BOOK REVIEWS

A History of Continental Civil Procedure. By Arthur Engelmann and Others. Translated and Edited by Robert Wyness Millar. With Introductions by William Searle Holdsworth and Samuel Williston. Boston, Little, Brown & Co., 1927. pp. lxiii, 948. Vol. 7 of the Continental Legal History Series.

This is one of the last of the notable Continental Legal History Series of which eight volumes have already been published. It not only maintains the very high standards set by the others but it has a special interest of its own. It opens to American lawyers and legal scholars an almost unknown field of study of the utmost value in the administration of the law; and as an introduction to that study it contains reprints of Professor Millar's law review articles where in clear, concise and yet complete form he sets forth the likenesses and differences between our own system of procedure and the various continental systems. It is perhaps a question which will prove of more interest to American scholars, the reprint of material from various continental sources or Professor Millar's own contributions to the study of comparative civil procedure. The reviewer inclines to favor the latter and he takes this opportunity of expressing the very great debt which he believes is felt by the profession generally to be owed to Professor Millar for his devoted scholarship in this all too unknown field.

The volume begins with an editorial preface by Professor Millar in which he gives the setting of the subject in the general field of law and a brief resumé of the continental systems of procedure, accompanied by biographical notes on the continental authors represented in the volume. Then follow appreciative introductions by Professors Holdsworth and Williston. Next is a reprint of Professor Millar's articles from the Illinois Law Review entitled "Formative Principles of Civil Procedure," where the author made an extensive comparative study of the procedural principles of the continental and Anglo-American systems. The general idea of this comparison may be shown by reference to section 3, "Party-Presentation and Judicial Investigation," section 4, "Party-Prosecution and Judicial Prosecution," and section 7, "Orality and Documentation." In these sections Professor Millar indicates perhaps the most notable differences between our procedure and that in vogue in continental Europe.

In the latter much more responsibility in pushing a case along to trial is placed upon the judges than under our practice; so much so that Professor Millar refers to our method as "party-prosecution" and the continental method as "judicial prosecution." In connection with this difference is the further one that unlike our written pleadings the policy of framing issues by oral pleadings at the trial is followed on the continent. It is true that written claims or notices may be required of the parties but these are not binding on them and the issues are finally settled before the court. The net result of the differences is obviously that more responsibility for the conduct of the case rests upon the judge and that decisions upon procedural points are comparatively few in number. Any one viewing the continental system as a whole, and from a distance at least, would feel that he had arrived at a paradise where the waste of time of our system upon disputes of mere form is eliminated.

The remainder of the book contains selections from different authors, giving a history of the various continental procedures from early times

down to the present. Thus there is considered the Germanic procedure, the Roman procedure, the Romano-Canonical procedure and the modern continental procedure of Germany, Austria, France, Italy and Sweden. More than half of the volume is devoted to extracts from the well-known —at least continentally—master work of Arthur Engelmann, *Der Civilprozess, Geschichte und System*, the selections being taken from volume two, "Geschichte des Civilprozesses." Engelmann was a judge for over 30 years, and for the last decade of his life was a member of the law faculty of the Silesian Frederick Wilhelm University at Breslau. His scholarly disposition is shown by this work, written, or at least begun, fairly early in his career. Parts of this subject were brought down to date by Rudolph Hermann, a much younger man, but a thorough German scholar, now a judge of the first instance in the same city. The material from the other sources, though less in bulk, is all from able scholars in their respective fields and countries. It is notable that some of the sketches of the present day systems were prepared by Professor Millar himself. We may congratulate ourselves upon having an American scholar who is sufficiently familiar with continental sources to perform such a task. The present volume is intended to be only a general survey and does not deal with particular cases or problems. It will, however, be very helpful in pointing the way to much material on such problems.

The picture presented by the whole volume of the principles of civil procedure from a foreign viewpoint is one which should fascinate everyone interested in the administration of justice. Professor Holdsworth does not state the matter too strongly when he says in his introduction of Professor Millar's own contribution,

> "I think that it is no exaggeration to say that this Prolegomena will introduce Anglo-American lawyers to a department of legal thought, of the existence of which most of them have no conception—a department which concerns itself with the science of procedure. For the first time some of the conclusions of this science are explained to them; and, for the first time, they are applied to our peculiar system of procedure by a lawyer who is as well acquainted with the continental system of procedure as with the Anglo-American system."

