

JURISPRUDENCE.

THE main object of the present article is no less ambitious than to give at least, one clear meaning to the word 'Jurisprudence'. I have, however, ventured to add a few tentative and diffident observations upon the German and English Schools of Historical Jurisprudence respectively.

Jurisprudence is the science of positive law, but to say that is to do little more than substitute a longer name for a shorter. We want to know what is a science, and what is positive law; and then what are the contents and scheme of this science; how does it treat its subject-matter, and what is the end it professes to achieve?

Now, when we say that jurisprudence is a science, we mean something more than that it is knowledge co-ordinated, arranged and systematized, to quote a dictionary definition of a 'science'. We mean, further, that the legal phenomena which are its subject-matter may be traced, and are by it traced, to ultimate laws of human nature; and that, to adopt words of Professor Holland, its generalizations will hold good everywhere by virtue of the fact that these legal phenomena possess everywhere the same characteristics.¹ 'Positive law' means, in Austin's words, 'law established or *positum* in an independent political community, by the express or tacit authority of its sovereign or supreme government';² that is to say, actual law, as distinguished from any ideal or imaginary law.

Jurisprudence, then, is such a knowledge, or such a system of generalizations about the actual laws of one or more countries.

But this still leaves us in the dark, for we want to know what is the nature of the contents of this science of positive law, what does it aim at teaching us, and what does it accomplish? Austin replies that Jurisprudence, or, as he prefers to call it, 'General Jurisprudence,' is 'the science concerned with the exposition of the principles, notions and distinctions which are common to systems of law; understanding by systems of law, the ampler and maturer systems which by reason of their amplitude and maturity, are pre-eminently pregnant with instruction': And again—

'The proper subject of General or Universal Jurisprudence (as distinguished from Universal Legislation) is a description of such

¹ Holland's *Jurisprudence*, 9th ed., p. 10.

² *Lectures*, 5th ed., vol. ii, p. 1072.