BOOK REVIEWS

Handbook of the Law of Code Pleading. By Charles E. Clark. St. Paul, West Publishing Co., 1928. pp. viii, 581.

Thoughtful students of American administration of justice must welcome this book, both for itself and as a sign of the times.

Hypertrophy of procedure has been characteristic of American law. The English law which we received was for the greatest part land law and procedure. The trial lawyer was the leader of the profession and our ideas of a legal practitioner took form for local courts in which procedure and swaying juries were the chief considerations. Several circumstances aggravated the resulting condition in the formative period of our legal institutions. One was the prevailing apprentice-training of lawyers, whether in law offices or in schools in which the methods, aims, and spirit of office training were continued. This, along with the general lack of law libraries, led to development of local law and local procedure. Story checked this development as to the substantive law. But it went on unchecked as to procedure and was given impetus successively by at least four later features of our legal history.

Pioneer communities, as they arose and grew into new states in the course of our westward expansion across the continent, were in some sort caves of Adullam. The Adullamites had control of the fashioning of local law and local institutions, and were not minded to allow their creditors to pursue them into the wilderness. Their most effective defensive weapon was a technical procedure, not over-refined like the inherited common-law procedure, so as to require libraries and a baggage of antiquated learning beyond reach of the rural practitioner, yet abounding in pit-falls and in opportunities for taking a case away from the merits. By and large the simpler pioneer communities tended to work out the more involved procedure; the more refined communities moved toward the simpler procedure. Next came the rise of great public service companies, the passing of leadership in the profession to the "railroad lawyer," and the unofficial differentiation into professional defendant's lawyers and their correlative the professional plaintiff's lawyers. The professional defender found the procedure of the Adullamites at hand and availed himself of it. Procedure was his weapon as jury prejudice and jury lawlessness were the weapons of the plaintiff's lawyer. They agreed in resisting all discretion in the judge. The court was to be held down to the minimum of interference with the game so as to give the defendant the maximum of advantage of procedural difficulties and vested rights in the procedural errors of his opponent, and give the plaintiff the maximum of advantage of free rein to advocacy and unfettered powers in the jury. Jeffersonian democracy, along with pioneer faith in versatility and pioneer disbelief in specialists, putting the judges in most of the states into politics and in too many jurisdictions allowing counsel to dominate the trial, fortified our inherited distrust of discretion and led to legislation tying down the courts on every side and prescribing rigidly details of practice where, nevertheless, courts were given free rein to develop the substantive law by experience of the needs of justice in concrete cases.

Still later, in our older and larger cities, came the rise of the client-caretaker, as the leader of the bar, and consequent withdrawal of the best minds in the profession from contact with the every-day work of the courts. Thus in a time of economic unification, when the substantive

law tends more and more to uniformity, procedure remains provincial and localized, so that a senator of the United States, representing the traditional view of the last generation, can resist the efforts of the American Bar Association for the simplification of federal procedure as involving a threat to the local bars.

A book for beginners which approaches legal procedure not as an arbitrary mass of rules analogous to those governing estates in land, not as a body of historically given fundamental propositions from which, as idealized by courts and text writers, we may never depart, but as a system of precepts devised and administered for certain ends, and to be judged and developed with reference to those ends, is a hopeful sign of better things.

Common-law pleading emphasized the function of formulating the issue (or *an* issue) because of the exigencies of the mechanical modes of trial which obtain in the beginnings of law. As these mechanical modes of trial became obsolete and jury trial changed from a mechanical to a rational proceeding, the issues formulated ceased to be the real issues. An issue was reached. But it was likely to be formal or even fictitious, leaving the real issues to come out at the trial of the formal issues. The earlier codes of civil procedure sought to supersede this formal issue pleading by emphasizing the statement of "ultimate facts." But this, too, became formal. A set of pleadings was likely in practice to raise a great variety of apparent issues from which the real issues had to be sifted at the trial and (subject to many technicalities) in the charge of the court. In the present generation the emphasis has been shifting steadily to the notice function of pleading; and it is not the least merit of Professor Clark's book that he has recognized this and, without dogmatism or propagandist argument, has shaped his book as a whole and his treatment of details accordingly.

