

first time in the twentieth century, but an ancient and forgotten rule familiar to the astronomers of bygone years, in which the lunar calendar was in common use. It is idle for Mr. Maunder to quarrel with such a rule, just as it is idle for him to cite observations dependent on the telescope or an opera-glass, or other artificial aids to sight. Nor even with such aid can he find any instance parallel to that demanded by Colonel Mackinlay and the chronologers who follow Clinton's date. Their date is simply impossible, and must be dropped.

Mr. Maunder is quite right, however, in drawing attention to the abnormal date assigned to the Crucifixion by the same chronologers in placing it before the spring equinox. Once again we may simply say this date is impossible. Such a full moon as fell in March, A.D. 29, would not be that of Nisan, but of Veadar.

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Welsh Disestablishment and Canon Law.

IT is a strong, and on the whole healthy instinct, which impels us to find modern political problems in our studies of past history. But, like many other strong and healthy instincts, it needs to be carefully watched. Mr. Ogle assures us that he had long ago found strong reasons against Maitland's theory, "without any thought that a sudden turn of political controversy might make it expedient to produce them in however imperfect a form."¹ We believe him; his rather lengthy preface is temperate, dignified, and therefore impressive. He there deals directly with the Disestablishment question; we could wish that his whole book had dealt with it equally directly. But the main body of the work purports to be a scientific historical discussion of one of the best known among all Maitland's historical works. In this discussion Mr. Ogle rapidly loses the self-control which had served him so admirably so long as he openly faced the political question alone. The sense that the Downing Professor is often unfairly used as a political stalking-horse has bred a very pardonable irritation in his mind. He is conscious of attacking Maitland, at this particular moment, only because other far less worthy adversaries are sheltered behind that great name. And we seem to trace a gradual discovery, not the less irritating for being subconscious, that, when it comes to serious gnawing, Maitland is an even harder file than he seemed at first sight. In any case, there is a steady rise of temperature, and the hopes raised by Mr. Ogle's preface are succeeded by a growing sense of disappointment, to use no stronger word. So long as we were on frankly political lines, all was well; but now that the time is come for scientific research, we find ourselves wading through a political pamphlet.

¹ "The Canon Law in Medieval England," by Arthur Ogle, M.A., Rector of Otham. John Murray, 1912.

Bishop Stubbs, the greatest medievalist among that school of historians who had been strongly influenced by the Oxford Movement, championed a "Theory of the Continuity," which, while refuting certain exaggerated assertions as to the breach caused by the Reformation, has often been accused of inspiring equally grave exaggerations on the other side. Mr. Ogle gives his own version of this theory when he asserts the independence of the Medieval Anglican Church to have been so great that, "when the crisis came under Henry VIII., the papal authority was found hanging by little but the purse-strings." Stubbs would never have written so strongly as this; yet he committed himself to a theory of our legislative independence of Rome throughout the Middle Ages, which seemed to Maitland so exaggerated that he wrote his "Canon Law in the Church of England" to prove the strict dependence of medieval English Church Law. Stubbs, in his brief answering note, admitted explicitly that he had once or twice overstated his case, and implicitly that he had not always kept the issues sufficiently clear. Those issues have since been confused by so much controversial writing that we must begin here by focussing them down to their narrowest and clearest point.

