BOOK REVIEWS.

CONSTITUTIONAL LAW OF ENGLAND. By Edward Wavell Ridges. Pp. 541. London: Stevens & Sons, Ltd., 1915.

Even before the new apostles of culture began to hack their way through Belgium the year 1914 bade fair to be one of the great landmarks in the history of the English constitution. The challenge flung down by the Parliament Act, 1911, seemed about to be taken up, with consequences no man could foretell but which must inevitably have left a permanent mark not only upon the Lords, the Church, the Army and Ireland, but upon the wider problems that are opened by the vista of Imperial Federation. Then came the War, to postpone all this, and to add to it a new set of forces which have seized the constitution in an iron grip. New powers are daily being taken over by the Government and more are daily clamored for by sections of the people who a year ago would have stood aghast at such assumptions by the central authority. How far this tide will recede when the urgent need is past one cannot tell, but it is almost safe to predict that there will survive a new impatience with the waste caused by unorganized effort, upon which will be founded conceptions new to the spirit of the constitution as it lived before the war. It is well, therefore, to have a complete and definite picture of the laws and conventions of the English constitution as they were just before the opening of this critical time, and with this Mr. Ridges provides us in the second edition of his useful text. He has noted at length the content of the tempestuous statutes from the Finance Act of 1910 to the Welsh Disestablishment Act of 1914, and the chapters on the Army, the Navy and the Colonies are of especial topical interest in connection with the share those agencies are bearing in the present titanic struggle. But these matters are presented only in their proper relation to the whole framework of the constitution, not as leading features. The work contains an amazingly complete review of the history and present status of all the functions of the Imperial Government. It has no pretension to the literary elegance which is apt to be the most striking quality of essays on the English constitution; but only by succinctness and rigid brevity could such a mass of material be made available in a single volume of reasonable size. It will serve, therefore, most usefully in the near future as a basis of comparison, for those students who are watching with interest the present developments in the Mother of Parliaments, and as a help in understanding them when they have settled into definite shape.

S. R.

THE FORMAL BASES OF LAW. By Giorgio del Vecchio. Translated from the Italian by John Lisle, of the Philadelphia Bar. Modern Legal Philosophy Series, Volume X. Boston: The Boston Book Co., 1914.

This volume, edited by a Committee of the Association of American Law Schools, contains three essays—a triology but a connected work—published originally under the titles of "The Philosophical Presuppositions of the Idea of Law", "The Concept of Law", and "The Concept of Nature and the Principle of Law."

As a preliminary study to the discussion of the questions involved in his problem, the author considers, in the first place, the possibility of an objective or universal definition of law and the conditions under which it may so exist. The arguments of those philosophers who deny the existence or possibility of a philosophy of law are carefully analyzed and the question of the need for a definition of law presented. The function of a definition is more than to make an object clear; it is, in addition, to give the object its proper

position in the scheme of things by indicating its origin, meaning and kindred facts. "The analysis of concepts should be a way and means to the work of co-ordination and synthesis, which is the final goal of science and of philosophy."

Properly to understand the concept of an object one must understand its "essence", for "formal" is used in the philosophic sense of "essential", and not in the popular meaning of "artificial", "non-essential". A concept is neither the ideal of the object, as the Idealists would have us believe, nor is it the aggregate of the empirical phenomena or facts accompanying the object, as the Positivists treat it. It is in reality the medium or "point of cleavage" between these views. And it is as incorrect and fallacious to make the ideal or speculative character of law its basis or concept as it is to base the concept on its factual or empirical nature.

Although the aggregate of individual experiences equals the general, it does not, as the Positivist claims, serve as the universal; for the generalization of a number of positive laws does not equal a universal or objective concept. The true concept—the true universal—is something beyond experience,—entirely independent and in no way conditioned upon experience. In fact, it was in existence prior to experience and made it possible. "Juridical thought is anterior to its concrete realization in law."

With this explanation of the concept, one must view positive law as a natural phenomena and adopt the attitude of the naturalist, giving full and impartial consideration to all institutions and treating all such institutions as human phenomena which compose a part of the universal. To adopt any particular object as the prototype of others or, on the other hand, to treat it as meaningless and immaterial in the scheme of the universe is, in either case, contrary to the proper attitude.

