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***Vormundschaft nach Attischem Recht.* By Dr. O. Schtulthess. Freiburg-i-B. 1886. 6 Mk.**

Herman Hager

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possibility, such as the amount of corn required to support existence, the density of population in proportion to area, together with more direct arguments are often sufficient to disprove the excessive estimates of former writers. But from the nature of the case, positive conclusions drawn from scanty materials and *a priori* considerations must be in great part hypothetical. Dr. Beloch repeatedly warns us against regarding his results as anything more than approximations to the truth.—L. WHIBLEY.

Vormundschaft nach Attischem Recht. By DR. O. SCHULTHESS. Freiburg-i-B. 1886. 6 Mk.

DR. SCHULTHESS divides the subject of 'Guardianship according to Attic Law' into seven sections, each of which he treats in a separate chapter: the Archon as state protector of orphans and the *ὄρφανοφύλακες* in Xen. *de red.* 2, 7 etc.—state help given to the orphans of those killed in war—names (*ἐπίτροπος* and *κύριος*) and qualifications of a guardian—different kinds of guardians (*testamentarii*, *legitimi*, *dativi*) and their appointment, and in an appendix the *πρόδικος* in Sparta—duties of a guardian—time and mode of the orphan's release from guardianship—litigation which might arise out of guardianship (*εἰσαγγελία κακώσεως*, *φάσις μισθώσεως οἴκου*, and *δίκη ἐπίτροπῆς*). In an eighth chapter he enumerates the speeches delivered in such actions. Dr. Schulthess has collected carefully the various passages in Greek authors bearing on his subject and discusses fully the opinions held by modern writers on the different questions involved. The material here collected is complete and cannot but prove very useful to scholars, but they will probably prefer in some cases to draw their own conclusions from the information here supplied. In a number of cases I have been unable to follow the reasoning which has led Dr. Schulthess to adopt one rather than another of the conflicting views held by modern scholars; for instance, I cannot but agree with Lipsius in thinking that *ἀποκρήρυξις* was not an Athenian institution (p. 41) and that money belonging to a minor might be lent on *ναυτικός τόκος* as well as on *ἐγγειος τόκος* (p. 124); Thonissen seems justified in concluding from Lysias vii, 37 that the accuser in such a law-suit was *ἀκίνδυνος* (p. 198. n.); and I am inclined too to believe, with Philippi, that there was a second *εἰσεγείσις* to the *φράτερες* (p. 38), of course merely as a religious ceremony (for the civil act took place before the *demotae*), a survival of the ancient Aryan custom (cf. Leist, *Graeco-ital. Rechtsgesch.* p. 68, see also the meaning of *dreihaarig* in old German Law, in *Zeitschr. f. d. Altert.* 1886 p. 352). From C. I. A. ii, 841b it is clear that *κούρειον* and *μείον* are not the same, as was generally believed on the strength of the Etym. M.; this fact throws a new light on Poll. viii, 107 *φράτορες . . . καὶ εἰς ἡλικίαν προελθόντων ἐν τῇ καλουμένῃ κουρεωτίδι ἡμέρᾳ ὑπὲρ μὲν τῶν ἀρρέων τὸ κούρειον ἔθουν, ὑπὲρ δὲ τῶν θηλειῶν τὴν γαμηλίαν*. The latter part of this passage is of course wrong, Pollux himself giving the correct definition of *γαμηλία* in iii, 42, but the first half seems to me to support Philippi's view. This is surely one more instance where Pollux has been proved by later finds to contain correct information; e.g. every one cast doubt on viii, 93 *εἰσαγωγῆς ἀρχῆς κληρωτῆς ὄνομα* and 101 *οἱ τὰς ἐμμήνους δίκας εἰσαγοντες*, until Koehler found their name in an inscription (C. I. A. i No. 37); no one believed in the correctness of viii, 52 *ἔτι δ' ὁ εἰσαγγέλκας καὶ οὐχ ἐλὼν ἀζήμιος ἦν*, 'Ἐπερίδης ἐν τῷ ὑπὲρ Λυκόφρονος, until the papyrus proved it. To return however to Dr. Schulthess, the reader will probably not find *εἰς ἀνάσσειν* (p. 27, n. 2) 'an unintelligible' expression, and may possibly agree with