Perhaps the least satisfactory parts of the work are sections 2-5, treating of Roman legal procedure, Continental legal procedure, and, very summarily, the historical background of our own procedure at common-law and in equity. One needs to be a master of the subject in order to write about Roman procedure and Continental procedure in short compass for American readers. Few common-law lawyers are prepared for such a task. Nor are many prepared to write broad sketches of bits of our own legal history. It takes a master to make a few bold strokes with assurance. I suspect that the reason for the single-issue doctrine was not that the jury was composed of laymen (§4) but the requirements of the old mechanical modes of trial, of which originally trial by jury was one. One may see analogous phenomena in Aristotle's discussion of a "divided verdict" and in the doctrines of the Roman strict law as to *plus petitio*. Also, although the last century no doubt exaggerated the Germanic element, one may hardly leave out of account the Germanic distinction between the issue term and the trial term nor the course of framing the issue in Germanic law, when he comes to compare the Roman formulation by a magistrate with our formulation by the parties through alternate pleadings until a traverse is joined in. And as to equity pleading, one might suggest that the prolixity which obtained in England was a legacy of the eighteenth century even of formal over-refinement, while the rigidity which tended to obtain in the United States was due to lack of acquaintance with equity in our formative era and consequent assimilation of equity practice to practice at common law.

When he enters on his real task, however, the author is on sure ground and has given us a handbook which is in many ways a model. He makes no attempt at specious generalization of heterogeneous materials, yet is

not afraid to generalize where generalization is fruitful. He is not afraid to criticize, yet keeps criticism in bounds in view of the demands of a handbook. He is not deceived by the illusory certainty by which the last generation set so much store. Thus he can give an analytical account of code pleading as it is, with an eye to what it is becoming, tempered by the necessary historical cautions and yet affording possibilities for improvement by constant reference to the purposes of procedure and measuring of rules and doctrines by the ends to be met. Such a book, studied generally by those who are to go into the practice in the code states is not unlikely to achieve more than new codes and practice acts, however well drawn, administered in the spirit of the last century.

Particular mention should be made of the distinction between issue pleading, fact pleading, and notice pleading, which is carried through the whole book, and is made to bring the different problems into relation. This is in desirable contrast with the older method of treating each problem by itself with no unifying principle beyond history, usually employed only by treating the several code provisions as the culminations of a course of development along lines fixed in the common law.

It requires some hardihood in an author to approach in this fashion a subject so peculiarly in the realm of the practitioner, and it is not surprising that Professor Clark has not always had the entire courage of his convictions. One must not accept at its face value the claim for common-law pleading that "the exact issue had to be defined" (§ 11). Rather it was *an* issue exact in form. Consider the general issue in ejectment, in replevin, in *indebitatus assumpsit*. Nor should one be too ready to admit that a "system of pleading the facts" was substituted by the codes (§ 11). For at one end code pleading was turned back toward the common-law ideal by the doctrine of the theory of the pleading, while at the other end it has tended, without legislative aid, to run into notice pleading. As he rightly says (p. 29), "there is not so much a change in the kind of pleading as a change in emphasis." But the emphasis when placed with reference to the ends to be served is decisive. I doubt very much the assertion (§ 11) that our law of procedure is tending toward the procedure of the civil law, where pleading is in terms of asserted rights, as distinguished from demanded relief. Rather I suspect that both our law and the civil law are moving in the same direction. We have been giving over the quest for formal issues, due to the old mechanical modes of trial, and more and more making the pleadings give notice. Pleading in the civil law has been giving over the sharp distinctions that go with the closing of the roll, which likewise go back to the demands of archaic procedure, and has been coming toward notice as the basis of the asserted rights.

