

We must conclude, therefore, that while Mr. Harding has done excellent service in his monograph by gathering evidence as to the contemporary opinions of the period and by using this material to bring out many new phases of his subject, yet he has failed to take the larger view. The relations of the contest over the ratification in Massachusetts to those before and after it in the whole history of state politics; the great importance of the economic factors in the final decision; and, lastly, the substantial unity of the struggle throughout New England—these essentials for a complete and impartial treatment of the subject the author certainly has not incorporated in these published results of his investigations.

O. G. LIBBY.

*Constitutional History of the United States from their Declaration of Independence to the Close of their Civil War.* By GEORGE TICKNOR CURTIS. In two volumes. Vol. II., edited by JOSEPH CULBERTSON CLAYTON. (New York: Harper and Brothers. 1896. Pp. x, 780.)

IN examining this volume its precise scope and its relations to the previous work of the author should first be observed. In 1854 and 1858 Mr. Curtis published, in two volumes, his work entitled *History of the Origin, Formation and Adoption of the Constitution of the United States*. More than thirty years later, in 1889, he began the publication of a work entitled *Constitutional History of the United States*, in two volumes. The first volume appeared in the same year. It was a mere reproduction of the former volumes, as the author states, "retaining the whole of my former text." Mr. Curtis then announced his intention, "at some future time, to follow down the constitutional history of the United States through the adoption of the first twelve, and the succeeding, amendments." The present book contains what he had prepared in execution of this purpose, now published, three years after his death, and comprises, with the appendix, 780 pages. It is made up, first, of thirteen chapters, 440 pages, substantially completed by Mr. Curtis, of which the editor states that he has "not felt at liberty to make any substantial change in, or addition to the text;" next, of the bare titles or headings for five additional chapters; and, lastly, of an appendix of 337 pages of historical documents and other matter.

For the original work, done in the fifties, Mr. Curtis had many high qualifications; and at that time the work was of prime value. The author's style was too formal and cold, even jejune, for the best literary effect; his tone was somewhat too dogmatic at times for historical discussions and statements; but his powerful grasp and array of facts, his skill of exposition and forensic debate, and the strength of his well-reasoned conclusions made the work at once, and have since kept it, one of authority with courts, publicists and scholars, upon almost all points strictly within the lines marked out by its title. The materials and topics

with which Mr. Curtis then dealt belonged chiefly to a period two or three generations in the past ; the great outward facts attending the beginnings of our constitutional life were then generally undisputed ; the prevailing rubrics of the constitutional interpretation and construction had been quite well settled by Marshall and Webster ; and so the task of the constitutional historian and commentator at that time was one which adequate learning and intellectual comprehension could fairly compass. Such a task was specially suited to Mr. Curtis's tastes, studies, and habits of mind. He was an ardent champion of the constitutional views of Webster and his school ; but he was also an ardent and unwearied student of the Constitution and the sources of our constitutional development. The general accuracy of the work has been accounted, we think, by those who have most used it, exemplary. With quite pardonable pride, Mr. Curtis said in the preface to his later edition in 1889,—“ If the historical accuracy of my former work has ever been called in question I have not been aware of it. Nor have I met with anything in the writings of other authors who have since treated the same subject which has led me to doubt the correctness of my statements or the soundness of my interpretations. The work to which I refer has been so often consulted and relied upon by those who have had to construe the Constitution that I may be pardoned for believing that it is reliable.” For these reasons, as well as because the original work, when published, supplied a real want, it rose at once, as has been said, to repute and authority—a position which, within certain limits, it may long hold.

But the period between 1858 and now has brought great changes in the conditions of the task of presenting satisfactorily our constitutional progress and position. Mr. Bagehot remarks in his work on the English Constitution : “ There is a great difficulty in the way of a writer who attempts to sketch a living Constitution, a Constitution that is in actual work and power. The difficulty is that the object is in constant change.” The remark is an acute one, and is as applicable to our Constitution as to the English. The most precise phrases, enrolled and guarded most sedulously, cannot defeat the operation of this law. Our Constitution is an example of high skill in precision of expression as well as in sharpness of ideas. Yet in the light and retrospect of a century it is plain that our Constitution, as it exists and operates to-day,—its success as well as its actual development,—has resulted, as much as from its framers and its text, from three great facts and forces in our history, outside of the written Constitution : the unequalled practical sagacity, influence, and patriotism of Washington as President ; the intellectual, moral and judicial greatness of Marshall as Chief-Justice ; and the profound depth of the influence and effects of the Civil War of 1861 and its causes. Without these forces it is perhaps certain that, with the same written Constitution, our national development, political and otherwise, would have been widely and essentially different from what we now see,—a result which warrants another of Mr. Bagehot's aphorisms ; “ Success in government in England, as elsewhere, is due far more to the civil instincts and capacity of our race than to any

theoretical harmony or perfection of the rules and formulæ of governmental work."

