

Lecture I.

THE matter of jurisprudence is positive law: law, simply and strictly so called: or law set by political superiors to political inferiors. But positive law (or law, simply and strictly so called) is often confounded with objects to which it is related by *resemblance*, and with objects to which it is related in the way of *analogy*: with objects which are *also* signified, *properly* and *improperly*, by the large and vague expression *law*. To obviate the difficulties springing from that confusion, I begin my projected Course with determining the province of jurisprudence, or with distinguishing the matter of jurisprudence from those various related objects: trying to define the subject of which I intend to treat, before I endeavour to analyse its numerous and complicated parts.

[A law, in the most general and comprehensive acceptation in which the term, in its literal meaning, is employed, may be said to be a rule laid down for the guidance of an intelligent being by an intelligent being having power over him. Under this definition are included, and without impropriety, several species. It is necessary to define accurately the line of demarcation which separates these species from one another, as much mistiness and intricacy has been infused into the science of jurisprudence by their being confounded or not clearly distinguished. In the comprehensive sense above indicated, or in the largest meaning which it has, without extension by metaphor or analogy,] the term *law* embraces the following objects: - Laws set by God to his human creatures, and laws set by men to men.

The whole or a portion of the laws set by God to men is frequently styled the law of nature, or natural law: being, in truth, the only natural law of which it is possible to speak without a metaphor, or without a blending of objects which ought to be distinguished broadly. But, rejecting the appellation Law of Nature as ambiguous and misleading, I name those laws or rules, as considered collectively or in a mass, the *Divine law*, or the *law of God*.

Law of God.

Laws set by men to men are of two leading or principal classes: classes which are often blended, although they differ extremely; and which, for that reason, should be severed precisely, and opposed distinctly and conspicuously.

*Human laws.
Two classes.*

Of the laws or rules set by men to men, some are established by *political* superiors, sovereign and subject: by persons exercising supreme and subordinate *government*, in independent nations, or independent political societies. The aggregate of the rules thus established, or some aggregate forming a portion of that aggregate, is the appropriate matter of jurisprudence, general or particular. To the aggregate of the rules thus established, or to some aggregate forming a portion of that aggregate, the term *law*, as used simply and strictly, is exclusively applied. But, as contradistinguished to *natural* law, or to the law of *nature* (meaning, by those expressions, the law of God), the aggregate of the rules, established by political superiors, is frequently styled *positive* law, or law existing *by position*. As contradistinguished to the rules which I style *positive morality*, and on which I shall touch immediately, the aggregate of the rules, established by political superiors, may also be marked commodiously with the name of *positive law*. For the sake, then, of getting a name brief and distinctive at once, and agreeably to frequent usage, I style that aggregate of rules, or any portion of that aggregate, *positive law*: though rules, which are *not* established by political superiors, are also *positive*, or exist *by position*, if they be rules or laws, in the proper signification of the term.

1st Class.

*Laws set by
political
superiors.*

Though *some* of the laws or rules, which are set by men to men, are established by political superiors, *others* are *not* established by political superiors, or are *not* established by political superiors, in that capacity or character.

*2nd class. Laws
set by men not
political superiors.*

Objects
improperly but
by close analogy
termed laws.

[Closely analogous to human laws of this second class, are a set of objects frequently but *improperly* termed *laws*, being rules set and enforced by *mere opinion*, that is, by the opinions or sentiments held or felt by an indeterminate body of men in regard to human conduct. Instances of such a use of the term *law* are the expressions — ‘The law of honour;’ ‘The law set by fashion;’ and rules of this species constitute much of what is usually termed ‘International law.’

The two last
placed in one class
under the name
positive morality.

The aggregate of human laws properly so called belonging to the second of the classes above mentioned, with the aggregate of objects *improperly* but by *close analogy* termed laws, I place together in a common class, and denote them by the term] *positive morality*. The name *morality* severs them from *positive law*, while the epithet *positive* disjoins them from the *law of God*. And to the end of obviating confusion, it is necessary or expedient that they *should* be disjoined from the latter by that distinguishing epithet. For the name *morality* (or *morals*), when standing unqualified or alone, denotes indifferently either of the following objects: namely, positive morality *as it is*, or without regard to its merits; and positive morality *as it would be*, if it conformed to the law of God, and were, therefore, deserving of *approbation*.

Objects
metaphorically
termed laws.

[Besides the various sorts of rules which are included in the literal acceptance of the term law, and those which are by a close and striking analogy, though *improperly*, termed laws, there are numerous applications of the term law, which] rest upon a slender analogy and are merely metaphorical or figurative. Such is the case when we talk of *laws* observed by the lower animals; of *laws* regulating the growth or decay of vegetables; of *laws* determining the movements of inanimate bodies or masses. 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. Yet through these misapplications of a *name*, flagrant as the metaphor is, has the field of jurisprudence and morals been deluged with muddy speculation.

[Having] suggested the *purpose* of my attempt to determine the province of jurisprudence: to distinguish positive law, the appropriate matter of jurisprudence, from the various objects to which it is related by resemblance, and to which it is related, nearly or remotely, by a strong or slender analogy: I shall [now] state the

essentials of a *law* or *rule* (taken with the largest signification which can be given to the term *properly*).

Every *law* or *rule* (taken with the largest signification which can be given to the term *properly*) is a *command*. Or, rather, laws or rules, properly so called, are a *species* of commands.

Laws or rules
properly so
called, are a
species of
commands.

Now, since the term *command* comprises the term *law*, the first is the simpler as well as the larger of the two. But, simple as it is, it admits of explanation: And, since it is the *key* to the sciences of jurisprudence and morals, its meaning should be analysed with precision.

Accordingly, I shall endeavour, in the first instance, to analyze the meaning of ‘*command*.’ an analysis which, I fear, will task the patience of my hearers, but which they will bear with cheerfulness, or, at least, with resignation, if they consider the difficulty of performing it. The elements of a science are precisely the parts of it which are explained least easily. Terms that are the largest, and, therefore, the simplest of a series, are without equivalent expressions into which we can resolve them *concisely*. And when we endeavour to *define* them, or to translate them into terms which we suppose are better understood, we are forced upon awkward and tedious circumlocutions.

If you express or intimate a wish that I shall do or forbear from some act, and if you will visit me with an evil in case I comply not with your wish, the *expression* or *intimation* of your wish is a *command*. A command is distinguished from other significations of desire, not by the style in which the desire is signified, but by the power and the purpose of the party commanding to inflict an evil or pain in case the desire be disregarded. If you cannot or will not harm me, in case I comply not with your wish, the expression of your wish is not a command, although you utter your wish in imperative phrase. If you are able and willing to harm me in case I comply not with your wish, the expression of your wish amounts to a command, although you are prompted by a spirit of courtesy to utter it in the shape of a request. ‘*Preces erant, sed quibus contradici non posset.*’ Such is the language of Tacitus, when speaking of a petition by the soldiery to a son and lieutenant of Vespasian.

The meaning of
the term
command.

A command, then, is a signification of desire. But a command is distinguished from other significations of desire by this peculiar-

ity: that the party to whom it is directed is liable to evil from the other, in case he comply not with the desire.

The meaning of the term duty.

Being liable to evil from you if I comply not with a wish which you signify, I am *bound* or *obliged* by your command, or I lie under a *duty* to obey it. If, in spite of that evil in prospect, I comply not with the wish which you signify, I am said to disobey your command, or to violate the duty which it imposes.

The terms command and duty are correlative.

Command and duty are, therefore, correlative terms: the meaning denoted by each being implied or supposed by the other. Or (changing the expression) wherever a duty lies, a command has been signified; and whenever a command is signified, a duty is imposed.

Concisely expressed, the meaning of the correlative expressions is this. He who will inflict an evil in case his desire be disregarded, utters a command by expressing or intimating his desire: He who is liable to the evil in case he disregard the desire, is bound or obliged by the command.

The meaning of the term sanction.

