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Book Reviews

EDWARD LIVINGSTON, by William B. Hatcher. Louisiana State University Press, 1940. Pp. xiv, 518. \$3.50.

Edward Livingston is one of the liveliest of our "great dead." Thus, in the current undertaking in Louisiana and elsewhere to construct a modern penal code, no source of information can provide greater assistance than the works of this eminent lawyer. In addition to innumerable technical and substantial suggestions (e.g., a Ministry of Justice, the progenitor of our judicial councils) will be found an abundance of humanitarian reforms that are consistent with American ideals. And if the appointed codifiers are tempted to forget that they are American lawyers and to embrace the dogmas of a current penology that has its roots in totalitarian philosophies, they may be deterred by Livingston's clear and even eloquent analyses of the role of criminal law as the paramount protector of the individual from official abuse.

The most conspicuous single fact about Livingston is that he was no rigid doctrinaire. Thus while he threw himself wholeheartedly into the struggle for preservation of French jurisprudence in Louisiana, he nonetheless recognized the excellence of English criminal law, and helped adopt it. This basic balance, judgment, insight, and common sense characterized his career from its promising origin in New York to its calm close at the end of almost three-quarters of a century.

A full biography of Edward Livingston—one that would build on and amplify Hunt's *Life*—has long been needed; all Americans, particularly all members of the legal profession, and, most especially, those of the Louisiana Bar, must be grateful to Mr. Hatcher for having undertaken so arduous and important a task. Louisiana State University Press has done an excellent job in the printing and editing of the work and has illustrated it splendidly with a number of interesting photographs.

The author has presented a detailed study of Livingston and of the political history in which he participated. The early days in New York where he was the favored member of a prominent family, election to Congress from New York, District Attorney and Mayor of New York, arrival in New Orleans and immediate entry into the vibrant life of the city and state, the controversy

with Jefferson over the Batture, Aide-de-Camp to Jackson in the Battle of New Orleans, the codification of the various Louisiana codes, Louisiana legislator, United States Representative and Senator, Secretary of State under Jackson, Ambassador to France, and brief retirement—these are the high points in a distinguished career that Mr. Hatcher describes in detail. The information is interesting; the work was painstakingly done.

I wish I could add that the book shows much insight, new discovery, or creative imagination. The author seems to have proceeded almost mechanically at times, feared to form his own judgment about the man, and failed to achieve a fresh, forthright point of view—preferring to accept the work of others as valid, and to summarize it. Livingston was sufficiently great to withstand any calm appraisal and display of his weaknesses—and he had them. Only the young and the romantic must have their heroes perfect. The rest of us want to know the weaknesses, the foibles, of the great, whom we come to know and to appreciate all the better thereby. Another major weakness in the book is the unsuccessful attempt to integrate Livingston's biography with the political events of his times. The aspiration was excellent—the execution unfortunate, to say the least. Almost two hundred pages simply repeat what can be found in numerous histories—except that Livingston flits through this restatement in Mr. Hatcher's book. The first hundred pages contain practically nothing about Livingston's childhood and youth, and hardly more than a word about his wife and children. It is unfortunate that it was impossible to add anything in this regard to Hunt's *Life*. The abbreviation of the book to the above extent together with some attention to the style would have helped greatly. In short, the definitive life of Edward Livingston remains to be written. Nonetheless it is fair to repeat that Mr. Hatcher has done a worthwhile job conscientiously and with detail and accuracy.

In these days the thoughts of all observant Americans are turned towards their own history more than ever before. It is a history in which law and lawyers played important roles—probably the most important ones of all. Not chauvinism but a vital need to solve pressing problems and maintain cherished values compels this study of our past. Law teachers must be interested especially in the biographies of great lawyers if for no other reason than to learn how legal education has retrogressed. Compare the training of Livingston and other great lawyers of this country as regards the functions and philosophy of law with that

of present-day students pointed at Bar examinations drawn up by average practitioners—and form your own conclusions as to this. There is, moreover, a special obligation on Louisiana lawyers and law teachers to make generally available the legal history of the state. It is a veritable mine of valuable resources that includes French and Spanish and common law; its cultivation is long overdue. Because of Livingston's equal grasp of all of these systems, he has excellent claim to the title of premier lawyer of Louisiana. In that state he blossomed to maturity as a great advocate and as a legal scholar and codifier of world and lasting renown. Livingston should be an inspiration to the Bar, teachers, and students of Louisiana. His career should encourage them to add greatly to the wealth of their own jurisprudence and to that of the country as well. For his considerable help in furtherance of this goal, we are much indebted to the author of this book.

JEROME HALL*

THE AMERICAN PRESIDENCY, by Harold J. Laski. Harper and Brothers, New York, 1940. Pp. 278. \$2.50.

THE PRESIDENT: OFFICE AND POWERS, by Edward S. Corwin. New York University Press, New York, 1940. Pp. 476. \$5.00.

No other political institution in the world provides so subtle and unstable an interplay between office and personality as does the American presidency. The presidency conditions the nature of the president's activity without defining it in any save the vaguest terms. As Woodrow Wilson put it, "The president is at liberty, both in law and conscience, to be as big a man as he can."—as big, that is, as he can be within the limits imposed by a federal system, a division of powers, and a party organization with radical centrifugal tendencies.

How big a man the president should be was left unsettled by the framers of the constitution; and their divided opinion on this matter is reflected in the ambiguity of the provisions which define the office. The presidency has never achieved a position of stable equilibrium within our system. And now this office of ambiguous origin and fluctuating history has come to assume a position of fateful importance in moulding the shape of the future. It must

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