# John Austin

*(3 March 1790 – 17 December 1859)*

Richard Hartzman

BOOKS: *The Province of Jurisprudence Determined: An Outline of a Course of Lectures of General Jurisprudence or the Philosophy of Positive Law* (London: Murray, 1832); enlarged, 3 volumes, edited by Sarah Austin (1861–1863)—comprises volume 1, *The Province of Jurisprudence Determined, Second Edition: Being the First Part of a Series of Lectures on Jurisprudence, or, The Philosophy of Positive Law;* volumes 2 and 3, *Lectures on Jurisprudence: Being the Sequel to "The Province of Jurisprudence Determined." To Which are Added Notes and Fragments. Now First Published From the Original Manuscripts;*

*A Plea for the Constitution* (London: Murray, 1859).

**Editions:** *Lectures on Jurisprudence; or, The Philosophy of Positive Law,* fifth edition, revised and edited by Robert Campbell (London: Murray, 1885);

*The Province of Jurisprudence Determined, and The Uses of the Study of Jurisprudence,* introduction by H. L. A. Hart (London: Weidenfeld & Nicolson, 1954; New York: Noonday Press, 1954);

*The Province of Jurisprudence Determined,* edited by Wilfred E. Rumble (Cambridge & New York: Cambridge University Press, 1995).

SELECTED PERIODICAL PUBLICATIONS—UNCOLLECTED: "Disposition of Property by Will-Primogeniture," *Westminster Review,* 2 (1824): 503–553;

"Joint Stock Companies," *Parliamentary History and Review* (1826): 709–727;

"Review of Friedrich List's *Das Nationale System der Politsche Oekonomie,*" *Edinburgh Review,* 75 (1842): 515–556;

"Centralization," *Edinburgh Review,* 85 (1847): 221–258.

John Austin is widely recognized as the father of English jurisprudence. Building on the work of his friend and mentor Jeremy Bentham, he founded the discipline of analytic jurisprudence and the philosophy of legal positivism. Analytic jurisprudence is the logical elucidation of the concepts of *law* and *legal system* and of fundamental legal concepts such as *right* and *duty;* with the exception of Bentham, no one in England before Austin had engaged in such a systematic and theoretical investigation into the nature and foundation of law. Legal positivism (not to be confused with philosophical or logical positivism) is the view that law in the proper sense of the term is limited to "positive," or actually existing, law—that is, law laid down by competent political authorities. The roots of legal positivism can be seen in the works of philosophers such as Thomas Hobbes, but the theory was first given a conceptual foundation by Austin and Bentham. Although jurisprudential studies on the European Continent were far in advance of those in England in Austin's day, legal positivism and analytical jurisprudence were unknown on the Continent.

Austin is best known for his command theory of law, his controversial perspective on the nature of sovereignty, and his insistence on the separation of law and morality. His work marks a break from the traditions of historical jurisprudence, which studies the development and evolution of the law, and of natural-law theory, which holds that law, to be valid and binding, must conform to the standards of morality.

Austin's work and thought, however, go beyond analytic jurisprudence and legal positivism. He was a lifelong and thoroughgoing utilitarian—that is, he believed that the rightness of an action depended on its tendency to promote the greatest happiness of the greatest number. He presented a lucid analysis of the concepts of act, will, volition, desire, and intent and applied them in a manner that still offers a penetrating, if incomplete, understanding of the basis of criminal and tort liability. He pioneered in the explication of the logic of judicial decision making and wrote with perspicuity on the nature and value of judicial legislation. He struggled, albeit unsuccessfully, to develop a coherent and scientific map of advanced legal systems. He also contributed to the political thought of his day by attacking the institution of primogeniture, calling for limited liability for corporations, defending free trade against the

protectionists, arguing for a hierarchically organized political structure, and upholding traditional British constitutionalism in opposition to democratic reforms.

Nevertheless, Austin's reputation was secured only when his widow brought out, between 1861 and 1863, a second edition of the only book he published during his lifetime, *The Province of Jurisprudence Determined: An Outline of a Course of Lectures of General Jurisprudence or the Philosophy of Positive Law* (1832), along with two volumes of previously unpublished material. Because of Sarah Austin's determination and belief in her husband's greatness, John Austin's work became the engine behind the development of English legal theory.