Equally bold and wholly praiseworthy is Professor Clark's constant sense of the futility of attempts at rigid analytical working out of the practical questions which arise in procedure. For example, the criterion as to jury trials under a regime of one form of action must be historical, tempered by consideration of the purpose of the constitutional provisions as to jury trial and of how that purpose may be achieved practically. This is shown by the phraseology in many constitutions which guarantee the right to jury trial "as heretofore enjoyed." Sometimes the constitutional provision must be the sole guide. Sometimes it is supplemented by statutes which adopt the historical criterion. Sometimes it is supplemented by statutes seeking to make an exhaustive, detailed enumeration of the cases which are for a jury. Sometimes the courts have sought to provide such a detailed enumeration by means of a rigid analytical criterion involving the conception of the theory of the pleading. The result

has been confusion and exaggeration of procedural niceties and difficulties. The original New York Code of Civil Procedure speaks from an era of extravagant attempts to commit all things to juries and unfettered advocacy, of which our procedure was full, down to the end of the last century.

Another example may be seen in analytical conceptions of "cause of action," a typical example of the nineteenth century jurisprudence of conceptions. On the one hand there is the definition of "cause of action" in terms of right-duty relation—a phase of the attempt to resolve all things in terms of "a right," so conspicious in Holland's *Elements of Jurisprudence*. On the other hand, there is the view of "cause of action" in terms of a controversy in fact; as a state of facts out of which controversy arises, to be diagnosed finally for purposes of relief when the time for judgment comes. The single-right theory, really an exotic from the modern Roman law, is not only untenable under the authorities, but is due to the exigencies of analytical teaching. As Professor Clark well says, in any of its forms it yields only an illusory certainty. It is vain to seek to treat procedure after the manner of the law of real property.

Perhaps one further suggestion might be added to the excellent treatment of the doctrine of the theory of the pleading. In *Mescall v. Tully*, 91 Ind. 96 (1883) (cited in § 43, note 136) ideas of common-law pleading were applied to equity pleading under the code. Something of this sort had been going on in equity pleading in England before the middle of the nineteenth century. A tendency to a doctrine of the theory of the bill begins with *Hiem v. Mill*, 13 Ves. Jr. 114, 119, in the Jarndyce and Jarndyce era of equity. But there was nothing in the code to call for it and it was not a doctrine of equity pleading before the code. Here again the law teacher made mischief. Bliss (*Code Pleading*, § 8) made a "natural" (*i. e.*, ideal?) classification of code actions out of Chitty's division of personal actions into actions *in form ex delicto* and *in form ex contractu* (1 Chitty, *Pleading* (1808) 85). Chitty's formal distinction was made into a natural distinction by teachers and text writers and for a season was written into the codes.

A few small matters remain to be noted. One feels at times that, in his conscientious and laudable endeavors to bring together all the materials on both sides, Professor Clark treats all print as created free and equal. See, for example, the American opinions as to the success of the English practice under the Judicature Act, cited in section 6, note 44.

On page 25, line three of the text, I suppose "remembered" is a clerical error for "amended."

In section 13 it is perhaps a bit misleading to say that "ordinarily" there is "a simple written summons signed by the plaintiff or his attorney." It is true of ten states, on in substance, eleven. It is an alternative in two more. But it is not true in twelve code states, including such important jurisdictions as California, Indiana, Missouri, North Carolina, and Ohio. Nor is the question as to jury trial in probate appeals quite as simple as it is made to seem in section 16. It should be remembered that the validity of a will as to real estate was passed on by a jury on an issue of *devisavit vel non*.

Professor Clark's book brings out admirably what has been accomplished for improvement of pleading in the present generation. It shows the lines on which that improvement must go forward. Its influence will be good in every direction. I hope it will be widely read by students and consulted and pondered over by judges and practitioners.

ROSCOE POUND.

The Drafting of the Covenant. By David Hunter Miller. With an introduction by Nicholas Murray Butler. New York, G. P. Putnam's Sons, 1928. Vol. I, pp. viii, 555. Vol. II, pp. 857.

