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Reviews and Criticisms

DAS INSTITUT DER BEDINGTEN BEGNADIGUNG. By *J. Herrnstadt.* Zweite Auflage, J. Guttentag, Berlin, 1912. Pp. 137.

This book is not a mere code or compilation of early temporary regulations for the administration of "conditional release" (like Blankenburg's *Die Einstweilige Aussetzung der Strafvollstreckung* or von Englemann's *Die bedingte Begnadigung*). It represents a valuable and successful attempt to gather and sift the widely strewn laws, amendments, decrees, interpretations, etc., into a perspicuous, readily usable working manual—a *Hilfsbuch.* Furthermore, it aims to give not only the precise laws and formulas involved, but also the spirit which dominates them and which they incorporate. Written *conamore* by a practical man, a district magistrate at Kattowitz, it offers information and assurance to other practical men.

The author is committed wholly to the principle of suspending punishment under appropriate conditions for first offenders who are still morally unspoilable and teachable. That he is a "modernist" in criminology appears from his summary criticism and rejection of Förster's recent book.[1] He cites with approval from von Liszt that splendid appeal to grant the first offender before he is contaminated by association with hardened criminals or has lost his self-respect, an opportunity to prove that he is capable of redeeming himself.

The body of the book is prefaced by a brief statement of the history and purport of conditional release or suspended sentence. The text is an admirable analysis of the existing law, arranged under systematic headings so that even the layman unlearned in the law may read intelligently. Every point is buttressed by an almost alarming array of footnotes containing references to legal texts, ministerial orders, judicial decisions, and invaluable hints as to how things are actually worked out in practice. The phrase *In der Praxis* repeats itself on nearly every page. In addition to textual directions concerning the application of the law, methods of conducting trials, investigations, and rehearings, the author furnishes in an elaborate appendix actual verbatim models of the records, documents, etc., necessary to efficient administration of the law. Hence the dullest country magistrate or the most recalcitrant police official cannot fail to grasp and carry out the aim and methods of the *Institut der bedingten Begnadigung,* if they will but read.

Perhaps a glimpse of the actual workings of the system of conditional release in Prussia may not come amiss to American readers. The

[1] Schuld und Sühne, München, 1911: A belated attempt to retain the sin motive in our penal policy. Förster demands the maintenance of this principle, even in the treatment of youthful offenders. Not the doer but his deed must be the object of punishment. Improve methods of punishment, adapt them better to individual cases, but in no case disturb the fundamental principle that punishment is primarily punishment for sin.

legal institution of *bedingten Begnadigung* dates from the royal edict of Oct. 23, 1895, and its accompanying semi-official explanatory note. This note lays down three general principles to direct the carrying out of the "innovation" published in the edict. And these principles give the key to the whole system as still administered in Prussia. (1) The decision as to suspension of punishment and pardon is not to be left to the courts but is a manifestation of imperial mercy and in every case must follow an examination undertaken by the central office. (2) The final remission of punishment is made to depend not on the avoidance of further punishment within a given time, but on the good conduct of the offender during this time. (3) This institution is limited chiefly to youthful offenders and other minor offenders or persons not unworthy of clemency.

In accordance with the royal rescript the Prussian Minister of Justice issued the notable circular order of Nov. 19, 1895, and after ten years of amendments, enlargements and interpretations, the order of April 12, 1906, which forms the present working basis of conditional release in Prussia. So far the institution of conditional pardon has not been made part of the organic law of Prussia. But several noted legalists (among them Bachein and Allfeld) have been urging the *legalizing* of the system. And the Commission for Reform of Criminal Procedure has been considering the matter. With characteristic Prussian loyalty and zeal for centralization the author argues for the extension of the Prussian system to all states of the empire. For two reasons: first, to maintain the principle that pardon is an act of free grace on the part of His Imperial Majesty; second, to secure uniformly efficient administration in details of the law itself.

The provisions of this law extend only (1) to suspensions of prison sentence, not to remission of fines; (2) to sentences of not more than six months; (3) to offenders who at the the date of their offence have not yet completed their 18th year, and hitherto unconvicted; (4) the offender must not yet have entered on his punishment; (5) the offender must have committed his offence not through depravity or criminal inclination but rather through levity, thoughtlessness, inexperience, or seduction; (6) the environment and especially the relations in which the offender must live during his probationary period must be such that improvement can be expected.

The hearing of such cases shall comprise: (1) previous life of the offender; (2) circumstances preceding, accompanying, and following the criminal act; (3) questions as to applicability of the law to the case under trial; (4) results of attorneys' arguments and the court's personal impression of the offender. These may be secured through records of the courts or by other inquiry. But however secured they must be communicated to the offender when action is taken on his application for suspended sentence. Exact and detailed investigations may be demanded through police authorities, guardianship or parole agencies, pastors, teachers, employers and other official or private agencies. To repeat, these must be *in detail;* mere statement that the person's conduct

has been "good" is insufficient. But the investigations, especially when conducted by police authorities, are to avoid the spirit and methods of police "inquisitions."

The period of probation varies somewhat, though it is usually two years, and in grave cases three years. During this period no change of residence can be made without due notice and permission. *No special supervision is maintained;* but if circumstances seem to require it a summons may issue recalling the probationer to show cause why the order for his conditional release should not be set aside. Pardon at the end of the probationary term depends upon postitive satisfactory evidence of good conduct. Mere keeping out of trouble is not sufficient.

In view of the growing interest in Germany in juvenile delinquency and in measures to forestall and prevent it, the author's section on *Strafaussetzungsverfahren bei Fursorge—oder anderen Anstaltszöglingen* is particularly timely. He gives in brief space the rules of procedure for what amounts to probation of minors under 18 who are under jurisdiction of the courts of guardianship, juvenile protective societies or children's institutions. These rules are based upon the general order of the Prussian Minister of Justice dated Nov. 1, 1910. Admirable as the spirit of these rules seems to be, their effective and elastic administration would at the same time seem to be hindered by a good deal of *paperasserie.* The attempts to get around this slow-going fomalism (for example, the frequent printed injunctions to *hurry,* to do this or that *immediately, without delay*) must be as exasperating as they are ludicrous.