The first of the seven children of Jonathan and Anne Austin, Austin was born on 3 March 1790 in Ipswich. His mother, the daughter of a yeoman farmer, was well educated, religious, and melancholic in disposition. His father, a miller and corn merchant who profited greatly from the Napoleonic Wars, was the first in his family to acquire wealth. Although he had little education, Jonathan Austin had a precise mind and disliked exaggeration–characteristics shared by his eldest son. He was determined to provide better educational opportunities for his children, several of whom achieved considerable success.

It is not clear whether John Austin attended school or was tutored at home. In any case, in a burst of anti-Napoleonic enthusiasm inflamed by the almost continuous wars with France during his childhood and the presence of the military garrison at Ipswich, he enlisted in the army when he was seventeen. Starting out as an ensign and later promoted to lieutenant, Austin saw virtually no military action and fell into a state of boredom and indolence. Realizing that he was unsuited for a military career, he resigned in 1812 and returned to Ipswich.

Displaying the diffident, vacillating, overly sensitive, and perfectionist personality that hampered his striving for success during his lifetime, Austin was plagued for the next two years with indecision about what he should do next. He finally decided on the profession of law and in late 1814 began reading for the bar at the Inner Temple in London. His announced goal, even at this early stage, was "to study and elucidate the principles of law," according to a letter collected in Janet Ross's *The Fourth Generation: Reminiscences* (1912).

Formal legal education was nonexistent at that time. Instruction in the law was oriented toward practice, rather than theoretical grounding, and was acquired through undirected reading and discussion and by observation in chambers, a law office, or the courts. Austin's legal apprenticeship included work in the chambers of an equity draftsman–a preparer of pleadings for proceedings in courts of equity. According to an 1817 letter from Austin to Sarah Taylor, his work with the equity draftsman developed the "taste for perspicuity and precision" that led both to the clarity and to the often tiresome and dry detail of his writing.

During his period of vacillation Austin had met Sarah Taylor. Shortly after commencing his legal studies Austin proposed to her in a letter that is notable more for its legalistic and moralistically serious tone than for its expression of passion. Despite misgivings about Austin's prospects, Sarah's parents gave their blessing. The couple began an engagement that lasted through Austin's legal education and apprenticeship; they were married in August 1819, one year after he was called to the bar.

Born into a family with a tradition of two hundred years of public service in religion and politics, Sally–as Sarah was known in her younger years–was a good match for a serious young man with a potential for extraordinary achievement. She shared her husband's middle-class origins, good looks, intelligence, and ability. During their long engagement she joined him in reading the works of such thinkers as Tacitus, Francis Bacon, John Locke, Adam Smith, and Bentham. There were significant differences in their characters, however: while John was insecure, overly perfectionistic, humorless, and subject to "feverish attacks" and lengthy bouts of lethargy and despondency, his wife was self-confident, ambitious, and gregarious. She became an able translator of German works into English, a skill she used to help support her family.

Shortly before their marriage Austin had been introduced to Bentham, whose work he had long admired; when the newlyweds took up residence in Queen Square Place in London, they became neighbors both of Bentham and of Bentham's principal disciple, the philosopher James Mill. The Austin home soon became a meeting place for the Benthamite circle. A particularly close relationship developed between the Austins and Mill's son, John Stuart Mill. John Stuart took vacations with the Austins and, though fifteen years older, served as a playmate for their only child, Lucy, who was born in 1821. James Mill engaged Austin to tutor John Stuart in law; the precocious John Stuart, in turn, influenced Austin's understanding of logic, an understanding that played a role in Austin's analytic jurisprudence.

Bentham, who was seventy when the Austins moved to Queen Square Place, was one of England's most important political and legal philosophers, the founder of utilitarianism, and a radical social reformer. He believed that the human condition could be improved by the development of a science of legislation

based on the "principle of utility," or the principle of "the greatest happiness of the greatest number." This science of legislation, which he called censorial jurisprudence, was to determine what the law ought to be, in contrast to expository jurisprudence, the study of what the law is.

James Mill worked to put Bentham's ideas into practice in the fields of law, government, and economics. He had a deep influence on David Ricardo's economic theories, and Austin considered his *Elements of Political Economy* (1821) the model of what a work of social science should be.

