appropriate illustrations and a fair index of fifteen pages, although the latter is hardly adequate as a guide to all the information contained in Mr. Konkle's elaborate book.

CHARLES H. LINCOLN.

The Supreme Court in United States History. In three volumes. 1789–1821; 1821–1855; 1856–1918. By CHARLES WARREN, formerly Assistant Attorney General of the United States. (Boston: Little, Brown, and Company. 1922. Pp. xvi, 540; x, 551; x, 532. $18.00.)

THE two works with which Mr. Warren's is most apt to be compared are Carson's *History of the Supreme Court* and Beveridge's *Life of John Marshall.* The former is a recital of decisions interlarded with short biographies of the judges, and while Mr. Warren furnishes brief statements both of the facts involved and of the decisions reached in the cases of which he treats, his book is not otherwise tangent to the earlier work. With Beveridge's *Life* there is a more obvious overlapping for the period of Marshall's incumbency, to which Mr. Warren devotes two-thirds of his first volume and one-half of the second; but this seems to have been the unavoidable result of the synchronous preparation of parallel works, and besides the method of treatment of the same material is usually very divergent.

Probably two-thirds of Mr. Warren's book consists of matter which is quoted directly or indirectly—and most of it directly. It is his purpose to preserve contemporary impressions of the court in daily action, contemporary accounts of the famous arguments before it, contemporary political gossip regarding appointments or suggested appointments to its membership, and above all contemporary comments, both the hostile and the friendly, of its principal decisions, most of which of course lay in the field of constitutional interpretation. In the performance of this task he has combed sources of every kind, newspapers, magazines, the biographies and writings of public men, to say nothing of the numerous manuscript collections which he has laid under contribution. Nor is even this the full toll of his researches. For his own observations, as well as his citations, show him fully abreast with the recent "literature" dealing with the critical phases of his subject, whether in the form of books or articles in periodicals.

The result is a work of great interest and value not only to bench and bar and to special students of constitutional law and theory, but to all students of public opinion in democracies, and especially the American democracy. Nowhere else can such a wealth of material be found bearing on the issues which at various times have been raised with reference to the institution of judicial review of legislative acts. In these pages we see how from the first the discussion of measures, and even of men, was constricted by the doctrine of constitutional

limitations into a peculiar vocabulary in which questions of public policy assumed automatically the guise of questions of individual rights. By the same sign we see the highest judicial tribunal of the country for the determination of individual rights subjected almost without intermission to the fiercest tempests of partizan and sectional rage and to every verbal brutality of denunciation. Yet the final impression conveyed is by no means unfavorable to the characteristic feature of our system of government. If it is granted that there are certain fundamental understandings which demand embodiment in a written constitution, it must be further granted that this constitution must have a final authorized interpreter; nor will anybody be apt to turn from Mr. Warren's pages, with their graphic record of the wild inconsistencies with which sections, parties, and individuals have at different times essayed the task of constitutional construction, without feeling that had this final authorized interpreter been any organ of government except the Supreme Court, the Constitution must have been torn to shreds and tatters within a generation.

In short, as compared with the violent fluctuations of public opinion as regards the crucial topics of constitutional doctrine, the Supreme Court will be found to have pursued a remarkably steady and consistent course. The fact offers striking confirmation to the so-called "mechanical theory" of judicial interpretation; given a sufficiently large and representative bench of judges, sufficiently withdrawn from the hazards of politics, and it will in the long run identify itself as the still, small voice of the law amid the babble of opinion about it. It is interesting, moreover, to see how easily and with what grace the vast majority of appointees to the court—some of them the mere wheel-horses of party—have yielded themselves to this theory and the dignifying tradition of office which it supports.

Some incorrigibles there have been, like McLean, whose perpetual candidacy for the presidency precipitated at last the calamitous Dred Scott decision, and Chase, whose similar pre-occupation was more or less responsible for the imbecility of Hepburn *v.* Griswold; but on the whole, judges with a political itch—once they became judges—have been rare.

The two principal criticisms of Mr. Warren's book are, first, that it is too long; and, secondly, that it is not long enough. Save for a perfunctory chapter or two, the work ends with the close of Waite's chief-justiceship, in other words, just as the problems of constitutional construction with which we are concerned to-day began to arise. For this omission he offers the double apology that this recent period is still within the view of living men and that the historical perspective is still lacking; but both are of transitory validity, wherefore it is to be hoped that eventually he may incorporate in a fourth volume recent criticism of the court—that criticism which is so dominated by the

strident voice of Mr. Samuel Gompers. On the other hand, a little freer use of foot-notes would often have relieved the text of a certain oppressive repetitiousness without, at the same time, sacrificing anything of the satisfying completeness of the work as a survey of opinion.

