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Zoeller on Roman Constitutional Law *Römische Staats- und Rechtsalter tümer, ein Kompendium für das Studium und die Praxis*, Dr Zöller von Max. (Zweite Auflage.) Koebner, Breslau: 1895. Pp xvi. 520. 8 Mk.

A. H. J. Greenidge

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Verily! But how about *ᾶν* with the past tenses of the Indicative?

It will have been seen that Mr. Horton-Smith is very catholic in his views as to what is possible in Greek. He believes not only in *ᾶν* with the Indicative Present or Past, and *ᾶν* with the Future Indicative, but also in even more startling things: *ᾶν* with the Optative, and *ᾶν* with the Indicative + *ᾶν*, etc. If we seek for proofs of the existence of these forms of speech, we are referred to some passages in which the text has been generally regarded as corrupt, and to a long list of quotations from such authors as Hippocrates, Leophanes (?) *de Superfoetat.*, Auctor *de Iudication.*, Auctor *de Artic.*, etc. Before Mr. Horton-Smith can convince the

world of these things, he must show us that the text rests on sound foundations.

But I would not close with a note of dissonance. The book is full of matter, and while there are many points in it which will raise dissent in any reader, the collection of instances is a rich vein which will prove of service to future explorers in this field. From Mr. Horton-Smith's sentences of irregular type (pp. 103 foll.) I have gleaned many instances of various kinds which had previously escaped my observation; and I doubt not that further acquaintance with the book will extend the list.

E. A. SONNENSCHIN.

ZOELLER ON ROMAN CONSTITUTIONAL LAW.

Römische Staats- und Rechtsaltertümer, ein Compendium für das Studium und die Praxis, von Dr. MAX ZÖLLER. (Zweite Auflage.) Koebner, Breslau: 1895. Pp. xvi. 520. 8 Mk.

THE author of this work is justified in the statement made in his preface that the mere fact of a second edition of a book of this character having been called for within ten years shows that it must have met a real want. It could hardly have done otherwise: for as a clear exposition of the main conclusions that have been established by a century of research it is admirable. The title has been well chosen, for Zöller's work aims at being something more than a 'Staatsrecht.' The main principles of private law, the outlines of civil and criminal procedure, the financial system and the army have each a brief space allotted them. Still the work is in the main a manual of constitutional law, without however being in any sense a political history of Rome. Throughout we see a rigorous adherence to the modern system of treating the history of institutions by departments. It would be unjust to criticize a work, in which this principle of exposition is consciously adopted as being the best for teaching purposes, for not being a history. But we cannot help thinking that a work, which from its compass evidently does not aim at merely furnishing the materials for history, does gain by the slight approach to the historical method effected by a division into periods.

Such a division enables us to get some insight into the parallel development of the separate institutions of the Republic, it does not lead us to treat the Rex merely as a magistrate nor to merge the Principate in the Princeps. Yet the method adopted by Zöller has its own peculiar advantages. A work that is not a history of institutions is better fitted to become a history of views about institutions—to become, in short, what the author modestly describes his work as being, a compendium.

It must be stimulating to the scientific interest of a young student to be able to trace the steps by which the history of Roman institutions has been built up from Niebuhr's time to our own; for the history of any great development of thought is in itself a scientific training. It is one of the author's signal merits that he has been able to make a work, written on a somewhat unattractive system, interesting throughout. The compass of the treatise has made frequent references to the original authorities impossible. As a substitute we have a good bibliography in the introduction, well selected citations of the authorities on particular subjects at the head of each section and references to the most important monographs in the notes.

In accordance with the plan of his work the author has made it his object to give the most important alternative views on all disputed points of any importance. This is done fully in his account of the 'plebs' (p. 20), the 'tribuni aerarii' (p. 55), the

'patrum auctoritas' (p. 339), the reformed 'comitia centuriata' (p. 106). Presumably when an alternative view on an important point is not mentioned we have a tacit assumption that it was never worth holding. Yet we should have expected some discussion of the doubtful question of the relation of the 'agnati' to the 'gentiles' (p. 16); here Mommsen's view alone is given. It is uncertain whom the author understands by the 'equites' referred to in the 'lex Sempronia' and 'lex Roscia' (p. 49); in fact the crucial question who these legally recognized 'knights' were is never once raised. He also states the view that the knights of the empire were all 'equites equo publico' (p. 54) without any hint of the alternative solutions of Belot, Willems and Mispoulet. Similarly the theory given as to the basis of the powers of the Princeps (pp. 302-307), though stated with admirable clearness, represents only one of two possible views. The theory is followed which represents the 'imperium' of the Princeps as purely provincial and military; the 'tribunicia potestas' is made to bear the whole weight of the internal administration, and no hint is given of the aggregate of powers, collectively forming a 'quasi-imperium' for Rome and Italy, which supplement the defects of the 'tribunicia potestas' as a basis for the civil power. It is strange to find the appeal to Caesar, the greatest system of appeal that perhaps the world has ever seen, dismissed in two lines. It is stranger still that we are not told that this appeal differed in character from what was known as 'appellatio' under the Republic.

As a rule the author is very careful to distinguish an ascertained fact from a current theory; but there are occasional exceptions to this rule. To state absolutely that, after the Hortensian law of 287 B.C., there is no trace of 'leges' passed in the 'comitia centuriata' (p. 135) is to go far beyond the limits of the knowable—especially when we consider that the only alternative assembly, the 'comitia tributa populi,' has a merely hypothetical, if a probable, existence. Far more doubtful is the view expressed on p. 470 that all the 'socii' in Italy were foederati. The Latins we know to have held this status; but it is difficult to account for the distinction between 'civitates foederatae' and 'liberae' introduced by the Romans into the provinces at the very beginning of their work of organization unless the inferior condition of 'libertas' had previously existed in Italy.

As regards the 'civitates liberae et immunes' it is scarcely correct to say that they possessed free property ('Eigentum') of the soil (p. 368). The 'lex de Termessibus' shows rather a condition of 'libera possessio' than one of 'dominium.'

Zöller has fully realized that one of the duties of the author of a compendium, which is to a large extent a literary history of researches into Roman antiquities, is a full acquaintance with the recent literature on the subjects which he is discussing. This duty is faithfully performed: and one or two novel views have found acceptance at his hands. Such are the theory that the 'seviri' of the municipal towns were not a priestly order (p. 476), and the theory of Niessen that the 'lex curiata de imperio' was required for alterations in the constitution (p. 86). If by alterations are meant simply the successive creations of new magistrates with 'imperium' the view is not improbable; but it is difficult to see what evidence could be adduced for the statement that at the end of the Republic the 'lex curiata' was required for *all* 'magistratus populi' (p. 163).

In a work of this compass it is inevitable that there should be a great number of points on which differences of opinion must exist. Consequently those points have been chiefly mentioned on which further discussion, or a more tentative expression of opinion, might have been deemed advisable. On p. 115 we find a strange statement, which must however be a mere inaccuracy of expression; for the view that the 'comitia tributa (populi)' possessed capital jurisdiction by no means represents the author's real opinion as to the judicial competence of this 'comitia.'

Whatever may be thought of the plan of this work, the treatment of the subjects discussed in its separate sections is excellent. It combines fulness with clearness in a higher degree than any work of the kind which I have seen, while a very complete index makes it fulfil effectively its secondary function of a work of reference. Teachers of Roman history who are often reminded of the fact that there is no recent work in English, at once comprehensive and concise, to which they can refer their pupils for information on the details of the Roman constitution, would find their labours greatly lightened by a translation of Zöller's book.

A. H. J. GREENIDGE.