

BOOK REVIEWS.

OUTLINE OF THE JURISDICTION AND PROCEDURE OF THE FEDERAL COURTS. Second Edition. By Joseph H. Long, Charlottesville, Va.: The Michie Co. 1911.

This account of the Federal courts is based upon a course of lectures given by the author in the School of Law of Washington and Lee University. It is a neglected subject and the law student usually finds it difficult to obtain a clear idea of the distribution of Federal jurisdiction. Works on Federal practice are generally too technical, while Kent's Commentaries, which were once relied on for this information, have, upon this topic, been rendered obsolete by recent Congressional action. The work is therefore most timely, particularly when one takes into account the important changes effected by the Judicial Code of 1911, which went into effect this year. The book is divided into two parts, the first containing a brief but fairly comprehensive description of the judicial power of the United States, its distribution among the various Federal courts, the courts themselves and Federal Reports and Statutes. When one takes into consideration the complexity of the subject it will be found that the author has succeeded remarkably well in presenting the salient problems connected with the administration of justice in the courts of the United States. The subject of procedure is omitted, as outside the scope of the work, but it would have been an advantage to the student if some further information had been given upon the subject of admiralty and bankruptcy, at least in outline.

The second part of the work contains the much discussed Act of Congress of March 3, 1911, known as the Judicial Code. Every lawyer who expects to practice in the Federal courts must have some knowledge of this statute. The references given in this volume to the old sections of the Revised Statutes and to Federal Statutes Annotated will be found very helpful.

L. H.

THE REFORM OF LEGAL PROCEDURE. By Moorfield Storey. New Haven: Yale University Press. 1911.

This volume contains a series of addresses upon a topic of perennial interest, delivered before the Yale Law School, in the Stoor's lecture series for 1911. Starting with the thesis that there exists at present a profound discontent with the administration of both criminal and civil law, particularly in the delay of cases, the writer discusses some of the causes which lead to the failure of American courts to render prompt and efficient justice and offers some suggestions based on his own experience as a practitioner. It is suggested that the true solution of the problem depends largely upon the adoption of higher standards of professional conduct and of a more sensitive professional conscience; that the judges should be more carefully chosen, given more power and larger salaries; that litigation itself should be reduced by scientific legislation looking toward the removal of causes of litigation, particularly in tort cases; that concerted efforts should be made to prevent crude legislation. To such truisms we may cordially assent, and yet search in vain for a concrete program of reform in procedure, which the title of the lecture course would lead us to expect. But it is the habit of distinguished practitioners in lecturing to law students to underestimate the intelligence of their audience, and to deal in commonplaces rather than with the technical problems with which their experience should make them familiar.

In this volume the criticism of the legal profession, and the antiquated procedure for which the profession is, after all, mainly responsible, is

administered with so gentle a voice, that one may doubt whether the office of censor is altogether congenial to the writer. No ruthless hand is laid upon the ancient fabric, and one is left with the impression that the problem is in the main ethical rather than juristic. The author reprobates the alleged remarks of ex-President Roosevelt about a "fossilized" judiciary, without judicially investigating the authenticity of these statements, which have been categorically denied. The writer's own attitude is indicated in the following sentence: After referring to the obvious delays in appellate courts he declares, "If these words of mine can be *tortured into a suggestion* to our judges, it is made with the greatest respect, and with a full appreciation of the difficulties which surround them." Is this not somewhat Oriental, in a day, too, when pigtailed are coming off in China?

If the writer has little to offer in the field of procedure, as such, he has much to say that is interesting and instructive and the book should serve a useful purpose in drawing to the attention of the lay reader, the part that the great public plays in the obstruction of justice.

W. H. L.

CORPORATIONS AND THE STATE. By Theodore E. Burton. New York: D. Appleton & Co. Pp. XVI, 249. Price, \$1.25.

This thoughtful discussion of the corporation problem by the senior United States Senator from Ohio, is in substance a series of lectures recently delivered at the University of Pennsylvania. Its purpose is to consider the political, social and economic conditions which have contributed to the growth of corporations, and to point out the proper relation between the corporation and the state. The volume includes also the decisions of the Supreme Court in the Standard Oil and Tobacco Trust cases, Justice Harlan's dissenting opinion in the former case, the text of the Sherman Anti-Trust Act, and the chief features of the Aldrich Plan for Monetary Legislation.

The present movement toward large combinations is traced to two distinct causes: the desire for greater efficiency or cheapness; and the desire for private gain which works itself out through the elimination of competition, the control of the output, and the fixing of prices. Only the former is normal. But both kinds of combination have gone farther in the United States than elsewhere, and for this reason the attitude of the state toward corporations has for the American people a peculiar importance. The frauds and excesses, which are so commonly associated with corporation organization and management here, and which are the resultant of certain recognized conditions, constitute an urgent demand for some form of control. It is well to remember, however, that the very conditions which render the need of control the more imperative are also the chief obstacles in the way of such control. It is important to keep in mind, too, that as the conditions which have contributed to the growth of corporations in the United States differ materially from those in other countries, so the remedy or remedies must be different. The physical environment, the stage of economic development, the degree of prosperity, the form of government, the political ideas concerning the relation of the government to the people, all have an important bearing, as the author is careful to point out, on the problems of corporate organization and management. The effect of these conditions has been that in the United States, where the opportunities for the acquisition of wealth on a large scale are unsurpassed, where the desire to acquire wealth as rapidly as possible is all but universal, where the corporation is believed to be the readiest agency at hand for the development of great resources, and where the less certain character of business ventures has necessitated larger returns, corporations have been given liberal franchises and a free hand. Another factor, contributing to the same end and quite unknown to such countries as Great Britain and France, is closely connected with our system of government, under which forty-six states and two territories grant the privilege of

incorporation. The result is dire confusion and a demoralizing competition between states for corporations.

