

DUTCH PENAL CODE.

By Art. 450 of the Dutch Penal Code, he who, seeing another person suddenly threatened with the danger of death, omits to give or furnish him with assistance, which he can give or procure without any reasonable fear of danger for himself or others, is punished, if the death of the person in distress has resulted, with three months' imprisonment and fine. — H. A. D. Phillips on Comparative Criminal Jurisprudence, Introduction, p. 5.

BENTHAM'S PROPOSALS.

From Specimen of a Penal Code.

There is simple corporal injury, when, without lawful cause, an individual, seeing another in danger, abstains from helping him, and the evil happens in consequence.

Explanations: — *Abstains from helping him.*

Every man is bound to assist those who have need of assistance, if he can do it without exposing himself to sensible inconvenience. This obligation is stronger in proportion as the danger is the greater for the one, and the trouble of preserving him the less for the other. Such would be the case of a man sleeping near the fire, and an individual seeing the clothes of the first catch fire, and doing nothing towards extinguishing them: the crime would be greater if he refrained from acting not simply from idleness, but from malice or some pecuniary interest. — 1 Bentham's Complete Works, edition 1859, p. 164.

As to the rules of beneficence, these, as far as concerns matters of detail, must necessarily be abandoned in great measure to the jurisdiction of private ethics. . . .

The limits of the law on this head seem, however, to be capable of being extended a good deal farther than they seem ever to have been extended hitherto. In particular, in cases where the person is in danger, why should it not be made the duty of every man to save another from mischief, when it can be done without prejudicing himself, as well as to abstain from bringing it on him. This accordingly is the idea pursued in the body of the work.¹ — Bentham's Introduction to *The Principles of Morals and Legislation*, chapter xix, section 1, paragraph xix. 1 Bentham's Complete Works, edition 1859, pp. 147–148.

¹ A woman's head-dress catches fire: water is at hand: a man, instead of assisting to quench the fire, looks on and laughs at it. A drunken man, falling with his face downwards into a puddle, is in danger of suffocation: lifting his head a little on one side would save him: another man sees this and lets him lie. A quantity of gunpowder lies scattered about a room: a man is going into it with a lighted candle: another, knowing this, lets him go in without warning. Who is there that in any of these cases would think punishment misapplied?

As to beneficence, some distinctions are necessary. The law may be extended to general objects, such as the care of the poor; but, for details, it is necessary to depend upon private morality. . . .

However, instead of having done too much in this respect, legislators have not done enough. They ought to erect into an offence the refusal or the omission of a service of humanity when it would be easy to render it, and when some distinct ill clearly results from the refusal; such, for example, as abandoning a wounded man in a solitary road without seeking any assistance for him; not giving information to a man who is negligently meddling with poisons; not reaching out the hand to one who has fallen into a ditch from which he cannot extricate himself; in these, and other similar cases, could any fault be found with a punishment, exposing the delinquent to a certain degree of shame, or subjecting him to a pecuniary responsibility for the evil which he might have prevented. — *Theory of Legislation*, compiled by Dumont from the manuscripts of Bentham; originally published in French; translated by Hildreth; 5th edition. London, 1887, pp. 65, 66.

LIVINGSTON'S DRAFT CODE.

Article 484. Homicide by omission only, is committed by voluntarily permitting another to do an act that must, in the natural course of things, cause his death, without apprising him of his danger, if the act be involuntary, or endeavoring to prevent it if it be voluntary. He shall be presumed to have permitted it voluntarily who omits the necessary means of preventing the death, when he knows the danger, and can cause it to be avoided, without danger of personal injury or pecuniary loss. This rule may be illustrated by the examples put in the last preceding article: if the blind man is seen walking to the precipice by one who knows the danger, can easily apprise him of it, but does not; or if one who knows that a glass contains poison, sees him about to drink it, either by mistake or with intent to destroy himself, and makes no attempt to prevent him: in these cases the omission amounts to homicide. — *Code of Crimes and Punishments*, drafted by Edward Livingston for the State of Louisiana [but not enacted by the legislature]. Volume ii, Complete Works of Edward Livingston on Criminal Jurisprudence, pp. 126, 127.

MACAULAY'S NOTES TO DRAFT OF INDIAN PENAL CODE.

Penal Code Prepared by the Indian Law Commissioners.¹ Chapter xviii [page 76]. Of Offences Affecting the Human Body. Of Offences Affecting Life.

294. Whoever does any act or omits what he is legally bound to

¹ A Penal Code prepared by the Indian Law Commissioners, and published by command of the Governor-General of India in Council; Calcutta, 1837. — Ed.