

THE HON. CHARLES PINCKNEY, LL.D.

TO THE EDITOR OF THE NATION:

SIR: Of late years, much attention has been given by experts in American history to a study of the career of Charles Pinckney, one of the delegates from South Carolina to the Philadelphia Convention of 1787. I am not aware, in this connection, that any scholar has ever called attention to the fact that there are in existence two slightly different title pages to Pinckney's well-known pamphlet which first appeared in print soon after the Convention adjourned in September, 1787. The title of the pamphlet, as listed by Joseph Sabin in his "Dictionary of Books relating to America" (xv, 128), reads:

Observations on the Plan of Government submitted to the Federal Convention, in Philadelphia, on the 28th of May, 1787. By Mr. Charles Pinckney, Delegate from the State of South-Carolina. Delivered at different Times in the course of their Discussions. *New York: Printed by Francis Childs. [1787] Sm. 4to, pp. 27.*

The late Paul Leicester Ford, in his "Pamphlets on the Constitution of the United States" (1888), p. 419, gives almost the same title, but has this variation: By the Hon. Charles Pinckney, Esq., LL.D., Delegate, etc.:

The pamphlet described by Sabin is to be found in the Boston Athenæum Library; that of Ford in both the Yale Library at New Haven and the Watkinson Library at Hartford. A page-by-page comparison of the texts of the two pamphlets shows no differences of language. It is clear that for some reason two slightly differing title-pages were printed. Why should the "LL.D." have been added in one case and not in the other?

In a vain effort to answer this question several months ago, I was able to obtain one item of information from Dr. E. C. Richardson, librarian of Princeton University, which has some slight historic significance. It appears that the degree of LL.D. was voted to Pinckney by the authorities of the College of New Jersey, under date of April 18, 1787, about a month before the assembling of the Convention at Philadelphia. The transcript of the record reads:

The board considering the literary character and reputation of the Honorable Charles Pinckney, Esq. delegate to Congress from the State of South Carolina. Resolved. That the degree of Doctor of Laws be conferred on the said Charles Pinckney Esq., and that the president of the board prepare and forward to him a diploma of his degree.

This looks very much as though Pinckney's degree was probably conferred *in absentia*. The supposition is strengthened by the fact that at the regular commencement exercises which took place on the following September 26, 1787, there was no mention of Pinckney's name. On the preceding day the board, according to the Princeton records, voted the doctor of laws degree to James Madison; and this degree was duly conferred on Madison on the 26th, as the account of the exercises which appeared in the *Pennsylvania Packet and Daily Advertiser* of Saturday, October 6, 1787, clearly indicates. Charles Pinckney, it is worth recalling, was born in 1758. He was consequently about twenty-nine years of age. He was not quite the youngest member of the famous convention, for Jonathan Dayton of New Jersey was born in 1760, and

John F. Mercer of Maryland in 1759. But it is curious that he should have been deemed worthy of the degree before Madison.

HENRY BARRETT LEARNED.

South Manchester, Conn., August 10.

ANACHRONISM IN THACKERAY'S "ESMOND."

TO THE EDITOR OF THE NATION:

SIR: In your issue of July 27 you published a communication from W. E. A. Axon, in which he points out that in "Esmond" Thackeray makes one of the characters refer to Peter Wilkins and his "Glawrie," though this was not published till 1750, the date of the action being 1712. I had already drawn attention to this anachronism in the Introduction I wrote for the edition of "Esmond" published by George Allen in 1896, p. xxvi, but I there suggested that some sort of a defence might be made by remembering that Col. Esmond is supposed to be writing his history in old age, somewhere in the "50's" of the eighteenth century. The lapse might thus be a failure in Col. Esmond's memory rather than an anachronism in Thackeray's presentation. In the same Introduction, however, I pointed out two or three other slight inaccuracies; so perhaps this defence of Thackeray is too subtle.

JOSEPH JACOBS.

Yonkers, N. Y., August 15.

Literature

THE AMERICAN CONSTITUTION.

The Origin and Growth of the American Constitution. By Hannis Taylor. Boston: Houghton Mifflin Co. \$4 net.

This is neither a textbook of constitutional law nor, in the usual sense, a constitutional history; but rather, as the elaborate title-page declares, "an historical treatise in which the documentary evidence as to the making of the entirely new plan of Federal government embodied in the existing Constitution of the United States is, for the first time, set forth as a complete and consistent whole." The "entirely new plan" in question, that of a Federal Union with adequate financial powers, appears to have been first clearly set forth by Pelatiah Webster, in a pamphlet entitled "A Dissertation on the Political Union and Constitution of the Thirteen United States of North America," printed at Philadelphia in February, 1783. The recent reprint of this interesting document, and its wide dissemination through the pages of the *Congressional Record*, have called attention, virtually for the first time, to what is undoubtedly the most important single documentary anticipation of the Constitution; and places Webster, hitherto known chiefly as a writer on finance, in the front rank of early American publicists.

