BOOK REVIEWS.

THE LAW AND CUSTOM OF THE CONSTITUTION. By Sir William R. Anson. Vol. I., Parliament. London: Stevens & Sons, Limited. 1911.

The fourth edition of the first volume of this standard work, published in 1909, has been re-issued in a revised form so as to include the momentous constitutional changes of the past year; particularly those introduced by the Parliament bill of 1911 (1 & 2 Geo. V., ch. 13). By this act the House of Lords is deprived of all control over money bills, which, if not passed by the lords, may be presented without their concurrence for royal approval. Other public bills passed by the House of Commons in three successive sessions and rejected by the lords in each session, may become law without the assent of the lords, provided two years have elapsed between the date of second reading in the first session and final passage in the third session. A promise of a new second chamber on a popular instead of hereditary basis is held out in the preamble to the act. But these are by no means all of the innovations that have disturbed the even course of the ancient parliamentary procedure. The duration of parliament has been reduced to five years; the members are now paid annual salaries of £400; while the drastic method of limiting debate, known as "the guillotine," by which discussion, whether concluded or not, is closed automatically at fixed periods, has notably increased the control of the ministry over the business of Parliament, strengthened party machinery and discouraged independent action by private members.

Without disturbing the existing arrangement of the text, the learned author has deftly interwoven a lucid account of the new legislation, which can hardly be said, as yet, to have passed beyond the experimental stage, and which is still the subject of bitter political controversy. The author while loyally discreet in his discussion of the pledge to make peers, secretly exacted of the King in November, 1910, by the Liberal ministry clearly indicates his distaste for this discreditable proceeding. And indeed to the unbiased outsider the conduct of the ministry on this occasion is impossible to justify either by constitutional precedent or the principles of common fairness. Certainly those who profess to believe in popular government should be the last to hide from the Opposition and the electorate the conditions upon which an election is to be fought, and to seek a return to the back-stairs politics of the Eighteenth Century.

To an American, accustomed to outbreaks of hysteria over even a suggestion of constitutional innovation, the British public seems singularly calm as to the kaleidoscopic changes of the recent past. Perhaps it is that Christian resignation often noticed in the desperately ill person—the growling will occur during convalescence. In the meantime we may go to this book for a temperate and scholarly discussion of parliamentary institutions as they exist today, exhibiting as they do a shifting of the balance of political forces, the outcome of which no man knoweth.

W. H. L.

THE CLOSED SHOP IN AMERICAN TRADE UNIONS. By Frank T. Stockton, Ph. D., Baltimore: The Johns Hopkins Press, 1911.

A critical examination of the problem discussed in this book, is of vital interest to the lawyer of today in view of the fact that the branch of the law which deals with it is considered by most jurists to be in its formative period. Continuous and hard-fought litigation on such questions tends to

keep the bar of today alive to the importance of the economic changes that are now being effected.

"The Closed Shop in American Trade Unions" is of value to the lawyer as an economist rather than as a practicing attorney. It deals with the legal aspects of the closed shop in a collateral and rather timorous manner, and some of the authorities cited have recently been overruled or are now disapproved by the weight of opinion.

As a profound study of laboring conditions, and a keen analysis of the development and growth of the particular phase of labor organization, which he discusses, the author's work is valuable. It is a matter-of-fact statement in an impartial way, of modern economic conditions. It is notable for its thorough examination of all available sources and evidences a careful synthesis of a mass of material. It is, therefore, deserving of the serious consideration of the lawyer economist.

C. A. S.

THE RECORDS OF THE FEDERAL CONVENTION OF 1787. 3 Vols. Edited by Max Farrand, Professor of History in Yale University. New Haven; Yale University Press. 1911.

Professor Farrand has done a most note-worthy piece of work in this contribution to the literature of constitutional history and law. It seems strange that students of our constitution have had to wait from 1787 until 1911 for such a work, but modern methods and modern scholarship were necessary to its production. This scholarship and these methods Professor Farrand has brought to bear on his undertaking and the result is an authoritative and definitive record of the work of the Federal Convention.

