BOOK REVIEWS.

LAW AND ITS ADMINISTRATION. By Harlan F. Stone. Pp. viii, 225. New York: Columbia University Press. 1915.

In the present overhauling of our governmental and social machinery, laws and lawyers, judges and courts have come in for their share of criticism and abuse. Much of what has been said must no doubt appear to those trained in legal ways of thinking as wholly absurd and due to ignorance and misconception of the real nature of the problems. To dispel the mists of suspicion and misunderstanding by making clear to the layman "the more fundamental notions which underlie our legal system" is the purpose of *Law and Its Administration,* a book of eight chapters, delivered as the Hewitt Lectures at Columbia University by the dean of the Columbia University Law School.

In the opinion of the writer of this review, the author has succeeded admirably with a task that needed doing. He has given us an account of our legal system which is both intelligent and readable. The main concepts of the law, the philosophy underlying the law, the difficulties inherent in its administration and the relation of judges, lawyers and statesmen to the law and to each other are themes which are presented in a clear and satisfactory manner. The author's success in making this "dry as dust" subject interesting and in demonstrating its true cultural value makes his query to educators regarding the omission of law courses from the curriculum doubly pertinent. Why, indeed, should the subject of law occupy so small a place in a liberal education? After reading the book, one is also tempted to ask why other sciences could not be thus epitomized for presentation to undergraduates in liberal arts. It would do much to promote true culture.

The book does not, however, give one the impression that it will prove effective in quieting hostile criticism of the legal system. One does not feel that the author is thoroughly acquainted with present-day social philosophy, a fact which stands in his way whenever he turns to those problems which now excite public interest. He would improve the machinery of law and make it more efficient. Nearly all that he says on this is excellent, but he seems to think that nothing else is really needed. Now, admitting that changes in the direction he indicates would be important steps toward reform, it must also be admitted that the "non-expert" critic, whom the author has in mind as one to be silenced, would still remain dissatisfied. There is at present a group of men, to whom the author it would appear belongs, who have caught the gospel of efficiency, but who have not seen the vision of efficiency aiding and actively promoting new ideals. To be more efficient in doing the old things is, to say the least, cold comfort to those who have seen the inadequacy of doing some of these at all.

His attitude with respect to the position of a judge in dealing with the constitutionality of measures is illustrative of his inability to meet the just demands of the present age. He but restates the arguments of the conservatives and makes no reference to the "forward looking" decisions which have been made in recent years, particularly with reference to labor legislation. The layman knows that these can be made and no legal quibbling will make

him believe that they cannot. Are there not, too, many who will regret to learn that "unfortunately those most competent to aid in reform (that is, of legal procedure) are those who, because of professional obligations, are least able to give it their assistance" (p. 126). Not even the further statement that these must make the attempt will be apt to appease them. "Professional obligations" seems to be a euphemism for "fear of losing one's job or one's clients."

The judges' "familiarity with life" to which the author refers approvingly will likewise be taken by the layman with a grain of salt, especially if he be a Pennsylvanian knowing of judges who have sentenced men to "separate and solitary confinement at hard labor," when even a slight familiarity with the life of a prisoner would have shown the judge that the prisons were too crowded to permit of "separate and solitary confinement" and that the laws of the state permitted but few of the prisoners to work.

Why was there so little said about the changing concepts of the law, a subject in which the public is now evincing great interest? For example, is crime to be regarded in the same light as formerly? And property, too—is there nothing to be said about that?

The author sought to do two things: to give the layman an idea of the legal system, and to remove misunderstanding and hostility. He has accomplished the first, but his success with the second is doubtful.

Louis N. Robinson.

Swarthmore College.

THE MAN IN COURT. By Frederic De Witt Wells. Pp. 283. New York: G. P. Putnam's Sons. 1917.

