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REVIEWS AND CRITICISMS

THORSTEN SELLIN, ED.

LA PSICOLOGIA GIUDIZIARIA. Judicial Psychology by *Enrico Altavilla,* Professor of Criminal Law at the University of Naples. Pp. xxxi, 671. Con Prefazione di Enrico Ferri—Unione Tipografico—Editrice Torinese, Pp. 581. L. 45.

This volume in the "Nuova Raccolta di Scritti Giuridici e Sociale" by Professor Altvilla of the University of Naples, on "Judicial Psychology" is one of the most important and brilliant in an exceptionally distinguished series of books on the judicial and social sciences. The passionate pursuit in Italy of that "sad and severe discipline of crimes and punishments" to which Ferri refers in his Preface (p. xxv)—"la mesta e severa disciplina dei delitti e delle pene"—has resulted in this original work which summarizes and systematizes the labor of hundreds of ardent pursuers of the fugitive and often illusory psychology of the normal and the abnormal, the honest and the criminal; and adds its own distinguished contribution in idea, in treatment and in form.

There are, says Hazlitt, in his essay on Thomas Moore, poets who can write verses but not a poem. There are scientists who can string together a mass of facts and supposed facts in amorphous and heterogeneous fashion. Altavilla is not one of these. He understands the principles of massing, of proportion, of perspective, of continuity, of seeing, in the words of Matthew Arnold, the object steadily and seeing it whole.

The work contains, besides a Preface by Ferri and a short Introduction by the author, a bibliography of twenty-six pages in which nearly a thousand authors are cited—all of whom are referred to or quoted from in the course of the work. These writers include, French, Italian, German, Dutch, Spanish, English and American authors. And curiously enough for a continental European book, the English and the American authors are by no means swamped in number by the continental ones. For instance, the English writers quoted are: Lubbock, Locke, Lewes, Hobbes, Holland, Gordon, Hack-Tuck, Hawkins, Laycok, Galton, Forbes-Winslow, Romanes, Darwin, Spencer, Sully, Bentham, Campbell, Carpenter, Bacon and Dickens—men of science, philosophers, men of letters and psychologists. The Americans are: James, Baldwin, Dexter, Swift, Poe (the psychologist), Beard (neurologist), Moore (lawyer). The French scientific men quoted from are large in number; but it is interesting to note the literary men drawn upon: Gaboriav, Hugo, Rousseau, Sarcey, Zola, De Goucourt, Bossuet, Montaigne, Voltaire.

Ferri says that the positive study of the criminal has determined the formation of four scientific branches for the psychological observation of the criminal's personality: criminal psychology, judicial

psychology, prison psychology, and legal psychology. Whether we agree or not with Hazlitt when he says in his Essay on Bentham, "who has offered constitutions for the New World and legislated for future times," that "to argue with strong passion, with inveterate habit, with desperate circumstances, is to talk to the winds," we realize at once that to determine whether he is right or wrong will necessitate a study of criminal psychology—the first division of Ferri —and probably a study of the third and fourth branches and in exceptional circumstances of the third. Altavilla divides criminological science, animated by the positive method, into "criminal anthropology which examines the genesis of the crime in relation to the personality of its author; and judicial investigation or judicial science which deals with the discovery of the author of the incriminable act and of the ways in which the crime was committed" p. xxvii. The first is divided into somatology and the psychology of the criminal, and the second into judicial psychology and judicial police. Following Claparède in this and not Ferri, he would say that legal psychology is divided into criminal psychology which deals with the psychology of the criminal and judicial psychology which treats of the various participants in a criminal investigation and trial—the defendant, the complainant, the lawyer, the District Attorney, the Judge, the jury (p. xxvii fol.). This classification differs from Ferri's in that by legal psychology Ferri means the study of the application of penal norms to minors, the infirm of mind, the drunkard, and to aggravating and extenuating circumstances—The author limits himself to judicial psychology, endeavoring at the same time to cover the scientific and the practical. The book is a work for those interested in science and scientific method and for those interested in the practice of life in relation to delinquents. The author considers either side of the subject incomplete without the other. To give an instance of his practical tendency, he says: "Judges shut up in their tower of ivory think they can dispense with psychology because they believe their judicial instinct is equal to any demand" (p. 500). Practical experience or instinctive feeling is not enough. Scientific illumination completes the round. And so with laboratory and theoretical labors. These are vain without the living influence of the realities of life.

The author is a follower of the Positive School and believes in all the consequences of the Positive School with Ferri, Lombrosi, Garofalo and the later investigators. He believes in the consequences of the study of modern criminology. Ferri alludes to these in his preface. They are the separation of the function of criminal Judges from civil Judges; the criminal law is a career; the separation of public prosecutors and judges; the separation of investigating and trial judges; for the efficient application of penal laws there is necessary a special scientific knowledge, not only of law, but also of anthropology and psychology, of legal medicine, or psychiatry; the teaching of these subjects in the law school.

I now deal with the method of the author, and his general ideas. He treats at first the theoretical psychology of the recording and reproducing process in the mind. He deals therefore with sensation, perception, fixation, conservation, conviction and reproduction of stimuli. These general ideas on theoretical psychology he does not leave hanging in the air, but in subsequent chapters from page 169 on, he applies to trials and the incidents of the trial the scientific principles of psychology, which he has discussed in Chapter I of the book. To give an instance, the first chapter, on the normal psychological process, is applied in subsequent chapters. The process of rumination explained on page 15 is applied to lawyers on page 435, in a passage which shows how a lawyer who at first approaches a client with diffidence, finally becomes imbued with his client's cause and makes the client's case his own. The first part of the book deals with the normal psychological process; age and sex; emotions and passions; individual differences; behavior; disturbances of the psychological process; the stunted and mutilated in spirit; mental diseases. The application of the psychological principles elaborated in these chapters is made in book 2 to the following subjects: The actors in a criminal proceeding (Chapter I); and under this head he deals with the defendant under whom he treats the following subjects: The questioning, judicial confessions, extrajudicial confessions, the witnesses for the defendant and simulation of madness. The second chapter of book 2 deals with passive subjects of a crime and accusers; and under this head he writes of the passive subjects of a crime; the psychology of suicide and its value in judicial investigation; accusers. In Chapter 3 he deals with the witness and under this head, the psychology of the witness, the witness under the Italian Code. Chapter 4 deals with confrontation. Chapter 5 with the psychological interpretation of documents. Next comes in an interesting and brilliant chapter, a discussion of the lawyer. Chapter 7 deals with the District Attorney. The next deals with the Judge under these heads: the psychology of the Judge, the Magistrate in his diverse functions, the juror.

