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LITERATURE.

THREE GREAT LAWYERS.

Beccaria, Bentham, and Romilly.

"Three Criminal Law Reformers (Beccaria, Bentham, Romilly)." By Coleman Phillipson. London: J. M. Dent & Sons.

Dr. Phillipson, who is Professor of Law at the University of Adelaide, is the author of many books on legal subjects, and although this is the latest in publication, it is not the last written. The whole book, including even the preface, was completed in July, 1914, but the intervention of war prevented its earlier appearance.

Cesare Bonesana, Marquis of Beccaria (1735-93) was an Italian writer on moral and political philosophy, and a close student of Montesquieu. His best known work was "Crimes and Punishments," which has been long recognised as singularly in advance of its time, but, remarks a writer on the subject, "so far in advance that while he raised during his life a furore in Europe he is now, like Jeremy Bentham, not read at all." That however, is manifestly an incorrect generalisation, for Dr. Phillipson has read the works of both men very thoroughly, and no doubt his enthusiasm concerning them will attract other students to follow his example.

Jeremy Bentham (1748-1832) is described as "a writer on law and political economy whose influence was greater than his fame." "He wrote, among many other books, a valuable work on prison discipline, which was the basis of experiments by the British Government. Bentham was the prophet of utilitarianism, and it is stated of him that 'he was regarded as a Solomon by money-lenders, precepts from his 'Defence of Usury' being hung round their rooms like Biblical texts in a Sunday school.' Although he did not invent he was the first to popularise the theory of the greatest good to the greatest number, which is at the foundation of utilitarianism. His disciples included Mill, Romilly, and other great men, to whom may evidently be added Professor Phillipson.

Sir Samuel Romilly (1757-1818) was an honored law reformer. As Solicitor-General he proceeded to amend the severe criminal laws of the day. He instituted enquiries into transportation and confinement in hulks and vigorously opposed the suspension of the Habeas Corpus Act, 1817. His observations on the criminal law of England as it relates to capital punishment are well known.

Professor Phillipson, who dedicates his book to Sir Courtenay Ilbert, Clerk of the House of Commons, and himself a writer on legal and constitutional subjects, leaves little to be said concerning the three great men whom he has here associated and compared. His book is at once a testimony to his industry, his erudition, and his literary and analytical skill. The care which he has devoted to the work is indicated not only by the text but by the exhaustive table of contents, by the tabulation of books of reference, and by the copious index. It contains 132 pages, but he has exercised great pains in condensation, and the result is a clear, concise, and connected narrative, although each of the men is treated separately. "Our great men are our most precious inheritance. Let us then," he says, "with pride and exultation, perpetuate and cherish their memory, so that, by reflecting on their lives and deeds, our souls may grow to the light." He has certainly given great help in this direction by the comprehensive manner in which he has set forth the lives, the theories, and the achievements of the particular great men whom he has selected for his elucidation and eulogy.

The three essays, he says, are meant to be taken together as supplementing each other, and as constituting one whole. "We are concerned with but one epoch, one movement, one phase in legal evolution which represents in many respects a turning point in European history, and is of the utmost importance in the development of our modern civilisation. Beccaria, Bentham, and Romilly are among the greatest law reformers of modern civilisation. In their assault on the folly, injustice, and cruelty of the then existing criminal jurisprudence, in their

trenchant criticism of outworn codes, obscurantist traditions, blind superstitions, dogmatic technicalities, oppressive fictions, and useless relics of the past, in their proposal of rational substitutes, in their pointing the way to the light, they were intimately united. Their resemblances, like their differences, are as striking in their work as they are in their personal characteristics. In the case of Beccaria we shall see vital conceptions and principles of penology in the process of germination and crystallisation, we shall see them in their triumphant conflict with the prevailing regime of sanguinary laws and barbarous methods of procedure. In the case of Bentham—that myriad-minded man, the dauntless explorer of institutions, the arch-legislator, ever ready, in his jealously guarded 'hermitage,' to make laws for all the nations of the earth—we shall see a prodigious multitude of ideas, schemes, and systems, lavishly given to the world from a rich mine that could, surely, never be exhausted; we shall see this prolific progenitor scattering them broadcast, infusing new life into many barren places, raising the hopes of peoples that were worn out with despair, and leaving his successors a legacy which, despite the numerous borrowings from it of several generations, still possesses valuable treasures. In the case of Romilly—that true and saintly soul, that man of noble disinterestedness and self-abnegation, of unspiced purity and scrupulous rectitude, that man of Promethean courage, animated by an ardent love for his fellow creatures—we shall see those ideas and projects brought before a legislature; we shall see him advocating them with ceaseless energy and untiring perseverance, and eloquently pleading the cause of reason and humanity; we shall see the adventures encountered by those ideas and projects in the presence of the legislature, which, confronted with innovations that were deemed contrary to ancestral wisdom, showed itself now timorous, now obstinate, now panic-stricken, now furiously hostile.

