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Book Reviews

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BOOK REVIEWS

THE LIMITS OF JURISPRUDENCE DEFINED. By Jeremy Bentham. Edited by Charles Warren Everett. Columbia University Press, 1945. Pp. xxii-358. \$4.50.

Mr. Everett may be remembered by readers of this JOURNAL as author of *The Education of Jeremy Bentham* (1931) which was sympathetically reviewed in these columns by Dean George W. Kirchwey (1932, Vol. 32 pp. 512-4).

By the present labor the future fame of Bentham in this country deservedly rests in Mr. Everett's hands as it does for England in the hands of Professor Ogden. We speak of Bentham's future fame. There is no question of his past fame. He has long been recognized as one of the greatest figures of his time. Legislation as a science has stood in its tracks since Bentham's death in 1832, and there can be no doubt that if and when the need of such a science becomes recognized as one of the greatest contributions for the well-being of organized human society, the writings of Bentham on this subject will be collected in a systematic fashion and carefully weighed.

As may be noted, the present volume appears in print more than a century after Bentham's death. Mr. Everett fixes the date of its composition in the year 1782 (p. 3)—163 years before its present publication. It was intended by Bentham as the second volume of his now famous classic, *Introduction to the Principles of Morals and Legislation*.

The work of Mr. Everett in the publication of the present volume has been laborious and competent. It was produced from microfilms of the original Mss. resting in the vaults of University College at London. Something of the difficulties encountered by the editor may be gathered from an inspection of a facsimile page (opp. p. 53). Mr. Everett has added a preface of his own and a helpful editorial introduction.

While Mr. Everett undertakes a kind of abridgement or summary of the ensuing book in his Introduction, he seems rather abruptly to end his analysis with Bentham's remarks on *privilegia* and finds occasion to discuss a hypothetical case of a holding company, the Alpine Milk Chocolate Co., Ltd. His argument based on Bentham's touchstone, utility, seems to us of somewhat doubtful legal validity. We are not convinced that Bentham would have accepted the editor's radical viewpoint. We believe the able editor would have rendered a greater service to the reader if he had continued with an analytical review of Bentham's classification of law and his ideas of how legislation is to be framed to attain the qualities of "precision, perspicuity, and conciseness." It is curious to observe here that apparently nowhere either in the author's text or in the editor's comments and notes is there even a single reference to Bentham's essay on Nomography (which is found in Bowring's edition of Bentham's works). In this same connection it is interesting to observe that Bentham's justified (as we think) attack on the "license of interpretation", meaning "liberal interpretation—that delicate and important branch of judiciary power, the concession of which is dangerous, the denial ruinous"—will not easily be abrogated. In a recent *cause célèbre* an important court has declared that the word "production" of goods includes "distribution" of goods. The question is

how can such "licentiousness of interpretation" be checked? The qualities of precision, perspicuity, and conciseness, alone it would seem, afford no remedy.

As to the present work, Bentham himself has not inaptly characterized it as "long-winded and abstruse". When this book was written it was a century in advance of its time, but the printed book (so far as it contains new matter) is largely outmoded. Yet nothing that Bentham wrote is unimportant, whether "long-winded" or not, and while much of his writing is repetitious, nothing in his immense writings can safely be neglected. While much of the present work is tiresome reading, yet here and there will be found flashes of brilliant insight. We have never seen a better (nor a more acidulous) statement of the nature of our Common Law. His brief discussion of that difficult idea, "possession", seems to be in accord with the best juristic views of our own time. His discussion of the nature of "power" is not altogether clear. In the beginning (p. 57) he denominates power as a fictional entity, but later and throughout he treats it as a "real" entity.

We may perhaps be permitted to express regret that Bentham did not live a century later when the important codes of the 1800's came into being. His observations on these later codes would have been, we have no doubt, of the greatest value. The legislation of Bentham's own time was still based on the conveyancing model. Much improvement has come to pass in the form of legislation, but the science of legislation is still in its adolescence, and it is precisely here we believe that Bentham's ideas will have an important influence, greater in the years to come than in his own day.

