

In both periods the heavy hand of authority and tradition checked all attempts at independent research. No man could wander from this beaten track ; his only claim to originality lay in the skill with which he used his materials. The occasional flashes of independent genius which stand out against the black dulness of the age, furnish the subjects of Dr. Poole's essays. Claudius of Turin, Agobard of Lyons, John the Scot, all gained their title to remembrance from this independence, and the fact that the names of their fellows are so few adds to their own renown. Much of Dr. Poole's writing is theological in character, but theology was the mode of mediæval thought. The clergy were the literary class, and society was a theocracy. Education, politics, philosophy, all had to be reduced to theological standards, and expressed in theological terms. Theology was for a time the mould into which the great stream of human thought, which has after all a unity, had to flow. To study it in the middle ages, we must study theology ; but on getting beneath the shell, we find that the substance—the thoughts and doubts and speculations—is after all not so different from that of our own age.

In treating the second of the periods referred to, Dr. Poole confines himself to that characteristic which is for us the most interesting, namely, the attempt to frame a political philosophy, and in particular to reconcile the notion of the state with the existence and the claims of an universal church, or to modify those claims by reference to the necessary exigencies of civil government.

Into a detailed examination of the several essays we have not space to enter. The exceedingly clear account of how and why it was the Irish race that kept alive learning in the West and spread it again over Europe, the careful study of Duns Scotus, and the examination of the hierarchical doctrine of the state as held and taught by Hildebrand and Thomas Aquinas, are perhaps the most interesting passages.

The whole work is done with scholarly insight, and after a patient study of the original documents and authorities. The book is a valuable contribution alike to history, to politics, and to philosophy.

NICHOLAS MURRAY BUTLER.

The Influence of the Roman Law on the Law of England, being the Yorke Prize Essay of the University of Cambridge for the year 1884. By THOMAS EDWARD SCRUTTON. Cambridge University Press, 1885.—xvi, 199 pp.

Considering the scope of the subject of this essay, and the knowledge necessary to approach it with any prospect of success, it is not surprising that a work "written in ten months by a young man within seven years of his first degree" should be a production, if of equal merit in

all its parts, at least of very unequal value. Under the circumstances, Professor Scrutton could hardly do better than he has done, in giving a very substantial piece of original work in a limited portion of the field, and confining himself for the rest to collecting and arranging the work of others.

The book consists of two parts, of which the first treats of the period before the coming of Vacarius. Relying chiefly upon Stubbs and the *Essays in Anglo-Saxon Law*, the writer examines the allegations as to Roman influences made by Finlason, Coote, Seebohm and others. The vagaries of a Finlason are easily disposed of. Mr. Coote's ingenious arguments he considers unsupported by evidence; and Seebohm's theory of the origin of the manor as not yet proven, with the burden of proof on Mr. Seebohm. Professor Scrutton concludes that early English law was essentially Teutonic, with but slight traces of Roman influence, except in the introduction of wills and written instruments. With this general conclusion, we should think, every competent Romanist would agree. It is another question whether the introduction of the Roman law into England ought not to be put at a time much nearer the Conquest than the coming of Vacarius; and whether the latter event, though it undoubtedly marks the beginning of the great extension of the study, is not a result rather than a cause. There are many indications of a knowledge of the Roman law, and even of its application in the ecclesiastical courts, at least as early as the reign of Henry I. Much light would be thrown on this point by a determination of the date and character of the mysterious tract on Roman procedure in the Holkham MSS. This tract, attributed by Palgrave to Aldhelm, is referred by Haddan and Stubbs to a date not far from the Conquest. Dr. Liebermann accepts provisionally the opinion of Madden, who thought it the third part of the *Quadripartitus*, a law book compiled in England between 1113-1120. The opening sentences, which are all that have yet been printed, seem to be very nearly identical with those of the treatise known as *Ulpianus de edendo*, or the "Pseudo-Ulpian," but the date usually assigned to the latter treatise is about 1150. May we not hope that some competent authority will determine the questions raised by this MS. — questions of importance not only for England, but for the general history of Roman law in the middle ages?