Reference to one or two general ideas maintained throughout the book may be useful. The author wisely insists that there are no fixed laws because life is various. "If ignorance is a peril, very often a greater peril is an inflexible armature of notions which pretend to immobilize changeable and multiform human nature in constant and fixed laws" (p. 509). If scientists and laymen took this to heart and applied it in their every day investigations and conduct, infinitely fewer mistakes would be made. In Chapter V, for instance, page 92, there is a discussion of the behavior of the criminal. The author says that no constant laws are to be laid down but individual cases to be studied. The dogma, for example, that the innocent does not fear, says the author, is a gross error. "It follows not because the hair is rough, the dog's a savage one." You cannot put human conduct into a straight jacket. "Life is multiform, full of illogicalities, improbabilities and inverisimilitudes" (p. 514). There is there-

fore a very strong case to be made for the relativity of evidence (p. 479).

Another general idea that runs through the volume is that of individualization. The relation between the norm and the sanction, the prohibition and the penalty, occupies and preoccupies the author (p. 497); he advocates different penalties for the same crime to different individuals. "The real and genuine finality of punitive justice," says the author, "is the proportion between the measure of social defense and the incriminable act. This proportion is not possible of attainment through the implacable net work of legislative rules; and the jury with a stroke of its elbow liberates itself from juridical impediments and pronounces a verdict which is anti-juridic, but just" (p. 530).

The consequences of the application of this principle to laws recently passed in various states in imitation of the Baumes Laws of the State of New York are adverse to the maintenance of these laws. These laws make it obligatory upon the Judge to sentence to life imprisonment a person who has been four times convicted. The laws run counter to the whole of modern criminology and the American Bar Association Committee was right in saying recently in its report to the Association, July 27th, 1928, that "The 'Fourth Offender Act' should bring to the attention of the bar a very important question, that of limiting the discretion of the judge in fitting the sentence to the prisoner in the case before him. The peremptory order of the Legislature that all fourth offenders be sentenced for life deprives the judge who hears the evidence of all powers to take the mitigating circumstances into consideration; the sentence is automatic. The results of this rigidity have already caused doubt as to the wisdom of the law. Those who uphold the law point out that the fourth offender sentenced for life may always apply for executive clemency." (N. Y. Times, July 28, 1928.)

One of the most important of these general ideas which ought to be taken to heart by every student and practitioner of the subject, is the doctrine which is referred to also by Ferri, in his preface p. xxv, "Laws are worth what men who apply the laws are worth." All the law and the prophets is here.

I now select various points in the book for discussion.

The treatment of the judge deals with the dangers of the investigatory and trial process due to his prejudices and with the actual means of coming to a conclusion concerning who committed the crime. There are various kinds of judges: Subjective, analytic, synthetic, instinctive and obstinate. The personal equation and the subjectivity of the Judge are powerful influences in determining the result of an investigation or trial (pages 487 and 488). All these various characteristics of judgment have a powerful influence upon the result. The author refers to the political leanings of Judges and their tendency to reaction. This, we know, is also a universal

problem.[1] "The ideal judge," says the author, "is one who combines in himself, study, intuition and common sense." "The Court of Justice is not an academy, but a social clinic" (p. 500). The judge should therefore not use the court to learn his business but prepare for that business at the law school and in private study by disciplining himself in judicial psychology, in criminal sociology and in criminal psychology. Experiments upon human beings are expensive. The judge should be willing to learn from science, and to be flexible enough to adapt himself to the various conditions as they arise.

The question of false testimony is important in all investigations and trials. This false testimony may be given consciously or unconsciously; and it is interesting to follow the author in his treatment of the way in which conscious and unconscious errors may arise. An example of unconscious false testimony is given by hystericals (p. 332 fol.). Normal unconscious false testimony is also frequent.

"Or in the night imagining some fear,
How easy is a bush supposed a bear!"[2]

An example of consciously falsified testimony is given on page 292—a moon tale. The illustration of actual cases given by the author, some from his own experience, are very illuminating of the text. The Lincoln Moon story we find in this book as we have found it in many others. The witness says that there was a moon. Reference to the almanac shows that there was none (p. 292). The discussion on pages 369 to 371 of political parties and false testimony is illuminating. Members of political organizations, says the author, stick together and swear together. This is true not only in political organizations but, in many cases, in classes, casts, divisions of society. It is also found in any group that desires to maintain its solidarity. The Savidge case in England recently, is a lambent illustration of this principle. Mr. H. B. Lees-Smith says in his minority report "The police officers did not give the impression that they were equally frank in their evidence, but denied both the probable and improbable with equal force. The mechanical precision with which the chief police witnesses corroborated every detail of each other's statements, casts suspicion upon their evidence." (Manchester Guardian Weekly, July 20th, 1928.)

[1]See for an interesting and learned discussion the article on *"Contempt by Publication in the United States,"* by Walter Nelles and Carol Weiss King, Col. Law Rev., April and May, 1928; especially pp. 420, 531, 544, 547, 550, 551. See for England, an article on *"Constructive Contempts in England."* Harv. Law Rev., June, 1928, especially pp. 1032, 1036, 1041.

See also H. T. Peck, *"Twenty Years of the Republic,"* for criticisms of American judges; ed. 1906, especially pp. 268, 318, 319, 363, 371-2 (income tax cases of 1895). For England, see *"The State Trials"*; and for an example in literature see "The Pilgrim's Progress," Lord Hate-good.

For an amusing and instructive discussion of bias and prejudice of the Judge at Common Law and by Statute in this country, see an editorial in the N. Y. Law Jour., Aug. 6. 1928.

