

*The Constitutional History of the United States.* By FRANCIS NEWTON THORPE. In three volumes, 1765-1895. Chicago, Callaghan & Company, 1901. — 595, 685, 718 pp.

There is room for a new constitutional history of the United States. It should consist of an adequate account of the framing of the original constitution and the several amendments; of the various

<sup>1</sup> On page 168 Professor Hart discusses the question of the future population of our new dependencies, and reaches the conclusion that "Hawaii alone is likely to become an American community."

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unsuccessful attempts at amendment; of the actual working of government under the constitution, as it has been developed in the political experience of the republic; of the meaning of the organic law, as decided by judicial interpretation or by the precedents of the other branches of the federal government; of the various schools of interpretation and of the sense in which they have read the constitution; of the influence of the federal fundamental law on the political thinking of the people. Politics, economics and political philosophy will appear in such a history only so far as they bear on the orderly development of the main theme.

In this sense Mr. Thorpe's three volumes are not a material addition to historical literature. His story of the making of the original constitution (found in Vol. I and the first book of Vol. II) is the familiar story, including Franklin's remark about the rising sun. The remainder of the second volume contains a sketch of our political history to the outbreak of the Civil War, and the third volume traces the steps which led to the adoption of the three war amendments.

The general method followed is that of quotation. There are numerous extracts from speeches, and still more numerous summaries of arguments in Congress, in conventions and elsewhere. This method has the advantage of giving a view of contemporary thought, and in a way of tracing the development of opinion. It requires a master hand, however, to use such materials without being swamped by them. In the present case it can hardly be said that the mass of citations has been thoroughly subordinated to the orderly development of historic sequence and to the working of cause and effect. The materials are abundant rather than well digested.

The sketch of politics connecting the first twelve amendments with the last three is not sufficiently critical. For example, the great debate between Webster and Hayne is not analyzed with the thoroughness which it deserves. Mr. Thorpe praises the eloquence of Hayne and the powerful logic of Webster in well-chosen words (II, 392-397). But this is what everybody does. Surely it is time now, when the passions of the great contest between the sections have burned out to cold ashes, to examine the grounds of both sides in the light, not of the event only, but of political science as we understand it to-day. Such critical study will show clearly that Hayne was in great part entirely correct, that in Webster's argument there was one fatal flaw and that each failed to comprehend some essential elements of the problem. If we supply the deficiencies, we shall see that each view is otherwise vital to an adequate understanding of our federal

union. But the history of ante-bellum politics becomes luminous only under the light of such scientific criticism.

The history of the war amendments — especially of the fifteenth — is fragmentary without a study of their practical working. Mr. Thorpe seems to approve the congressional plan of reconstruction and of negro suffrage (III, 419). Is there, however, in the whole range of history a more grotesque blunder in political theory than that on which the extension of the suffrage to the freedmen was based, or a more ghastly failure than it became in practice? Abraham Lincoln had a far more rational idea as to the suffrage than was afterwards developed by the radical leaders in Congress. Writing to Governor Hahn of Louisiana in March, 1864, with reference to the subject of suffrage in the pending constitutional convention in that state, the President said: "I barely suggest, for your private consideration, whether some of the colored people may not be let in; as for instance, the very intelligent, and especially those who have fought so gallantly in our ranks" (III, 86). Had such prudent counsels prevailed later we might have been spared the stain on the national name left by the process of reconstruction. The thirteenth amendment embodied in the constitution an actual result of the Civil War. It expressed a living fact — and it was righteous. The suffrage amendments were artificial, and from their very nature were bound to be nugatory. This would plainly appear in a constitutional history which traced the organic law beyond its mere birth.

On the actual meaning and force of the constitution as time and experience have developed it, Mr. Thorpe gives us little light. A single chapter (Book IV, Chapter III) is devoted to the work of the Supreme Court under Marshall, and one chapter (Book VI, Chapter VII) touches some main decisions of the court from the time of the Civil War. But of the development of the federal government under the constitution — of the form which time has given to the presidential election and to the executive appointing power in its relation to Congress, of the relation of the Senate to treaties, of the cabinet, of congressional government — of all these and many more matters, which pertain not merely to the history of government, but quite as much to the history of the constitution as a living instrument, we have hardly a trace. The author's idea is to give in the main merely a history of the framing of the constitution. This is constitutional history, to be sure, but in an inadequate sense.

A comprehensive and thorough constitutional history of the United States, clear, complete in all its parts, well balanced, with adequate

perspective, with material reduced to its proper proportion — a history, and not a mere collection of material for history — will be a valuable addition to the apparatus of scholarship.

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