BOOK REVIEWS.

ADOPTION AND AMENDMENT OF CONSTITUTIONS IN EUROPE AND AMERICA. By CHARLES BORGEAUD. Translated by CHARLES D. HAZEN, Professor of History in Smith College, with an introduction by JOHN M. VINCENT, Associate of the Johns Hopkins University. New York and London: Macmillian & Co. 1895. $2.00.

The essay which forms the basis of this volume won for its author the Prix. Rossi for 1892, awarded by the Faculty of Law of the University of Paris, and that in spite of the fact that in it he dared to controvert some of the preconceived opinions of his judges as to matters of great importance in French eyes, such as the character of the fundamental law of that nation, and the relation of the French people to the making and remaking of their constitution. But it was nevertheless most cordially praised by those who awarded the prize; and it will be sure to win no less commendation from all who study it carefully.

In the execution of his task, the author sharply differentiates between charter and popular constitutions:—between those granted by a sovereign to his subjects, apparently as an act of grace, and those imposed by the people upon themselves. This distinction is a very important one: for the power that grants can also, *if it be strong enough*, take away what has been granted; and a charter constitution therefore lacks one important element of stability, or rather of security, which a popular constitution possesses. But as the author clearly points out, such compacts, in monarchical states, furnished the only means of reconciling the past with the present; and were therefore a necessity, if men would secure their liberties and at the same time avoid the dangers of a revolution.

There are many interesting passages in this work, but perhaps none more so than the opening chapters, in which the author traces the development of the idea of a written, as distinguished from a traditional constitution, and finds the first clear evidence

of it in the theories of the English Puritans, and its first prolific germs in their system of church government. "Upon the point of founding a republic, they went about it in the same way as they would to organize a church congregation. They wished to base it upon a formal compact, emanating from the social body, which they naturally were compelled to regard as the possessor of sovereignty." This, then, was the origin of popular constitutions: charter constitutions came later, after the French Revolution had sown the new ideas broadcast throughout Europe, and sovereigns were compelled to yield a part of their prerogatives, or risk losing all.

Starting with this, Mr. BORGEAUD points out how the Puritan theory, carried with its adherents to America, there sprang into leaf in the early compact into which the people of various colonies entered, blossomed in the Articles of Federation, bore fruit in the constitution of the United States, and has been ripening ever since, through the changes in that document and in the State Constitutions; and then shows how France, in emulation, not in imitation, of this system, worked out a constitutional theory of her own, which though in some respects fallacious, is nevertheless the prevailing one in Europe.

The first part of the work closes with a chapter on the Nature of Written Constitutions, which gives a very clear summary of the scope and limitations of such a document, and at the same time points out how necessary it has become to overstep in many instances the theoretical bounds of a constitution, and incorporate into it matters which belong properly to the domain of legislation, but with which the legislative power has shown itself unfit to be entrusted. The author differs from the opinions expressed by Governor Russell of Massachusetts, in his address at the Commencement of the Yale Law School, printed in the July, 1894, number of this Magazine, (1 AM. L. REG. & REV. N. S. 481,) and while admitting that, in a general way, it may be said that a constitution ought not to contain matters of detail, yet urges strongly the importance of securing the first aim of a written constitution, efficient protection against abuse of power. And again, speaking of the length of some recent American Constitutions, he says:

"Does this mean that the Americans are wrong? Not at all. They have sought a means of efficient self-protection against the corruption and intrigue which have too often dishonored their legislatures. The constitution offered them this means; it was made, in fact, for that purpose. They have not diminished the grandeur of their constitutions by entrusting them with the care of matters which they feared would otherwise be mismanaged, however long the list of these may be." Verily these words have a ring of solid common sense.

In the second part of the book he discusses the subject of Royal Charters and Constitutional Compacts; and in the third that of Democratic Constitutions, which more nearly concerns us. He perceives clearly that it is in the history of the State Constitutions, not in the Federal Constitution, that growth is to be looked for; and he very ably traces the development of modern constitutional ideas through the successive conventions which gave to their respective states new constitutions, new not merely in the sense of being made over, but of incorporating new ideas and measures. One most interesting point, and one that is probably known to but few, is, that in the Pennsylvania Convention of 1837-8 a modified form of the popular initiative, now on trial in Switzerland, was proposed and rejected; which was not strange, as its purpose at that time was to hinder constitutional amendments, rather than facilitate them, as is the modern idea.