While there are some striking differences between the continental procedure and our own, Professor Millar correctly points out that our system has gone very far from the heyday of common law pleading in its approach to the continental forms. It is probable that the presence of the jury may prevent us from ever completely taking over that system, but it is interesting to note the many points of similarity that may be found in the solution of particular problems. Questions of joinder of parties, for example, brought to the front by modern reforms of procedure following the English practice, may find their counterpart under the German code, and it is interesting to note the summary procedure of countries such as France and Italy for the expeditious settlement of certain causes, particularly commercial causes, in comparison with efforts made by pleading reforms in England and in this country to achieve similar results. In one respect at least we may envy our continental brethren, for they have gone very far in developing procedure as a science and a jurisprudence.

It is to be hoped that this book will be only a preliminary volume to other extensive studies by an increasing number of scholars interested in the possibilities of work in this field of comparative law. Legal procedure is but a means to an end, and that the administration of the substantive rules of law. The machinery which is most effective to achieve that end should be the one which is to be employed. It is perhaps su-

prising, in view of the number of laboratories we have for experiments as to the relative efficiency of various types of judicial machinery, that we have so little scientific study of the effectiveness of each type. In this country alone, we have some 48 different laboratories in the various states, not to mention the federal and territorial courts, in which such tests are possible. When to these are added the field opened by such a work as this the possibilities of research are great. One of the difficulties in the way of developing a better administration of justice has been the attitude of insularity and chauvinism of the lawyers and judges. Each fondly believes that the system under which he has grown up is the best and only possible one, whereas others not so far away may be much more effective. This attitude of mind as reflected with reference to reforms in the law of evidence has been strikingly shown by Professor Morgan and his Commonwealth Committee upon a poll of the bench and bar of several states.[1] Continental procedure with its entirely different approach should prove particularly valuable in giving us a point of view and a check upon our own methods.

While the average lawyer is not prone enough to accept reforms from outside, sometimes the reformers themselves too easily assume the perfection of any system but their own. In this connection we should be on our guard to be quite sure how the foreign practice operates before we too strongly advocate it for adoption in place of our own. On the surface the continental systems seem to have eliminated much waste in the administration of justice. Yet it appears, among other things, that a very great increase in the number of judges is necessary to administer them. It is now thought to be a reproach that so many more judges are needed for the trial courts in New York City than are needed for the administration of justice in all of England. But, as the reviewer is informed, in the city of Frankfort alone there are more than double the judges needed to administer the system than in the much larger city of New York. The principle of judicial prosecution also may result in some difficulty, for as the reviewer is also informed, the possibilities for delay and continuance while the judge is attempting to settle the issue between the parties are very great, perhaps comparable to our own system in that respect. It may be that the principle of self interest upon which we rely to force a case to actual trial may prove to be as effective as the principle of official duty relied on in Germany. Other subordinate results are at least conceivable. Thus, under our system where the parties are compelled to thresh out the issues themselves in advance of trial, it would seem that they might thereby obtain a better comprehension of their case before the witnesses are heard and hence that they would be better prepared either to try the case or to effect a compromise thereof. These and other similar matters can only be discovered by a very careful and thorough detailed examination of particular procedural points in each country and also an extensive fact research into the actual operation of the procedural rules in each country in comparison with similar research in our own. It is hoped that means and personnel will be available in the future for this new type of investigation. In the meantime this present volume may be hailed as the first and essential beginning of such a development.

CHARLES E. CLARK.

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[1] MORGAN AND OTHERS, THE LAW OF EVIDENCE—SOME PROPOSALS FOR ITS REFORM (1927) Appendices A, B, C, D, showing that the great major- of lawyers answering the questions strongly preferred their local rules.

Due Process of Law. By Rodney L. Mott. Indianapolis, The Bobbs-Merrill Co., 1926. pp. lxxxi, 702.

