

BOOK REVIEWS.

THE PROSECUTION OF JESUS, ITS DATE, HISTORY AND LEGALITY. By Richard Wellington Husband. Pp. v and 302. Princeton: Princeton University Press, 1916.

This is the most admirable treatise on the trial of Jesus that has come to the notice of the reviewer. In fact, it may be said without exaggeration that it is the only treatise on the subject that is worthy of consideration from the point of view of scientific legal scholarship. It is splendidly objective in its treatment of a difficult subject, and it presents conclusions which, while not necessarily convincing, are important, persuasive and possibly correct. One cannot read a page without being impressed with the solid, mature learning of the author and his very exceptional grasp of the principles and practice of the Jewish law as well as of the Roman and Provincial law that he had to consider in the development of his thesis.

The subject is one that has been often treated in books, monographs, articles in learned reviews, in special chapters in works on biblical criticism and exegesis, in sermons and in newspaper articles. Much, indeed most of the literature on the subject, is mere waste paper. Rarely indeed has any scholar been freed sufficiently from the trammels which prejudice judgment to make even an attempt at a purely objective study of the question. Giovanni Rosadi was perhaps the ablest of the lawyers who have given attention to this subject, but he appeals so often to the emotional reaction that the contemplation of the trial of Jesus so easily provokes, that his work and conclusions fall far short of satisfying the inquiring student and the searcher after the facts of the case. Professor Husband has written a book which should be read by every student and scholar, by every clergyman and layman who desires to familiarize himself with the best results of real scholarship, and who wishes to enjoy the purely intellectual pleasure which a dispassionate treatment of a most difficult subject of investigation can afford. With the exception of chapter three, which is devoted to a consideration of the date of the trial and which presents extremely technical problems in chronology, the book is readable in the highest and best sense of the word and, although its scientific quality is never sacrificed, its simplicity of style gives it a literary charm rare indeed in a scientific work.

After having pointed out that it was not until 1912 that the *papyri* found at Oxyrhynchus were studied and the work of Mitteis and Wilcken containing a new chapter of knowledge of Roman administration in the provinces was published, our author says "enough has been said to show that no treatment of the trial of Jesus, written prior to 1912, could have been adequate, for the simple reason that the only systematic investigation of the material contained in the *papyri* had not yet been published." These *papyri* showed in detail the difference between the conduct of a criminal trial at Rome and in the Roman provinces and the marked differences in procedure,

and it is only through the study of the provincial procedure that the real significance of the records of the procedure in the trial of Jesus can be understood.

Professor Husband finds three serious defects in the orthodox treatises. First, a lack of adequate knowledge of many essential facts of Roman criminal law and of the administration of the Roman provinces; second, failure to give adequate recognition to the principle of Roman law that a person may not be put twice in jeopardy for the same offense; third, failure to recognize that the court proceedings must be presumed to have been orderly and correct, unless the contrary be shown. He, therefore, seeks to find some legal system into which the gospel stories may be made to fit, and he starts with the presumption that the Jewish officials as well as the Roman acted legally and properly. His analysis of the various theories advanced by different groups of writers leads him to the conclusion that Jesus was arrested by the Jewish authorities and that the proceedings before the Sanhedrin were merely preliminary hearings in order to present a charge before the Roman Court and that the Sanhedrin did present such charge to Pilate, who tried the case according to Roman procedure. "The action of the Sanhedrin was parallel to that of a modern grand jury, and the one trial to which Jesus was subject was that conducted by Pilate." And "the whole case was one of Roman law enforced in a Roman province and the Jewish law played but a most insignificant part." This hypothesis of a preliminary hearing before the Sanhedrin and trial before Pilate relieves us from the assumption that Jesus was twice tried for the same offense, which would be impossible under the Roman as well as under the Jewish system of criminal procedure. Furthermore, it enables the gospel narrative to be accepted as giving at least an approximately true history of the event and that the trial of Jesus was perfectly legal both under the Jewish as well as the Roman system. The great vice of practically all of the modern writings on the subject is their search for illegality in the prosecution of Jesus. As the author says, "the eagerness with which each irregularity in procedure is greeted reminds one forcibly of the mad search for nuggets of gold by the Argonauts of California or by the multitudes who raced to the Klondyke. One writer thinks he has discovered twenty-seven irregularities in the conduct of the case, but this very zeal leads inevitably to excess, a thing which invariably happens when historical investigations are carried on with passion or pre-existing bias. It is hard to avoid the belief that the majority of modern investigators are just as much prejudiced against the Sanhedrin as they themselves claim the Sanhedrin was prejudiced against Jesus."

