BOOK REVIEWS.

THE POLITICAL ECONOMY OF NATURAL LAW. By HENRY WOOD. Boston: Lee & Shepard, Publishers, 1894.

It is not the function of a law magazine to review economic literature. Natural law is not a subject with which the lawyer deals, and yet, since we have taken the trouble to read this book, and since we know several members of the bar who are more or less interested in economic subjects, we desire to say that it is the worst of a very bad lot that shall be nameless. The writer seems to be imbued with one idea, and one idea only, and that is, that *natural law* must never be interfered with under any circumstances and conditions. Individual lines of action "are often inharmonious and contrary, while the operations of natural law are consistent and harmonious." What this natural law is about which Mr. WOOD talked so fluently we do not know, and we have a suspicion the author does not know, either. For instance, what does he mean by this: "Its different factors may modify or counteract, but never oppose each other, for truth cannot be in opposition to truth. Its only warfare is with error, and its complete victory is simply a question of time." Or, again, what is meant by, "Natural law, being normal, is truthful;" or, of the natural law in the economic realm "as one of the many subdivisions of the universal natural law or the grand unity of truth." Shade of Sir Henry Maine! Would that that author, when he wrote the history of the ideas which, during the different stages of the world's development, have gathered around the idea of the word "natural," could have seen this curious conglamoration and mixture of ideas, which, revolving in the mind of Mr. WOOD, came to light in these pages.

We speak thus harshly of this work, which we would otherwise ignor, for the following reasons: The science of political economy or economics is a noble science—as noble, perhaps,

as the science of law, and certainly requiring just as deep research, just as efficient study, and just as clear a mind. Suppose that, to-day, there should be written a work on the law of contracts, which, disregarding all the decisions of the court, all that had ever been written or said, produced a work that one who had never studied law would write, would it not then be the duty of every man who cared for the science of law to condemn that book? The book and the writer would be masquerading under a title which they had no right to. Now, this sort of thing is what we believe only happens too frequently in political economy or economics. Men entirely unfamiliar with the literature of the subject, or who have never taken the trouble to examine the facts of the actual world, write out their own ideas, or what they are pleased to call ideas, gathered with little trouble and less thought, and label the whole "Political Economy" or "Economics," or some title by which the innocent reader will be deluded into thinking that the author is a student of the subject. This we do not consider as fair. It would not be fair in law, and it is not fair in economics. It is not fair to the men who are spending their lives trying to make the economic and social laws plain. Such a book as this tends to throw ridicule around the valuable labors of others. Publishers like the ones whose names are on this work should regret that it is there.

W. D. L.

CASES OF CONSTITUTIONAL LAW. Part I. With Notes by JAMES BRADLEY THAYER. LL.D., Weld Professor of Law at Harvard University. Cambridge: Charles W. Sever, 1894.

This work is the first part of a collection of cases on Constitutional Law which have been looked forward to for some time by those of the profession interested in that subject. The high position of the writer gave promise of a valuable work, and the result, so far, more than comes up to our expectations.

Case books from the Harvard Law School have become so familiar to members of the profession, that it is almost

unnecessary to describe their character. The present collection opens with some preliminary quotations on government taken from Aristotle, Montesqusui, Holland, Blackstone, etc. The principal English decisions on prerogative of the crown are given; but the most interesting cases in the volume are those which illustrate the rise of that peculiar "American doctrine" of Constitutional Law, the power of the judiciary to declare an Act of the Legislature contrary to the Constitution void. The cases of Rutgers *v.* Waddington and Trevett *v.* Weeden will always have a lasting interest for the student of this subject. The first of these is reprinted from a pamphlet of Mr. Henry B. Dawson, published in 1866. The court did not really assert, though they implied, that they had the power to set aside a statute as being contrary to the Constitution. New York had passed an act which, in terms, would have permitted one, who, during the Revolutionary War, had had his premises occupied by foreign troops, to bring a suit in trespass against such person. The court thought that to apply the statute so as to cover such a case, after the treaty of peace between the United States and Great Britain, was to imply that the Legislature of the State of New York desired to set aside the law of nations, an implication which the court refused to make. "Whoever, then," they say, "is clearly exempted from the operation of this statute by the law of nations, this court must take it for granted, could never have been intended to be comprehended within it by the Legislature . . ." This very moderate decision seems to have aroused public feeling to such an extent that a mass meeting was held, which issued an address, parts of which read strangely to us after a hundred years of experience of State Legislatures, on the one hand, trampling on the rights of individuals, and courts of justice on the other, standing between the individual and the arbitrary action of the State. The quotation from the address runs as follows:

"From what has been said, we think that no one can doubt the meaning of the law. It remains to inquire whether a court of judicature can consistently, with our Constitution and laws, adjudge contrary to the plan and obvious meaning of a statute.