Sarah Austin presided over a drawing-room salon that attracted intellectual luminaries such as Thomas Carlyle and George Grote. While John Austin was imbibing the radical politics of Bentham and developing his reputation as a master conversationalist, however, his law career was going none too well. He regarded the legal profession as "venal and fee-gathering," according to Lotte and Joseph Hamburger's *Troubled Lives: John and Sarah Austin* (1985). He took a position as a conveyancer and later became an equity draftsman. He also traveled on the Norfolk circuit but gave up his one case when he became tongue-tied. This anxiety about speaking in public, in contrast to his conversational brilliance in an intimate setting, contributed to his lack of success as a lecturer in subsequent years. He gave up the practice of law in 1825.

Austin's real interest lay in political and legal philosophy. His first published article, "Disposition of Property by Will-Primogeniture" (1824), demonstrates this interest, as well as his early adherence to the reformist politics that he later rejected. The article appeared in the *Westminster Review,* the journal founded by Bentham that same year. Austin contends that the tradition whereby the firstborn son inherits all or most of his parents' estate has negative economic consequences, including the concentration of landed wealth in the hands of a few, the creation of "aristocratical ascendancy and aristocratical misgovernment," and exploitation of the people. The radical spirit of Austin's early utilitarianism is expressed in his argument that the "greatest happiness" principle requires the equal distribution of wealth through inheritance:

> That the more there is for all, the more may fall to each, is clear; and it is not less indisputable (however it may be disputed) that a portion of wealth, if distributed amongst a given number with an approach to equality, will give a greater sum of happiness, than if the bulk of it be heaped on one or a few of the number, and the residue be shared by the rest in such pittances as will barely afford a subsistence. So far, therefore, as happiness is the effect of wealth, those institutions and customs are most to be praised, which most conciliate augmentation in the quantity of wealth with equality in the distribution of it. These ends, perhaps, are conciliated amongst the middling class in England as far as they can be.

In his second article, "Joint Stock Companies" (1826), Austin develops a farsighted critique of the rule that provided for the unlimited liability of partners or shareholders in business ventures. Although it is now generally accepted that limiting the liability of corporate stockholders to the amount of their investment in the enterprise promotes economic progress, England did not institute statutory changes to limit liability until 1844. Austin's article criticizes unlimited liability as a deterrent to investors and the public. He calls the rule "needless and pernicious": needless because creditors would have sufficient information to make sound decisions on lending if companies were properly registered; pernicious because a cautious person would not invest in a joint-stock company for fear that he might lose not only his investment but his personal assets.

In 1826 Austin was appointed professor of jurisprudence and the law of nations at the newly founded University of London and began the only philosophically productive period of his life. His appointment apparently came through his Benthamite associations: Grote and James Mill were members of the governing council of the university.

The University of London–now known as University College London–was established to provide opportunities for students who could not attend Oxford or Cambridge and to teach subjects that were neglected at those schools, including professional courses in law and medicine. The decision to offer a course in jurisprudence was a significant innovation and a prime example of the influence of Benthamite progressivism; neither Oxford nor Cambridge had such courses.

Though he was known in his circle as a profound legal thinker, Austin had never taught. To prepare his lectures, which were to begin in the Michaelmas term of 1828, he decided to go to Germany for six months to familiarize himself with the writings of German jurists and to look for models of academic jurisprudence that were lacking in England. The Austins moved to Germany in 1826 or 1827. By fall 1827 they had settled in Bonn, the home of a newly founded university with distinguished faculty members such as B. G. Niebuhr, author of *The Roman History* (1827), and Wilhelm von Schlegel. According to Sarah Austin's preface to *The Province of Jurisprudence Determined,* the Austins quickly developed a fondness for the townspeople's "respect for knowledge, love of art, freedom of thought, and simplicity of habits."

Austin returned to England in the winter of 1828 less enamored of progressive causes than when he had left. He had come to view the Prussian monarchy and bureaucracy as superior to English representative democracy, had developed a dislike for the "general meanness of English life," and had acquired an interest in "the poetic and contemplative."

Delayed because of an illness until 1829, Austin's course began auspiciously with thirty-two students, including John Stuart Mill, but attendance rapidly dwindled. No students showed up for the first lecture in the November 1830 term, and attendance thereafter was no more than six or seven students.

In 1832, at his wife's urging, Austin published *The Province of Jurisprudence Determined.* The book is based on the first ten lectures of his course but is divided into six lectures to conform to the structure of the material. The first sentence lays out his philosophical position and begins the definitional task of the work: "The matter of jurisprudence is positive law; law, simply and strictly so called; or law set by political superiors to political inferiors." A law in the most general sense is "a rule laid down for the guidance of an intelligent being by an intelligent being having power over him." The intelligent beings who lay down laws are God and the political ruler, or sovereign; the body of rules set by God constitutes the divine law, while rules set by the sovereign make up the positive law.

