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Reviews and Criticisms

GESCHICHTE DER DEUTSCHEN RECHTSWISSENSCHAFT. *Ernst Landsberg.* Division III, Part II. Text, 1008 pp. Notes, 414 pp. Munich and Berlin, 1910.

This is the last installment of the monumental work on the History of German Legal Science published under the direction of the Historical Commission of the Royal Academy of Science of Bavaria. The first and second divisions of the work (1070 pp.), which were prepared by Roderich v. Stintzing, professor of law at the University of Bonn, and appeared in 1880 and 1884 respectively, brought down the history to the second half of the 17th century. After Professor Stintzing's death, his pupil and friend, Dr. Landsberg, was asked to continue the work. Part I of the third division of the history (878 pp.), covering the period of the 18th century Law-of-Nature School, was published in 1898. The present volumes, with which the work concludes, trace the history of German legal science from the beginning of the 19th century to the time of the Empire and the preparation of the modern codes, that is, to about the year 1870.

Breaking off the history at the point mentioned, the author has as the central theme of this portion of his work the rise and decline of the Historical School. By way of introduction, so to speak, the author details in two chapters the status of private and public law in Germany at the beginning of the 19th century. In the first chapter (Ch. 13) Hugo and Thibaut appear as the leading figures. Through works of a profound, independent and methodological character, Hugo opened up for German jurisprudence the deep fountain of Kantian thought. "For this reason he occupies in the history of positive jurisprudence the place which belongs to Kant in the history of all sciences." (P. 48.) With Hugo, therefore, began the modern era in German jurisprudence.

In Thibaut we meet the greatest civilist of his day, though he is known more widely today as the opponent of Savigny, by reason of his advocacy of the codification of the law. Opposed to the exaggerated notions both of the 18th century Law-of-Nature School, and those of the Historical School, he became the founder of the School of Scientific Positivism, which retained a strong following throughout the period under review.

In the second chapter (Chapter 14) the author discusses the writers on public law—criminal law (Feuerbach, Grolman), procedure (Gönner, Martin), constitutional, international and feudal law (Klüber, Pätz), and canon law. Feuerbach freed criminal law from the fetters of the Law-of-Nature School and arbitrariness. In "Revision der Grundsätze und Grundbegriffe des positiven peinlichen Rechts (2 vols., 1799, 1800)" he applied the psychology and ethics of Kant to criminal law. Through this important work and numerous other writings he created modern criminal law.

Chapter 15 is devoted to the founding of the Historical School by Savigny, to a discussion of its program and its superiority over the

Law-of-Nature School. Revolutionary in the history of German legal science were Savigny's Law of Possession (1803), his History of Roman Law in the Middle Ages and his System of Roman Law. Eichhorn was the co-founder with Savigny of the Historical School. His investigations were in the field of old German law, a branch of law which through him became an independent juristic discipline.

Part I of the following chapter shows us the earlier fruits of the Historical School in the field of Roman law, old German law, and feudal, canon and criminal law. The rest of the chapter is devoted to a discussion of tendencies in legal science opposed to the Historical School. Hegel is presented as the only intellectual power in Germany at the beginning of the 19th century able to cope with romanticism, Savigny, and the Historical School. After outlining Hegel's philosophy of law and history, the author gives an account of the work of two leading jurists belonging to the Hegelian school—Gans and Stahl. The narrative then takes us to the representatives of the Positivist School (Mühlenbruch, Linde, Bayer and Wächter). In Wächter we find "one of the greatest German jurists of all times." He had become "almost in his lifetime a legendary person of such authority and popularity that Windscheid could say in 1879: 'If he were not an old man, he would have been the only person whom people would have trusted—whom they would have liked to appoint as dictator *legibus scribundis*—as the sole drafter of a German civil code.'" (P. 387.) Wächter was throughout his long career as a jurist a scientific positivist in the truest sense. He embodied in his person the virtues of the Historical School, and yet he maintained his independence with respect to that school by his emphasis on the practical and positive, by his appreciation of the necessity of legislation and of legislative problems, and by his aversion to romantic exaggeration. Scientific positivism found pure expression also in Wächter's works on criminal law, a branch of the law which was soon to pass under the sway of Hegelianism. The chapter concludes with Mittermaier, whose reputation in his lifetime both in Germany and abroad was scarcely less than that of Savigny. The author admits that such an estimate of Mittermaier contains a gross exaggeration; but he defends him against the unjust criticism to which by way of reaction his life work has since been subjected. According to our author Mittermaier's main contribution to the law is to be found not in his literary productions, but in his influence upon legislation and the practice.

