DEBATES*

DEBATES have so far figured very prominently in the Society's programme of activities; indeed, it would be more correct to state that the holding of debates was the Society's main function this year. The standard displayed by the speakers was, on the whole, quite good ; it is clear that debating talent is certainly not lacking among members of the Society. If one has to express a note of regret, it is, that the response from some students has recently been anything but encouraging with the consequent result that the last two debates have been poorly attended. We look forward to more cooperation in the future, for it is in the atmosphere of debate that the student develops his personality and acquires that confidence and sense of judgment which cannot but stand him in good stead when he embarks on his professional career.

The first debate of the year took as back to Montesquieu's doctrine of the Separation of Powers. George Zammit B.A. (Lond.) , who was supported by Joseph Agius contended 'That the Separation of Powers enunciated by Montesquieu, does in fact exist'. In his speech the proposer laid particular stress on the fact that the famous French writer propounded his theory subject to evolution. It was natural, the proposer said, that we could not expect to witness complete separation between the legislative, executive and judicial powers ; one would be insulting the genius of a Montesquieu if one were to maintain that his theory stood for complete and absolute separation. The opposition was led by George Degaetano and Maurice V. Arrigo. It was pointed out that the French jurist was not, as many maintained, the originator of the doctrine ; his theory was a restrictive interpretation of the previous doctrines of the Separation of Powers. Today Montesquieu's theory had not found application in any system on the Continent ; the nearest approach to it was in the American Constitution, but even here with the growth of subordinate legislation, separation tended to break down and could not be said to exist.

From the trend of the debate it became clear that the opposition had attracted more adherents to its side and it eventually carried the day by a majority of six votes.

A very interesting debate came up for discussion when Antoine Cachia with Joseph Abela, as seconder, proposed his motion 'That the notion of the born criminal is false'. The proposer said that to admit the notion of the born criminal one had to admit that there were persons who from birth manifested certain Criminal traits which inevitably lead them to the commission of crime. In other words, an irresistible impulse was essential—a certain irresistible influence which distingushed them from habitual criminals in whose case the cultivation of crime was not irresistible. The proposer referred to certain absurd theories according to which born criminals could be recognised by certain physical traits. He admitted that heredity played an important part in the formation of an individual but it was not the exclusive factor which overcame everything else. What was inherited was only a predisposition to crime; or an enfeeblement of character which if left to itself, could never lead to crime. Joseph Abela said that many upheld the theory of the born criminal because they confused the different notions of environment and heredity.

Oliver J. Gulia L.P. and Anton Calleja B.A., led the opposition very convincingly. The

* Reported by Eric P.Sammut.

former started by expressing disapproval of the proposer's Conception of a born criminal. He said that it was at variance with the meaning popularly attributed to the term. When we refer to a born artist we do not ordinarily mean a person who, from the very moment of birth was an artist, but one who has such ability that he has come to be considered by the public as a born artist. It was the same with the born criminal—a man who in the pursuit of crime had shown such nefarious dexterity and whose life had been a record of evil and anti-social acts. Relapse, he contended, proved indirectly the existence of born criminals i.e. : people who possessing an evil disposition, were bent on crime. As regards the purposes of Criminal Punishment, it had been proved beyond doubt that reformation as an aim of legal sanctions, had failed in one crucial test ; the reason being that it was by no means universally applicable. There were those 'so inextricably rooted in wrongdoing that no prospect existed for inducing in them an honest way of life'. These considerations which emerged from researches of modern criminologists could not but lead to the conclusion that born criminals in the sense given above, did actually exist. Anton Calleja referred his listeners to Freud and others and their findings in the field of Psycho-Analysis. These taught us that man was subject to an innate impelling influence which manifested itself in different directions and differed from one individual to another. In some persons this developed, into a tendency to commit crimes.

The speeches of the principals were followed by a lively discussion when the motion was open to the House. Robert Staines, said that the acceptance of the notion of the born criminal would be tantamount to a denial of the freedom of the will, as the proposer himself had pointed out, and as such it appeared to him to be untenable. Wallace Gulia B.Sc., expressed himself in favour of the opposition. He would not be so bold as to contradict the principles evolved by Gregor Mendel who pointed out that heredity was a determining influence in nature and that therefore criminal traits could be passed on to a succeeding generation.

The final voting was 12—7 in favour of the motion.