The first volume of Mr. Curtis's work, the one published in 1889, ended with the final adoption of the Constitution by the tardiest of the thirteen states—North Carolina and Rhode Island—in 1789 and 1790. The first thirteen chapters of the present volume cover, in point of time, the period from the inauguration of Washington to the presidential election of 1876. Throughout, these chapters are discursive to a degree. The first four may be said to give no history, only disquisition and reflections, though we deliberately regard these chapters as the most valuable in the book; and while the remaining chapters do relate to some extent the course of events, the relation is incidental to the discussion of certain topics, which evidently filled the mind of the author. It seems not unjust to go farther, and say that what of history proper is contained in these chapters appears as pegs on which to hang dissertations on selected and detached topics at large and exploitures of the author's individual political notions and public views, nearly all the topics being still "burning questions" of our current politics. Such discussions, appearing, as here, in what should be a grave and impartial statement of historical results, a scientific study of events, influences and phenomena, give an uncomfortable wrench to the historical sense. For the treatment of such themes,—for example, the President's power of removal from office, the tariff, the Kansas controversy, especially the anti-slavery agitation, the relative responsibility of the North and South for the Civil War, reconstruction in all its phases, and the contested presidential election of 1876 with its incidents,—for the fair treatment of these and related topics, Mr. Curtis had conspicuous disqualifications. Though a learned lawyer and a zealous student, he was, regarding all these matters, an eager and lifelong controversialist. He was, too, a strong political partisan, first as a Boston Union Whig, and later as a New York Tammany Democrat. He was the commissioner in Boston who returned the fugitive slave, Thomas Sims, in 1851, and thirty years later he was an adviser of Tammany Hall's leader, John Kelly, in New York.

Mr. Curtis would have been the most remarkable of men, if, having such relations to the times of which he here writes, he could still give us anything, on such hotly-contested matters, worthy of being called history. What he has given us has value but not as history. It has all the value attaching to the assertions and arguments of an acute, learned and honest champion of one side. Space permits but little specification here. The ninth chapter deals with "the rise, progress and consequences of the Northern anti-slavery agitation" and opens with this dictum: "The system of African slavery, which had long existed in our Southern States, might have come, and in all probability must have come, to an end without any political or social convulsion if it had been left to the operation of causes which were tending to its peaceful removal. It could not have lasted unchanged so long as the year 1865, even if there had been no Civil War and no forcible emancipation." Against such assertions, it is

not worth while to set counter assertions, but it is proper to say they are not history, nor even well-supported opinion. They are hardly more than the self-justifying reflections of one who had always stood in fierce personal opposition to those who carried on the anti-slavery agitation. The present opinion of the world,—not yet, it is true, the final voice of history,—regards these agitators as heroes of a great moral and political advance, but let all be content to refer the question to a tribunal not yet formed, the august and final tribunal of history, impersonal, dispassionate, all-regarding, scientific history, and let none accept as history, however it be labelled, the mere assertions or prejudices or arguments of the ablest or most persuasive partisan of either side.

Reconstruction fares worse, if possible, than anti-slavery, at Mr. Curtis's hands. Here he seems to have forgotten or totally disregarded the truth that there are but few, if any, human events or topics which can be rightly set forth in colors of unrelieved darkness. Such treatment of the reconstruction period is as ineffective as it is unjust; it is ineffective because it is unjust. It is easy for lawyers or critics to point out errors, some of them flagrant, in the conduct of the Civil War and the treatment of the rebellious states and their people after the war. Both sides equally would be wiser, if like situations could recur; but the most useful and patriotic citizens and the wisest practical men were not those who took, in our stress of arms, the attitude of constant and severe criticism of those charged with duty in cabinet, field or Congress, nor those who, in our subsequent civil stress, wearied all, certainly all but themselves, by unmixed denunciation of every practicable plan of reconstruction, as well as of every man who bore any part under the plan adopted. Here, as in other matters, let all, actors or onlookers in these affairs, await the judgment of the future; and surely let none mistake the voice of this volume for that of an impartial or final tribunal. There are certainly some participants in reconstruction who await the ultimate verdict with composure and confidence.

