

extreme cases, become the moral DUTY of the *State* to sacrifice the legal rights of the few for the great good of all? There may be cases, as Mr. Hallam says, when the nation cannot afford the protection of the law to its enemies. The lawyer may not recognize such cases; but the jurist and the moralist do. They are cases of extreme necessity. They are to be regarded, whenever they come, as dire national calamities, which the political philosopher and the patriot will contemplate always with mingled fear and pain. J. H. A.

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NOTICES OF NEW BOOKS.

THE PROVINCE OF JURISPRUDENCE DETERMINED; second edition; being the First Part of a Series of Lectures of Jurisprudence, or the Philosophy of Positive Law. By the late JOHN AUSTIN, Esq., of the Inner Temple, Barrister-at-Law. London: John Murray, Albemarle street. 1861.

Few contributions to legal literature have been received with greater favor than Mr. Austin's *Province of Jurisprudence*. It was first printed in June, 1832, and, after some little time, arrested professional attention. Mr. Austin has recently died, and this re-publication has been made under the auspices of his widow, who writes an interesting and modest preface, containing some biographical sketch. The volume arose from the author's labors as a teacher and professor of law. "In the year 1826," says the preface, p. viii., "the University of London (now University College) was established. From the character and objects of this institution, it appeared to hold out a hope that not only classes of persons, but branches of science, excluded from the ancient universities, might find admittance and fostering in this. Among the sciences which it was proposed to teach, was jurisprudence, and Mr. Austin was chosen to fill that chair. As soon as he was appointed, he resolved to go to Germany, in order to study on the spot what had been done and was doing by the great jurists of that country, for whom he had already conceived a profound admiration. He immediately set about learning the language, and had already made some progress before he left England. In the autumn of 1827, after visiting Heidelberg, he established himself with his wife and child at Bonn, which was then the residence of Niebuhr, Brandis, Schlegel, Arndt, Welcker, Mackeldey, Heffter, and other eminent men, from whose society he received equal pleasure and instruction. Mr. Austin secured the assistance of a young jurist, who had just entered on that stage of the professional career in which men are permitted to teach without holding any appointment. They are called *Privatdocenten*, and are a sort of tutors. By reading

German law-books with this gentleman, Mr. Austin, while pursuing his main object, speedily acquired the language with that precision and completeness which he carried into every thing he studied."

"In spite," says the Law Magazine for May, 1860, "of the brilliant commencement of his career as a professor, it soon became evident that this country would not afford such a succession of students of jurisprudence as would suffice to maintain a chair; and, as there was no other provision for the teachers than the students' fees, it followed of necessity that no man could continue to hold that office unless he had a private fortune, or combined some gainful occupation with his professorship. Mr. Austin, who had no fortune, and who regarded the study and exposition of his science as more than sufficient to occupy his whole life, and who knew that it would never be in demand among that immense majority of law students who regard their profession only as a means of making money, found himself under the necessity of resigning his chair."

But the period during which he filled the chair was most profitable to his pupils and to his brethren of the bar. It led to the preparation and publication of the "Province of Jurisprudence." The purpose of the work is, perhaps, best explained by the author himself in his prospectus, printed for his law classes, and prior to the publication of the first edition. "Positive law, or *jus*," says he, "positive morality, or *mos*, together with the principles which form the text of both, are the inseparably-connected parts of a vast organic whole. To explain their several natures, and present them with their common relations, is the purpose of the essay on which the author is employed. But positive morality (as conceived in the whole of its extent) has hardly acquired a distinguishing name, though one important branch of it has become the subject of a science, and been styled by recent writers the 'positive law of nations.' For the variously-conceived and much-disputed principles, which form the measure or test of positive law and morality, established language has no name which will mark them without ambiguity. As related to positive law, (the appropriate subject of jurisprudence,) they are styled the 'principles of legislation;' as related to positive morality, they are styled 'morals or ethics;' but, as either of these names will signify positive morality, as well as the standard to which it ought to conform, there is no current expression for the principles in question which will denote them adequately and distinctly. He (the author) had thought of entitling the intended essay, the 'principles and relations of law, morals, and ethics'—meaning by law, *positive* law; by morals, *positive* morals; and by ethics, the principles which are the test of both."