The subject which was next discussed was—in the words of Victor Frendo the proposer—as much of topical as of legal interest. The proposer said that, following the judgment delivered in the Strologo case, there had been a demand for the establishment in Malta of a Court of Appellate Jurisdiction in Criminal cases. The principle of appeal had been recognised from the earliest times; it was as old as the composition of the Courts themselves. There was a supreme Court of Appeal in Rome ; in England, even in the feudal era the principle of appeal was recognised. He referred to other countries where Criminal Appeals were allowed. In support of his contention he quoted Professor Mortara who wrote that once we approved of the principle of appeal there appeared to be no reason why this right should be denied in criminal matters. The proposer went on to say that appeals were allowed from the Courts of Magistrates. In the case of the Superior Courts it was only in Civil and Commercial cases that appeals were allowed but for some unknown reason a person brought before H.M. Criminal Court could not

lodge an appeal. He was fully aware of the fact that the introduction of such a Court would involve many difficulties but he held that the administration of justice was to be the first and foremost consideration.

The proposer concluded by saying that he failed to understand why a person was given the right to appeal in a case which dealt with an obligation to pay a sum of Lm 1,000 but was refused this right when his very existence was in the balance. S. Camilleri said that Chief Justice Holt had referred to appeals as 'the badge of English liberty'. In England there was not only a Court of Appeal but also a further appeal to the House of Lords on a point of Law. He drew attention to the marked contrast between this system and that prevailing in Malta.

It was true that appeals to the Privy Council were sometimes allowed but only in the case of a flagrant violation of justice. He considered that the expenses involved were, in most cases, beyond the reach of the average citizen. Moreover he did not look upon the Privy Council as the court which was to deal with appeals from Malta when it was possible to establish a local Court of Appeal. The fact that appeals lay with the Privy Council in certain cases, was in itself an acknowledgement of the necessity of setting up a Court of Appeal. On behalf of the opposition Victor Borg Grech said that he considered appeals necessary in civil and commercial cases as there was no jury. In a Criminal Court the decision as to whether a person was guilty or not rested with nine judges. He was of opinion that by the introduction of a Court of Appeal the administration of justice would be hampered because it is important that punishment should immediately follow the decision of the Court. The Romans, he said, looked upon an appeal as the juristic remedy to repair the mistakes in a judgment of the Court. He referred to the provisions of Section 498 of the Code of Criminal Procedure, whereby the judge is empowered to recommit the case where he considers the jury's verdict erroneous. These provisions were, in his opinion, sufficient safeguard against the commission of any injustice.

George Schembri, who seconded the opposer said that the English system could not in any way be compared with the local one. There was no judicial functionary in Malta corresponding to a Justice of the Peace in England. It was only natural to expect a different procedure in the latter system. He mentioned the safeguards to the interests of the accused to which the opposer had made reference and. concluded by saying that the fact that appeals were allowed to the Privy Council in extreme cases was an indication that no local court need be established. Paul Mallia B.A., was of opinion that there was no necessity for the established of a Court of Appeal. That would mean that the accused would be subjected twice to trial ; in cases of trials causing a sensation the jurymen sitting in the Appeal would have already formed an opinion. A system which stood the test of many years was not to be brushed aside because of exceptional cases.Hugh Wm. Harding L.P., also expressed himself against the motion and stated inter alia that the Royal Commission of 1913 did not recommend the introduction of a Court of Appeal because of the limited number of judges.

After Victor Frendo's winding up, a division was taken, the motion being approved—6 in favour and 5 against.

In the last debate which was held, Victor Ragonesi, L.P. , advocated the abolition of the system of trial by jury. The proposer started by answering some objections put forward by those who upheld the retention of the system. Some contended that the jury's verdict was more humane and supported by public sentiment. The proposer argued that the basis of Criminal Law' was that justice should be done. Those who maintained that jurors were necessary in order that justice may be administered according to public conscience were

contusing the duties of jurors with those of legislators. Nor could he agree with those who held that a jury would be more independent than a magistrate in times of public disturbances. The trial of M, Laval, during which the members of the jury assumed a hostile attitude to the accused, showed that this argument did not have much weight. The proposer reminded his listeners that the judge was bound to give reasons for his decision whereas jurors did not give their reasons. If trial by jury were abolished, definite reasons and motives underlying a judgment would be given in every case. Many supported the system on the grounds that it produced independent judgments of the man in the street. Experience had shown, on the other hand, that Jurors followed the directives and dictates of the presiding judge. There were also definite cases where jurors could easily prejudice rather than help the administration of justice. Typical cases were those where member, of the jury came from the neighbourhood of the place where the crime was committed or when they had previous knowledge of the facts. Moreover it was difficult to draw a borderline between questions of fact and questions of law. A juror would not find it easy to understand the weight of a question of fact which was closely interlinked with a point of law.

