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Römisches Staatsrecht *Römisches Staatsrecht* von Theodor Mommsen. Dritter Band: II Abth. Der Senat. 10 Mk.

E. G. Hardy

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Essai sur l'Administration des Finances, &c., he at times dissents definitely and with good reason from them, as for example (Note 678) from their view that the *rationalis rei privatae* was more than a director, and had *arcarii* in his office; and (ii. p. 9, and Note

852) from their opinion that the *curator reipublicae* and *curator kalendarii* had the actual handling of money and so functions other than those of directors.

L. C. PURSER.

RÖMISCHES STAATSRECHT.

Römisches Staatsrecht von THEODOR MOMMSEN.

Dritter Band : II Abth. Der Senat. 10 Mk.

WITH this volume is concluded the great and without exaggeration epoch-making work, the *Handbuch der Römischen Alterthümer*, by Mommsen and Marquardt. The *Staatsverwaltung*, written by the latter, as also his *Privatleben*, have been published now for some years, but the third volume of the *Staatsrecht*, which was to deal with the rights of the senate and the citizens, has for a considerable time been delayed, and has caused a gap which we have hitherto had to fill either from scattered notices in the *Römische Geschichte*, or with better success from the *Römische Forschungen*. The publication of *Die Bürgerschaft* at the close of last year, and the present volume on the senate at last make the *Staatsrecht* complete. To attribute absolute finality to the *Handbuch* as a whole, in the face of the remarkable development of our knowledge of Roman antiquities during the past fifty years, would be rash and unreasonable; and indeed, as regards the *Staatsverwaltung*, it is almost certain that the fresh stores of epigraphical evidence, of which the successive issues of the *Ephemeris Epigraphica* are standing proofs, will necessitate many modifications and corrections of Marquardt's views. But the *Staatsrecht* stands on somewhat different ground. The period in which the Roman Constitution in relation to the ordinary magistracies, the comitia and the republican senate, reached its full development is illustrated in a very secondary degree by epigraphical evidence, while of the literary materials on which it is most dependent Dr. Mommsen has a knowledge and a mastery which, joined to his thorough training in jurisprudence, place him in a position quite unique. Nor is the method which he employs one which is likely to be reversed with any fruitful results. The attractive region of theory, hypothesis, and reconstruction of prehistoric institutions is one which

he consistently renounces. Taking his stand on what is attested by complete historical evidence, he traces institutions backwards into times less distinctly known, never however suffering any considerable gap to intervene between his data and the inferences drawn from them. No doubt the renunciation which this method implies precludes the possibility of a Roman Constitutional History in any complete sense. But a Constitutional History the *Staatsrecht* does not claim to be. It is rather the presentation of Roman political institutions as they mutually cohere and form parts of a system. Thus it is not necessary to decide, though it would be interesting to know, whether the Senate in its first origin was in a real sense intended to represent the gentes, and whether the original senators therefore were delegated by their gentes rather than appointed by the king. But it is necessary on the one side to determine the constitutional relations between the executive and the senate, and on the other to point out the lines of demarcation between the political spheres of the senate and the comitia. Again, it is not necessary to reconcile the conflicting statements of historians as to the original number of the senate, or its increase or duplication by Tarquinius, but it is necessary to know in what way the normal number when fixed was maintained. With Dr. Mommsen's radical conception of the senate's constitutional position *de jure* and *de facto*, the readers of his *History* and of the *Römische Forschungen* are to some extent already familiar, but what was broadly stated in the former works without a full citation of references is now worked out in detail, and the position, function, and privileges of the senate receive an exhaustive treatment in reference to the various departments of legislation, finance, foreign policy, provincial government, and in fact all public acts in which the senate either *de jure* or by means of usurpation and encroachment took the leading part. Out of such a mass of

material it is impossible in a short notice to touch upon more than a few points.