Perhaps the most interesting and convincing reasoning in the entire book is in chapter 9 of the trial in the Roman court in which the gospel narratives are reviewed in the light of the author's hypothesis, based upon the new knowledge discovered since 1912 on the procedure before the provincial Roman criminal courts.

The great difficulty in this most interesting field is the lack of reliable historical material. The gospel texts are uncertain and their evidential value untrustworthy. Especially misleading is the gospel according to St. John. This is recognized by Professor Husband, who, with every desire to give credence to these records, finds it impossible to harmonize them with the

results of his practical judgment. He reviews the results of the modern criticism which has endeavored to ascertain the original form of the narrative of the trial before Pilate and the otherwise uninformed reader may be shocked to find that the most radical criticism leaves only six sentences out of the entire material reported by the four gospels, but Professor Husband takes a more moderate view of the historicity of the gospel narratives.

The true story of this trial will probably never be written because documents of unquestioned historicity relating to it do not now exist, and perhaps will never be found. To what extent the myth-making instinct has overlaid the original kernel of fact with pious imaginings can be determined with more or less accuracy, but how much of this original kernel of alleged fact is indeed true will probably always remain undetermined. Accepting the results of a moderate critical view such as that which Professor Husband has taken, we cannot help expressing our admiration of the manner in which he has handled his material in the development of his thesis toward its conclusion. Whether we agree with his conclusion or not, we are grateful to our author for his fine presentation of a thesis based upon careful, scholarly examination of such evidence as he believed to be admissible.

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CRIMINALITY AND ECONOMIC CONDITIONS. By William Adrian Bonger. (Translation by Henry P. Horton.) Boston: Little, Brown & Company, 1916.

This volume belongs to the Modern Criminal Science Series, published under the auspices of the American Institute of Criminal Law and Criminology. The editorial preface is contributed by Edward Lindsey, of the Warren, Pennsylvania, bar, and the introduction by Frank H. Norcross, Justice of the Supreme Court of Nevada. The author is one of the leading European students of criminology, a native and resident of Amsterdam, Holland.

The volume is divided into two parts. Part One is a "Critical Exposition of the Literature Dealing with the Relation Between Criminality and Economic Conditions." Part Two, a discussion of "The Present Economic System and Its Consequences."

Part One gives brief critical synopses of the various writers, and contains much interesting material, including many charts of great value to students.

The real thesis of the author is that "criminality has increased greatly under capitalism, and is of the greatest importance to the whole social life." This leads him to make an extensive survey of the present economic system, the condition of the various social classes, with special emphasis on the degrading surroundings of the very poor. The relations of the sexes and the family are also considered. Monogamy is traced as the outgrowth of private property. The increasing freedom and power of women are due to her growing share in production and ownership of wealth. The lower proletariat suffers most in these regards because of its unhappy condition and its family life is most unstable and moral standards lowest. Prostitution is entered upon at an early age. Crowded homes lead to child labor and the general

demoralization due to poverty. Alcoholism, which is stressed, has "its deeper causes in the material, intellectual and moral poverty created by the economic system now in force." A short chapter treats of militarism, which is also "a consequence of capitalism."

Part Two deals with the general conditions of criminality. "Crime is an act committed within a group of persons forming a social unit; that it prejudices the interests of all, or of those of the group who are powerful; that, for this reason, the author of the crime is punished by the group (or a part of the group) as such or by specially ordained instruments, and this by a penalty more severe than moral disapprobation." We must find the causes of crime then in the forces that lead a man to act egoistically. Primitive man was altruistic because the mode of production emphasized co-operation. The present system is unfavorable to social instincts because the emphasis is thrown upon individual profits and success. Self-assertion is developed. Juvenile crime is increasing. The conception leads the author to claim that "among young delinquents there are two or three times as many persons following a trade as among non-delinquents." The "tendency to crime is less in the case of the married than of the unmarried," but this does not apply to women. The greatest crime among women is found in the most developed cities and countries.

Economic crimes such as vagrancy, mendicity and theft are usually committed by the unemployed, but "vagrancy and mendicity would be no less extensive if all the workers knew a trade and were equal in zeal and energy." Beggars may get good incomes, but "if these people are blamed, blame must also be attached to a state of society in which honest labor is so poorly paid that begging is often more lucrative." Theft from mere cupidity is often more abundant in good times, but usually theft is an index of want. Robbery is usually committed by professionals, who are often trained from childhood, but the influence of hard times can be seen in this crime also.

