should be to John Bright" (p. 399). It sounds strangely after this tribute, to relate that on April 2, 1889, when a resolution commemorative of John Bright, who had just died, was offered in the Senate, it was Mr. Sherman who prevented its immediate passage by insisting on its reference to his committee, whence it never emerged. It is not known what prompted this opposition to a recognition of our country's benefactor, its greatest foreign benefactor after Lafayette. Was it undue deference to foreign agitators on our soil, seeking to embroil our people in their old-world controversies?

Mr. Sherman's farewell words, — that while doing hereafter his best "to add to the strength and prosperity of the United States," he will do "nothing to extend its limits or to add new dangers by acquisition of foreign territory," — together with other passages concerning "outside possessions" (pp. 975, 1039, 1040), give assurance that while he remains in the Senate we are to be saved from the incorporation of Samoa, St. Thomas, San Domingo, Cuba, and the Sandwich Islands into our American system, and that this nation is to be confined to its legitimate sphere of development within its own present ample domains. Sober-minded patriots bid the veteran statesman God-speed in this service.

EDWARD L. PIERCE.

Commentaries on the Constitution of the United States, Historical and Juridical; with Observations upon the Ordinary Provisions of State Constitutions, and a Comparison with the Constitutions of Other Countries. By ROGER FOSTER. Vol. I. (Boston: The Boston Book Company. 1895. Pp. viii, 713.)

THE line between commentaries on a constitution on the one hand, and a constitutional history on the other, is not always very clearly drawn. Perhaps we may say that the primary purpose of the first is legal exposition of things as they are, while that of the second is to explain how things came to be what they are. The difference is in the point of view. Story's *Commentaries on the Constitution of the United States*, and Stubbs's *Constitutional History of England*, may be taken as types of the two methods — the one a text-book for lawyers, the other for scholars.

But while the difference may be roughly marked in this way, after all the two kinds of thing are necessarily more or less merged. The commentator cannot expound without tracing more or less of historic sequences. The historian fails if his researches do not lead to a lucid exposition of existing institutions. Indeed, the present tendency of historical and legal scholarship is toward a distinct blending of method. It is not too much to claim that the richest results in political science may in no other way so well be reached as by using the processes of historical research. In other words, political science is not merely law. It is not merely history. It is both. Law is its subject-matter. History is its method of treatment. Law is best illumined by the clear light of history.

No better illustration of the truth of this thesis can easily be found than

is afforded by Foster's *Commentaries on the Constitution of the United States, Historical and Juridical.* It is in fact a constitutional history of the United States, thrown into the topical form of a constitutional commentary. The *raison d'être* of each provision of the federal constitution is seen in the successive events which led to its adoption. The meaning is made clear by our political history during the century since its adoption. The lawyer's logical exposition is enriched by the scholarship of the historian.

The order followed is, in the main, that of the constitutional text, the first volume (volume second is not yet published) covering the preamble and the first three sections of Article I. But, of course, in treating the great subjects involved in the general theory of the government, and in the structure and essential powers of Congress, any other portions of the document which are pertinent are freely used. But they are discussed because of their importance to the subjects above named, which are the topics of this volume.

Besides the historical method pursued, a second important feature of Mr. Foster's work is his recognition of another truth, — the dual nature of our government. The essence of federal government is its duality, — the balance of central and local authority. In fact, the constitution of the United States consists not of one document, but of forty-six. In each state the fundamental law comprises the federal constitution and the local state constitution. They mutually supplement each other. State officers are sworn to support both. Federal officers may not violate either so long as their provisions are not in conflict. No one can adequately understand either without the other also. Hence a commentary on the constitution of the United States is incomplete unless it touches at least on the essentials of the state constitutions. At this point there is a defect in our histories and in our constitutional treatises. There is considerable recognition of our local life, especially of late years; but of the interaction of local and national forces, of the effect of local social and legal conditions on national development, — of these there has been too little account. A general history of the United States which discusses Kentucky as if it were no more definite and significant an organism than a French department, is far from giving an accurate picture of the conditions of American life.

Mr. Foster on his title-page promises to remedy this defect. The most notable evidence of carrying out his purpose in the present volume is the valuable appendix on impeachment trials in the states. Of course, in discussing state rights and suffrage he also deals largely with local organization. It is to be hoped that in the subsequent part of the work the comparison of federal with state political structure and methods will be still more pronounced.

A great advantage possessed by a constitutional writer at the present time is in the practical completion of constitutional interpretation. The Supreme Court, the Civil War, and the last amendments have settled about all the doubtful questions of moment. "The United States are a nation. The Union is not a league, and cannot be dissolved except by a revolution.