Separated from both divine law and positive law is the realm of "positive morality." Positive morality is divided into rules set by men but not by political superiors and rules set and enforced by mere opinion and sentiment. The first category includes rules set by parents for children and by masters for slaves, which Austin calls "laws in the proper sense"; the second, "laws in the improper sense of the term," include international and constitutional law, etiquette, and fashion. Finally, Austin classifies the "laws of nature"–of physics, chemistry, and biology–as laws only in a metaphorical sense: "For where *intelligence* is not, or where it is too bounded to take the name of *reason,* and, therefore, is too bounded to conceive the purpose of a law, there is not the *will* which law can work on, or which duty can incite or restrain."

Austin's classification scheme flows from his analytical definition of law as command–the central concept of his philosophy of law and, in his words, "the *key* to the sciences of jurisprudence and morals." The term *command* denotes a wish or desire, conceived by a rational being, that another rational being shall do or forbear doing; an evil to proceed from the former and to be incurred by the latter, in case the latter does not comply with the wish; or an expression of the wish by words or other signs. Divine laws are the commands of God; positive laws are the commands of the sovereign; and positive morality consists of the commands of human beings in their private capacity (law in the proper sense of the term) and the sentiments of an indeterminate body of persons, that is, public opinion (law in the improper sense of the term). The liability to evil in case a command is not obeyed gives rise to *duty,* which is the obligation to obey; the evil to be visited on those who disobey is the *sanction,* or the enforcement of obedience.

The second, third, and fourth lectures focus on divine law. Divine law is divided into two parts: the law as revealed in the word of God, and the unrevealed law, which is determined by the principle of utility. The principle of utility, or greatest happiness principle, serves for Austin as the guide to the divine law: "the laws of God, which are not revealed or promulgated, must be gathered by man from the goodness of God, and from the tendencies of human actions. In other words, the benevolence of God, with the principle of general utility, is our only index or guide to his unrevealed law."

The practical impossibility of individuals calculating all of the consequences of each of their proposed actions on a utilitarian basis leads Austin to suggest that an intellectual elite be charged with inquiring into the unrevealed law on the basis of the principle of utility and disseminating the rules that most likely constitute the divine law. Such a college of moral workers would slowly lift the veil of prejudice and move humankind toward moral perfectibility. The public at large and even legislators would slowly learn to trust this elite group, which would have to be insulated from class and other interests. One source of this growing trust would be universal education: the multitudes would be taught the principles by which they could judge the work of the intellectual moral elite. Foremost among these principles would be respect for private property and capital:

> Without *capital,* and the arts which depend upon capital, the reward of labour would be far scantier than it is; and capital, with the arts which depend upon it, are creatures of the institution of property. The institution is good for the many, as well as for the few. The poor are not stripped by it of the produce of their labour; but it gives them a part in the employment of wealth which it calls into being. In effect, though not in law, the labourers are co-proprietors with the capitalists who hire their labour. The reward which they get for their labour is principally drawn from *capital;* and they are not less interested than the legal owners in protecting the fund from invasion.

Austin's defense of private property shows that although he maintained his Benthamite belief in progress–through

the vehicles of science and utilitarianism humanity would move toward moral perfectibility–he had abandoned his conviction that a more equal distribution of wealth was desirable. He also abandoned his belief in democratic suffrage. By the time he gave the lectures, in other words, Austin was no longer a radical Benthamite.

The fifth lecture is on the nature of positive morality. Austin's view that international law is not law in the proper sense but, rather, positive morality, is the logical outcome of his definition of positive law as the command of the sovereign. A rule of international law does not come from a person or body of persons sovereign over those being commanded.

The sixth–and by far the longest–lecture is on the nature of positive law. After the concept of command, that of sovereignty is most important for Austin's enterprise of demarcating the varieties of law. Sovereignty is inseparably connected to the concept of an independent political society; as a consequence, in Austin's account positive law exists only in such a society. Independent political societies are distinguished from independent natural societies–families and primitive tribes, confederations of independent political societies, and subordinate political societies–by the presence of a sovereign. The sovereign is the person or body of persons that is habitually obeyed by the bulk of the members of the society but does not habitually obey any other human superior. Those who obey the sovereign are the subjects.