The bibliography of procedural reform, published by Dean Roscoe Pound in the Illinois Law Review for February, 1917, testifies most eloquently to professional interest in a subject which has in recent years aroused strong feeling and a great deal of intemperate criticism and comment among laymen. It is generally conceded by expert opinion that the machinery for the administration of justice is, in many jurisdictions, antiquated and is the cause of much waste of time and money, of no little injustice and of great irritation and dissatisfaction. Judge Wells points out the complexities, technicalities and maladjustments of means to end, which so often defeat the purposes of legal investigation. He presents in a series of interesting pictures, all of the well-known faults, the formalism, the sporting theory of trial, the guild control of the bar, the worship of procedure, and in many thumb-nail sketches, the human factors in the legal drama, drawn with much humor and at times with tenderness. Here we see judges, juries, attorneys, parties litigant and witnesses, all engaged in the effort to do justice and making a mess of it. It is not an inspiring picture. It is one that moves either to laughter or to tears. As presented by Judge Wells, the drama of contending human rights is played out as in a theatre—the courtroom—in which all of the persons from the judge to the doorkeeper, including the litigants and their witnesses, are the *dramatis personæ*, so that after reading the book one comes away with a sense of having attended a comic opera or a play of George Bernard Shaw. Judge Wells,

however, instead of leaving the serious reader at the end of his book tasting merely the bitterness of justice thwarted, opens to him a gate of hope in his last chapter, entitled "Looking Backward," being "Extracts from a graduation dissertation of a Columbia J.E. upon receiving his degree of Juridical Expert in 1947." He shows how all of our procedural machinery has been scrapped and how a new engine, which he calls the judicial corporation, has been set up to do the work which since time immemorial has been attempted by the courts and the established systems of procedure. The judicial corporation is organized with different departments, each of them taking the place of one of the old departments of our judicial system—a department of issues instead of pleadings, a department of investigation and experts instead of judicial proofs, a department of statutory law and records instead of brief-making lawyers, a sort of legal reference bureau to find the written law, and a department of determination and results instead of verdict and judgment. Judge Wells finds an analogy in the growth of the real estate corporations, title insurance companies, trust companies administering decedents' estates, and insurance against employers' liability. The fact that he has placed so early a date as 1947 as the time in which a juridical expert may be studying our present system as an historical fossil indicates Judge Wells' most remarkable faith in a swift and early overturn of our present system. Whether the world war will have so far-reaching an effect in its undoubted reshaping of our philosophy of life and institutions may well be doubted, when the many historical cataclysms of the past millenniums are reviewed and their effect on old and well established institutions observed. The professional reader of Judge Wells' book, no matter what his view may be on the subject of procedural reform, will thank him for a delightful and entertaining little volume in which keen observation of men and institutions, shot through with witty and humorous comments, abounds.

David Werner Amram.

SIXTY YEARS OF AMERICAN LIFE. By Everett P. Wheeler. Pp. xi, 489. New York: E. P. Dutton & Company. 1917.

This book is the story of American life from the opening of the Civil War to the administration of President Roosevelt, at least that portion of the national life that came under the observation of the author, who had unusual opportunities, not only to see, but also to take part in the great national development of the second half of the nineteenth century. Reconstruction, national politics, tariff reform, currency, civil service reform and municipal politics are discussed in a very interesting way. The author, a member of the New York Bar, played a leading part in all these movements, and the personal side of his narrative is not the least interesting part of the book. Indeed, it is to be regretted that the author's modesty has restrained him from giving as much of this personal side of the story as we would like to have. The facts he gives are matters of history; it is the shaping of the movements that will interest historians of the future. The most interesting parts of the book are the chapters dealing with civil service reform and New York politics, topics that still present problems only half solved. There is little that deals directly with law, the author having excluded that subject on account of lack of space,

but there is this lesson for those who read—we see a lawyer in active practice —modestly, fearlessly and unselfishly devoting a large part of his time to active civic duties; accomplishing great things for the benefit of his fellowmen. It is a quiet answer to the statement constantly made that lawyers are a selfish and sordid class. It should be an inspiration to the young attorney to do in his time what the author and lawyers of his stamp did in theirs.

W. H. L.

HANDBOOK OF THE LAW OF PRIVATE CORPORATIONS. By William L. Clark, Jr. Third Edition by I. Maurice Wormser. Pp. xiii, 913. St. Paul: West Publishing Company. 1916.