The majestic clumsiness of a centralized ministry of justice, complicated by the prerogative of royal pardon, appears in the red tape necessary to secure a final grant of pardon even after the successful issue of the probationary period. The local judge must send a report to the chief States Attorney (Ersten Staatsanwalt) of the district. He in turn must within the next calendar quarter send a complete report to the Minister of Justice. The stream next carries the report before his royal majesty the Kaiser and King, who returns it with his decision to the Minister of Justice, who passes it on to the Ersten Staatsanwalt, who notifies the local court. Finally the penal authorities are apprised of the pardon, or its refusal; they make the necessary entries and Jack's house is at last built.

There is one feature of this centralization which, however, commends itself to us. That is the regulation for annual compiling and reporting of statistics of cases coming under these laws. They are pretty complete and in pleasing contrast to our American lame and slipshod methods of recording statistics of crime and public relief.

Whether Herr Amtsrichter Herrnstadt intended it or not, his valuable little *Hilfsbuch* affords another interesting example of how difficult it is to pour new wine into old bottles. Whether the bottles are Prussian or American, or the wine old age pensions, suspended sentence, or probation is a mere matter of detail. Tradition and legal formularies force us to make haste slowly.

I know of no bias in the German mind against such a convenient and labor-saving device as the index. But for some reason or other German writers and publishers have pretty uniformly refused us this sop to human frailty. Hence in my estimation the author of this manual deserves special commendation for his full and carefully prepared *Sach-Register* and bibliography of ministerial orders. Perhaps this bibliography is for the American student of new developments in criminal law and criminology the most valuable part of the book.

University of Illinois. A. J. TODD.

PRINCIPLES OF THE CRIMINAL LAW. By *Seymour F. Harris,* B.C.L., M.A. (Oxon.) 12th ed., by *Charles L. Attenborough,* of the Inner Temple. Stevens & Haynes, London, 1912. Pp. xl. + 613. 10s.

For many years, Mr. Harris' excellent treatise has been regarded as the standard textbook for English students of the criminal law. Its lucid style and clear explanations have won it a recognized and distinctive position. Even the difficult topic of criminal procedure is handled with absolute adequacy.

This new twelfth edition, like the other recent editions of the work, was prepared by Mr. C. L. Attenborough, Barrister-at-Law and member of the Inner Temple, himself the author of a recent and interesting treatise on the Recovery of Stolen Goods, and an authority upon criminal law. Since the last edition in 1908, there have been several English statutes enacted of considerable importance in connection with the law of crimes and of criminal procedure. The two best known, at least to the American reviewer, are the Punishment of Incest Act (8 Ed. VII c. 15) and the Prevention of Crime Act (8 Ed. VII c. 59). The first of these has already occasioned two appeals to the House of Lords, in both of which the Court of Criminal Appeal has been reversed. In the former, R. v. Ball (1911), A. C. 47, the nature of the evidence which is admissible in support of the charge was considered; in the latter, Leach v. R. (1912), A. C. 305, it was held that the husband or wife of the defendant was a competent, but not a compellable witness for the prosecution. The second of these statutes is of especial interest to the student of criminology and penal reform. It makes detailed provision for the attempted reformation of the youthful offender by Borstal Institutions and otherwise, and also deals with that offensive plague of modern society—the habitual and confirmed criminal—by authorizing his preventive detention under suitable restrictions and safeguards. These statutes, together with the other recent English statutes, are very skillfully and lucidly analyzed and the recent cases interpreting and expounding them carefully collected. The book, without a doubt, brings the subject down to date. It should prove, in this new and enlarged edition, of indispensable value to the English practitioner. Its value to the American lawyer, while not, of course, so great, is nevertheless very considerable. A full table of offenses, their punishments and the statutes affecting the common law rules applicable,

and also a very thorough index, enhance the worth of this excellent volume.

Fordham University. I. MAURICE WORMSER.

A HOLIDAY IN GAOL. By *Frederic Martyn*. Macmillan and Company, New York, 1911. Pp. 278. Net $1.25.

This story by Frederic Martyn is a striking descriptive study of English prison life from behind the scenes. The author, a man of education, and with the ability to see the bright and burlesque side of a serious situation, has put to good account his eighteen months in a district workhouse. He gives a vivid impression of the various types of offenders to be found in such an institution.

To the reader who is acquainted with American prisons, a good opportunity is afforded to contrast British penal methods with our own. The comparison is rather favorable to the newer country, though many of the same shortcomings are apparent in both new and old. To the general public this interesting word picture of routine prison life will be informing and enlightening.

The book, however, scarcely bears out the title, or the opening statement to the effect that a prison sentence could be commended as a pleasing holiday. This idea is sustained only in the sense that the "hard labour" prescribed was more or less of a farce. Judged from all other standpoints, even the author's exceptional optimism fails to conceal the depressing sequence of the experience.

The inevitable monotony of prison fare, including a crushing disappointment in the Christmas dinner of the same daily dope; the unending red tape so characteristic of institutional life; the constant affront to self-respect and manhood imposed by petty officials; the keen anxiety endured throughout the long hours of many a sleepless night; the cramped quarters of a small cell for 22 hours of each day; the humiliation suffered by reason of injustice and the assumption of police and prison officials that all convicted men are equally bad—these and other like experiences so graphically portrayed, are scarcely such as one would choose as a part of his enjoyment in a care-free and independent period of recreation.

In the first part of the book, the author describes in detail the inequalities and the apparently chance nature of English justice. While disputing the legal justice of his own conviction the writer admits his moral culpability, but points out the inadequate presentation of his case before the court, because he was unable to employ counsel. On this account, evidently, the great majority of defendants, in English courts as well as those of America, secure little more than the *ex parte* hearing provided by the prosecution. In the absence of a public defender, the prosecutor seeks only conviction, rather than the whole truth, including what may be favorable to the defendant. In this connection, the writer throws a glaring light upon what he believes to be the prevailing bias and false testimony of arresting officers. Moreover he was directly approached for a bribe by the detective who apprehended him, and

declares his belief that a 10 pound solace to that dignitary would have eliminated the charge against him.