Mr. Taylor undertakes to show, by elaborate and detailed study, the in-

debtedness of Hamilton, Madison, and Pinckney to Webster's pamphlet. The evidence is not, indeed, direct, since no one of these three statesmen explicitly acknowledged Webster as the source of his suggestions; nor was the pamphlet apparently a subject of discussion in the convention. On the other hand, the significant points of correspondence between Webster's proposals and the Constitution, the absence of any similar plan in the period between 1781 and 1786, and the prominence of Webster in public life, are elements in an argument which, as a whole, may fairly be regarded as conclusive. At any rate, the story of the origin of the Constitution must henceforth be told in the light of what Mr. Taylor very properly regards as a discovery; and for his own connection with that discovery he is entitled to hearty praise.

It would be gratifying if equal commendation could be given to the workmanship of the volume as a whole, or to the treatment of its other important topics; but at these points approval must at times be seriously qualified. Doubtless it is too much to expect that Mr. Taylor should openly reject the theory of "unbroken political development" of American institutions from Anglo-Saxon times, set forth so prominently in his well-known work on the English Constitution; but it is at least surprising to find that theory, no longer held by any considerable number of scholars, put forward again here in its baldest form, as the historical basis of an elaborate chapter on the "evolution of the typical American State." Once he gets past the days of barbarian beginnings, Mr. Taylor is on surer ground: he knows his English history pretty well, and draws his information, more largely than in his earlier work, from primary sources. He does well, for example, to point out (p. 78 *et seq.*) that the prevailing constitutional theory in England as to the rights of the subject, at the time the American Union was formed, was that stated by Blackstone, in which were embodied the far-reaching results of the revolutions of 1640 and 1688; and not the older theory of Coke, which embodied the earlier ideas of royal prerogative. He very properly criticises the Supreme Court, in such earlier cases as *Davidson vs. New Orleans*, for its historical error at this point.

One cannot but wish that Mr. Taylor had taken pains to fortify himself as well in American history as he has in the history of England, and had read with more care some of the documents which he cites; though possibly too much thoroughness should not be expected of an author whose reliance seems to have been, almost exclusively, on a handful of secondary narratives. It is wide of the mark, for example, to say (p. 97) that the Massachusetts charter

of 1629 "organized the group of New England settlements into a corporation," or that the charter "was in fact nothing more than a recognition of a preëxisting state of things." Nor does it accord with the history of Connecticut and Rhode Island to imply (p. 98) that the continuance of their charters until 1818 and 1842, respectively, was because they were "so completely adequate" to the needs of those commonwealths. The Stamp Act was passed in March, not in February, 1765; and of the coercive acts of 1774, only one, the Boston Port Act, and not all four, was passed in March (pp. 124, 125). Moreover, the Massachusetts Government Act did not "suspend the charter" of the colony; nor did the Administration of Justice Act legalize the transfer of criminal cases to England any more than to another colony (p. 126). The preliminary articles of peace with England were signed November 30, 1782, and the cessation of hostilities was declared January 20, 1783: Mr. Taylor (p. 156) reverses the process. The brief account of John Rutledge's activity during the Revolution (p. 200) is, in the connection in which it is introduced, misleading, and singularly inadequate for "the foremost statesman and jurist of his time south of Virginia." There is more, unfortunately, of such looseness and inaccuracy. Extraordinary is Mr. Taylor's treatment of the Dred Scott case: he ignores almost entirely the argument of Curtis's dissenting opinion, speaks of a State and a Territory as though they were on the same footing as regards the status of slavery in them, and implies that the question of the right of the Supreme Court to abolish slavery was before the court. Another example of inexcusable negligence in dealing with documents is the statement (p. 305) that the Sedition Act of 1798 was devised in part "to define more exactly the law of treason." The act has nothing to do with treason, which, as Mr. Taylor must know, is conclusively defined by the Constitution. It will be news to students that Jefferson, "at the special request" of Monroe, "wrote the so-called Monroe Doctrine." The doctrine was at least a generation old when Monroe gave it definitive proclamation; and Mr. Taylor's note, moreover, is not borne out by the extracts which he later gives from Jefferson's letters (pp. 390, 391).

