

RIVISTA PENALE DI DOTTRINA, LEGISLAZIONE E GIURISPRUDENZA. Rome. Vol. IV, No. 4.

In the only number which has yet reached us of this review of criminal law about thirty-five pages are occupied with a digest of recent Italian decisions, in the same form with that of the journal above mentioned. The verbal extracts from the courts' opinions are placed, however, in notes occupying a very large portion of each page; and as the type is small, though clear, we are thus furnished with a very satisfactory collection of criminal decisions, well worth the attention of all students of criminal law who can read Italian. "An account of the Prisoners' Friend Society of Rome" (*La Società di Patrocinio pei Liberati dal Carcere dalla Provincia di Roma*), with its constitution and some other documents relating to its work, will also be found [pp. 322-336] in this number, besides a couple of critical articles upon the new penal code of Italy.

KRITISCHE VIERTEL JAHRSSCHRIFT FÜR GESETZGE-
BUNG UND RECHTSWISSENSCHAFT. München. New
Series, Vol. 1, No. 3.

Theories of law have been divided by Bierling—whose work (*Zur Kritik der juristischen Grundbegriffe. I. Theil.* Gotha, 1877) is reviewed by Geyer in this number of this the most interesting of all German legal periodicals—into two great classes; those which find the obligatory force of the law in the character of the legislator, and those which find it in the nature of the law. Each of these is again divided into three groups of theories. The first into (1) the theocratic or religio-political, (2) the natural-absolute, (3) the idealistic group. (The last partakes of the nature of the second class, but belongs here because it assumes the existence of a *Volksgeist*, distinct from all individual minds, and acting in and through the legislator.) Bierling criticises these, and holds (a) that the decision of the question as to the binding force of law cannot be found in any quality of the legislator as prior to, or above, the law; and (b) that the theories of this class all logically lead to the conclusion that what makes the law law is its recognition by the members of the community as the rule of their common life. Or, as the definition is more fully given by B. in another passage, which is worth quoting chiefly for the prominence it gives to the element of recognition

(*anerkenennung*): "A legal rule is distinguished from all other rules by this, and this only: that it is uniformly recognized by the members of a certain community or body of men as the rule of their common social life." This "recognition," however (as B. goes on to say), is not to be confounded with a compact. It does not imply a conscious voluntary act, as compact does; it is not a single act expressive of the common will, but an habitual course of conduct with reference to the legal rules so recognized. Neither does it, like a compact, imply at least two distinct contracting parties. It is a constant, uninterrupted, habitual respect for, or sense of obligation toward, or subjection under, certain principles or rules. The recognition of a law, as such, implies that these rules or principles are accepted by the majority of the members of a certain community or political body as the norm and rule of their common social and political life. All this may be accepted, so far as it treats of the importance of recognition as a constitutive element of law, whether we agree or not in B.'s further effort to show that the rules of private corporations, etc., are "*Recht*" in the same sense with the laws of a State.

B.'s second class embraces the theories which find the constitutive element of law, (a) either in its origin from a common will or a common conviction, or (b) in its character as enforceable, or (c) in the ethical nature of its rules. Under a he includes all theories of social compact—that of the popular sovereignty (the sovereignty of a majority of the citizens), the doctrines of the historical school, and that which treats law as a natural organism.

J. A. SUEFFERTS' ARCHIV. FÜR ENTSCHEIDUN-
GEN DER OBERSTEN GERICHTE IN DEN DEUTSCHEN
STAATEN. Neue Folge, III Band. Der ganzen
Reihe, 33. Band. III. Heft. Herausgegeben
von A. F. W. Preusser. München; Druck und
Verlag von R. Oldenbourg.

Readers of the recent *Pandecten*, and similar works by German jurists, must have been struck with the remarkable change in the authorities they quote. Down to the time of Savigny and Puchta, the long lists which composed the "literature" of their notes were made up entirely of speculative works, monographs, articles from the legal periodicals, etc. A reference to the report of an actual case was rarely ever found