In Chap. 17 we reach the height of success of the Historical School. We see also that through the powerful personality of Puchta a new direction was given to the Historical School as founded by Savigny, and limitations were placed upon it, which, while they carried the School to the height of its fame, were calculated inevitably to produce a reaction. "A school which accepted his (Puchta's) principles had really no right to call itself a Historical School—so strongly predominated with Puchta the formal-imperative, the dialectic-reasonable element." (P. 459.) Notwithstanding this, Puchta was readily accepted as the second head of the Historical School. With Puchta the cult of an idealistic jurisprudence gained predominance. In the second

part of Chapter 17 the lives and writings of other Romanists, chief among whom are Rudorff, Keller and v. Bethmann-Hollweg, are discussed. In Part III follows an account of the split in the Historical School—between the Romanists and the Germanists. It was inevitable that the jurists devoted to the study of Germanic law incited by a spirit of nationalism, should in time become the bitter opponents of the champions of a foreign system. The leader in the attack was Beseler. Parts IV, V and VI deal respectively with other Germanists (Bluntchli, etc.), with writers on civil procedure (J. W. Planck, etc.), and with writers on canon law (Richter, Friedberg, Hinschius, etc.).

In Chap. 18 the history of the Historical School is interrupted so that the influence of Hegelianism and of positivism during the period just traversed may be shown. In tracing the influence of Hegelianism upon juristic thought, the author discovers the curious fact that in private law it led to a strict doctrine of positivism, while it invited philosophic speculation in criminal law. The positivist writers on German common law are classified into those representing speculative positivism (Christiansen, Kierulff), into those whose positivism is based upon the decisions of the courts (Seuffert, Sintenis), and into those whose positivism is based upon the Corpus Juris Civilis (Vangerow). Next are considered the writers on territorial law, including Wächter, the writers on the law of bills of exchange and commercial law (Einert, Liebe, Thöl, Biener), Otto Bähr, writers on public law and philosophy of law, (Pütter, Heffter, Ahrens, Zachariae), and the writers on criminal law under the influence of Hegel (Abegg, Köstlin, Berner, Hälschner, Geyer, John, Merkel, v. Holtzendorff). The chapter concludes with the last Hegelians, Lorenz v. Stein and Ferdinand Lassalle.

The next chapter (Chapter 19) is entitled "The Crisis of the Historical School." Toward the middle of the 19th century the Historical School as such came to an end. Its aim had been to build up an idealistic jurisprudence. The Romanists had sought to rear it on the basis of classical Roman law; the Germanists on the basis of old German law—without reference to the practical requirements of their time. A reaction set in with v. Ihering, the powerful advocate of a practical jurisprudence. Contrary to the individualistic view point, then prevailing, of the Hegelian School, Ihering insisted upon the fundamental doctrine that law exists for the protection of *social* interests. Associated with Ihering in the movement was the Germanist Gerber. Bruns, Delbrück and Arnold occupy a position half-way between Ihering and Gerber, on the one hand, and the old school of jurists, on the other hand.

In the last chapter the author considers the work of the jurists whose main activity falls between the years 1850 and 1870. The Historical School as such was dead, but the historical method developed by it was to remain its priceless contribution to jurisprudence. It found recognition in all branches of the law, even in those where it had not met with favor before. Through the labors of Zachariae v. Lingenthal, Leist, v. Ihering, Ficker, Maurer, Brunner and Sohm, the historical study was extended beyond that of Roman and German law to Aryan law, Graeco-Italian law, Frankish-Norman law, and Scan-

dinavian and English law. The principal other jurists considered in the chapter are Kuntze, Brinz, Bekker, Windscheid (common law), Mommsen (history of Roman law), Paul Roth, Ficker, Stobbe, Gierke (German law), Unger, Dernburg (territorial law), Goldschmidt, Endemann (commercial law), Bülow (civil procedure), Glaser (criminal law and procedure), Gneist (administrative law), Schulze, Laband, G. Meyer (constitutional law), v. Bulmerincq (international law).