Throughout the work the author has kept two main objects in view; the presentation of the records of the Convention in the most trustworthy form possible, and the collection of all the available records in a convenient and serviceable edition. The first of these objects—and the most important—presented no mean task. Previous printed texts were known to be unreliable, or incomplete, or both. Even Madison's notes, published in 1840, after his death, and written out by him from notes made during the sessions of the convention have been found to be not absolutely reliable, due to changes made by Madison in his notes many years after they were written, apparently for the purpose of harmonizing his notes with the Journal of the Convention published in 1819, or with Yates. This journal is itself inaccurate in important particulars, and in some cases Madison changed a correct statement in his notes to make it conform to an incorrect statement in the Journal. This fact brings into new importance the notes of other members of the Convention. As the corrections made by Madison can be distinguished from his original writing by the fact that the corrections having been made at a much later date, the ink has faded differently, a disagreement between the text of the Journal and Madison's corrected notes on the one hand, and the text of Yates on the other, may by showing an agreement between Yates and the original notes of Madison give the correct reading rather than the reading given by the Journal and the corrected notes of Madison. An illustration, out of hundreds, of the careful work of the author, may be found on page 549 of volume I, of the record of the session of July 7th. In Elliott's Debates, the editor, copying Madison's corrected notes begins the day's proceedings with "The question, shall the clause; allowing each state one vote in the second branch, stand as part of the report." In the book under review we find that Madison originally had recorded at the beginning of this day's notes; "On the question whether the question depending yesterday at the time of adjournment shall be entered in the affirmative, Masts. ay. Cont. ay. N. Y. no. N. J. ay. Pa. ay. Del. ay. Md. ay. Va. no. N. C. ay. S. C. ay. Ga. ay." The Journal records this question and vote under the previous day's proceedings, Madison, therefore, in order to harmonize his notes with the Journal, inserted this note in his

records of July 6, and struck it out of the records of July 7th. Our editor finds from a comparison of other records that Madison's first entry was probably correct. The plan pursued in the work is that of gathering together the records of each day's session of the Convention from the various sources, and printing them in regular order. Thus for the session of May 31st, 1787, we have the "Journal," Madison's Notes, Yates, King's, Pierce's and McHenry's; and so for each day the Convention sat, the notes taken by Paterson, Hamilton and Mason in addition to those just mentioned, being incorporated. The first two volumes are taken up with the proceedings thus arranged, together with the proceedings of the Convention as referred to the committee on style and arrangement, as compiled by the editor; the report of that committee, in which they changed the wording of the preamble from "We the people of the States of New Hampshire, Massachusetts," etc., which had been unanimously adopted on August 7th, to "We, the people of the United States," the phrase that was subsequently used with such effect to prove that the Constitution "was not ratified by the States, but by the people of the whole land in their aggregate capacity."

Volume III contains supplementary material. Appendix A contains a mass of interesting material, letters, contributions to the press, debates, etc., that throw much light on the work of the convention and, what is almost as interesting, on the opinions and personalities of the members.

Appendix B contains a list of the delegates to the Convention with a record of their attendance. Appendix C, D, E, and F, contain the plans of government submitted to the Convention by Randolph, Pinckney, Paterson and Hamilton, respectively. A very valuable mechanical feature of the work is the double index: one, an index by clauses, by which everything embodied in the final draft of the Constitution may be easily traced; the other a general index. It would be difficult to say too much in praise of the devotedness of the editor to the herculean task involved in the preparation of such a work, or in recognition of the ripe scholarship that characterizes the undertaking throughout.

W. E. Mikell.

THE LAW OF CONTRACTS. By Clarence D. Ashley. Boston: Little, Brown and Company. 1911.

The fascination of the law of contracts has attracted so many commentators in the last half century that the profession, through self defence, demands justification for any new work on this subject. Clarence D. Ashley, Dean of the faculty of law in New York University, finds a justification which would inure to the benefit of the great majority of commentators. He considers it the duty of a teacher to give permanent form to the thoughts which classroom experience has suggested to him and thinks such a course justified, "if the work is sufficiently strong to invite attack and criticism on the part of well-informed thinkers."

To the practical lawyer in search of concrete propositions of law and cases to support them, Mr. Ashley's book will be of little use, for the author warns them that "there has been no attempt to prepare a digest of decided cases." To the student of only average brilliance who has no knowledge of the subject, or only a confused understanding of it, the book will be of little more value. It is not, speaking narrowly, a text book at all. It is rather a collection of connected essays on the subject, dealing not so much with the law as such, but with the metaphysics of the law. The work shows throughout a fund of learning in legal history and yet the writer's position is that of a radical. He considers the doctrine of consideration "accidental and unnecessary." He is insistent for the modern conception of a contract as an agreement requiring an *aggregatio mentium* and strives to find mutual assent in every transaction giving rise to a right of action in assumpsit. He thinks this branch of the law

only half formed and in many instances points out the imperfections of the unfinished structure.

To the theoretical student who has mastered the fundamental principles of contract law, or to the practitioner who delights in the law as the refinement of reason, the book will make its strongest appeal. The treatment of the subject shows a mind trained in the most careful and accurate analysis and the division and arrangement leaves little to be desired. The propositions laid down by the author are carefully, almost guardedly, worded, and suggest in many instances, the result of hair-splitting discussion in the class room. The book is full of new thought and new points of view which arouse the love of discussion inherent in the profession. The personality of the author is injected into the work to a greater degree than is common in legal text books. The style is very clear and concise and so forceful as to seem at times combative.

There is room for works of this type in other branches of the law and Mr. Ashley's book will be found to be a valuable addition to the authorities on its subject.

F. L. B.