[2]Cf. Macaulay, *"Essays Critical and Historical,"* Everyman's Library, Vol. II, p. 266.

The author is impressed with the dangerous quality of the association-test as applied to the participants in a trial, especially as applied to the defendant. This matter is discussed in Munsterberg's "On the Witness Stand" and in many articles during the last twenty years. The author believes that the test is highly perilous to the interests of the defendant. He may have read about the story of the crime or in some other way the associations that arise in his mind are the associations that the psychologist believes would arise in the mind of the person who had committed the crime (page 185).

The discussion of the lawyer brings up some points of interest. The author believes that there is a professional deformation of the intellectual and moral faculties of a lawyer just as there is in the case of a judge or district attorney or any other functionary who is subdued to what he works in (page 437). The author is probably right; but there are unquestionably a great many exceptions to the rule. There is, in a large number of cases, I dare say, only an apparent deformation—a specific or ad hoc deformation—a deformation that appears only when the individual is working in certain surroundings, that is, practically speaking, when the lawyer, for instance, works in the environment of a trial. Outside of that environment, the individual and moral faculties may remain sound. There would be little hope for lawyers or for society in general, considering how easy it is to become professionally deformed, if this professional deformation were carried over into other fields of activity, from the particular business or the special profession.

"A lawyer should never have direct contact with witnesses and should never inspire testimony which is not according to truth" (p. 440). That a lawyer should not interview his witnesses is a European conception, rather than an American one. On the continent of Europe and in England where the bar is separated into solicitors and barristers, the solicitor prepares the case and interviews the witnesses and the barrister just tries it. But the rule laid down by the author seems to be not only harsh in itself and unwise, but seems also to differ from the actual practice in the various countries on the continent of Europe and in England. The trial lawyers do have some contact with their witnesses and in a great many cases know what testimony they are going to give, not only because depositions have already been made by these witnesses and these depositions are read by the trial counsel before trial, but also because there is some interviewing of the witnesses. In England, it is my belief, the interview depends upon the barrister and no immorality or unethical taint attaches to a lawyer who interviews his witnesses. The author's stern rule, however, has, as I can testify, as an American of long experience in the practice of law in this country, a great deal to be said in favor of it.

I am glad to see the author refer to the tremendous strain upon a lawyer during the course of a trial and the "intellectual spasm in which the brain is thrown in order to give it some power of intuition, of divination" (page 440).

On the method of preparing speeches, the author seems to violate his own rule of flexibility and adaptibility to various circumstances. He quotes from Sarcey (p. 459) on the method of preparing a speech for a trial and the author comments that this is certainly the best way of preparing that kind of speech. Here the author is betrayed into accepting as a universal method, a method which is applicable only to certain individuals. There are various methods of preparation, and the method a person will adopt will be different from the method other people will adopt; and, in fact, the method a person adopts on one occasion, will be different from the method he adopts on another occasion. "Life is multiform and has no fixed laws." Individualization should be accepted and applied here also.

Of cross-examination, the author has some very interesting things to say, particularly on drawing out the witness by leading questions and the effects upon testimony of this method of procedure: "The witness who formerly did not have an exact remembrance will speak in perfect good faith in the presence of the judge, having even perhaps forgotten the colloquy with the attorney which led him to the opinion which he is expressing. . . . It is therefore of great importance for the valuation of the truth of a witness, not only to know his relations of friendship or blood with the parties, but to know who has induced him to speak as he has and why, to know if he has spoken with the parties and in what the conversation has consisted (p. 378).[3]

The discussion of the jury will interest every citizen as well as every lawyer. The author quotes Claparede's definition of a jury: "A heterogeneous mob, not anonymous, made up of individuals incompetent in respect to the judicial matter and the judicial facts" (p. 527). The author follows Claparede in his low opinion of the jury. "I say that without any fetishism for the institution of the jury, the defects of which are so much greater than its qualities, as to be considered an anachronistic institution which must disappear" (p. 530). The difficulties under which the jurors work on the Continent, where they cannot discuss the matter among themselves even after the case is over before decision (p. 528) make this opinion of the author more understandable. And yet his criticism of the judge and his prejudices is scathing and complete. If there are defects in the jury, there are defects also in the judge. Not only in the ordinary case, but also in the exceptional cases of political or social crime. In the discussion of the question as to whether the trials should be left to persons of particular technical competency, that is, to judges of special training, the author refers to his opinion that the jury should be abolished, and asks the question whether all kinds of cases should be left in the hands of the judge, including political cases. "The juror," he thinks, "may more easily be the expression of a

[3]An interesting, learned and powerful discussion of professional deformation and the ethics of the lawyer will be found in Macaulay, op. cit., Vol. II, pp. 290, 315-318.

particular moment in history and not the supreme exponent of a regime, even if that regime be agonizing. But with all this, how many dangers jurors present with their affirmation of a partisan principle, with their sectarian spirit which is not even disciplined by a sense of responsibility and by the preoccupation which the necessity of a written and reasoned opinion may cause to spring up in the mind of every man of intellect and conscience" (p. 535). Every man of intellect and conscience! But this is just the kind of man that the author says does not exist because of the defects of human nature; and cannot from the nature of the case exist. A judge is just as much as a jury, particularly in moments of crisis, a partisan, a narrow sectarian spirit and all his discipline and education make him the worse in his prejudices. We saw that everywhere in the world during the late war.

"The political criminal confesses with joy in a spirit of exaltation" (pp. 214-215). He does not accuse others (p. 258). "There are few cases where there is no psychic disequilibrium," says the author (p. 215). But there are few cases in any kind of crime where there is not a psychic disequilibrium of some sort. And there are few cases in which no crime has been committed and in which there is no psychic disequilibrium. The perfectly equilibriated man is still to be found. Even the most superficial observation leads to the conclusion that the weaknesses and defects of human beings are myriad and that no one is exempt from them. And the more distinguished the qualities the more prominent the defects. It is easy, according to the point of view of the observer, to make these defects out to be psychic disequilibrium.

