

R E V I E W S
 BOOK FOR THE MONTH

THE MEDIEVAL IDEA OF LAW as represented by Lucas de Penna.
 A study in fourteenth century legal scholarship, by Walter
 Ullman, with an Introduction by Harold Dexter Hazeltine.
 (Methuen; 20s.)

This is a very good book, demanding by its contents the attention of all students of medieval legal and political thought, and to be commended to a wider circle of readers on account of its general interest, lucidity and excellent construction, not to speak of its elegant format. The first point is made manifest from the start by the learned, straightforward Introduction, in which Professor Hazeltine places Lucas de Penna (c. 1320-90) in the general framework of the development of jurisprudence. It becomes obvious that he cannot be neglected in the reconstruction of a critical period which has not received the attention it deserves. As to the general readability of the book, a short review can do little more than say 'try it'.

Not much seems to be known of Lucas personally (ch. 2), except that he was a practising lawyer and judge and therefore immune from the ostentation of erudition proper to a professor. His deep and wide culture must have been acquired at some university, but there seems to be little or no ground for making him a student of Toulouse. His immediate teachers seem to have been Neapolitan, and in a general way he belongs to the school of the Bartolists, Cynus of Pistoia and ultimately Pierre de Belleperche and Jacques de Revigny.

Lucas's main work is in the form of a commentary on the last three books of Justinian's *Codex*, a characteristically misleading form for what, if we believe (as we do) Dr Ullmann (p. 15), is a 'complete exposition of the fundamental legal principles and juristic rules relating to all departments of the ramifications of the law'. Still, even without acquaintance with the original work one may safely conclude that Lucas owes Dr Ullmann a great deal. The collecting and ordering into a lucid and coherent whole of the basic ideas underlying a commentary on the *Tres Libri* (ch. 3-8) must obviously have involved months of patient and disinterested labour, only possible to an exceptionally qualified scholar. Lucas's ideas are seen in this presentation to be of real interest and importance, and that the presentation is a faithful one is vouched for by the footnotes, which not only cite, but quote, the relevant passages of Lucas's

commentary—a particularly commendable feature in an account of a practically inaccessible work.

Naturally Lucas is a man of his own times. His acceptance of the Christian conception of man and human society is unquestioning, and he assumes the universal validity of Roman law, that is of the law of the *Corpus Iuris*, both as being the ordinance of the supreme civil ruler, the Emperor, and as being the authentic 'transformation of the metaphysical idea of justice into a workable reality' (p. 76). Not the least service rendered by this book is that it illustrates the application of these then universal postulates by a vigorous and independent mind. How far Lucas is original only a specialist can say, but at least he was no slave of authority; if he accepts what other men accept, it is because it is commended to him by reason.

It is not only specialists who will read with profit Dr Ullmann's discussions of Lucas's views on the nature of law and justice, the authority of customary law, the application and administration of law, and the nature of crime and war. Of particular interest are Lucas's views on civil sovereignty; Dr Ullmann's comparison of them with those of his contemporaries are most valuable. In the eternal conflict between Church and State Lucas sides, so far as an orthodox Catholic can, with the State. It is a question on which it is always possible to disagree; but it does not seem to us that Lucas gets to the root of the matter, which is simply: which of the two divinely constituted authorities is to settle the limits of the things that are Caesar's? In the last resort it seems undeniable that in principle the decision rests with the spiritual authority and in fact with the civil. Lucas, of course, accepted both authorities as conferred by God, and it may be that in his day it was the independence of the State in its own sphere that needed to be insisted on. But such a state of affairs is hardly likely to recur. For centuries past, while the Church continues to attribute divine authority to the State, the secularist State has recognised no such authority in the Church, but admits it, in general, as a concession to the superstition of some considerable portion of its subjects, in the form of a grudging Concordat, to be broken almost as soon as it is made. It is, therefore, in our opinion, hardly a virtue in Lucas that to some extent he anticipates the sixteenth century humanistic doctrine of the absolute State. The fact that Lucas was moving ahead of his contemporaries does not prove that he was moving in the right direction; to us it seems that the advance of the humanists was not in jurisprudence but in philology and history, and that even their history was decidedly one-sided, as Dr Fritz Schulz points out in his recent *History of Roman Legal Science*. However, the business of the historian of

ideas is with their genesis and development, and this Dr Ullmann conducts in masterly fashion.

F. DE ZULUETA.

THE INDIVIDUAL AND THE STATE. By the Rev. Robert H. Murray, Litt.D. (Hutchinson, 21s.)

Of this book, the publisher tells us that it is 'a remarkable history of the individual and the State, brilliantly written, out of exceptional knowledge'. The author, a pupil of the late Professor J. B. Bury, and formerly an honorary Canon of Worcester, confides, in the Preface, that he has had charge of three different types of parishes, 'the small country, the large country, and the city type'. He has also been chairman of non-ecclesiastical as well as ecclesiastical bodies, and president of a working men's club, and has learnt much from this school of experience.

The book is divided into ten chapters and in some 250 pages it reviews the whole of history from the Greek city and the Roman Empire, through the period of the Middle Ages, and the Reformation to the Prussian State and Nietzsche and the Totalitarian systems, down to the present day.

We are told that 'the claim of the book is that man is a moral being or he is nothing'. And the clue to the whole volume is given in the first chapter and repeated on the last page. 'The wise man lives by the laws of a city in the heavens which is not and cannot be realised anywhere on earth—a city which

"is built

To music, therefore never built at all,
and therefore built for ever".'

In this spirit the author, undertaking his task with 'youth and gaiety of heart', gives a running commentary on the whole course of history, of the oneness of which he is so conscious, that he is able to say that though 'from the 4th century B.C. to the year 1860 is a long interval, yet the American Civil War is at bottom a revolt, an armed revolt against the opinions of the Stagirite' in relation to slavery.

Of St Augustine, we are told, that 'the amount of good—and the amount of evil—he did can never be measured. . . . The *Confessions* leaves the impression on its readers that the study of the classics was definitely less valuable than the study of theology. . . . We do not care to say that Christianity temporarily debased the intellectual currency, yet in the hands of such leaders of thought as St Jerome and St Augustine, it scarcely discouraged its debasement'.

In the chapter on Law and Life in the 13th century, the *Decretum* of Gratian is, by a delightful error, described as the *Concordia Discordantium Sanorum*. And it is said to be 'nothing short of a tragedy' that Juvenal's words 'propter vitam vivendi perdere causas' apply to the 'astounding career' of Innocent III. 'Without in the least intending it', St Thomas Aquinas 'regimented thought as Boniface VIII regimented action'. On the same page we are told that Machiavelli