

Limits of Jurisprudence Defined, The. By Jeremy Bentham. Edited by Charles Warren Everett. New York: Columbia University Press, 1945. Pp. xxii, 358. \$4.50.

In going over the Bentham manuscripts in the library of University College, London, Mr. Everett eventually succeeded in identifying some twelve hundred pages of unpublished manuscripts as belonging to Part II of Bentham's *Introduction to the Principles of Morals and Legislation* (1789), which has long been regarded as a classic in its particular field. Patient editorial work eventually resulted in the present publication; and there can be no doubt that this Part II will at once take its proper place beside Part I in all large libraries, and its citations and references will soon be as well known to students of ethics, government, and law, as are the citations and references from Part I. In reviewing what is the first publication of this important work, I shall first discuss the author's method, his vision, and his results. I shall then proceed to deal with what the editor has accomplished in detail.

As a thinker, Bentham is a member of what is called the British School of Empiricism, whose chief lights are Locke and Hume. He is further influenced by the exact developments, on this basis, achieved by the *Idéologues* in France, especially by Helvétius. In general, the background and outlook of this school survive today in the "neorealism" of S. Alexander and Bertrand Russell.

For this school, the function of philosophy is largely to clarify concepts. It is believed that human ideas are analyzable, without exception, into "images" which are relatively vague and fluctuating continuations of what were originally sense-data (*sensa*), arranged in rather simple relational patterns which give them precision. The function of the philosopher is to take such ideas as "power, right, prohibition, duty, obligation, burden, immunity, exemption, privilege, property, security, liberty" and a multitude of others which are not "realities" but "fictitious entities" (Bentham), and analyze these into the simple sensory and perceptual experiences which constitute their real origin. The simple experiences are direct, and go behind language to "the things themselves." They are clear, vigorous, and unmistakably precise.

The Aristotelian Scholastic method of defining *per genus et differentiam*, remaining as it does within an established linguistic system, does not go behind words to "the things themselves" except at second hand. Locke's method of enumerating the simple experiences or *sensa* which lie at the root of all complex linguistic formulations, and proceeding to build up, step by step, the "mixed modes" which constitute the "fictitious entities" dealt with in the social sciences, restores factuality and clarity to the work of social scientists. Hume's "mental microscope" which concentrates, with even greater precision, upon the direct "impressions" in which all complex ideas originate, introduces certainty into the field of the metaphysical.

A thinker of the stamp of Bentham thus does not hesitate to call himself a metaphysician, to conceive it as his professional business to clarify, in the way indicated, the ideas and practices of lawyers, judges, and legislators, and to provide a clear, distinct, analytic and synthetic pattern to guide future legislators in advancing beyond the dogmatic opinions of infancy and adolescence toward a critically self-conscious and scientific adulthood in their important task.

His vision is of a system of laws planned on the pattern of a new "logic of will" which is to be the counterpart of the Aristotelian "logic of debate" or possibly, "of understanding." The ultimate aim of will is "utility," a term which Bentham proceeds to relate very directly to the pleasure-pain sense (sensation), and supplies with a clear and

distinct formulation. The resulting code will be, in so far as an inter-implying formal system can be, complete, and will reduce to a minimum the informal interpretation (by judges and other persons, some qualified and some unqualified by position and experience) of "customary law which has spread itself like a plague over the surface of the statute law, infecting it with its own characteristic obscurity, uncertainty, and confusion."

The result here, as in the well-known Part I, is to set before Bentham's readers masses of very exact analysis and reasoning, together with principles of classification and synthesis which involve, in many places, the creation of new terms of a highly technical nature and function. As a lawyer and careful student of the empirical facts of jurisprudence, as well as a clear and persistent thinker, Bentham reveals without hesitation the types of inaccuracy and confusion which inevitably and in principle result from unguided empiricism on the part of legislators; in fact, the limitations of jurisprudence which stand out in every chapter are the unclaritys, the indeterminateness and incompleteness, and other inadequacies of codes which, like Topsy, "have just growed." It is not merely the weakness of language and logic that stands out. Bentham does not hesitate to draw attention to the comparative absence of clear, definite and candid thinking on the part of almost all empirical ad hoc legislators.