The preceding outline includes only the names of the more prominent jurists discussed. The aim throughout the work has been to give a comprehensive account of German legal science at the different periods of its development, and this aim has been faithfully pursued in the last part of the work, notwithstanding the vastness of the material to be digested. Biographical statements and a description of their principal works may be found concerning most of the writers mentioned, either in the text or in the elaborate notes. With regard to the leading jurists the author takes special pains to trace the influence of the home and of the university so that the philosophic attitude of the writer may be more readily comprehended; and in the discussion of the works of a particular writer there is depicted the history of his growth and development to the maturity of his powers. On every hand our author points out the relation of the different works of the same jurist to each other, and their relation to and influence upon juristic science in Germany.

The work on the History of German Jurisprudence by Stintzing and Landsberg is truly a momumental work, the like of which does not exist in any other country. No one unacquainted with the boundless mass of juristic literature covered by the volumes under consideration can form a mental picture of the enormous amount of labor that our author has had to perform. All interested in German jurisprudence owe a debt of gratitude to Dr. Landsberg for having undertaken and so well performed such an arduous task.

E. G. Lorenzen.

Festband Anlasslich Des 25 Jahrigen Bestehens Der Internationalen Kriminalistischen Vereinigung. Bulletin der Internationalen Kriminalistischen Vereinigung, Bd. XXI, Heft I, edited by Dr. Ernst Rosenfeld, Berlin, 1914. Pp. 443.

It is extremely difficult to give in brief a concept of the multifarious themes developed in this memorial collection. A common thread, however, runs through the whole volume; that thread is the inspiration which the I. K. V. has communicated to its members in many countries. The book is a collection of papers commemorative of the 25th anniversary of the Union. Thirty notable men have collaborated in it. Appropriately enough the opening paper is a brief history of the founding of the Union by Professor von Liszt, to whom with Van Hamel, of Amsterdam, and Prins, of Brussels, credit is due for the original conception of the Union. The I. K. V. grew, von Liszt says, from his editorial contacts with contributors to the *Zeitschrift für die gesamte Strafrechtswissenschaft,* which he and Dochow founded in 1881. In 1888 he, van Hamel and Prins drew up the statement of

principles which for ten years was to serve as the Union's program. The first article of this platform frankly declared that crime and punishment must be considered no less from the sociological than from the juridical standpoint. The third called for preventive measures as well as punishment. The fourth demanded classification of criminals, particularly distinction between occasional and habitual criminals. Other practical issues were named, notably improvement of prisons and long terms for incorrigibles. The general object of the I. K. V. was declared shortly after by von Liszt to be the gradual reform of existing law to the intent that the function of punishment might be better formulated. On January 1, 1889, the I. K. V. came formally into existence. Its first general meeting was held in Brussels, August 7, of that year. In spite of some rebuffs the Union prospered and soon included in its membership a large number of the most important criminalists of Europe, and a few from America. The formation of national branches followed.

Professor Cuche in his paper declares that the I. K. V. by abrogating in 1897, the dogmatic Article II of its original statement of principles left itself, to say the least, in an equivocal position. Its very liberalism and freedom from dogma leaves the impression that it has no longer any precise aim. This is specially true of the national branches. For example, the French branch, he says, differs in no respect from such an organization as the Société des Prisons. As a remedy for this latitudinarianism he urges the Union to stand, say, for the principle that individualiaztion of punishment is not primarily for the benefit of the individual criminal but for the "security and moral relief of the collectivity."

Professor von Jagemann of Heidelberg urges the claims of protection of childhood as the most effective protective measure against crime. Regierungsrat Lindenau in a brief but suggestive paper asks for more attention to the preventive aspects of the police service and concludes that the special training of higher police officials will secure this desirable end. Dr. Schneickert, writing on the control of international crime, reasserts the resolutions adopted by the I. K. V. at its Hamburg meeting in 1905, which called for the creation, in every modern state, of a special bureau for the repression of international crime. These bureaus are to be in constant and direct communication, and their data are to be worked up scientifically for the common benefit of international relations.

