

BOOK REVIEWS.

CASES ON CONSTITUTIONAL LAW, AMERICAN CASE BOOK SERIES. James Parker Hall, Dean of University of Chicago Law School. West Publishing Co. 1913.

In briefly reviewing Dean James Parker Hall's "Cases on Constitutional Law" it is proper to say a word concerning the series of which this work forms a part. Under the general editorship of James Brown Scott, a series of case books is being prepared, by men thoroughly competent to prepare them, "with special reference to the needs of the class-room, on the fundamental subjects of legal education, which, through a judicious rearrangement of emphasis, shall provide adequate training combined with a thorough knowledge of the general principles of the subject."

Instructors everywhere in the United States will welcome the advent of these case books. And if others of the series approach the ideal above set forth as nearly as Dean Hall's "Cases on Constitutional Law," the editor may be congratulated on securing the substantial fulfillment of his purpose. Most of the existing case books are too bulky for class use; and their plan seems to be to cover the greater and smaller points and principles without discrimination or omission and without logical arrangement. They cover the subject; but without judicious selection or enlightening classification. And they are therefore not adapted to the needs of the law schools, where economy of time and intelligently directed research are of the essence of the matter.

Dean Hall divided his book into three principal parts, "Making and Changing Constitutions," "Fundamental Rights," and "The Federal Government." The first cases referred to direct the attention of the student to the essentials of constitution-making and the manner in which constitutions can be changed. Then follow cases on the power of the Courts to declare statutes unconstitutional and on the effect of declared unconstitutionality. And lastly under the first division are cases on the separation of powers and the delegation of powers.

This arrangement of this first division of the book is certainly well adapted to meet the questions which are arising in daily discussion at the present time, and the cited cases will answer, at the beginning of constitutional study, many of the questions with which the student has been confronted in the newspapers and in current popular discussion.

In the second division of his work under "Political Rights" the author gives only bare citations as to "Republican Form of Government," "Freedom of Speech and Press," "Right of Assemblage and Petition" and "Right to Keep and Bear Arms," but the cases cited are cases which give full description of such rights and their extent. "Citizenship" and "Suffrage" are fully dealt with by selection from controlling cases. The outline given is ample for class-room use, and the condensation resulting is desirable.

The work follows the usual lines of arrangement in the headings relating to "Personal and Religious Liberty," "Protection to Persons Accused of Crime," "Due Process," "Equal Protection of Law" and "Eminent Domain." The chapters on "Interstate Privilege and Immunities of Citizens" and "Operation of Fourteenth Amendment in Securing Civil Rights," particularly the last chapter under the heading "Application to Corporations," present an arrangement and selection peculiarly useful to the student.

In the last division of the work a notably good choice is made in the entitling and compilation of the first chapter, relating to the "General Scope of Federal Powers." The common instruction in constitutional law has not heretofore placed sufficient emphasis upon this phase of the subject. Under the arrangement of cases here made the limits of state and federal powers are laid out as clearly as the subject permits. And this is continued in the admirable chapter on "Regulation of Commerce" which brings that subject as

nearly down to date as it could be brought at the time of publication. The last chapter is well adapted for the short separate study of the Federal Courts, as the author suggests in his preface.

It is true, in a sense, that case books are merely compilations. But there are compilations and compilations. The ultimate law upon a given subject is the result of the best cases. To know these cases, and knowing them, to select from their voluminous contents the essential holding, and to present it in a form adapted to the study of the principle sought to be illustrated,—this is the work of the great mind and the great teacher. An illustration of the method of the author in this respect is his treatment of the case of *Gibbons v. Ogden*, 9 Wheaton, 1 (1824), from which he chooses two extracts in the text and one in the notes. In each case the quotation is sufficient for the illustration of the principle, and there stops.

The combination of this precise and discriminating citation and quotation with really illuminating titles and arrangement is the feature of the work. It must also be said to be peculiarly adapted to the study of the Federal Constitution in the light of present-day questions and criticism. As the first of the series it has fully realized the anticipations of the general editor. It typifies the "judicious rearrangement of emphasis" which he has sought.

Louis L. Waters.

Syracuse, New York.

CRIMINOLOGY. Baron Raffaele Garofalo. Procurator General at the Court of Appeals of Venice. Translated from the Italian by Robert Wyness Millar, Lecturer in Northwestern University Law School. With an Introduction by E. Ray Stevens, Judge of the Circuit Court, Madison, Wis. No. 9 of the Modern Criminal Science Series. Boston: Little, Brown & Co., 1914.

