

EDITOR'S NOTE-BOOK

CONCERNING In another department of the of the present number
UNIVERSITIES. of the REVIEW we venture to speak with approval of
a new regulation adopted by the Law Society of
Upper Canada which requires two years' University training as a
prerequisite for entrance into the Law School of Osgoode Hall. In
dealing with the subject we quote some observations by the Honour-
able Wallace Nesbitt in the course of which he expressed the hope
that the regulation would be a step towards requiring "complete
University training" on the part of those who seek admission to the
School. In the same department our readers will find countenance
for the hope entertained by Mr. Nesbitt in our notice of the very
great success achieved by a Canadian law student abroad whose
sound preliminary education was received at one of our leading
Universities.

As a matter of fact discussion of the Universities and their place
in our national life has been very much to the fore of late. In De-
cember last Mr. E. W. Beatty, K.C., President of the Canadian
Pacific Railway Company and Chancellor of McGill University,
addressed the Arts Undergraduates' Society of McGill on the subject
of "Student Influence at the University and Afterwards." In the
course of his address Mr. Beatty said:—

"While at one time on this Continent of North America there was a
tendency to belittle the value of a University education, particularly in Arts,
as unsuited to practical life, it is interesting to note that some of the most
generous benefactors of Universities have been men who themselves were
deprived by circumstances of the opportunity to attend a University—such
men as Andrew Carnegie, John D. Rockefeller, John D. Archbold and James
B. Duke. These men seem to have felt that in their own youth they missed
something, and they have given of their wealth so that the gates of the
Universities should be opened wider to a later generation. . . . The idea
which seems to have governed these benefactors is not so much that a Univer-
sity career qualifies a man to earn a larger income than he otherwise would,
but rather that higher education is a good thing for human progress, as well
as for the human individual. They have found through their own
experience and through their own social contacts that a University edu-
cation is not a waste of time and that there are more admirable things
in human life than the mere making of money. . . . If you look
over a list of names of those studying at the great English Universities
you are struck by the number of those bearing family names familiar
to students of English history. That is because these families send their sons
to Oxford and Cambridge as preparation for the life of public service which
it is their pride to maintain. So, too, the youth whose ambition it is to
enter public life goes, if he can, to Oxford or Cambridge, where in an atmos-
phere of fine tradition he studies the social, political and economic history of

Europe, both old and new, in relation to his own race, trains himself in debate at the Union or other lesser clubs, makes friends and contacts in a society which includes the brightest minds of his generation. Cecil Rhodes' idea was that such a spirit should be disseminated throughout the Empire and the United States, and, as an afterthought, be extended to the Teutonic cousins of the Anglo-Saxons in Germany."

These are the words of a man who has had, as a lawyer and as the chief officer of a great railway system, exceptional opportunities for testing the requirements of Canadian citizenship, and we commend them to every young man who contemplates admission to the Bar.

Then, in January, we had the celebration of the seventy-fifth anniversary of the foundation of Trinity College, now one of the constituent colleges of the University of Toronto. At the Graduates' Dinner, which took place in the Great Hall of Hart House on the last day of the celebration, the Right Honourable Mr. Justice Duff of the Supreme Court of Canada delivered an impressive address. We quote some of its memorable passages:—

"It would be impossible for me, in any words at my command, to begin to express the debt which I know I owe to the University. . . . I like best to think of the University as a temple of disinterested learning, haunted by the shades of mighty men, where the flower of our youth assemble, with diverse ideals, with diverse hopes, with diverse destinies, who mutually influence and stimulate one another, whose lives may be elevated, enlarged, enriched, whose mental outlook is humanized, and where the whole man may be moulded and fashioned for good service in the world.

"And it is from this point of view, perhaps, that we can most clearly discern the peculiar value of the federal constitution of the University. These colleges, each with its own origin and its own history, and each with something of a special character derived from that origin and history: each with an intimate life of its own—it is perhaps in such surroundings, that these precious possessions, these ameliorations of character and spirit, are most likely to be acquired. . . . There has been no period in our own history and probably none in the history of the British Empire when the rôle of the University was so important as it is to-day. Men with eyes to see must realize if they observe the world about them, that the time may come when we shall have to call upon all our resources of wisdom and stability. Every judicious person must perceive this who glances at the problems which now confront us and which as the time goes on will press more and still more insistently for solution. Judicious people must perceive this, if they take note of the tendencies and the forces which may dictate such solutions. No one fears destructive revolution. But our confidence must largely rest upon the assurance that a sufficient number of citizens, educated men and women, will approach the examination of these problems, with knowledge, with some degree of detachment, and with entire rectitude of intention. And it is here that the stabilizing and humanizing influences, which directly or indirectly ought to proceed from the higher seats of learning, will, we are entitled to expect, make themselves felt with all their force.