Mr. Warren's efforts to correct accepted historical verdicts are not always convincingly successful, but otherwise the work is singularly free of statements to which the informed reader will be apt to take exception. He shows, in correction of Beveridge, that the decision in Marbury *v.* Madison was widely published at the time (I. 245, note 2); yet Judge Davis knew nothing of it five years later (*ibid.*, 345, note 2). He insists that the Virginia and Kentucky Resolutions did not imply a repudiation of the right of the court to pass upon the constitutionality of acts of Congress—though the Northern legislatures so interpreted them—but only a supplementary right in the states to reject acts which the court had sustained against the constitutional objection (*ibid.*, 258–261). Even so, in rejecting the *finality* of the court's decisions, they introduced a vastly different idea of judicial review from that stated in the *Federalist*; while, moreover, some of the supporters of the Resolutions, Breckenridge of Kentucky, for instance, later came out against judicial review of Congressional acts in any form; nor do the words which Mr. Warren quotes from the closing pages of Madison's *Report* of 1799 prove more than that the author of them had discovered in discretion the better part of valor. Also, Mr. Warren's contention, based on a letter of Taney's, that Jackson "never asserted a right to decline to carry out a court decision, when acting in his executive capacity" (II. 222–224; *cf.* 246), is, in view of all the facts, entirely unpersuasive. Hailing as he does from Boston, Mr. Warren champions Webster's claim that Marshall's opinion in Gibbons *v.* Ogden "followed closely the track of his argument" (*ibid.*, 70–71), but the fact is that this characteristically vainglorious assertion is without basis; nor should Goodrich's recollections of what the great Daniel said in the Dartmouth College case have been cited as reliable historical testimony (I. 479, note 2). Mr. Warren is also mistaken in supposing that the passage which he quotes from the original opinion of the court in Kendall *v.* United States does not appear in the printed report (II. 320; *cf.* 12 Peters, 524). Occasionally it is the lawyer who speaks in these pages, with the lawyer's tendency to "antedate the emergence of ideas" (see, *e.g.*, I. 476 and note); and occasionally the profitless inclination is indulged to conjecture what would have happened if something else had happened which didn't (*e.g.*, I. 410, 413).

But these, after all, are very minor blemishes of a highly valuable work. It should be added that the publishers have done their part most satisfactorily, even to the excellent index.

EDWARD S. CORWIN.

Training for the Public Profession of the Law: Historical Development and Principal Contemporary Problems of Legal Education in the United States, with some account of Conditions in England and Canada. By ALFRED ZANTZINGER REED. [Carnegie Foundation for the Advancement of Teaching. Bulletin Number Fifteen.] (New York: Charles Scribner's Sons. 1921. Pp. xviii, 498. $2.00.)

PREVIOUS books on legal education relate primarily to one institution, like the *Centennial History of the Harvard Law School,* 1918, or Warren's *History* of that School, 1908 (although containing much general bibliographical material); or discuss pedagogical problems, like the earlier Carnegie Bulletin by Redlich on the Case Method, 1914. Reed covers all law schools and office-training, approaching education from the fresh viewpoint of its relation to requirements for admission to the bar.

The introductory part I. discusses Comparative Development of Law and the Legal Profession in England, Canada, and the United States, and summarizes the whole book. The American lawyer is shown to be an outgrowth of the English solicitor, and our law schools to resemble the English training by lawyers, not the Continental universities. The historian will find his chief interest in parts II.–V. These survey exhaustively the early requirements for admission to the bar (II.); the rise of law schools (III.); the rise of bar associations after the Civil War (IV.); and the changes in bar-admission requirements due to law schools and bar associations (V.). Part VI. covers the broadening of the curriculum after the Civil War; VII., the intensification of training by written examinations, the case method, etc. Part VIII. on recent developments is anticipatory of a subsequent Carnegie Bulletin on the contemporary situation. The author's principal recommendation for a division of the bar into graduates of leading law schools, organized into selective bar associations, which will also admit other conspicuously able practitioners, and secondly into graduates of textbook and night schools, has been vigorously attacked by Albert M. Kales.[1]

Legal education touches general American history at many points. Jeffersonian democracy resented the prevalence of Federalist lawyers suspected of a monopoly, and almost abolished bar-admission requirements. Jefferson insisted on sound Republican law professors for the University of Virginia, while Northern schools selected Federalists (pp. 119, 140). In protest against Calhoun's doctrine of state rights, Dane endowed a Harvard professorship to teach law "equally in force in all branches of our Federal Republic" (p. 143). Reed establishes a parallelism between stiffened bar admission and civil-service reform (pp. 41, 42, 102). The absence of law-school courses on government

[1] *Harvard Law Rev.,* XXXV. 96; and Reed's reply, *ibid.,* 355.