oversight over certain phases of their religious life. On June 13th, this woman asked *L* who killed *C*, and obtained the response that *L* was then giving, viz: A dark man with black mustache," etc. On June 19th, after *V. P.'s* arrest, the woman, after some exhortation, asked this terribly suggestive question: "Now, wasn't it really *V. P.* who killed *C?*" *L nodded her head faintly.* Again the same question, and again *L* nodded her head, but added: "All the boys say so." A third time the question and the same response. Then the woman hastened to report her "success" to the authorities, saying: *"She is weakening and on the point of confessing all."* It does not need a psychologist to anticipate what followed. The commissioner repaired again to *L*'s house and armed with the woman's statement, proceeded to secure from *L* (and from *L. V. P.*, who had, it may be added, ample opportunity to discuss the testimony with *L*) all the "evidence" desired.

In the trial, which followed in January, 1911, the circumstantial evidence against *V. P.* was successfully met by counter-evidence,

so that the chief reliance of the prosecution was upon the testimony of the two little girls aforesaid. Counsel for the defence thereupon engaged a number of psychologists to testify to the unreliability of this juvenile testimony. The chief part of this expert testimony was presented by Varendonck, the author of the present article. He had examined, line by line, the voluminous record (nearly 1,000 pages) secured in the preliminary hearings and had conducted a series of experiments upon school children, in which, so far as feasible, the nature and form of the questions propounded by the authorities to the girls was reproduced. This he sought to put before the court, together with a general account of the work that had been done by experts in the study of the psychology of testimony. He concluded that the girls had positively not seen the murder or the murderer, and that their testimony was worthless. Varendonck's testimony was the occasion of several violent outbursts of wrath on the part of the court officials, who publicly ridiculed the pretensions of psychologists to dictate to them how questions should be asked or what evidence was reliable. Despite numerous sensational passages-at-arms between the court and the psychologists, the jury was impressed by the arguments and the accused was acquitted.

It remains to cite briefly some of the experimental evidence offered on this occasion. Eighteen 7-year-old pupils were asked the color of the beard of one of the teachers in their building: 16 answered "black;" 2 did not answer. The man has no beard. Of 20 8-year-old pupils who replied to a similar query, 19 reported a color; only one said the man had no beard (which was correct). Similar results were obtained from older pupils. .In one class, a pupil laughed aloud at the query and exclaimed: "He hasn't any beard." Nevertheless, 12 of the 22 reported a definite color. Again a teacher of a certain class visited another class, stood before them for 5 minutes, talking and gesticulating, but keeping his hat on. Directly after he left, the teacher of the class obtained, in response to the query: "In which hand did Mr. ——— hold his hat?" 17 answers of "right," 7 of "left," and only 3 correct answers. Other experiments showed that suggestions of odor or temperature could be easily evoked in schoo children. Finally, to duplicate the strongly suggestive questions of the magistrate, another experiment was tried with 8-year-old pupils, who gave written answers to the following: "When you were standing in line in the yard, a man came up to me, didn't he? You surely know who it was. Write his name on your paper." Though no one had approached the teacher, 7 of the 22 pupils gave a man's name. The experimenter then continued the test by saying: "Was it not Mr. M——?" to which 17 pupils now answered "Yes." Before a number of lawyers, individual pupils were then subjected to oral examination and gave complete descriptions of the "man's" dress and personal appearance.

It is not surprising that this experimental demonstration of the complete failure of children to withstand the lure of suggestive

questions produced a profound effect upon the jury. It is perhaps as little surprising that the legal authorities did not take kindly to the testimony of the psychologists. There is, however, the satisfaction that the study of the psychology of testimony has saved a man from the gallows.

Cornell University. GUY MONTROSE WHIPPLE.

CODE DE LA PROCEDURE PENALE; CODE D'INSTRUCTION CRIMINELLE; CODE DE LA PROCEDURE PENALE MILITAIRE LOIS USUELLES. Sous Law Direction de *Edmond Picard* et *Leon Siville*. Vve Ferdinand Larcier, Editeur. Bruxelles. 26-28 Rue des Minimes, 1911.

This is a pocket edition of the Code of Penal Procedure of Belgium which follows, of course, very closely the French Criminal Procedure, as both are under the Code Napoleon, and in its form, the volume follows the well known Dalloz Edition of French Codes, civil and criminal. The American lawyer well knows what this means when we say that the Dalloz "petite collection," as it is called, is exactly like the well known pony series of law books begun many years ago by the Bancroft-Whitney Company, of San Francisco.

University of Missouri. JOHN D. LAWSON.