Willis deals with the question of administrative rule making unchecked by judicial review, which has aroused such a furore in England in recent years, with Lord Hewart leading the attack in "The New Despotism." The bureaucracy has received more or less a clean bill of health from the Committee on Ministers' Powers, which reported in 1932; but Mr. Willis is not impressed with the utility of the somewhat strengthened judicial review which the committee recommends. Determination of administrative jurisdiction by suitable administrative tribunals holds for him no more terrors than similar determination of their own jurisdiction by the courts. His scholarly survey of the legislation and decisions bearing upon the question reveals how deep-seated is the need and how numerous are the occasions for administrative discretion in rule making no less than in other directions.

After all the general studies and surveys of administrative control have been taken into account, there will remain a need for intensive studies of the functioning of particular administrative agencies. There have been a few such studies, but no preceding one has been as ambitious as Professor Sharfman's projected four-volue work on the Interstate Commerce Commission, of which the first two volumes have appeared. The Interstate Commerce Commission is of all American administrative agencies the one with the longest and most honorable history and with the largest aggregate of powers. Again it is not possible in a review such as this to go into details regarding Professor Sharfman's treatment of his subject. Suffice it to say that on the legal side his survey of the powers of the Commission and its relation to the courts leaves little to be desired, while his estimate of the usefulness of the Commission as a device for controlling the transportation industry is enlightened by the equipment which he brings to his study in his capacity of economist. The possibilities of bureaucratic control of private enterprise are nowhere better revealed than in these two volumes.

RALPH F. FUCHS.

Washington University School of Law.

THE DEVELOPMENT OF INTERNATIONAL LAW BY THE PERMANENT COURT OF INTERNATIONAL JUSTICE, by *Hugh Lauterpacht.* New York: Longmans, Green and Co., 1934, pp. IX, 112.

This volume consists of a series of lectures delivered at the Graduate Institute of International Studies at Geneva. It is a significant contribution based upon an exhaustive study of the judgments and advisory opinions of the Permanent Court of International Justice. With the major aim of the Court as one of several instruments for the maintenance of peace, the author is concerned only incidentally, in part because there is no exact way of even estimating the extent to which the Court has been successful in performing this function. He concentrates on the second basic function of the Court and attempts to measure and evaluate the work of the Court in the development of international law.

While the work of the Court thus far has consisted to a very large extent of the interpretation of treaties and other international documents and the international commitments upon which its own jurisdiction is based, it does not follow that the Court has had no occasion to concern itself with the principles of general and customary international law, for in the search for dependable guides to the meaning of treaty stipulations and the intention of the parties to international agreements, these principles are among the most potent of sources. In using them, the Court has naturally practiced a degree of caution commensurate with the weightiness of the cases that come before it and the voluntary character of its jurisdiction in controversies between sovereign states.

As the judges of the Court apply these general principles and maxims, it is as true of them as it is of municipal judges that "It is not their function deliberately to change the law so as to make it conform with their own views of justice and expediency. This does not mean that they do not in fact shape or even alter the law. But they do it without admitting it; they do it while guided at the same time by existing law; they do it while remembering that stability and certainty are no less the soul of law than justice; they do it, in a word, with caution."

"Judicial legislation is, ultimately, not a change of the law, but the fulfillment of its purpose." The Permanent Court of International Justice, as does every municipal court in the sphere of municipal law, interprets the law to make it effective—"to secure a full degree of effectiveness of international law, and in particular of the obligations undertaken by the parties in treaties."

The Court from the outset has made clear that it will not permit itself to be held in bondage by technicalities. Here is its own language from the *Mavrommatis Palestine Concession* case: "The Court, whose jurisdiction is international, is not bound to attach to matters of form the same degree of importance which they might possess in municipal law." In the absence of procedural provisions in its own statute and rules, the Court regarded itself "at liberty to adopt the principle which it considers best calculated to ensure the administration of justice, most suited to procedure before an international tribunal, and most in conformity with the fundamental principles of international law."

"If any lesson can be derived from the experience of the last twelve years," writes the author, "then it is this: that Governments cannot rely on the Court that it will countenance evasion from the *vincula juris* into which they have entered."

The Court adjudicates disputes between states, but the law which it applies is law to which the states themselves are parties, either expressly or tacitly, and, consequently, no encroachment on the sovereignty of the state is involved. The Court's language in the *Wimbledon* case is clear on this point: "The Court declines to see in the conclusion of any Treaty by which a State undertakes to perform or refrain from performing a particular act an abandonment of its sovereignty. No doubt any convention creating an obligation of this kind places a restriction upon the exercise of the sovereign rights of the State, in the sense that it requires them

to be exercised in a certain way. But the right of entering into international engagements is an attribute of State sovereignty." And similarly in the *Lotus* case: "International law governs relations between independent States. The rules of law binding upon States therefore emanate from their own free will as expressed in conventions or by usages generally accepted as expressing principles of law." The author makes this enlightening comment: "The curbing of some cherished claims of State sovereignty is the result of submission to jurisdiction, and not of any usurpation of powers on the part of the Court."

Professor Lauterpacht has produced a scholarly and readable volume which merits the attention of all who have either a general or a special interest in international law or the World Court—or, for that matter, in the general problem of judicial legislation.

Washington University. ARNOLD J. LIEN.

COMO SE HIZO LA CONSTITUTION DE CUBA, by *Antonio Bravo y Correaso.* La Habana: Rambla, Bouza y Ca., 1928. 113 pp.

BASES PARA UNA CONSTITUTION FUNCTIONAL, by *Oscar Alvarez Andrews.* Santiago de Chile: The Author, 1932. 125 pp.

These two little works on constitution making are about as different as they well could be. The former, by a member of the Cuban senate, is patriotic and historical in character. It is very clearly and simply put, so that even high school students could grasp its contents. After a brief summary of the achievement of the independence of Cuba, and an incidental criticism of the United States for making the treaty of liberation without consulting Cuba on terms of equality (p. 9), the author proceeds to analyze the form of government and to give a circumstantial account of the debates and decisions of the constituent assembly (of which he was secretary) in framing the constitution. This account is very interesting and provides a very good picture of how such assemblies work. Of course the main provisions of the constitution are explained. In discussing the Platt Amendment and intervention some further repressed antagonisms against the United States are mildly displayed.

Alvarez' book is concerned with what should be rather than with what is in the Chilean constitution. He takes a decidedly liberal, although not a doctrinaire, viewpoint, and treats his subject matter from the standpoints of (1) fundamental principles, (2) functional organization, (3) effective public opinion. He is well read in the recent European literature of functional democratic government. The book is really a handbook for the student of constitution making and for the more intelligent type of citizen and is constructed largely in outline with terse, pointed definitions and statements of principles. It should serve its function well. We have nothing just like it in this country and the work most similar to it in Great Britain is Sidney and Beatrice Webb's *Socialist Constitution for Great Britain*—although the two books are by no means wholly comparable. Alvarez' book is much more terse and provocative. He is not content merely with a statement of the principles of government which a constitution should embody.