Austin divides the forms of government into two basic types: monarchical, or rule by one, and aristocratic, or rule by more than one. The latter category includes limited monarchies, such as that of England in the nineteenth century, and democracies, whether participatory or representative.

A distinctive and controversial feature of Austin's concept of sovereignty is its relation to law. The sovereign is the sole source of positive law; only the sovereign can issue commands that are legally binding. Since the sovereign has no superior, the sovereign is not subject to the law. The sovereign's imposition of a law on itself would be meaningless, as it could repeal that "law" at will. Thus, constitutional law is relegated to the realm of positive morality, having only the force of public opinion. The laws that sovereigns affect to impose on themselves are merely principles or maxims that they are not legally obliged to follow. In aristocratic societies (including democracies) the superiority of the sovereign to the law extends only to the sovereign body as a whole, not to its members acting in their individual capacities.

Austin stretches the concept of the sovereign to include the electorate. Hence, for England in the nineteenth century the sovereign was the Crown, the members of the House of Lords, and the electors of the House of Commons. For the United States the sovereign body is a complex aggregate of state and federal components and at the federal level extends to those who are empowered to amend the Constitution. Today, with universal suffrage, the sovereign would include the entire adult citizenry. In the American system the government is subordinate to the sovereign, and Austin allows that constitutional law is legally binding on the government.

Austin's concept of positive law as the command of the sovereign forms the basis for the sharp distinction between law and morality, a central feature of the school of legal positivism. In the older tradition of natural law, an unjust or immoral law is no law at all. For Austin and subsequent legal positivists, a law promulgated by the sovereign, or by authorities to whom the sovereign has delegated the power to promulgate law, is legally binding on the members of the society, whether or not it is unjust or immoral. He distinguishes between justice in the legal and the moral senses: justice in the legal sense means conformity to the laws of the sovereign, that is, to positive law; justice in the moral sense means conformity to the laws of God.

Austin does not, however, rule out disobedience to the positive law if it is found to be morally unjust. The decision should be based on the principle of utility: would disobedience to the law increase the sum of happiness in society? Austin deplores what he considers the confused thinking of the natural-law theorists. Acceptance of the view that a morally unjust law is not legally binding would lead to anarchism, he thinks, as each individual would believe that he or she could decide in his or her own conscience which laws are legally binding and which are not.

An important aspect of Austin's view of positive law concerns the pronouncements of subordinate officials, especially the judiciary. The English common-law tradition was based on judge-made law; the statutory promulgations of Parliament were the exception, not the rule. But since the judiciary is not the sovereign, how could judge-made law be the command of the sovereign? Austin answers:

> Now when customs are turned into legal rules by decisions of subject judges, the legal rules which emerge from the customs are *tacit* commands of the sovereign legislature. The state, which is able to abolish, permits its ministers to enforce them: and it, therefore, signifies its pleasure, by that its voluntary acquiescence, "that they shall serve as a law to the governed."

Having completed the task of delimiting the domains of jurisprudence and positive law, Austin is occupied in the remainder of *The Province of Jurisprudence Determined* with an inquiry into a variety of aspects of positive law. These materials, which are of continuing interest and use to legal scholars and theorists despite the fact that Aus-

tin never fully developed them, demonstrate both Austin's effort to place jurisprudence on a scientific footing and his efforts to apply utilitarian principles to structural elements of the positive law.