The evil which will probably be incurred in case a command be disobeyed or (to use an equivalent expression) in case a duty be broken, is frequently called a *sanction*, or an *enforcement of obedience*. Or (varying the phrase) the command or the duty is said to be *sanctioned* or *enforced* by the chance of incurring the evil.

Considered as thus abstracted from the command and the duty which it enforces, the evil to be incurred by disobedience is frequently styled a *punishment*. But, as punishments, strictly so called, are only a *class* of sanctions, the term is too narrow to express the meaning adequately.

To the existence of a command, a duty, and a sanction, a violent motive to compliance is not requisite.

I observe that Dr. Paley, in his analysis of the term *obligation*, lays much stress upon the *violence* of the motive to compliance. In so far as I can gather a meaning from his loose and inconsistent statement, his meaning appears to be this: that unless the motive to compliance be *violent* or *intense*, the expression or intimation of a wish is not a *command*, nor does the party to whom it is directed lie under a *duty* to regard it.

If he means, by a *violent* motive, a motive operating with certainty, his proposition is manifestly false. The greater the evil to be incurred in case the wish be disregarded, and the greater the chance of incurring it on that same event, the greater, no

doubt, is the *chance* that the wish will *not* be disregarded. But no conceivable motive will *certainly* determine to compliance, or no conceivable motive will render obedience inevitable. If Paley's proposition be true, in the sense which I have now ascribed to it, commands and duties are simply impossible. Or, reducing his proposition to absurdity by a consequence as manifestly false, commands and duties are possible, but are never disobeyed or broken.

If he means by a *violent* motive, an evil which inspires fear, his meaning is simply this: that the party bound by a command is bound by the prospect of an evil. For that which is not feared is not apprehended as an evil; or (changing the shape of the expression) is not an evil in prospect.

The truth is, that the magnitude of the eventual evil, and the magnitude of the chance of incurring it, are foreign to the matter in question. The greater the eventual evil, and the greater the chance of incurring it, the greater is the efficacy of the command, and the greater is the strength of the obligation: Or (substituting expressions exactly equivalent), the greater is the *chance* that the command will be obeyed, and that the duty will not be broken. But where there is the smallest chance of incurring the smallest evil, the expression of a wish amounts to a command; and, therefore, imposes a duty. The sanction, if you will, is feeble or insufficient; but still there *is* a sanction, and, therefore, a duty and a command.

Rewards are not sanctions.

By some celebrated writers (by Locke, Bentham, and, I think, Paley), the term *sanction*, or *enforcement of obedience*, is applied to conditional good as well as to conditional evil: to reward as well as to punishment. But, with all my habitual veneration for the names of Locke and Bentham, I think that this extension of the term is pregnant with confusion and perplexity.

Rewards are, indisputably, *motives* to comply with the wishes of others. But to talk of commands and duties as *sanctioned* or *enforced* by rewards, or to talk of rewards as *obliging* or *constraining* to obedience, is surely a wide departure from the established meaning of the terms.

If *you* expressed a desire that *I* should render a service, and if you proffered a reward as the motive or inducement to render it, *you* would scarcely be said to *command* the service, nor should

I, in ordinary language, be *obliged* to render it. In ordinary language, *you* would *promise* me a reward, on condition of my rendering the service, whilst *I* might be *incited* or *persuaded* to render it by the hope of obtaining the reward.

Again: If a law hold out a *reward*, as an inducement to do some act, an eventual *right* is conferred, and not an *obligation* imposed, upon those who shall act accordingly: The *imperative* part of the law being addressed or directed to the party whom it requires to *render* the reward.

In short, I am determined or inclined to comply with the wish of another, by the fear of disadvantage or evil. I am also determined or inclined to comply with the wish of another, by the hope of advantage or good. But it is only by the chance of incurring *evil*, that I am *bound* or *obliged* to compliance. It is only by conditional *evil*, that duties are *sanctioned* or *enforced*. It is the power and the purpose of inflicting eventual *evil*, and *not* the power and the purpose of imparting eventual *good*, which gives to the expression of a wish the name of a *command*.

If we put *reward* into the import of the term *sanction*, we must engage in a toilsome struggle with the current of ordinary speech; and shall often slide unconsciously, notwithstanding our efforts to the contrary, into the narrower and customary meaning.

It appears, then, from what has been premised, that the ideas or notions comprehended by the term *command* are the following. 1. A wish or desire conceived by a rational being, that another rational being shall do or forbear. 2. An evil to proceed from the former, and to be incurred by the latter, in case the latter comply not with the wish. 3. An expression or intimation of the wish by words or other signs.

It also appears from what has been premised, that *command*, *duty*, and *sanction* are inseparably connected terms: that each embraces the same ideas as the others, though each denotes those ideas in a peculiar order or series.

'A wish conceived by one, and expressed or intimated to another, with an evil to be inflicted and incurred in case the wish be disregarded,' are signified directly and indirectly by each of the three expressions. Each is the name of the same complex notion.

But when I am talking *directly* of the expression or intimation of the wish, I employ the term *command*: The expression or intimation of the wish being presented *prominently* to my hearer; whilst the evil to be incurred, with the chance of incurring it, are kept (if I may so express myself) in the background of my picture.

When I am talking *directly* of the chance of incurring the evil, or (changing the expression) of the liability or obnoxiousness to the evil, I employ the term *duty*, or the term *obligation*: The liability or obnoxiousness to the evil being put foremost, and the rest of the complex notion being signified implicitly.

When I am talking *immediately* of the evil itself, I employ the term *sanction*, or a term of the like import: The evil to be incurred being signified directly; whilst the obnoxiousness to that evil, with the expression or intimation of the wish, are indicated indirectly or obliquely.

To those who are familiar with the language of logicians (language unrivalled for brevity, distinctness, and precision), I can express my meaning accurately in a breath. — Each of the three terms *signifies* the same notion; but each *denotes* a different part of that notion, and *connotes* the residue.

Commands are of two species. Some are *laws* or *rules*. The others have not acquired an appropriate name, nor does language afford an expression which will mark them briefly and precisely. I must, therefore, note them as well as I can by the ambiguous and inexpressive name of '*occasional* or *particular* commands.'

The term *laws* or *rules* being not unfrequently applied to occasional or particular commands, it is hardly possible to describe a line of separation which shall consist in every respect with established forms of speech. But the distinction between laws and particular commands may, I think, be stated in the following manner.

By every command, the party to whom it is directed is obliged to do or to forbear.

Now where it obliges *generally* to acts or forbearances of a *class*, a command is a law or rule. But where it obliges to a *specific* act or forbearance, or to acts or forbearances which it determines *specifically* or *individually*, a command is occasional or particular.

The manner of that connexion.

Laws or rules distinguished from commands which are occasional or particular.

The meaning of the term command, briefly re-stated.

The inseparable connexion of the three terms, command, duty and sanction.

In other words, a class or description of acts is determined by a law or rule, and acts of that class or description are enjoined or forbidden generally. But where a command is occasional or particular, the act or acts, which the command enjoins or forbids, are assigned or determined by their specific or individual natures as well as by the class or description to which they belong.

The statement which I have given in abstract expressions I will now endeavour to illustrate by apt examples.

If you command your servant to go on a given errand, or *not* to leave your house on a given evening, or to rise at such an hour on such a morning, or to rise at that hour during the next week or month, the command is occasional or particular. For the act or acts enjoined or forbidden are specially determined or assigned.

But if you command him *simply* to rise at that hour, or to rise at that hour *always*, or to rise at that hour *till further orders*, it may be said, with propriety, that you lay down a *rule* for the guidance of your servant's conduct. For no specific act is assigned by the command, but the command obliges him generally to acts of a determined class.

If a regiment be ordered to attack or defend a post, or to quell a riot, or to march from their present quarters, the command is occasional or particular. But an order to exercise daily till further orders shall be given would be called a *general order*, and *might* be called a *rule*.