Reviewers have long since discovered that it is easier to review a jacket or a preface than to review a book. This book had no jacket when it came to me, but it has a preface. Perhaps a preface, like any other *apologia pro sua,* is not to taken too seriously. Yet it may reveal the mould of the author's mind and it is quite likely to hint at some thesis which a reviewer may commend or combat. This book apparently has the thesis that the better way, or at least an essential way, to understand the significance of due process of law is to try to put salt on the tail of "principles" and to avoid getting enmeshed in "details." "In fact," says the preface, "so numerous have the cases on due process become, that it is all too easy to lose one's self in the forest of details and miss completely the principles which lie back of the decisions. There seems to be no better way to bring out these principles than to study their historical development." In such a perception of principles lies the way of prophesying what the courts will do next:

"The experience of many a clever and intelligent lawyer, however, has shown that either the method of analogy or a temperamental analysis of the judges is of itself inadequate for this purpose. There remains the analysis of the fundamental principles which lie deeper than superficial differences in form or temperament. If there can be found basic principles so fundamental that the courts tend to recur to them in case after case, the attorney who recognizes them and advises clients accordingly is certain to be correct in the great majority of cases. It is the object of this book to trace the origin and development, as well as the application, of those principles which the courts have developed as part of the concept of due process of law."

Pencil marks on the margin of my copy indicate that I have read the first four parts of the book. These are the ones that deal with historical development. I am sure that they have added not a whit to my slender powers of prophecy. They tell what folks have said about "due process" and consanguineous terms. Of their accuracy I am not competent to judge. Of their significance for an understanding of present-day battles of due process, I am skeptical. The geneology of a slogan may fittingly be the subject of an investigation, and that investigation its own entirely sufficient excuse for being. I am not such a crude Philistine as to subject historical studies to the test of a cash value. When, however, I am promised a divining rod, I may indulge in the confession that it has not worked as such for me.

Publishers, like politics, may make strange bed-fellows, and so they seem to have done in the case of this book. Parts I-IV are redolent of the dissertation for the doctorate. Parts V-XI are of a wholly different character. While I have not read Parts V-IX, I have turned the pages enough to know what they are like. A seven-page section on what railroads may be compelled to do with respect to highways and bridges has twenty-nine lines of text. The rest consists chiefly of citations, with here and there an introductory sentence of transition to a variation in detail. It takes over seventy pages to print the Table of Cases and there are about seventy cases to a page. This two-thirds of the book that deals with the applications of due process is in the main built on the model of the familiar law encyclopaedia. I do not know what to say about a work of this kind except to pay tribute to the amazing industry of one who produces it, even though he may have read only a fraction of the five thousand cases which he cites. As an aid to prophecy, it will tell what courts are likely to do with respect to issues precisely like those which courts have already

determined. So does a digest. I doubt if this book will prove a significantly greater aid to prophecy than the available digests.

A kindlier word may perhaps be said for the effort of the three concluding chapters. These are entitled: "Evidence in Due Process Cases"; "Legislative Determination of Facts and Judicial Technique"; and "The Function of Due Process of Law." Here are catalogued the canons which courts have professed to follow in deciding due-process issues and the expedients of proof and of persuasion which have been employed by counsel in argument. While the author sometimes seems to take judicial pronouncements too seriously, he allows his readers to discover that the pronouncements have been honored in the breach as well as in the observance. About many of his own observations there is a convenient vagueness which makes them difficult to assess or to controvert. It would be hard to say just where belief ends and doubt begins when we read that "it is important to remember that this provision is primarily a guarantee of legality itself, legality not of the formal or superficial kind, but of the fundamental, inherent form which is based upon tested principles of constitutional government." The principles of due process are left sufficiently broad to leave room for play in the joints when they are thus summed up:

> "When we find a body of law which is in the main characterized by remarkable consistency in spite of its close connection with difficult economic and social problems, when we find a judicial body attempting to develop that body of law according to recognized norms of constitutional development, we are not surprised to discover at the heart of the decisions such principles as administrative convenience, balance of convenience, or public purpose."

