

ment has been entirely recast, the subjects discussed are more specific, and the mode of treatment is, in many respects, more satisfactory and critical. For example, an analytic review is made of the character and working of the "civil service" of the later empire; and the ideals and failure of the autocratic administration are illustrated by an examination of original texts, namely, the *Treatise on Magistrates* by John Laurentius, the *Secret History* of Procopius, and the *Novels* of Justinian. The author's acquaintance with the *Corpus Juris* is evident from his frequent quotations from the *Novels*,—in which he has apparently abandoned for the time being his early prejudice against the "leaden sediment of footnotes." This single chapter, devoted to a review of original sources, would lead one to believe that the writer might not have proved unsuccessful as a critical historian. But the main part of this volume consists of highly-colored panoramic views of the various dynasties which followed one another in the Eastern Empire. Whatever lends itself to a philosophical interpretation or a rhetorical treatment is specially dwelt upon. Particular facts and characters which should be explained for the benefit of the "general reader"—or omitted entirely—are often made the mere subject of passing allusions, leaving an indistinct impression upon the reader's mind.

WILLIAM C. MOREY.

*The Revision and Amendment of State Constitutions.* By WALTER FAIRLEIGH DODD. (Baltimore: The Johns Hopkins Press, 1910. Pp. xviii, 350.)

Mr. Bryce, when writing the *American Commonwealth* in 1887, spoke with great earnestness of the rich field for historical and constitutional investigation to be found in the study of our state constitutions and governments.<sup>1</sup> Since that time much work has been done along the line of his suggestion, and the Johns Hopkins Studies have frequently published valuable results of these efforts. The book now under consideration is another contribution to the literature of the subject, and entirely sustains the high scholarly rank of its predecessors.

Judge Jameson's book on "Constitutional Conventions" comes more nearly to the subject now treated by Mr. Dodd than any other

<sup>1</sup> *American Commonwealth*, vol. I, p.p. 411-413. (ed. 1897.)

work hitherto written, but as the latter points out, Judge Jameson constructed a theory in regard to constitutional conventions, to which the facts are made more or less subordinate. Mr. Dodd, on the other hand, gives a view of the practice of the present day concerning the revision or amendment of state constitutions.

The author has evidently delved deep into the abundant materials at his hand, and has produced a work that will prove of great value to the student of present day problems and political conditions. He treats successively of the first state conventions and their subsequent development, the legal position of the convention, the amendment of state constitutions, and the working of the constitutional referendum. The above statement will give a clear idea of the scope of the work, but it will not be amiss to mention several of the more striking matters discussed.

Mr. Dodd states that the distinction of the constitution from ordinary statute law is the fundamental principle of constitutional development (p. 26) for the American colonists had the conviction that principles of government are permanent, and may be changed only by the people (p. 22). He well might have added that this was only a logical and consistent following out of the doctrines of Rousseau—so potent in their influence in America at that time. However, the distinction between constitution and statute was not as clear in 1776 as it later became, while the development of this idea and of a judicial sanction for the enforcement of the distinction was late in Vermont and Pennsylvania on account of their peculiar institution known as the Council of Censors (pp. 30, 37). During more recent years, the practice of incorporating in state constitutions detailed legislative enactments, or what Dr. Woodrow Wilson has well called “non-constitutional provisions,”<sup>2</sup> and also the increased popular participation in legislation through the use of the referendum, have caused to a large extent the disappearance in substance of the distinction between constitutions and statute law (pp. 249–250).

The policy of submitting constitutions to a popular vote first developed in New England as a result of the town meeting (p. 64), but Mr. Dodd takes the ground that at the present day “the only rules positively binding a convention to submit its constitution to the people are those contained in the constitution which the convention may have been called to revise” (p. 69).