In its own field, Bentham's work resembles Kant's *Critique of Pure Reason*, in which most readers feel that the critical part somewhat overshadows the constructive part which is designed to take the place of what the author rejects. But in both cases it is hardly possible to criticize effectively without at the same time making plain the basis from which the criticism derives its strength; and all of Bentham's chapters contain, bound up with the negative criticism, significant and useful classifications and syntheses in detail, as well as helpfully clear statements of principle. The whole book, if we include Part II with Part I, will certainly be regarded as the classical exposition of eighteenth century hedonism at its best.

What is the value of his book at the present day? Chiefly, it must be confessed, historical. In a hundred and sixty years, or so, philosophy has made great strides; and while philosophers of every school will admire the erudition, the persistent reasoning, the candor, and the massive determination of Bentham and will be attracted by the many evidences of a hopeful modernism which has many echoes today, there will be little that they can really use, except to point a moral and adorn a tale somewhat different from Bentham's.

A "logic of will"? Yes, indeed. But Bentham's account of "will" in relation to a simple pleasure-pain sense will raise only a smile today. His hedonism, correctly stated and correctly quoted in our modern textbooks, is used to introduce beginners in philosophy to the simpler pitfalls of a naïve psychology, ethics, and logic. In place of his extremely simple "will-to-pleasure," we have seen more far-reaching developments: a "will-to-live" (Schopenhauer), a "will-to-power" (Nietzsche), what might be called a "will-to-action" (Pareto), and an *élan vital* (Bergson), before whose unblushing non-logic the simple rationalism of Bentham would feel entirely lost. Psychological and sociological research have severely limited the field within which the confident pronouncements of the logician have any status; and in the light of these findings, the appeal can no longer be to "everyone's observation [introspection] and experience," but only to prolonged social experimentation which distrusts ideas whose only merit, perhaps, is that they are clear and distinct.

Clarifying ideas may be an important part of the work of philosophers. But the technique of Locke and Hume represents the beginning, rather than the completion of that work. Bentham is in too much of a hurry. Modern realists will claim that he does not push his researches into fact far enough. Modern idealists will claim that his ideals are narrow in range and deficient in insight. Modern pragmatists will object to his readiness to substitute formal schemata for the flexibility of continuing social experimentation. In social enterprises (they will insist), formal and informal are not enemies, but correlatives which can work well together. Intuition has to be mixed with formalism if the judgment of the executive is to be kept alive; and for the living judgment of the executive (whether judge, legislator, or business leader) there is, and can be, no substitute.

So much in general for Bentham and presently existing philosophy. Now for the editor and the quality of his achievement. Bentham's handwriting is difficult to read, especially so in microfilm. The editor is accordingly to be congratulated upon his unflinching persistence, courage, and determination, no less than upon his judgment in arranging material, filling gaps, and keeping himself out of the completed picture. The only possible criticism is in matters of detail.

Thus, in modernizing the spelling, many readers will feel that the editor might well have gone even further: printing "group" in place of the noun "groupe" *passim*, and changing the odd "hath" to "has" wherever it occurs. He might have printed "displayed" for "display'd,"¹ "ordered" in place of "order'd,"² "employed" in place of "employ'd,"³ "allowed" for "allow'd,"⁴ "glossary" for "gloss'y,"⁵ and possibly "January" for "Jan'y" and "Jan."⁶

There are also a number of inconsistencies which the editor should surely have sought to avoid more successfully: e.g., "considered" and "consider'd,"⁷ "leveled" and "levelled,"⁸ "referable" and "referrable,"⁹ "comprise" and "comprize,"¹⁰ "neighbor" and "neighbour,"¹¹ "until" and "untill,"¹² and "shown" and "shewn."¹³ One reference reads, "In ch. xvi, 'Division of Offences' . . .,"¹⁴ whereas in all other references, which are quite numerous, we read "Ch. 16 (Division). . . ."