Nobody doubts that the Canon Law—a body of ecclesiastical jurisprudence created or codified by direct or indirect papal authority—was held up by the Popes as authoritative for all Christian people. Nobody doubts, again, that the natural resistance excited by this claim took very different forms in Eastern and in Western Christendom. In the East clergy and laity were united in their repudiation of the Pope's legislative authority; in the West, the resistance was mainly confined to the secular powers. We need not go far to find cases in which temporal sovereigns and temporal courts repudiated the papal ruling with a clearness which leaves nothing to be desired by the most anti-papal of modern readers. The English King and barons, for instance, definitely upheld the old English law of inheritance at the famous Council of Merton in 1236. The English Bishops, at that Council, pointed out that Canon Law was opposed to that of the English State, which (as they contended) must therefore give way. They received the flat and uncompromising rebuff which has since become famous: *Nolumus leges Angliæ mutari*. Here is a case of resistance to Canon Law in a *secular* court, and *on legal principle*. The distinctions we have here italicized are of vital importance in every historical inquiry, but most of all in a matter which, like this, has been dragged into present-day politics. Mere resistance *in practice* to unpopular laws was, of course, common enough everywhere in the Middle Ages. Even in modern England, one of the most law-abiding among world-States, we may find the whole population of a great town chronically rebellious to the law of vaccination, imposed on the whole country by the sovereign legislature. But this bare fact would not justify the inference that the town in question claims to be a separate political entity, unbound by the legislation of the British State. Still less can we take any such disobedience in the Middle Ages to betoken more, at the very most, than an appeal from the written law to the great Unwritten Law of justice, to which men attributed even then a moral authority which might override the highest and most explicit enactment—*jus divinum et naturale*. In many cases, of course, there is not even so vague a principle as this at stake; we are confronted with

mere cases of indiscipline and disobedience, which leave the question of principle untouched. If Stubbs's theory of the legislative independence of the English Church is to be proved at all, it must be proved by adducing cases in which Englishmen resisted Canon Law neither (a) in reliance upon English Common Law (State Law), nor (b) because, being far from Rome, they might in practice safely ignore this or that inconvenient provision; but (c) in the name of an English Church Law, enacted by a National Church essentially independent of (though in many most important particulars admittedly dependent on) the Roman Church. This task is now attempted by Mr. Ogle; but, as one of the many Liberal Churchmen who have publicly spoken of the present Disestablishment Bill as illiberal, I may perhaps be permitted to say here equally frankly that Mr. Ogle's counterblast to Maitland is likely to do more harm than good. It may, indeed, encourage the already converted; it is readably written, and comes from a well-stored and naturally candid mind. Few readers will have time to compare it carefully with Maitland; fewer still will check the rival pleadings page by page with Lyndwood's "Provinciale," upon which both advocates rely for their main evidence. But Mr. Ogle's strong, though no doubt partly unconscious, bias renders such a comparison very necessary. Where he is most loose and rhetorical, we shall find Maitland clearest and most convincing. Where they disagree upon Lyndwood's meaning, we shall find (as we might have expected) that the eminent lawyer and brilliant medievalist has understood what the Rector of Otham has misunderstood. Mr. Ogle is a well-read man; yet his valour in this case is partly the valour of ignorance. He lays stress on the depressing words in which Maitland confessed himself "a dissenter from both [English and Roman] and from other Churches." But why should we not give an agnostic a fair chance, even in ecclesiastical history? Why should the devil have all the good science, or the children of light necessarily put themselves at a logical disadvantage against the children of this world? "Historic truth" (writes Mr. Ogle) "is not one of the kingdoms which the violent can take by force." These words, intended as a rebuke to Maitland, are in effect a most illuminating criticism of the mind which dictated them. If even the Kingdom of Heaven suffereth violence, who shall separate us by force from the lesser province of historic truth? Of violence in the invidious sense, Maitland had astonishingly little; it is not pleasant to think of the comparisons which outsiders will draw between his controversial style and Mr. Ogle's. But few men of our time have more consistently applied to scientific problems that holy violence which Christ enjoined upon all of us: "Seek, and ye shall find." Mr. Ogle, who seldom really understands Maitland, convinces himself from the very first that the latter never understood Stubbs's main position. Yet a competent living witness informs us that Stubbs, after Maitland's criticism, "intimated to me . . . that he was not prepared to dissent from Professor Maitland's view"; and Mr. Ogle's attempt to pass off this confession as a practical joke shows an astounding want of humour. Moreover, Stubbs did, in fact, reply to Maitland, with almost Gladstonian obscurity and involution of phrase, in a note of two pages which Mr. Ogle appears not to know; it occurs only in the third edition of the "Seventeen Lectures" (p. 335). There is no complaint here of having been misunderstood; on the contrary, Stubbs says: "I have

so great respect for Professor Maitland's knowledge, critical insight, and fairness, that I would gladly submit to any amount of adjustment of facts and authorities that he might prescribe to me."

