

## FRIDERICK HARRISON ON THE ENGLISH SCHOOL OF JURISPRUDENCE.

thinker, and an accomplished scholar. Certain articles by him under the above title have appeared recently in the *Fortnightly Review*, which, if fragmentary in their character, are nevertheless full of suggestive remarks. The first two, contained in the October and November numbers for last year, were mainly a criticism of certain parts of Austin's writings, and especially of his view of Sovereignty and Law, as considered by the light of Sir Henry Maine's researches. It is not intended to dwell upon them, but it may be worth while to repeat the author's statement of what he understands by Jurisprudence. "Jurisprudence," says he, "can be placed no higher than a systematic arrangement of rules established by practical convenience; and the attempt to base it on psychological principles or theories of abstract logic, seems arbitrary and quite illusory. Practical convenience is the source of law; and technical convenience is the aim of all classification. The attempt to force metaphysical precision on a body of technical rules would be a mischievous form of pedantry."

It is, however, to the third of these articles, namely, that on the Historical Method, which is contained in the *Fortnightly Review* of January last, to which it is especially desired to call attention. Mr. Harrison begins with some remarks on the *history* of the Historical Method in Law. While some approximation to it may be found in the works of such early writers as Bodin and Grotius, the conception is first found in its fulness in a juvenile production of Leibnitz, viz., the *Nova methodus discendæ docendæque jurisprudentiæ*, published in 1667. Here Leibnitz speaks of the historical method of explanation, and distinguishes between the *external* and the *internal* history of Law; the latter being the history of events which accompanied and affected

the actual internal history of law itself. He speaks of an *historia mutationum legis* as one of the things wanted in law.

The next occasion when we meet with the historical method treated in any fullness is in the celebrated 44th chap. of Gibbon's *Decline and Fall* (1776-1788). For, though, Montesquieu has, in his "Spirit of the Laws" (1748), some allusions to the historical method, and even in some chapters has actually exemplified this method, his book is concerned rather with political and social changes and with the external history of law, than with the internal history. Gibbon's chapter is a most wonderful analysis of the external and internal history of Roman Law. Partly no doubt owing to him an Historical School of Jurists arose in Germany, which is identified with the name of Hugo, author of a celebrated history of Roman Law (1790). Hugo with Haubold and Cramer prepared the field for the historical genius of Savigny, whose work on *Possession* (1803) marks a distinct revolution in the study of Jurisprudence, and is a complete proof of the value of the historical instrument.

His next great work was the *History of Modern Roman Law* in which he traced the continuity of the Civil Law from Justinian to the end of the middle ages. Niebuhr's researches in Roman history, and his discovery of the MS. of Gaius, in the Chapter-house of Verona, in 1816, added a new stimulus to the historical treatment of Roman Law. "Gaius" has been described as the best book on Law ever written. But the next great advance in the Historical Method was due to the English School, as represented by Sir H. Maine. This school may be connected by repulsion with Bentham and Austin. Austin does, however, in some parts show traces of the Historical Method. Sir H. Maine shows, with