The following errata require correction: after "seen" comes a full stop, whereas it should be a question mark.¹⁵ The word "*celerent*" should be printed "*celarent*";¹⁶ "word" should be "work";¹⁷ "obstinancy" should be "obstinacy";¹⁸ "stronger than I" should be "stronger than myself";¹⁹ "lines" should be "line";²⁰ "*meri*" should probably

¹ P. 78. ³ Pp. 92 and 311. ⁵ P. 255, n. 10. ⁷ Pp. 322 and 312.

² P. 80. ⁴ P. 114 bis. ⁶ P. 173. ⁸ Pp. 83 and 89.

⁹ Pp. 112, 226, and 270; cf. pp. 72, 94 and 96. Cf. also "transferable" on p. 89, n. 1.

¹⁰ Pp. 97, 98, 106, 123, and 138; cf. pp. 94, 264 bis, 313 and 314. Cf. also "comprizable" on p. 291 n.

¹¹ P. 319n bis; cf. p. 343.

¹² P. 324.

¹³ Pp. 246 and 247; cf. pp. 240 and 290. Cf. also "shew" on p. 142.

¹⁴ P. 330, n. 10.

¹⁵ P. 21, middle.

¹⁶ P. 26, middle and p. 294, bottom. Cf. correct printing on p. 340.

¹⁷ P. 27, seven lines from bottom.

¹⁸ P. 35, in the middle of the second citation; cf. correct printing on p. 83.

¹⁹ P. 50, one-third way down the page.

²⁰ P. 86, four lines down.

be printed "*mero*"²¹ (as elsewhere in the text); "effected" should probably be "affected";²² "*venditeo*" should probably be "*venditio*";²³ the penultimate word "geneology" should probably be "genealogy";²⁴ and "*falle*" should be printed "fall,"²⁵ whatever Bentham's manuscript reads. In the Greek word reading "*πτωσις*," the fourth letter should not be printed "s," but "σ."²⁶ A similar sigma should be printed in place of the tau in "*τυπτω τε*," which should read "...σε," and "*φιλω τε*" should read "...σε."²⁷ The comma after the last "σε," just before "*amo*," should be in the proper place for commas, i.e., on the line and slightly below it, not above it. The sentence beginning "But let it say let no one kill his father here there is . . ."²⁸ really needs to be properly punctuated, in spite of the editor's hesitation to correct his author's idea of punctuation.

Furthermore, "*principium*" should probably be printed "*principem*," as it is elsewhere in the text;²⁹ "articles then one" should be "articles than one";³⁰ "Topic. Iv" should be "Topic. IV";³¹ "numeros" should be "numerous";³² and should not "dicso-dotic" be printed "dicaodotic" or "dicaeodotic"?³³ In addition "*actum agere*" should be printed "*actum agere*";³⁴ and should not "epirogastic" read "epergastic"?³⁵ And would it do any harm to the author's intentions, if the proper breathing were added to the two Greek words? Should not "Reglements" have an acute accent on its first "e"?³⁶ Finally, "chastity" should be followed, not by a full stop, but by a question mark;³⁷ "*species infima*" should be printed "*species infimae*";³⁸ and should not the second "right" commence with a capital "R"?³⁹ And "such and one" should read "such a one" or "such an one," and in the penultimate line "is" should be "in."⁴⁰

One further trap for editors. Bentham's manuscript shows a carelessness in two ways which ordinarily call for the editorial hand. Writing analytically, he enumerates his points "1 . . . 2 . . . 3 . . .," but sometimes changes over from figures to words.⁴¹ Sometimes he changes over from words to figures;⁴² and occasionally he puts in a "2." but omits what should be the preceding "1." Several other instances of care-

²¹ P. 93, middle.

²³ P. 106, seven lines from the bottom of the note.

²² P. 97, middle.

²⁴ P. 117.

²⁵ P. 130, four lines from the bottom of the note.

²⁶ P. 130, three lines from the bottom of the note. This sigma is correctly printed elsewhere in the text.

²⁷ P. 125, n. 12.

³⁴ P. 185, two-thirds down the page.

²⁸ P. 135, nine lines from the bottom.

³⁵ P. 229, middle of note.

