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REVIEWS

Der Ursprung der deutschen Stadtverfassung. Von DR. GEORG VON BELOW. Pp. 147. (Düsseldorf: Voss, 1892.)

Untersuchungen zur Geschichte der Kaufmannsgilden des Mittelalters. Von DR. ALFRED DOREN. Pp. 220. Schmoller's *Forschungen* XII. 2. (Leipzig: Duncker and Humblot, 1893.)

SOME four or five years ago there appeared in the *Historische Zeitschrift* a couple of articles by a writer hitherto little known outside his immediate circle—Dr. Georg von Below—upon the rise of the town constitution of mediæval Germany (*Zur Entstehung der deutschen Stadtverfassung*), followed speedily by a thin volume on the rise of the civic community (*Die Entstehung der deutschen Stadtgemeinde*).

For some time before, historical work in this field had taken the direction of minute investigation concerning particular towns: Dr. von Below's writings would have attracted attention if only because they attempted to survey the whole of Germany and to state conclusions of general validity. He has, moreover, the gift of clear and concise expression; and the power, which is always so fascinating, of drawing sharp distinctions. But all these causes would have been insufficient to secure for Dr. von Below quite the amount of attention he has received. A further characteristic has to be mentioned—the employment of language of extraordinary virulence, ranging from scoffing irony and outspoken contempt to unseemly vituperation; as, for instance, where he says that, 'a shocking example of what one has to experience from dilettanti is afforded by the expectorations of Liesegang' (*Ursprung*, p. 13, n. 3).

Here, at the outset, the reviewer would like to pause and call Dr. von Below's attention not only to the undignified position in which a scholar puts himself who condescends to such weapons; not only to the needlessness of them—for a writer of his ability can indicate quite clearly his opinion of another, without departing from the language of good society; but also to some considerations which are likely to weigh more heavily with a patriotic German. He may perhaps not know that there are a good many people who think that English

university life has a great deal still to learn from German methods. But one of the cheap arguments brought against such reformers has always been the want of amenity in German discussions. They have been accustomed to reply that this is a thing of the past. Dr. von Below makes it difficult for them to say this any longer ; and perhaps he may bethink him in future that every resort to violent language is so much discredit thrown on German scholarship in other lands. And further, he may reflect that already French historical scholarship rivals German in thoroughness and accuracy, while it has always had the advantage in charm of expression. It will not need much to turn the attention of students away from Germany to a country where they will find not only scholarship but also urbanity.

To return to our theme. The publication of Dr. von Below's essays has been followed by a torrent of controversial pamphlets and reviews. A dozen or more scholars every year send one or two fresh contributions to the pile of new 'literature.' There are not only divers 'schools,' swearing by their several masters, von Maurer, Nitzsch, Gierke, Sohm ; there are different points of view, that of the legal historian, that of the constitutional historian, and that of the economic historian ; and the lawyer, who has hitherto had almost a monopoly of the subject, can hardly conceal his contempt for the economist. To make confusion worse confounded, after Dr. von Below had, as he thought, removed all competing theories to make room for his own, the distinguished jurist, Professor Sohm, unexpectedly stepped in, and, with language of high regard for the younger scholar, proceeded to seize the ground which he had prepared, and to build upon it a very different sort of edifice equally objectionable to Dr. von Below. It is now *Belovius contra Mundum* ; while his antagonists also have to turn aside from time to time to spar among themselves.

Two of the latest and most important of these publications are now before us. The reviewer sets about criticising them with trepidation. For either he will seem to imply his acceptance of one of the several competing theories, and in this case he will be set down as an 'Anhänger' of a particular master and school, and have to bear the burden of all that school's defects ; or else he will be of opinion that no one theory is adequate by itself, and then he will be visited with contempt for his want of discrimination. Dr. von Below warns us that only those can be presumed to have a real interest in enquiries touching constitutional history who feel 'joy in juristic distinctions' (*Ursprung*, p. xii.) !

It must be allowed, however, that even the mere economist can hardly fail to take pleasure in the sharp and clear-cut distinctions which Dr. von Below draws in the present work. If it is the fault of German scholars to distinguish over much, it is perhaps the fault of English scholars not to distinguish enough. Even if we ultimately find that our explanation must be of the nature of a synthesis, we shall the better understand the character of the elements which go to

make up the whole if we begin by analysis. But allowing that in this respect the economic historian must go to school to the lawyer, we must add that the lawyer has often himself to learn the lesson that his task is incomplete until he has made the attempt to form for himself a mental picture of the conditions which his terms denote. That he hardly attempts to do so is a defect in the work of Dr. von Below, as it is a defect in that of the scholar with whom he is most in accord, Professor Hegel.