The question of the jury is discussed with a great deal of common sense and scientific value. The matter of the quality of the jurors is now being passionately discussed in the City of New York and various organizations have come forward to serve on juries. The reasons for the low estate of the jury are the large number of exemptions under our laws and the large number of evasions of jury duty by citizens. These evasions and exemptions are much fewer in the European countries than they are here. A tightening of the reins by the legislature and the judge will do wonders. Judges allow interminable examination of prospective jurymen by the lawyers, and lawyers select and select till their choice has whittled the jury down to insignificance. It takes days to select a jury here, by this method, whereas it takes minutes in England and on the continent of Europe. The first group of twelve men in the box is almost invariably accepted. "It is surely not the fault of business men alone that they make up only 1 per cent of our jurors, while citizens less intelligent make up the other 99 per cent. It is to a large extent the fault of our courts, and of our absurd system of selection, which eliminates almost all candidates except out-and-out-morons." (Editorial in N. Y. Morning World, Aug. 5, 1928.)[4]

[4]"The way to improve juries is for men well qualified for jury duty to quit shirking it. . . .

"Part of the distaste for jury service brought out in recent discussion is the

A word should be given to the police school. A matter which touches the lawyer and the citizen intimately is the question of the education of the police in the matter of giving testimony. Schools should teach the police how to observe facts and record testimony (pp. 374-375).

In concluding this desultory discussion I refer to the author's treatment of women in his chapter "On the psychological interpretation of documents." "The letters of women have postscripts more often than ours. I do not believe this is due to their weaker memory but to the unsatisfiable quality of their expression, be it true or false. I do not say that in all women's letters there are errors in spelling but I must confess that the abundance of these errors is one of the most constant notes of the weaker sex. This also is a form of the "almost so" (del presso a poco) which is a quality in large part of the work of women and which proves intellectual weakness" (p. 413). The author will have all the scientific women at his heels. He will be particularly harassed by American women, not only because conditions in this country have made it possible for women in large numbers to go into the sciences and the professions, but also because thousands upon thousands have obtained college educations and have certainly learnt the art of spelling.[5]

Let us now make a few comparisons between the Continental European law and procedure and the Anglo-American. At the outset, let us refer to our discussion of the lawyer in this review. The author says, (p. 427) that the practice of criminal law is not held in high esteem. "The profession of the criminal lawyer is surrounded by a sense of admiration veiled with disesteem. It is recognized

reluctance of citizens to be 'bullyragged' on the stand by lawyers using, as the Merchants' Association politely expresses it, 'the wide latitude of examination counsel are permitted to make of prospective jurors.' . . .

"A reform of court amenities in the treatment of persons drawn for jury duty would probably decrease the dodging habit." (Ed. in the N. Y. Her. Trib., Aug. 15, 1928.)

[5]Let Altavilla, however, take heart. Let us see what the gallant Macaulay—Englishman and stout Whig to boot—opines. I quote from *"Critical and Historical Essays,"* Everyman's Library. Vol. II, p. 203, "a lady's reason" (1830); p. 628, ibid. (June, 1831); p. 537, "the colloquial incorrectness and vivacity of style." But, strange to say of Macaulay, the syntax leaves the reader in doubt whether the phrase is attributed to Mrs. Thrale or to women in general. The former, I should think. (Sept., 1831); p. 564, "in true woman's English, clear, natural, lively." (Jan., 1843); p. 457, "It is proper, however, to remark that Mrs. Aikin has committed the error, very pardonable in a lady. of overrating Addison's classical learning" (July, 1843).

For the curious I give—as you would give citations to cases with parenthetical summaries of the decisions—other references to woman's characteristics or to the characteristics of some woman, according to Macaulay: p. 577 (concealing age); 590 (ingratitude); 591 (jumping to conclusions without evidence); 597 (lack of political knowledge); 612 (Madame D'Arblay "vindicated the right of her sex to an equal share in a fair and noble province of letters"). The characteristics of women writers are: "fine observation, grace, delicate wit, pure moral feeling."

In the thirties Macaulay thought not highly of woman's reason, though he admired her style. In the forties he thought not highly of her classical attainments, but he praised her abilities in the domain of novel writing.

that the profession is an expression of culture and of an intellectual keenness and agility which is not common but it is realized or people think they realize an ethical inferiority and a pernicious social mission." "I really think," says United States Judge William H. Atwell of Texas, now sitting in the Southern District Court of New York, "that the public disgust at the administration of law is traceable to the unethical conduct of lawyers. . . . The man whose case is desperate and not just seeks a lawyer not because he is learned in the law, but because he is an expert at chicanery and sharp practice." (N. Y. Times, July 31, 1928.) No. There is a contradiction here. If the conduct of lawyers is unethical, in most cases if not in all, it is the conduct of clients that is first unethical. The judge puts his finger upon the festering sore of our body politic, but his interpretation of the sympton leads to an erroneous diagnosis. The lawyer should be blamed. But the citizen who drives the lawyer to illegality should not escape. The pressure, every practicing lawyer knows, is unbearable. Clients want results, not learning. They want successful issues, not brilliant and learned disquisitions and arguments. They do not approach the lawyer of known honesty and ethical practice. They leave him to starve. They make a straight and rapid drive for the man who is likely to help them by hook or by crook. If perchance the ethical lawyer falters, he soon totters and falls—the tragic victim of dishonest clients and corrupt social environment.

On the question of confessions, the author has a discussion in which he quotes the New York Criminal Code, (p. 198). He realizes the dangers and difficulties of confessions, judicial and extra-judicial, especially those obtained through fear or favor (p. 221). But in spite of all the drawbacks and the perils he still believes that confession is the queen of proofs (p. 229). He thinks, however, that the Continental European method of accepting the confession without corroboration as absolute proof is not as scientific as the New York method of accepting it as proof only if the confession is corroborated by other testimony. How to obtain the confession, therefore, is the great problem which is discussed on page 222. The author shows no excessive tenderness to the criminal, yet he desires the application of safeguards to confessions and the prevention of the third degree.