The chapter on the contested election of 1876—the thirteenth and last—compels the remark that it does not rise above the level of an ordinary political campaign pamphlet, except in its order and style. Judicious writers, especially historians, impute personal motives which are not known or clear, sparingly. Even Macaulay, not always true to the standard, wrote, "It is not safe or fair to judge individuals in history or in life except by their avowed purposes or by acts respecting which it must be presumed they intended the results which actually followed." Mr. Curtis puts almost no restraint on his mind or pen in dealing with the actors on one side of this unique passage of our political annals, while those on the other side escape all censure and almost all notice. But the opinion grows, in the general mind, that it was a sordid and desperate game of party politics, played on both sides with equal want of scruple, in which the losers differed from the winners only in their skill or luck. On the constitutional question involved in the creation of the Electoral Commission, Mr. Curtis is entitled to be heard with re-

spect, and his argument is plainly strong, if not conclusive; but it is plainly the argument of a lawyer, not the view, or from the point of view, of the statesman. A political *impasse* had been reached, and even if Mr. Curtis's constitutional argument were admittedly sound, the Congress was shut up to the choice, on the one hand, of almost certain civil confusion and conflict, or, on the other hand of some orderly, if extra-constitutional mode of settling the disputed succession. The call was necessarily for statesmanship, not forensic argument resulting in no practical remedy. Be the condemnation ever so heavy of those who created the deadlock, the unavoidable question still was *Que faire?* The most serious-minded and patriotic men who dealt with the problem, one may say the best and wisest men of the day, were cordially agreed in regarding the solution reached as the best possible. We can only ask, not answer, whether history will approve their judgment; but they deserve respectful treatment at the hands of all who assume to dispute their wisdom. Certainly they receive scant justice, hardly due shrift, at our author's hands. The chapter which treats this topic, with the bare exception of the strictly legal argument, is not in place in a constitutional history, if in any history.

We have already done the author the justice, as we think it, of pointing out the difficulty of his task in this volume. He is handling not merely a living constitution, in Bagehot's phrase, but hot and flagrant partisan politics. Hardly any one could have been expected to be judicial on such terms. We heartily wish that on all present controverted issues, Mr. Curtis had chosen to gather and array the facts, all the facts, and there paused. The book, therefore, so far as the author's work goes, gives the careful reader a strong sense of disappointment, not to say grief. Its incompleteness is by no means its chief lack. It is named *Constitutional History*, and the title is a misnomer. It is put forth as the sequel and complement of the former work of 1858 republished in the single volume of 1889, and it proves to be not of a piece with that very meritorious work. It appears with all the interest belonging to a message, so to speak, of one who was greatly and justly revered by family and by friends; but it is impossible to think it will increase, if it does not lessen, his esteem as a writer and scholar. It is pleasant, however, to remember that before this Mr. Curtis had done work which seems likely to put all who study our constitutional history under obligations to him for a long time to come.

The editor's appendix, forming so large a part of the volume, calls for remark. A considerable part of this matter is readily accessible on every hand, *e. g.*, the full report from Wheaton of the Dartmouth College case; (for any purpose appropriate to this volume, the text of the decision in the case of *Texas vs. White* would have been cognate and much more useful;) a part even is included in the appendix of the first volume; a part is plainly superfluous, *e. g.*, the full texts of the four official proclamations announcing the adoption of the last four amendments to the Constitution, occupying ten pages; another part is made up of documents whose interest is almost wholly personal to Mr. Curtis, *e. g.*, his