Notwithstanding such significant deductions, and a clear view of the somber tragedies which follow upon the career of professional criminals as herein described, there is a fine flavor of humor pervading the pages. This, together with the author's ability to take his own uninviting situation philosophically, makes a most readable and intensely interesting volume.

Chicago. T. EMORY LYON.

REPORT ON INCENDIARISM IN NEW YORK CITY; SUBMITTED TO MAYOR WILLIAM J. GAYNOR. By *Joseph Johnson,* Fire Commissioner. Pp. 153.

This report, bound in book form and containing something less than two hundred pages, purports to reveal incendiarism in all its phases in the city of New York.

It is asserted that the crime of arson is rampant in the city, that suspicious fires are on the increase and have already reached the appalling total of one quarter of all losses annually, involving a destruction of not less than four million dollars' worth of property.

The report is illustrated with numerous photographs, showing how fire bugs have actually worked in particular cases, the details of which are given in full. The report further shows that members of the New York fire department obtained $127,500 worth of fire insurance in the form of 135 different policies on property worth only $3.96.

The Commissioner concludes that New York City incendiarism is due to over-insurance, which is made possible by the failure of the companies rigidly to investigate the character of all applicants for fire insurance, and previously to inspect all property before insuring it.

The remedy suggested as "the only way to stamp out the fire making industry" is to have a personal inspection of all property before insuring.

The ideas of the Commissioner were embodied in a bill introduced in the recent session of the New York Legislature, and known as the Walker bill, but it failed to become law.

It is not necessary to comment upon this phase of the report further than to say that the absolute impracticability of personal inspection of all risks before issuing a policy thereon was conclusively shown in the hearings on the Walker bill. Such inspections would be very expensive to the honest policyholder and would not prevent incendiarism. It is apparent that anyone who would commit the crime of arson would not hesitate either to remove goods upon which insurance had been obtained before the fire, nor would they hesitate to commit perjury regarding the value of the goods should they be destroyed.

Without further discussing the merits of the remedy suggested by the Commissioner, we will turn to a brief analysis of the figures which he cites.

The illustrations of various arson "plant-beds" with a detailed description of the methods of fire bugs in specific cases are doubtless

authentic. They furnish convincing evidence of the lengths to which such people will go. They do not hesitate to start a fire in a crowded tenement, endangering the lives of hundreds of people, nor do they feel any compunction in saturating decrepit horses with gasolene in order to collect large amounts of insurance, which have been secured on horses supposed to be valuable.

The conclusions the Commissioner draws, however, in regard to the prevalence of this crime, are in the opinion of New York underwriters, very far from reliable. The total annual loss in New York City is probably fifteen million dollars. The manager of the New York Fire Insurance Exchange—an underwriter of large experience, and an adjuster in New York City during many years—estimates the loss from incendiarism at about one million dollars.

The report of the Committee on Incendiarism and Arson of the National Board of Fire Underwriters, under date of May, 1912, quotes statistics to show that there were 32 arrests for arson in the Borough of Manhattan and the Bronx for the year 1911, which resulted as follows:

1	guilty	sentenced
4	guilty	paroled
1	insane	sent to an asylum
13	acquitted	
9	held over	
4	sentenced for disorderly conduct—the charge having been changed.	

The fire department's report for 1911 shows 10,069 fires in the Borough of Manhattan, the Bronx and Richmond. If 25 per cent. of these were incendiary, the number would be 2,517. As stated above, the number of persons arrested by the division of fire marshal, convicted and sentenced for arson, was one.

If the Commisioner's estimate of 25 per cent is correct, and out of this total number of incendiary fires there grew but one conviction for the crime of arson, this would seem to be the place in this review for an extended discussion of the efficiency of the New York police. Especially, in view of the fact that the Fire Commissioner remarks in his letter, submitting the report to the Mayor, upon "the strenuous activities of our fire marshals, and the detection and prosecution of numerous incendiaries."

In the opinion of underwriters who have replied in various ways to the arson exhibit of the Commissioner, both before the New York Legislature and through the public press, the crime of arson is confined almost wholly to small fires involving the destruction of household goods.

Mr. William T. Emmett, Superintendent of Insurance for the State of New York, disagrees decidedly with Mr. Johnson's remedy. He says, "The average rate for policies, covering household goods, is about $5.00 a thousand for three years. It is not large. If the companies were obliged to make inspections in every case before policy was issued,

the rates would increase to figures which might double the present rates, or more. This would be imposing a hardship and an unjust burden upon every property owner and every householder in the state, while still failing to stop the fire bug."

There remains but one feature of the Commissioner's report not yet commented upon, viz., the amount of insurance his men were able to place upon property of insignificant value. This represents simply how easily several hundred dollars of the public's money may be spent by a misguided official.

The exhibit policies cost about $2.00 apiece. The fraud involved in procuring these policies would vitiate them, and the necessity of proving the loss after the fire would have presented a serious task to even the most hardened fire bug.

In most cases it is doubtful whether other insurance was permitted by the terms of the first policy issued, in view of the character of the property and the neighborhood, in which event there would be no chance whatever of collecting on any policy after the first.

It further appears that some of these policies were obtained by a fireman of the first grade, who gave his correct name and position. Surely a fire insurance company could be excused for issuing a policy of $1,000 on household goods to a first grade fireman in the city of New York, whose salary was $1,400, without being suspicious.

Our conclusion is, therefore, that all of the startling features of the report have some truth in them, but that they are, as presented, very misleading, and that the conclusions the Commissioner draws therefrom are clearly unwarranted.

There is, undoubtedly, much incendiarism in our large cities. The "moral hazard" is a factor which underwriters must continually face, but the fact remains that insurance companies cannot possibly profit by incendiarism, and that, therefore, they would not willingly be a party to any system or circumstances, such as over-insurance, which would tend to breed the crime of arson. It is apparent also—as above noted—that if the crime of arson is so prevalent in the City of New York, the police department of the city should be better equipped to handle it.