Tested by its promise to tell us how to forecast what courts will do in due-process cases, this study both on its historical and its analytical side must be called at best but a partial success. To some of us such failure was foreordained by the characteristics of the material involved. An effort that confirms us in our faith cannot for us be called a failure.

THOMAS REED POWELL.

Private Corporations. By Henry Winthrop Ballantine. Chicago, Callaghan & Co., 1927. pp. lxix, 927.

This is the most useful treatise of its size on the law of private corporations that has yet been published. The volume is unique in the extent to which legal periodicals are cited, and the selection of such citations has been wise. Furthermore, the work clearly reflects the important developments which have occurred in the realm of corporate law in recent years; with but few exceptions the leading cases marking this growth of the law are referred to and not infrequently discussed.

The arrangement of the material is quite orthodox; the author suggests in his preface that it is a "logical unfolding of the subject." Inasmuch as the book is intended largely for student use, one may venture to suggest that a less "logical" presentation might have pedagogical advantages. The orthodox and "logical" method apparently begins, as do most casebooks on the subject, with a study of the "nature" or "characteristics" of a corporation: a consideration of the corporate entity view, of a corporation as distinguished from other forms of business association, and of a corporation as a "citizen," "person," "resident," etc. This approach results either in the student disregarding the purpose motivating each court in applying such labels as "legal entity" or "corporation" to a specific fact situation, or else in compelling the student to his ultimate confusion to attempt a correlation of a conglomeration of cases merely because

the opinions employ similar concepts (for diverse purposes) despite the fact that functionally the cases may have nothing in common.

The second stage in this "logical" unfolding of the subject is to consider the creation or formation of corporations with all the attendant problems of "de jure" and "de facto" corporations and corporations "by estoppel." Pursuing this "logical" sequence, the student is next confronted with the law as to "stock subscriptions" and as to "promoters." Then, while still reeling, he is sandbagged with "powers of corporations" and blackjacked with "ultra vires." If not completely ruined, he comes at last to the "powers of directors" and the "rights of stockholders," and finally begins to have some glimmering of understanding of the subject.

To the practitioner well versed in the subject this orthodox arrangement of the material may be highly logical, but as a vehicle for bringing the student most readily to a comprehension of corporate problems it would seem inadvisable. Rather should the student first be enabled to understand the normal functioning of an association which all authorities would agree was a corporation (the division of control between shareholders and directors, the duty of directors to shareholders, the relations of shareholders among themselves, their relations to corporate creditors, etc., etc.). With this picture well in mind the student would be far better equipped to study the legal consequences of alleged corporate acts which are not obviously within the factual authority of the corporation (so-called "ultra vires" transactions). And probably last of all he should be introduced to the problems involved in attempts to form corporations, for surely a knowledge of what he is seeking to accomplish is a pre-requisite to any intelligent endeavor to form a corporation, just as an insight into that which is normally comprehended by the term "corporation" is essential to an understanding of those combinations of facts and legal consequences which it is not feasible to describe by that term.

One of the features of the book is the author's treatment of those topics which are of comparatively recent origin or development. His exposition of the advantages and dangers of shares of no-par value, for example, is superb, especially in view of the size and scope of the volume. Similarly the law as to voting trusts is well stated. Unfortunately, the presentation of the problems growing out of the Blue Sky legislation is not quite so adequate, reference to many recent cases being omitted.[1]

ALEXANDER HAMILTON FREY.

Cases on the Law of Bankruptcy. By Evans Holbrook and Ralph W. Aigler. Second Edition. Chicago, Callaghan & Co., 1927. pp. xi, 650.