Professor Mayer of Strassburg contributes a lecture on the proper attitude of legislation in regard to "resistance to public authorities." It is liberal in tone and calls for reason and discretion in judges in dealing with such cases. Professor Torp pays a tribute to the I. K. V. for its influence in reforming Danish criminal law, particularly in the repeal of the law permitting corporal punishment, in new legislation for conditional sentences, treatment of tramps and beggars, and in the tendency to eliminate short sentences and to provide more rationally for juvenile delinquents. Professor Stjernberg sends a similar testimonial from Sweden. Direktor Schwander of the Ludwigsburg House of Correction describes the steady development of the idea of special

institutions for those feeble minded and insane now held in penal institutions. He finds the best solution of the problem of the defective-delinquent in the Wurtemberg plan of committing them to "annexes to penal institutions." Dr. Paul Köhne outlines the contributions of the I. K. V. to the reform of procedure in juvenile cases; and advocates the principles, familiar to Americans, of judicial discretion, special children's courts, probation, and unification of all agencies for child welfare and protection.

Professor Henderson is represented by a paper on "Penology in the United States." He presents the leading ideas in the current movement for the reform of criminal procedure, and summarizes new developments in methods of studying crime, probation and parole. Courts of Morals and Mr. Randall's plan for a Central Board to determine methods of treating offenders committed to it also come in for considerable notice. It is to be regretted that no other American writer has shown sufficient interest to be included in this volume, for not a little of the energy and inspiration of the I. K. V. is traceable to American experiences with probation, parole, and children's courts. Professor Strassmann's paper on *Die Behandlung der Querulanten* (the cranky, ligitious, quarrelsome type) suggests the desirability of withdrawing this type from ordinary penal procedure and treating it as insane and irresponsible. With this should be compared Dr. Leppmann's address on *Sexuelle Fragen und Criminalität,* as illustrations of the increasing demand for the interpretation of many types of delinquency in terms of psychology. Dr. Leppmann summarizes recent progress in the domain of sexopathy; he shows, for instance, that many criminals commonly treated as burglars, assaulters, or pickpockets, are really sexopaths, and that for such cases psychological rather than penal treatment should be invoked. He is to be congratulated for his moderate and conservative views, which quite deliver him from the ranks of the sexologists.

Professor Garcon, of Paris, treats briefly of the tendency to take certain classes (juveniles, vagrants, beggars, criminal-insane, drunkards) out of the penal category and to transfer them to that of public charity *(assistance publique).* Professor van Hamel discusses the reaction against rationalism and materialistic science in the Pragmatists, and in Bergson, Bernard Shaw, Chesterton, Maeterlinck, etc.; and shows how this tendency is mirrored in current penal philosophy. The recrudescence of "natural rights" is an illustration in point. He concludes that the modern criminalistic doctrines are based not on pure reason, but on optimism and humanity.

The paper on *Verbrecherkliniken,* by Professor Aschaffenburg, deserves far more extended notice than we can give here. He starts with the broad principle that criminal law is a branch of applied psychology as well as of jurisprudence, goes on to discuss the various meanings of the term, "criminal psychology," and concludes that the only way of fixing its meaning and of making it serviceable in practice is to establish criminological clinics, preferably in connection with universities. Dr. Karl Meyer of the Criminal Law Commission indicates the influence of the I. K. V. on recent German projects for reform of criminal

law, especially with regard to juveniles, professional criminals and recidivists. Dr. Engelen on the basis of Dutch experience suggests as the proper treatment of beggars and vagabonds (which he makes synonymous) not punishment, but *sichernde Massnahmen,* (measures of prevention and surety), with wide discretion for judges. Professor Silovic's short paper proves that the principle of conditional sentence was well known and used in Croatia even in the 15th century. He has drafted a bill which embodies modern ideas on this important subject, and which seems altogether likely to become law very soon.

The most elaborate paper in the series is Professor Oetker's detailed monograph on abortion. He takes a liberal rather than the traditional legal view of the subject, but bears down very hard upon the professional abortionists in the project of law which he offers. Professor Heimberger points out that one of the chief objects of the I. K. V. has been to educate judges to realize that their function is not purely logical or mathematical, but that they must be concerned equally with measures for executing sentences of punishment, *i. e.,* with prison conditions and administration as well as with criminal codes and procedure. This principle was recognized in the earliest years of the Union and was frequently reaffirmed. The Copenhagen meeting in 1913 passed the following resolution, which is the summary of Heimberger's article: "The Congress observes that considerable progress yet remains to be realized in the professional education of magistrates charged with application of the penal law; it urges that, without neglecting general culture, the importance of which is essential, this education should, in the universities be turned in the direction of those sciences auxiliary to criminal law."