Chicago. ERNEST PALMER.

GRUNDZUGE DER HYGIENE. By *Dr. W. Prausnitz.* 9th edition; revised by Prof. P. Th. Muller and Prof. W. Prausnitz. J. F. Lehmann, Munchen, 1912. Pp. 662, 278 figs. M. 3.

The authors have undertaken to cover in a concise manner the whole field of scientific and practical hygiene. None of the chapters remain unchanged and some are considerably extended to bring them up to the state of our present knowledge. A short chapter on race hygiene has been added. The illustrations are simple and mostly quite illuminating, and are more abundant than in previous editions. One of the important phases of this edition is the presentation of some of the laws and ordinances of Germany and Austria in the interest of public health.

The book gives a good survey of the field and encompasses an enormous amount of detail on all sorts of hygienic problems. It is, moreover, presented in a clear and simple manner. Such a book should find a considerable demand as a text-book, or as a reference book for the general reader, though its value would be increased, in this country, if it were translated.

Some of the topics covered are enumerated below: Organization of sanitary affairs in Germany and Austria, with rules and laws pertaining thereto; Air, weather and climate, the soil, clothing and bathing, water, milk and food supply; Sewage and garbage disposal; Construction, heating and ventilation, and lighting of dwellings and their relation to each other and to the street; School hygiene; Infectious diseases, their causes, disinfection, immunity, relation of other animals and of air, water and the like to human diseases; Hygiene of trades and occupations, including protection of employees, lighting and ventilation of factories, child labor, sick and accident insurance.

Northwestern University. GEORGE T. HARGITT.

PROSTITUTION, ITS NATURE AND CURE. Penal Reform League, London, 1913. Pp. 16, 2d.

There is much to be commended in this measure and I believe it marks an advance in the method of handling prostitution. An essential error, however, is in the bill—and that error is the common one to practically all laws that have been enacted upon the subject—is that the emphasis is placed upon the economic rather than upon the anthropologic aspect of the matter. The subject of prostitution throughout the ages has been invested with a strange mystery. The scarlet woman has served as a background figure at least in the tumultuous struggle, the passionate conflict of man to man and nation to nation that has made up our human history.

Yes, and sad though it appear, her part has been a conspicuous one in that checkered history. It is the half conscious feeling of this fact, together with her obvious disregard of the plainest lessons of experience, her patent contempt for what the normal among her sex hold sacred—conventional morality—that has made her so inexplicable. Modern science, however, with its iconoclastic methods of precision that has dispelled so many of the world's illusions, has again adduced proof that this mysterious and alluring devotee of Kama is in far more than fifty per cent. of the cases an imbecile—a mentally defective creature who could do little better than she does and is not entirely responsible for her acts. The problem of the control of prostitution is but a part of the larger problem—that of the control of the feeble-minded. Prostitution, habitual criminality, pauperism and other of the degenerative neuroses are but different individual expressions of the same underlying morbid state—vitiated mentality. The causes which generate this widespread delinquency are the causes that make for degeneracy—the things that impair the germ plasm. Drunkenness, syphillis, the deprivations due to grinding poverty, onanism in early childhood and possibly in

infancy, and bad environmental conditions ultimately eventuate in an anomalous nervous system that is doomed to disaster, and from it spring root stocks from which are descended the different manifestations of mental defectiveness.

When the feeble-minded strain is once founded it is ineradicable and tends to perpetuate its type just as normal stocks do; it breeds true, and prostitution and its congeners will exist just so long as the stock from which it is formed is reproduced. I do not hesitate to affirm my conviction that if the mentally sub-normal could be eliminated from the human race, commercialized prostitution would practically disappear. Not that immorality would be eliminated entirely thereby, for unfortunately our present biologic standard will not permit us to designate them as invariably degenerative. All prostitutes are not psychically inferior, just as all criminals are not, but they form the groundwork, the foundation and most of the superstructure, and without them the building could not exist.

The normal man is conventionally honest just as the normal woman is conventionally virtuous; honesty in a man and virtue in a woman are synonymous terms. Primitive man was a free booter—a marauder—and judging by our present-day standard, a criminal. Primitive woman was polyandrous and ministered sexually to him whose strength or cunning gave him possession of her body. Atavism is here in evidence, degenerative stocks tend to revert to the primitive or barbarian type.

One of the great difficulties or errors in our method of treating social problems is our inclination to treat individual symptoms rather than to search out the cause or causes with a view to as complete eradication as possible. An essential element of failure in the treatment of physical ailments by the medical profession in its earlier history was due to this same tendency, and not until a recognition of the positive necessity of sound laboratory methods and a willingness to base the treatment on such laboratory findings or research work was the medical profession ever able to reach a rational basis of combatting human ills. The present-day methods of treating social problems necessarily will have to pass through the same era of evolutionary changes before we can hope for definite results. The several expressions of mental subnormality have to do distinctly with the great problem of eugenics. So long as we fail to recognize the fundamental or basic principles of the biologic laws governing eugenics, and fail to base our treatment on the findings of laboratory research our results will continue to be unsatisfactory. The laboratory has given to us our knowledge of the fact that the germ plasm is the great essential in the transmission of natural characteristics, and our hope not only for the solution of these various social problems, but for a continued virility of the race must depend upon a better understanding of the essentials of genetics and our ability to educate the public mind to the need of a rational or intelligent cooperation along the lines of improvement of the race.

The remedy for this condition is simple and yet complex: simple in conception, complex in application. Two words express it—steriliza-

tion and segregation. Sterilization of all those feeble-minded who by reason of offense have come under the law as public charges, and segregation of all those who can be reached and who are not yet public offenders. The difficulties in the way of accomplishment are indeed great since examinations by expert psychologists indicate that at least four per cent. of our population falls within this category. It is hoped also that the time is not far distant when society through its law-making bodies will recognize the necessity of founding its marriage laws on scientific principles rather than sentiment alone, and that every step possible shall be taken to discourage the propagation of those who can furnish only additional burdens to be borne by society, and to encourage the propagation by those whose offspring will mean units of intellectual and physical strength to the human race. Society's first and essential duty is to awaken to the necessity of taking such steps as are absolutely necessary to prevent the burdens that are sure to follow our present methods insofar as they apply to the generations yet unborn.