The book is filled with typical Benthamic neologisms. Bentham was a sound Latin and Greek scholar and that neologisms are in bad repute among lawyers indicates only that the profession of lawyers has not yet outgrown its apprentice traditions.

Since the industrious and able editor has performed a notable labor in producing Bentham's unpublished Ms., we venture to suggest that he make a complete list of Bentham's neologisms. Some of them, as is well known, have been adopted (e.g. codification, international, substantive, adjective). We would also venture to hope that the editor would explore the relations between Bentham and Austin and trace out how far Bentham influenced Austin. (The Austins were familiar friends of Bentham.)

Of Bentham himself Talleyrand said (quoted by Prof. T. E. Holland): "*Pillé par tout le monde, il est toujours riche*".

ALBERT KOCOUREK.

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MUNICIPALITIES AND THE LAW IN ACTION. By Charles S. Rhyne (Ed.). Washington, D. C.: National Institute of Municipal Law Officers (1945). Pp. 500, \$10.00.

This volume on the proceedings of the 1944 War Conference of the National Institute of Municipal Law Officers—the eighth in the series—is as welcome as the preceding seven volumes. It is one of the most useful records of government in action at the local level, and therefore represents a profitable source of information for both

practitioner and academic research scholar. Although all the articles—each written by a city attorney—are interesting, three perhaps stand out in importance to the student of criminal law administration: "Creating Jobs by Elimination of Blighted Areas in Cities"; "Protection of Civil Liberties in Wartime"; and "Traffic Court Reform."

The thesis of Walter J. Mattison's, "Creating Jobs by Elimination of Blighted Areas in Cities," is that the rebuilding of blighted areas is necessary to municipal solvency, the realization of the goal of sixty million jobs, and the control or abolition of crime, disease, delinquency, and poverty. It can readily be demonstrated that urban blight has resulted in a migration to the suburban districts, thus lowering taxable assets and weakening the city's financial position. It is more difficult to demonstrate that full employment is contingent upon blight and slum elimination, for, however important the task, it overlooks more significant issues of domestic and international economics and politics. The author, of course, is on sound ground in relating crime to the existence of blighted areas in cities. Mr. Mattison's solution for building up slum areas in metropolitan centers with new residential housing is federal financing at low interest rates, or, as a second alternative, state and local cooperation through the interstate compact with the Port of New York Authority as a model. The only question that could fairly be raised in connection with the author's excellent analysis and sound suggestions is whether his attack on the safety provisions of city building codes is entirely justified (p. 248).

Barnet Hodes in his, "Protection of Civil Liberties in Wartime," is entirely correct in declaring that civil liberties have been better protected during this war than in any other in which the United States has participated. He rightly states that the ". . . fears that the United States would become a dictatorship or that the President in his combined capacity as Chief Executive and Commander-in-Chief would exercise power comparable with that of dictators in totalitarian countries, have been entirely without foundation" (p. 266). The excellent summary of all the important civil liberties cases rendered by the Supreme Court in the past year, which are discussed in the article, serve to bring the author's conclusion into sharp relief and emphasize it.

The traffic court problem is gradually beginning to receive the serious consideration it merits in the administration of justice. Joseph H. Crowley in his article on "Traffic Court Reform" rightly points to the significance of the state-wide conferences in thirty-four states which last year gave attention to the problem. Practical encouragement was forthcoming from the creation of traffic courts in Seattle, Washington and Portland, Oregon. Indeed, the conclusion can be reached that the efficacy of traffic courts in local administration of justice has been sufficiently demonstrated to prophesy increased adoption in the near future. The emphasis in the future program probably should be on the education of the traffic court judges in the importance of their work, as deterrence in traffic violations has a direct relationship to the lowering of criminal violations.

WILLIAM S. STOKES.