Dr. von Below maintains that the origin of the town is to be found in the 'Landgemeinde' or 'Ortsgemeinde'; a view which seems to be identical with the belief of Dr. Stubbs that 'towns were originally no more than large townships or collections of townships, whose constitution cannot be shown to have differed from the general type of the ancient village' (*Const. Hist.*, i. 438, *cf.* 99). It is true that Dr. Stubbs profoundly, though insensibly, modifies this conclusion by his insistence on the hundred jurisdiction, an element absent from Dr. von Below's theory; nevertheless both writers agree in laying the greatest stress on the same institution as the germ of the later town. The main purpose of Dr. von Below's last book is to defend this thesis against the theory of Professor Sohm, who regards the town constitution as the result of the establishment of a market and therewith of a market-tribunal. He has quite overthrown, he supposes, the view that the town constitution arose out of 'Hofrecht,' or, as we should say, the manorial organisation. Yet he turns in passing to deal a further blow at the manorial theory; and it is here that we may venture to make our first observation. Just as Dr. Stubbs has remarked that the English towns, though they had their origin in the township, had it 'generally in the *dependent* township which acquired wealth and solidity under the protection of a great earl or bishop, or of the king himself' (i. 442); so Dr. von Below recognises that 'most German *Gemeinden* (communes, townships) were, at the time of the rise of the towns, dependent upon a *Grundherr* (landlord).' 'This dependence did not go so far,' he declares, 'as to amount to absorption'—whatever that may mean. 'But the *Gemeindeherr* (lord of the township) had succeeded in securing recognition of his superior property rights over the common lands, in laying various burdens on the members of the township, and in making the passing of bye-laws and the appointment of officers dependent upon his approval' (p. 41). The phrase 'succeeded in securing,' &c. (*war es . . . gelungen . . . geltend zu machen*), is of course a trace of the author's acceptance of the Mark or Original Free Village Community theory. But that is not really in question just now; the point to observe is that when the towns arose the townships were as a rule—I should be inclined to ask for any case where they were *not*—in dependence upon lords, however that condition of things may have come about. But when once this is perceived, the question arises whether the township theory is after all so far removed from the manorial theory. It is not necessary to follow Nitzsch, either in

supposing that the baronial retinues (*ministeriales*) constituted an important part of the burgess body, or that the burgesses were originally all serfs, or even that the later craftsmen were originally all the serfs of the town lord; each of these positions may be surrendered without surrendering the idea that the towns grew out of—at any rate geographically—groups of persons subject to a *Hofgericht*, or, as we should say, out of manors. Indeed the question is pertinent what we really know of any *Landgemeinde* not subject to manorial jurisdiction, at the epoch of the rise of the towns. It is significant that Dr. von Below, to prove township control of weights and measures, has to rely on the records of customs (*Weistümer*) made ‘in the later centuries of the middle ages and the beginning of modern times’ (p. 61). ‘There exists no older information as to the competency of the *Landgemeinden*.’ He thinks ‘we can without hesitation date back from these to earlier times.’ Perhaps we may for weights and measures; but for other and more vital matters that is a dangerous procedure.

The main purpose of the book, to show the untenableness of Professor Sohm’s theory as to market rights, is one with which it is more possible to be in complete accord. The present writer has already pointed out in another place (*Eng. Hist. Rev.*, vii., 340), the extremely artificial character of Professor Sohm’s line of argument. Even the proposition that the market was the one essential factor which made the town—apart from Professor Sohm’s views as to the *origin* of the market jurisdiction, which is clearly separable from it—is one which, as Dr. von Below clearly shows, cannot be maintained. In England, as we know from Dr. Gross’s treatise, the control of the market fell into the hands of the merchant gild, and the merchant gild legally and constitutionally was distinct from the town community. But when that is said, the question still remains to what extent trade and traders, whether specially organised or not, contributed to create the characteristic features of mediæval town life. Granting that the towns grew out of the earlier local groupings—whether we call them ‘villages,’ ‘townships,’ or ‘manors’ matters little, for there is hardly any dispute as to what the state of affairs in the country actually was—yet the towns were something more than townships or manors; and the question is, what was it made them more? Many things—fortification, privileges as to taxation, separate jurisdiction, a market; but is it not probable that the market (or the existence of a body of traders) was the most important of these, and to a large extent the very reason why the rest of them were secured? Dr. von Below remarks, and it is of the utmost importance, that it is necessary to distinguish the question of the *impelling motive* which caused a constitutional change, and that of the *organisation* which the innovation affected, and out of which the new institution arose. The latter, he says, is a question of constitutional history, the former of economic history (p. 12). This is a distinction which it is essential to keep in mind in the progress of an investigation. But when we come to sum up at the end, and speak of the *origin* (*Ursprung*,

Entstehung, &c.) of the town system, are we to lay stress only on the answer to one of these questions? This seems to be Dr. von Below's practice. Yet, for an edifice, foundation and superstructure are alike necessary; 'origin' suggests not simply a starting point, but also a process; and in that process, as Dr. Doren justly says, there were 'both active and passive elements' (*Kaufmannsgilden*, p. 25, n.).