"It will be perceived, then, that these three men, chosen as representative protagonists in the movement, are closely related to each other by a connecting link, which is not merely historical, but clearly doctrinal, organic. Indeed, Bentham explicitly proclaimed his indebtedness to Beccaria, and Romilly similarly acknowledged his to both Beccaria and Bentham. Now, they were all three—and this is another point of affinity—in touch with France and with the French philosophical and political movement—they were all three indebted to the doctrines of French thinkers of the time. Accordingly something is said here of men such as Montesquieu and Voltaire, Helvetius, Diderot, and some of the other encyclopedists, in order to show the kinship that was so frequently evoked."

Beccaria's principles and conclusions were adopted and elaborated by Voltaire, Bentham, Romilly, as well as by contemporary reformers. He pointed out, says Professor Phillipson, that the entire edifice of criminal jurisprudence should be based on the principle of the greatest happiness to the greatest number, and that penal justice should be moderated by the element of humanity. He questioned the legitimacy of capital punishment, and, if he failed to convince everybody as to its total abolition, he certainly contributed much to bring about its rapid diminution in the case of a great many offences. He insisted on the careful proportioning of penalties and crimes. He showed that in the conduct of human affairs, the guidance of the head, which is so prone to play the tyrant, should be supplemented by the ineradicable feelings of the heart.

Of Bentham Professor Phillipson says, quoting other admirers, he "was created to be the inventor and patentee of legal reforms," and he "holds a place among the masters of wisdom, the great teachers and permanent intellectual ornaments of the human race." "If we bear in mind the nature and importance of his work," he affirms, "its originality, its enormous extent, its many-sided character, its universal influence, its far-reaching practical results, and its perpetual virtues, we are tempted to proclaim Bentham the greatest legal philosopher and reformer the world has ever known."

The professor, however, reserves a high position for Romilly, of whom Augustine Birrell wrote:—"Among the many brilliant

lawyers who have fitted through the House of Commons, I know but one of whom I could honestly say, 'May my soul be with him.' I refer to Sir Samuel Romilly, the very perfection, in my eyes, of a lawyer, a gentleman, and a member of Parliament, whose pure figure stands out in the frieze of our Parliamentary history like the figure of Apollo among a herd of satyrs and goats." In his lifetime (says Professor Phillipson) Romilly, a daring pioneer, reaped scanty fruit; his successors, however, gathered, and are still gathering, a rich harvest due to his sowing. He made it infinitely easier for the generation coming after him to dispel the old errors, prejudices, and tyrannies, to shake off the bondage of noxious traditions, and to introduce in criminal law numerous salutary changes of an almost revolutionary nature. Accordingly, his work occupies a place of supreme importance in the evolution of English jurisprudence. Sir James Mackintosh declared that Romilly's moral character stood higher than that of any other conspicuous Englishman then alive. In the opinion of Lord Brougham, Romilly was the first advocate and the profoundest lawyer of his age.

In dealing with each of the three men of whom he has written Professor Phillipson gives a biography and a description of the age in which he lived, and the formative influences brought to bear as well as an analysis of the works written. The book accomplishes all that it was designed to do, and perhaps more, for the personal portraits are so realistic that the men, as well as their work, become familiar to the reader.