From America he passes to France; and here his treatment of his subject is of course fuller, and his knowledge more extensive. But no other portion of his work has the interest of the concluding chapters on Switzerland, for the reason, as mentioned above, that there new ideas are being experimented with for the edification of the rest of the world. Of these, the most important is the lodging of the initiative to a certain extent in the hands of the people. That power, which is "the right to lay a proposition before the constitution-making power, the acceptance of which will itself be an exercise of this power," is with us lodged in the hands of the legislature. In Switzerland they have gone further. Early in this century the constitutions of some of the democratic cantons had already given

this power to a certain number of citizens; and it now exists, to a greater or less extent, in the majority of the cantons. The Federal Constitution of 1848 contained an article which required the Federal Assembly, on demand (by petition, probably,) of 50,000 voters, to submit the question of amendment to the people, and if it was decided in the affirmative, then to prepare amendments. In 1891, however, this constitution was amended, by providing that the petition for amendment might demand the enactment, abolition or alteration of certain articles of the constitution, and that, if the vote of the people was in favor of amendment, then the revision should be taken in hand by the Assembly *in the sense of the people.*" This, it will be seen, introduces a new element into the making of a constitution; and Mr. BORGEAUD fully and clearly points out the inconvenience and danger that may result therefrom. But the impression he leaves on the mind is, that he is by no means bitterly opposed to it, at least in a carefully restricted form. It will probably be a long time, however, before America follows in the footsteps of her sister republic in this respect.

After what has already been said, it would be idle to attempt further commendation, lest it might defeat its own object. It is far better to let the book speak for itself. This much can safely be added, that Mr. BORGEAUD'S work is indispensable to the student of constitutional history; that in it he will find a store of material that it would be impossible to amass otherwise, without a great expenditure of time and labor; and that he will find the author's views and criticisms well deserving of the most careful attention. One other point may also be noticed. It is of course difficult to tell whose is the credit, author's or translator's; but at any rate, the book is written in a style very pleasantly different from the usual Gallic "artificial-flowery" style, so that it will please the literary, as well as the intellectual taste of the reader.

R. D. S.

A MANUAL OF PUBLIC INTERNATIONAL LAW. By THOMAS ALFRED WALKER, M.A., LL.B. Cambridge: The University Press. New York: MacMillan & Co. 1895.

"In the course of work as college lecturer in Cambridge," says the author in his preface, "I have on many occasions been asked to recommend for the use of students commencing to read Public International Law some text book which, whilst excluding unnecessary detail and mere theoretic discussion, might well serve as a fairly comprehensive general introduction to detailed study of the subject. No English treatise which has fallen into my hands fully satisfying the conditions which I should require in such a book, I have in this volume attempted to supply the need."

Nevertheless Mr. Walker's manual will necessarily be brought into competition and considered in comparison with a work which has since its appearance been probably the most popular text book for the general study of International Law, namely, Mr. W. E. Hall's Treatise. True, Mr. Hall has devoted considerable space to the consideration of the theories upon which the rules governing civilized nations in their relations with each other rest, while Mr. WALKER in the main contents himself with a description of these rules as they exist. Still, the theoretical discussion of the former is not of such depth and profundity, nor the condensed statements of the latter so limited as to render them separate and distinct classes of work.

The reader, whether he be a student, beginner or a mere searcher after information and instruction upon this subject, as fascinating as it is important to every well read citizen, will certainly find this volume well calculated to supply him with a broad, general view of the science of International Law, and hold his interest throughout. No matter in how condensed a form it may be treated, the study is of necessity largely historical, being closely connected with or growing out of international events, many of which, whether in peace or war, have been the milestones in the progress of modern civilization. Incidentally, with each branch of his subject, Mr. WALKER

gives us in a brief way the instances and cases which gave rise or have reference to the proposition of law applicable thereto. These propositions are stated concisely, and in heavy type precede the more general discussion. The side notes are unusually complete and furnish the ambitious reader with exhaustive references to the more elaborate works of other writers, to historical documents and to reported cases. Of the latter there is a full list accompanying the table of contents. It may be safely said that this work, accompanied by a good collection of cases, such as Cobbett's, cannot fail to accomplish its purpose. W. S. ELLIS.

THE ROAD RIGHTS AND LIABILITIES OF WHEELMEN. By GEORGE B. CLEMENTSON of the Wisconsin Bar. Chicago: Callaghan & Co. 1895.

Now that human beings have discarded their ancient classification by sexes and may be seriously said to consist of (1) those who do and (2) those who do not ride bicycles, it is eminently proper that the enthusiastic members of the wheeling fraternity (and sisterhood) should learn something as to their legal status and appreciate the fact that they have liabilities as well as rights. This good work has been undertaken by the author of this little book, who is, as far as we know, the pioneer of this branch of legal literature, and it cannot be denied that his efforts are deserving of great credit. Mr. CLEMENTSON has not permitted his confessed fondness for the "bike" to bias his sense of fairness or blind his legal acumen. He realizes that the numerous class for whose instruction his work is designed require restraint more than encouragement. He warns them not to disregard the rights of others unless they are prepared to have their own ignored.