The work of Dr. Doren just mentioned is one of that valuable series of investigations which owes its origin to the inspiration of Professor Schmoller's Berlin *Seminar*. It is rather a review of the literature of the subject than a really independent treatment of it; but as an introduction to the discussion it will be extremely useful, and it abounds in suggestive remarks by the way. First comes a chapter on the origin of the Germanic gild system in general; then one on mediæval trade and traders; then a review—and this will be extremely convenient to readers outside Germany—of recent investigations into the history of eight German and two French towns; then a renewed survey of the whole field, laying especial stress upon the economic elements involved; and finally an appendix of tables and documents. As to the 'origin' of the town constitution, Dr. Doren has ventured on a theory of his own which appears to be a combination of the teaching of Professor Sohm with some suggestions from Dr. Inama-Sternegg's *Wirtschaftsgeschichte*; he makes it due to 'a combination of the customary privileges of travelling merchants, and the privileges of the local market' (p. 32). But granting that these two elements coalesced—and to the present writer they seem rather to belong to different stages in the evolution—and supposing they were of great importance, Dr. Doren's view would seem to err almost as much as Dr. von Below's in laying emphasis only on one set of factors; for if these were, to use his own phraseology, the 'active' factors, what were the 'passive'? Or, in other words, if the action of these forces made the town out of something, what was that something? Dr. Doren seems to cast Dr. von Below's argument as to the survival of certain traits of the old agricultural group rather too lightly aside.

In tracing the later progress of events, the economic characteristics of the activity of the merchant gild, and the causes of the marked differences between England, France and Germany, Dr. Doren is more satisfactory; and his book ought to be looked at by every one who wants to know how far England pursued a movement of her own, and how far she shared in the greater currents of social life which swept over the whole of Western Europe. To call attention to half the points of interest would involve the writing of another pamphlet; but there is perhaps space to call attention to one. It will be remembered that in reaction against Professor Brentano's somewhat lurid picture of a struggle between merchant and craft guilds in England, Dr. Gross has maintained that the craftsmen were at first themselves members of the merchant gild. It has been urged as against this latter view that to

prove that *some* craftsmen were members of the merchant gild is not the same as proving that *all* craftsmen were members: that the merchant gild, though it extended its membership occasionally to persons outside the town, was primarily an association of *burgesses* of a particular town, so that to become a member it would be necessary in the case of an inhabitant that he should first be a citizen; and that it was the general rule that the possession of a burgage holding was the pre-requisite of citizenship; so that we need not be surprised if some craftsmen, being burgage-holders, and therefore citizens, became members of the merchant gild, and others, perhaps more, not having such holdings, remained outside (*cf. Political Science Quarterly*, vi., 566 *seq.*). All this argument is more than confirmed by Dr. von Below's insistence on the holding of land as originally the condition of citizenship in Germany, and upon the way in which in various towns craftsmen could acquire citizenship precisely because they could hold land (pp. 46-47); though he hardly sees just how far the proposition carries him. And now comes Dr. Doren, and by comparing his criticism of Dr. Gross's book with his criticism of Nitzsch, another important element in the problem presents itself. It had already been seen that in the monopoly of trade which the gild merchant obtained lay the danger of a serious conflict of interests with any craftsmen there might happen to be outside the gild; and this opinion Dr. Doren more than confirms (p. 150). But we have probably been led astray by an impression that craftsmen sold 'wares' to the general public earlier than they did. As Professor Schmoller and others have recently pointed out, the craftsmen at first worked chiefly in the houses, or at the immediate order, of a customer or employer—he may be called either—who provided the material. So long as they did not bring goods to market they would not need to become members of the merchant gild. It was only as and when the craftsmen began to desire to bring wares to market that the privileges of the merchant gild could create friction. As Dr. Doren points out (p. 133) it would only be the exceptional and richer craftsmen who would at first manufacture for the general public, and these would probably be already owners of tenements and therefore burghers. It would not be until *many* craftsmen sought to sell finished wares or to buy their own raw material, and found entry to the merchant gild difficult, that collisions would arise.

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The Jews of Angevin England: Documents and Records from Latin and Hebrew Sources, Printed and Manuscript, for the first time Collected and Translated. By JOSEPH JACOBS. London: D. Nutt. Pp. xxix., 425. 16mo.

THE aim of this book is to extract from contemporary sources all the passages which illustrate the history of the Jews in England up to 1206. That date, the author thinks, forms a real epoch in the

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