Indiana State Reformatory. DAVID C. PEYTON, M.D.

ENVIRONMENT AND EFFICIENCY. By *Mary Horner Thomson.* With a preface by J. Rendel Harris, LL.D. Birmingham Studies in Social Economics and Adjacent Fields. Longmans, Green and Co., London and New York. Pp. 100. 75c.

This volume is a study in the records of industrial schools and orphanages in England for the purpose of discovering the relative effect of environment in the building up of human efficiency. In fact, the author says in her introduction that her chief purpose in writing the thesis has been "to show by a collection of definite results the overwhelming part played by environment in the building up of human efficiency." This introductory statement does not appeal to the student as an indication of an unbiased scientific attitude of mind with respect to a problem which can be solved only by scientific method. This, however, should not prejudice the student who undertakes an examination of the data. The method of investigation involves an inquiry into the statistics of homes, schools, orphanages, etc., for children. Only those institutions that are available as homes, etc., for children of unfortunate parentage are taken into consideration. Furthermore, only those institutions which have data with respect to the history of their wards after they have left the institution for a considerable period of time, enter into the author's record. The author rightly estimates that the only proper criterion of the effect of an institution upon character is to be found in the history of the ward after discharge. The longer period covered by that history, the better. The first point, therefore, in the investigation was to find a suitable starting point. With but few exceptions this point was earlier than the year 1907. Having established the point, the names on the records were taken in consecutive order. They are not, therefore, picked records. The minimum period of post-institution history that is taken account of in this study is four years. Two hundred cases were found which had such a minimum record. The average

record of these cases extends over eight and one-tenth years. Ten of the two hundred had been kept for a period of twenty years and upwards; thirty-six for ten years and upwards; and thirty-two for four years. Seventy-two per cent. of the records investigated proved satisfactory. There are only twenty-nine out of the whole number of cases studied that were distinctly unsatisfactory in post-institutional life. Of these, thirteen are classified as almost deficient mentally. The author pertinently asks the question whether, when we talk glibly of the home-tie which is broken when a child is placed in an institution, there is not a risk that we shall sacrifice a very tangible good to a sentiment to which we may be very far from being able to give satisfactory effect. Undoubtedly, it is true that a good institution is preferable to a very defective home, such as the author includes in her lowest group—that group, for instance, in which the food is definitely bad, served irregularly, and seldom if ever prepared, a home in which the diet consists of (1) mostly bread, tea, and scraps; (2) much bread, occasionally a half-penny worth of soup; (3) mostly bread, and potatoes also, when they can be afforded. It is probable also that a good institution is preferable to the next lowest, or third group, in which the author includes those families whose meals are likely to be irregular, owing either to a definite shortage of food which makes it necessary to go without or to a habit of eating whatever food is obtainable at any hour of the day. There is, in such a home, a certain amount of cooked food. An example of the fare in this group is "sometimes two-penny worth of meat and potatoes, quaker oats, bread and lard or drippings"; also "a turnip and some potatoes for dinner, sometimes only bread—meat and milk very rare."

When the author turns to an examination of the nature of the employment of children in post-institutional life, as compared with the employment of children who are in deficient homes and enjoy the benefit of "out-relief," she finds the situation greatly superior in the case of post-institution children.

On the whole, the study is a satisfactory brief in favor of emphasis upon institutional care of unfortunate children, rather than relief for such children in the *defective homes* to which many of them belong.

Northwestern University. ROBERT H. GAULT.

SUMMARIES OF LAWS RELATING TO THE COMMITMENT AND CARE OF THE INSANE IN THE UNITED STATES. By *John Koren,* National Committee for Mental Hygiene, New York, 1912. Pp. 297. $1.00.

As a contribution toward the protection of the mental health of the public and to help raise the standard of care for those who are mentally ill, the National Committee for Mental Hygiene has had this summary prepared. The laws relating to the insane were in the beginning intended merely to safeguard the public against a class of unfortunates who were considered dangerous. With the modern conception that the mentally disordered person is sick and therefore amenable to treatment, a new body of legislation is arising which seeks to realize better ideals. The insanity laws, therefore, reflect the status of public care

given to the insane. There is a bewildering diversity of legislation in this field. The summary under review sets forth systematically the prescriptions of the laws in the different states in the hope that it may prove useful to legislators and to those who are charged with the supervision and care of the insane. The summaries cover the laws of each state and of the District of Columbia. They are based upon a first hand examination of the present codes and statutes of the respective states ending with the first session of the year 1912.

Northwestern University. ROBERT H. GAULT.

THE KALLIKAK FAMILY, A STUDY OF FEEBLE-MINDEDNESS. By *Henry Herbert Goddard,* Ph.D. Macmillan Company, New York, 1913.

This is a book whose value in the study of heredity cannot be overestimated. The standing of its author and of the school with which he is connected are such guarantees of the authenticity of its data and the correctness of the work as to make it invaluable. Its aim is to prove what Dr. Winship attempted to show in his comparison of the descendants of Jonathan Edwardes with the Jukes. The earlier study failed; it was a *non-constat,* because the difference in results was not necessarily due to heredity (see page 52). This book succeeds because "The Kallikak Family"—as its name indicates—contains both Jukes and Edwards in it. The Jukes being the descendants of the feeble-minded mother, while the Edwardes were descendants of the legal wife of normal mentality. It is interesting further to note that the Kallikak Family is one of the most famous families in the history of New Jersey, the progenitor of the bad branch being a son of the signer of the Declaration of Independence and a founder of Princeton University. Goddard, with his assistants, has covered data beginning before the year 1735 and continuing it down to the present generation, both in the normal and in the feeble-minded branch. Briefly, Caspar Kallikak came to this country and bought a farm from the Proprietor of New Jersey. He held a position of honor and prominence. His children have married in their own station of life to this day, but Martin Kallikak in the troublous days of the Revolution had an illegitimate son by a feeble-minded child. After the Revolution he settled down, marrying a woman of position, and had by her a son Frederick. These two branches have been studied side by side, and while the legitimate branch has continued to be of prominence and its members to lead lives of respectability, with no taint of feeble-mindedness, the illegitimate branch has sunk lower and lower. It consists of 438 descendants, 143 of whom were, or are, feeble-minded; only 46 have been found normal, the rest being unknown or doubtful. A trace of the love of wine extended throughout both branches, but in the normal branch this has led to no degeneracy, with possibly one exception, while in the feeble-minded branch it has resulted in practically a continuous line of anti-social citizens.