brief in the Dred Scott case, and his oration in Boston on July 4, 1862, an effort which met and still meets with far less than general approval. The analytical index to the Constitution, 43 pages, is merely copied, without credit, from the volume of the *Revised Statutes of the United States* of 1878. In the annotated copy of the Constitution, pp. 474-496, the editor has done good work in bringing the citations of cases down to a later date than those cited in the volume of the *Revised Statutes*; and at pp. 664-667 he has given a valuable classified list of cases, chiefly of still later date than those given in the annotated Constitution, though the value of the list would have been distinctly enhanced, if it had not been limited strictly to decisions in the United States Supreme Court. Valuable and authoritative decisions on points of constitutional law are by no means confined to cases in that court. The inclusion in this appendix of Judge B. R. Curtis's pamphlet, written in 1862, on Executive Power, pp. 668-686—a temperate, respectful, and preëminently able argument and protest of this great lawyer and jurist against the claims of executive power involved in the proclamations and orders of President Lincoln in 1862 regarding emancipation, suspension of the writ of *habeas corpus*, and arrest, under executive warrant alone, of citizens of loyal states charged with treasonable practices—is to be highly commended. This remarkable monograph is not readily at hand, and it has value as well as fitness here.

The excellent bibliography of the Constitution, compiled by Mr. Paul Leicester Ford, pp. 708-750, with an added "Reference List," pp. 750-766, closes the appendix, which is followed by a good index to the whole volume.

The volume may well direct attention to what we think is now most needed in the field of our constitutional history. The need is not forensics or dialectics, not rhetoric or polemics; we have enough of these. The time has come, or it is near, when a competent hand should give us,—what does not now exist,—a really thorough and satisfactory, if not final history of the course of our life as a nation under our Constitution, especially its beginnings. Such a work, of course, must cover much that antedates the Constitution; in truth, this is perhaps the most fascinating, if not the most important part, as it is the part on which great divergences of views still exist, as shown especially in the recent works of Mr. Hannis Taylor and Mr. Douglas Campbell. But the field which covers only the one hundred and ten years since the meeting of the convention of 1787 calls for fresh and more thorough explorations, for original studies dealing with the separate topics, phases and forces of the great growth. Some work has lately been done on these lines; much is now in hand among our scholars; much remains to be taken in hand. Myths and legends have already enshrouded the events and actors in our early national life, but as Washington, for example, is gradually emerging under the touch of reality and scientific historical study from the mists which have enwrapped him so heavily, and is becoming a flesh-and-blood man, the true figure as he looked to those who saw him at close range,



and grows under the process a more impressive character ; so the coming historian of the Constitution may, by the scientific study of the facts—putting aside arguments, hypotheses, preconceptions, traditions and the mere authority of great names, tending this way or that—develop, put together and present to his generation the true outlines and courses of this, the latest and most important movement and effort to secure liberty under democracy.

D. H. CHAMBERLAIN.

*The Suppression of the African Slave Trade to the United States of America, 1638-1870.* By W. E. BURGHARDT DU BOIS, Ph. D. [Harvard Historical Studies, Vol. I.] (New York, London and Bombay : Longmans, Green and Co. 1896. Pp. xi, 335.)

THE present volume is the first number of the *Harvard Historical Series*, published under the direction of the Department of History and Government of Harvard University out of the Henry Warren Torrey Fund. It is announced that the series will “comprise works of original research selected from the recent writings of teachers and graduates” in this department of that university. The series will also include collections of documents, bibliographies, reprints of rare tracts, etc. While the volumes will appear at irregular intervals it is hoped that at least three will be published annually.

Dr. Du Bois begins his work by a brief summary of the rise and fortunes of the English slave trade. The characteristics of the three classes of American colonies, the planting, the farming and the trading, are traced and the laws passed by each regulating or limiting that trade are summarized. It is worthy of note that while the English slave trade has its origin before the foundation of the American colonies it was principally towards these that it was directed. The trade did not prosper at first. By the Assiento of 1713 the English commercial classes secured for themselves the exclusive right to import slaves into Spanish America ; although the importations were large, about half going to the Spanish colonies, the Royal African Company became bankrupt, being a debtor to Spain and a recipient of English bounty. The colonies, as a rule, thought slaves necessary for the development of their natural resources. The necessity of the trade was an unquestioned axiom in England, and that the mother country, in her efforts to promote her own trade, was willing to sacrifice her colonies to the incubus of slavery her instructions to royal governors to encourage the Royal African Company and her disallowance of prohibitive duties will clearly testify.

But it must be admitted that the restrictions put on the trade by the colonies were uncertain in character and varying in amount. As early as 1698 South Carolina became uneasy at the great increase in the number of slaves and tried to counteract their influence by a special law to encourage the immigration of white servants. One of the favorite methods was by a duty which decreased importation and at the same time brought