term constitution is used in the *Federalist*, as number 9 alone suffices to prove. The Fathers knew, as Fisher Ames remarked, that "constitutions are but paper; society is the substratum of government."

Paper constitutions, while as useful as paper money, have like it a strong tendency to obscure the actual basis of value. The habit of paper emissions in constitution-making has become so prevalent since the time of the Fathers that illusions have been propagated that are great hindrances to the adoption of sound methods of reform. To go into details would carry this examination beyond the limits of a book review, but at least it may be observed that it is incumbent on every one who discusses constitutional problems to keep in mind what a constitution really is. The true constitution of a country is the actual existing distribution of political power, and it is only as the written constitution affects the distribution of political power that it is operative. By applying this cardinal principle one will have the means of testing the value of any political nostrum that may be offered. It is not the abstract merit of municipal ownership, direct primaries, the initiative, the referendum, the recall *etc.* that counts, but the distribution of power that will ensue in the circumstances of American public life. What sort of men will be interested in working the proposed instrument of government, and what will they be likely to use it for as a general thing? The answer to that sums up its constitutional value.

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The Federal Power over Carriers and Corporations. By E. PARMALEE PRENTICE. New York, The Macmillan Company, 1907. —xi, 244 pp.

A critical journal has described the reasoning of Mr. Prentice as similar to certain of the now discredited arguments of ante-bellum days. Such criticism supplies its own conclusive rejoinder, for those heterodox doctrines could be disposed of not in argument but only in conflict. Their logical correctness was not affected by that result, as is shown by the serious consideration even now given to the proposition that Lee was no more a traitor than was Washington. It may be granted that the argument of this volume is carried to an extreme in its analytical refinements; but, so far as exhaustiveness of research and clearness of statement can avail anything, there is presented a forcible and seemingly convincing demonstration of the fallacy of the policy of the federal administration in so far as it involves an attempt to effect a re-

distribution of powers between the national government and the states. In a recent speech President Roosevelt said that "the American people abhor a vacuum, and are determined that . . . control shall be exercised somewhere." In our scheme of government the only opportunity for a constitutional "vacuum" is in the realm of the "reserved powers," and that realm the federal authorities seem to be attempting gradually to occupy. Against this tendency Mr. Prentice makes the most exactly reasoned and best considered protest that has yet been offered.

Among the principal theses maintained in the volume is the proposition that the grant of power with respect to interstate commerce was really restricted to interstate navigation. The decision in Gibbons *v.* Ogden indeed destroyed state monopolies of coasting navigation, but had no effect on state monopolies of interstate transportation by land, or by water when not conducted coastwise. Venerable authorities are quoted to show that commerce is a word having reference to external, not to internal, trade, and that consequently a grant of power over commerce must have been intended to mean a grant of power over external or foreign commerce only. Moreover, session laws and newspaper files are made to bear astonishing evidence of the extent to which the states actually assumed the control of certain forms of interstate commerce. "Even as late as 1855, it was generally considered, Mr. Justice McLean said, that 'the right to regulate commerce had been exhausted' in federal control of navigation." Following this line of strict construction, or of construction in accordance with the actual intent of the framers of the constitution, any assumption by the federal government of control over agencies of interstate commerce not intended by the "framers," such as interstate telegraphic lines, is improper. This, certainly, is treating the constitution "as a historical document," and rejecting all elasticity of interpretation and application, the one feature of our constitutional history which has been supposed to demonstrate the excellence of the constitution as a permanent frame of government adaptable to changed conditions not within any possible foresight of its authors. To justify the argument for this general thesis it is stated that the grant of power in the "commerce clause" was "not in terms exclusive," and an argument from analogy is advanced in the suggestion that the "federal power over bankruptcy was never considered exclusive." On the contrary, it must be recognized that the power of the federal government may be exclusively exercised in any of the spheres in which it has acquired constitutional power. The inaction of the federal government, or its action in such

manner as to permit concurrent state action, are not inconsistent with its claim to exercise exclusive authority in certain specified spheres of action whenever it may choose to do so. Whether, however, a certain power is within the scope of federal authority; whether, for instance, control over interstate commerce includes control over all the agencies of such commerce and over the non-commercial functions of corporations engaged, remotely or otherwise, in interstate commerce, is the real problem to which the reader will apply the arguments advanced by Mr. Prentice. While the strict constructionist theory has been unpopular for a century, and Mr. Prentice may now win few adherents, his researches have certainly made available ample material for more than one obstructionist speech in the coming session of Congress. So far, however, as Mr. Prentice advocates the serious testing of present theories of procedure by a reversion to first principles, his volume, while reactionary, is a real contribution to argumentative political science.

A consideration of the principles of individual liberty leads to the statement of what may readily appear to be a corollary of the thesis already stated, to the effect that "the right to engage in commerce is, then, part of the liberty derived from the states, which neither the United States nor the states may deny. There is no process of law by which the right may be taken." It is admitted that the exercise of this inalienable right is subject to limitations arising from federal control over foreign relations and from federal exercise of the "police power." Such a right is "an element of personal liberty which the states could not deny nor the United States impair." Thus is raised another problem of constitutional interpretation, involving the real extent of the "bill of rights" and, from another point of view, the meaning of the grant of power in the "commerce clause." The author's position is stated as follows:

> The Constitution knows no "privilege of engaging in interstate commerce." That was not a phrase which the Attorney-General learned from American history. The Constitution knows an inalienable right to engage in any of the common occupations of life, including the liberty to engage in interstate commerce, a liberty which comes from State law and belongs to those to whom the State gives it, whether citizen, corporation, or alien.

Many will think that if the framers of the constitution had so thought or intended, they would never have troubled to draft the "commerce clause," unless, indeed, that clause has, and should have, the effect or ineffectiveness here attributed to it.

There naturally follows a protest against such extensions of the exercise of federal power as involve an unauthorized limitation upon personal liberty and upon the freedom of corporate existence and activity —such extensions as lead to "the establishment of a parliamentary despotism," and make possible "personal government, not the reign of law."

The rule of "free ships and free goods" is questionably applied in the course of the argument, and some speculation may be caused by the following statement: "Every measure which impairs the power or dignity of local governments, deteriorates the central authority." The rarity of such lapses emphasizes the scrupulous care with which the work has been prepared, while the industry, skill and conviction of the author make criticism difficult.

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Englisches Staatsrecht. By JULIUS HATSCHEK. Tübingen, J. C. B. Mohr (Paul Siebeck), 1905, 1906. Two volumes: xii, 669; viii, 710 pp.

For the first time the constitution, government and administration of Great Britain have received an exhaustive treatment at the hands of a continental scholar who has no motive beyond a systematic and objective presentation of his theme. Montesquieu, stirred by the controversy between the regency and the French parliaments, discovered in England the theory of the division of powers in order that he might demonstrate at home the desirability of an independent judicial authority; and the quest after an ideal for France led him into a fundamental misrepresentation of English government. Likewise, Gneist turned to the study of English institutions when the reform of the Prussian administrative and judicial system was a pressing issue, and by reason of his sympathies he found in the "self-government" of the county gentry—a system then obsolescent and now obsolete—his ideal for Prussia. Warned by the havoc which subjective factors have wrought in the theories of his predecessors, Dr. Hatschek has not sought primarily for political morals for the use of continental statesmen but has attempted a comprehensive and detailed treatment of the English constitution as it actually exists. For this work the author is equipped by a systematic legal training and by a wide and intimate acquaintance with the literature of his subject.

In accordance with the unwritten but inexorable law of German