One of the most stimulating papers is Dr. Felisch's story of how modern treatment of juvenile delinquents has been profoundly influenced by the I. K. V. Indeed he calls the meeting of the Union at the prison of Moabit, December 5, 1891, the "birthday of modern reform in the treatment of youthful offenders." He shows how at every successive meeting the subject recurred, and how after 1901 the Juvenile Court became the special object of interest.

Professor Nabokoff pays high tribute to the late Professor Ivan Foinitzky, one of the earliest and most influential members of the I. K. V., and organizer and president for many years of the Russian branch. Dr. Kulischer follows crediting the Russian branch with such reform movements as the parole law of 1909 and the model prisoners' aid statute worked out by the Superior Prison Council in 1908.

Professor van Hamel has the last word; and very fitting, too, since it is an announcement of his retirement from his university chair at seventy, as Dutch law requires. Characteristic is his last sentence, which summarizes his whole teaching, and for that matter restates one of the principles which he helped to draw up twenty-five years ago, and which has been a guiding principle to the I. K. V. ever since: *So rate ich, Abschied nehmend, an erster Stelle zur Ausbildung und Fortbildung der Richter.*

It is, perhaps, ungracious to add a word of criticism, but it seems a pity that so important a book (for it is a book despite the fact that

it is issued as only a bulletin) should go out unprovided with an adequate index. It is to be hoped that this notable record of substantial achievement will prove an inspiration to the American branch of the I. K. V.

University of Pittsburg. ARTHUR J. TODD.

GEFANGNISRECHT UND RECHT DER FURSORGEERZIEHUNG. By *Professor Dr. Berthold Freudenthal.* Sonderabduck aus Band V. *Enzyklopädie der Rechtswissenschaft in systematischer Bearbeitung.* Siebente Aufl. 1914.

The central doctrine of this constitution of a German scholar who knows American conditions well, is that the essential regulations of correctional institutions should be contained in the national law. In the German Empire the criminal code is national, while the prison regulations are issued by administrative boards of the several states. Under a constitutional government all that affects the rights of persons and the interests of the people should be under the control of the legislature which represents the people. The danger of imposing unequal penalties on convicts, and of adding to the deprivation of liberty, injury to the body or loss of property, is considerable. Such matters should not be subject to caprice or to administrative arbitrariness. A certain range of discretion in details is admitted to be desirable. The Wisconsin Industrial Commission is working at a similar problem. (See J. R. Commons: "Labor and Administration.")

One could wish that this very competent author had discussed more fully the basis on which the law should rest, whether tradition, or assumed "principles" applied deductively, or induction from experience and results of trial. If the inductive method is to be used, then room must be provided for experimentation. The author gives generous acknowledgment of the improvements introduced in America; but these are largely due to the freedom of individual initiative and variety of experiment in the various states. We must admit that this variety and freedom have produced many undesirable effects, and that our statistical records are too imperfect to be reliable exhibits of actual results; but the advantages are great. Would it not be possible to bring our administration under a "law of correction," while maintaining at least some of the advantages of variety of methods? There should be some safe middle ground between ossification by statute and arbitrary warden-made law which sets the constitution aside for a passing fancy or invention.

Throughout the discussion of systems and methods of various countries are scattered wise suggestions of improvement. The treatment of our reformatories, parole system, "indeterminate sentence" (or "relatively determinate"), and reform schools, is brief but sympathetic and intelligent. The sketch of prison reform contains a remarkable characterization of the historic phases of development in few words. The argument for paying prisoners a gratuity is ingenious and novel. Cellular and community life in prison is treated with discrimination. Alto-

gether this short work is one of the most instructive and critical contributions to the subject and deserves translation into English to make it more widely useful.

University of Chicago. CHARLES R. HENDERSON.

ALCOHOLIC IMBECILITY. General Presentation as a Foundation for the Practical and Criminal Care of Drunkards. By *Dr. F. Schaefer,* Anstaltsdirektor, Geh. Sanitatsrat.

This little brochure of 60 pages is a very ambitious and specially difuse German effort to discuss the above question. The author divides the topics into five parts, the first is experimental results; the second, the etymology; the third is the practical; fourth, the new German method of correction, and the fifth, some general conclusions and statistics.