Altavilla is in favor of the interrogation of the defendant at the outset of a trial in order that the judge and the jury may know what the defense is (pp. 195-196). This of course is the usual procedure in Continental European countries. Compare this procedure with that in New York criminal trials where for a few years now, the rule has been for the defendant's attorney to open the case to the jury immediately after the opening of the case by the District Attorney.

The District Attorney is the subject of a detailed and keen examination by Altavilla. His social and judicial functions are extremely important and may be highly dangerous to the citizen. A psychological investigation brings the author to various interesting

conclusions, among which is that the District Attorney, just as other functionaries, undergoes a professional deformation. He is, in other words, subdued to what he works in. He becomes adapted to the particular environment in which he is just as I previously said the attorney for the defendant does; and this professional deformation colors and taints his whole attitude toward the defendant, and the other participants in the case, as well as toward the evidence (p. 469). For instance, according to the theory of the law in Italy, it is his duty to call witnesses for the defense as well as witnesses for the prosecution—as is the rule and practice, in large part, in England. But this rule, the author says, is violated in his country and the District Attorney calls witnesses only for the proof of his own case. This is the situation we find in this country. So far as I know, in no State of the Union, is the District Attorney obliged to call, by the law witnesses for the defense. But the implied principle based upon long history and tradition in Anglo-American law, is that the District Attorney is a quasi-judicial officer and that as such it is his duty to bring forward evidence for the defense as well as evidence for the prosecution. "You may consult thousands of trials without finding that the District Attorney has once called a witness to give testimony for the defense; and if at any time, he calls witnesses who have been produced during the investigation by the defendant, it is only because the District Attorney desires to ask them concerning circumstances favorable to the prosecution" (p. 472). This is true also in this country. "The man called to jury duty is awake to discover the difference at quick glance between the official charged with the preservation of society and the man defending an individual member of society. He exhibits the same nervousness and the same harshness. The jury sees them sparring like two roosters for personal advantage. The prosecutor should be fair in every way and impress the judge with his judicial attitude." (Atwell, J., in N. Y. Times, July 31, 1928.) In England, the rule of judicial impartiality is observed more faithfully.

Whether, at the time of the trial, testimony should be given spontaneously or by questions and answers is one of the most important questions in the law of evidence and in the investigation of truth. The author leans to the spontaneous method, (p. 28) and shows the difficulties and the dangers of the method of question and answer (pp. 512-513). He gives an experiment conducted by Binet, in which four kinds of statements were made by a witness: (1) The spontaneous statement; (2) The statement made upon specific and insistent questioning on a particular circumstance, without the judge's expressing his own opinion. (3) That made on questioning with light suggestion. (4) The statement made on questioning with strong suggestion. The larger part of those who gave spontaneous testimony responded with accuracy to the experiment. The percentage of errors, on the other hand, in (2) was 26, in (3) was 38 and in (4) was 61.

This is, if true, of great usefulness to the lawyer, to the judge and to society, which, above all others, is interested in the ascertainment of truth.

On the continent there is a full preliminary investigation by a judge and this investigation is recorded. The witnesses sign statements and these statements are read at the time of the trial. In our country there is, of course, no investigation by a judge but only by a District Attorney who gathers evidence for the prosecution. The author seems to think that, considering the psychology of testimony and the circumstances under which witnesses and others have to work during an open trial, truth is less ascertainable during a public trial than it is in the preliminary investigation by one or more judges, and an informal trial before a tribunal, made up of men, adept in law, sociology, psychology and psychiatry. This seems to be a legitimate inference from the reasoning of the author (p. 509).

The author very rightly says that reputation evidence is not only not admitted in the Italian courts, but should not be admitted; and that the only kind of testimony to be admitted is testimony concerning specific instances of a person's conduct (p. 383). Of course the objections in Anglo-American law to the bringing up of specific instances of conduct are very well known to gentlemen of the bar. But members of the bar and the bench have not considered sufficiently the perils and the stupidity of reputation evidence. Any lawyer who has had any practice at all at the Bar, knows how perfectly futile and inane is reputation evidence as it is given in our courts.

The author says, (p. 385) that questioning by the Judge is better than questioning by the parties. This contrasts the methods of the Continental European and the Anglo-American. The questioning of the defendant and the witnesses is, in Europe, done by the Judge. In this country and in England it is done by the parties. The author believes that because of the professional deformation of the lawyers, meaning the District Attorney, the attorney for the defendant and the attorney for the injured party, who takes an important part in European trials, the questioning by the Judge is preferable. The author seems to forget that he himself forcibly argues that the Judge himself suffers a professional deformation. On a general view and looking at the matter from every angle, it seems that if there is going to be an open and public trial, the trial should be conducted, not by one man from the bench, but principally by the parties involved and their representatives, with the Judge holding the central position as he does in England.

Americans are wont to believe that the presumption of innocence is not known in Continental Europe. This is a mistake. The author shows, (p. 470) that the presumption of innocence is valid there as it is here. But in truth, how much does the presumption of innocence amount to, even here? It is a theory rather than a fact.

The psychological effect upon witnesses at the public trial of statements which they have already made before the investigating Judge, is discussed at length (pp. 516, 517, 519). There is no steno-

graphic reporting on the Continent, or I believe even in England, and the depositions of witnesses in the preliminary investigation and in the actual trial is not done by giving the exact words of the question and answer. But the gist of what the witness says is put down by the Judge and the witness, to whom the statement is read, signs. In this country, even statements taken by the District Attorney during the investigation of the case, are made by means of a stenographer, so that at the time of the trial, if the statement is necessary to be read, it is read exactly as it was made by the witness. The author believes that a great many mistakes are made because of the method of taking statements in the preliminary investigation and in the actual trial. In the open and public trial, the Judge takes notes, and it is these notes that go to the higher court. I was surprised in a recent trial in England to read the criticism, that the case was prolonged at the time of the open trial because the Judge insisted upon taking elaborate notes which were used as the basis for the appeal. Fortunately in this country, for years the Judge has had no function, so far as taking notes for the Appellate Court goes. The record made by the stenographer goes before the Appellate Court.