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A CONCISE PLAN FOR THE ORGANIZATION OF A STATE DEPARTMENT OF CORRECTION. By Harry Elmer Barnes. (Including an Outline of State Correctional Systems in All States by Charles L. Chute and Frederick W. Killian.) The Institute of Local Government, Pennsylvania State College, 1945. Pp. 65. Mimeographed. No price quoted.

The second part of this publication will be considered first. It presents a convenient compilation setting forth the barest details of the administrative setup of the correctional system in each of the forty-eight states and in the District of Columbia, but it does not give an operational picture of the systems. A perusal of this section makes very clear a well-known fact, namely, the diversity of the organization of state correctional systems.

The first part of the publication presents recommendations for the establishment of a state correctional system. Much of the paraphernalia of the "new penology" is to be used. There are recommendations for non-political appointment of qualified personnel, an integrated program for all phases of the correctional services, in-service training, a central diagnostic service staffed by several types of professional correctional workers, a diversified institutional system, institutional classification and behavior clinics, development of a career service, and a host of other familiar penological "musts." There are recommendations in regard to the institutional setup, its administration, personnel, industrial and agricultural problems, educational, health, and recreational programs, and in regard to other aspects of the operation of institutions. There are a few suggested improvements of jails (state control, consolidation, etc.), but it is not made clear if the author thinks that the jails should be an integral part of the state correctional system.

If the prolific (from John Howard's day) formulation and publication of plans, recommendations, and surveys for the launching of the "new penology" (from John Howard's day to our own time) were accompanied by action, Utopia in the prison world would have been here long ago. There is nothing new in the recommendation set forth in this book. Maybe sheer repetition of the prescription for the "new penology" will bring the prison millennium nearer.

Only two sentences are devoted to the idea that "the correctional administration should carry on continuous scientific research." In the opinion of the reviewer, this idea deserves a great deal more attention than it has been given in this book. Research should be just about the most important part of the whole correctional system at the present time, and a correctional system should be organized with this in mind. As a matter of fact, research is essential even to determine if a great many of the recommendations set forth in the book under review are feasible and if they accomplish what they are supposed to accomplish. For example, the recommendation that some non-reformable offenders should be incarcerated permanently is sound. But a tremendous amount of research will be needed before it can be determined who is non-reformable. The continuous development, alteration, and improvement of the correctional setup can best be effected on the basis of sound and extensive research and controlled experimentation.

It is urged that prisons should have "character education—teaching the virtues of general reliability, honesty, energy, thoroughness, and the like!" Maybe research should concentrate on the deter-

mination of the best and most effective method for the inculcation of these good character traits. After the method is discovered, it could be applied in the public school system and in the Sunday schools, and then there would be no need for prisons and correctional systems!

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THE ONE HUNDRETH ANNUAL REPORT OF THE PRISON ASSOCIATION OF NEW YORK. 135 East 15th Street, New York City, 1945, Pp 117.

This excellent report covers the year 1944—the one hundredth year of the existence of the Prison Association of New York. In this *Journal* Vol. XXXV, No. 5 we commented on the public services of this organization and of the succession of distinguished penologists who have been active in it as Directors and General Secretaries. One of the most worthy of them all is the present Secretary, our colleague, Mr. E. R. Cass.

The present report includes a recital of important measures that the Association has initiated and fostered during the years; current recommendations for state action; brief notes on the activities of the Association during the year and extended papers on timely subjects as follows:

THE EXPERIENCES OF PAROLEES IN THE SERVICES, by Lt. Col. Oliver P. Bennett.

THE ARMY'S NEW CORRECTION DIVISION; ITS PURPOSE, FUNCTION AND ORGANIZATION, by Col. Marion Rushton.

THE NAVY'S CORRECTIONAL PROGRAM, by Col. Emmett W. Skinner.
FIGHTING DELINQUENCY FROM WITHIN, by G. Howland Shaw.

As a whole the report is a model because of its stimulating and readable character.

ROBERT H. GAULT.