Under these different heads there is a great deal of elaboration and grouping of symptoms and an attempt to merge them into some particular system of movement. The American reader is confused by this effort to divide the symptoms and tabulate them.

The author evidently thinks that a minute analysis of the symptoms, which are so complex, and mixed, one with another, is a contribution to the study. In this there will be some difference of opinion. In the introduction, he recognizes and defends this effort, saying that it is necessary to a proper conception and recognition of the sickness of the drunkard.

The book seems to be intended for laymen and lawyers, and while it may appear very exhaustive in minuteness, is sadly lacking in clearness and directness of statement. Some facts are new to the ordinary readers, thus the cells do not allow certain materials to enter into them, but exercises a selective affinity for certain substances. Alcohol is one of these: it dissolves the fatty-like substitutes called Lippoids which are found between the white of an egg and the fat in the middle. The cell membrane resembles Lippoids and is most quickly disturbed by alcohol.

No other substance poisons the cells so quickly, and the largest quantity is found in the brain. When alcohol enters into the organs, it is in the form of a vapor at a very low temperature and this produces serious derangements. In the chemico-physiological action of alcohol, he mentions that it deprives cells of their acidity and thus lowers their vitality and lessens their power of resistance. Other very interesting facts are mentioned, the significance of which can best be appreciated by the pathologist.

In the methods of correction, questions of responsibility, general control and punishment, are not equal in broad knowledge of the subject to the discussions of the effects of alcohol.

Several different systems of treatment and control are mentioned that are already disregarded and proved to be inefficient.

The author is not happy in his discussion of this part of the subject, nor is he acquainted with the efforts in this country nor in England to any great extent. Taken together this little book is a very useful con-

tribution to the subject, but is by no means conclusive, and lacks in that in judicial and scientific accuracy, which is so essential now, in this subject where so much loose thinking and writing occurs.

Hartford, Conn. T. D. CROTHERS.

PRISON ASSOCIATION OF NEW YORK. Sixty-Eighth Annual Report and and Review of the Correctional System of New York State, 1912. Prepared by *Dr. O. F. Lewis,* General Secretary. Pp. 278.

The ever widening field of welfare work for prisoners is well illustrated in the Sixty-Eighth Annual Report of the Prison Association of New York. The measure of the mission of that organization is not marked merely the practical aid given to some hundreds of paroled offenders and probationers, important though it be. This is indicated by the fact that while seventy-five pages are given to describing this direct work, over two hundred pages are devoted to a discriminating description of the penal and reformatory system of New York state. The pen picture of the different departments of work carried on by the association, is both enlightening and appealing. The organization of the work into bureaus; one for the care of state paroled men, another for local probation service, and one for the relief of prisoner's families, in addition to the activities of the administrative department, shows the work of an able and orderly executive. The traditions for statesmanlike reform established in the organization of this society by Dr. E. C. Wines, and continued by Dr. S. J. Barrows, have been sustained and extended by the broad scholarship and energetic leadership of Dr. O. F. Lewis, the present general secretary.

That Dr. Lewis conceives the functions of the society to extend far beyond the rescue and relief of individuals, is illustrated by the comprehensive and adequate portrayal of conditions in the present correctional system in New York state. Both the good and the evil features are described with impartial fairness, and it is evident the writer has seen what he describes and knows what he is talking about. In addition to many comparative tables and views of institutions, the portrayal itself is so well classified that the report is sure to be read and utilized for purposes of comparison in other states. We find an illuminating statement of the scope of the problem; a statement of the different theories of punishment; a classification of the different offenders and of the institutions established for their punishment or treatment. The report shows that although the penal system of New York state is centralized and highly organized, it has nevertheless not succeeded in eliminating some of the greatest handicaps to penal reform. Its correctional system, for instance, has not become innocent of politics. While it has abolished prison labor, its long established state industries have not become self-supporting. It has at Elmira the first reformatory ever known, and with far-seeing vision, the state is practicing the best approved methods in dealing with women prisoners at Bedford; in demonstrating the feasability of the honor system at Great Meadow prison, and in the establishment of a farm colony for inebriates and vagrants. On the contrary, and

in the meantime, many of the old badges of barbarism still continue in many of the prisons of this, as of other states. The cropped head, the rule of silence, the poor food, unwholesome cells, brutality of under officials, and other features which impressed Thomas Mott Osborne, as so unnecessary in his experience, are set forth with force in this report. The general idleness in the county penitentiaries, the indefensible conditions in the average county jail, and the disgraceful buildings still in use at Sing Sing and on Blackwell's Island are attacked and scored with courage and convincing argument.