The second edition of this well known case book contains 602 pages of cases and an appendix setting forth 13 Eliz., the New York statute of 1829, the Uniform Fraudulent Conveyance Act and the Bankruptcy Act (with all of its amendments) followed by an index to the latter act. The number of cases is the same as that in the first edition and 1920 supple-

[1] See: Bates, Trustee v. Firestone, 19 Ohio App. 243 (1924); Burlington Hotel Co. v. Bell, 192 N. C. 620, 135 S. E. 616 (1926); Dixie Rubber Co. v. McBee, 148 Tenn. 168, 253 S. W. 353 (1923); Domenigoni v. Imperial Live Stock Co., 189 Cal. 467, 209 Pac. 36 (1922); Goodyear v. Meux, 143 Tenn. 287, 228 S. W. 57 (1921); Guaranty Mortgage Co. v. Wilcox, 62 Utah 90, 218 Pac. 133 (1923); Hamlin County Livestock Co. v. Karlstad, 48 S. D. 82, 202 N. W. 141 (1925); Hancock v. Frederick Co-op. Merc. Co., 48 S. D. 1, 201 N. W. 714 (1925); Neimeyer v. Dougan, 31 Ga. App. 99, 119 S. E. 544 (1923); Sherman v. Smith, 185 Iowa 654, 169 N. W. 216 (1918); Snitzler-Werner Co. v. Stein, 234 Ill. App. 392 (1924); Winifred Farmers' Co. v. Smith, 47 S. D. 498, 199 N. W. 477 (1924); Witt v. Trustees' Loan Co., 33 Ga. App. 802, 127 S. E. 810 (1925).

ment thereto. Some fifty odd cases appearing in the latter edition do not appear in this new edition. More than half of the substituted cases are cases decided since the date of the first edition. All of those cases in the 1920 supplement are retained except three. The method of arrangement is identical with that of the first edition. There are still five main divisions, *viz.*, Jurisdiction, Prerequisites to Adjudication, Administration, Compositions and Discharge. This edition is more compact than the former. The pages are larger, the quality of the paper seems better and the printing seems improved. And, finally, more foot notes appear. And occasionally these footnotes expand into short annotations. So much for general observations.

A criticism of this edition would be for the most part a criticism of the first edition. Only a few matters need be mentioned. All of the phases of "Preferences" presented under "Prerequisites to Adjudication" do not logically belong there. Sections 57 (g) and 60 (b) obviously have no bearing on "Acts of Bankruptcy." Similarly, *Dean v. Davis* [1] is a decision under § 67 (e) and not under § 3. Numerous other examples could be cited.

The answer may be that the arrangement, though not logical, makes the subject matter more teachable. That obviously was the editors' purpose. And the answer, supported by more than twelve years' teaching experience, would seem decisive.

On a matter of greater substance, however, the reviewer would be more critical. The cases under Fraudulent Conveyances would seem to contain too many cases representing non-commercial transactions, in number somewhat out of proportion to the importance of that type of transaction in the average bankruptcy proceeding today. The editors have many precedents for their case. But the reviewer feels that progress has been made by relegating *Reade v. Livingston* [2] to a footnote. And, it is felt, further progress could have been made. This seems more vital when it is realized what important and significant commercial transactions might have been profitably introduced or further developed: absolute deeds intended as mortgages, mortgages under which mortgagors retain possession, floating charges, assignments of book accounts. These now remain practically untouched. Further, the importance of conditional sales and trust receipts would seem to have warranted giving some treatment to them also, especially in light of the scope of § 47. As stated in the preface; "If the selected cases are to the point, inevitably in large measure they are going to be in a sense illustrative." Nevertheless, the variety of problems raised by the use of these various security devices would seem to have warranted a more extensive treatment. Also, the significance of § 67 (d) would seem to have justified the editors in giving it more consideration than they have.

One misses landmarks like *Carey v. Donahue*,[3] *Martin v. Commercial National Bk.*,[4] *Clarke v. Rogers*,[5] *Richardson v. Shaw*,[6] *New York County Bk. v. Massey*,[7] and a few others. However, they seem to have left no gaps. And quite often an annotation explains the absence. On the other hand one welcomes *Sexton v. Kessler*,[8] *Bailey v. Baker Ice Machine Co.*,[9] *Lewis v. Roberts*,[10] etc. They seem to have filled gaps.