"For generations it has been a commonplace that the hope of democracy lies in an educated people. Among the admonitions addressed by Washington and Jefferson to their fellow-countrymen, none was more emphatic than 'educate the people.' But popular education will starve and wither unless it can be nourished, unless it can derive sap and vitality, from higher institutions of study. The pioneers of our own Province acted upon this self-same principle. They founded a system of elementary education; but they were

not content with that—they established seats of learning. And upon us, who are the beneficiaries of their labours, upon us rests a reciprocal duty: it is for us to see that these potent instrumentalities of civilization shall not become less potent: but that they shall be maintained, that they shall be perpetuated with more and more pervading, more and more penetrating influence, and with augmented lustre and power."

We were privileged to be a guest of Trinity during part of the celebration, and in wandering through the studious cloisters of the magnificent building just completed for that College in Queen's Park, the atmosphere served to recall the gentle Elia's visit to Oxford in the Vacation, where he felt that even one who was not University-bred, one indeed who "has been defrauded in his young years of the sweet food of academic institution," could "play the gentleman and enact the student" with dear dissimulation. And then when, answering the summons of a pious bell, we turned into the Chapel for Evensong, the scene of the gowned students assembled for worship after a day of training for mind and body afforded a very palpable proof that Trinity is an institution which recognizes in a practical way that "education has for its object the formation of character." That sort of education is necessary in building up a nation. Canada cannot become great without it: for the soul of the body politic is the sum of the characters of its individual citizens. And with this thought in our mind we close these observations by a quotation from the Epilogue to Sir Rider Haggard's recently published memoirs—not forgetting that Sir Rider himself was bred to the Bar:—"Surely those men are mad who in their little day reject the offerings of religion, for, through faith, the communion of the creature with his Maker is real and possible to him who seeks it, whatever the fashion of his seeking; and without that communion light is not."

A COUNTER CURRENT. With the mood produced at Trinity strong upon us it was with mixed feelings that we read an article in the January *Harper's* under the title: "Wanted: A Substitute for Righteousness" in which a teacher on the staff of an American college, despairing of inculcating moral standards in the sophisticated youth of to-day, suggests the setting up of *aesthetic* standards in their stead. This is sheer nonsense. Did their culture save the Greeks when they became politically dishonest? If it is true that the young people of the United States have no sense of moral responsibility then the republic is faced with imminent ruin. But while conditions exist which justify some alarm, we think the indictment referred to is ridiculously overdrawn. The nation that produced Abraham Lincoln, and was inspired by him to save itself in

the greatest civil war of history, is not likely to forget his counsels and "perish from the earth" by reason of social dry-rot within a century after his death.

THE REPRESSION OF CRIME. At the present moment in the history of our age when a whirlwind of crime is ravaging the peace of society throughout the world, it is interesting to take up a book of studies in Historical Penology such as that of Dr. Barnes, recently published by the Dorans,¹ and learn what he thinks of the imperfections of the penal systems prevailing in the United States. While it is generally and very generously admitted by our American cousins that the administration of criminal justice both in Great Britain and Canada is superior to theirs, still one has only to search the criticisms of the English system—from which of course ours is derived—since the time Bentham wrote his *Panopticon* to realize how little has been done towards a scientific solution of the problem of culpability on the part of one whose conduct has brought him within the toils of the law of crime. La Bruyère in the seventeenth century uttered a profound truth in the epigram: "Si la pauvreté est la mère des crimes, le défaut d'esprit en est le père." Poverty is and ever has been a congenial breeding-ground for crime, but it is the defective mind in its failure to evaluate the advantage as related to the peril inhering in a criminal act that is chiefly responsible for its commission. Hence, in this humanitarian age, the necessity for expert inquiry into the mental state of the law-breaker before determining his responsibility. And here it is that psychology, disengaged as it now is from its former domain in metaphysics and regarded as the science of behaviour, can be of the greatest service in providing us with reliable tests of culpability. To quote Dr. Barnes:—

"Hitherto the question of the guilt of the accused has been the chief problem which has concerned court procedure, and criminal law has been largely devoted to an effort to fit the penalty to the crime. Both these concepts and objectives are totally renounced by modern criminal science. The problem of the guilt of an accused individual is far less important than the matter of his potential danger to society. Indeed, the question of guilt is interesting and significant only in relation to this very issue of the menace to the community. If competent psychiatrists discover that an accused person is potentially a social menace, modern criminal science would insist that such an individual must be segregated and properly treated, irrespective of his guilt or innocence of a particular criminal act." And he adds:—"Many conventional critics of the new criminology and penology assert dogmatically

