

one epoch in our constitutional history — that of the formation and adoption of the constitution. The text of the new volume, covering the succeeding period of upwards of eighty years, occupies but little more than half the space of the first volume, and discusses a part only of the important constitutional questions that have arisen during that period. The author did not plan this volume upon a scale proportionate to that of the first; and it was never completed according to his original plan. Some disappointments in the treatise will therefore be felt by those who would have been pleased to see a complete constitutional history from the pen of Mr. Curtis, following the plan of his first volume, and expanding, if necessary, into four or more volumes. His minuteness of explanation and lucidity of illustration would have enlivened many of the naturally dry episodes of our national history. It is a matter of regret, not only that he did not live to finish his work as he had planned it, but that it had not been laid out on a more generous scale and executed accordingly. But in so far as Mr. Curtis has, in this supplemental work, taken up and discussed the constitutional questions of the period, he is, as usual, instructive and entertaining. The meagreness of such discussions is in part compensated for by the addition of a group of constitutional documents of the highest value, including the Non-importation Agreement of 1774, the Address to the King of the same year, the Declaration of the Congress to the army in 1775, the Ordinance of 1787, the Tariff Act of 1789, the provisional and final Constitutions of the Confederate States, and a reprint of Mr. Paul Leicester Ford's excellent Bibliography of the Constitution. A collection of these documents, with the Declaration of Independence, the Articles of Confederation, and the annotated Constitution of the United States, as found here, would, if printed by itself, find ready acceptance by the public, and their insertion as an appendix to Mr. Curtis's work is most timely, and will insure hearty commendations to the learned editor of the new volume.

Disregarding chronological order, Mr. Curtis discusses by "groups" several subjects as they have presented themselves at various times since the inception of our system. The changes in current opinion concerning the nature of our constitutional system are traced in a generalized way. The question of the extent to which the "league of friendship" of

#### CURTIS ON THE CONSTITUTION.\*

After an interval of forty years from the appearance of the first portion of Mr. George Ticknor Curtis's treatise on the Constitution, which was republished in 1889 as Volume I. of the "Constitutional History of the United States," the material left by him is now published as Volume II., under the editorship of Mr. Joseph C. Clarkson. Notwithstanding this lapse of time, the new volume is distinguished by the same pleasing style which was such an acceptable feature of the former work. But as regards substance, there is great disparity between the two volumes. The earlier one treats of what may be considered as but

\*CONSTITUTIONAL HISTORY OF THE UNITED STATES. By George Ticknor Curtis. In two volumes. Volume II. Edited by Joseph Culbertson Clarkson. New York: Harper & Brothers.

the Confederation period gave place to a national government is well illustrated by the calm and judicious comments of the author, who cleverly shows the weaknesses in the arguments advanced by the "State Sovereignty" school of writers. Both the friends and the opponents of the constitution, when it was under consideration, agreed that the proposed new system would substitute a nation for a league; and, as our author points out, while in later years theorists have advanced extreme views in regard to State sovereignty, delegated powers, nullification and secession, still the administration of the government in all its departments, legislative, executive, and judicial, has continuously proceeded upon the lines of the national theory, as expounded by its friends in 1787-1789. But the theories of the secession school are unsatisfactory and deceptive in themselves. They are confuted by the plain provisions of the Constitution and the mode and circumstances of its adoption. The ratifications of the national constitution by the people of the original Thirteen States were unqualified and unconditional, without either express or implied reservation of a right to revoke. The people of South Carolina, like those of several other States, accompanied their adoption of the constitution with a proposal for immediate amendments, thus evincing their understanding, not only that their ratification was unconditional, but that the instrument thus adopted could be changed only in one of the modes provided by itself. President Jackson's position in reference to nullification, and the terms of his proclamation to the nullifiers, are warmly commended by our commentator, while the grounds of his veto of the charter extension of the United States Bank are criticised with a fine discrimination, showing that the President misapplied a constitutional rule which might have been properly invoked had the facts been different.

In a very clear and happy manner, Mr. Curtis explains the dual character of our constitutional system, and illustrates the merits of both its national and local departments, and the mode in which each has contributed to our national success. But he is not uniformly clear in his analysis, and his discussion of the question as to who were the "People of the United States" that ordained and established this dual system, is vague, and reaches no apparent result. He does not agree with the current opinion that that "People" were the mass of those inhabiting and

acting jurally in all the Thirteen States; and he seeks to find confirmation for his views in the opinion of Chief Justice Marshall, in *McCulloch vs. Maryland*. Referring to the adoption of the constitution by the conventions of the people, assembling in their several States, Marshall assumed the entire propriety of that mode of action, but said that the measures thus adopted "do not, on that account, cease to be the measures of the people themselves, or become the measures of the State governments; the government proceeds directly from the people." Mr. Curtis is quite clear that the adoption of the constitution was not a measure of "the State governments." He repudiates the "State sovereignty" theory in unequivocal terms, and emphasizes the features in which the States have been made subordinate to the Federal government. But he seems to draw the inference, without stating it in terms, that the establishment of the system was the work of thirteen separate and distinct "peoples." Marshall, however, spoke not of "peoples," but of "the people," evidently entertaining no other idea than that of one people, operating at once in thirteen groups, to effectuate one common object. It is perhaps with this idea of thirteen separate peoples in mind, that Mr. Curtis refers to some of the provisions of the constitution as "compacts and agreements" between the States. He says: "The idea of compacts, covenants, and agreements, between the separate States, as members of the Union, and the United States as the representative of all the States collectively, is embedded in the Federal Constitution and forms its principal strength." In this he puts himself in direct conflict with Mr. James Wilson, whose views he praises without stint in his first volume, and who said that he saw no trace of compact in the constitution. Nor does it seem easy to make these declarations of Mr. Curtis consist with his statement, in this new volume, that "the process of amending the constitution seems scarcely reconcilable with the hypothesis that the constitution is a compact between independent sovereign States." A clear and unequivocal statement of a logical deduction from the text and the history of the constitution, may be found in Wilson's opinion in *Chisholm vs. Georgia*: "We may then infer that the people of the United States intended to bind the several States by the legislative power of the National Government." The authoritative command of a lawful sovereign rises far above the grade of a compact.

The territorial clause of the constitution, the government of the territories and the admission of new States, are subjects which Mr. Curtis uses skilfully as leading up to a consideration of the debates on the Missouri question, the compromise which resulted, the Dred Scott decision, the slavery controversy, and the civil war. Other cognate questions are discussed, among them the reconstruction measures, which are freely criticised. But space cannot be here given for further extracts from his text. The subject of the disputed election of 1876, and the settlement effected by the Electoral Commission, lies so well out of the field of constitutional interpretation that in a treatise like this it might be properly dismissed with a brief reference to that fact. The account here given of the party schemes and operations which preceded the creation of the Electoral Commission, and which is borrowed from a partisan book on the subject, is out of place in the constitutional treatise of a jurist.

The constitutionality of protective tariff legislation is earnestly maintained and forcibly advocated by Mr. Curtis; and the history given by him of the inception and consummation of the first tariff act under the constitution shows that at the beginning of our revenue legislation the element of protection to American industry was considered a proper incident of a tariff for revenue, and that its entire constitutionality was assumed. The 4th of July, 1788, being the first national anniversary after the Constitution had been ratified by the necessary number of States to give it effect, was signalized by a public parade in Philadelphia, in which the workers in the mechanic arts exhibited mottoes indicating their expectation that among the first fruits of the new system would be the adoption of protective legislation; and the next following national anniversary was distinguished by President Washington's approval of the first tariff act, which in terms embodied the protective theory.

JAMES OSCAR PIERCE.