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[1] 242 U. S. 438, 37 Sup. Ct. 130 (1917).
[2] 3 Johns. Ch. 481 (N. Y. 1818).
[3] 240 U. S. 430, 36 Sup. Ct. 386 (1916).
[4] 245 U. S. 513, 38 Sup. Ct. 176 (1918).
[5] 228 U. S. 534, 33 Sup. Ct. 587 (1913).
[6] 209 U. S. 365, 28 Sup. Ct. 512 (1908).
[7] 192 U. S. 138, 24 Sup. Ct. 199 (1904).
[8] 225 U. S. 90, 32 Sup. Ct. 657 (1912).
[9] 239 U. S. 268, 36 Sup. Ct. 50 (1925).
[10] 267 U. S. 467, 45 Sup. Ct. 357 (1925).

The sequence of cases, the choice of cases, the editing of cases,—each is a job well done. The footnotes, enlarged and made more suggestive, will be of considerable aid to student and teacher. The important additions to and changes in the law have been carefully noted. The addition to the appendix of the Uniform Fraudulent Conveyance Act will make the book increasingly useful as the adoption of that act continues. By and large the subject of bankruptcy with its 13 Eliz. background has been covered. A variety of materials is available to the instructor. In fact, the reviewer concludes that the availability of this new edition will make the choice of a case book less of a problem wherever bankruptcy is still taught as a separate subject.

WILLIAM O. DOUGLAS.

The Law of Aviation. By Rowland W. Fixel. Albany, Matthew Bender & Co., 1927. pp. xv, 403.

Law of the Air. By Carl Zollman. Milwaukee, The Bruce Publishing Co., 1927. pp. xvi, 286.

To anyone who is called upon to examine authorities on questions relating to aviation in the course of his practice any book rescuing him from interminable searches through improperly indexed works is welcome indeed. In so new a subject as aviation three things are needful.

First: Such actual scattered decisions as exist directly passing on aviation questions proper,

Second: Ready reference to statutes on the subject.

Third: A careful selection of analogies with supporting cases on questions that are still open and undecided by direct decision or by legislative act.

The two books by Mr. Fixel and Professor Zollman are complementary to each other and together meet the requirements suggested, of anyone, whether student or practitioner, who is interested in the law of aviation.

Mr. Fixel emphasizes the statutory phase of the law of aviation. He has published not only the Federal Air Act of 1926 with the Air Commerce Regulations issued pursuant thereto, but he has also printed in full laws of 27 states that in one form or another relate to aviation. Such a collection, together with the International Convention Regulations of Aerial Navigation of 1919 covering some 240 pages is in itself a compact and important book of reference.

The statutes are preceded by the text of some 125 pages in which Mr. Fixel, writing, as he explains in his foreword, "for the lawyer and the layman," gives a brief historical legal synopsis of the subject. He discusses the law of aviation with reference to other branches, such as civil and military law and admiralty jurisdiction, and refers briefly to the early discussions of the questions of international law connected with aviation and their crystalization in the Convention of 1919.

In the sphere of private law he outlines the question of the right of flight over private property, concluding that this right in practice is so firmly established as to render the old maxim of ownership of the air space nugatory. He mentions the question of the tort liability of the operators of aircraft but does not discuss the question as to the liability in case of injury to passengers, confining his remarks to the damage to persons on the ground and the absolute liability therefor suggested by writers and by the Uniform State Law.

His chapter on the damaging effect of aviation on insurance contracts shows the unsatisfactory state of the law in this important element in the proper development of aviation. For the rest he outlines federal legis-

lation on the subject of aviation with particular reference to the various branches of the government which have been interested in this field, including the Aircraft Board, which went out of existence at the termination of the war.

Professor Zollman, on the other hand, has taken as the basis of his work articles published by him in 1919. These articles dwell with scholarly care upon such questions as the right of a subjacent landowner in the air space, the proper constitutional theory of federal control, and the various views as to the liability for damage done by aircraft. The cases cited are carefully chosen and admirably illuminate the author's own discussion of the questions treated.

In case of an airplane accident a practitioner would turn to Mr. Fixel's work to see whether the particular state in which the accident occurred had, as has Connecticut, a statutory rule that applies the ordinary rule of negligence to aircraft cases or not. He would turn to Professor Zollman for a collection of authorities on the general question of negligence in the absence of statute.