Del Vecchio, therefore, delivers a practical message in these essays,—that law is not coercion, as Von Ihering states, nor is it merely a growth, but that it is rather "right reason, existing in the nature of man himself".

Digressions in which Del Vecchio discusses the history of philosophy and the various controversial schools are frequent, some of the explanations being, however, unfortunately too brief to be satisfactory for the reader who lacks special knowledge of the subject. Copious notes and quotations accompany the arguments of the author—many of which are very complicated and difficult to follow. In fact, although the volume is a great work of this modern Italian philosopher, it is not a work which the average reader will be able to understand and which will, therefore, satisfy the purposes of the committee as outlined in its preface. For this reason the translator's constant use of the technical philosophical terms is to be regretted, especially since, in all other respects, the translation is excellent.

N. I. S. G.

GOOD WILL, TRADE-MARKS AND UNFAIR TRADING. By Edward S. Rogers, of the Chicago Bar. Pp. 288. Chicago: A. W. Shaw Company, 1915.

With the growth of national advertising and the resulting wide distribution of standard brands, the problem of identifying one's product has become a very important one to the large manufacturers. Closely linked with the problem of identification is the means of protecting the producer's trade-mark from the attacks of infringers and business parasites who are seeking to profit on another's good will. Mr. Rogers' book is the result of a careful study of the many questions involved in the solution of these problems. It contains an interesting discussion of the elements of good will and the means of protecting that elusive, though valuable, business asset from the attacks of trade pirates. The subject of trade-marks is treated in a thorough manner, and a large part of the book is taken up with this branch of the subject because, in the words of the author, "a trade-mark is nothing but visualized good will".

Not many years ago locality was the principal consideration in all questions of good will. Most of the early cases on restraints of trade are merely interpretations of contracts limiting the time or locality within which a vendor of a business covenanted not to compete with his vendee. And the present test of reasonableness in questions of restraints of trade was developed by the courts in suits on such contracts. But good will is no longer merely a local asset; it attaches to the goods themselves, however far they may travel from their point of origin.

Another development of national advertising is the standard price. A dollar for an Ingersoll watch and five cents for Uneeda biscuits are the prices known to every consumer. Fixed prices have made price-cutting profitable. This latest attack on good will is only one of the means used by the unfair trader to injure the good will of a well known product discussed by the author.

The book is essentially not a law book; it was written for business men. The style is clear and the subject matter entertaining, and the treatment is never technical. Yet the six *don'ts* given by the author as guiding stars in choosing a trade-mark—don't select a personal name, nor a geographical name, nor a descriptive name, nor a deceptive name, nor an infringing name, and finally, don't be commonplace—succinctly state the fundamental principles of our trade-mark law. Numerous illustrations show the kind of labels, *etc.*, which have been restrained as unfair, the original and the infringing trade-marks being shown.

Mr. Rogers' wide experience in trade-mark litigation well qualifies him to discuss his subject from the practical as well as theoretical side; and it is believed the book will be of great value to the profession, especially to the general practitioner who has not specialized on this subject. From the lawyer's point of view it is regrettable that the citations of the many cases discussed and illustrated are not given in foot notes; but perhaps this defect is a virtue, for the book is the most readable work on a legal subject the writer has come across, and the total absence of any of the *indicia* of the profession makes it all the more refreshing.

Charles L. Miller.

LIMITATIONS ON THE TREATY-MAKING POWER. By Henry St. George Tucker. Pp. xxi and 444. Boston: Little, Brown & Co., 1915.

The Constitution gives to the President and Senate the power to make treaties, but it does not define that power, it does not recite the subjects which may be dealt with under it as other clauses of the Constitution recite the subjects over which Congress has legislative powers, nor does it say that any restraints apply specifically to the treaty-making power. The clauses which deal with it specifically do not show how far the President and Senate may go in the exercise of their power. To answer this question requires further study; and it is to this study that Mr. Tucker's book is devoted.

The problems which are involved are important. May the President and Senate without the concurrence of the House of Representatives commit the United States to the making of appropriations? May they regulate the use of a state's institutions without the consent of that state? May they establish a religion—a power which is denied to Congress but which is not expressly denied to the treaty-making power? These and similar questions may arise at any time.