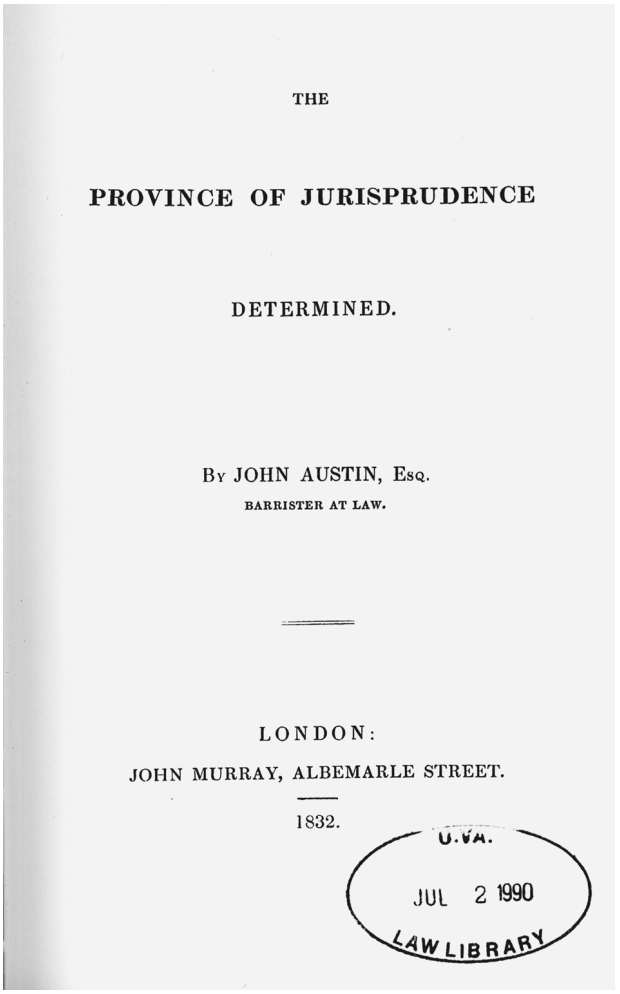
The primary reasons for Austin's failure as a teacher were the primitive state of legal education at the time, the practical orientation of most law students, and the abstract character of jurisprudence–a subject that does not attract many students in law school even today. According to the preface to the fifth edition of *Lectures on Jurisprudence; or, The Philosophy of Positive Law* (1885), this failure was the "real and irremediable calamity of his life–the blow from which he never recovered." He lamented that he "was born out of time and place": "I ought to have been a schoolman of the twelfth century–or a German professor."

Despite his disappointment, Austin continued to teach at the University of London until 1833. In 1834 he was asked to give a series of lectures on jurisprudence at the Inner Temple; but, as at the university, the initial interest soon waned, and he concluded that completing the series would not serve any purpose. He did no further work in jurisprudence, the field he most loved, nor did he produce anything more of an intellectual nature or engage in any other gainful employment during the remainder of his lifetime. Attempts that he did make were aborted by repeated bouts of his neurasthenic illnesses.

No longer able to afford to live in London after Austin's failure as a teacher, the family moved to Boulogne, France, in 1835. In 1836 they moved to Malta when Austin was appointed a colonial commissioner for the island but returned to London in 1838 after the commission was recalled. In 1844 the Austins moved to Germany, where they stayed in Carlsbad, Dresden, and Berlin. Later that year they moved to Paris. During the first year after their arrival in Paris, Austin was elected a corresponding member of the Academy of Moral and Political Sciences of the Institut de France. Sarah again created a popular salon that was attended by many political and intellectual personages, among them the historian and statesman François-Pierre-Guillaume Guizot.

The conservative Austins were deeply alarmed by the revolutionary fervor of Paris in 1848 and returned to England in March of that year. After staying for a while at Queen Square Place, where their daughter–who had married Sir Alexander Duff Gordon in 1840–had followed in her mother's footsteps by establishing a salon, the Austins settled in Weybridge. There Austin finally found tranquillity in reading, walking, meditating, and cultivating his garden. After a seven-week illness, he died on 17 December 1859.

The republication by Sarah Austin of an enlarged three-volume edition of *The Province of Jurisprudence Determined* in the early 1860s could not have come at a more auspicious time to secure her husband's reputation. For-


THE

PROVINCE OF JURISPRUDENCE

DETERMINED.

By JOHN AUSTIN, Esq.
BARRISTER AT LAW.

LONDON:
JOHN MURRAY, ALBEMARLE STREET.
1832.



*Dust jacket for the only book by John Austin published during his lifetime (Arthur J. Morris Law Library, University of Virginia)*

mal legal education was finally taking root in England, creating a need for materials on jurisprudence, and the only texts available were Austin's. The only other major English jurist of the time was Bentham, but his most significant writings in the field were not published until well into the twentieth century. As a result, Austin's works became the de facto standard, providing several generations of English legal scholars and lawyers with their basic grounding in jurisprudence. The legal positivism that he spawned became the dominant school of legal philosophy of the twentieth century.

In the United States, Austin's influence was more diffuse. He was read avidly by Oliver Wendell Holmes Jr., the renowned Supreme Court justice, who agreed with him that laws should be made by legislative bodies, not by courts, and that the spheres of law and morality should be kept separate. Christopher Columbus Langdell, nineteenth-century Harvard law professor and founder of the case method of teaching in American law schools, was

familiar with Austin's work, as was Wesley Hohfeld, the Yale law professor famous for his pioneering work on fundamental legal concepts. John Chipman Gray drew inspiration from Austin for *The Nature and Sources of the Law* (1909), which had a substantial influence on the development of jurisprudence in the United States.

