

BOOK REVIEWS.

COOK ON CORPORATIONS. William W. Cook, Esq., of the New York Bar. Seventh edition, five volumes. Boston: Little, Brown & Co. 1913.

It would be highly presumptuous to criticize the substance of a work which has gone through seven editions and been cited more frequently than any other dealing with the same field of law. In the edition of Cook on Corporations now offered to the public there are, however, so many new features as to afford ample opportunity for critical inspection. The citation of cases illustrative of the text has been brought completely up to date, the chapters dealing with specialized branches of corporation law have been greatly enlarged, and forms which were not before included in the treatise at all are given in large numbers. The additions have compelled the division of the work into five volumes instead of four, as previously.

In any exhaustive work on so large a division of the law, the accurate citation of cases is one of the criterions by which the value of the work must be judged; for to the practitioner at least, it is largely as the text indicates where the law can be found that it is useful. In this respect Mr. Cook's work is far above the average, although there are isolated instances where perfection has not yet been approached. For example, in discussing the time when the statute of limitations begins to run in favor of stockholders on their liability to pay the par value of their stock, the statement is made in the text that "In Pennsylvania the courts hold that the call must be made before six years have elapsed after the call is possible; otherwise the right of collection is barred." Volume I, page 519. This is unquestionably not the law in Pennsylvania under the recent decisions, and the cases cited do not, on careful study, justify the statement. Such instances are, however, unavoidable in so large a work, undertaking as it does to cite practically every decided case on the subject of corporation law. And a careful examination of the citations in several chapters of the text disclose a surprising degree of accuracy.

Especial attention has been paid to the enlargement of the chapters on steam and electric railroad, telegraph, telephone, electric light and other quasi-public corporations; and a casual inspection of this section of the work creates in the reader's mind an impression of detailed exhaustiveness.

Two hundred pages of forms, many of them never before published and dictated by Mr. Cook's wide experience as a corporation lawyer, will doubtless make this edition far more useful to the practitioner than any of the former editions in which no forms were included. Almost any possible corporate document is outlined in these pages.

Altogether the new edition of this standard publication has served to improve it in every particular. Its continued and increased popularity is assured.

W. A. S.

CRIME AND ITS REPRESSION. Gustav Aschaffenburg. (Translated by Adalbert Albrecht.) Little, Brown & Co., 1913. Boston.

In this, number six of the Modern Criminal Science Series, the author has made an elaborate and painstaking study of the statistics of crime which have been gathered in the German Empire. In Part I he has analyzed the Social Causes of Crime, pointing out how the statistics show the varying effect of seasons, city life, rural life, race, religion, national customs, alcohol, and economic and social conditions upon the frequency of criminal acts. It

is interesting to note that Professor Aschaffenburg preceded the German Emperor in his denunciation of the beer-drinking habit of the German people. Intoxication he believes to be the principal cause of certain forms of crime. Further he stigmatizes the present crusade against prostitution as "sentimental," and points out that this vice cannot be stamped out by repression nor by any ignoring toleration born of a refusal to face the facts; and calls for its regulation by intelligent, open measures calculated to cure this social sore.

In Part II the causes tending to produce crime and having their root in the individual himself, are considered. The author denies that criminal tendencies are transmitted from parents to children and concludes that environment is practically determinative. Education, he asserts, can have no appreciable effect upon the criminal person. He advocates preventing the marriage not only of the physically and mentally immature and unfit, but also of the economically incompetent. He repudiates Lombroso's theory of the criminal born and of a criminal physical type; but he does find that the criminal class is recruited from the intellectually and physically inferior,—those unable to compete economically with normal men. Crime is a social phenomenon; its roots must be sought and studied in society itself, not merely in the individual.

In Part III he deals with the penological side of his subject: the attempt to repress and to prevent crime. He recognizes in alcohol the greatest single cause of crime and pleads for a restriction of its use,—prohibition being admittedly impossible in Germany. The discharged convict must be given work and aid in his effort to rehabilitate himself. He concludes that the individual is a social product: "a man cannot form his character as he desires." As a test for criminality he would depart from the moral and in its place set up the social responsibility. Punishment is not justifiable on the ground of retribution, expiation, or deterrent effect but, if at all, on the ground of the protection of society. It should embrace the indemnification of the injured individual by the criminal. In order that imprisonment should not lose its repulsiveness to normal men through familiarity, it should be invoked only when all other means fail; the first offender's sentence should be suspended. Sentences, when imposed, should be for indeterminate terms; prisoners who have shown signs of improvement by a recognition of social duty, should be paroled.

Taken as a whole this work will be found to be of intense interest and value to the criminological student,—a term which should embrace every lawyer. Its language is noteworthy for its clarity and terseness; and its tone, for its lack of passion in discussing controverted theories. The author's determination of what is practical is grounded upon conditions in Germany and his hopes for advance do not go far beyond those conditions. He confesses to a German aversion to look to America for example and enlightenment and accordingly has failed to note the American experiments in appealing to the honor of the convicts at Great Meadows, N. Y., Montpelier, Vt., and elsewhere. He but dimly foresees the time when the criminal will no longer be "punished" but will be committed to a corrective educational institution, as a defective, from which he will not depart until his anti-social tendencies have been eradicated.