To aid in their solution Mr. Tucker presents a large amount of valuable material. He discusses the few cases that have come before the Supreme Court and shows that they do not mark off the extent of the power; that, for example, in Ware v. Hylton the court did not decide that the treaty invalidated the state law. His analysis of the case is masterly. He discusses those instances in which treaties have involved the making of appropriations by the federal government and shows that in those instances it has been necessary

to secure the concurrent action of the House of Representatives. He discusses the instances in which treaties have involved the exercise of powers the usual exercise of which is only within the power of the state governments and shows that the consent of Maine to the Webster-Ashburton treaty was sought before that treaty was ratified, and that in the recent California controversy the Department of State conceded the power of the state to act as it did.

But the author does more than this. By a review of the constitutions of several European countries he shows that it is not self-evident that a country can always be bound by an agreement which has not received the concurrence of the legislative department. He shows that the Supreme Court has refused to adopt the theory that there are powers inherent in the Government of the United States and that, on the other hand, it has repeatedly recognized the reserved powers of the states. And he quotes extensively, perhaps too extensively, from the writings of a large number of publicists whose opinions give further weight to his position that the grant of the treaty-making power should not be so construed as to deprive the House of Representatives of powers conferred upon it by the Constitution or to withdraw from the states or the people the powers which were reserved by our forefathers.

The book exhibits thoroughness in research and a sound judgment on points of law. The arrangement of the material, however, is unsatisfactory, for the author does not tell us at the outset just what questions are involved and whether the law is settled, so that the ordinary reader is apt to wade through several chapters before he gets his bearings. The difficulty is due not so much to the author's fondness for quotations as to the order in which the material is presented. The average lawyer should disregard the first three chapters until after he has covered the more important later chapters. He will then set out with a much better impression of the book itself and of the strength of the cause for which it stands, and will be much more likely to cover the entire book, than if he starts out to read the chapters in strictly consecutive order.

In spite of this minor defect, however, the book is entitled to the careful attention of all serious students of constitutional law. It will be especially welcome to those who believe that neither the grants of power nor the restraints on power contained in our fundamental law should be extended by forced construction.

Robert P. Reeder.

RIGHTS AND REMEDIES OF CREDITORS RESPECTING THEIR DEBTOR'S PROPERTY. By Garrard Glenn. Pages xlvi and 461. Boston: Little, Brown & Co., 1915.

This volume contains the substance of a special course of lectures delivered by the author at the Law School of Columbia University. The earlier chapters are especially valuable as they present clearly and logically the nature of the creditor's right in the debtor's property, the meaning of the term assets within the purview of this right, and the historical development of the law relating to fraudulent transfers.

The great value of the book lies in the fact that it treats the subject from a new point of view. We have had many books on fraud, bankruptcy, judgments, procedure, mortgages, liens, *etc., etc.,* but the author's treatment cuts through all of these topics and many more, presents the law in a new cross section, and enables the student to follow the creditor in his relation to the debtor from the time that he lays the foundation for his right in his judgment to the very end of the several processes by which that right is to be satisfied.

The book belongs to a class of legal writings valuable because of their restatement of the subject matter with a new integration. In the study of cases the student necessarily makes his own synthesis. The text book writer whose work is something more than a mere digest of decisions helps the student to correct his own perspective by presentation of the matter from a different angle. Although no man's thought on the subject of the law

should be dogmatically stated in terms of finality, yet even dogmatic views are valuable for purposes of comparison through which the student is given a broader outlook and is protected against the danger of too readily accepting or asserting the certainty of any view. Good text books help toward the acquisition of systematic knowledge of the law without in any way interfering with the student's necessary analytical work in the handling of original material. The study of cases is a study of the law in action; the study of text books and essays is the study of the law as a body of doctrine philosophically presented. A knowledge of both aspects of the law is necessary to its broadest comprehension.

Mr. Glenn's book is an excellent treatise to be read by a student at the end of his third year work; it may also be recommended to the Bar for its scholarly restatement of the law in an important and well traversed field.

D. W. A.