When we consider the short time since bicycling has become the craze it now is, and how changed is the condition of things to the driver, rider, or pedestrian, with the swiftly moving machines gliding noislessly through the crowded thoroughfares of the city, or in battalions along such country roads as are sufficiently well paved for their use, it is not

surprising that those who cling to the more time honored means of progression have found some difficulty in adapting themselves to the new régime, and are inclined to feel that the bicycle is claiming more than it is lawfully entitled to. It is not fair, however, to condemn the whole class for the mistakes of its untrained or over zealous members, and after all it is usually the bicyclist who suffers the damages in accidents on the road.

As Mr. CLEMENTSON shows, the bicycle is a "carriage" (generically termed) and as such has the same right to the use of the public highway (legislative prohibitions excepted) as any other vehicle, and is of course subject to the same restrictions. There is, however, one important practical distinction between the rider of a wheel and the rider or driver of a horse, which, we think, courts should remember, or at least which should be taken into consideration in the trial of any question of conflict between the two, and that is, that while the motions of the former are the result of his own will alone, those of the latter are to some extent dependent upon the tractability of his animal, and its quickness in responding to his wishes.

The question of tolls is one which cannot yet be said to be settled, and of this the author has little to say. On the whole, it is not reasonable, nor consistent with the *carriage* theory, that bicyclists should be exempt from contributing to the maintenance of turnpikes whose smooth surface they so much frequent and on which they expect the same privileges of right of way, etc., as are enjoyed by horsemen; while, on the other hand they cannot be expected to pay the same rates as wagons. It is respectfully suggested that the rule requiring bicycles and saddle horses to pay the same fee be universally adopted.

Mr. CLEMENTSON's book is of the "popular" class of legal publications, being intended primarily for the lay reader. We cannot say too much for the thorough yet concise way in which the subject has been treated, nor for the exceptionally well chosen language with which it is presented to the reader.

W. S. ELLIS.

THE UNITED STATES INTERNAL REVENUE TAX SYSTEM. EMBRACING ALL INTERNAL REVENUE LAWS NOW IN FORCE, AS AMENDED BY THE LATEST ENACTMENTS. INCLUDING THE INCOME TAX OF 1894 AND 1864. WITH RULINGS AND REGULATIONS. By CHARLES WESLEY ELDRIDGE, Member of the Bar of the Supreme Courts of Massachusetts and California. Boston and New York: Houghton, Mifflin & Co. 1895.

Since the publication of the Revised Statutes, which exhibit the law as it stood December 1, 1873, Congress has passed more than thirty acts, amending and altering in many important particulars, the Internal Revenue laws; but this is the first attempt, since that time, to present these laws in a conveniently digested form for the uses of the profession.

It was Mr. ELDRIDGE, who, with Hon. WILLIAM H. ARMSTRONG of Pennsylvania, made a revision of the Revenue laws in 1871, as a basis for the title in the Revised Statutes, and again, in 1879, for the purposes of the service. Add to this that the editor has had the benefit of twenty-five years active experience of the workings of the system, and that he is a lawyer of learning and ability, and one feels sure that the work is well done,—a conviction which is speedily confirmed by an examination of the pages.

The task of digesting, which is so delicate and so important, but so rarely thoroughly well done, is often rather a thankless task also; but it is with a distinct feeling of gratitude that the reader of this volume will find spread before him the entire body of the revenue laws, precisely as they stand to-day,—seeing at every page the evidence of intelligent and painstaking labor, and knowing that, with the aid of the excellent arrangement, and of the index, he can in a few minutes' time ascertain just what is the law upon any particular point.

And furthermore, there is such an atmosphere of carefulness about the book as inspires, even upon a cursory examination, a confidence in its trustworthiness and accuracy as a tool for the frequently hurried workman.

Comprising, as it does, a history of that part of the scheme

of taxation which, at the present day, yields the Government a full third of its income, from the first act, of March 3, 1791, down to the ill-fated income tax provision of the Wilson Bill; a series of shrewd and cogent comments upon the comparative utility and practicability of the various methods of taxation and the chances of fraudulent evasions thereof, by one who has been behind the scenes; and a very satisfactory and convenient arrangement of the acts, rules of practice, and forms, annotated with the decisions of the courts, and the rulings and regulations of the department,—Mr. ELDRIDGE's book will be of interest alike to the student of economics and the practical legislator, while to the practitioner who has any dealings with the Revenue laws, it can hardly fail to become a *vade mecum*. Altogether, it is a subject for general congratulation that Mr. ELDRIDGE did not adhere to his original project of confining his work to the Income Tax, and thus condemning it to join that long rank of dust-inheriting volumes which had so brief a day of usefulness. S. D. M.