A recent case in England, the Savidge, caused not only a great deal of discussion in England and an investigation, but has made the government totter. This shows how careful of civil rights and the liberty of the individual, the English are. Miss Savidge was arrested with another in Hyde Park. The case was brought before the Magistrate and the Magistrate dismissed, with a reprimand to the police. A few days after Miss Savidge was taken from her place of business by representatives of Scotland Yard for an examination before them.

The Manchester Guardian Weekly, of July 20th, 1928, Page 42, makes the following comment:

"Two main conclusions seem to follow. The first is that the present method of taking statements at Scotland Yard is open to grave objection. The precise words of the witness are not taken down, but, by the detectives' own admission, a sentence is composed which is supposed to embody the question and answer. In the course of a long examination, in which the witness is certain to grow tired and less competent to check the report, a skilled detective can easily give the words of the witness a sense which they were not intended to bear. The remedy is clear. An exact shorthand note should be taken of all such interviews. Finally we come to the most important conclusion of all. In a letter which the Director of Public Prosecutions addressed to Sir Leo Money's solicitors he appeared to imply that anyone from whom he desired information was under an obligation and might even in some way be compelled to make a statement in answer to questions by the police. If any such power exists, it is time that the public knew its precise nature and extent. In general, when a person is asked for a statement by the police, he should be clearly informed, first, as to the purpose and bearing of the questions to be put to him, and, secondly, told that he has the legal right to refuse to answer them if he likes. He should, further, be given the opportunity of obtaining a friend or legal adviser to be present at the taking of his statement."

New York City. ROBERT FERRARI.

LIFE AND DEATH IN SING SING. By *Lewis E. Lawes.* 267 pp. Doubleday, Doran and Company, Garden City, 1929. $3.00.

This book is a human document, rather than a scientific treatise. With keen observation, and out of twenty-five years' experience in penal institutions, the author relates many of the dramatic happenings that occur in the daily life of such a place.

The publishers say: "Warden Lawes explodes almost every popular notion about crime and criminals in this book, which is full of the dynamite of irrefutable fact. He shows that criminals are average human beings, and do not belong to a special class with peculiar physical and mental characteristics." The reading public may say that the writer's statements are rather strong. For, after all, it is one thing to say that some men in prison are better than many people outside of prison and quite another to imply that most prisoners are as good as the majority of citizens. Yet I think that impression would be carried to many readers.

That there is not, however, such a wide margin of difference between the ins and the outs, and that many people violate laws without knowing it, or without punishment, is effectively shown. Numerous popular fallacies about the criminal are exposed—such as that he is something other than a human being, or that punishment (the more the better) will cure or prevent crime. The superstition that the law is infallible, and results in equal justice to all, is shown to be contrary to experience. "Law and right and justice are unfortunately synonymous only in the abstract and not in practice." Numerous instances are cited of the well-known inequalities of sentences imposed by different judges for the same offense, or by the same judge at different times or under varying moods. As to prison discipline, which has been something of a fetish in the minds of wardens of the old school, Mr. Lawes has a very different conception. "Discipline is not synonymous with harshness, inflexible rules, browbeating, and the breaking of a man's spirit. If a man is ever to return to society he will need spirit and courage." The author disclaims being in any sense a sentimentalist, but he believes that vengeance is definitely out of line with any Christian civilization. The idea that severity will deter others from committing crime, he holds, is as absurd as to suppose that whipping Johnny in a Brooklyn school will frighten Tommy into good behavior at Chicago.

Two very strong chapters are given to the discussion of capital punishment—the first one under the caption, "Why I Changed My Mind!" For nearly twenty years this warden believed in the social necessity of capital punishment. Since coming to Sing Sing in 1920 his observations have been such as to convince him of both its injustice and futility. His arguments are well sustained and his citations are dramatic. The author clearly pictures the modern trend of penal treatment from punishment to the protection of society. But protection, he insists, involves much more than mere custody, and should prepare the prisoner for ultimate release and restoration to good citizenship.

And there again, is the final question. Suppose a new purpose is awakened by the best program of prison treatment, training and education? What does the state do to help the released prisoner carry out that better purpose? Practically nothing, it is admitted.

A telling picture is drawn of the difficulties of that situation, and the author advocates the raising of a special fund for the rehabilitation of these thousands. One wonders why reference is not made to the dozen or more Prisoners' Aid Societies throughout the country that are rendering heroic service, with inadequate support, in placing, supervising and giving relief to large numbers of such applicants.

This book is a thought provoker, is easy to read, and should be owned by every one interested in the prison problem, and especially in the personal equation involved in the study of crime.

F. EMORY LYON.
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THE CHILD OF CIRCUMSTANCE. By *Albert Wilson, M. D.* xx + 420 pp. William Wood and Company, New York, 1929. $6.00.

Dr. Wilson died after correcting the last proofs of this book. He was a man not only prominent in his own profession, but one of those lovable and kindly men who are never hardened by medical routine and who always have a soft spot in their hearts for their unhappy or unfortunate brothers and sisters. The book deals in general with criminology. Not in a particularly objective and scientific way, but in a manner much more delightful to the casual reader. The first section discusses the question as to who the criminal really is. Dr. Wilson's attitude towards the delinquent is the attitude of a long-suffering father towards a naughty child who is suffering from arrested evolution and imperfect development of the brain. As Dr. Wilson says, "The Great Architect of the universe has left the delinquent unfinished. We cannot expect normal reactions from this class of humanity." The second section deals with abnormal mentality: questions of multiple personality and of dual personality. There is also an interesting subsidiary chapter on Professor Freud and his dogmas. To this chapter are appended a number of subsidiary paragraphs of which, perhaps, the most interesting is entitled Religion and Materialism. Section three discusses the manner of dealing with the criminal, the administration of justice, prison systems and prison psychology. Section four is a general consideration of prison methods in various European countries and in America. The chapter on American Penology contains some rather careless statements. Perhaps, the best chapter in the book is contained in the last section entitled Physiology, namely, chapter 26 on Sex. The writer holds that sex is not absolutely pure and that there is no pure male or any pure female in the adult stage. In every female there is a latent maleness and in every male femaleness is hidden (p. 386).