That the mayors' courts have done so in this case is manifest from the foregoing remarks. That there should be a power vested in courts of judicature, whereby they might control the supreme legislative power, we think is absurd in itself. *Such power in courts would be destructive of liberty and remove all security of property.* The design of courts of justice in our government, from the very nature of their institution, is to declare laws, not to alter them. Whenever they depart from this design of their institution, they confound legislative and judicial powers. The laws govern where a government is free, and every citizen knows what remedy the law gives him for every injury. But this cannot be the case where courts, if they deem a law unreasonable, may set it aside. Here, however plainly the law may be in his favor, he cannot be certain of redress until he has the opinion of the court." At the same time, the House of Assembly resolved, "That the judgment aforesaid is, in its tendency, subversive of all law and good order, and leads directly to anarchy and confusion; because, if a court instituted for the benefit and government of a corporation may take upon them to dispense with and act in direct violation of a plain and known law of the State, all other courts, either superior or inferior, may do the like; and therewith will end all our dear bought rights and privileges, and legislatures become useless."

In the report of Trevett *v.* Weeden, we regret that the argument of Mr. Varum was omitted. Mr. Varum's speech would have added a great deal to the value of the report of the case, as it places in extenso the reasons on which the judges probably reached their decision. There is no opinion of the court, but Prof. THAYER has printed the reply of the judges to the General Assembly when they were summoned before them to explain why they had declared an act of the Assembly void.

In this part of the work Prof. THAYER has used freely the material collected by the late BRINTON COXE, ESQ., of Philadelphia, and printed in his posthumous work on "Judicial Power and Unconstitutional Legislation," which we had such pleasure in reviewing at length on page 76 of the current

volume of the AMERICAN LAW REGISTER AND REVIEW. Some of the most interesting parts of Mr. COXE'S work are thus preserved with full permission of Mr. COXE'S editor, WILLIAM M. MEIGS, ESQ., in a place where they will be apt to reach a larger class of readers. There are few more interesting things in the whole work, than the report of the case which came before the Hanseatic Court of Upper Appeal at Lubeck, in which that court decided that even when constitutional provisions do not exist, prohibiting an official attesting, the legal validity of ordinances of the sovereign, which have not been authenticated in due form, the judge has, according to general legal principles, both the authority and the duty of refusing to apply an ordinance of the sovereign which, while its provisions are those of a law, has not been enacted according to the forms prescribed for making law by the Constitution of the land. This decision has since been overruled, but it is interesting as the only modern example of a civil law court attempting to hold the government to the provisions of a written Constitution. On page 149 to 154 inclusive and in other parts of the work the author has reprinted the major portions of his article in the *Harvard Law Review* on the "Origin and Scope of the American Doctrine of Constitutional Law."

The report of the case of Fletcher *v.* Peck, as an illustration of the power of the courts to set aside unconstitutional legislation, leads us to mention one apparent difficulty in this system of reporting cases illustrative of the different branches of a subject. Fletcher *v.* Peck, while it is an excellent illustration of how the courts of the United States can declare an act of the State contrary to the Federal Constitution void, has its chief importance not in that fact, but in the fact that it is a case where the Supreme Court first declared that a grant of land was a contract which the State could not impair. The decision in this last respect was fraught with consequences which are still being worked out. It is a matter of speculation, for instance, whether the Dartmouth College Case would have been placed upon the ground that the Act altering the charter violated a contract, and not on the ground that it confiscated property, had the opinion in Fletcher *v.* Peck never

been written. And it is an interesting query whether had the court considered the Act of New Hamphire in that case nothing more than the confiscation of property, whether they would have affirmed the decision of the State Court, or held that an *ex post facto* law could apply to a civil as well as to a criminal case. However this may be, it will be interesting to see what Prof. Thayer will do when he comes to publish cases illustrative of that clause in the Constitution which prohibits a State from passing laws impairing the obligation of contracts. Well, he will omit Fletcher *v.* Peck?