The book is composed of five chapters; the first the "Story of Deborah," which gives an account of the attempt at the Vinland Insti-

tute to educate and improve the mentality of a member of the illegitimate branch now confined there. The failure of this attempt leads Dr. Goddard to the conclusion that feeble-mindedness cannot be cured by environment.

Chapter 2, "Data and Charts" gives a history of both branches of the Kallikak family. Chapter 3, "What it Means": In this chapter Dr. Goddard reaches the conclusion that feeble-mindedness is hereditary and ineradicable. In Chapter 4, "Further Facts About the Kallikak Family," many interesting details in the collection of the data are given, together with illustrations of the degradation of the illegitimate branch and the report of two interviews with two cultured and refined members of the legitimate branch. Chapter 5: "What is to be done?" In this chapter Dr. Goddard takes up the questions of segregation, asexualization and sterilization. He thinks that the propagation of feeble-minded children must be stopped but sounds a word of warning because of the difficulties in the way of its three methods, together with the insufficiency of our knowledge. In this chapter he recites the Medelian law which he thinks covers feeble-mindedness, although there has been no proof that feeble-mindedness is a unit character. His synopsis of the Medelian law, at page 110, is clarity itself, and we recommend it for this quality, and at the same time refer the reader to heredity in relation to eugenics by Charles Benedict Davenport (Holt & Co., 1911—page 18).

We cannot close this brief review of the Kallikak Family without expressing our appreciation of the work entailed and gratitude of those interested in this subject for a book so clearly written and of such undoubted accuracy.

JOHN LISLE.

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WAS IST KRIMINALPOLITIK? By *Franz Exner*. OSTERREICHISCHE ZEITSCHRIFT FUR STRAFRECHT. 6 Heft. 1912, pp. 275-282.

The leading article in the last number of the *Oster. Ztsft.* is Dr. Exner's address "*Was ist Kriminalpolitik?*" given before the 31st Deutschen Juristentag held at Vienna last summer. Dr. Exner is a professor at the University of Czernowitz and avails himself of the college professor's immemorial right to turn his subject inside out and reduce it to the formula A plus minus A equals 0. Yet his pragmatic common sense forces him to save something from the wreckage, so that after finding that *Kriminalpolitik* cannot and must not be this or that, he shows that it may very well be something after all.

I confess to a keen interest in the distinction Dr. Exner draws between *Kriminalpolitik* and *Strafpolitik* (which I shall translate broadly as the distinction between criminology and penology). For last year while waiting with my Criminology class to be shown through Joliet penitentiary, a burly guard walked up to me to find out who we were and what we wanted. He received my explanation with the most undisguised incredulity which culminated in his explosive criticism: "Humph, how can anybody teach criminology!" The implication was that nobody can know anything about criminology unless he has been

a turnkey or guarded prison walls with a Winchester on his shoulders. Yet this illustrates just the confusion between criminology and penology which Dr. Exner is evidently trying to remove from the minds of his countrymen. For, as he justly remarks, you may have criminology without any punishment at all; such is even demanded nowadays; and in no case shall criminology or its application to the prevention and cure of crime be limited to the application of punishments.

But granting with Von Liszt, Stoos, Exner and others that criminology is to be thus broadly conceived as the coordination of principles according to which the law shall proceed in its fight against crime, *how* broadly shall we interpret it? Shall we include in criminology, as such, general social welfare movements like those for the care of orphans, for housing reform, insurance systems, labor and wage regulations? Dr. Exner answers no, and we agree; for the reason that social welfare legislation and institutions have a broader and higher aim than criminology has. In its preventive and curative aspects criminology is only one limited chapter in the broad program of social welfare. Hence it is only in a very limited and particular sense that we can say with Kraepelin that the public school is a *Kriminalpolitische* measure, or that adequate salaries for judges to prevent bribery belongs distinctly to the heading "Preventive Means" in the combat against crime. Yet there is a very decided tendency (notably in Switzerland) to make such measures for general social welfare a recognized part of "criminalistics" (if we may be permitted to coin such a term).

But modern criminology or "criminalistics" must be broad enough to include not only certain general measures of social policy, but also it must take into account the irresponsible as well as the responsible malefactors, the insane as well as the sound. In other words, it must take a more objective view of the criminal instead of floundering in the classical morass of subjectivism with all its metaphysics of "motives," of "responsibility," etc. For to arrive anywhere in our combat with crime we must leave off trying to assess precise "responsibility" and learn to look upon social protection as the purpose, guide and measure of our system. Yet how far shall we allow the principle of social protection to work in deciding what is specifically *Kriminalpolitik* and what is something else? Shall *Kriminalpolitik* be a sort of *pantechnicon,* a catch-all for protective measures? Some of its critics ironically ask if the modernists in criminology propose to include in their program protection against wild beasts and natural calamity. The absurdity is too manifest to require formal answer. But it serves to point a warning to the criminologists that if they are to make good their claim to scientific verity they must define with considerable accuracy the limits of their material.