"The fundamental principle of the mode of production in which we live is competition, strife, in other words, doing injury to others." Hence the author expects such crimes as revenge to increase. Because husband and wife have rights over each other, jealousy and vengeance thrive. Political crimes are relatively rare, but are largely due to economic conditions. Since insanity is largely due to alcoholism, or to worry about income or position, what may be termed pathological crimes can be traced to economic influence.

The solution then is to take the means of production out of the control of the few. Dr. Bonger is a socialist. That he should stress economic conditions is to be expected. I have tried to give the general outline of his position. It is impossible to reproduce the mass of evidence with which he supports his claims. Nor have I space to criticize the importance assigned to other factors. The volume is one of great value and will repay careful study. As Judge Norcross states, "the value of Dr. Bonger's work does not depend upon an agreement with all the views of the author. The book will bring to the American readers a depth and breadth of view most valuable to the administrators of criminal law and to those interested in the wider field of general social progress."

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CLASSICS OF INTERNATIONAL LAW. Washington: The Carnegie Institute, 1918.

James Brown Scott, Esq., whose work in the field of international law has earned him an international reputation, proposed in 1906 in a letter to the president of the Carnegie Institute, a plan for the publication of a series of books aptly described as the Classics of International Law. In no field of jurisprudence will the lawyer of the next decade or two find more important and fruitful labor awaiting him than in the field of international law. As they emerge from the war, the nations, whatever be their form of government, and especially if it be democratic, must formulate and develop, along the lines laid down by the classical writers, a new and enlarged code of law which shall measurably serve to take the place of the sword as the arbiter of their differences and disputes. To the many students, to whom these problems of international law will prove attractive, and who may devote themselves to the attempts at their solution, the Carnegie Institute has rendered an inestimable service in publishing this splendid series. No praise can exaggerate the merits of the works, the wisdom of their selection, the mode of their presentation. All the masters who have contributed to the foundation and development of this great branch of law, will be represented in this series, grouped around Hugo Grotius, whose work is the grand focal point in which the labors of his predecessors culminate and from which the works of his successors radiate.

With photographic facsimile reproduction of the best editions of the original texts, with an ample critical apparatus of errata, emendations, notes and citations, and with a carefully prepared, scholarly and accurate translation of such texts as are printed in foreign languages, the reader will have at hand in this series, for the first time, a practically complete working library of the most indispensable material. Splendidly printed on excellent paper and well bound in buckram, the ancient masters are worthily dressed for their presentation to the moderns who shall attend their levee, or in some cases their resurrection.

The series begins with the publication of the work of Richard Zouche: *Juris et Judicii Feialis, Sive, Juris Inter Gentes et Quaestionum de Eodem Explicatio*. Edited by Sir Thomas Erskine Holland, with a translation of the text by J. L. Brierly, in two volumes. Pp. xvi, 204 and xvii, 186. Oxford University Press, American Branch, New York, sales agent.

Zouche was an Englishman and one of the immediate successors of Grotius, and termed the "second founder of the law of nations." Dr. Oppenheim called his book "the first manual of the positive law of nations," and yet its text was practically inaccessible and unfamiliar even to students and teachers of international law. The text here reproduced is from a copy of the original edition of 1650 in the possession of the editor, and is accompanied by a brilliant reproduction of the beautiful portrait of the author by Cornelius Jansen, representing him as a man of thirty-three, in ruff and doublet, with refined features of high intellectual type and wearing the pointed beard characteristic of the time. Zouche was the first to adopt the title of "*jus inter gentes*," which in its translation "international law," has largely superseded the older designation of "*jus gentium*," which still lingers in "*droit des gens*" and "*völkerrecht*." He was also the first to recognize that war, with which his predecessors had mainly busied themselves, is but a

means whereby, in the last resort, the rights which nations enjoy in time of peace may be vindicated.

The second work in this series is that of Balthazar Ayala: *De Jure et Officiis Bellicis et Disciplina Militari*. Edited by John Westlake, with a translation of the text by John Pawley Bate in two volumes. Pp. xxvii, 226, and xvi, 245.