¹ *The Repression of Crime*. By Harry Elmer Barnes, Ph.D. New York: George H. Doran Company. Toronto: The George H. Doran Company of Canada, Limited.

that the modern criminal science would lead to inadequate defense of society against the criminal classes, but this allegation is shown to have no foundation when subjected to critical analysis. . . . If such persons possessed even a rudimentary knowledge of the history of crime and its treatment they would know that increased severity in punishment has been tried for thousands of years and has invariably ended by producing a far worse demoralization of society than previously existed."

After a very thorough examination of the history of penology in the United States, Dr. Barnes presents in his concluding chapter an outline or programme of such measures as he thinks expedient for the repression of crime in that country, prefacing it with the sprightly observation that

"One could completely eliminate law-breaking by arresting the entire population and putting it into temporary custody, but no such scheme would be any guaranty that the crime rate would be lower a decade hence."

His programme is discussed under three heads: first, preventive measures, such as an accurate collection of criminal statistics, restriction upon the marriage of mental defectives, special mental training for backward children of the poor, and specific instruction of children in general as to the duty of obedience to the law; secondly, more adequate measures for the apprehension and conviction of the criminal; and, thirdly, improved measures for effecting the reformation of the convicted criminal. As to this last he says:—

"If we can make penal and correctional institutions ever more efficient instruments of reformation or permanent segregation, we shall cut off one of the most important sources of the production of criminals, and render socially effective any improved type of criminal jurisprudence and criminal procedure."

We feel that some parts of Dr. Barnes' presentment of the case for reform in the general field of penology will provoke dissent in the minds of many Canadian lawyers; for undoubtedly the result of the adoption of his suggestions in the main would be to diminish the functions of the judicial tribunals and magnify the place of the psychiatrist in the administration of criminal justice. That of course spells a further advancement of the menace of bureaucracy. But his book repays a careful reading by all who are interested in the subject, for it presents in a moderate bulk and in clear and forceful language a complete summary of the advancement that has been made in the United States in the psychopathic treatment of criminals. As has been said by a wayside philosopher "the world do move," and the law and the lawyer must keep pace with the march of scientific achievement if they are to find favour with a public ever widening its sociological knowledge. In a period when a majority of the nations are seeking to wash the stains of war from the face of the world, doubtless it would be well for the several communi-

ties of civilized people to seek every aid of science to accomplish what the conventional rules of law alone have hitherto failed to do, that is to say to secure a proper proportion between the increase of social culture and the subsidence of the volume of crime.

* * The atmosphere of our observations in this department is a little more serious than usual, and we therefor think it well to lighten it by the following items:—

THE WAY THE WIND BLOWS. Bluster, K.C., noted for his leather lungs, was addressing the Appellate Division at E. when an usher new to the job stuck his head in the door and announced that Mr. Bluster was wanted on the long distance telephone to speak to someone in a city two hundred miles away. "Never mind the telephone," said Mr. Justice B., *sotto voce* to the Clerk, "just open the window and they will hear him."

BOTH WET AND DRY. In a recent case tried in the West the plaintiff was suing for the dipping of a large number of sheep, and in giving his evidence referred to his memorandum-book, a home-made affair consisting of writing-paper inserted in a cover bearing the striking title "Methodist Hymn Book." Counsel cross-examining scoffed at the title, whereupon Mr. Justice H., the trial Judge, remarked that the eternal fitness of things would be better served if "Baptist" were substituted for "Methodist," but he would make no order to that effect as no issue of title was raised in the pleadings.

PRELIMINARY EDUCATION AGAIN. The following 'howlers' collected from some American school-examination papers are quite equal to anything we have seen of late in the English press; and they have some pertinence to the subject of higher standards of preliminary education for law students. Three questions in a Geography paper were answered in this wise:—"The highest peak in the Alps is Blanc Mange." . . . "Amongst the Islands of the West Indies are the Pyjamas, noted for toilet sponges." . . . "Ceylon is joined to India by a chain of coral wreaths." In a History paper these marvellous answers were furnished:—"Habeas Corpus is what the people used to say to undertakers at the time of the Great Plague in London. It means, 'You may have the body.'" . . . Louis XVI. was gelatined during the French Revolution." In a Botany paper was the following:—"A Focus is a thing like a mushroom, but if you eat it you will feel differently from a mushroom, for Focusses is poison."