That some form of legal control is required to limit the evils of combination is readily conceded by the author. He does not agree with those who would rely entirely or even mainly on such natural checks to the growth of combinations as the persistence of competition, actual or potential, the liability of consumption to diminish with rising prices, or the possibility that beyond a certain point increase of size makes for decreased efficiency. Nor does he agree altogether with those who maintain that great combinations exist only by virtue of certain well-defined advantages or privileges, which require only to be eliminated to cure the ills of combination, and under which may be included special favors from railroads, a partial or entire monopoly of natural resources, the use of unfair methods, the fostering influence of protective tariffs. The author believes that these factors have been greatly exaggerated. This is particularly the case with the tariff and the corrupting influence of corporations on government. His views with respect to the tariff will hardly find acceptance with the great body of American economists. For despite the fact that large combinations have grown up where protection is not an accepted economic doctrine, it must be conceded that tariff rates in excess of the difference in the cost of production at home and abroad create a condition which makes combination easier as well as more effective; and that when a more or less complete domestic monopoly has once been established such rates are an effective obstacle to the breaking of its power. More than a quarter century ago, Mr. Blaine argued that even with a prohibitory tariff rate, competition would keep the price from rising above the normal cost of production. But with the more or less complete disappearance of domestic competition, that argument has lost its force. Whatever other agencies there may be, foreign competition is at least one means of destroying a domestic monopoly; and it is unfortunate that in so many instances it is rendered inoperative by excessive tariff rates.

Of the four possible ways then in which the state can deal with corporations—leaving them alone, destroying them, regulating them, and owning them—the author pronounces in favor of regulation. To leave them alone is clearly impossible as being inimical to the public welfare. To destroy them is equally out of the question for such a policy would necessarily forego the advantages of economy and efficiency which come from large-scale production. Against state socialism the author urges a number of unanswerable objections. On its political side it would open the door still more widely than is now the case to the assertion of class interests to the detriment of national aims and aspirations. The great economic objection to state socialism is that the management of large enterprises would be less efficient under government than under private control. Socialism would find it extremely difficult to maintain a proper standard of promotion based upon merit and ability; and worst of all, it would discourage that individual initiative without which progress is impossible.

Having chosen regulation as the proper policy of the state toward corporations the author finds it necessary to determine more particularly what is involved in such a policy. Its aim is declared to be "to subserve the public welfare by the adoption of such laws and the exercise of such supervision as will render corporations great or small helpful agencies for meeting the demands of an advancing civilization." The essential features of such a policy of regulation must include publicity, the interdiction of all sorts of discrimination, the limitation of corporations to definite fields of activity, a revision of our patent laws and general statutes for the punishment of the personal delinquencies of corporate managers instead of laws which shield the personal delinquent behind the figment of an impersonal corporation. So much at least is required under existing conditions. It is altogether probable, however, that additional devices may be discovered by the needs of the future, such as the regulation of rates and prices, and the limiting of profits, the

amount over and above a fixed maximum going either entirely or in part to the state.

But any policy of regulation if it is to be effective must be prosecuted, not by the several states, nor by any mixture of state and national agencies, as is now the case, but by the general government exclusively. The reasons for this are that state regulation has shown itself to be hopelessly inadequate, that at best consistency and uniformity cannot be had under state regulation, that corporations have outgrown state boundaries, that powerful corporations are less likely to influence the general government, and that the general government is more efficient than the state governments.

Of the three plans for federal regulation which have been proposed—federal licensure, voluntary federal incorporation, and compulsory federal incorporation—the author prefers the second. The third he holds to be too revolutionary as yet for public sentiment; while the first would in large part leave untouched the confusion and uncertainty inseparable from conflicts between the federal and state authorities. Voluntary federal incorporation is also the plan recommended by President Taft two years ago and embodied in a bill which was drafted by the Attorney-General and introduced in the Senate. While the measure is less comprehensive than the German law and while it would present very serious difficulties of administration it would be a long step toward the elimination of the worst evils of corporate organization and management.

No question of public policy now before the American people compares in importance with the corporation problem. It has an important bearing upon the whole range of our political, social and economic life, present and future. It is a problem that must be solved somehow; and in the interest of a just and rational solution this brief but thoroughly illuminating discussion is warmly commended to the citizen and the legislator.

Lancaster, Pa.

A. V. Hiester.

STUDENTS' REMINGTON ON BANKRUPTCY. By Harold Remington, Charlottesville, Va.: The Michie Company. 1911. Pp. XI, 548.

The author of this treatise was impelled to prepare it for the reason that "there is no text-book upon the subject of bankruptcy law in the United States, adapted to the special needs of students." To meet this deficiency, Mr. Remington, whose more comprehensive work on Bankruptcy has made his name familiar to the profession, has admirably condensed the underlying principles of this very important field of the law, into a conveniently small volume.

The first chapter of the book deals with the origin, history, general nature and constitutionality of bankruptcy law, by way of introduction to the study of the particular statute now in force in this country—the Act of 1898 as amended in 1910. The remainder of the text takes up, in logical order, the successive steps by which litigation in bankruptcy progresses, and the various problems arising therein. The purpose which inspired the author to write the book, rendered it necessary that the various topics be briefly and concisely treated, but in order to direct the student to a minute discussion of any particular section in which he may be especially interested, references to the larger "Remington on Bankruptcy" are given throughout. The only objection to this arrangement is that to make a complete study of any question of which the Students' Remington treats, access must also be had to the larger work. That this is not a serious objection will certainly be admitted by the publishers of the unabridged "Remington." In addition to the annotations mentioned, there are frequent references to the Act of 1898 as amended, and the more difficult questions are elucidated by the citation of decided cases and quotations therefrom.