

BOOK REVIEWS

THE WORLD'S LEGAL PHILOSOPHIES. By Fritz Berolzheimer. Translated from the German by R. S. Jastrow. Boston: The Boston Book Company, 1912.

This is the second volume of the Modern Legal Philosophy Series, translated and published under the editorial supervision of a committee of the Association of American Law Schools, and is the second volume of the author's five-volume work published under the title "System der Rechts-und Wirtschaftsphilosophie." Beginning with an historical survey of the legal and economic institutions of the ancient world, the evolution of the philosophy of law is traced through the intellectual bondage of the middle ages, and the civic emancipation that followed, to the sociological philosophies of modern Europe. In the course of this survey the contributions of the world's greatest thinkers to the philosophy of law, which is defined as the critical study of formulated law, are summarized and discussed. Throughout, the emphasis is placed not so much upon the theories and doctrines advanced by individual philosophers as upon their intellectual attitudes as the cultural expressions of their times.

To call attention to the fact that in extent of research and lucidity of presentation, this work is not excelled by any contemporary effort in the same field, is only to say what has already been said by others. From no other single volume can so much information be obtained in compact form upon the attitude of modern German philosophy toward the fundamental problems of jurisprudence. But with all its thoroughness and scholarship the work has its limitations. To mention one, it fails to take into proper account the contributions of non-German, and more particularly English, jurists and philosophers to legal philosophy. The real pre-eminence enjoyed by Germany in metaphysics has tended to develop in her scholars a somewhat disdainful attitude toward foreign excursionists intruding in their special province, while the analytical German mind reacts unfavorably toward English empiricism. The attitude of the heirs of Aristotle toward American pragmatism is better imagined than expressed. By the author it is ignored. It may also be pointed out that the author, as the leader of a school of thought which he himself has named Neo-Hegelian, has a viewpoint of his own that he has not failed to emphasize at the expense of rival systems.

The most interesting part of the work is that which discusses modern sociological philosophies. While admitting the services of the sociologist and socialist in displacing the older forms of individualism and emphasizing the importance of the group or class, he protests against the attempt to explain the entire range of political and legal problems upon a narrow socialistic basis. Non-jurists, he says, occupying themselves with the philosophy of government and law are disposed to replace the definite, though complex and difficult conception of government and law by the more elastic and vague one of society. "The definiteness of legal concepts gives way to a foggy confusion of social-political, social-reformatory and social-ethical discussions, fertile in proposals that prove valueless and ineffective when philosophically considered." Social democracy imposes on its adherents, he points out, a discipline of such severity as makes every form of governmental and capitalistic paternalism seem mild in comparison. And while accepting the evolution of the modern class-state, (Klassenstaat), he warns us that the legal protection of the legitimate interests of every economic class and of the freedom of the individual within his class is the key to progress.

Sir John Macdonnell, in his introduction to the volume, pertinently observes: "The reader who has breathed the highly rarified air of the speculations in these

pages, will derive pleasure and profit by turning from time to time to some highly concrete question of the law of landlord and tenant or the rights of parties to a negotiable instrument." Amen, heartily echoes the lawyer of us, more accustomed to labor with refractory witnesses and to cultivate the stony ground of precedent than to soar in the empyrean. But once back on solid earth one may add to the feeling of relief a pleasant memory of the swift and far reaching view of the topography of the domain of law.

H. W.

CLAIMS, FIXING THEIR VALUES. By George F. Deiser and Frederick W. Johnson. New York: McGraw Hill Book Co., 1911.

The claim adjuster of a large street railway company, for example, occupies a rather unique position in the community. His object is to reduce for his employer the costs due to liabilities for injuries done to persons or property by making settlements with the claimants, and thus to avoid the necessity of defending a law suit. In his field of putting a money value on a claim for an injury he assumes the character of a detective in investigating the accident, of a physician in discovering the nature and extent of the physical injury sustained by the claimant and of a judge and jury in "finding" facts and determining liability and the amount of damages. Besides, he must have a very highly developed keenness for scenting fraud in a claim.

It is obvious that a claim adjuster must be highly trained and well informed. The book under review aims in a general way "to equip the claim adjuster with information and knowledge that will assist in making him efficient in the performance of his duties." The treatment of the subject is quite logical and the arrangement, both of chapters and paragraphs, is praiseworthy. The work is admirable especially for its conciseness of statements and a minimum number of cases illustrative of the principles of law involved. The citations of cases referred to by way of illustration and footnotes are conspicuous by their absence. A reading of this book will give the reader an insight into the subject of actions for personal injuries from the viewpoint of the claim adjuster who represents a large corporation which is subjected to a multitude of claims for damages, many deserving and just, and many fraudulent.

I. B.

A HISTORY OF ROMAN LAW, WITH A COMMENTARY ON THE INSTITUTES OF GAIUS AND JUSTINIAN. By Andrew Stephenson, Ph.D., Boston: Little, Brown, and Company. 1912.

A history of the law of the Roman city-state, from its earliest beginnings to the subversion of the Republic by Augustus, is a history of the unceasing efforts of a dominant class, on the one hand, to maintain their ascendancy, and of a subject class, on the other, to wrest that ascendancy from their masters. This struggle between Patrician and Plebeians was long and slow, protracted indeed over centuries; and it ranged in its course through all stages from the undisputed domination of the former and the abject subservience of the latter, to the complete and unqualified triumph of the Plebeians and the utter submergence of the Patrician order in the more numerous class by which it had been overwhelmed. Professor Stephenson has not essayed in this volume to write a history of Roman social conditions, but none the less a history of the development of Roman law is little more than the story of the manner in which changes in social status became formulated in terms of law and procedure. The prize of victory on either side lay always in the control of legislation and of the machinery of litigation, and the advance of the Plebeians toward this control was from the first steady and inevitable, though fought by the Patricians at every inch of the way. It is indeed only our vantage point across the centuries that enables us to see how hopeless the endeavors of the Patricians were. It is one of the interests of Professor Stephenson's book that he shows us so clearly the varying fortunes of the contest as it proceeded, expressed in terms of law.

Professor Stephenson has done more, however, than survey Roman law historically. The first part of his volume provides the historical setting, and then he presents a definite summary of the doctrines of the Civil Law as, emerging from the melting-pot of social conflict and imperial absolutism, they solidified

into the Code of Justinian, where they were to exercise in the succeeding centuries so profound an influence upon the jurisprudence of all Europe. And by thus projecting the doctrines of the Code upon a historical background the author escapes much of the inevitable aridity of this part of his subject.

It was the general needs of college students of history which Professor Stephenson had before him in writing this book, and it is based upon a course of college lectures; but it may well find a field of usefulness, also, in professional schools of law. Though, in its notable self-sufficiency, English law affords little stimulus to the study of other systems, yet in certain directions it owes so much—often without acknowledgement—to the teaching of the civilians, that the student of our law cannot be ignorant of their work without a loss of correct perspective. A readable and not over-technical treatise like this gives this respective admirably.

In making a book out of his lectures one wishes at times that the author had remembered that the repetitions which give continuity to a course of lectures delivered periodically, have just the contrary effect when retained in book form. This, however, is but a minor blemish upon a work of much merit.

A. M. B.