Austin's ideas have been subject to heavy criticism since they were first published, and they are now widely considered to have been superseded by a more complex understanding of legal phenomena. For example, "power-conferring rules"–that is, laws that enable individuals to make legally enforceable wills or contracts or that give powers to public officials–pose a problem for his claim that laws are commands backed by sanctions, because they do not impose duties supported by penalties. Austin's notion of tacit commands has come to be regarded as unrealistic, because it fails to account for the complexities of lawmaking by subordinate officials, particularly the judiciary. Austin's theory of sovereignty has been attacked from many quarters. Some critics consider it a misrepresentation of most actual societies, particularly complex federal systems such as that of the United States. Austin is also seen as confusing legal sovereignty with political sovereignty: sovereignty in democracies rests in the electorate, but laws are enacted by legislatures. And his view that the sovereign is not subject to legal restraints does not account for the constitutional limitations imposed on the government in many modern societies. Austin's sharp separation of law and morality has also been criticized, particularly by natural-law theorists, as obscuring the true character of law. His analytic jurisprudence has been faulted as an inappropriate abstract inquiry divorced from the social context and function of the law.

Despite the criticisms, Austin's work has remained a central starting point for modern positivist analyses of the law. Hans Kelsen, the most important of the twentieth-century Continental positivists, saw "no essential difference" between his own pure theory of law and Austin's analytic jurisprudence: "Where they differ, they do so because the pure theory of law tries to carry on the method of analytical jurisprudence more consistently than Austin and his followers." H. L. A. Hart, the leading twentieth-century English legal philosopher, styled his version of legal positivism "a fresh start." Nevertheless, Hart felt compelled to devote three chapters of his central jurisprudential work, *The Concept of Law* (1961), to a critique of Austin's command theory of law and concept of sovereignty. Likewise, the first two chapters of Joseph Raz's positivist work *The Concept of a Legal System: An Introduction to the Theory of a Legal System* (1980) comprise a sustained criticism of Austin's main ideas.

The role given to Austin by outstanding twentieth-century legal positivists as an example of a flawed though important approach to understanding the nature of law led to renewed interest in him in the 1980s. During that decade three books were published on Austin, including the first comprehensive biography of Austin and his wife. In addition, a spate of law-review articles have explored his ideas. This interest was capped in 1995 by the publication of a new edition of *The Province of Jurisprudence Determined*.

Austin's systematic, uncompromising, and deep analysis leaves a powerful impression and remains an important entryway into the field of jurisprudence for both the layperson and the legal scholar. Sir Henry Sumner Maine, the leading nineteenth-century English exponent of historical jurisprudence and a sharp critic of Austin, said that his writings produce a "clearing of the brain," sweeping away confused and muddled ideas about the nature of law. John Austin ranks among the important figures in the pantheon of legal philosophy, and his work continues to be worthy of study.

**Biographies:**

Janet Ross, *Three Generations of Englishwomen: Memoirs and Correspondences of Mrs. John Taylor, Mrs. Sarah Austin, and Lady Duff Gordon,* 2 volumes (London: Murray, 1888);

Ross, *The Fourth Generation: Reminiscences* (New York: Scribners, 1912);

Lotte and Joseph Hamburger, *Troubled Lives: John and Sarah Austin* (Toronto & Buffalo: University of Toronto Press, 1985).

**References:**

James Bryce, *Studies in History and Jurisprudence,* volume 2 (New York: Oxford University Press, 1901), pp. 89–97, 127, 180–184;

Roger Cotterrell, *The Politics of Jurisprudence: A Critical Introduction to Legal Philosophy* (Philadelphia: University of Pennsylvania Press, 1992), pp. 52–82;

John Chipman Gray, *The Nature and Sources of the Law* (New York: Macmillan, 1927);

H. L. A. Hart, *The Concept of Law* (London: Oxford University Press, 1961), pp. 1–48;

Hart, "John Austin," in *International Encyclopedia of the Social Sciences,* edited by David L. Sills, volume 1 (New York: Macmillan, 1968), pp. 472–473;

Hart, "Positivism and the Separation of Law and Morals," *Harvard Law Review,* 71 (1958): 593–629;