That during the best years of the Republic the senate was *de facto* the supreme governing body there is no dispute. Controversy can only arise on the question—Was it also *de jure* supreme? or was its position a usurpation of functions constitutionally belonging to the executive or the popular assemblies? Dr. Mommsen takes the latter view. *De jure* the senate was merely a deliberating and advising board, absolutely without initiative of its own, without the means of directly entering into relations either with the citizen-body or with foreign states, and whose resolutions were not legally binding upon the executive. But from this position it gradually emancipated itself. The life-long position of its members, the weight of their experience as mostly ex-magistrates, the early control which the senate gained of financial matters and external policy, and judicious use of tribunicial influence, were the chief means of a gradual usurpation of much wider powers. In the main no doubt this theory is correct, but none the less it involves a certain break of continuity in the development of the senate at the point when plebeians were first admitted into it. As E. Herzog has pointed out, the interregnum and the *patrum auctoritas*, originally functions of the senate as a whole, do imply a certain supremacy and sovereignty in the position of the original senate, even if the latter of the two privileges was, as Mommsen holds, more a negative *Nomophulaky* than an active check on popular measures. These functions were no doubt reserved (and the proof of this Mommsen now gives in full detail) to the patrician members of the plebeio-patrician senate of the Republic. But was this supreme position of the senate constitutionally altered by the admission of plebeians? Was not, on the contrary, the supremacy still maintained, though made more vague and less dependent on this or that particular function, and must we not add this latent sovereignty handed down from the original senate to the means by which the later senate with which we are familiar gained its position? and is it not truer to say that the development of the senate was less a usurpation than a transformation of a latent sovereignty into a practical supremacy *pari passu* with the conditions and circumstances of Rome's own development? This would seem to be the more probable view, and indeed Dr. Mommsen himself in a previous volume speaks of the *Nomophulaky* of the plebeio-patrician senate as

'eine Fortsetzung oder Wiederaufnahme der alten *patrum auctoritas*.' A typical example of Dr. Mommsen's method of dovetailing particular points into the general system of the constitution is his explanation of the much disputed term '*pedarii*.' Correcting the mistaken definition of Gellius, he shows that *pedarii* were those senators who had the right to vote, but not the right '*sententiam dicendi*.' Who were these senators, and what constituted the right '*sententiam dicendi*?' According to Mommsen the answer to the latter question is, a magisterial position. Accordingly all patricians, as potentially *interreges*, had the right, and all those, whether patrician or plebeian, who entered it after tenure of a magistracy had it too. The *pedarii* were therefore those plebeians who were '*lecti a censoribus*' without having held a magistracy. After the Sullan restoration this class no longer existed, and therefore the term '*pedarii*' changes its meaning, and denotes the two lower classes of *aedilicii* and *tribunicii* in opposition to *consulares* and *praetorii*. This view, if correct, and it certainly seems to answer to all the passages in our authorities, is of course the answer to Herzog's contention that the plebeian senators must from their first admission have had the full senatorial rights. Again to the formal distinction between the terms *senatus decretum* and *senatus consultum* Dr. Mommsen assigns a constitutional meaning which has an important bearing on the development of the senate. Every resolution of the senate was a joint act performed by the presiding magistrate and the senate. As long as the most important part was assigned to the former, the result was a *decretum* of the magistrate *de sententia senatus*, or, by an abbreviation, *decretum senatus*. But as the magistrate became subordinated to the senate, the term *senatus consultum*, as giving greater prominence to the senate's part, became the usual expression, and indeed, in the period known to us, is the only term in regular use. It is interesting to compare this view with that of Herzog, who says '*Senatus consultum* mag der alteren Auffassung entsprechen, wonach der Senat das consilium des Beamten bildete, *decretum* dem daraus entwickelten Verhältniss, nach welchem . . . seine Entscheidungen Regierungsverordnungen waren.'