If Parliament prohibited simply the exportation of corn, either for a given period or indefinitely, it would establish a law or rule: a *kind* or *sort* of acts being determined by the command, and acts of that kind or sort being *generally* forbidden. But an order issued by Parliament to meet an impending scarcity, and stopping the exportation of corn *then shipped and in port*, would not be a law or rule, though issued by the sovereign legislature. The order regarding exclusively a specified quantity of corn, the negative acts or forbearances, enjoined by the command, would be determined specifically or individually by the determinate nature of their subject.

As issued by a sovereign legislature, and as wearing the form of a law, the order which I have now imagined would probably be *called* a law. And hence the difficulty of drawing a distinct boundary between laws and occasional commands.

Again: An act which is not an offence, according to the existing law, moves the sovereign to displeasure: and, though the authors of the act are legally innocent or unoffending, the sovereign commands that they shall be punished. As enjoining a specific punishment in that specific case, and as not enjoining generally acts or forbearances of a class, the order uttered by the sovereign is not a law or rule.

Whether such an order would be *called* a law, seems to depend upon circumstances which are purely immaterial: immaterial, that is, with reference to the present purpose, though material with reference to others. If made by a sovereign assembly deliberately, and with the forms of legislation, it would probably be called a law. If uttered by an absolute monarch, without deliberation or ceremony, it would scarcely be confounded with acts of legislation, and would be styled an arbitrary command. Yet, on either of these suppositions, its nature would be the same. It would not be a law or rule, but an occasional or particular command of the sovereign One or Number.

To conclude with an example which best illustrates the distinction, and which shows the importance of the distinction most conspicuously; *judicial commands* are commonly occasional or particular, although the commands which they are calculated to enforce are commonly laws or rules.

For instance, the lawgiver commands that thieves shall be hanged. A specific theft and a specified thief being given, the judge commands that the thief shall be hanged, agreeably to the command of the lawgiver.

Now the lawgiver determines a class or description of acts; prohibits acts of the class generally and indefinitely; and commands, with the like generality, that punishment shall follow transgression. The command of the lawgiver is, therefore, a law or rule. But the command of the judge is occasional or particular. For he orders a specific punishment, as the consequence of a specific offence.

According to the line of separation which I have now attempted to describe, a law and a particular command are distinguished thus. — Acts or forbearances of a *class* are enjoined *generally* by the former. Acts *determined specifically*, are enjoined or forbidden by the latter.

A different line of separation has been drawn by Blackstone and others. According to Blackstone and others, a law and a particular command are distinguished in the following manner. — A law obliges *generally* the members of the given community, or a law obliges *generally* persons of a given class. A particular command obliges a *single* person, or persons whom it determines *individually*.

That laws and particular commands are not to be distinguished thus, will appear on a moment's reflection.

For, *first*, commands which oblige generally the members of the given community, or commands which oblige generally persons of given classes, are not always laws or rules.

[Thus, in the case already supposed; that in which the sovereign commands that all corn actually shipped for exportation be stopped and detained; the command is obligatory upon the whole community, but as it obliges them only to a set of acts individually assigned, it is not a law. Again, suppose the sovereign to issue an order, enforced by penalties, for a general mourning,] on occasion of a public calamity. Now, though it is addressed to the community at large, the order is scarcely a rule, in the usual acceptance of the term. For, though it obliges generally the members of the entire community, it obliges to acts which it assigns specifically, instead of obliging generally to acts or forbearances of a class. If the sovereign commanded that *black* should be the dress of his subjects, his command would amount to a law. But if he commanded them to wear it on a specified occasion, his command would be merely particular.

And, *secondly*, a command which obliges exclusively persons individually determined, may amount, notwithstanding, to a law or rule.

For example, A father may set a *rule* to his child or children: a guardian, to his ward: a master, to his slave or servant. And certain of God's *laws* were as binding on the first man, as they are binding at this hour on the millions who have sprung from his loins.

Most, indeed, of the laws which are established by political superiors, or most of the laws which are simply and strictly so called, oblige generally the members of the political community, or oblige generally persons of a class. To frame a system of duties for every individual of the community, were simply impossible: and

if it were possible, it were utterly useless. Most of the laws established by political superiors are, therefore, *general* in a twofold manner: as enjoining or forbidding generally acts of kinds or sorts; and as binding the whole community, or, at least, whole classes of its members.

But if we suppose that Parliament creates and grants an office, and that Parliament binds the grantee to services of a given description, we suppose a law established by political superiors, and yet *exclusively binding* a specified or determinate person.

Laws established by political superiors, and exclusively binding specified or determinate persons, are styled, in the language of the Roman jurists, *privilegia*. Though that, indeed, is a name which will hardly denote them distinctly: for, like most of the leading terms in actual systems of law, it is not the name of a definite class of objects, but of a heap of heterogeneous objects.¹

It appears, from what has been premised, that a law, properly so called, may be defined in the following manner.

A law is a command which obliges a person or persons.

But, as contradistinguished or opposed to an occasional or particular command, a law is a command which obliges a person or persons, and obliges *generally* to acts or forbearances of a *class*.

In language more popular but less distinct and precise, a law is a command which obliges a person or persons to a *course* of conduct.

Laws and other commands are said to proceed from *superiors*, and to bind or oblige *inferiors*. I will, therefore, analyze the meaning of those correlative expressions; and will try to strip them of a certain mystery, by which that simple meaning appears to be obscured.

Superiority is often synonymous with *precedence* or *excellence*. We talk of superiors in rank; of superiors in wealth; of superiors in virtue: comparing certain persons with certain other persons; and

The definition of a law or rule, properly so called.

The meaning of the correlative terms superior and inferior.

¹ Where a *privilegium* merely imposes a duty, it exclusively obliges a determinate person or persons. But where a *privilegium* confers a right, and the right conferred *avails against the world at large*, the law is *privilegium* as viewed from a certain aspect, but is also a *general law* as viewed from another aspect. In respect of the right conferred, the law exclusively regards a determinate person, and, therefore, is *privilegium*. In respect of the duty imposed, and corresponding to the right conferred, the law regards generally the members of the entire community.

This I shall explain particularly at a subsequent point of my Course, when I consider the peculiar nature of so-called *privilegia*, or of so-called *private laws*.

meaning that the former precede or excel the latter in rank, in wealth, or in virtue.

But, taken with the meaning wherein I here understand it, the term *superiority* signifies *might*: the power of affecting others with evil or pain, and of forcing them, through fear of that evil, to fashion their conduct to one's wishes.

For example, God is emphatically the *superior* of Man. For his power of affecting us with pain, and of forcing us to comply with his will, is unbounded and resistless.

To a limited extent, the sovereign One or Number is the superior of the subject or citizen: the master, of the slave or servant: the father, of the child.

In short, whoever can *oblige* another to comply with his wishes, is the *superior* of that other, so far as the ability reaches: The party who is obnoxious to the impending evil, being, to that same extent, the *inferior*.

The might or superiority of God, is simple or absolute. But in all or most cases of human superiority, the relation of superior and inferior, and the relation of inferior and superior, are reciprocal. Or (changing the expression) the party who is the superior as viewed from one aspect, is the inferior as viewed from another.

For example, To an indefinite, though limited extent, the monarch is the superior of the governed: his power being commonly sufficient to enforce compliance with his will. But the governed, collectively or in mass, are also the superior of the monarch: who is checked in the abuse of his might by his fear of exciting their anger; and of rousing to active resistance the might which slumbers in the multitude.

A member of a sovereign assembly is the superior of the judge: the judge being bound by the law which proceeds from that sovereign body. But, in his character of citizen or subject, he is the inferior of the judge: the judge being the minister of the law, and armed with the power of enforcing it.

It appears, then, that the term *superiority* (like the terms *duty* and *sanction*) is implied by the term *command*. For superiority is the power of enforcing compliance with a wish: and the expression or intimation of a wish, with the power and the purpose of enforcing it, are the constituent elements of a command.

'That *laws* emanate from *superiors*' is, therefore, an identical

proposition. For the meaning which it affects to impart is contained in its subject.

If I mark the peculiar source of a given law, or if I mark the peculiar source of laws of a given class, it is possible that I am saying something which may instruct the hearer. But to affirm of laws universally 'that they flow from *superiors*,' or to affirm of laws universally 'that *inferiors* are bound to obey them,' is the merest tautology and trifling.