The book could easily have been cut down to half its present size, but, although often diffuse and made up of short chapters inadequately connected, it is pervaded by a spirit of kindliness and by an attempt

to understand and to sympathize with delinquents which may, of course, be classed as faulty sentimentality, but which, nevertheless, has a definite attraction of its own.

Baltimore, Maryland. JOHN RATHBONE OLIVER.

ESSAYS IN THE LAW OF LIBEL. By *Leon R. Yankwich, J. D., LL.D.* iii+310 pp. Parker, Stone and Baird Company, Los Angeles, 1929.

This book presents not so much a series of essays on the law of libel as an outline digest of much material from which comprehensive and authoritative essays on the law of libel might be fashioned. As printed the book is nothing more than the bringing together of cases and outlines of briefs under various topics and subdivisions of topics in the law of libel. Nevertheless, the book has considerable merit. It does give the law of libel in condensed, pithy form. It is a good book for newspaper men to read and have about in newspaper offices. Attorneys hunting for a quick aid will find it useful. Students in law schools can use it as a substitute for a good notebook in the section of a course in torts which deals with libel. The usefulness of the book is enhanced by a good topical index and lists of cases and authorities cited. But, there is an almost complete lack of reference to the various law reviews. This, to the reviewer's mind, is a serious omission. The law reviews have become the finest depositories for the very best thought of the country on legal topics. Had references to the case-notes "comments" and articles in the law reviews been included the value of the book as a reference book would have been considerably increased.

ALBERT LEVITT.

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CRIMINAL COURT STATISTICS. By *Hugh N. Fuller.* 126 pp. mim. State Department of Public Welfare, Atlanta, 1929.

In the last decade criminology has been advanced rapidly by two types of investigation. Case analyses of individual delinquents have exploded most of the ancient theories concerning the nature of the criminal. Surveys of the administration of criminal justice have indicated many conditions in courts or other administrative agencies favoring, or at least not unfavorable to, the increase of crime. Both types of studies are supplementary in their aim to individualize justice.

Of the surveys of criminal administration those which have differentiated between the many classes of crime are most informative. They show us what types of crime are most frequent and repetitive, furnishing an objective basis for the extension of case analysis. This monograph is a survey of six courts in Georgia for the decade. January 1, 1916, to January 1, 1925, covering a total of 89,671 defendants. It includes three city and three superior courts. Each of these courts has misdemeanor cases, but the superior courts have exclusive jurisdiction over felonies. Crimes are divided into classes varying from 15 to 25

and the frequency of each class is stated by years and grouped for purposes of summary in the following arrangement—amount and disposition of business, time of disposition, and certainty and severity of punishment.

Though the type of business varies in each of the courts, the following results of this survey are worthy of notice: (1) In each court the amount of crime has increased and may be traced to the peculiar variations of different classes of crime. (2) Each of the city courts, contrary to the practice of the superior courts, used the nol pros. method of disposition liberally. (3) In time required to reach a verdict the city courts showed an increase, while the superior courts tended to decrease in this respect. (4) Judging severity of punishment by length of sentence, there was no central tendency, two courts tending to increase sentence, two decreased sentences, and in the remaining two there was no significant change. (5) In the successful establishment of guilt four courts showed an increasing proportion of cases resulting in this verdict while two decreased. Since the purpose of this survey was simply to state the facts no effort was made to furnish a specific list of recommendations. It was suggested, however, in view of these tendencies that misdemeanors be restricted to the city courts and felonies to the superior courts.

As a whole this survey is a first-rate piece of work, requiring an enormous amount of statistical sorting and computation. It is clear in every respect and offers excellent material for comparisons. It is liberally supplied with Tables and Figures, all of which add materially to the reader's comprehension of the problems involved. Though in some sections there is a comparison of the operations of two or more courts, there was no tabular or graphical comparisons of all the courts. If the data were comparable, such comparisons would have facilitated a better understanding of the entire study and especially of the trends in specific crimes and their treatment.

HAROLD A. PHELPS.

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THE HANGMEN OF ENGLAND. By *Horace Bleackley, F. S. A.* xix+272 pp. Chapman and Hall, London.

For those who like to dabble occasionally among the interesting, but relatively inconsequential bypaths of criminology, Horace Bleackley has collected a store of objective and essential trustworthy details about the more noteworthy English "Finishers of the Law" who held that office in London between 1714 and 1883. Brief notes on earlier and later hangmen are also included and incidental references are made to executioners in other parts of the realm. The traditions and the slowly changing technique of the profession are illumined by the details presented and considerable light is thrown upon the conditions surrounding their exercise. Those who were hanged receive as much notice as those whose livelihood and fame depended upon the need of others to be hung. Many sidelights upon such incidentals as prison discipline, the

crowding of graveyards, and the use of bodies for medical study, appear in the narrative.

The book is an earnest attempt to deal honestly with a minor subject without treating it as though it were the world's most important problem. The receipt of A Hangman's Diary, being the Journal of the Public Executioner of Nuremberg, suggested to Bleackley the possibility of assembling and amplifying his notes upon the English hangmen, for "if I did not sing of our fellows it seemed likely that no one else would celebrate them, with the result that German supremacy must remain unchallenged." The literary style is a combination of sober recording coupled with lighter comments of a gossipy sort. John Rice, who was hanged by Thomas Turlis in 1763 " . . . is said to have been the only stockbroker who was ever hanged, which suggests that lucky escapes have been prevalent." Such glints of humor are necessary spice in a narrative that too frequently becomes a tedious record of the number and type of persons hanged. Several plates add to the value of the book.

For the criminologist who is seriously interested in the English hangmen the book has little to offer. It is descriptive rather than analytical, and the facts presented are much more useful in satisfying one's curiosity about superficial items than they are in contributing to an understanding of the nature and social and legal status of the hangmen themselves. The frequent use of contemporary newspapers as sources casts doubt upon the trustworthiness of the account in certain details, especially in view of recognized journalistic errors in reporting the names of executioners. Perhaps the author's tendency to end his interpretations when he is just on the verge of rounding out a bit of worthwhile knowledge many intrigue someone to carry the effort a bit further. If Mr. Bleackley were writing this review, he would undoubtedly say that he often came to the end of his rope too soon.