With Caillemer's book Professor Scrutton was not acquainted; and the opening chapter of Part II., on Vacarius and the introduction of the Roman law, is hardly adequate even as an outline of a period the importance of which is attested by the existence of at least six treatises on Roman and Canon law, ranging in date from 1150 or earlier to 1189, all written by Anglo-Norman lawyers, and one the work of an English Chancellor and Chief Justiciar. With these may fairly be reckoned the inter-

esting *Ordo Judiciarius* published by Gross, which shows clearly the method of teaching the Roman law in connection with the Canon law in vogue in Paris in the years 1170-1180; that is, at a time when Paris was much frequented by English students. That this close connection of the Roman with the Canon law was the real ground of Stephen's hostility to the teaching of Vacarius there would seem to be no doubt, though Professor Scrutton, following Wenck, thinks it improbable. The argument that Vacarius could not have taught the Canon law, because Gratian's Decree was not published until 1151, is no longer tenable now that the better opinion puts the decree between 1139 and 1142. If Vacarius came to England in 1143, the nearness of the dates is certainly suggestive. Nor can the later legislation of the popes, forbidding the study of the Roman law by the clergy, be allowed much weight. Cultivated at first in northern France and in England as the handmaid of the Canon law, the Roman law was soon studied for its own sake to an extent and with an enthusiasm that threatened serious injury to other studies. Peter of Blois is a mournful witness to the attraction of the study for his own mind, in spite of a growing conviction that it could bring him advantage neither in this world nor in the next. Many of the clergy neglected theological for legal studies, and, debarred in consequence from promotion to high rank in the church, and finding insufficient scope for the exercise of their legal training in the ecclesiastical courts, attached themselves to the king's service. Through them, the Roman law exercised an influence upon English legal development which was none the less important, and probably more valuable, because it was indirect. This neglect of theology, and the occupation of the clergy with secular matters, led to the decretal of Honorius III.; but in the time of Vacarius the evils had begun to be felt only in the monasteries, and the legislation cited by Scrutton aimed only at preserving the monastic rule.

The long chapter on the Roman law in Bracton is a monograph by itself, and constitutes an important and valuable addition to our knowledge. The work here is done so well as to furnish ample proof that the defects in other parts of the book are due only to the circumstances under which the essay was written. By a minute and careful comparison of Bracton with Azo, Professor Scrutton has gone far to settle the question of Bracton's relation to Roman law. His conclusions, though given with great modesty, seem hardly to admit of question after the careful analysis of the sources upon which they are founded :

English law was reduced to order on a Roman frame-work, furnished with many Roman terms, its gaps filled up with actual Roman matter, so long as this was not inconsistent with English law. At the same time Roman influences, acting on the judges, vary some existing English rules. . . . But I know of no case where Bracton has cited Roman law, the previous English rules

being to a contrary effect, unless, indeed, some previous decisions give him warrant.

On the question whether the Roman law which Bracton incorporated was valid English law, he thinks that there are "no materials in existence for a positive answer to this question," but inclines to the opinion that

As regards the first part of Bracton's work, it was new matter to the English law, directly copied from Roman sources to fill up a frame-work of his first three books, which he had adopted from the Institutes. As to the second part, I think that Bracton has both introduced new Roman matter, and reproduced English law, derived from the Roman by the decisions of other clerical judges, and then recognized as the law of the land.

The book closes with a number of short chapters on Roman law in the text-writers, from Britton and Fleta to Coke, Hale, and Blackstone; an interesting chapter on the authority of Bracton since Coke; and chapters on the Roman law in the ecclesiastical courts, in the admiralty, in the law merchant, and in the common law. These contain a good deal of interesting matter not easily accessible. On the whole, Professor Scrutton has made an important contribution to one of the most difficult problems of English legal history; and we may hope for much good work from him in the future in a field which has hitherto been much neglected.

ERNEST YOUNG.

The English Historical Review, edited by the Rev. MANDELL CREIGHTON, M.A., LL.D., Dixie Professor of Ecclesiastical History in the University of Cambridge. No. 1, January, 1886. London; Longmans, Green & Co. — 208 pp.

Annales de l'École libre des sciences politiques, recueil trimestriel, publié avec la collaboration des professeurs et des anciens élèves de l'École. No. 1, Janvier, 1886. — 164 pp.

The *English Historical Review*, we are told in the "prefatory note," will not confine itself to political history, nor will it attempt to deal with the general development of civilization. Its editor regards history "as the record of human action, and of thought only in its direct influence upon action." To "avoid the suspicion of partisanship," contributions which argue political or ecclesiastical questions "with reference to present controversy" will be refused. Ancient and modern, home and foreign history "will be duly cared for."

There is certainly no suspicion of partisanship or reference to present controversy in the contents of the first number, for but two out of the five articles deal with the nineteenth century, and but one of these with English affairs. Under the title "Notes on the Greville Memoirs" an anonymous contributor gives a clear and interesting account of the