Like most of the leading terms in the science of jurisprudence and morals, the term *laws* is extremely ambiguous. Taken with the largest signification which can be given to the term properly, *laws* are a species of *commands*. But the term is improperly applied to various objects which have nothing of the imperative character: to objects which are *not* commands; and which, therefore, are *not* laws, properly so called.

Accordingly, the proposition 'that laws are commands' must be taken with limitations. Or, rather, we must distinguish the various meanings of the term *laws*; and must restrict the proposition to that class of objects which is embraced by the largest signification that can be given to the term properly.

[I have already indicated, and shall hereafter more fully describe, the objects improperly termed laws, which are *not* within the province of jurisprudence (being either rules enforced by opinion and closely analogous to laws properly so called, or being laws so called by a metaphorical application of the term merely). There are other objects improperly termed laws (not being commands) which yet may properly be included within the province of jurisprudence. These I shall endeavour to particularise: -]

1. Acts on the part of legislatures to *explain* positive law, can scarcely be called laws, in the proper signification of the term. Working no change in the actual duties of the governed, but simply declaring what those duties are, they properly *are* acts of *interpretation* by legislative authority. Or, to borrow an expression from the writers on the Roman Law, they are acts of *authentic interpretation*.

But, this notwithstanding, they are frequently styled laws; *declaratory* laws, or declaratory statutes. They must, therefore, be noted as forming an exception to the proposition 'that laws are a species of commands.'

Laws (improperly so called) which are not commands.

It often, indeed, happens (as I shall show in the proper place), that laws declaratory in name are imperative in effect: Legislative, like judicial interpretation, being frequently deceptive; and establishing new law, under guise of expounding the old.

2. Laws to repeal laws, and to release from existing duties, must also be excepted from the proposition 'that laws are a species of commands.' In so far as they release from duties imposed by existing laws, they are *not commands, but revocations of commands*. They authorize or permit the parties, to whom the repeal extends, to do or to forbear from acts which they were commanded to forbear from or to do. And, considered with regard to *this*, their immediate or direct purpose, they are often named *permissive laws*, or, more briefly and more properly, *permissions*.

Remotely and indirectly, indeed, permissive laws are often or always imperative. For the parties released from duties are restored to liberties or rights: and duties answering those rights are, therefore, created or revived.

But this is a matter which I shall examine with exactness, when I analyze the expressions 'legal right,' 'permission by the sovereign or state,' and 'civil or political liberty.'

3. Imperfect laws, or laws of imperfect obligation, must also be excepted from the proposition 'that laws are a species of commands.'

An imperfect law (with the sense wherein the term is used by the Roman jurists) is a law which wants a sanction, and which, therefore, is not binding. A law declaring that certain acts are crimes, but annexing no punishment to the commission of acts of the class, is the simplest and most obvious example.

Though the author of an imperfect law signifies a desire, he manifests no purpose of enforcing compliance with the desire. But where there is not a purpose of enforcing compliance with the desire, the expression of a desire is not a command. Consequently, an imperfect law is not so properly a law, as counsel, or exhortation, addressed by a superior to inferiors.

Examples of imperfect laws are cited by the Roman jurists. But with us in England, laws professedly imperative are always (I believe) *perfect or obligatory*. Where the English legislature affects to command, the English tribunals not unreasonably presume that the legislature exacts obedience. And, if no specific sanction be

annexed to a given law, a sanction is supplied by the courts of justice, agreeably to a general maxim which obtains in cases of the kind.

The imperfect laws, of which I am now speaking, are laws which are imperfect, in the sense of *the Roman jurists*: that is to say, laws which speak the desires of political superiors, but which their authors (by oversight or design) have not provided with sanctions. Many of the writers on *morals*, and on the so called *law of nature*, have annexed a different meaning to the term *imperfect*. Speaking of imperfect obligations, they commonly mean duties which are *not legal*: duties imposed by commands of God, or duties imposed by positive morality, as contradistinguished to duties imposed by positive law. An imperfect obligation, in the sense of the Roman jurists, is exactly equivalent to no obligation at all. For the term *imperfect* denotes simply, that the law wants the sanction appropriate to laws of the kind. An imperfect obligation, in the other meaning of the expression, is a religious or a moral obligation. The term *imperfect* does not denote that the law imposing the duty wants the appropriate sanction. It denotes that the law imposing the duty is *not* a law established by a political superior: that it wants that *perfect*, or that surer or more cogent sanction, which is imparted by the sovereign or state.

I believe that I have now reviewed all the classes of objects, to which the term *laws* is improperly applied. The laws (improperly so called) which I have here lastly enumerated, are (I think) the only laws which are not commands, and which yet may be properly included within the province of jurisprudence. But though these, with the so called laws set by opinion and the objects metaphorically termed laws, are the only laws which *really* are not commands, there are certain laws (properly so called) which may *seem* not imperative. Accordingly, I will subjoin a few remarks upon laws of this dubious character.

1. There are laws, it may be said, which *merely* create *rights*: And, seeing that every command imposes a *duty*, laws of this nature are not imperative.

But, as I have intimated already, and shall show completely hereafter, there are no laws *merely* creating *rights*. There are laws, it is true, which *merely* create *duties*: duties not correlating with correlating rights, and which, therefore may be styled *absolute*.

Laws (properly so called) which may seem not imperative.

But every law, really conferring a right, imposes expressly or tacitly a *relative* duty, or a duty correlating with the right. If it specify the remedy to be given, in case the right shall be infringed, it imposes the relative duty expressly. If the remedy to be given be not specified, it refers tacitly to pre-existing law, and clothes the right which it purports to create with a remedy provided by that law. Every law, really conferring a right, is, therefore, imperative: as imperative, as if its only purpose were the creation of a duty, or as if the relative duty, which it inevitably imposes, were merely absolute.

The meanings of the term *right*, are various and perplexed; taken with its proper meaning, it comprises ideas which are numerous and complicated; and the searching and extensive analysis, which the term, therefore, requires, would occupy more room than could be given to it in the present lecture. It is not, however, necessary, that the analysis should be performed here. I propose, in my earlier lectures, to determine the province of jurisprudence; or to distinguish the laws established by political superiors, from the various laws, proper and improper, with which they are frequently confounded. And this I may accomplish exactly enough, without a nice inquiry into the import of the term *right*.

2. According to an opinion which I must notice *incidentally* here, though the subject to which it relates will be treated *directly* hereafter, *customary laws* must be excepted from the proposition 'that laws are a species of commands.'

By many of the admirers of customary laws (and, especially, of their German admirers), they are thought to oblige legally (independently of the sovereign or state), *because* the citizens or subjects have observed or kept them. Agreeably to this opinion, they are not the *creatures* of the sovereign or state, although the sovereign or state may abolish them at pleasure. Agreeably to this opinion, they are positive law (or law, strictly so called), inasmuch as they are enforced by the courts of justice: But, that notwithstanding, they exist *as positive law* by the spontaneous adoption of the governed, and not by position or establishment on the part of political superiors. Consequently, customary laws, considered as positive law, are not commands. And, consequently, customary laws, considered as positive law, are not laws or rules properly so called.

An opinion less mysterious, but somewhat allied to this, is not uncommonly held by the adverse party: by the party which is strongly opposed to customary law; and to all law made judicially, or in the way of judicial legislation. According to the latter opinion, all judge-made law, or all judge-made law established by *subject-judges*, is purely the creature of the judges by whom it is established immediately. To impute it to the sovereign legislature, or to suppose that it speaks the will of the sovereign legislature, is one of the foolish or knavish *fictions* with which lawyers, in every age and nation, have perplexed and darkened the simplest and clearest truths.

I think it will appear, on a moment's reflection, that each of these opinions is groundless: that customary law is *imperative*, in the proper signification of the term; and that all judge-made law is the creature of the sovereign or state.