M. H. Hoeflich, "John Austin and Joseph Story: Two Nineteenth Century Perspectives on the Utility of the Civil Law for the Common Lawyer," *American Journal of Legal History,* 29 (1985): 36–77;

Hoeflich, "Law and Geometry: Legal Science from Leibniz to Langdell," *American Journal of Legal History,* 30 (1986): 95–121;

Hans Kelsen, *General Theory of Law and State,* translated by Anders Wedberg (Cambridge, Mass.: Harvard University Press, 1945), pp. 30–32, 62–64, 71–74, 94–95, 127–128;

Kelsen, "The Pure Theory of Law and Analytical Jurisprudence," *Harvard Law Review,* 55 (1941): 44–70;

Albert Kocourek, "The Century of Analytic Jurisprudence since John Austin," in *Law: A Century of Progress, 1835–1935: Contributions in Celebration of the 100th Anniversary of the Founding of the School of Law of New York University,* 3 volumes, edited by Alison Reppy (New York: New York University, 1937), II: 195–230;

Sir Henry Sumner Maine, *Lectures on the Early History of Institutions* (New York: Holt, 1888), pp. 342–400;

John Stuart Mill, "Austin's Lectures on Jurisprudence," and "Austin on Jurisprudence," in his *Essays on Equality, Law, and Education,* edited by J. M. Robson, *Collected Works of John Stuart Mill,* volume 21 (Toronto & Buffalo: University of Toronto Press, 1984), pp. 51–60, 167–205;

Robert N. Moles, *Definition and Rule in Legal Theory: A Reassessment of H. L. A. Hart and the Positivist Tradition* (Oxford: Blackwell, 1987);

Moles, "Hart's Critique of Austin," *Northern Ireland Legal Quarterly,* 36 (1985): 283–313;

Moles, "John Austin Reconsidered," *Northern Ireland Legal Quarterly,* 36 (1985): 193–221;

W. L. Morison, *John Austin* (Stanford, Cal.: Stanford University Press, 1982);

Morison, "Some Myths about Positivism," *Yale Law Journal,* 68 (1958): 212–233;

Herbert Morris, "Verbal Disputes and the Legal Philosophy of John Austin," *UCLA Law Review,* 7 (1959): 27–56;

Gustav Radbruch, "Anglo-American Jurisprudence through Continental Eyes," *Law Quarterly Review,* 52 (1936): 530–545;

Joseph Raz, *The Concept of a Legal System: An Introduction to the Theory of a Legal System* (Oxford: Clarendon Press, 1980), pp. 5–43;

Eira Ruben, "John Austin's Political Pamphlets 1824–1859," in *Perspectives in Jurisprudence,* edited by Elspeth Attwooll (Glasgow: University of Glasgow Press, 1977), pp. 20–41;

Wilfrid E. Rumble, "Austin in the Classroom: Why Were His Courses in Jurisprudence Unpopular?" *Legal History,* 17 (1996): 17–39;

Rumble, "John Austin and his Nineteenth Century Critics: The Case of Sir Henry Sumner Maine," *Northern Ireland Legal Quarterly,* 39 (1988): 119–149;

Rumble, "The Legal Positivism of John Austin and the Realist Movement in American Jurisprudence," *Cornell Law Review,* 66 (1981): 986–1031;

Rumble, "Nineteenth-century Perceptions of John Austin: Utilitarianism and the Reviews of The Province of Jurisprudence Determined," *Utilitas,* 3 (1991): 199–216;

Rumble, *The Thought of John Austin: Jurisprudence, Colonial Reform and the British Constitution* (London: Athlone, 1985);

Andrea B. Schwarz, "John Austin and the German Jurisprudence of His Time," *Politica,* 1 (1934): 178–199;

John E. Stannard, "A Tale of Four Codes: John Austin and the Criminal Law," *Northern Ireland Legal Quarterly,* 41 (1990): 293–314;

Julius Stone, *Legal System and Lawyers' Reasonings* (Stanford, Cal.: Stanford University Press, 1946), pp. 62–92;

Stone, *The Province and Function of Law: Law as Logic, Justice and Social Control. A Study in Jurisprudence* (Sydney: Associated General Publications, 1946), pp. 55–73;

Samuel E. Stumpf, "Austin's Theory of the Separation of Law and Morals," *Vanderbilt Law Review,* 14 (1960): 117–149.