²⁹ P. 147, middle and in the index.

³⁶ P. 242, four lines from the bottom of the note.

³⁰ P. 159, four lines from the bottom.

³⁷ P. 252, one-third down page.

³¹ P. 161, last line.

³⁸ P. 262, middle; cf. p. 265 for correct printing.

³² P. 164, middle.

³⁹ P. 274, sixth line.

³³ P. 169, four lines from bottom of text.

⁴⁰ P. 310, seventh line.

⁴¹ P. 74, below middle, "investitive power of the 2d order . . . investitive powers of the third, fourth or fifth orders. . . ." See p. 69, one-third down in n. 1, "1 . . . 2 ly. . . ." The same note also has "1 . . . 2 . . . 3 . . . fourthly. . . ."

⁴² P. 118, five lines from bottom of text, "In the tenth place . . . in the 15th place. . . ." See p. 277, n. 4, "In the first-mentioned . . . in the second . . . in the 3d . . . in the last" See also p. 315, second paragraph, "First . . . 2 . . . 3"

lessness occur, wherein the reading should be "two ways: 1. in the way of 2. in the way of";⁴³ and ". . . . several respects: 1. in respect of 2 3 4";⁴⁴ Occasionally numbers should be utilized in place of "Next."⁴⁵ Furthermore, the text should be corrected to read ". . . . duty will either be 1. a duty of forbearance or 2. a duty of performance";⁴⁶ and the "2." has been omitted in ". . . . distinguished into 1. barren, or 2. productive."⁴⁷ Finally, in the sequence beginning "In the second place In the third place In the fourth place," there is no "In the first place."⁴⁸ The editor has corrected these mistakes of Bentham's in so far as his analytic numbering affects very large sections, such as whole chapters. But would it be considered as contrary to the author's intention, to expect the editor to check up on these smaller instances of the same error?

The second carelessness of the manuscript is in connection with references. As Bentham writes, here and there he notes—recollecting that he has treated the subject at length elsewhere—something like "Cf. Ch. Actions," intending, doubtless, to verify the reference when passing the work through the press, if not earlier. The editor has, in a number of cases, printed the correct reference, and readers will be duly grateful. But could he not, without going to too much trouble, have done it in all instances?⁴⁹ Finally, would it not be better to print the reference "Ch. 7 (Actions) 22" ⁵⁰ so as to bring it into conformity, not merely with the final line of the immediately preceding note, but with all similar references in the book? What is actually printed, i.e., "Ch. VII (Acts) XXII" is in rather startling contrast with all other references of the sort.

The Index is useful, but "*Lettre de cachet*" should add the important reference 262.

It may be thought that the above detailed criticisms of the editor's performance of his task affect only minutiae. And so they do. But is not an editor's work mostly concerned precisely with such minutiae? It is because the reviewer is convinced of the importance of this publication of a classic, and because he realizes that the editor's text will be the basis of all subsequent editions, that he ventures to suggest that the editor would do well to have the Columbia University Press print a full list of errata as soon as possible, and have it inserted in all possible copies of the work.

RUPERT C. LODGE*

Judicial Decision and Practical Judgment. By Morris Gall. New York: King's Crown Press, 1946. Pp. 99. \$1.50.

Despite the ponderous tome which its title suggests, *Judicial Decision and Practical Judgment* is a ninety-two-page booklet, published in a paper-back, inexpensive edition by the King's Crown Press, which is a division of Columbia University organized for the purpose of making certain scholarly material available at a minimum cost. This book is directed primarily toward educators and not lawyers. To the educator it may bring a significant proposal for revising present methods of teaching students how to

⁴³ P. 103, middle.

⁴⁴ P. 104, fourth line.

⁴⁵ P. 110, first word in first two paragraphs.

⁴⁹ Pp. 140, n. 4; 149, n. 13; 184, n. 2; 185, n. 6; and 226, n. 5 (2).

⁵⁰ P. 131, n. 6.

⁴⁶ P. 312, nine lines from bottom.

⁴⁷ P. 317, middle.

⁴⁸ Pp. 331-33.

* University of Manitoba.