It is meanwhile perfectly evident as Dr. Exner points out that "criminalistics" has to do with crime only as a manifestation of *human will.* It is not concerned with the mere fact of social damage (for rats or grasshoppers or comets may damage society!), but with

the *damager*. Hence priests no longer excommunicate comets, nor do judges sentence rats and grasshoppers. But granted that this science has to do with crime as a *human* phenomenon how shall we proceed to work out a definition of crime in general? That we must do so is self-evident. For if criminology is to develop preventive means it must first of all fix clearly in mind what it wants to prevent. Otherwise it is attempting the impossible task of solving an equation with two absolutely unknown and unknowable quantities. But after all this is not an impossible task, for history and common sense (Dr. Exner says the history of law and the popular conscience) have given us and will continue to give a sufficiently approximate and workable value to one of the unknowns. Long before scientific penology was dreamed of men had pretty clear and effective concepts of murder, theft, breach of contract, etc. With this pragmatic notion of crime as the target for our preventive measures Dr. Exner leaves us, having to his own satisfaction answered the question *Was ist Kriminalpolitik?*

But wherein are we one bit the wiser? The thorough-going classicist would have landed us in the same vicious circle. Having set down the fact that criminology is concerned with human acts, and in the same breath denied that the mere act of damage *qua* damage was of concern, is it not the merest vanity of nothingness not to take the very obvious next step of making the nature of the criminal and how to prevent *him* the main business of *Kriminalpolitik?* Dr. Exner's address would have been all the stronger had he insisted on the fact that if we learn to know the criminal and what produces him, we can take care of his "crimes." Their metaphysical aspect can be safely left to certain philosophers and legalists. And that such a type of criminology is perfectly practicable and is on the way to scientific verity Lombroso's "Crime, Its Causes, and Remedies," to take only a single example, shows clearly enough. There is to my mind a very decided gain in formulating the problem in terms of criminals rather than of crime. So long as we cower before the vague specter of "Crime stalking through the land" we shall cower and do little more. But once get the notion that slums and tenements are manufacturing *criminals* we will no longer cower but rise and put the slum and tenement out of business.

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LA CRISE DU DROIT PENAL. *By Eugène de Balogh,* Budapest, 1912. Pp. 34.

The more recent European writers on criminal conditions seem to be agreed on the fact that the class of petty malefactors and the so-called recidivists are largely responsible for the steady increase in crime. This state of affairs, according to M. de Balogh, is true also of Hungary, where conditions are aggravated still further by the critical situation in the whole system of penal law.

Present problems have arisen as a result of a widespread revolt against certain principles of criminal law hitherto believed to be fundamental but which are becoming more and more incompatible with

present day social and intellectual advancement. The importance of this development in criminal jurisprudence becomes evident when we consider that these principles which for the first time are being questioned are based upon certain philosophic abstractions of the latter eighteenth century, abstractions which in other spheres of intellectual endeavor have for some time been discredited.

It must be pointed out that whereas in Hungary the movement for reform centers about the penal system, in the United States it is being directed against the system of criminal procedure, and is primarily for a reform in the judiciary. Moreover, in the United States the movement is essentially one for the improvement of administration, but in Hungary the problems are evidently far more fundamental in character.

The reforms which M. de Balogh proposes are neither new nor startling and have for some time been incorporated in the penal system of Great Britain and to a certain extent in that of the United States. They embrace a scientific study of criminals, reclassification of penalties, provisions for juvenile offenders and the introduction of better measures of prevention. In short, they represent the most advanced ideas in penal science and must inevitably be introduced into the law of all nations if the treatment of criminals is to conform with the exigencies of present progress.

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THE FORENSIC SIGNIFICANCE OF CONGENITAL SYPHILIS. By Priv. Doz. *Felix Plaut.* Psych. Clinic at Munich. *Zeitschr. f. d. Gesamte Neurologie und Psychiatre.* Bd. II. H5.

Since the advent of the Wassermann reaction for the diagnosis of syphilis, a good deal more light has been thrown on the nature of juvenile phychopathy. The author reports a number of cases of juvenile delinquents who came under his observation at the Munich clinic and who showed a positive Wassermann reaction in the blood serum and in some instances slight pathological changes in the spinal fluid. When we remember that about one-third of the living children of paretics inherit syphilis from the parent so affected, the importance of determining whether these juvenile delinquents are syphilitic becomes at once apparent. Prior to the advent of the Wassermann reaction, however, investigation in this direction has been rather unsatisfactory, inasmuch as many congenital syphilitics show none of those physical signs which we are wont to consider as pathagnomonic of hereditary lues. Hence the importance of this test. When we come to consider the so-called mental stigmata of hereditary syphilitics, still greater confusion and uncertainty prevail. We shall have no difficulty from a forensic standpoint in those cases which show pronounced symptoms of mental disorder, and the Wassermann reaction can aid us here only from a therapeutic standpoint. But what of the large number of borderland cases who, without showing distinct signs of mental disorder, are yet so different from normal man as to preclude the idea of holding them equally responsible for their deeds with normal

man. That an inherited syphilitic infection has its distinct deleterious effects upon the physical and mental development of the child so affected cannot be doubted but there still exists considerable uncertainty as to the exact nature of the mental defects of hereditary luetics. In the author's experience these youngsters rarely show a mere intelligence defect *per se.* They are rather characterized by an arrested development of their emotional and volitional faculties, the very same defect which in most instances characterizes the grown-up criminal. It is hoped that this paper will stimulate those who have the care of the delinquent youth in hand to utilize to a greater extent than has been the case heretofore in this country, this valuable adjunct—the Wassermann reaction. It not only gives us an indication as to the probable cause of juvenile delinquency but may prove of inestimable value from a therapeutic standpoint.

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DIE BEGRIFFE STRAFE UND SCHAUDENSERSATZ. *By Guilio Q. Battaglini.* Translated by *Franz Wallan* of Bonn, for the *Archiv fur Recht und Wirtschaftsphilosophie,* April, 1911.

This is an interesting dissertation on the concepts of punishment and compensatory damages. The author claims that the two concepts should be kept distinct. Herein we agree with him; our only wonder is that Battaglini should so painstakingly distinguish them, denying at length their interchangeability. But, while we may not see the direct practical value in his research, we heartily endorse and favor theoretical works of this kind, for, by them the errors in proposed renovations and much heralded returns to some Golden Age are made apparent. A thorough theoretical knowledge is the best foundation for practical work. Its lack has led to many deplorable practical blunders in our country and the present political endorsement of the rule of thumb makes a theoretical study of the philosophical, and sociological basis of juridical problems of great educational value.

