

lessness occur, wherein the reading should be "two ways: 1. in the way of . . . . 2. in the way of . . . .";<sup>43</sup> and ". . . . several respects: 1. in respect of . . . . 2 . . . . 3 . . . . 4 . . . ."<sup>44</sup> Occasionally numbers should be utilized in place of "Next."<sup>45</sup> Furthermore, the text should be corrected to read ". . . . duty will either be 1. a duty of forbearance . . . . or 2. a duty of performance . . . .";<sup>46</sup> and the "2." has been omitted in ". . . . distinguished into 1. barren, or 2. productive."<sup>47</sup> Finally, in the sequence beginning "In the second place . . . . In the third place . . . . In the fourth place," there is no "In the first place."<sup>48</sup> 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?<sup>49</sup> Finally, would it not be better to print the reference "Ch. 7 (Actions) 22 . . . ."<sup>50</sup> 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

<sup>43</sup> P. 103, middle.

<sup>44</sup> P. 104, fourth line.

<sup>45</sup> P. 110, first word in first two paragraphs.

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

<sup>50</sup> P. 131, n. 6.

<sup>46</sup> P. 312, nine lines from bottom.

<sup>47</sup> P. 317, middle.

<sup>48</sup> Pp. 331-33.

\* University of Manitoba.

think. To the lawyer the book will seem largely a collection of pronouncements culled from respectable juridical writings without much additional contribution from the author. However, the project which this book undertakes is too fundamental and of too great a magnitude for the short treatment which this book affords. It should be considered both more intensively and on a broader scale.

The writing of this book derives from the fact that citizens in a democracy are continuously faced with the necessity of deciding political and other problems and of choosing one course of action in preference to another. This process of selection is defined by Mr. Gall as the process of making a practical judgment. Because so many people are untrained in the art of making such judgments intelligently, and because so many such judgments are unwisely made, Mr. Gall's book seeks to set forth a method of improving the art of making practical judgments.

Mr. Gall states that the art of making practical judgments is best exemplified and most clearly expounded in appellate court decisions. Therefore, he reasons that it would be of great benefit to every citizen to become acquainted with appellate court decisions and with the art of deciding as described in such decisions; it would similarly be desirable to acquaint citizens with some of the attendant legal literature. These decisions and this literature would thus provide guidance for the average citizen in the art of making practical judgments. Consequently Mr. Gall considers, at some length, the nature of appellate judgments and discusses many of the factors which influence judges in arriving at their decisions. He discusses the current trend toward realism in jurisprudence and touches upon many of the considerations of an environmental, psychological, social, and economic nature which influence judgments, apart from the bare words of a statute or a precedent. He also considers briefly some of the problems of ascertainment of fact which are prerequisite to the making of a judgment, and some of the standards for determining whether a decision is well or badly made. Mr. Gall maintains that the primary criterion for testing the merit of a judgment is the empirical one of its adequacy, which he defines as "the volume of assent it attains in the fullness of time among those affected by and interested in it."

After his outline of general considerations, the author turns to a eulogy of Mr. Justice Holmes whom he regards as the pre-eminent example of a judge who has done well and wisely in his assigned task of rendering practical judgments. Mr. Gall presents a résumé of the life of Mr. Justice Holmes and analyzes a large number of his judicial decisions.

The book then concludes with a statement of some of the implications for education in a democracy of Mr. Gall's thesis that appellate judgments are our best example of the articulate art of deciding a wise course of action. He states that "Education for competence in practical judgment means a conscious endeavor to build in our students a judicial temperament by the slow cumulative process of directed growth." As a method of obtaining such judicial temperament, he suggests that students in our schools should study cases in simplified form so that they can become acquainted with the essential problems confronting a citizen in a democracy and the judicial manner of deciding the controversy so presented. He states that "A direct knowledge of the problems confronting our highest tribunals, an analysis of the conflicting interests and social values involved, and a sensitiveness to the principles and methods applied by the judiciary in resolving these controversies would mean working with classic illustrations of the fine art of practical judgment as practised in the most expert and highly institutionalized form available to us."

It would undoubtedly be of immense value if some incisive observer were able to make a revealing analysis of the process by which facts and values were weighed in making practical judgments and were able to suggest improvements in the art of practical judgment. However, this book fails in the task which the author has undertaken. The book is, unfortunately, constructed in too large a part by the "scissors and paste pot" method of compiling quotations from a great number of prominent authors without adequately correlating them into a well-constructed, cohesive whole. Too large a portion of the book is devoted to the adulation of Mr. Justice Holmes and to a mere recital of the facts of his well-known cases. In fact, Mr. Gall fails to extract from any of the judicial decisions which are considered, or referred to, in his book any direct suggestions for the improvement of the art of making a sound decision in the ordinary affairs of daily life.

Mr. Gall is probably quite sound in assuming that an acquaintance with some legal decisions and literature would be very illuminating to a large number of people. Whether or not it would be sufficient to make them more sophisticated and effective with respect to the processes which they follow in reaching ordinary decisions is something that remains to be proved. It would seem relevant, for example, to include some evidence in this type of book to establish that the lawyer, by virtue of his education, acts in a more informed and enlightened way in reaching a practical judgment than does the average citizen. It would also seem important to include some more extensive consideration of the relation between ethical requirements and the making of practical judgments than this book contains. Students of philosophy will probably also think that some greater consideration should also be given to the distinction between the making of theoretical judgments and practical judgments.

Mr. Gall has suggested an interesting and provocative thesis; unfortunately he has not contributed a great deal to demonstrating its utility or exploring its ramifications. Perhaps some other examiner into this subject will present a more fruitful consideration of its possibilities in some future book.

STANLEY A. KAPLAN\*

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**Political Reconstruction.** By Karl Loewenstein. New York: The Macmillan Co., 1946. Pp. xii, 498. \$4.00.

This book, to quote the author's preface, "has one central thesis; namely that the right of every nation to choose the form of government it pleases, now enshrined in the Atlantic Charter,<sup>1</sup> is the safest way to World War III."<sup>2</sup> The liberal doctrine of non-interference in the political institutions of a foreign state was one thing in the early nineteenth century, when the drift was toward democracy and when intervention came from the side of the Holy Alliance; lately, however, its tolerant shelter has proved congenial to dictatorships, fifth columns, and puppet regimes. "No nation after this war—least of all, the defeated Axis states and their satellites—must be permitted to choose a form of government which fails to conform to political democracy. . . ."<sup>3</sup> "A Demo-

\* Member of the Illinois Bar.

<sup>1</sup> "Third, they respect the right of all peoples to choose the form of government under which they will live; and they wish to see sovereign rights and self-government restored to those who have been forcibly deprived of them. . . ."

<sup>2</sup> P. viii.

<sup>3</sup> P. 12.