In certain fields of corporation law momentous developments since the first edition of Clark on Corporations, in 1897, as well as the ordinary growth in the common law, made imperative a revision of the original book, if it was to continue to serve in filling a real need for such a volume. This work has been accomplished by Professor Wormser in a painstaking and authoritative manner. There is ample proof of careful attention to details that might easily have been glossed.

Among sections that have been rewritten to accommodate the text to developments in the law are those dealing with Liability of Promoters to Corporation and Stockholders, and, Power of Corporation to Acquire and Hold Its Own Stock. The statements are put in a succinct, incisive way that makes clarity a characteristic virtue of the revision. The logical method pursued led to the insertion in appropriate places in the text of an examination of: Who Are Promoters—Their Functions, and, What are *Ultra Vires* Acts, before plunging into a consideration of the respective subjects of the liability of promoters and the effect of *ultra vires* acts. There are other notable additions. Not only has the original text been amplified and enriched throughout in the treatment of the subjects comprised in the first edition, but also there have been included new topics, *e. g.*, Power to Consolidate, and, Contracts to Prevent Competition—Trusts—Pools.

The notes have been made more valuable by giving references to articles dealing with particular problems, and been brought to date by including apparently all the cases of importance decided since the first edition, thus adding to the weight and usefulness of the text, while also testifying to its accuracy.

THE LAW OF EMINENT DOMAIN. By Philip Nichols. Second Edition. Pp. Vol. 1, cclii, 720; Vol. 2, xi, 721 to 1577. Albany: Matthew Bender & Company. 1917.

The volumes which lie before us are a second edition of a treatise in one volume published in 1909. The author now professes to cover all phases of the law of eminent domain, whereas the first edition appears to have been confined to a discussion of the constitutional limitations upon the power.

The treatise which we are called upon to review is marred by haste and lack of finish. The author has apparently expended an immense amount of

time and labor in writing the book, and no doubt much useful information is contained within the pages. It seems a pity that so much effort should appear in such slovenly and obscure English, for, in short, Mr. Nichols has failed to meet the test of clear writing.

Mr. Nichols expresses himself throughout in sentences of insufferable length and obscurity. The result is that a large part of the reader's attention is taken up in an effort to find out what the author means to say and what the connection is between different parts of the same sentence. As illustrations of Mr. Nichols' English, the attention of the reader is invited to the first sentence of the preface (on page 3) and to the following excerpt from the text (the italics are the reviewer's):

"Perhaps the subjection of private rights in the streets to uncompensated destruction *in* behalf of public travel made mere joint use seem a trivial injury; *but it is unquestioned that a street railway company owns its rails;* a rival company which enters upon them and puts them to use 'takes' them in the constitutional sense; and such a taking can only be *made* for the public use" (p. 976).

On page 4, he discusses the origin of the power of eminent domain. He says (section 2), "The origin of the power of eminent domain is lost in obscurity, since before the title of the individual property owner as against the state was recognized and protected by law, the right to take land for public use was merged in the general power of the government over all persons and property within its jurisdiction." He appears to mean that the right to condemn was merged in the general power of the government before the title of the property owner was protected by law, and therefore the origin of the power is lost in obscurity. If, however, he is able to say that at an earlier time the power was separate, which is a necessary implication from the statement that it was merged, he cannot, merely from the fact of merger, draw the inference that the origin of the power is lost in obscurity. If there is such obscurity in the origin, it must arise because of some circumstance existing prior to the merger, and not merely because the merger took place at a particular time. The conclusion does not follow from the premise.

On page 11, he says that in England the power of eminent domain was well established by the time of the American Revolution, and the obligation to make compensation had become a necessary incident of the exercise of the power. The word "necessary" may be a slip for the word usual or ordinary. As the phrase stands, however, it is obviously inaccurate—an inaccuracy which is the more surprising as the author himself, on pages 12 and 26, correctly states the principle of constitutional law obtaining in England, *i. e.*, that the legislature has sole power to determine whether the property shall be taken and upon what terms. If the legislature has the power, the obligation to make compensation lies solely in its discretion, and is not a necessary incident to the exercise of the power.