At its origin, a custom is a rule of conduct which the governed observe spontaneously, or not in pursuance of a law set by a political superior. The custom is transmuted into positive law, when it is adopted as such by the courts of justice, and when the judicial decisions fashioned upon it are enforced by the power of the state. But before it is adopted by the courts, and clothed with the legal sanction, it is merely a rule of positive morality: a rule generally observed by the citizens or subjects; but deriving the only force, which it can be said to possess, from the general disapprobation falling on those who transgress it.

Now when judges transmute a custom into a legal rule (or make a legal rule not suggested by a custom), the legal rule which they establish is established by the sovereign legislature. A subordinate or subject judge is merely a minister. The portion of the sovereign power which lies at his disposition is merely delegated. The rules which he makes derive their legal force from authority given by the state: an authority which the state may confer expressly, but which it commonly imparts in the way of acquiescence. For, since the state may reverse the rules which he makes, and yet permits him to enforce them by the power of the political community, its sovereign will 'that his rules shall obtain as law' is clearly evinced by its conduct, though not by its express declaration.

The admirers of customary law love to trick out their idol with mysterious and imposing attributes. But to those who can see the difference between positive law and morality, there is nothing of mystery about it. Considered as rules of positive morality, customary laws arise from the consent of the governed, and not from the position or establishment of political superiors. But, considered as moral rules turned into positive laws, customary laws are established by the state: established by the state directly, when the customs are promulgated in its statutes; established by the state circuitously, when the customs are adopted by its tribunals.

The opinion of the party which abhors judge-made laws, springs from their inadequate conception of the nature of commands.

Like other significations of desire, a command is express or tacit. If the desire be signified by *words* (written or spoken), the command is express. If the desire be signified by conduct (or by any signs of desire which are *not* words), the command is tacit.

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.'

My present purpose is merely this: to prove that the positive law styled *customary* (and all positive law made judicially) is established by the state directly or circuitously, and, therefore, is *imperative*. I am far from disputing, that law made judicially (or in the way of improper legislation) and law made by statute (or in the properly legislative manner) are distinguished by weighty differences. I shall inquire, in future lectures, what those differences are; and why subject judges, who are properly ministers of the law, have commonly shared with the sovereign in the business of making it.

I assume, then, that the only laws which are not imperative, [and which belong to the subject-matter of jurisprudence,] are the following – 1. Declaratory laws, or laws explaining the import of existing positive law. 2. Laws abrogating or repealing existing positive law. 3. Imperfect laws, or laws of imperfect obligation (with the sense wherein the expression is used by the Roman jurists).

Laws which are not commands, enumerated.

But the space occupied in the science by these improper laws is comparatively narrow and insignificant. Accordingly, although I shall take them into account so often as I refer to them directly, I shall throw them out of account on other occasions. Or (changing the expression) I shall limit the term *law* to laws which are imperative, unless I extend it expressly to laws which are not.

Lecture II.

The connection of the second with the first lecture.

IN my first lecture, I stated or suggested the purpose and the manner of my attempt to determine the province of jurisprudence: to distinguish positive law, the appropriate matter of jurisprudence, from the various objects to which it is related by resemblance, and to which it is related, nearly or remotely, by a strong or slender analogy.

In pursuance of that purpose, and agreeably to that manner, I stated the essentials of a law or rule (taken with the largest signification which can be given to the term *properly*).

In pursuance of that purpose, and agreeably to that manner, I proceed to distinguish laws set by men to men from those Divine laws which are the ultimate test of human.

The Divine laws, or the laws of God, are laws set by God to his human creatures. As I have intimated already, and shall show more fully hereafter, they are laws or rules, *properly* so called.

As distinguished from duties imposed by human laws, duties imposed by the Divine laws may be called *religious duties*.

As distinguished from violations of duties imposed by human laws, violations of religious duties are styled *sins*.

As distinguished from sanctions annexed to human laws, the sanctions annexed to the Divine laws may be called *religious sanctions*. They consist of the evils, or pains, which we may suffer here or hereafter, by the immediate appointment of God, and as *consequences* of breaking his commandments.

Of the Divine laws, or the laws of God, some are *revealed* or promulgated, and others are *unrevealed*. Such of the laws of God as are unrevealed are not unfrequently denoted by the following

Of the Divine laws, some are revealed, and others are unrevealed.

names or phrases: 'the law of nature;' 'natural law;' 'the law manifested to man by the light of nature or reason;' 'the laws, precepts, or dictates of natural religion.'

The *revealed* law of God, and the portion of the law of God which is *unrevealed*, are manifested to men in different ways, or by different sets of signs.

With regard to the laws which God is pleased to *reveal*, the way wherein they are manifested is easily conceived. They are *express* commands: portions of the *word* of God: commands signified to men through the medium of human language; and uttered by God directly, or by servants whom he sends to announce them.

Such of the Divine laws as are *unrevealed* are laws set by God to his human creatures, but not through the medium of human language, or not expressly.

These are the only laws which he has set to that portion of mankind who are excluded from the light of Revelation.

These laws are binding upon us (who have access to the truths of Revelation), in so far as the revealed law has left our duties undetermined. For, though his express declarations are the clearest evidence of his will, we must look for many of the duties, which God has imposed upon us, to the marks or signs of his pleasure which are styled the *light of nature*. Paley and other divines have proved beyond a doubt, that it was not the purpose of Revelation to disclose the *whole* of those duties.

Some we could not know, without the help of Revelation; and these the revealed law has stated distinctly and precisely. The rest we may know, if we will, by the light of nature or reason; and these the revealed law supposes or assumes. It passes them over in silence, or with a brief and incidental notice.

But if God has given us laws which he has not revealed or promulgated, how shall we know them? What are those signs of his pleasure, which we style the *light of nature*; and oppose, by that figurative phrase, to express declarations of his will?

The hypotheses or theories which attempt to resolve this question, may be reduced, I think, to two.

According to one of them, there are human actions which all mankind approve, human actions which all men disapprove; and

Such of the Divine laws as are revealed.

Such of the Divine laws as are unrevealed.

What is the index to such of the Divine laws as are unrevealed? The hypotheses or theories which regard the nature of that index. The hypothesis or theory of a moral sense: of innate practical principles; of a practical reason; of a common sense, &c. &c.

these universal sentiments arise at the thought of those actions, spontaneously, instantly, and inevitably. Being common to all mankind, and inseparable from the thoughts of those actions, these sentiments are marks or signs of the Divine pleasure. They are proofs that the actions which excite them are enjoined or forbidden by the Deity.

The rectitude or pravity of human conduct, or its agreement or disagreement with the laws of God, is instantly inferred from these sentiments, without the possibility of mistake. He has resolved that our happiness shall depend on our keeping his commandments: and it manifestly consists with his manifest wisdom and goodness, that we should know them promptly and certainly. Accordingly, he has not committed us to the guidance of our slow and fallible *reason*. He has wisely endowed us with *feelings*, which warn us at every step; and pursue us, with their importunate reproaches, when we wander from the path of our duties.

These simple or inscrutable feelings have been compared to those which we derive from the outward senses, and have been referred to a peculiar faculty called the *moral sense*: though, admitting that the feelings exist, and are proofs of the Divine pleasure, I am unable to discover the analogy which suggested the comparison and the name. The objects or appearances which properly are perceived through the senses, are perceived immediately, or without an inference of the understanding. According to the hypothesis which I have briefly stated or suggested, there is always an inference of the understanding, though the inference is short and inevitable. From feelings which arise within us when we think of certain actions, we infer that those actions are enjoined or forbidden by the Deity.

The hypothesis, however, of a *moral sense*, is expressed in other ways.

The laws of God, to which these feelings are the index, are not unfrequently named *innate practical principles*, or *postulates of practical reason*: or they are said to be written on our hearts, by the finger of their great Author, in broad and indelible characters.

Common sense (the most yielding and accommodating of phrases) has been moulded and fitted to the purpose of expressing the hypothesis in question. In all their decisions on the rectitude or pravity of conduct (its agreement or disagreement with the unre-

vealed law), mankind are said to be determined by *common sense*: this same *common sense* meaning, in this instance, the simple or inscrutable sentiments which I have endeavoured to describe.