So much, then, for Mr. Ogle's general position. Let us now descend to details. It is very difficult to understand which he considers the crucial points of his polemic. He enters into a not very coherent series of detached skirmishes, after each of which he claims the victory, often adding accusations of superficiality against Maitland, which may do very well to blow up the flames of political controversy, but can only irritate serious students. We will, therefore, choose Chapter IV., which very clearly illustrates these methods, and to which Mr. Ogle himself seems to attach special importance. He is well aware, in one half of his brain, that Canon Law made a definite place for local custom; but this essential truth never seems to filter into that cerebral lobe which conducts the attack upon Maitland. If, therefore, the whole argument of this chapter were correct, Mr. Ogle would still have proved no more than Maitland was perfectly willing to admit. The Pope allowed England, like other countries, to have her local customs, even though these were sometimes discordant with Canon Law; but we are as far as ever from discovering a medieval Anglican Church which asserted its own legislative independence against that which was generally considered the Church Law of Christendom. Moreover, in attempting to convict Maitland of ignorance, Mr. Ogle himself make very serious mistakes. He takes the case of the Papal Decretal *Vas Electionis* and archidiaconal procurations. The Decretal fixes these for England at a *maximum* of £50 *tournois*, or about £12 10s. sterling. On the other hand, English local custom commonly allows the Archdeacon, when travelling with a full retinue, to charge no more than 7s. 6d. Out of this Mr. Ogle tries to manufacture a case of conflict between English Church Law and Canon Law, with the usual accompaniment of gibes against Maitland. But here, as usual, the confusion is only in his own mind. A modern statute fixes the maximum charge for passenger trains at 1d. per mile. If any railway chooses to fix a lower tariff in its by-laws, it does not thereby bring these into conflict with Statute Law. Moreover, Mr. Ogle has seriously misunderstood Lyndwood's note on p. 224, s.v. *solet solvi*. He evidently does not realize that *communis consuetudo*, like *communis fama*, does not necessarily imply *universality*; it goes no farther than *generality*. Therefore, though this seven-and-sixpenny tariff was the general English custom, yet there might well be districts which knew nothing of it. Accordingly, Lyndwood takes care to add: "But where custom does not limit the amount of the procuration, we must have recourse to what we find in the Decretal *Vas Electionis*." The meaning here is very plain; where the by-law happens to give us no guidance (and there may be many such cases), we must fall back upon the Statute Law—*i.e.*, the Papal Decretal—to which Lyndwood, as a man of business, therefore refers us. Yet Mr. Ogle misunderstands this; indeed, he is morally compelled to misunderstand it, since there would be no other way of imputing a blunder to Maitland. "His [*i.e.*, Lyndwood's] mention of it," writes he of this Decretal, "is purely academic . . . it has no bearing on the matter in hand. . . . But mark how Maitland presents the matter. He treats Lyndwood's glancing references to the *Vas*