In a subject like Constitutional Law the same case may be of great importance, not only in one, but in two or more branches of the subject. Space prohibits that the cases should be republished in every connection. References to a case which was important in one connection, which had been reported in another, might be valuable, but the report of the case having been written from the standpoint that the case is to illustrate the development of a particular principle of law, the report naturally brings out the parts of the case and the parts of the opinion dealing with that principle, and, therefore, the report may not be suited as an illustration of the development of other principles. Prof. Thayer has prepared himself for getting around this difficulty by printing the opinion of the court in such cases as Fletcher *v.* Peck, in full. Why, however, he omitted the opinion of Mr. Justice Johnson, in that case, we do not know. Will not that opinion be important when he comes to discuss the meaning of *ex post facto* laws, or whether a law can be declared void because against the spirit of the Constitution? In fact, we note that all the cases on the subject of the power of the court to set aside acts for their unconstitutionalty seems to omit those opinions, like Mr. Justice Johnson in Fletcher *v.* Peck, which would set aside the Act of the Legislature, not because it was contrary to any express clause in the written Constitution, but because it was not to be presumed that the Legislature had been granted power to pass such Acts. For instance, the case of Trustee of the University *v.* Foy, and the opinion of Mr. Justice Chase in Calder *v.* Bull has been entirely omitted. It is true that the ideas rep-

resented in these cases, and in the opinion of Mr. Justice Johnson did not at the time develop into principles of Constitutional Law, but to-day such members of the Supreme Court as Mr. Justice Brewer are reverting to the ideas of Chase and Johnson and Mr. Haywood, counsel, in the case of the Trustees of the University *v.* Foy above mentioned, and basing their opinions on Constitutional matters on lines of reasoning suggested by these old cases and opinions. (See AMERICAN LAW REGISTER AND REVIEW, Vol. 32, 971).

Even peculiar doctrines of constitutional law, though never again taken up by the members of the profession and of the present Supreme Court, are sometimes interesting and instructive. We presume, however, that to insert all the ideas on Constitutional Law, as well as those which come to naught, as those which developed and became imbedded as part of the fundamental principles of the subject, would have unduly increased the size of the work.

The volume before us is the first instalment of what is evidently a work of permanent value, to which will turn all students of Constitutional Law, as well those students of twenty-five years hence, as those of to-day. If the remaining parts of this work attain, as they doubtless will, the high standard of the first part, the profession will owe another debt of gratitude to the University in Massachusetts.

W. D. L.

A TREATISE ON THE LAW OF PARTNERSHIP. By THEOPHILUS PARSONS, LL.D. Fourth Edition. Revised and Enlarged JOSEPH HENRY BEALE, Jr. Boston: Little, Brown & Co., 1893.

It has been fifteen years since the third edition of Professor PARSON'S work made its appearance. It is to Mr. BEALE (Assistant Professor of Law at Harvard) that we owe the present revision and enlargement of the "Partnership." The Editor has done his work well. In the first place, he has added a chapter upon a subject which has seen much develop-

ment and undergone important changes since the previous publication of the work—that of business combinations and "trusts." The question is treated very clearly, though briefly, finding a place in the work from its relation to partnership law rather than for the purpose of discussing its depths, interesting and important though they undoubtedly are. This chapter first describes a few of the present more important "trusts," and shows the objects of their custom and their nature legally considered. The question of illegality is then taken up, and, as regards the cases to which corporations are parties, a distinction drawn between the violation of, or departure from, charter rights, and the more interesting and less well-defined ground of "public policy." A list of the various State "anti-trust" acts is added in a note and a brief mention of the extent to which they have gone.

The editor remarks in his preface that "much of the discussion in the first and fifth chapters" (of the previous edition) "was rendered unnecessary by Cox *v.* Hickman." The mercantile conception has, he says, become the legal conception as well. On page 41, chap. 5, the partnership character is discussed.

Mr. Beale has not hesitated to make liberal use of his office as regards the treatment of the notes. We find, however, that the changes are improvements, and such is surely the province of the editor.

A useful appendix of forms for partnership agreements (and disagreements) is added. The book has throughout been divided into sections, following the present almost universal custom. Text books are usually consulted, not read continuously, and some sort of heading to the various subjects are necessary. W. S. E.

The Editors announce that the following *erratum* has been brought to their attention: Page 69, 2d column, 4th line of the January number, 1894 (Vol. I, N. S., No. 1), after the words "upon the discretion of a last trustee," *insert* "or being given in perpetuity."