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Lord Kames: Legal and Social Theorist, by Andreas Rahmatian, Edinburgh, Edinburgh University Press, 2015, viii + 336. £90.00 (hardback), ISBN 978 0 7486 7673 6

Henry Home was born in Kames, near Duns, in the Scottish borders in 1696. He came to Edinburgh in 1712 as an apprentice to a member of the writers of the signet, and following a public examination in front of the Lords of Session on 19 January 1723, was admitted to the Faculty of Advocates. In 1728, he published his *Remarkable Decisions of the Court of Session from 1716 to 1728*, a notable feat of stamina and industry. He became Lord Kames on 6 February 1752, when he took his seat as a Lord Ordinary in the Court of Session. He died on 27 December 1782, aged 86. A biography of Kames was written by Ian Simpson Ross in 1972, which remains to this day a wonderful portrait of Kames and the world which he inhabited. A friend of James Boswell, David Hume, Adam Smith, William Hamilton, Benjamin Franklin and John Millar, he was well connected. He was also a prolific writer, publishing fourteen books on topics ranging from agriculture to aesthetics. He has not received until now an overarching intellectual biography, although William C. Lehmann's 1971 biography, *Henry Home, Lord Kames and the Scottish Enlightenment: A Study in the National Character and in the History of Ideas* came close to this in its ambition. In spite of his influence and ideas being well-known within the existing literature he has not received, at least according to Rahmatian, sufficient attention as a thinker. However, Rahmatian's monograph is a significant contribution on both accounts, offering both a new appraisal of Kames' ideas as a whole and an overarching examination of his *oeuvre*.

Lord Kames does not generally require much of an introduction; his reputation often precedes him. However, there can be a tendency to parody Kames like a character from *Blackadder*. Rahmatian summarizes what he sees as the (misleading) later reputation of Kames: an unoriginal thinker, who was 'domineering and arrogant, and published heaps of books of questionable quality which are only worth quoting to demonstrate oddities of thought and to make the real geniuses of the Scottish Enlightenment, such as Hume or Smith, shine in a brighter light'; he 'dabbled in many unrelated areas, mastered none properly (including law), and was essentially a conservative, derivative writer within the mainstream of eighteenth-century Scotland' (vi). Although it is difficult to find anyone who would stand by such an outspoken assessment of Kames, he is certainly correct to suggest that Kames can be dismissed too easily as an artefact of and not an insight to the intellectual life of eighteenth-century Scotland. However, what is distinctive about Rahmatian's engagement with Kames, and the argument of this book, is that Kames remains to this day a rich source of ideas and understanding.

The first half of the book offers a general overview of Kames' worldview. Chapters 2–5 deal with Kames' theory of aesthetics, epistemology, causation, reasoning, moral and political philosophy. They also offer the reader an introduction to Kames' theory of 'improvement' and anthropology. In general, these chapters try to paint a picture of interconnectedness and a sense of an overall project. Rahmatian therefore offers something valuable here; it is an attempt to observe Kames' body of work and to determine some general themes or ideas which are *Kamesian*. He argues that Kames is more practical and realistic in his approach to the moral sense of man when compared to Shaftesbury and Hutcheson and suggests that this originates in

Kames' training as a lawyer. He also suggests, as has been argued before, that his theory of justice can be seen as a response to Hume's conventional theory, which stressed public utility as the source of our sense of justice. What Rahmatian goes on to argue in Chapter 3 is that Kames' main achievement was 'a concept of morality [which is] a workable solution for the law, unburdened by complicated philosophical ramifications'. A key argument which Rahmatian maintains through these chapters is that Kames' *Elements of Criticism* is 'a central treatise in Kames's oeuvre' (20), which gives an account of man's moral sense.

Chapter 4 argues that Kames is a 'principal representative' of a characteristic of the Scottish Enlightenment: development and improvement. Rahmatian argues that Kames' *Sketches of the History of Man* is 'built on the notion of progress' (92). Two ideas underlie Kames' approach, one is that social institutions go through – or have been through – a process of evolution; the second, that one can see this process of change through history, which can be studied through a mixture of historical-empirical inquiry and a philosophical understanding of the arrangement of historical processes. He argues that in Kames you encounter 'the distinctive mixture between ahistorical "pure" philosophical thought and an anthropological/social history of man that is founded on philosophical assumptions' (93). What Rahmatian points out here, is that Kames' turn to history is typical of the Enlightenment, where 'one can present divergent positions and back these up with undeniable evidence from history. This has a corrosive effect on orthodoxies and dogmatic systems, such as religion or morality because it invariably allows a relativistic point of view'. This is a theme that he picks up again in the second half of the book which looks at Kames' approach to legal history, property, equity, obligations, and criminal law.

Chapter 6 is an overview of Kames' view of legal history. However somewhat out of the blue, Rahmatian criticizes in this chapter black-letter lawyers, when he says '[f]or the ahistorical mind of the modern black-letter lawyer [Kames' approach to law] ... may be astonishing, but for Kames the present law is inevitably the result of a historical process and of an anthropological development; it is also the outcome, if not a branch, of applied moral philosophical reasoning' (190). Whether he has picked the correct interlocutor or not, what Rahmatian shows here is that Kames wanted to elevate law to the status of science, which for him meant that law should be studied historically, anthropologically and be subject to moral assessment. Rahmatian argues in the spirit of Kames that '[i]f law is studied divorced from its historical and philosophical context, it degenerates into a dry set of meaningless and unsystematic rules, adhered to on the basis of authority only, and not developed by the exercise of reason' (190). Some readers may have sympathy with this position; and Rahmatian argues that in Kames you can find an example of how legal history can be used to challenge the authority or nature of the law we inherit.