Discarding the legal definition of crime as useless, Baron Garofalo finds the scientific or sociologic definition of natural crime to be an act violating either the sentiment of pity or the sentiment of probity, by the latter of which he means a proper respect for all that which belongs to others. For the precise definition of these sentiments he would not go to ethics but to the current acceptance of them in the particular country at a particular time. He rejects the anthropologic theories of criminality as of no value; on the other hand, he finds the root of crime in moral, not physical, anomaly. A criminal is a moral monster. No morally well organized man can possibly commit a natural crime solely by the force of external circumstances; the casual offender is non-existent. Consistently he contends that our social and economic order is not a cause of criminality. In every true criminal the moral organism is defective; such defect is primary; its roots lie in heredity or in atavism. This criminal anomaly is incapable of correction; there can be no reformation of one guilty of a natural crime. The anomaly in the particular individual, it is true, may be slight and will reveal itself only under particular circumstances; but it is the anomaly, and not the circumstances, that is the cause of the criminal act.

Since criminal anomaly is incapable of correction, the author would have the penal arm of the state eliminate from society all whose anomaly is a menace to society. In the case of true murderers, by which he apparently means all who are guilty of first degree murder under our law, elimination should take the form of execution; for their execution is demanded by the social reaction against the crime and does not therefore violate the social conscience. In all other crimes, save the least dangerous of the crimes *mala in se*, and in all cases of recidivism, elimination should take the form of deportation for life to a penal colony preferably upon some island of the sea. For minor offenses *mala in se* and for all offenses merely *mala prohibita*, the author would impose reparation both to the individual and to the state. Consequently our present great penal establishment of prisons and penitentiaries would have no place in this scheme of repression.

The author further would make radical changes in our criminal procedure which he says often tends to protect the criminal from society rather than society from the criminal. He would wipe out trial by jury in all but English-speaking countries. He would aim to discover in the light of the criminal's past what society has to apprehend from him in the future; and, that determined, would decide whether or not elimination from society was required.

There is indeed much valuable suggestion and discussion in this work. The American student may not be willing to accept the author's theories of the irredeemable nature of criminal; penalogical development in this country has been upon widely different theories. But we are unable to assert that our penalty has been a success in practice; it may be that our basic principles, or lack of basic principles, is at fault. Of one thing we can be certain; Garofalo's scheme of repression would result in a great reduction of persons who would be withdrawn from society. Elimination would be far less frequent than incarceration in our present penitentiaries. Any one who would seek to improve our present unscientific treatment of crime will find much assistance in Baron Garofalo's work.

P. N. S.

JUSTICE AND THE MODERN LAW. By Everett V. Abbott. Houghton Mifflin Company: Boston and New York, 1913.

Mr. Abbott believes there is a standard of absolute justice to which the human race has struggled to approximate its laws and social customs, and points to the common law as a development in which judgments have been made and accepted under the influence of that instinct of the race rather than by the force of bare precedent or sovereign authority. The principles of law, therefore, he contends, coincide with the fundamental principles of ethics, which he dissects into three: a right in each individual to enjoy freedom, a duty upon all individuals to help each other, and an obligation to fulfil all promises voluntarily made. All jurisprudence can be reduced to these prime factors, and Mr. Abbott demonstrates by applying them to some doctrines of the common law which might seem to defy classification. With this introduction the author plunges into a jeremiad, delivered with all the vehemence of the Hebrew prophet, against the slipshod spirit of the age, which has contaminated the springs of justice by letting turbid thinking and loose reasoning trickle through the minds of judges and lawyers alike. In a review of some important recent decisions in the Supreme Court of the United States and in the New York Court of Appeals he shows how easily counsel are led astray by fallacies in their logic, and how often courts are apt to shirk the burden of clear thinking by announcing their decisions on the broad ground of a supposed "public policy." We must get back to fundamentals, he concludes, and re-establish the principle of sufficient reason for every legal conclusion we formulate and every decision we announce. If all our lawyers were to clear their minds of cobwebs and commit themselves resolutely to a course of correct thinking, the writer prophesies that there would be a new era in the administration of justice which would take the nation by surprise and cure it of its latter-day hankering after political nostrums. Mr. Abbott's method of attack is lively enough to escape the imputation of platitude, and his illustrations are sufficiently concrete to make firm an argument that might easily evaporate in generalities. It is too much to hope that it will cause us all to mend the error of our ways, but the book is an optimistic effort in the direction of progress which comes as a refreshing change at a time when the air is full of mere wind and ink.

S. R.