BOOK REVIEWS

BENTHAM'S "A FRAGMENT ON GOVERNMENT AND AN INTRODUCTION TO THE PRINCIPLES OF MORALS AND LEGISLATION." Edited by Wilfrid Harrison.* New York: The MacMillan Company, 1948. Pp. lxvii, 435. $2.25.

JEREMY BENTHAM AND THE LAW: A SYMPOSIUM. By George W. Keeton** and Georg Schwarzenberger.*** London: Stevens & Sons, Ltd., 1948. Pp. viii, 266. 20s.

The past year marked the two hundredth anniversary of the birth of Jeremy Bentham. Among the many commemorative volumes which have appeared, the above are particularly worthy of attention.

Of the several score of great men in English legal history, there are scarcely more than a half dozen known today to laymen and lawyers alike. Certainly Blackstone and Bentham hold the most enduring place in man's memory. Under these circumstances it is perhaps worth while to inquire into the qualities of personality, of activity, and of performance which have preserved their names in contemporary thought.

With Blackstone preparation certainly was not the explanation for he had only the most conventional training common to upper middle-class boys of the early 1700's. Nor was it accomplishment as a lawyer, for his early attempts at the practice were so unsuccessful that he retired almost immediately to the security of academic halls. There he wrote his famous *Commentaries.* As a result of the publication of these volumes he left academic life for a fling at politics. Thereafter, finding himself inept as a member of Parliament, he happily accepted a judgeship where he served without particular distinction until his death. His success as a writer seems dependent entirely on his literary skill, for he lacked an accurate understanding of the law, and glossed over all its difficulties; but because the *Commentaries* were available in America when the need for a modern treatise on English law was at its height, his reputation was assured. The avail-

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ability of his work gave him a monopoly in early American legal education, but we must not fail to appreciate that with all his faults Blackstone did what no other man of his time had done—he wrote and published an up-to-date commentary on English law.

An explanation of the success of Jeremy Bentham requires greater inquiry and more searching explanation. His beginnings were not dissimilar to those of Blackstone. The son of a Tory lawyer, he was educated at Oxford and sat as a student under Blackstone with whom he almost immediately disagreed. His first published work, *A Fragment on Government*, was a sharp attack and criticism of Blackstone's *Introduction to Government*, published in the *Commentaries*.

Like Blackstone, Bentham did not remain long in the active practice. His was to be a scholar's life and a politician's. His investigations reached the entire breadth of social, economic, legal and governmental problems. The fertility of his mind, coupled with his boldness of action, leaves him claimed by every social science as its own. He was a lawyer, philosopher, economist, penologist, sociologist, philologist, statistician, and in addition he conducted experiments in many of the physical sciences. Extensive as Bentham's publications are,[1] the larger portion of his writings remain in transcript form. If and when these writings appear, they will contribute to Bentham's continuing influence in the social sciences.

Bentham had a trait which Blackstone lacked, a propensity for drawing to him sharp minds and active young men—John Stuart Mill, Romilly, and Dumont. These and others carried forward with modification and amplification Bentham's theories, until today the great majority of his proposals have found their places in our social, economic and legal system.

Viewed from the standpoint of the twentieth century, with government ever increasing its regulation of individual affairs, Bentham appears as a disciple of Adam Smith, but to his contemporaries Bentham was thought of as a radical philosopher. Bentham, however, could accept laissez faire as a postulate without the necessity of following it as a

1. See, for example, the eleven volumes of THE WORKS OF JEREMY BENTHAM (Bowring ed. 1843).

dogma and here lay his constructive genius. He did not let a postulate interfere with utility as he saw it. If a hands off policy of government resulted in particular evils to individuals he saw no harm but, on the contrary, great reason for government to correct the ill. However, he recognized that people were likely to know their own interests better than the government and he thought that they would be more vigorous in the assertion of their rights than any civil servant. But if the interest of an individual, and his ability to assert it, became impaired by the very complexity of social organism Bentham felt that the individual, being no longer able to protect himself, might rightly turn to government for aid.

Bentham recognized the practical necessity of translating theory into action. It was here perhaps that he differed most from Blackstone. Blackstone was content to record and glory in the legal system. Bentham could see neither glory nor contentment in a system which left men starving, subjected them to unreasonable punishment, and left them "free" to protect themselves when they had no capacity to do so. It was this quality that earned Bentham the title of "social reformer."

Reformer he was, and perhaps the most successful one in the entire annals of Anglo-American history. It was Bentham who instigated the Law Reforms, who proposed and campaigned for universal suffrage. It was Bentham who gained legalization of the trade unions; who proposed general education at the public expense; who fought for free speech and free press; who started a civil service system based on merit; who urged the repeal of the usury laws, the registration of land titles, reform in local government, and the establishment of a social security system. In addition, Bentham's varied interests included such diversities as the creation of a new alphabet, excursions into mathematics and the building of an iceless refrigerator.

To re-tell and extol Bentham's accomplishments, however, is not the purpose of this review. It is rather to point out that the key to his success lay not so much in his writings but more in his willingness to face existing problems and seek their resolution by means presently practical and immediately available rather than to insist upon solutions of ultimate logic or of utopian idealism. Bentham's rational

approach to reform, the *Principle of Utility*, produced in his own time the beginnings of a wholesale and broad-fronted movement the details of which have been expanded and improved but the postulates of which have not been materially changed in the more than one hundred years since Bentham's death.

Herein lies both a challenge and a warning to all lawyers and social scientists. They must not rest content with a passive role in society, for theirs is a responsibility which exceeds description and recommendation. They must accept the obligation for achieving the adoption of their proposals. This implies energetic participation in political activity. To compound tract upon treatise, even though the contents are sage and sound, is not providing the professional leadership to which society is entitled.

The legal scholar too has wallowed in the pool of descriptive analysis and remained lost in the morass of inconsequential criticism of legal procedures. With the almost terrifying array of legal talent which our nation now possesses it is not only surprising but disappointing to note the real paucity of broad-scale inquiries into the function or operation of our legal system. The fact that the Cleveland Crime Survey, now more than twenty years old, still is remembered as a landmark stands as mute testimony to the lack of scientific investigation and practical programs for law reform. In a society which no longer accepts the expense of craft production and hand-made articles the legal system seeks to keep pace with machinery discarded two decades ago by business and industry. Yet where are our Benthams who have the insight to cut through the historical accumulation of unnecessary human labor involved in our legal machine and the courage, the conviction, and the determination to achieve reform in our time?

For those who feel responsibility, for those who feel Utopia is not yet, for those who desire to dream but also to build there is no better starting point than Bentham himself.

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