Boston College, Boston, Massachusetts. ALBERT MORRIS.

THE TREATMENT OF ADULT OFFENDERS AND CHILDREN IN LUZERNE COUNTY, PENNSYLVANIA. 98 pp. The Welfare Council of Wyoming Valley, Wilkes-Barre, 1929.

This study and analysis, with recommendations, was made at the request of the Wyoming Valley Welfare Council, with the endorsement of Hon. W. S. McLean, President Judge of the Luzerne County Courts. It is the third in this series to be published, having been preceded by the Berks County and the Beaver County surveys.

The Luzerne County study is the most practical yet made, in that it presents a series of recommendations which offer means of coöperation between the social agencies in Luzerne County and the public authorities. The study is divided into three parts; that of children, family relationships, and adult offenders. It points out clearly the lack of social treatment and the inadequacy of institutional care, while it shows that without a sympathetic understanding on the part of both social agencies and public officials, there can be little progress made.

Each has its field, but only through coördination that comes from understanding, can there be adequate planning in the entire field.

Mr. Stern emphasizes the modern thought in treatment of offenders, laying particular emphasis upon probation with trained personnel. The need of case records with careful investigation applied to circumstances is plainly indicated.

Such studies are useful, however, only if they are brought before the community through intelligent discussion and newspaper publicity. This the Wyoming Valley Welfare Council is attempting to do, and it will be some months before it can be seen whether there will be response on the part of both citizens and social organizations. Then comes the need of attention and official action by the public authorities. These studies should be encouraged, and Mr. Stern is to be congratulated upon the care with which he has presented the facts.

B. L. Scott.
Pennsylvania Prison Society, Philadelphia, Pennsylvania.

Canadian Penal Institutions. By *C. W. Topping, S. T. D., Ph.D.* With an Appendix by Malcolm T. MacEachern, M. D., D. Sc. xiv+126 pp. The Ryerson Press, Toronto, 1929.

The author is Associate Professor, Department of Economics, Politics and Sociology at the University of British Columbia. He was given an opportunity to study carefully penal institutions of the Dominion of Canada, and reports his impressions in the handbook.

He comes to the conclusion that the six Canadian penitentiaries coming directly under the Minister of Justice and the Superintendent of Prisons for the Dominion are fulfilling their purpose; that certain of the penal farms or reformatories are distinctly a credit to their authors, but that the jail system of the various provinces is particularly bad, in some provinces actually hopeless.

The volume is similar in content and treatment to the book entitled, The English Prison System, by the distinguished English penologist. Sir Evelyn Ruggles-Brice, published several years ago. It is more of a description of the institutions and a recital of the plans and hopes for their future development than a critical analysis such as the exhaustive treatise by Hobhouse and Brockway, of English Prisons. It does not seem to be as complete as a similar work issued under the auspices of the American Society for Penal Information and called the Handbook of American Prisons. Nevertheless, there is much food for thought in the book and those who are really striving for improvement and efficiency in our American prisons would do well to consult this volume.

Sanford Bates.
U. S. Department of Justice, Washington, D. C.

Principles of Judicial Administration. By *W. F. Willoughby.* xxii+662 pp. The Brookings Institution, Washington, 1929.

This work is an attempt to disclose the problem of administration and to ascertain the means by which it can best be met. Although

the author has not hesitated to make suggestions of his own, his primary effort has been to make known and in a measure to broadcast the best thought of those members of the bench and bar of America and of the various special committees and commissions on judicial and administrative reform who have been laboring during these recent years. Many references are made to the writings of Mr. Herbert Harley in the Journal of the American Judicature Society, and the author candidly and generously admits that without the inspiration of this editor and of this publication, his own volume would hardly have been written. Although. as before stated, the author feels free to express his own views, the book as a whole is a summary of the teachings of the American Judicature Society and of the facts and conclusions which have been arrived at and disclosed by the Missouri and Cleveland crime surveys and of the investigations in the police field which have been conducted by Raymond D. Fosdick.

The author appears to be a modernist in almost all matters of administrative reform. He believes in administration rather than in adjudication. He believes in commissions and he believes in conciliation and arbitration. Perhaps if our courts functioned more adequately, there would be a lesser demand for these devices, and by unification of our system of courts and the creation of judicial councils, the author seems to hope for much in this direction. There is really in the book nothing that is particularly new. Investigations, in fact, have been made everywhere and point to the same conclusions, and it is, perhaps, a pity that the work in question was published before the study of the Illinois Association for the Promotion of Justice and other similar studies now in process or already completed were presented to the public, since these studies would have served to emphasize many of the conclusions arrived at by the author and have disclosed the fact that there is no great difference in the administration of the law in the various sections of the country; that the problem of crime and of the administration of the law generally is a national problem and that like conditions beget like results. The chapter on Police is a good chapter, but it might well be read in connection with the reports of more recent crime surveys. The desire that the office of coroner should be abolished and something more adequate put in its place, evidences a wish which is fervently expressed in the Illinois Crime Survey. The strictures on the grand jury are not local or confined to the State of Ohio. The protest against the general inefficiency which prevails in the administration of the law is everywhere to be found, as well as the desire for the elimination of political control in all of these matters. Everywhere, also, is to be found the desire for an independent judiciary and everywhere the conclusion that our judiciary is not independent enough. The question, however, still remains as to whether a democracy can be induced to surrender its powers. Legislatures are extremely difficult bodies to deal with. Much public sentiment must be aroused. The work in question, therefore, if serving only as a summary and a re-affirmation of protests, criticisms and suggestions which already have been made, by combining them in

a unified and acceptable form, will be extremely valuable in creating an intelligent governmental thought, which, though steadily growing in volume, so far has made but little impression upon the minds of the legislator and the minds of the voter. The late Senator La Follette was fond of saying that the cure for the ills of democracy was more democracy. The work in consideration, however, as do hundreds of other similar productions, serves to emphasize the fact that what is needed is not more democracy, but a more intelligent democracy. To this intelligence the excellent summary before us will add materially, as it presents in an admirable form facts and conclusions and the results of a great amount of study.

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