Westlake points out that Grotius marked Ayala and Gentili (whose work will appear in this series), as his two chief predecessors. Of these Ayala is first in time. Ayala was born at Antwerp of Spanish parentage and held the office of auditor, *i. e.*, military judge and judicial adviser to the chief of the army, something like our judge-advocate-general, by appointment of Philip II of Spain. His book was written and published while he was holding this office. It is less a treatise than a collection of authorities and examples from the literature of all times. Westlake suggests that the collection of data was made before our author took office, and that he then found it impossible to work them out systematically and, therefore, threw them into their present form rather than risk the loss of their publication. Nothing more clearly marks the rudimentary conception of neutrality entertained in Ayala's time, than the assertion of the right of free passage through the territory of another without doing harm, the chief authority for which is the second chapter of Deuteronomy, giving an account of the episode with Sihon, king of the Amorites. The chapter on keeping faith with an enemy contains a good discussion of the subject, and it will perhaps offer some explanation of the moral blindness of the ruler who, believing himself divinely ordained, refuses to conform to the laws that govern the relation of less favored personalities with each other. As Westlake says, "the common humanity on which the duty of keeping faith must be founded, is not felt by those who identify themselves with the divine will to which they attribute institutions, to exist between them and their opponents." Princes of the state as well as of the church, have not hesitated to break their pledged word when their interests deemed it necessary, for God being with them they could do no wrong. Apart from its value as a source book, this book of Ayala is a most fascinating collection of rich material for the student of folk-psychology and of political ethics.

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AMERICAN CITY PROGRESS AND THE LAW. By Howard Lee McBain. Pp. viii, 269. New York: Columbia University Press, 1918.

This volume deals particularly with the relation of the law to American city progress, and the large field of the fiscal, political, economic and social aspects of the subject are not especially referred to, except in so far as they may be necessary in considering the views of the court, which have been predicated upon them. The first two chapters, devoted to home rule by legislative grant, and the breaking down of the rule of strict construction of municipal powers deal with fundamental principles rather than with details of judicial interpretation. Beginning with the statement that the city is a

far more logical unit of government than the state, the author launches into a consideration of the problem of home rule for cities. He argues in favor of securing it by legislative act rather than by vague grant of power in the constitution of the state. In considering the question whether the legislature in the absence of any specific grant of authority has the necessary constitutional power, he is obliged to consider the fundamental question whether and to what extent such legislative power may be delegated to the municipalities. He is of the opinion that the difficulty which has beset the courts in justifying such delegation of power was one largely due to the use of old terms to describe a somewhat new statutory situation, and he suggests that if the home rule act passed by the legislature were called the "charter" of the city, and if the charter, ratified by the voters, were called the "fundamental ordinance" of the city and if the ordinances enacted by the corporate authorities were called by some appropriate term to indicate their inferiority, the difficulty of sustaining the constitutionality of such a legislative act would be largely, if not entirely, overcome. From this problem, the author passes to the problem of the construction of municipal powers. It is an open question whether the rule of strict construction of municipal powers is gradually being broken down, although the cases would indicate that some inroad has been made upon its rigidity. The author expresses the hope that in the specific application of canons of construction, the courts will assume a liberal attitude, and he recommends as highly desirable the principle that the courts should return to the view that any doubt against the powers of a municipal corporation should be resolved not necessarily against the corporation, but always in favor of the public, whether for or against the corporation.

The later chapters of the book are devoted to such subjects as expanding the police power, city planning, including building heights and zoning and excess condemnation, the municipal ownership of public utilities, control over living costs, municipal recreation and the promotion of commerce and industry, including such topics as development of water power, advertising the city, municipal exhibits at expositions and financial aid to private enterprises.

The treatment of the subject is everywhere marked by sober judgment and a thorough grasp of fundamental principles, and the work may be highly recommended to those interested in the important problem therein considered.

WORKMEN'S COMPENSATION LAW JOURNAL. Volume I, No. 1, New York:
C. C. Hine's Sons Company, 1918.

As the Workmen's Compensation Acts are in force in a great majority of the large industrial states of the Union it is not surprising that a law journal devoted exclusively to the reporting of workmen's compensation cases should make its appearance.

While the cases reported in this journal are all printed in other publications, they are scattered over a number of reports and, except in large cities, are not accessible even to lawyers, unless they can afford elaborate and expensive libraries. The journal should, therefore, supply a real want. It is,

perhaps, to be regretted that instead of publishing all the decisions of the appellate courts, it should not have selected the more important of such decisions, and also the more important decisions of the boards who are charged with the administration of the various acts. Many of these decisions are of great importance and may never come before an appellate court for affirmation or reversal. They are published, if at all, in bulletins or reports issued more or less irregularly, and extremely difficult to obtain. Their publication would, therefore, be a real boon to those who desire to keep abreast of current compensation law. It would be, of course, impossible to publish all of such decisions and to select out of their immense mass those worthy of publication would require editorial ability of the highest class. Nevertheless, one may venture hope that the journal will enlarge its scope and will at some time in the near future include a carefully selected collection of such cases.