Considered as affecting the soul, when the man thinks especially of *his own* conduct, these sentiments, feelings, or emotions, are frequently styled his *conscience*.

According to the other of the adverse theories or hypotheses, the laws of God, which are not revealed or promulged, 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.

God designs the happiness of all his sentient creatures. Some human actions forward that benevolent purpose, or their tendencies are beneficent or useful. Other human actions are adverse to that purpose, or their tendencies are mischievous or pernicious. The former, as promoting his purpose, God has enjoined. The latter, as opposed to his purpose, God has forbidden. He has given us the faculty of observing; of remembering; of reasoning: and, by duly applying those faculties, we may collect the tendencies of our actions. Knowing the tendencies of our actions, and knowing his benevolent purpose, we know his tacit commands.

Such is a brief summary of this celebrated theory. I should wander to a measureless distance from the main purpose of my lectures, if I stated all the explanations with which that summary must be received. But, to obviate the principal misconceptions to which the theory is obnoxious, I will subjoin as many of those explanations as my purpose and limits will admit.

The theory is this. — Inasmuch as the goodness of God is boundless and impartial, he designs the greatest happiness of all his sentient creatures: he wills that the aggregate of their enjoyments shall find no nearer limit than that which is inevitably set to it by their finite and imperfect nature. From the probable effects of our actions on the greatest happiness of all, or from the tendencies of human actions to increase or diminish that aggregate, we may infer the laws which he has given, but has not expressed or revealed.

Now the *tendency* of a human action (as its tendency is thus understood) is the whole of its tendency: the sum of its probable consequences, in so far as they are important or material: the sum

The theory or hypothesis of utility.

A brief summary of the theory of utility.

The following explanations of that summary briefly introduced.

The true tendency of a human action, and the true test of that tendency.

of its remote and collateral, as well as of its direct consequences, in so far as any of its consequences may influence the general happiness.

Trying to collect its tendency (as its tendency is thus understood), we must not consider the action as if it were *single* and *insulated*, but must look at the *class* of actions to which it belongs. The probable *specific* consequences of doing that single act, of forbearing from that single act, or of omitting that single act, are not the objects of the inquiry. The question to be solved is this: — If acts of the *class* were *generally* done, or *generally* forborne or omitted, what would be the probable effect on the general happiness or good?

Considered by itself, a mischievous act may seem to be useful or harmless. Considered by itself, a useful act may seem to be pernicious.

For example, if a poor man steal a handful from the heap of his rich neighbour, the act, considered by itself, is harmless or positively good. One man's property is assuaged with the superfluous wealth of another.

But suppose that thefts were general (or that the useful right of property were open to frequent invasions), and mark the result.

Without security for property, there were no inducement to save. Without habitual saving on the part of proprietors, there were no accumulation of capital. Without accumulation of capital, there were no fund for the payment of wages, no division of labour, no elaborate and costly machines: there were none of those helps to labour which augment its productive power, and, therefore, multiply the enjoyments of every individual in the community. Frequent invasions of property would bring the rich to poverty; and, what were a greater evil, would aggravate the poverty of the poor.

If a single and insulated theft seem to be harmless or good, the fallacious appearance merely arises from this: that the vast majority of those who are tempted to steal abstain from invasions of property; [and the detriment to security, which is the end produced by a single theft, is overbalanced and concealed by the mass of wealth, the accumulation of which is produced by general security.]

Again: If I evade the payment of a tax imposed by a good government, the *specific* effects of the mischievous forbearance are

indisputably useful. For the money which I unduly withhold is convenient to myself; and, compared with the bulk of the public revenue, is a quantity too small to be missed. But the regular payment of taxes is necessary to the existence of the government. And I, and the rest of the community, enjoy the security which it gives, because the payment of taxes is rarely evaded.

In the cases now supposed, the act or omission is good, considered as single or insulated; but, considered with the rest of its class, is evil. In other cases, an act or omission is evil, considered as single or insulated; but, considered with the rest of its class, is good.

For example, A punishment, as a solitary fact, is an evil: the pain inflicted on the criminal being added to the mischief of the crime. But, considered as part of a system, a punishment useful or beneficial by a dozen or score of punishments, thousands of crimes are prevented. With the sufferings of the guilty few, the security of the many is purchased. By the lopping of a peccant member, the body is saved from decay.

It, therefore, is true generally (for the proposition admits of exceptions), that, to determine the true tendency of an act, forbearance, or omission, we must resolve the following question. — What would be the probable effect on the general happiness or good, if *similar* acts, forbearances, or omissions were general or frequent?

Such is the *test* to which we must usually resort, if we would try the true *tendency* of an act, forbearance, or omission: Meaning, by the true *tendency* of an act, forbearance, or omission, the sum of its probable effects on the general happiness or good, or its agreement or disagreement with the principle of general utility.

But, if this be the ordinary test for trying the tendencies of actions, and if the tendencies of actions be the index to the will of God, it follows that most of his commands are general or universal. The useful acts which he enjoins, and the pernicious acts which he prohibits, he enjoins or prohibits, for the most part, not singly, but by classes: not by commands which are particular, or directed to insulated cases; but by laws or rules which are general, and commonly inflexible.

For example, Certain acts are pernicious, considered as a class: or (in other words) the frequent repetition of the act were adverse

According to the theory of utility, God's commands are mostly rules.

to the general happiness, though, in this or that instance, the act might be useful or harmless. Further: Such are the motives or inducements to the commission of acts of the class, that, unless we were determined to forbearance by the fear of punishment, they *would* be frequently committed. Now, if we combine these *data* with the wisdom and goodness of God, we must infer that he forbids such acts, and forbids them *without exception*. In the tenth, or the hundredth case, the act might be useful: in the nine, or the ninety and nine, the act would be pernicious. If the act were permitted or tolerated in the rare and anomalous case, the motives to forbear in the others would be weakened or destroyed. In the hurry and tumult of action, it is hard to distinguish justly. To grasp at present enjoyment, and to turn from present uneasiness, is the habitual inclination of us all. And thus, through the weakness of our judgments, and the more dangerous infirmity of our wills, we should frequently *stretch* the exception to cases embraced by the rule.

Consequently, where acts, considered as a class, are useful or pernicious, we must conclude that he enjoins or forbids them, and by a *rule* which probably is inflexible.

Such, I say, is the conclusion at which we must arrive, supposing that the fear of punishment be necessary to incite or restrain.

For the tendency of an act is one thing: the utility of enjoining or forbidding it is another thing. There are classes of useful acts, which it were useless to enjoin; classes of mischievous acts, which it were useless to prohibit. Sanctions were superfluous. We are sufficiently prone to the useful, and sufficiently averse from the mischievous acts, without the motives which are presented to the will by a lawgiver. Motives *natural* or spontaneous (or motives *other* than those which are created by injunctions and prohibitions) impel us to action in the one case, and hold us to forbearance in the other. In the language of Mr. Locke, 'The mischievous omission or action would bring down evils upon us, which are its *natural* products or consequences; and which, as *natural* inconveniences; operate *without a law*.'

Now, if the measure or test which I have endeavoured to explain be the ordinary measure or test for trying the tendencies of our actions, the most current and specious of the objections,

It does not follow from the theory of utility, that every useful action is the object of a Divine injunction; and every pernicious action, the object of a Divine prohibition.

A current and specious objection to the theory of utility, introduced and stated.

which are made to the theory of utility, is founded in gross mistake, and is open to triumphant refutation.

The theory, be it always remembered, is this:

Our motives to obey the laws which God has given us, are paramount to all others. For the transient pleasures which we may snatch, or the transient pains which we may shun, by violating the duties which they impose, are nothing in comparison with the pains by which those duties are sanctioned.

The greatest possible happiness of all his sentient creatures, is the purpose and effect of those laws. For the benevolence by which they were prompted, and the wisdom with which they were planned, equal the might which enforces them.