The process of amending the constitution by means of the ordinary

<sup>2</sup>“The State,” p. 474.”

legislative organs of the state originated in the South (p. 120), and the method has proved so convenient that many of the newer states have entered upon the excessive enjoyment of constitutional tinkering. For illustration, during the decade, 1899-1908, the people of the several states voted upon four hundred and seventy-two constitutional questions, of which fifty-one were submitted in California, fifty in Louisiana, thirty in Minnesota, twenty-two each in Oregon and Michigan and twenty-one in Florida. Of course the larger number of these amendments related to matters of detail, in which the public was not much interested (pp. 268-271). The elector either cast his vote upon questions upon which he had no real opinion, or refrained from voting at all and the decision of the matter went by default (p. 279). The author thinks that it has come to be clearly recognized that the constitutional referendum is working badly, and the four following plans are being tried or are suggested. (1) The compulsory referendum should be retained for all constitutional measures of fundamental importance. (2) Matters of detail should be left to the discretion of an increased majority of the legislature, subject to popular vote at the petition of a sufficient number of electors. (3) There should be an extension of popular control over the proposal of amendments. (4) The plan of distributing to each voter the text of questions is preferable to mere publication in the newspapers (pp. 279, 291-292).

As to the control of the courts over constitutional amendments, Mr. Dodd thinks that for some time it will be as strictly exercised over laws approved by the people as over those passed by legislative bodies. However, "the courts have probably stretched to its furthest limit their power over legislation and there may soon come a saner and more reasonable judicial attitude toward state enactments. The approval of laws by the people may have some influence in making courts more cautious, and in bringing them back more nearly to their true function as interpreters rather than as makers of law" (p. 258).

Finally, it may be remarked that the index to Mr. Dodd's excellent volume, while accurate as far as it goes, is incomplete and inadequate, as the reviewer soon realized in the practical difficulties of reference which he encountered.

WILLIAM STARR MYERS.

*Biographical Story of the Constitution; A Study of the Growth of the American Union.* By EDWARD ELLIOTT. (New York and London: The Knickerbocker Press, G. P. Putnam's Sons, 1910. Pp. vii, 400.)

This work undertakes to present in twelve chapters an account, based upon the best secondary authorities, of our constitutional history as influenced by the thoughts, words and actions of certain of our great men. After a chapter on "The Fathers," Professor Elliott takes up successively Alexander Hamilton, James Wilson, Thomas Jefferson, James Madison, John Marshall, Andrew Jackson, Daniel Webster, John C. Calhoun, Abraham Lincoln, Thaddeus Stevens and Theodore Roosevelt, and discusses the evolution of the Constitution of the United States, in the periods of the Nation's history covered by the activities of each of these men. The influence of each one is suggested by a phrase attached to his name, thus "Growth through Administrative Organization" is ascribed to Hamilton; "Growth through Speculative Forecast" to James Wilson; "Retardation through Sectional Influence" to Calhoun; and "Growth through Reconstruction" to Stevens; etc. In every case a very fair account is given of the principles for which each man stood; while, thanks to Professor Elliott's easy style, the addition of considerable biographical matter contributes to the interest of the work. There is, in the book, little critical analysis, either from the standpoint of the lawyer or from that of the political scientist. Indeed it is not easy to state Professor Elliott's point of view, as this seems to reflect largely the authorities which he has followed, and to expand with the broadening of constitutional interpretation until the last chapter. Even here it is difficult to ascertain whether the change of ideals, which has marked recent years, does or does not meet with Professor Elliott's approval. A short bibliography is appended to the work. A somewhat unusual feature is the appendix of selected documents significant in the constitutional history of the United States, which covers over a hundred pages. As there is not room to present all these documents in their entirety, and as all are readily accessible elsewhere, one wonders whether this space might not more wisely have been devoted to an expansion of the main part of the volume. Unusually well written and free from partisan spirit, the book should find its chief usefulness in the work of public libraries, as a general introduction to wider reading in American Constitutional History.

ST. GEORGE L. SIOUSSAT.