Neither author emphasizes sufficiently the question as to the measure of responsibility that is to be placed upon the shoulders of the operator of aircraft. Both dwell on the propriety of a rule of absolute liability where damage occurs to a person on the ground. Neither stresses the fact that the liability to passengers is, with the exception of Connecticut and probably Massachusetts, a wide open question, the decision of which in particular states will have great bearing on the development of aircraft. Finally, while we can agree with both writers that the claim of the landowner to the airspace to the skies is an outworn formula, we might properly ask for light as to the correct answer to the converse of the question, which is, admitting that the landowner does not own to the skies, does he have any ownership, aside from the right to complain of nuisance, in any air space whatever.

CHESTER W. CUTHELL.

Table Talk of John Selden. Newly Edited for the Selden Society by the Right Honorable Sir Frederick Pollock. With an Account of Selden and his Work by Sir Edward Fry. London, Quaritch, 1927. pp. xxv, 200.

This is a most timely and welcome publication. To American lawyers and to most law teachers, as well, John Selden, the patron saint of the Selden Society, is no more real a person than is St. George, the patron saint of Selden's England. But to one who reads the introduction to this edition of *Table Talk,* so instinctive with the charm characteristic of all the writing of the learned and distinguished editor, as well as his shrewd and half-humorous editorial comment on the text itself, and Sir Edward Fry's admirable biographical sketch which is included in the volume, this legendary archetype of seventeenth century learning becomes a very real person, as thoroughly known as Blackstone or Mansfield. Selden, to whom Richard Milward, in the letter transmitting the original manuscript of *Table Talk* to the dead scholar's executors, referred as "That Person, who (while he lived) was the Glory of the Nation," is described by Aubrey as "very tall—I guess six foot high—sharp, oval face, head not very big, long nose inclining to one side, full popping eie,"—grey eyes being meant. This description is well borne out by the two portraits handsomely reproduced in the present volume. Whitelock tells us that "his mind was as great as his learning; he was as hospitable and generous as any man; and as good company to those he liked." One need not read far in the *Table Talk* to infer that Selden did not

like dull and ignorant persons. But it is Clarendon who makes clear the reason for the remarkable fact that this great scholar "of stupendous learning in all kinds and in all languages" should be best known, not for any of the numerous learned treatises which he wrote, but for his table talk inadequately and inaccurately reduced to writing by his Secretary, Richard Milward, from rough notes taken during the last twenty years of Selden's life, and first published in 1689, thirty-five years after his death. So crude was Milward's manuscript, or, at least, the copy of it that served for the first printed edition of 1689, that Archdeacon Wilkins was reluctant to include the "Table Talk" in his edition of Selden's collected works, published in 1726, because, he thought, "it does no credit to Selden's learning, and is not in accordance with his character." But Clarendon, with surer understanding, writes "His style in all his writings seems harsh and sometimes obscure, which is not wholly to be imputed to the abstruse subjects of which he commonly treated, out of the paths trod by other men, but to a little undervaluing the beauty of a style, and too much propensity to the language of antiquity; but in his conversation he was the most clear discourser, and had the best faculty in making hard things easy, and presenting them to the understanding of any man that hath been known." In short, Selden talked better than he wrote. In his *Table Talk*, ill reported as it is, "there is more weighty bullion sense," as Coleridge wrote, "than I ever found in the same number of pages in any uninspired writer," while Mr. Hubert Paul has said in *The Autocrat of the Dinner Table*—"Except Bacon's *Essays* there is hardly so rich a treasure-house of worldly wisdom in the English language as Selden's *Table Talk*."

We owe the publication of the present volume to the fortunate circumstance that in 1909 a hitherto unpublished manuscript copy of Milward's original work came into the possession of The Society of Lincoln's Inn. The Selden Society is to be congratulated, as indeed are all lawyers who have come to an appreciation of legal scholarship, upon its success in enlisting, as editor of the present volume, so acute a scholar and so charming a writer of English prose as Sir Frederick Pollock.

W. R. VANCE.

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