But, seeing that such is their purpose, they embrace the *whole* of our conduct: so far, that is, as our conduct may promote or obstruct that purpose; and so far as injunctions and prohibitions are necessary to correct our desires.

In so far as the laws of God are clearly and indisputably revealed, we are bound to guide our conduct by the plain meaning of their terms. In so far as they are not revealed, we must resort to another guide: namely, the probable effect of our conduct on that *general happiness* or *good* which is the object of the Divine Lawgiver in all his laws and commandments.

In each of these cases the *source* of our duties is the same; though the *proofs* by which we know them are different. The principle of general utility is the *index* to many of these duties; but the principle of general utility is not their *fountain* or *source*. For duties or obligations arise from commands and sanctions. And commands, it is manifest, proceed not from abstractions, but from living and rational beings.

Admit these premises, and the following conclusion is inevitable. — The *whole* of our conduct should be guided by the principle of utility, in so far as the conduct to be pursued has not been determined by Revelation. For, to conform to the principle or maxim with which a law coincides, is equivalent to obeying that law.

Such is the theory: which I have repeated in various forms, and, I fear, at tedious length, in order that my younger hearers might conceive it with due distinctness.

The current and specious objections to which I have adverted, may be stated thus:

'Pleasure and pain (or good and evil) are inseparably connected. Every positive act, and every forbearance or omission, is followed by both: immediately or remotely, directly or collaterally, to ourselves or to our fellow-creatures.

'Consequently, if we shape our conduct justly to the principle of general utility, every election which we make between doing or forbearing from an act will be preceded by the following process. *First*: We shall conjecture the consequences of the act, and also the consequences of the forbearance. For these are the competing elements of that *calculation*, which, according to our guiding principle, we are bound to make. *Secondly*: We shall compare the consequences of the act with the consequences of the forbearance, and determine the set of consequences which gives the *balance* of advantage: which yields the larger residue of probable good, or (adopting a different, though exactly equivalent expression) which leaves the smaller residue of probable evil.

'Now let us suppose that we actually tried this process, before we arrived at our resolves. And then let us mark the absurd and mischievous effects which would inevitably follow our attempts.

'Generally speaking, the period allowed for deliberation is brief: and to lengthen deliberation beyond that limited period, is equivalent to forbearance or omission. Consequently, if we performed this elaborate process completely and correctly, we should often defeat its purpose. We should abstain from action altogether, though utility required us to act; or the occasion for acting *usefully* would slip through our fingers, whilst we weighed, with anxious scrupulosity, the merits of the act and the forbearance.

'But feeling the necessity of resolving promptly, we should *not* perform the process completely and correctly. We should guess or conjecture hastily the effects of the act and the forbearance, and compare their respective effects with equal precipitancy. Our premises would be false or imperfect; our conclusions, badly deduced. Labouring to adjust our conduct to the principle of general utility, we should work inevitable mischief.

'And such were the consequences of following the principle of utility, though we sought the true and the useful with simplicity and in earnest. But, as we commonly prefer our own to the interests of our fellow-creatures, and our own immediate to our

own remote interests, it is clear that we should warp the principle to selfish and sinister ends.

'The final cause or purpose of the Divine laws is the general happiness or good. But to trace the effect of our conduct on the general happiness or good is not the way to know them. By consulting and obeying the laws of God we promote our own happiness and the happiness of our fellow-creatures. But we should *not* consult his laws, we should *not* obey his laws, and, so far as in us lay, we should thwart their benevolent design, if we made the general happiness our object or end. In a breath, we should widely deviate *in effect* from the principle of general utility by taking it as the *guide* of our conduct.'

Such, I believe, is the meaning of those – if they have a mean-
ing – who object to the principle of utility 'that it were a *dangerous*
principle of conduct.'

*The two apt
answers to the
foregoing objection
briefly introduced.*

As the objectors are [generally persons little accustomed to] clear and determinate thinking, I am not quite certain that I have conceived the objection exactly. But I have endeavoured [with perfectly good faith] to understand [their meaning, and as forcibly as I can to state it, or to state the most rational meaning which their words can be supposed to import.]

It has been said, in answer to this objection, that it involves a contradiction in terms. *Danger* is another name for *probable mischief*. And, surely, we best avert the probable mischiefs of our conduct, by conjecturing and estimating its probable consequences. To say 'that the principle of utility were a *dangerous* principle of conduct,' is to say 'that it were contrary to utility to consult utility.'

Now, though this is so brief and pithy that I heartily wish it were conclusive, I must needs admit that it scarcely touches the objection, and falls far short of a crushing reduction to absurdity. For the objection [obviously assumes] that we *cannot* foresee and estimate the probable effects of our conduct: that if we attempted to calculate its good and its evil consequences, our presumptuous attempt at calculation would lead us to error and sin. [What is contended is, that by the attempt to act according to utility, an attempt which would not be successful, we should deviate from utility. A proposition involving when fairly stated nothing like a contradiction.]

But, though this is not the refutation, there *is* a refutation.

The first answer to the foregoing objection stated.

And first, If utility be our only index to the tacit commands of the Deity, it is idle to object its imperfections. We must even make the most of it.

If we were endowed with a *moral sense*, or with a *common sense*, or with a *practical reason*, we scarcely should construe his commands by the principle of general utility. If our souls were furnished out with *innate practical principles*, we scarcely should read his commands in the tendencies of human actions. For, by the supposition, man would be gifted with a peculiar organ for acquiring a knowledge of his duties. The duties imposed by the Deity would be subjects of immediate consciousness, and completely exempted from the jurisdiction of observation and induction. An attempt to displace that invincible consciousness, and to thrust the principle of utility into the vacant seat, would be simply impossible and manifestly absurd. An attempt to taste or smell by force of syllogism, were not less hopeful or judicious.

But, if we are not gifted with that peculiar organ, we must take to the principle of utility, let it be never so defective. We must gather our duties, as we can, from the tendencies of human actions; or remain, at our own peril, in ignorance of our duties. We must pick our scabrous way with the help of a glimmering light, or wander in profound darkness.

The second answer to the foregoing objection briefly introduced.

Whether there be any ground for the hypothesis of a *moral sense*, is a question which I shall duly examine in a future lecture, but which I shall not pursue in the present place. For the present is a convenient place for the introduction of another topic: namely, that they who advance the objection in question misunderstand the theory which they presume to impugn.

Their objection is founded on the following assumption. — That, if we adjusted our conduct to the principle of general utility, every election which we made between doing and forbearing from an act would be preceded by a *calculation*: by an attempt to conjecture and compare the respective probable consequences of action and forbearance.

Or (changing the expression) their assumption is this. — That, if we adjusted our conduct to the principle of general utility, our conduct would always be determined by an immediate or direct resort to it.

And, granting their assumption, I grant their inference. I grant that the principle of utility were a halting and purblind guide.

But their assumption is groundless. They are battering (and most effectually) a misconception of their own, whilst they fancy they are hard at work demolishing the theory which they hate.

For, according to that theory, our conduct would conform to *rules* inferred from the tendencies of actions, but would not be determined by a direct resort to the principle of general utility. Utility would be the test of our conduct, ultimately, but not immediately: the immediate test of the rules to which our conduct would conform, but not the immediate test of specific or individual actions. Our rules would be fashioned on utility; our conduct, on our rules.

Recall the true test for trying the tendency of an action, and, by a short and easy deduction, you will see that their assumption is groundless.

If we would try the tendency of a specific or individual act, we must not contemplate the act as if it were single and insulated, but must look at the class of acts to which it belongs. We must suppose that acts of the class were generally done or omitted, and consider the probable effect upon the general happiness or good.

We must guess the consequences which would follow, if acts of the class were general; and also the consequences which would follow, if they were generally omitted. We must then compare the consequences on the positive and negative sides, and determine on which of the two the *balance* of advantage lies.

If it lie on the positive side, the tendency of the act is good: or (adopting a wider, yet exactly equivalent expression) the general happiness requires that *acts* of the *class* shall be done. If it lie on the negative side, the tendency of the act is bad: or (again adopting a wider, yet exactly equivalent expression) the general happiness requires that *acts* of the *class* shall be forborne.