Mr. Taylor's style is, in general, both discursive and repetitious. There are some suggestions of haste, as where a long passage on pp. 76, 77 is repeated almost verbatim on pp. 362, 363; while the allusion to the negro problem and Booker T. Washington, on p. 376, is simply lugged in. The main thing, however, is not faulty diction or errors of fact, but the treatment of the subject as a whole. With the exception of the portions which deal especially with

Webster's pamphlet, Mr. Taylor's contribution to the literature of American Constitutional history is not weighty. His views, sound enough in the main on most of the better-known topics, are conventional, presenting little novelty either in substance or in form; while at a number of points where there has long been need of more light, his pages shed no illuminating rays. In his laudable desire to make clear the importance of Webster's proposals, he tells us next to nothing of the indebtedness of the Federal Constitution to the existing institutions and practices of the States. The great work of Hamilton in laying down, in his opinion on the constitutionality of a national bank, some of the most important foundations of American constitutional law, is not noticed; nor is attention directed to the reaction of economic and political growth upon the development of constitutional interpretation.

The crucial test of a writer on the American Constitution is his treatment of constitutional questions since the civil war. Mr. Taylor rightly sees in the decision of the Supreme Court in *Texas vs. White* the culminating point in the long struggle between nationalism and particularism; but he does not seem to us to recognize in that decision, with equal clearness, the watershed, so to speak, between the old constitutional law and the new. From the standpoint of a sound jurisprudence, as distinguished from mere case law, nothing is more ominous to-day than the frank inability of lawyers to forecast, from a scrutiny of the opinions of the Supreme Court, what that august tribunal is likely to do next. Mr. Taylor is not blind to this dilemma; but his only hope of escape, apparently, from the limitations of a written instrument proverbially hard to amend, is to throw himself unreservedly into the arms of "judge-made" law. "If the histories of Roman and English law prove anything clearly," he writes (p. 449), "it is the fact that as the relations of advancing societies become more complex, it is the trained hand of the jurisconsult rather than that of the legislator that must solve the finer problems that arise out of them"; and he goes on to express with fervor his confidence that the Supreme Court, which, save in the *Dred Scott* case, has never failed thus far, will continue to do all things well. The trouble is, of course, that neither Roman nor English jurists ever felt themselves constrained to stretch a written Constitution to cover cases not within its purview, and that, in England at least, the courts have not undertaken to relieve Parliament of its fundamental obligation to legislate intelligently. We wish very much that, since Mr. Taylor has essayed to enter both fields, his valuable contribution to the documentary history of the Constitution had

been balanced by equally suggestive work in the field of constructive jurisprudence.

CURRENT FICTION.

Nonsense Novels. By Stephen Leacock. New York: John Lane Co.

The writer of these skits prefaces them, not with an apology, but with a defiance. "The reviewers of his previous work of this character," he complains, "have presumed, on inductive grounds, that he must be a young man from the most westerly part of the Western States, to whom many things might be pardoned as due to the exuberant animal spirits of youth." This, we learn, is not true. No improvement is to be looked for with advancing years. "All that education could do in this case has been tried and has failed. As a professor of political economy in a great university, the author admits that he ought to know better." On the whole, the admission is timely. A slave of the dismal science may be pardoned much for indulging in a literary spree on occasion. Mere exuberance ought not to be held up against him. But after all, a work of humor, if it is to have any sort of carrying power, must be under control. Too often the fun of this McGill professor is nothing above facetiousness or horseplay. It is the kind of book of which one instinctively says, "It ought to have been mighty good, but somehow—." The book belongs to the general order of Bret Harte's "Condensed Novels," or of Mr. Seaman's "Borrowed Plumes." But it is clear over the borderline between parody and travesty, and often the author's love of nonsense for its own sake removes the last faint traces of semblance. The alliterative titles give an impression of monotony, however, of which the volume is not guilty. The detective story, the psychic research study, the historical romance, the sea yarn, the story of domestic pathos, and not a few other types of fiction are touched off with more or less effect. As we have suggested, the chief fault in the book is lack of restraint. The fun-maker has a quaint and original knack of his own, if he only would not let it run away with him. The final sketch in the collection, "The Man in Asbestos," is a clever "Looking Backward" fantasy, a little out of place between these covers.

The Ashes of a God. By F. W. Bain. New York: G. P. Putnam's Sons.

To the remarkable series of Hindu stories, begun ten years ago with "A Digit of the Moon," Mr. Bain has now added a ninth volume. Here again we move in the mystic glamour of the East, watching, from the divine height of Siva's wisdom, the relentless working of *karma* from birth to birth through countless reincarnations. The keynote