Battaglini begins his essay by stating that punishment and damages are penalties imposed by law for the infraction of a primary legal duty—the former, criminal; the latter, civil. The distinction of the last phrase, however, is only formal. And, furthermore, the old distinction carried on the kind of interest, protected whether public or private, cannot be considered lucid, for every statute protects interests of both kinds. The statute protecting the right of suffrage protects a private right, while one protecting property is in the interest of all, as well as of him who owns the particular object protected. There can be no accurate division by this test. And yet, Battaglini will not have the two concepts confused. He opposes Merkel and Heinze for holding that damages are a kind of punishment. To show the difference he writes that a punishment is not reparative, it does not cure the harm done the victim by the crime, whereas damages are compensatory, and as far as possible restore things to *Status quo*—another proof, as he thinks, that damages are not a punishment, is the fact that many acts entail both consequences

and subject their author to prosecution and civil suit. Here, we might adduce an argument for the Common Law lawyers in the existence of "primitive damages" distinct from ordinary damages. He refines his point further, and explains that the remission of punishment granted by the German code for immediate indemnification does not prove the indemnity of punishment and damages, but only the individualistic tendency of the German legislators. He favors the Italian point of view, that indemnification is to be considered in extenuation.

He then discusses the case of those under disabilities, and weak-minded persons. On the subject of these, he thinks that while the imposition of damages is just, the infliction of punishment is unjust, when the subjective phases of criminality are lacking. He is not a positivist, and while recognizing the necessity of punishment as a result of crime, i. e., an act of offense by the state against the author of a breach of a legal duty, he does not believe in the infliction of a punishment when the psychology of the delinquent prevents his realization of his act. He believes that the imposition of damages, i. e., of a defensive act by the state is always just.

Before taking up the last pages of his treatise, dealing with the crimes of corporation, we may summarize his thought as follows: A crime, or breach of a legal duty, must give rise to two reactions, which while similar and originating in the same act or omission, are distinct. The one is the punishment, a reaction by the state in the interest of society with the intent to cause "pain" (*absolutes Uebel*) to the delinquent who has done harm to the social scheme. It is an act of offense against an enemy of society. This punishment must, however, be based on the subjective attitude of the delinquent. This was recognized to a certain extent by the old Common Law, when it required an *animus*. And, the punishment, notwithstanding its recognition of the subjective element of crime, remains always an act of offense, not simply defensive. This quality is necessary in order that it exercise its deterrent and reformative functions, which are of more general importance than its prevention. The other consequence or reaction following a criminal act or omission is the right of the victim to damages, i. e., to compensation for the injury. In this the state has only an indirect interest, similar to its interest in the maintenances of property. Now there are many differences between these consequences which can be seen from the summary. The punishment, for example, is personal *actio personalie cum persona moritur*, the damages follow the estate, and are accessible when there is no "animus." The confusion of these concepts has been largely due to the teachings of a modern school, which holds that punishment is not an act of offense, but merely repressive, deterrent, and reformative.

With this summary of his thought, we will leave the main current of Battaglini's argument, and following his example in *Die Begriffe Strafe und Schaudensersatz*, take up the application of his theory to corporations. This application is of interest both in showing the truth of his distinction, and in giving a philosophically sound plan of attack upon corporations which are guilty of crimes, whether of a

financial nature, such as monopolies and extortion, or of an industrial nature, including violations of statutes requiring protective machinery and of statutes limiting hours of employment (whose justice is not in question). To return, however, to Battaglini's application of his concepts of punishment and compensatory damages to corporations, or collective persons, "human associations or organizations for effecting a purpose, which in legal phraseology, make new juridical units of phenomenal form," with abstract synthetic unity and concrete changeable plurality. As the unit is composed of men, it must be subject to law. And, of course, an entity cannot enter the realm of law, that is, be juridical without being governed by all kinds of law applicable to the deeds it effects and the circumstances and conditions in which it has its being. It cannot be subject to criminal law. But, the non-corporal or abstract of the corporation renders it possible of subjection to criminal law only in its abstract or prohibitory phases. In other words, a corporation is not punishable. Here he deals philosophically with a practical question of the greatest importance. We may object, be inclined to disagree with him, but after a little reflection, I am afraid that we must see that the criminal prosecution of trusts is unphilosophical and, therefore, unjust and doomed to result in injustice. He believes in the criminal liability of managers and directors, believes in corporations being liable in damages for harm done, but he does not see how a corporation, the abstract unit, can be imprisoned or fined. The first of his impossibilities, is, of course, apparent to all. The second should be equally clear for the corporation itself does not pay the fine, but the investors who lack the *animus*, which we submit cannot be implied by the investment, in the majority of cases. This seems like a refinement of the old theory of the "legal entity" and *fictio juris*, and would seem to lead us into fields of academic sophistry, but such is far from being the case. For to follow the path leading to practical questions, we may point out that if the investors pay the price of the corporation, it means that innocent men are being punished, that is, men who have entrusted their money to responsible men, for unless the idea of accessories is established beyond all bounds, they are innocent. So, enforced dissolution does not affect the entity or the punishable direct, but the investors. And thus Battaglini turns his theory of the concepts of punishment and damages to the solution of a problem of the first magnitude, and following a decided plan—the criminal liability of directors, the non-punishability of corporations—he would effectively curb criminal monopoly, as well as do away with the violation of industrial statutes without mulcting the innocent petty stockholders, and without subjecting investment to the damaging possibility of prosecution.

As we wrote at the beginning of this review, we agree with Battaglini in his distinctions of the two concepts and while we wonder at the detail of his differentiation, we can but applaud the spirit and execution of philosopho-juridical works of this kind and express the hope that the philosophy of law will find in America many illustrious followers.

Philadelphia. JOHN LISLE.