Electionis as solemn statements of the law. In a grave disquisition as to the effect of the Decretal, he huddles up the one plain fact that for England it has merely a curious interest, being overridden by English law in *the one case to which it could apply.*" These last words, which we have italicized, contain a third blunder as bad as the two which have already been exposed. Mr. Ogle has just quoted a remark of John of Ayton to the effect that English Bishops "do not commonly exact procurations, as they do not visit the churches in detail." He does not see that this word *commonly* belongs, in fact, to both clauses. No prelate could claim his procuration (by a healthy rule of Canon Law) except for a personal visitation; therefore English Bishops do not *commonly* take procurations, because they do not *commonly* visit in person. Not only is this John's evident meaning (for he was an eminent Canon lawyer, and knew how inevitably the two things went together), but we know it to have been the historical fact. At the very time when John was writing, Bishop Grandisson was not only visiting the parishes of Cornwall in person, but drawing up by-laws to regulate the procurations claimable in his diocese for such personal visitations ("Reg. Grandisson," pp. 817 *et seq.*, esp. p. 836). When, therefore, Mr. Ogle urges against Maitland "if our prelates did what they did not do, visiting particular churches and exacting procurations, etc.," he is simply exposing his own misapprehension of the fourteenth-century canonist, and his own ignorance of fourteenth-century church-life. Moreover, he is making a further blunder which betrays his unfamiliarity with common medieval technicalities. Archdeacons were "prelates," as well as Bishops; and, if Lyndwood could have read the distinction which Mr. Ogle draws here and on p. 77 between the "prelate" and the "archdeacon," he would simply have told him to go back to school.

On three consecutive pages, then, Mr. Ogle has made four bad blunders. He has missed the crucial fact that the *Vas Electionis* prescribes only a maximum tariff; he has misunderstood Lyndwood's very simple statements as to English custom; he has argued from the alleged complete absence of personal visitation among English Bishops (for his words on pp. 78 and 79 are meaningless, unless the statement be exhaustive); and he has tripped over a common medieval technicality. After all this he asks: "Now what is it that leads Maitland to find so much in this empty Vessel of Election? Simply his anxiety to prove that the Papal Law was operative in England." If Mr. Ogle permits himself this kind of language, not once but a dozen times, against the Professor for whose "knowledge, critical insight, and fairness" Bishop Stubbs expressed so deep a respect, it is not because the Rector of Otham has discovered flaws which remained hid from the one man who might have had a right to treat Maitland as an equal on this ground. It is simply because he does not know enough of medieval conditions to realize how incomparably greater was Maitland's knowledge and critical insight. When, in a later part of this same chapter, he goes on to insinuate that Maitland derived his knowledge of Lyndwood mainly from the index, those who know the Professor's work will only wonder that Mr. Ogle should have so little sense of humour and proportion. Further investigation will satisfy such readers that here, as elsewhere, he misunderstands the law, and therefore scoffs at the lawyer who expounds it correctly.

Mr. Bumble's attitude towards the law may sometimes raise interesting questions; but it is only the attitude of Mr. Bumble, when all is said and done.

One point, out of very many, deserves further mention—the insinuation that Maitland did not understand the medieval theory of Church and State (pp. 63 *et seq.*). Maitland had, at least, studied the subject deeply; if Mr. Ogle had read his translation of Gierke with any care, he could scarcely have written that the clergy had no shelter from Papal Law but the power of the Crown (p. 66); for all that was truly Christian in the clergy would have found it far more easy and effective to entrench itself behind the *jus divinum et naturale*. It is more interesting, however, to note that Mr. Ogle here takes a position against Maitland which really plays into the hands of the Liberationists. After treating Maitland as a lawyer who has strayed beyond his province, he writes (p. 65): “The medieval mind distinguished, not between Church and State, but between a spiritual and a temporal power consenting in the governance of one great Catholic community.” One is tempted to ask whether Mr. Ogle has ever studied St. Augustine's “City of God,” with its essential and repeated contrast between Church and State—the *Civitas Dei* and the *Terrena Civitas*. Medieval thought was saturated with this conception of the conflict, necessary in human nature, between these rival powers; the first founder of the earthly state had been Cain, and “the story of Cain and Abel prefigured the enmities between these two States, that of God and that of men” (“Civ. Dei,” xv. 5). If we are to confine ourselves (as Mr. Ogle seems to argue) within the limits of Lyndwood's (and Augustine's) ideal conception of the Catholic Church as “the multitude of the faithful, united in faith and charity,” then we admit very uncomfortable political corollaries. It would then be no robbing of the Church to distribute some of the Welsh endowments among Greek Christians or Wesleyans, to whom none but a bigot would deny a place among “the multitude of the faithful.” Or, if he insists absolutely upon the qualifying clause, “united in faith and charity,” he thus will only too fatally disestablish not only the Welsh, but every other Church in this wicked world. We have heard even faithful Roman Catholics express doubts as to the salvation of other Roman Catholics whose faith differs in details from their own; and the bond of charity is broken among Christians even more frequently than the bond of faith. Mr. Ogle will complain that all this is absurd; so it is, but it follows logically from his own premisses. It is the old story; where Maitland was transparently clear and logical, his critic takes refuge in a theory which has the apparent advantage of being too intangible to be severed by any earthly weapon. But this theory, like all vague ideals, is inapplicable to existing human institutions in direct proportion to its value as a rule of private conduct. Of all laws that ever were given, “Love one another” is, at the same time, the loftiest in authority, and the most impossible to enforce or to argue from. Lyndwood's definition of the Catholic Church could be used almost as effectively by a Christian Scientist or an anarchist as by Mr. Ogle; in a question such as Maitland is arguing, it proves so much as to prove next to nothing. All this was quite understood in the Middle Ages, and that is why we find medieval lawyers and political writers laying so much stress upon that