P. N. S.

PENAL PHILOSOPHY. Gabriel Tarde. Pp. xxxii, 581. Little, Brown & Co., 1912. Boston.

By the recent translations of *Les lois de l'imitation* and *Les Lois Sociales*, Tarde has been known to American students and readers for a number of years. He has, however, been known to European students not only as a leading social theorist but as a leader in the newer criminal and penal thought. The experience as committing magistrate extending over almost

twenty years he has utilized not only to improve criminal procedure but to delve deep into penal philosophy. Such underlying problems as free-will, social responsibility, and the like are comparatively new to American students, but these questions have interested the thinkers of Europe for a quarter of a century. Moreover, the results of their thought and research have to some extent been reflected in legislation. The Modern Criminal Science Series, of which this is Volume VI, aims to present to the American and English reader the result of this thought. The series, edited under the direction of the American Institute of Criminal Law and Criminology, is exceedingly valuable and the Institute is to be congratulated for making possible these translations.

The book falls into three parts—the first deals with the question of free-will and determinism, the second is an explanation and study of the criminal side of societies, the third deals with suggested reforms of criminal procedure and penal practice. Four of the nine chapters are devoted to a study and discussion of the first question. The author attempts to harmonize the apparently opposite notions of determinism and free-will by establishing a psychological basis. He seeks to reach a true ground for moral responsibility without unnecessarily raising the question of free-will and in this way flying in the face of the increasing mass of scientific data which would seem to include human activity in the field of determinism. The combination of the hereditary and the various environmental factors combine to make the "self." As long as this "self" is uninfluenced by social factors, it may be said to be free and "morally responsible." It is the second factor—the relation of this "self" to others—which tends to weaken this independence and responsibility.

We must first consider, in judging an individual, whether "the guilty man was identical with himself when acting. The second condition is that we should judge him to be similar to ourselves; without this neither indignation nor compassion are possible" (p. 152).

The next step is the study of the social factors in the development of the criminal and the emphasis on these factors. Tarde attacks in this connection the stand of the Italian school and their over-emphasis on the anthropological and physical earmarks of criminals. But he really goes beyond this group of students in his emphasis on the social and environmental factors which make the criminal. In this connection he develops at length the theories promulgated by him in his sociological works—imitation and repetition as the laws governing human relationships.

In chapter vii he discusses some of the reforms that are necessary, based on the theories that he has developed. He points out and summarizes the arguments against the present jury system. He feels that eventually this system will be changed and that a group of experts—psychological, sociological, anthropological—will determine the guilt of the individual. A more immediate reform will be one that requires juries to file reasons for their decisions. He feels that the time is past when ignorance should be the prime requisite for service in determining the facts of a given case. The judiciary must be divided into civil and criminal. Not only are the requirements entirely different, but the same men are usually unqualified and unable to deal with both types of cases to advantage. The last two chapters deal with the advantage of penalties and heavy penalties in the reduction of crime and emphasize the deterrent influences of severe punishment. The book, however, loses rather than gains by the last chapter dealing with "The Death Penalty."

The "Introduction to the English Version" by Professor Robert H. Gault, of Northwestern University, is admirable. The translation by Rapelje Howell, Esq., of the New York Bar, is satisfactory. In parts, the English is rather involved and cumbersome, but for the most part the author's meaning is well conveyed. This volume should be studied by all who are interested in the basic problems of penal philosophy and in the improvement of criminal procedure.

Alexander Fleisher.

STUDIES IN AMERICAN ELEMENTARY LAW. (Second Edition.) John C. Townes, University of Texas. T. H. Flood & Co., Chicago, 1911.

The author believes in the existence of an elementary law underlying and forming the basis of American law, consisting of fundamental principles, substantive truths, based upon principles of right and wrong, which are universal, eternal, immutable and inexorable. Because of the author's extensive study, his experience as a successful teacher and his evident knowledge of the law, his opinions and theories command respect, even though one may believe right and wrong to be merely relative terms, varying with the conceptions and conditions of each decade, of each locality and of each people.

The treatise, in its opening chapters, treats of jurisprudence rather than law, and, in the next succeeding few chapters, of political government. The terminology employed in these chapters is, at times, unusual and the views therein expressed will be approved or disapproved, according to the theories of the reader. The presentation by the author is, however, refreshing because of its originality and worth while because it is concise and comprehensive. Thereafter law proper, in nearly all its branches, including both substantive and adjective law, is discussed, in a narrative rather than a technical style, in such fashion as to be of great benefit to one first entering upon the study of law. Because of the scope of the subject matter treated, inaccurate impressions of the law may be obtained in a few minor matters.

As a book suitable for collateral reading, it may well be recommended to every student of the law, irrespective of the extent of his legal knowledge. Whether or not it would prove a successful text book would depend upon the qualities and capabilities of teacher and student. Because of the very concise and comprehensive presentation of all law, it is feared the average student would garner little permanent knowledge unless the teacher correlated and illustrated the subject matter. For those desiring merely the law as illustrated by the "case in point" the book has no value, but for those of the profession who enjoy legal literature and thought the book may have considerable value in producing new ideas.

J. B. L.