Two or three books which have been published so far since the Conference of Paris which put an end to the War of 1914, have revealed to the world some of the details and of the not generally known motives to which the pact of the Society of Nations answered in its elaboration. The whole of this work was hedged in with great secrecy, and not even the minutes of the Commission which was entrusted with its preparation were published, although printed as fast as they were adopted. Those of us who were familiar with them through having helped as plenipotentiaries of one or other of the belligerent nations in the Peace covenant, took cognizance with a certain amount of astonishment of definite versions which the press and even some books often adopted.

Today, thanks to this most useful and complete work by Mr. David Hunter Miller, the situation is completely changed. The documents from which the Covenant was to take rise, from the Phillimore plan of the 20th of March, 1918, down to each and every one of the proceedings of the Commission, including the four texts proposed by President Wilson, are all inserted word for word in volume II, whilst the first volume contains day by day and act by act the history of its elaboration.

The work is written by a man who played a most important part in all these proceedings as member of the North American Delegation and who, with Mr. Hurst, gave his name to the transactional project which served as a basis for the one which was approved by the Commission and, consequently, for the present pact. And as the author had the happy idea of taking notes of what was taking place before him, officially as well as in private, there are to be found in his work more than one most curious anecdote as well as several important episodes which throw great light on what took place during those months in which the Treaty of Versailles was elaborated and which were equally filled with hope and anxiety for a large part of the civilized world. We may boldly assert that in the future it will be impossible to write the history of this most transcendental peace, which occupies in the 20th century a place analogous to that of Westphalia in the 17th, or to that of Vienna in the 19th, without consulting and commentating upon Mr. Miller's work. It is not a mere store of dates and conversations, as are usually to be found in memoirs, but the work of a writer worthy of the name, who knows how to add to the narration of facts sagacious remarks and most useful teachings.

The number of collaborators in the Covenant of the League of Nations and their diverse training, some being politicians, others lawyers and others again Government officials explains why the results of that Covenant may extend into very different spheres and is adapting itself to all kinds of evolutions. There is a purely political aspect to it, in which the European situation resulting from the war is finding the means of resolving some of its most serious difficulties and of smoothing out differences of opinion between the smaller and the greater powers, the results of which might be very serious were it not for this means of action. Another of its aspects is a social one in international relations, substituting the informal conversation in unavoidable and fruitful interviews in place of diplomatic correspondence, in which latter aggressiveness and conciliation often crop up out of season; still another of its aspects is an administrative one, in that it renders formal and intensifies the common work of maintaining close touch in every department from that of the post and telegraph to that of industrial property and of sanitary co-

operation. It is gradually changing the moral and material solidarity of the universe into a legal one; and many other multifarious aspects are constantly cropping up which have on certain occasions brought together on the committees at Geneva people who seemed on certain occasions most opposed to the objects and even to the existence of the Pact.

Perhaps the greatest merit of the great idealistic and humanitarian work, which has been more or less perfectly realised, and which this book describes step by step, is precisely its elasticity, which has made it possible to adapt it every day to fresh collective requirements, and which makes its universal acceptance possible for certain ends, though for others, in the end, continental or regional groups which already exist in fact impose themselves.

At the end of the second volume, in addition to a detailed alphabetical index, there is another which follows the order of the articles of the Pact and which gives in detail all the pages of both volumes on which reference is made to each one of them. It is of great practical use in consulting this work and will necessarily be of great service to all those who may search in it for light on any special point.

Whatever may be one's opinion concerning the League of Nations, and while recognizing that its creation and management are bound, like every other human institution, to give rise from time to time to criticism favorable or adverse, this most important publication by Mr. Miller is bound to make it well known and will occupy a favored place in every library consecrated to the subject of which it treats. International Law has been enriched by it.

The Hague. ANTONIO S. DE BUSTAMENTE.

Handbook of Federal Jurisdiction and Procedure. By Armistead M. Dobie. St. Paul, Minn., West Publishing Co., 1928. pp. xiii, 1151.

In view of the many existing books on particular phases of federal jurisdiction and procedure, many of which contain several volumes, the broad and detailed subject matter contained in this new addition to the Hornbook Series is a rather extraordinary accomplishment in itself. Probably there does not exist any other single volume which gives so complete and thorough a picture of the federal judicial system as a whole. Indeed, an outstanding feature is the painstaking care with which the leading authorities and other source materials have been collected in a series of footnotes which makes it possible for any one particularly interested in some special phase of the subject to further pursue his study and inquiry.

