

sense absurd." He thinks that a man is no more justified in complaining of having to support a state religion than of having to contribute to board schools or art schools. But he appears to confuse in his whole discussion what is legally right with what is morally right. When, however, — to speak figuratively, — he ascends the rostrum or pulpit, his remarks are eloquent and suggestive. "To be overruled by the pitiless forces of chance and passion — this is slavery, this is the extinction of individuality; to be educated by the best intelligence and the best morality of our age — this is freedom, this is life. Life is so brief, yet life might be so full" (page 177). One is disposed to believe that there is some truth in that.

Like a great many theoretical writers about government, the author takes a view of society at variance with facts. The process of legislation should perhaps be governed by logic and rules of morality, and even æsthetic ideals; but the theories which the author finds prevalent in Great Britain have little place here. Our way of looking at politics is, at least theoretically, that of the Greek and Roman publicists, if the author is right when he says: "In their eyes the state was a corporation; citizenship, a privilege; personal freedom, the right to discharge public duty."

ARCHIBALD ALEXANDER.

*The Patriarchal Theory.* Based on the Papers of the late JOHN FERGUSON McLENNAN. Edited and completed by DONALD McLENNAN, Barrister-at-law. London, Macmillan & Co., 1885. — 8vo, xiii, 335 pp.

Mr. J. F. McLennan first set forth his views upon the origin and evolution of marriage and kinship more than twenty years ago, in an essay upon *Primitive Marriage*. These views, his brother tells us, "were, on the whole, confirmed and enlarged by further study"; and it was his intention "to undertake a general work upon the structure of the earliest human societies." But, before attempting that work, he felt it necessary to "clear out of the way" certain widely received opinions in regard to the primitive household which "seemed to oppose an obstacle to the proper appreciation of his constructive argument." Of these opinions Sir Henry Maine is, among English-speaking men, the most prominent champion; and the work upon which Mr. J. F. McLennan was engaged at the time of his death was meant to combat and overthrow the patriarchal theory as presented by Maine. This is the book which Mr. Donald McLennan has completed and published. Seven out of the first ten chapters, and at least one of the last nine, had been put into substantially their present shape by Mr. J. F. McLennan;

the remaining eleven were worked out by Mr. Donald McLennan upon hints contained in his brother's papers. For these he wishes to be held responsible.

It is not my intention here to examine or criticise the positive theories of the McLennans. As far as they were set forth in Mr. J. F. McLennan's earlier writings, they have already been subjected to a great amount of discussion.<sup>1</sup> But it will perhaps be of interest to formulate and examine the McLennans' criticisms of Maine's theories. Issue is joined upon the following points:

(1) As to the historic priority of monandrous marriage, marital and paternal authority, and agnatic relationship. Here, I think, the McLennans have the best of the argument. They find "traces" of primitive polyandry and *Mutterrecht* (relationship exclusively through the female) in quite as many instances as Maine finds "traces" of *patria potestas* and *agnatio*.

(2) As to the extent of the husband's and father's powers. The McLennans find restrictions everywhere, — religious, moral, or legal; and wherever they find restrictions they at once assert that they have disproved the existence of *manus* and *patria potestas*. Such reasoning as this would prove that neither power existed at Rome, for at Rome also there were restrictions upon the house-lord's power, even in the royal period. The theory that his power was there originally unlimited rests upon the assumption that a general power with special limitations is probably older than the limitations.

(3) The McLennans assert that the duration of *patria potestas* through the father's entire life, and the extension of his power over the grandchildren, *etc.*, cannot be shown to be a general institution. I think they are right on this point. The Romans themselves regarded their law as anomalous in this respect, and the *emancipatio jure Saxonico* seems as old as any institution of German law.

(4) The McLennans assert that an *exclusively* agnatic system of kinship cannot be proven to have existed in any important branch of the Aryan family save the Latin. The evidence marshalled on this point is very strong.

(5) They attack Maine's theory that agnation implies *patria potestas* and is developed out of it. I confess I do not understand their reasoning upon this point, unless by *patria potestas* they mean an unlimited and life-long right of the house-lord over all descendants in the male line. They themselves admit that relationship cannot be traced in the male line until the husband gets a right of some sort to his wife (or wives) and thus incidentally to their issue; and they admit that this

<sup>1</sup> See, for example, Spencer's Principles of Sociology, part iii. ch. iv. *et seq.*

right was established in the earliest period by wife-capture, and later by wife-purchase. But these are methods of gaining the most unlimited of rights — that of ownership.

Great stress is laid upon the fact that at Rome *patria potestas* survived *agnatio*, and it is asserted that if agnation were the derivative and dependent institution, it should have lasted as long as the original and principal institution. I do not see the cogency of the argument. Legal history is full of cases where derivative institutions survive those from which they are derived, and *vice versa*. But there is an antecedent weakness in the premises of the argument. Agnation *did* last as long as *patria potestas* at Rome, not as an exclusive system of kinship, but as a legally superior system.

One of the incidental conclusions reached by Mr. David McLennan is that agnation was not the general system of Roman relationship in the royal period, but the system of the patricians only. He evidently is not aware that the same theory has recently been formulated by a German savant,<sup>1</sup> and furnished with a much larger apparatus of evidence than Mr. McLennan brings to its support.

I think that this book will be of service in "clearing out of the way" some of the overstatements and exaggerations of the patriarchal theory as presented by Sir Henry Maine. But I do not think that it seriously shakes the theory as held by scholars generally.

MUNROE SMITH.

*De l'Empire Allemand, sa constitution, son administration.*

Par C. MORHAIN, Sous-intendant militaire. Paris, Berger-Levrault et Cie, 1886. — Large 8vo, x, 455 pp.

Successful attempts at federal government are so rare in the political world that the study of perhaps the most powerful confederation of the present — one which has attained its position in an incredibly short space of time — is of the highest interest to the student of public affairs. On this account, if on no other, any book on the administrative system of the German empire must receive a warm welcome and attract more or less attention. Some such book, written in a language more commonly understood than German, has for a long time been needed; and this need it is the purpose of M. Morhain's work to supply.

It is to be regretted, however, that a book for which so wide a field of usefulness is open, is so faulty in its method of arrangement. We find no apparent system at all. The various chapters are all jumbled

<sup>1</sup> Bernhöft, *Die Römische Königszeit*. Stuttgart, Ferd. Enker, 1882.