We have left but short space in which to notice Dr. Mommsen's view of the position occupied by the senate under the principate. As is well known, he has described the imperial government rather as

a dyarchy than a monarchy, but until the publication of this volume the explanation and justification of the description have not been given. The last chapter in the work deals with the 'Sovereign Senate of the Principate.' Dr. Mommsen holds that the Augustan system was a compromise between the senatorial government as constituted by Sulla on the one hand and the autocracy of the Caesarian dictatorship on the other. On the one hand the magistracy, so far as it can be said to be represented by the princeps, is once more completely emancipated from senatorial control: on the other the sovereignty of the citizen-body is step by step transferred from the comitia to the senate, a process which received its completion under Tiberius. That practically the senate was little more than an instrument in the hands of the princeps, and never a real check upon his autocracy, Dr. Mommsen does not deny, and indeed this is involved in the use of the term principate as a description of the *régime*. This formal sovereignty was shared between that body, and the foremost citizen, but it received its name from the stronger element. The following are the principal points in which Dr. Mommsen discerns the sovereignty of the senate. (1) The functions of the comitia as regards elections and legislation are transferred to the senate, and the foremost place, which had previously of right belonged to the people, is now assumed by that body the regular formula being 'senatus populusque Romanus.' 'The populus and respublica have become ideal notions, for which the real expression and the practical form is the senate.' (2) In all cases of interregnum senatorial government has the right to step into the gap, and so while the position of the senate is legitimate and permanent, that

of the emperor is a magistracy, standing indeed but extraordinary, and one which is not of necessity self-renewed. (3) The ultimate courts of appeal in criminal cases, that of the consul and senate and that of the emperor, are unmistakable instances of concurrent sovereignty. (4) The administration of the empire is to a certain extent shared between senate and princeps, as is shown in the division of the provinces in B.C. 27, in the assignment of Italian administration to the senate, with ever-widening exceptions it is true in favour of the emperor, and in the distinction between *aerarium* and *fiscus*, the former of which was at first, and probably till Nero formally at least, in the hands of the senate. (5) While the emperor reserved the gold and silver coinage as his own prerogative, the copper coinage was for a considerable period handed over to the senate, a step which, as has already been pointed out in the second volume (p. 985), involved a very real limitation on the power of the princeps, since under the conditions of the Roman system the disposal of the copper coinage involved the possibility of putting into circulation an almost unlimited amount of credit-money. There are many other points in connection with the senate which have fresh light thrown upon them in this volume, or which are for the first time brought into clear relationship with the principles of the Roman Constitution. It would be an interesting task to go through the article on the senate in Smith's *Dictionary of Antiquities*, correcting it in the light of Mommsen's exposition. Nothing could show in a more striking light the advance which has been made since the publication of that now somewhat antiquated book, in exactitude, insight, and systematic work.

E. G. HARDY.

Beiträge zur Landes- und Volkeskunde von Elsass-Lothringen. Die Alemannenschlacht vor Strassburg 357 A.D. Von W. WIEGAND. 1 Mk.

THE victory of Julian over the Alemanni in 357 was memorable not so much for what it effected as for what it failed to effect. It revived for the moment the prestige of the Romans in Gaul, but it was powerless to prevent the Germanisation of Elsass, which indeed dates from just this period. Associated thus closely with the national fate of Elsass, a topographical examination of the battle finds an appropriate place in a series of contributions to the local history and literature of Elsass-Lothringen. In spite of the unusually detailed accounts given by Ammianus and Libanius, the attempts hitherto made to localise the scene of the conflict have been unsatisfactory. F. Dahn

indeed in his elaborate discussion gives a purely imaginary picture of the battle based in no way on the nature of the ground. Hitherto the battle-field has usually been placed in the plain east of the range of the Hausberge. A consideration of the Roman line of march however shows that it must be put much to the south-west of this. Starting therefore from the two data that Julian marched from Zabern-Elsass against the barbarians encamped at Strassburg, Wiegand assumes that he took the direct military road, along which according to the Antonine Itinerary the distance was fourteen Gallic leugae, a measurement exactly confirmed by Ammianus (xvi. 12, 8). This road may be traced from about six kils. from Zabern to within about the same distance of Strassburg, both by visible signs and also by such names as *Hohe Strasse*, *Alstrass*, *Kaiser-strasse*, found in