The author is at his best in discussing that body of principles having to do with the jurisdiction of the district courts. The chapters on diversity of citizenship, cases involving federal questions and removal jurisdiction and procedure are gems.

Those interested in the development of a more cohesive system of procedural jurisprudence throughout the United States will attach much significance to Professor Dobie's discussion of proposed or possible reforms. It is evident that these important matters are constantly in his mind; and the fact that he discusses them at all, in a text book prepared primarily for practitioners, and only incidentally for students (see p. v), is a distinct and most welcome departure from what may be called the modern text book tendency.

There are probably comparatively few persons in the country so well equipped by training, research and experience, to discuss these proposed or possible reforms. And yet in almost every instance the discussion is

rather brief and cryptic. Just enough to whet one's appetite, and to leave one with some sense of incompleteness. Thus the learned author hints at the desirability of perhaps abolishing diversity of citizenship as a ground of jurisdiction in view of the steady progress toward the elimination of "prejudice against the stranger litigant in the courts of a state;" and he mentions, in passing, the great change in the social and economic life of the various communities brought about by "integrated industries and improved transportation facilities." The congestion of the federal district courts, the continual cry for more federal judges and other circumstances would make some elaboration on this subject exceedingly interesting reading.

There is probably no more important and necessary reform in federal procedure than the prompt passage of some federal statute which shall give the Supreme Court the power to prescribe uniform rules governing the practice and procedure in actions at law in the federal district courts. This subject receives a mere three pages of discussion.

On the subject of admiralty jurisdiction the most interesting, and probably most confusing development, beginning with *Knickerbocker Ice Co. v. Stewart*, 253 U. S. 149, 40 Sup. Ct. 438 (1920), and continued in *State of Washington v. W. C. Dawson & Co.*, 264 U. S. 219, 44 Sup. Ct. 302 (1924), and *Robins Dry Dock & Repair Co. v. Dahl*, 266 U. S. 449, 45 Sup. Ct. 157 (1924), is stated so briefly as to leave a reader, unfamiliar with the subject, largely uninformed concerning the importance of the subject, the doubts which remain to perplex one, and the probable bearing of this line of decisions upon other phases of admiralty law.

No doubt Professor Dobie would at once state that he would have been only too pleased to discuss these and many other kindred subjects had the space and opportunity been available. We may, nevertheless, express our disappointment at not learning his views more fully.

One of the striking features of the book is the careful and entirely successful attempt to set forth the general rules and provisions governing federal procedure, civil and criminal, rather than to content himself with a full discussion on the subjects of jurisdiction and a mere cursory treatment of the practice and procedure. While many of the statements regarding the practice and procedure are of a purely formal character, they are fully and accurately set forth and they add greatly to the general usefulness of the book.

HAROLD R. MEDINA.

The Neutrality of the Netherlands during the World War. By Amry Vandenbosch. Grand Rapids, Mich., Wm. B. Eerdmans Publishing Co., 1927. pp. 349.

While some persons are thoughtlessly asserting that war has been "outlawed" in the sense that it is now a status outside the law and devoid of legal regulation, and while others are taking the view that the traditional legal system of neutrality is obsolete in view of the existence of the League of Nations, it is of great value to international lawyers to have Professor Vandenbosch's scholarly study of the neutrality of the Netherlands during the World War. With full paraphrases or quotations from the diplomatic correspondence, the author has presented in carefully organized form a clear picture of the difficulties confronting a small neutral state and of the courageous and skillful struggle of the Netherlands Government to preserve its neutrality in the trying times of 1914 to 1918. Professor Vandenbosch has utilized the Dutch Orange Books and White Books, numerous British Parliamentary Papers, the published war cor-

respondence of the Government of the United States and other official data in addition to much secondary material.

