

government has not suffered the disastrous inability of European governments to fix authority with a distinct majority. The multi-party systems have experienced a ruling plurality at odds with an antagonistic majority. In our system the brunt of the legislative burden is borne by the majority which is the plurality. How accountable his party is held for its legislative acts every Congressman knows all too well.

Institutionalists are likely to feel that so great stress on the state is an undue delimitation of the field of constitutional history. After all, it is urged, the sociological structure is constituted of many institutions of which the state is merely an important one. Commercial, cultural, scientific, religious, and scholastic organizations have their juridical constituents. Constitutional history should comprise the whole province. Professor McLaughlin, a constitutionalist, concludes that through the rise and fall of the other systems elsewhere "the American constitutional system still stands." (Page 794) The question it seems necessary to ask is just *what* American constitutional system he refers to as the one that "still stands." Conceding him, however, the limits of his approach, he has discerned definite patterns of continuity in the emergence of the democratic state that render present fact situations relative. Within the scope of its purpose this makes good history.

LEO STONE

"LAWYER LINCOLN"—*Albert A. Woldman. Houghton-Mifflin Co., Boston and New York, 1936. \$3.50*

One hundred years ago, the name of a former backwoodsman, storekeeper, and deputy surveyor was formally enrolled as "the Hon. A. Lincoln, Esquire, Attorney and Counsellor at Law," licensed to practice law in all the courts of the State of Illinois. In commemoration of this centennial, Albert A. Woldman of the Cleveland Bar has written this book dealing with the immortal Emancipator's career as a lawyer and with the legal and constitutional problems which confronted him as Civil War President.

The author has made this timely addition to the vast store of Lincolniana because he believes that Lincoln is the law profession's noblest contribution to American civilization and that, without his twenty-three years of experience at the bar, he might never have become President of the United States. Unfortunately, the influence of the first belief has prevented Mr. Woldman from completely accomplishing his express purpose of producing a realistic picture of Lincoln which would be free from the obscuring cloak of hero-worship. While the

author feels that the general conception of Lincoln has too long been formulated by biographers "who encircle his head with a halo as they strip him of all practicality, acumen, and shrewdness," occasionally, instead of pursuing his promised analysis, he himself falls into the easy habit of eulogy and adopts the very process of deification which he criticizes.

Nevertheless, this book is an accurate factual portrayal of Lawyer Lincoln's life and thus gives us a much better understanding of the shrewd and practical member of the Illinois bar who became the Nation's leader in its hour of greatest trial. Although occasionally the importance of his legal knowledge as an aid in the solution of the problems of his administration is unduly magnified, the author has in general clearly depicted the manner in which Lincoln's training at the bar prepared and qualified him for his great task as president and enabled him to meet the unprecedented constitutional questions created by the crisis of the Civil War.

Mr. Woldman tells us that Lincoln possessed these essential characteristics of the great lawyer: the ability to reason from a general principle, clearness of exposition, and a style of expression distinguished by its rare simplicity. And even in the petty and trivial cases in which the tall, gaunt lawyer was engaged from time to time, the author reveals instances illustrating his skill at the bar, his tact and adroitness, his clever wit, his broad humor, and the withering force of his satire.

Lincoln was not a research student. He tried his cases on principle rather than on precedent, on points of right and justice rather than on previously adjudicated cases. He became a successful lawyer in those days when there was no voluminous collection of precedents to master and no array of authorities to cite and when the court was the social and forensic center of the community—a stage on which his forceful personality, readiness of wit and invention, and strong dramatic sense made him a commanding figure.

Although his practice took him into practically every phase of the law, Lincoln was an especially fine trial lawyer. A keen knowledge of human nature enabled him to sense in advance the reaction of the members of a jury to a particular line of approach, and he usually chose that approach by means of which he could best develop the moral and ethical considerations supporting his side of the case. At times he played upon the sympathies of the jurors and skillfully attacked the credibility of witnesses on cross-examination by leading them into glaring inconsistencies. Occasionally his eloquent sarcasm would badger a stubborn judge into due consideration of his contentions and he even managed to

“laugh some cases out of court.” He used simple, clear language in addressing the jury and often illustrated his points by clever anecdotes which proved far more effective than any abstract argument he might have used. When the equities were on his side, he was almost invincible.

The author believes that Lincoln’s extreme conscientiousness and complete honesty is robbed of all human quality by biographers who picture him as a lawyer perversely honest who refused all cases where there was the least doubt of his client’s innocence or question about his integrity and who would never take advantage of the technicalities and fine protective points of the law. He shows us that Lincoln was a realist—shrewd, practical and matter of fact. Although it was not unusual for Lincoln to convince a fair-minded client of the injustice of his cause and to persuade him to abandon it, and although he never once took advantage of the court or opposing counsel by unethical means, the author asserts that the files of a number of his cases reveal that whenever an action was subject to a technical defense or a technical plea such as the statute of limitations, like any other wide-awake lawyer he pressed such advantage to the limit and gave his client the benefit of every favorable legitimate expediency.