The most promising feature of the New York correctional system, as known, is perhaps in its centralized control and in the organization of its industries. It would seem from this report that the full possibilities of these features have yet to be realized by greater efficiency of administration. That the evil conditions should continue side by side with the good, is perhaps to be expected, so long as there is public indifference to the welfare of the downmost man, and the significance of his future possibilities for weal or woe. The public cannot well continue indifferent, however, in face of the facts that are systematically marshalled in the report of the Prison Association of New York. As a matter of fact, the progress already made is no doubt largely due to the influence of this and other similar organizations. Because of the publicity given by their reports and their speakers to the fallacy of the old methods and the value of more humane and rational treatment, these agencies have become the focus of the forces of welfare work for the unfortunate offender. Because of their efforts, the attitude of the public toward the prisoner is changing with the process of the suns, and with the progress of the sons of men, and with the introduction of the spirit of the Golden Rule. To this end, the publication herewith reviewed, will be a valuable contribution and should be read by all concerned in the great problem of correction.

Chicago. F. Emory Lyon.

Die Bedeutung der Handschrift im Civil-und Strafrecht. Beitrage zur Reform der gerichtlichen Schriftexpertise. Von *Dr. iur. Hans Schneickert,* Kriminalkommissar am Kgl. Polizei-Präsidium in Berlin, Verlag von F. C. W. Vogel, Leipsig, 1906. Pp. 144, V. 4.

Schneickert presents an interesting justification of the existence of the handwriting expert. The cataloguing of the different forms in which handwriting falsification and disguise occur and of the various civil suits that depend upon identification of handwriting points the need of handwriting testimony and raises the question as to the proper method of safeguarding such testimony.

He seeks to have the handwriting expert placed on a level with other experts whose services are accepted without qustion. In every field of inquiry, as he shows, the expert has won his place only gradually and with effort. Always, in every line of work, there has occurred a gradual standardization of methods of investigation and a

shift from reports of subjective impressions to objective proofs. A similar advance appears in handwriting expertness. The citing of errors on the part of writing experts cannot be quoted as evidence of the impossibility of establishing a science of handwriting identification any more than errors on the part of chemical or medical experts could be cited as undermining all faith in the sciences they represent. Nor is it fair to lay on the trained expert responsibility for the mistakes of untrained and unrecognized pseudo-experts.

None the less, the author recognizes the wide-spread prejudice against the handwriting expert and grants the need of reform in methods of procedure. The question who should be recognized as an expert raises that of his proper training and experience. The custom of regarding as an expert any man whose professional or official life brings him much in contact with writing is regretted. Such opportunity to observe handwriting does not confer the power of analysis so necessary to the expert nor determine the graphic signs of most significance. In this connection Dr. Schneickert considers the connection between handwriting expertness and graphology, the latter being defined as the art of reading character from handwriting. He shows that while the writing expert may indeed make use of the analysis of skilled graphologists, his purpose is a very different one.

In discussing the need of reform in handwriting testimony and the best way of insuring it, the author quotes copiously from men who have given the subject careful consideration, such men as Busse, Meyer, Langenbruch, Gross, and Näcke. Various suggestions are given as to the lines along which the reform should take place, with discussion of the graphic signs least subject to control, of the best methods of instituting comparison between the disputed and proved documents, of the use to be made of photography. Since the publication of Schneickert's treatise, so much has been done in the matter of utilization of modern scientific instruments in identification of writing and standardization of methods of procedure (see Osborn's "Questioned Documents") that Schneickert's suggestions have only general value.

An interesting section of the treatise under consideration is that which deals with the collection of handwriting specimens to be kept for identification purposes, a collection to begin with specimens of the handwriting of all school children at various ages. A system of docketing of the specimens of the writings of criminals is suggested, a system which has since been elaborated by the author.[1]

In the second part of his book, Schneickert translated Bertillon's exposition of handwriting identification, with its system of minute comparison and calculation of the mathematical probability of the agreement of details. Bertillon, commenting upon the use of photography in writing investigations, states that it marks the first step forward in such work since the days of Louis XIV, and moves such investigations from the subjective to the objective field. A summary is given of helps in writing investigation, such as tests of paper to show erasures

[1]Die neue Handschriftensammlung der Berliner Kriminalpolizei." *Arch. f. Krim.-Anthropol. u. Kriminalistik,* 1910, 39, 144-178.

and fractures of surface, means of estimating the time of additions to documents, the testing of inks, the utilization of finger prints—tests which within recent years have been reduced to a science.