The book has three major divisions dealing respectively with Enforcement of Neutral Duties, Controversies Over Neutral Rights, and a General Estimate of the Dutch Neutrality Regulations. Under each of the first two of these main divisions the material is admirably grouped into such topics as Transit of Military Materials, Admission of Belligerent Warship, Blockade and Retaliation, Destruction of Neutral Prizes, and the like. In treating each of these questions the author takes up separately the controversies between the Netherlands and the various belligerent governments, follows the presentation of the factual side with a brief survey of the existing rules of international law and concludes with an estimate of the soundness of the Dutch position. In addition there are eleven appendices containing the texts of the more important Dutch regulations, an index and a good bibliography.

In regard to the presentation of the factual data, Chapter VIII on the Admission of Belligerent Armed Merchantmen, Chapter XII on the Right of Asylum—The Case of the Kaiser, the data on the Netherlands Oversea Trust Company in Chapter XIII, and Chapter XVI on Neutral Convoy are of particular interest. But the contributions made by the author's study are by no means confined to these topics. His disagreement with the British retaliatory actions, with the Allied system of "blockade" and with the German war zones are to be welcomed. Even where the reader disagrees with the author's conclusions he is grateful for the added light thrown upon the problem and for the fair, open minded analysis of national views and pretensions. Throughout the book a great service is rendered by indicating the defects which practice revealed in the Hague Conventions and by suggesting the lines along which at some future conference they may be improved. The reviewer subscribes to Professor Vandenbosch's statements that:

"The Dutch regulations with respect to certain phases of neutral duties have a singular importance, for they indicate a veritable evolution of neutral duties along the lines of fundamental principles previously established. Out of the diplomatic controversies with respect to the Dutch regulations concerning aircraft, radio, internment of both property and belligerent persons coming upon neutral territory, the treatment of prisoners of war interned on its territory by mutual agreement of the belligerents, the non-admission of warships, belligerent armed merchant-men, and prizes, have come clearer conceptions of neutral duties under modern conditions of warfare. These will form a useful working basis for the re-codification of the laws of neutrality on land which is so urgently needed."

One may add that the presentation of this data in so clear and accessible a form constitutes an additional service to the future of the international law of war and neutrality.

PHILIP C. JESSUP.

Appellate Practice and Procedure in the Supreme Court of the United States. By Reynolds Robertson. New York, Prentice-Hall, Inc., 1928. pp. xxxix, 360.

The number of cases which the Supreme Court of the United States is called upon to consider is relatively small in comparison with the entire volume of litigation that is pending in the various appellate courts of this country at any given time. And it is necessarily true, therefore, that the average practitioner rarely finds himself before the nation's highest tribunal. When, however, it becomes necessary for him to seek or to

resist a review by the United States Supreme Court he finds himself confronted by many practical questions of procedure and practice. The aim of Mr. Robertson's handbook is to answer those questions: " * * * to set down a chronological outline of the steps necessary to be taken, both in the lower courts and in the Supreme Court, in order to perfect a writ of error or appeal to the Supreme Court, or to apply for a writ of certiorari from that Court." The volume assumes that the practitioner has determined upon the proper remedy and seeks "to suggest the usual procedure to be followed in perfecting his application, filing his case in the Supreme Court, and conducting it while there, with regard to the statutes, the rules, the decisions, and the established practice."

The Act of February 13, 1925, amending the Judicial Code, greatly increased the number of cases that may be reviewed only on writ of certiorari. Since the enactment of that statute, comparatively few cases are subject to review by the Supreme Court as a matter of right. Six of the sixteen chapters in this book are devoted to the writ of certiorari, and it is treated in minute detail from the viewpoint of both the petitioner and the respondent. The steps to be taken by counsel for the petitioner are set forth, and each step is discussed and explained by reference to the controlling statutes, rules and decisions. Various contingencies that may preclude a consideration of the petition on its merits are mentioned, with suggestions as to how to avoid them. The distinction between the writ of certiorari to a state court and to the several federal courts is shown, as is also the procedure to be followed in obtaining a stay of the mandate of the lower court pending an application for certiorari. The duties of the respondent are also fully explained.