Robert A. Staines who led the opposition traced the development of the jury system. It originated in Roman times, received an impetus in mediaeval England and spread to all civilised countries. It was based on two fundamental principles viz : the right of every citizen to judge and be judged by his equals and the necessity of separating questions of fact from questions of law. The man in the street was as capable of deciding questions of fact as any learned judge. He: was perhaps even more capable in the sense that the judge is bound to become too used to the administration of justice, acquiring a tendency to lean to the side of the Prosecution. It was in this connection that Stoddart had referred to the 'perversion of mind of judges'. With regard to the possibility of having biased jurymen the opposer thought that it was easier to have a prejudiced judge as the accused had the right of refusing no less than three jurors. Dicey who was no ardent supporter of the jury system had stated that the worst iniquities committed by Jeffries would not have been possible unless he had accomplices among the jurymen. We certainly could not afford to discard this system.

J. Desira Buttigieg who supported the opposer said that the system of trial by jury afforded a guarantee to the public, to the accused, and to the State. The man in the street was more capable of understanding the passions and the workings of the human mind. The judge, as a human being, was liable to error but the State exonerated itself of any responsibility for these errors when trials were conducted on the jury system. The system also excluded the possibilty of any interference on the part of the Executive with a view to influencing the Court's decision. The judge was liable to have a preconceived opinion as he could have access to the file of proceedings before the actual trial. George Degaetano expressed himself against the motion. Crimes injured the community and it was only right that individuals selected from the community itself should be called upon to judge. Historically, the judge was the successor of the jury. He was of opinion that a set of men led on by a judge were far less liable to be biased.

Oliver Gulia L.P. rose to extend a helping hand to the proposer. He considered it difficult for the jury to go against the leaning of the judge ; the real responsibility rested with the presiding judge. Newspaper comment before the ttrial could easily

impress and prejudice a juror. Modern journalism could more easily affect the common man than the judge.

The majority of the members present supported a conservative policy in this respect and the motion was easily defeated.

* * *

THE ROCK OF REFUGE

Lord Hewart : "Amid the cross-currents an shifting sand of public life the law is like a great rock on which a man may set his feet and be safe, while the inevitable inequalities of private life are not so dangerous in a country where every citizen knows that in the Law Courts at any rate he can get Justice." On another occasion he says : "How is it to be expected that a party against whom a decision has been given in a hole-and-corner fashion, and without any ground being specified should believe that he has had Justice?... It is a queer sort of Justice that will not bear the light of publicity."

* * *

THE VITAL SPARK

Concluding part of Sir Edward Marshall Hall's address to the jury in the Seddons' trial ; "Gentlemen, the great scientist who have been here have told much of the manual of science and of the deduction that can be made from science. There is one thing scientist have never yet been able to find, never ye been able to discover with all their research and their study, and that is how to replace the little vital spark that will call life. Upon your verdict here depends, so far as I am concerned the life of this man. If that verdict is against him that vital spark will be extinguished and no science known to the world can ever replace it."

AKNOWLEDGMENTS.

TEMI MINORE MALTESE - by the Honorable Sir Arturo Mercieca, Kt., LL.D., M.A. rtd. Chief Justice and President of the Court of Appeal.

It is indeed unfortunate that only two hundred copies have been printed. The book contains in synthetic form no less than a description of that little world enclosed within the precincts of the Law Courts that brims over with activity every morning. There is such a motley crowd, such close contact between the wise and the foolish, the prudent and the extravagant, that one need not at all wonder at the endless variety of weird combinations. At times pitiful, at times rather uninviting, but always new and exiting. This is the spectacle that Sir Arturo portrays in this little volume. Hardly ever parting with a subtly humorous atmosphere, he narrates many incidence and anecdotes with precision—evidently the result of a most retentive and observing eye. Coupled with a fresh, lively exposition, his mastery of language has done him good service in registering the Message from the not remote Past—from that sphere of activity in which the author lived for several decades and which he himself designated: "Una cinematografia vivente".

To all those who participated in the incidents that are mentioned or, maybe, occupied a prominent role, the book must have recalled many memories of the days of old which, naturally, appear all the more radiant. To the young the anecdotes carry more impersonal meaning but they do not fail to impart a sure inkling of the friendly spirit and strangely enough, the hilariousness that pervade the Palace of Justice ant to instruct them in the great maxim of life—that all things should be taken in the proper mood.

JOURNAL OF COMPAATIVE LEGISTLATION AND IN- TERNATIONAL LAW—per British Council.

BRITIAN TODAY—per British Council.

We are proud to acknowledge our thanks to the British of Council who are kindly favoring us with the issues of the :"Journal of Today". It would be superfluous to sing the praises of these periodicals and to recommend their perusal to our colleagues. The names of writers who subscribe to them, some of whom are celebrities the constructive work of comparative legislation which is being achieved and the wide circulation they enjoy, are attributes too well-known to need any recommendation. G.Z.