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THE PRINCIPLES OF JUDICIAL PROOF, AS GIVEN BY LOGIC, PSYCHOLOGY AND GENERAL EXPERIENCE, AND ILLUSTRATED IN JUDICIAL TRIALS. Compiled by *John Henry Wigmore*. Little, Brown and Company, Boston, 1913. Pp. XVI, + 1179.

Professor Wigmore terms this volume a compilation, I presume, because the major portion of it is devoted to extracts from various authors and reprintings of well-known trials. However, the fact that some nine-tenths of the work is thus derived from other sources must in no way detract from its significance nor minimize the importance of the 115-odd pages in which he has contributed directly of his own constructive thinking. The extracts from 74 different authors and the 161 illustrative cases drawn from court procedure gain their significance primarily when organized as exemplifications of the author's development of his own theme.

This theme is the analysis of the principles of proof, the outlining of a probative science, independent of the artificial rules of procedure. These artificial rules of procedure (admissibility) have, in the author's opinion, tended to monopolize attention to the exclusion of what is, after all, the main activity—the persuasion of the tribunal's mind to a correct conclusion by safe materials. He seeks in this volume, therefore, to present, in tentative form, a novum organum for this neglected phase, "natural" proof, as it might be termed, the probative value of evidence as determined by logic, psychology and general experience and regardless of the rules of admissibility.

The book is intended to be used in law-school work, and in particular to encourage and to train the student of law himself to attack scientifically the analysis and marshaling into systematic and logical perspective of complex masses of evidential data. This task of disentangling proof is fully developed only in Part III; Parts I and II afford a preliminary drill in analysis. To indicate the scope of treatment it will be sufficient here to set forth the table of contents for these two parts.

Part I. Circumstantial Evidence.

I. Evidence to prove an event, condition, quality, cause or effect of external inanimate nature.

II. Evidence to prove identity.

III. Evidence to prove a human trait, quality or condition.

- a. Moral character.
- b. Motive.
- c. Knowledge or belief.
- d. Plan (design, intention).
- e. Intent.

IV. Evidence to prove the doing of a human act.

a. Concomitant circumstances.
   1. Time and place.
   2. Physical and mental capacity, tools, clothing, etc.
b. Prospectant circumstances.
   1. Moral character.
   2. Emotion (motive).
   3. Plan (design, intention).
   4. Habit (usage, custom).
c. Retrospectant circumstances.
   1. Mechanical (physical) traces.
   2. Mental traces.

V. The datum solvendum.

In Part II, Wigmore takes up testimonial evidence with reference to the effect on the trustworthiness of testimony of generic human traits (race, age, sex, mental diseases, moral character, feeling and experience), of the testimonial process itself (perception, memory, narration), the extent and sources of error in testimony and the relative probative value of circumstantial and testimonial evidence.

When these portions of the work have been mastered, the student is ready to undertake the "problems" of Part III, which consist of masses of mixed evidence taken from concrete cases and which are designed to be used for mere mental entertainment or for serious analysis and study. That is, Wigmore recommends that his readers practice disentangling from masses of evidence the logical interconnections of the various evidential items and assigning each its proper place and weight. To aid in this process he presents a new and interesting logical schema for determining the "net persuasive effect of a mixed mass of evidence." This schema takes the form of a chart, upon which numerous symbols represent the evidential items and their mutual interrelations. The symbols facilitate the process of ordering ideas into rational sequence and combination. The mere construction of such a chart has surely direct value because of the necessity that it entails for clarity of thinking. Why, indeed, might not exercises of this sort form an admirable feature of courses in logic or in argumentation for all college students, whether prospective lawyers or not?

The reviewer has no authority to evaluate this book as a contribution to legal literature, but as a psychologist keenly interested in the application of psychological experiment to legal problems, he has read this work with the greatest satisfaction and profit.

Cornell University. G. M. WHIPPLE.

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