The practice on writ of error, appeal, and certified questions is likewise discussed in detail. The final chapters are devoted to motions, briefs, the argument and submission of cases, and to opinions, judgments, mandates, and rehearings.

The Act of January 31, 1928, abolishing the writ of error to federal courts, was passed after the book had gone to press. The probable effect of that Act is discussed in an appendix. This discussion is particularly valuable in view of the fact that the statute has not yet been construed by the Supreme Court.

This volume does not purport to be a treatise on federal practice; it is a manual written in simple form and designed to serve as a practical guide for the practitioner in the Supreme Court of the United States. Through long experience as an assistant in the office of the Clerk of the Court, the author is peculiarly well qualified to write such a handbook. It contains many valuable forms and much material that has never before been published, and the practitioner will find it an invaluable aid in its field. It will save him much time and expense and will relieve him of considerable perplexity and anxiety. Of perhaps equal importance to the careful lawyer is the fact that it will enable him to follow the approved and customary method.

Birmingham, Ala. DOUGLAS ARANT.

Some Lessons from our Legal History. By William Searle Holdsworth. New York, The Macmillan Co., 1928. pp. viii, 196.

Professor Holdsworth's thesis is that rules of law, both substantive and procedural, have come into existence as the result of a long series of experiments. The method has been that of trial and error. From this, it follows that a knowledge of the experiments—of the efforts to secure effective means for a desired end—is a valuable, nay a necessary, part of

the equipment of a student of law. He proves his thesis abundantly with a wealth of learning, discussing events, statutes, decisions, works on legal philosophy, etc. with enviable knowledge and skill.

His work also proves the thesis that the fact that an institution or rule of law exists is *prima facie* evidence that it is effective, and that it is for the advocates of change to show that the change proposed has not been tried before, and found wanting, and that there is a reasonable basis, other than novelty, for an anticipation that improvement will follow change.

The examples he cites of the frequent failure of institutions transplanted from one culture to another, furnish a key to the fault which underlies Henry Ford's criticism of experts, i. e., that their chief activity is to point out, often mistakenly, what cannot be done. The causes of the success or failure of experiments in law or other institutions are so numerous and complex, that it is easy to ascribe success or failure to the law or institution itself, when, in fact, opposite results would follow if the conditions of race, culture, etc. surrounding the experiment were changed. Failure of Parliamentary Government in Italy does not condemn it, just as its success in Great Britain does not prove it the only possible governmental method.

Hence, a law or an institution may have succeeded in spite of its weaknesses which should be cured, or may have failed in spite of its excellencies.

It is disheartening to realize that most of the readers of Professor Holdsworth's book will come from among those who need its teachings least, and that the truths he demonstrates, as for instance, the vital need of a judiciary who are the equals or superiors in learning and skill of the men who practice before them, cannot be brought home to the public, so that it will demand and be willing to pay for judges of this class.

It would be presumptuous to attempt to criticise Professor Holdsworth in his discussion of legal history and its place in the world of knowledge. To do so would require a knowledge at least a tithe of his in extent and accuracy. The non-expert reader of these lectures finds delight in the breadth of the author's learning, and the skill with which he uses it.

A short quotation shows his general attitude, and his subtle humor.

"Philosophical speculation about law and politics is an attractive pursuit. More especially is it attractive to the young. A small knowledge of the rules of law, a sympathy with hardships which have been observed, and a little ingenuity, are sufficient to make a very pretty theory. It is a harder task to become a master of Anglo-American law, by using the history of that law to discover the principles which underlie its rules, and to elucidate the manner in which these principles have been developed and adapted to meet the infinite complexities of life in different ages. But those who have chosen to endure this harder task have chosen the better part. * * * These students of our law will thus learn, even though it is only at second hand, something of the practical wisdom which comes from knowledge of affairs. They will, for that reason, be able to suggest solutions of present problems which will depend not merely on their own unaided genius, but on the accumulated wisdom of the past; * * *. But, being students of modern law, and cognizant of modern conditions, they will not overlook the modern theories of legal and political philosophers."

HARRISON HEWITT.