NEW ATTENDANCE RECORD University Tutorial Class

All attendance records were broken this year by the Workers' Educational Association. Dr. Heaton, who is in charge of the classes and will leave for Britain tomorrow, said that enrolments last year were doubled, and it might have been expected after that phenomenal spurt that there would have been something of a setback. When the numbers went up, however, it was found that 693 students enrolled in 1923 as against 645 in the preceding year. When one considered that the financial resources available for this branch of University work were mortgaged up to the hilt and that consequently it was impossible to establish any new classes the excellence of this achievement would be realised.

At least another 300 people, especially in country centres, attended lecture courses and study circles, so that about 1,000 inhabitants of this State were brought into direct contact with the University of Adelaide.

But quantity alone was not a sufficient test, said Dr. Heaton. The quality of the work improved during the year just closed. Students read more, entered more actively into the discussion which followed each lecture, and were persuaded to write many more essays. But the most encouraging feature was the increase in social activities. About 200 students had met regularly on a Saturday evening in each month at the W.E.A. Club. Some of them formed a Public Questions Circle, which met fortnightly to discuss such subjects as regulations, prohibition, effective voting, and other topics.

"At the end of seven years' work," Dr. Heaton added, "we can claim to have established ourselves as an integral and not unimportant part of the mental activity of the State, and it was encouraging to note that in both Houses of Parliament during the present session tributes were paid to the work we have done."

"What of the future? Our activities will unfortunately be somewhat restricted from lack of adequate resources. Parliament has given us a very welcome increase in our grant, but not as much as we had hoped for. We want to do much more work in country centres, and have always urged upon the Minister of Education that if the drift to the cities is to be checked then our country cousins must have among other things some of those educational advantages which town dwellers enjoy."

"So far as we can we shall make a big effort to grant more country requests for lecture courses and the like. We hope to provide lecturers for Gawler, Freeling, Bordertown, Riverton, Murray Bridge, Mount Barker, Renmark, and shall probably make a start on the West Coast. The country work costs so much more than town work because we cannot get a concession on travelling expenses, but in spite of that your country readers can rely on us to do our utmost to help them educationally during the year."

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Attitude Towards Criminals

(By Professor Coleman Phillipson.)

There has been of late an increasing sense of civic responsibility and a recognition of social interdependence, but in the important questions of crime and punishment and the administration of criminal justice the public does not yet take sufficient interest. The attitude of a country towards these matters may perhaps be taken as a significant test and index of its real progress and civilisation. The opinion of a few zealous and thinking citizens is not, in a democracy, an adequate substitute for an enlightened public opinion. A sound public opinion is indispensable if we are to deal successfully with one of the greatest of our social problems—the penal treatment of adult occasional and habitual offenders and juvenile delinquents. Our failure to reach a satisfactory solution is due to three causes—first, ignorance or disregard of the mental and moral make-up of criminals, who have generally been assumed to be monsters that are to be crushed by humiliation, hardship, and terrorism; secondly, vague notions of the nature, grounds, and aim of punishment; thirdly, apathy of the community at large.

Development of Views

Our modern ideas, which seem to us so elementary, are the result of a long process of evolution. For example, the distinction between civil and criminal law, between intentional and unintentional, between substantial and formal responsibility, proof, the function of an impartial Court, its judgment backed up by the force of the State, and so on. Even now, the difference between crime, sin, and vice is not understood by many people. An act may be all three at once, though neither a sin nor a vice is always a crime, and a crime is not always a sin or a vice. In primitive society there was no distinction. The reaction against wrongdoers acts shows three stages in social evolution. The earliest was private revenge, vendetta, or blood feud; next came the intervention of a governing authority, that is, State retaliation, or punishment proper; lastly, self-defence of society, supplemented by the reclamation of offenders. Thus the phases in the development of criminal justice are the same as those in the general mental evolution of mankind, namely, animistic, theological, metaphysical, and scientific.

Primitive Society

The earliest human group is animistic. What takes place in nature to man, or what happens to man is due to be due to spirit-beings, who must be coerced or propitiated by magic or religion. A wrongdoer is possessed by an evil spirit. At first the attitude towards him is one of vengeance, which is a reflex action of self-defence. The growth of tribal organisation and the distinction arises between private