narrower sense of the words *ecclesia* and *ecclesiasticus*, as Maitland clearly saw, although Mr. Ogle fails to see it even after him.

It would be easy to adduce many more instances where Mr. Ogle's gravamina against Maitland rest upon a misunderstanding either of text or of evidence; but these are, perhaps, enough. We are confident that the few who take the trouble (sometimes needlessly increased by Mr. Ogle's imperfect references) to follow both parties through their authorities will rise from the work with the conviction that the "continuity theory," in the exaggerated form in which it is very commonly stated, is quite untenable. Not only does Lyndwood studiously avoid attributing to the *Ecclesia Anglicana* a lawgiving power independent of the Canon Law (though he has to comment upon texts which cry for some such exposition), but he makes repeated assertions which, on the face of them at least, contradict any such supposition. Moreover (as Maitland points out in a passage to which Mr. Ogle vouchsafes no attention), the one man whom we know to have made some such claim on the verge of the Reformation, Dr. Standish, was ill-received by Convocation (p. 89). His recorded exclamation, "What shoulde one poor frier doe alone against all the bishops and the clergie of England?" should have been among the first words to engage Mr. Ogle's attention in this attempt to defend the Welsh Establishment on the continuity theory of fifty years ago. The real line of defence is not to restate that theory in a form as exaggerated as the unauthorized corollaries which are sometimes drawn by politicians from Maitland's great work. We cannot destroy misrepresentation by misrepresentation. It is a pity that Mr. Ogle has not devoted his considerable powers of work and exposition to showing how tithes were originally private endowments; and how no principle can be invoked for Welsh Disendowment which would not equally apply to the moneys now enjoyed by Unitarians, though left for Presbyterians; and, lastly, how small is the chance that the commonwealth will really gain by the transference now suggested. He would then have secured the hearty support of many who will be compelled to greet this present book with an emphatic *non tali auxilio*.

G. G. COULTON.



Notices of Books.

THE NATURAL HISTORY OF RELIGIOUS FEELING. By Isaac A. Cornelison, D.D. *Putnam*. Price 6s. net.

The author is concerned to investigate the question of "miracles in the soul." This he does with regard to all forms of religious ecstasy, and particularly of conversion. His method is strictly scientific. The conclusion may be given in an extract from p. 163: "We believe that the emotion in religious experience is the product of a Divine action, that the Holy Spirit does comfort believers . . . but we believe that action to be providential, not miraculous—the kind of action that is now accomplishing all the purposes of God in the outer world . . . without once interrupting natural causes in their operation." Some of the tables of statistics about conversion and the discussions of its natural causes are very interesting. At the end is a