In many ways, Chapter 7 feels like the centrepiece of Rahmatian's book. It deals with Kames' theory of property, and attempts to show how Kames can speak to contemporary property theory. Indeed, Rahmatian says that his engagement with Kames on this topic inspired his own theory of dematerialized property, which aims to incorporate intellectual property into general property theory. However, when it comes to Kames he argues that he did not hold a purely conventional theory of property. He had a mixed theory somewhere between a Lockean labour theory and a natural rights theory. According to Kames, man has a sense of property and by

occupation takes ownership, but he also takes ownership through mixing his labour with it (251). Property is founded upon the nature of man and his moral sense, that is '[o]bserving the inner sense of property is also a human action that is morally beautiful, and a primary virtue' (243). This chapter also plots out Kames' dislike for feudalism and his attack on it throughout his printed work. Rahmatian argues that Kames' theory is unique, possibly because he was aware of both the Civilian and English legal systems and because of the context of Enlightenment Scotland. In this chapter, the author demonstrates the real gains which can be made by contemporary legal thought when it engages seriously with the past.

Chapter 11 examines the influence of Kames upon some of the founders of the United States of America, Franklin, Adams, Jefferson and Wilson. Rahmatian argues that Kames was 'highly relevant' to colonial America before and around the time of independence. First, because he offered a 'fairly orderly and portable' collection of 'large areas of knowledge', which was of 'much use in the intellectual outpost of civilisation' (317); secondly, he was Scottish and not English, and seen to be sympathetic to the growing discontent of American settlers. Furthermore, the fact that he was a member of the 'establishment' gave his work some increased authority. He argues that Kames was 'attractive to several of the founders' although not collectively and through no specific work, he nevertheless influenced several of them individually. Kames reached them before they 'entered the political arena'. Rahmatian concludes his assessment with the argument that 'Kames' relevance to these four individuals among the founders of the US was remarkable' and that 'one can argue that Kames' influence on them was to some extent fairly representative for American as a whole at the time' (317).

The approach of Rahmatian will not be agreeable to everyone. Very little space is given to the specific context of eighteenth-century Edinburgh or the particular circumstances within which Kames wrote each of his specific texts. He does not make any distinction between the intention of the author and the meaning of the text. He speaks of Kames' *oeuvre* without flinching, influences without exhaustive textual analysis, some of Kames' ideas as if they are approximations of an ideal type, criticizes Kames and other writers for not getting it quite right, and assumes a level of consistency within Kames throughout the period of his career. Some will not blink an eye at any of this, others will. In other words, to read this book one needs to put to one side Quentin Skinner's 1966 'Meaning and Understanding in the History of Ideas' and Michael Foucault's *The Archaeology of Knowledge* of 1969. Some will find this hard to do. Others will find the absence of contemporary anxieties refreshing. Rahmatian writes very much within the classic genre of a history of ideas. A virtue for some, a vice for others. Or he possibly adopts what Richard Rorty has described as 'rational reconstruction' of past ideas in order to stimulate our ideas today. That being so, whether one takes a Skinner-approach or a classical-approach, what we learn from Rahmatian's exploration of Kames is that a great deal of our legal thinking today is based on assumptions and disciplinary boundaries. However, in Kames' writing we see that he questioned almost everything, and tried to satisfy his own mind on almost everything from causation to aesthetics to history. Whether this is a good thing or necessary is another question.

Rahmatian is to Kames, what Boswell was to Johnson. Or to put it as Thomas Carlyle did in 1832, 'Boswell wrote a good Book because he had a heart and an eye

to discern Wisdom, and an utterance to render it forth; because of his free insight, [and] ... his lively talent' (83, 1885). Rahmatian certainly is a lively writer. He holds no punches when speaking about contemporary doctrinal scholarship or the more methodological cautious. This sort of writing brings to mind some of the intellectual rough-and-tumble of the eighteenth century which Kames himself partook in. Indeed, given that Rahmatian's final sentence encourages the reader, in the spirit of the Enlightenment, to disagree with him, at least in the details; he may enjoy an interlocutor who takes him to task on these points or on other matters he raises in this book. This review has not done so, although one would probably have to start with establishing agreement on methodology which may not be easily done. Whatever the case, Rahmatian has done a great service to legal history and Enlightenment studies by undertaking the incredibly challenging task of an intellectual biography of a polymath like Kames. One would hope this is not the last word on Kames' ideas and the end of Rahmatian's consideration of Kames. In fact, as the recent work of Jill Robbie shows in regard to Kames' doctrine of common interest in *Private Water Rights* (2016), and the forthcoming monograph by Daniel Carr, *Ideas of Equity* (2017) suggests, there is a re-engagement at present with Lord Kames. If this is to continue, Rahmatian's interpretation will be a key touchstone in the re-appraisal of Kames' ideas and methods.

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