The Workmen's Compensation Journal is attractive in form, and is well printed on excellent paper. If there is any criticism that can be made upon it, it is that the syllabi are not so clear as they might be. But the journal is in its infancy, and there is reason to hope that such small blemishes will disappear in later numbers.

CRIMINOLOGY. By Maurice Parmelee. Pp. xiii, 522. New York: The Macmillan Company, 1918.

Dr. Parmelee, formerly Professor of Sociology at the University of Missouri, and the author of a number of works on anthropological and sociological subjects, has presented in this volume an admirable study of the entire field of criminology. No work attempting to cover the entire subject in its historical, biological, psychological, sociological, and legal aspects can do more than present it in broad outline with such illustrative material as is necessary to give point and body to the more or less abstract propositions. This has been very well done by Dr. Parmelee, and the reader is carried forward from subject to subject by the author's thorough grasp on his material and his ability to present the matter in concise, correct and fluent manner. The book is eminently readable and contains the results of research in the several fields that it purports to cover down to the very year of its publication. The conflicting theories of criminologists are all considered and fairly set forth. The part relating to criminal jurisprudence is, of course, of special interest to lawyers. The author treats of the origin and historical development of criminal law and of procedure, the reform of criminal procedure, problems of evidence, particularly those of expert testimony and of the use of psychological investigation in securing proof. He breaks a lance for the establishment of public defense in criminal trials and is trenchant in his criticism of the jury system. He has several valuable suggestions as to the improvement of the bench and a most excellent chapter on the police function. The bibliography is sufficiently comprehensive and modern, and in addition to referring to text-books of a more or less authoritative character it includes references to many articles in scientific magazines, journals and bulletins.

THE LAW RELATING TO TRADING WITH THE ENEMY, TOGETHER WITH A CONSIDERATION OF THE CIVIL RIGHTS AND DISABILITIES OF ALIEN ENEMIES AND OF THE EFFECT OF WAR ON CONTRACTS WITH ALIEN ENEMIES. By Charles Henry Huberich. Pp. xxxii, 485. New York: Baker Voorhis & Company, 1918.

The Act of Congress of October 6, 1917, known as the Trading with the Enemy Act, will remain the subject of judicial investigation and interpretation for many years after the conclusion of this war. Dr. Huberich's book is a careful compilation of the decisions of American, English and English-Colonial Courts on problems that will arise in the administration of this act. The author's high reputation as a student of international public and private law and as a contributor to the study of legal problems arising out of the present war, justifies the reader's confidence in the use of this volume and in the opinions that are here and there offered as to the probable meaning of sections of the act that have not yet been judicially considered. Some of the more important topics considered in the book are status of alien enemies as litigants, as property holders, as licensees of patents and trade-marks, as creditors, as decedents, as parties interested in decedents' estates, as grantors or grantees of real estate, as trustees or *cestuis que trustent*, and more particularly their relation to the large field of contracts, including negotiable instruments. The work is most timely. It is excellently arranged and it is specially to be recommended to persons to whom a large law library is not accessible, in view of the fact that the opinions of the courts have, in many cases, been given *in extenso*.

DECISIONS OF THE UNITED STATES COURTS INVOLVING COPYRIGHTS, 1914-1917. Copyright Office. Bulletin No. 18. Pp. ix, 605. Washington: Government Printing Office, 1918.

This volume contains decisions of the United States Courts involving copyrights from July 28, 1914, to July 2, 1917. To these there have been added a number of decisions of the state courts as well as departmental decisions and opinions on the same subject and cognate subjects handed down between July 1, 1909, and June 30, 1916. The contents of this volume, together with the decisions published in the former annual reports for 1910 to 1913 of the Register of Copyrights, and in the Copyright Office Bulletin No. 17, containing the reports for 1913-1914, together form a fairly comprehensive, if not entirely complete, collection of authoritative interpretations of the Copyright Act of March 4, 1909, which went into effect on July 1, 1909. The report is well printed and contains a table of all the cases printed by the Copyright Office, as well as those printed in this volume. The volume, bound in red leather, may be obtained from the government printer for sixty cents. Bulletin No. 17, insofar as available, may be obtained from the same source at thirty cents.