These are principles which have been established by the adjudications of the courts, the action of Congress and the executive, the acquiescence of the states, and the arbitrament of war" (p. 61). In saying these words, Mr. Foster sums up three-quarters of a century of our national politics. And by this declaration he aptly introduces one of his most important chapters, — that on the nature of the constitution, on nullification, secession and reconstruction. The great constitutional questions involved in these subjects have been finally answered. The process by which the answer has been reached covered a large part of our national history, and was so fundamental that it shook the republic. The sketch of this epoch is very clear and dispassionately accurate. The reconstruction period, with all its perplexities and all its mistakes, is treated very fairly. There have been few instances in history in which a government has been confronted with so serious difficulties as those with which the Union had to deal when the Civil War was ended. To cope with them without mistakes was impossible. That they were surmounted with so few errors, indeed that they were surmounted at all, will in time appear one of the greatest marvels of history. The Southern states to-day, only one generation after the war, are not an Ireland. They are as loyal a part of the Union as New England itself. They exercise full local self-government. They share as freely in the national government as do any other states. Men who were in arms against the Union sit in the national Congress, have sat at the President's council board and on the bench of the national courts. And they have been quite as patriotic and quite as valuable in these places as their colleagues who fought on the victorious side. The truth is that the constitutional theories for which the South fought have been destroyed. And the danger was in the theories, not in the men who believed in them.

Mr. Foster is especially clear and forcible in tracing the evolution of these theories. He shows that the term "sovereign states" was and is merely a misnomer — and a very mischievous one. But "state rights" are an essential part of our federal system, and will remain so. He is quite right in pointing out the grave error of the Southern States in not promptly accepting the Fourteenth Amendment (p. 234). Had they done that, the tremendous mistake of indiscriminate negro suffrage, with all its inevitable evil results, would have been avoided. He is doubtless also right in pointing out the plain inconsistency and the probable unconstitutionality of the reconstruction acts of Congress. Congress laid down certain conditions precedent to the readmission of the lately insurgent states. So far as those conditions related to the adoption of the amendments, they were self-executing. But the suffrage provisions of the Mississippi constitution of 1890 hardly conform to all the conditions of the act readmitting that state to the Union. Yet there can be little doubt that it is the Mississippi constitution which is valid and the act of Congress which was invalid. Mississippi is a state of the Union on a par with all the other states. It cannot rescind the ratification of an amendment to the federal constitution. No state can do that. It can change its own constitution

with reference to suffrage within the limits of the Fourteenth and Fifteenth amendments. Any state can do that, and any act of Congress forbidding such action is null.

Mr. Foster insists (p. 22 *seqq.*) that the federal constitution is marked by strong originality. Again he is right. Its elements may be traced to many sources. But as a whole it is just what Gladstone called it, — "the most wonderful work ever struck off at a given time by the brain and purpose of man."

And now that the evolution of the republic has made clear the meaning and purpose of all the parts of the great instrument of government, it is time that all should be summed up in a complete exposition. The one we are considering bids fair to take that place in the literature of constitutional history and law. It can only be hoped that the promise of this volume will be fulfilled in the remainder of the work.

HARRY PRATT JUDSON.

Essays in Taxation. By EDWIN R. A. SELIGMAN, Professor of Political Economy and Finance, Columbia College. (New York and London: Macmillan and Co. 1895. Pp. x, 434.)

AMERICAN representatives of that "historical school of economics" much discussed in this country some ten years ago have made, as a rule, but slight use of history in their published works. To this rule Mr. Seligman is an exception. His *Essays*, to be sure, do not constitute a history of taxation. On the contrary his chief interest, frankly confessed, is rather in theory, which he regards as affording both a means for the interpretation of actual tax conditions and a canon for the constructive criticism of existing taxes. The *Essays* are, therefore, but incidentally historical. Nevertheless the historical element in them is considerable, for present theory and present practice alike are everywhere explained by tracing their development. Simply as an example of method, the book has thus a twofold value. To the theoretical economist, on the one hand, it reveals how much may be sacrificed of clearness and of cogency by neglecting history. To the writer of economic history, on the other hand, it indicates the helpfulness of such discreet selection among manifold industrial phenomena as has not resulted, in some instances, from a combination of antiquarian ardor with economic ignorance.

The introductory essay on "The Development of Taxation" attempts what may be described as a philosophy of tax history. The norm of taxation has gradually changed from "taxes proportioned to benefit received" into "taxes proportioned to ability to pay"; and the change is due to "the slow and laborious growth of standards of justice in taxation, and the attempts on the part of the community as a whole to realize this justice." There can be no doubt that, correlatively with the increasing diversity in the forms of wealth and in the sources of income — that is to say, in the indices of taxable ability — justice in taxation, as we now conceive