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Book Reviews

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BOOK REVIEWS

ON JURISPRUDENCE AND THE CONFLICT OF LAWS, by Frederic Harrison of Lincoln's Inn, M. A. Oxon, D. C. L., Litt. D., LL. D. With annotations by A. H. Lefroy, M. A. Oxon, of the Inner Temple, Barrister at Law. Professor of Roman Law and Jurisprudence, University of Toronto. Oxford: At the Clarendon Press, 1919, pp. 179.

The appearance in permanent form of these five lectures, which were first published in the *Fortnightly Review* in 1878 and 1879, will be welcomed by all interested in the history of jurisprudence, since they put forth in most attractive form several of the basic principles of the subject as they were understood by learned English jurists forty years ago. They are reissued in practically unchanged form, with annotations by Professor Lefroy, whose untimely death apparently occurred before the volume was printed, though there is no notice of that sad event in the book itself.

The constructive critical spirit of these essays is in marked contrast with the vituperative character of the writings of the post-Blackstonians in the period preceding Sir Henry Maine. The first essay gives due credit to Austin's masterly analysis of the concept of sovereignty as derived from his time and environment, and then shows the improvement that Maine made upon this by insisting upon its relativity in time and space. Austin's theory of a *determinate* sovereign breaks down under Maine's question as to what *determinate* sovereign could take from a State of the United States its equal representation in the Senate.

The second essay on Austin's analysis of law is in like manner corrected in the next essay, on the historical method, which shows clearly Maine's great contribution to the subject, by his insistence upon the question, how law has come to be what it is, rather than by pursuing further the exhaustive, if not exhausting, refinements of Austin as to its nature as a static concept.

It is to be regretted that the last two essays on the "Conflict of Laws" have not had the practical result of changing the name of that subject. The author shows that the common term, Private International Law, is hardly more than a mere exosmotic product of Public International Law, the name of both apparently exuding from the Roman *jus gentium* and then differentiating by fission, though there is very little of the substance of the parent cell in either of the offspring. On the other hand, the term "Conflict of Laws" is a misnomer because we find in the subject no *conflict* but simply an "ambiguity arising from the fact that more than one set of co-ordinate laws apparently apply to the case." The author therefore suggests the term *Intermunicipal Law*, but he confesses in the Preface that his suggestion has never been adopted.

It is fortunate that the venerable author, now in his eighty-eighth year, has consented to have the lectures printed in their original form, as they thus give to us a lucid and attractive account of historical and comparative jurisprudence in the last half of the nineteenth century, with many clever pre-

monitions of the sociological jurisprudence now in vogue. The author, like Maine, is a lawyer with a style, and in the effort now making to get our material for the teaching of jurisprudence into "case-book" form, this little volume will be found of practical use and, too, a most grateful oasis in the stylistic-desert of jurisprudential literature.

JOSEPH H. DRAKE.