On pages 66 and 67, he says: "The only limitation upon the power to condemn rights over real estate that has been seriously put forward is that a right to be taken by eminent domain must be capable of valuation in money." It appears from the note that what the author is trying to express is, that it has been contended that a right over real estate which cannot be valued in

money may not be taken in eminent domain. The sentence as he has written it leaves it in doubt whether he is speaking of a right in the land-owner to have his property condemned, or whether he is speaking of the condemnation of a right.

On page 69, he says: ". . . the right to vote as he sees fit cannot be taken from a citizen by eminent domain by a legislature seeking to perpetuate its power." It is not the right to vote as he sees fit, but the right to vote at all which is exempt. The rest of the sentence is unquestionably a superfluity. No legislature can condemn the right to vote, whether it is seeking to perpetuate its power or not.

Another example of Mr. Nichols' rather curious way of looking at legal problems is to be found on pages 488 and 489. He is criticising the doctrine that an abutting owner has certain rights in the highway when the fee is in the public. He states the change in the law in favor of the abutting owner substantially as follows:

It is now, however, the law, *etc.*, that the dollar raised by taxation from the people is not as good as a private land-owner's dollar; and while a private owner who buys land and owns it in fee may use it as he sees fit, when the public buys land in fee certain abutting rights immediately attach thereto.

A knowledge of political economy would have shown Mr. Nichols that there is no difference whatever in the purchasing power of a dollar, whether used from the public treasury or the pocket of a private individual. Furthermore, the analogy is imperfect because the public is not buying land as a private individual would buy it, but is acquiring it under eminent domain against the consent of the owner.

On page 507, he asserts, in section 162, that the owner of land abutting on the highway has no constitutional right to compensation for damage caused by change of grade, which statement is not the law in most jurisdictions of this country. It was the law in many jurisdictions.

Another inaccuracy appears on page 525, where the author discusses the reason why steam railroads, which were formerly held to be within the scope of the use of a public highway and therefore exempt from liability to an abutting owner, are now liable in such case. He points out the increased damage caused by the inconvenience of the more extensive operation of the railroads, and then says: "For these and other reasons it was held sooner or later that the abutting owner could recover damages," citing, amongst others, the case of *Jones* v. *Railroad,* 151 Pa. 30. This case decided that the abutting owner's right to recover depended on the provision in the constitution conferring a right to recover for injury caused. It seems an inexcusable inaccuracy or instance of haste to classify under the words "other reasons" constitutional changes of this kind.

On page 972, in discussing the question whether property already subject to a public use may be taken under the power of eminent domain for a different public use, he says that property may be taken for a second public use which a subsequent legislature may deem of greater importance. As a legislative definition of a public use is subject to review by the courts in interpreting the constitutional provisions, this statement is clearly inaccurate.

We have called attention to only a few of the infelicities of expression and inaccuracies of thought and statement which we have noticed. An example of one or the other may be found on nearly every page.

The distinction between the rights of an abutting and a non-abutting owner to recover damages for something done in the highway is of great importance, and there is a considerable amount of law with respect to the position of the non-abutting owner. We have not been able to find any discussion of this subject in the text nor does the word "non-abutting" appear anywhere in the index under any heading to which it is usually referred. It seems, therefore, as if this important topic had been entirely omitted.

We conclude, therefore, that Mr. Nichols has written a book which is no doubt the result of much labor and research, which promises from the general arrangement of the chapters and some of the main subdivisions a reasonably accurate and painstaking analysis of the subject, and which contains many statements of legal doctrine which are well worthy of serious consideration.

Upon closer examination, it appears that there is a certain rather peculiar obscurity of style which makes it very difficult to understand what the author means, and that either from difficulty in using the English language or from lack of care, there are many inaccuracies and misleading statements of the law. Because of these defects, the treatise is an unsafe guide to the novice, and may be used by an expert only with great caution.

Roland R. Foulke.