me that the statement *τὸν ἀπαῖδα μὴ στρατηγεῖν* (42. n.) is more likely to have taken its rise from Dinarchus i, 71: *καὶ τοὺς μὲν νόμους προλέγειν τῷ βήτορι καὶ τῷ στρατηγῷ. . . παιδοποιεῖσθαι κατὰ τοὺς νόμους* etc., than in the imagination of the scholiasts. These however are small matters, respecting which difference of opinion may well exist; what seems to me the main fault of the book, and one by which its usefulness cannot but be seriously impaired, is its want of precision and clearness on only too many points. Thus Dr. Schulthess says on p. 199: 'It is evident that the *εἰσαγγελία κακώσεως* could not but be *τιμητή* (cf. *All. Proc.*² p. 227, 359)', and in a note to the former reference he remarks: 'Lipsius ought not to mention only the *εἰσαγγελία* against arbitrators as *τιμητή*, for the same was certainly the case with the *εἰσαγγελία* for the benefit of orphans.' But this is exactly what Lipsius does say, his words being (on the last line of p. 226); 'die beiden letzten (kinds of *εἰσαγγελία* scil. *κακώσεως* and against arbitrators) waren gewiss schlechthin schätzbar.' The note goes on 'Lipsius is likewise wrong (p. 231) in mentioning a *γραφὴ κακώσεως* amongst the *γραφὰι τιμηταί*, since it is an *εἰσαγγελία κακώσεως* and there never was a *γραφὴ κακώσεως*.' On p. 358 Lipsius observes 'Es ist schwerlich zufällig, dass uns für *κἀκωσις* der Eltern durch ihre Kinder kein Beispiel von *Εἰσαγγελίᾳ* überliefert ist. . . es war dann der Weg der Schriftklage einzuschlagen' etc. This Dr. Schulthess declares (p. 206) he cannot understand; 'how' he exclaims, 'should this *γραφὴ* be different from the *εἰσαγγελία*? Probably in this, that the parents on not receiving one-fifth of the votes had to pay a fine of 1,000 drachmae. But how should they think of choosing that action, when the other existed by its side?' Where is the evidence for this latter assertion? The reader will probably think with me that Lipsius, in the absence of all evidence, is perfectly justified in not speaking of an *εἰσαγγελία κακώσεως γονέων*, especially as he also establishes a difference in the punishment of the offender: those found guilty of *κἀκωσις γονέων* lost their civil rights (p. 360); having thus given his reasons for believing in the existence of a *γραφὴ κακώσεως*, he was right in mentioning it on p. 231. It would be easy to multiply instances of such loose reasoning, see p. 74 on the *tutores dativi*, p. 223 on the private arbitrators, etc. Of course Dr. Schulthess knows that Demosthenes had only a sister, and that Demon was his father's brother; he says on p. 54: *am nächsten wäre dem Vater Demosthenes sein Bruder Demon gestanden*, but on the previous page, probably set wrong by *τῷ μὲν—τῷ δὲ* in Dem. xxvii, 4 he speaks of Demophon as a son of Demon who had married the sister of the elder Demosthenes, and of Aphobus as the son of a brother of the elder Demosthenes; and on p. 77 we find: *Demosthenes und seine Geschwister*. Or is *Geschwister* a provincialism for *Schwester*? there are several such in the book, on p. 6 n. 2 *ἐρῆθις*, p. 145 *im Tun sein*, p. 151 *Zinsen erzeugen*, p. 184 *Rechnung stellen*, p. 188 *die Pflicht der Vormundschaft überbinden* etc.; at any rate the expression is misleading. The book is not free from confusing misprints, such as *ὑπερβολῆς* for *ὑποβολῆς* (p. 100, n.), *Gatten* for *Garten* (p. 119, n. 1).

HERMAN HAGER.

Le Droit public Romain, par Th. MOMMSEN; traduit sur la 2me édition allemande, par P. F. GIRARD. Vol. I. Paris. Thorin. 10 fr.

THIS is the first instalment of a translation of the whole of Mommсен and Marquardt's 'Handbuch,' undertaken by eminent French *savants* under the direction of M. G. Humbert. It contains the first