In this book we find development of certain phases of Lincoln’s legal life which have hitherto received but scant attention. Mr. Woldman cites many instances where Lincoln’s logical reasoning and common sense aided the courts in settling the law for coming generations. We are most grateful for the enlightening picture of Lincoln’s activities as a circuit rider and of the associations and friendships which he formed while engaged in this arduous, itinerant practice. However, Lincoln was also counsel for some of the largest corporate interests doing business in Illinois, and his career as a railroad and big business lawyer is clearly set forth. The author includes a quite novel chapter on “Judge Lincoln,” describing the cases actually tried by Lincoln acting in the capacity of the judge, as a substitute for his friend Judge Davis and by consent of the parties concerned.

The problems of Lincoln’s presidency were for the most part legal problems—his wide assumption of powers; his interpretation of the Constitution as to the President’s war powers; legal and constitutional problems of conscription; restoration of confiscated property; emancipation. Although he was driven by the exigencies of the time to the use of more arbitrary power than perhaps any other president has ever seized, and carried the power of presidential proclamation and executive order further than any other President, nevertheless his actions were generally confirmed not only by Congress, but by the Supreme Court. The un-

paralleled exigencies confronting the nation caused him to interpret the Constitution from the viewpoint of military necessity in order that the Constitution itself, and the government created by it, might not perish. Whereas a layman in his position would have taken the necessary action in spite of the Constitution, Lincoln, because of his legal training, was able to rationalize his actions and his wide assumption of powers and to show that they really conformed with the Constitution.

The great living issues which divided the nation were secession and slavery—questions of law, of constitutionality, and of right and wrong. In the trial courts Lincoln had been dealing with the rights of men before the law and that was the basic issue now in this controversy between slavery and freedom. In his mode of reasoning on constitutional questions, in the acuteness of his replies, and in defining the issue, the author reveals him as the lawyer. Violent emancipation found no favor in his legalistic mind because he was too good a lawyer to disregard the legal importance of the vested interests of the slave owners and their rights to compensation. He sought the destruction of slavery by means compatible with law and the preservation of the Union, and he waited until further temporizing would prove disastrous to the cause of the Union, before he finally struck the death blow to slavery by his Emancipation Proclamation.

Many times Lincoln came in contact with Chief Justice Taney, and the author, in outlining the former's constitutional arguments and legal reasoning, proves that Lincoln's position was sometimes the sounder one. One of the most famous of these controversies was the validity of the President's suspension of the writ of *habeas corpus*. Another was the conflict over the validity of the principles embodied in the Dred Scott decision, an issue of paramount importance to Lincoln.

Mr. Woldman believes that the crowning achievement of preserving the very existence of the Constitution by wiping out the assumed right of state secession and the mistaken doctrine of state sovereignty and the maintenance of the Union of the States as an indissoluble, indestructible, and perpetual relation must remain along with the Thirteenth Amendment as Abraham Lincoln's monumental contributions to the Constitution.

The author pursues his analysis of Lawyer Lincoln in fair and accurate fashion. He describes various incidents in Lincoln's legal life which serve to bolster first one and then the other side of divergent estimates of his worth, and draws conclusions upon a sound basis of factual proof and reliable historical and documentary evidence. He does not seek to force any particular impression upon his readers, but leaves

them free to formulate their own estimates from a field of truly rich material. It is not unnatural that the author has tended to emphasize the greatness of the man Lincoln in the various settings in which he is depicted. Yet his stated purpose is to guide the reader to a realistic appreciation rather than to force upon him the deified conception, and to a considerable extent he has attained his promised objective.

Mr. Woldman has given us an absorbing narrative of the rise of a humble backwoodsman to the White House and has illustrated the importance of his legal training in enabling him to attain this highest honor which the Nation can bestow. He has explained the manner in which his legal experience aided him in the solution of the gravest problems which have ever confronted a President of the United States and has appropriately evaluated Lincoln's contributions to the cause of constitutional government. He has capably developed a phase of Lincoln's life which has long needed such attention. His book is a valuable contribution and it is recommended as interesting and worthwhile reading to lawyer and layman alike.

CHARLES L. GRAMLICH

"THE FOLKLORE OF CAPITALISM" — *Thurman W. Arnold.*  
*Yale University Press, New Haven, 1937. \$3.00*

Here is one of the most disquieting bits of literature to be given birth by our generation. The author seemingly attacks all the axiomatic concepts of our everyday life, with particular regard to law and economics. In effect he asks, "What is 'is'?" His procedure in so doing is to cast down his plummets into the "known" and charted seas, and to find that the bottoms on which they come to rest are false, thus revealing a depth more difficult to sound. The book has little of the tautology and redundancy of Arnold's earlier volume, "The Symbols of Government," but most of the ideas here given expression were previously set forth in the former work. It must be said, however, that their mode of expression is here infinitely superior. This book is therefore less a companion than a successor to its predecessor.

In general it is concerned with human organizations, with ways of thinking about society, and with how society thinks, or fails to think, about itself. The theme, naturally enough, deals with the folklore and symbolism about which our manner of life and government have grown. In brief the theme is this: Law and economics are no more than creeds supporting a scheme of life wherein the taboos of a people prevent them from using the devices best fitted to their needs.