Book Reviews

SOME LESSONS FROM OUR LEGAL HISTORY, by *W. S. Holdsworth.* New York: The Macmillan Co., 1928. Pp. 198.

The publication of this diminutive volume, with its less than two hundred pages, by the author of the monumental "History of English Law" is like the dropping of a handful of leaves from the branches of a mighty oak. (The oak itself, incidentally, is still in the process of growth, though its magnitude already extends over nine awe-inspiring volumes.) The book consists of four brilliant little essays that sweep over centuries of legal history with a lightness of touch and yet a depth of penetration that could come only from a pen that had been sweeping over the same field for more than thirty years.

The essays had their origin in the spring of 1927, when the learned occupant of the Vinerian Chair at Oxford University—the Chair made famous by its first incumbent, Sir William Blackstone—was invited by the Julius Rosenwald Foundation for General Law to deliver a series of lectures at Northwestern University. It is for that reason, no doubt, that the essays have, in addition to the range and profundity that were to be expected from Professor Holdsworth, a liveliness of pace and a directness and vigor that make them compare favorably even with some of the best essays of the great Maitland—to whom the author more than once acknowledges his indebtedness.

Of the various "lessons" that our historian would have us heed, perhaps the most significant is the one with which he concludes the essay on the "Contribution of the Common Law to Political Practice and Theory," as exemplified particularly in the development of the writ of habeas corpus and the institution of the jury. After a rough but masterly sketch of the history of these two important pieces of our legal machinery, in which the role played by the Common Law judges and lawyers is especially noted, the writer thus points the moral not only of this particular discourse but of the study of English legal history in general:

> 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. And even for those who are older and more learned, there is a very real fascination in the construction of theories, which will resolve the problems of legal history in a new way, or suggest a new solution of present day problems of law and politics.
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> 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. They are brought into close touch with

> the great lawyers and statesmen of the past, with their difficulties both technical and political, and with the manner in which they have used their knowledge of the rules of law, and of the conflicting needs and beliefs and aspirations of their day, to adapt the law and institutions of the state to new conditions. 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; for, as Hale said, "it is most certain that time and long experience is much more ingenious, subtle and judicious, than all the wisest and acutest wits in the world coexisting can be." But, being students of modern law, and cognizant of modern conditions, they will not overlook the modern theories of legal and political philosophers. Helped by history, they will be able to apply to them a critical intelligence which can discriminate between the possible and the impossible, and a capacity to convert what is valuable in them to the development and the adaptation of the law to the needs of their own day.

This passage has been quoted in its entirety not only because of the eloquent and yet restrained tribute that it pays to the value of legal history, but also because it clearly indicates that the learned historian, despite his evident partiality to the common law, is yet wholesomely free from the blind adulation and the bigoted conservatism that have characterized many a great common lawyer of the past. His sympathy with the spirit of our legal theorists and reformists is apparent from his comments on the work of Jeremy Bentham, of whom he says, at one place:

> Even now, when his theory of utility, as he expounded it, has ceased to inspire the enthusiasm which it inspired in the earlier half of the nineteenth century, his influence still lives . . . because the use which Bentham and his school made of that principle "expelled mysticism from the philosophy of law, and set the example of viewing laws in a practical light, as means to certain definite and precise ends."

On the other hand, tolerant as is the Oxford professor toward the spirit of reform, he cannot disguise his impatience with the more radical views expressed by theorists of the school of Duguit, for example. Thus Duguit's famous theory of the functional rather than sovereign character of the State, which found such a ready and brilliant advocate in Harold Laski, as well as his corollary and equally modernistic views about incorporate and voluntary associations, is disposed of rather unceremoniously as a scheme which will "take us right back to the anarchy of mediaeval political society." It must be admitted, however, that the author's own views on Sovereignty and Corporateness have more significance for the citizens of his own country than they do for his American readers. In the United States, the legal status of corporations presents problems of an entirely different order from those that are apparently agitating the minds of English as well as Continental jurists and legislators.

Nevertheless, after making all allowances for an undoubtedly English point of view, the student of historical and comparative jurisprudence will

find the essays in this book as stimulating as any that he has yet read in the field of legal history.

ISRAEL TREIMAN.

St. Louis, Missouri.

AIRCRAFT LAW—MADE PLAIN, by *George B. Logan.* St. Louis, 1928. Pp. 155.

It should be a satisfaction to the Bar of St. Louis that one of its members has written one of the pioneer works on the subject of Aviation Law. We read almost daily of new enterprises in the aircraft industry and in air transportation which are to center in St. Louis, and Mr. Logan's book offers to the practitioner and to the layman an agreeable opportunity to learn the up-to-date developments in the law affecting this new science and industry.

In the welter of dry legal treatises, it is most refreshing to find a book written in the lively style of Mr. Logan's volume. The author's style is untrammelled by the ponderous manner of our legal Scribes and Pharisees; he makes no bones about relegating the "ad coelum" maxim of ownership of the air spaces to the domain of "legal gossip." In the interests of veracity we can even pardon him a certain disrespect for the noble profession when he compares the lawyer to the night watchman because "he prefers to do no more work than necessary."

But it is not to be assumed, because he occasionally indulges in the vernacular, that Mr. Logan has failed in scholarly consideration of his subject. He covers not merely the specific decisions and theories applicable to aircraft law, but also briefly reviews, for the benefit of the layman, some of the fundamental rules of the Common Law relevant to the operation of aircraft and air ports. Moreover, and notwithstanding the popular character of the work, Mr. Logan cites the conclusions and principles developed by European scholars and courts with reference to aircraft law.

The book is divided into five parts, covering (first) problems of trespass and nuisance in flying, (second) police regulations, Federal, State and International, (third) liability to groundsmen, employees, passengers and shippers, (fourth) the effect upon insurance of participation in aviation, and (fifth) venue and jurisdiction in aircraft cases.

One of the most interesting discussions has reference to the as yet uncrystallized rules of liability of the aviator and plane owner to the groundsman, for damage to person or property on the ground. Mr. Logan (perhaps with undue conservatism) characterizes as "heresy, treason and anarchy" his theory that on account of difficulties of evidence, a rule of absolute liability should be adopted in such cases. It appears that the rule for which he contends has in substance been incorporated in the Uniform State Law of Aeronautics now in effect in ten or more states of the Union. Mr. Logan does not, however, contend for the extension of such a rule to criminal cases. The case of *People v. Crossan* (Cal., 1927), 261 P. 532, a manslaughter case, offers an interesting commentary upon the suggested rule of evidence in its application to criminal cases.

Mr. Logan's book, omitting the appendix (a digest of state Statutes, including the Air Commerce Act of 1926), comprises only about one hundred pages, and is recommended as an instructive and entertaining work, well worth the time requird for its perusal.

R. WALSTON CHUBB.

St. Louis, Missouri.