In a breath, if we truly try the tendency of a specific or individual act, we try the tendency of the class to which that act belongs. The *particular* conclusion which we draw, with regard to the single act, implies a *general* conclusion embracing all similar acts.

But, concluding that acts of the class are useful or pernicious, we are forced upon a further inference. Adverting to the known wisdom and the known benevolence of the Deity, we infer that he enjoins or forbids them by a general and inflexible *rule*.

If our conduct were truly adjusted to the principle of general utility, our conduct would conform, for the most part, to rules: rules which emanate from the Deity, and to which the tendencies of human actions are the guide or index.

Such is the inference at which we inevitably arrive, supposing that the acts be *such* as to call for the intervention of a law-giver.

To *rules* thus inferred, and lodged in the memory, our conduct would conform *immediately* if it were truly adjusted to utility. To consider the specific consequences of single or individual acts, would seldom consist with that ultimate principle. And our conduct would, therefore, be guided by *general* conclusions, or (to speak more accurately) by *rules* inferred from those conclusions.

But, this being admitted, the necessity of pausing and calculating, which the objection in question supposes, is an imaginary necessity. To preface each act or forbearance by a conjecture and comparison of consequences, were clearly superfluous and mischievous. It were clearly superfluous, inasmuch as the result of that process would be embodied in a known *rule*. It were clearly mischievous, inasmuch as the *true* result would be expressed by that rule, whilst the process would probably be faulty, if it were done on the spur of the occasion.

Speaking generally, human conduct, including the human conduct which is subject to the Divine commands, is inevitably guided by *rules*, or by *principles* or *maxims*.

If our experience and observation of particulars were not *generalized*, our experience and observation of particulars would seldom avail us in *practice*. To review on the spur of the occasion a host of particulars, and to obtain from those particulars a conclusion applicable to the case, were a process too slow and uncertain to meet the exigencies of our lives. The inferences suggested to our minds by repeated experience and observation are, therefore, drawn into *principles*, or compressed into *maxims*. These we carry about us ready for use, and apply to individual cases promptly or without hesitation: without reverting to the process by which they were obtained; or without recalling, and arraying before our minds, the numerous and intricate considerations of which they are handy abridgments.

This is the main, though not the only use of *theory*: which ignorant and weak people are in a habit of *opposing* to practice, but which is essential to practice guided by experience and observation.

'Tis true in *theory*; but, then, 'tis false in *practice*.' Such is a common talk. This says Noodle; propounding it with a look of the most ludicrous profundity.

But, with due and discreet deference to this worshipful and weighty personage, *that* which is true in *theory* is *also* true in *practice*.

Seeing that a true theory is a *compendium* of particular truths, it is necessarily true as applied to particular cases. The terms of the theory are general and abstract, or the particular truths which the theory implies would not be abbreviated or condensed. But, unless it be true of particulars, and, therefore, true in practice, it has no *truth* at all. *Truth* is always particular, though *language* is commonly general. Unless the terms of a theory can be resolved into particular truths, the theory is mere jargon: a coil of those senseless abstractions which often ensnare the *instructed*; and in which the wits of the ignorant are certainly caught and entangled, when they stir from the track of authority, and venture to think for themselves.

They who talk of theory as if it were the antagonist of practice, or of a thing being true in *theory* but not true in *practice*, mean (if they have a meaning) that the theory in question is false: that the particular truths which it concerns are treated imperfectly or incorrectly; and that, if it were applied in practice, it might, therefore, mislead. They *say* that truth in theory is not truth in practice. They *mean* that a false theory is not a true one, and might lead us to practical errors.

Speaking, then, generally, human conduct is inevitably guided by *rules*, or by *principles* or *maxims*.

The human conduct which is subject to the Divine commands, is not only guided by *rules*, but also by *moral sentiments* associated with those rules.

If I believe (no matter why) that acts of a class or description are enjoined or forbidden by the Deity, a moral sentiment or feeling (or a sentiment or feeling of approbation or disapprobation) is inseparably connected in my mind with the thought or conception of such acts. And by this I am urged to do, or restrained from doing such acts, although I advert not to the reason in which my belief originated, nor recall the Divine rule which I have inferred from that reason.

Now, if the reason in which my belief originated be the useful or pernicious tendency of acts of the class, my conduct is truly adjusted to the principle of general utility, but my conduct is not determined by a direct resort to it. It is directly determined by

Theory and practice are inseparable.

If our conduct were truly adjusted to the principle of general utility, our conduct would be guided, for the most part, by sentiments associated with rules: rules which emanate from the Deity, and to which the tendencies of human actions are the guide or index.

a *sentiment* associated with acts of the class, and with the rule which I have inferred from their tendency.

If my conduct be truly adjusted to the principle of general utility, my conduct is guided remotely by *calculation*. But, immediately, or at the moment of action, my conduct is determined by *sentiment*. I am swayed by *sentiment* as imperiously as I *should* be swayed by it, *supposing I were utterly unable to produce a reason for my conduct, and were ruled by the capricious feelings which are styled the moral sense.*

For example, Reasons which are quite satisfactory, but somewhat numerous and intricate, convince me that the institution of property is necessary to the general good. Convinced of this, I am convinced that thefts are pernicious. Convinced that thefts are pernicious, I infer that the Deity forbids them by a general and inflexible rule.

Now the train of induction and reasoning by which I arrive at this rule, is somewhat long and elaborate. But I am not compelled to repeat the process, *before I can know with certainty that I should forbear from taking your purse.* Through my previous habits of thought and by my education, *a sentiment of aversion* has become associated in my mind with the thought or conception of *a theft*: And, without adverting to the reasons which have convinced me that thefts are pernicious, or without adverting to the rule which I have inferred from their pernicious tendency, I am determined by that ready emotion to keep my fingers from your purse.

To think that the theory of utility would *substitute* calculation for sentiment, is a gross and flagrant error: the error of a shallow, precipitate understanding. He who *opposes* calculation and sentiment, opposes the rudder to the sail, or to the breeze which swells the sail. Calculation is the guide, and not the antagonist of sentiment. Sentiment without calculation were blind and capricious; but calculation without sentiment were inert.

To crush the moral sentiments, is not the scope or purpose of the true theory of utility. It seeks to impress those sentiments with a just or beneficent direction: to free us of *groundless* likings, and from the tyranny of senseless antipathies; to fix our love upon the useful, our hate upon the pernicious.

If, then, the principle of utility were the presiding principle of our conduct, our conduct would be determined immediately by

Divine *rules*, or rather by moral *sentiments* associated with those rules. And, consequently, the application of the principle of utility to particular or individual cases, would neither be attended by the errors, nor followed by the mischiefs, which the current objection in question supposes.

But these conclusions (like most conclusions) must be taken with limitations.

There certainly are cases (of comparatively rare occurrence) wherein the specific considerations balance or outweigh the general: cases which (in the language of Bacon) are 'immersed in matter:' cases perplexed with peculiarities from which it were dangerous to abstract them; and to which our attention would be directed, if we were true to our presiding principle. It were mischievous to depart from a rule which regarded any of these cases; since every departure from a rule tends to weaken its authority. But so important were the *specific* consequences which would follow our resolves, that the evil of observing the rule might surpass the evil of breaking it. Looking at the reasons from which we had inferred the rule, it were absurd to think it inflexible. We should, therefore, dismiss the *rule*; resort directly to the *principle* upon which our rules were fashioned; and calculate *specific* consequences to the best of our knowledge and ability.

For example, If we take the principle of utility as our index to the Divine commands, we must infer that obedience to established government is enjoined generally by the Deity. For, without obedience to 'the powers which be,' there were little security and little enjoyment. The ground, however, of the inference, is the *utility* of government: And if the protection which it yields be *too costly*, or if it vex us with *needless* restraints and load us with *needless* exactions, the principle which points at submission as our general duty may counsel and justify resistance. Disobedience to an established government, let it be never so bad, is an evil: For the mischiefs inflicted by a bad government are less than the mischiefs of anarchy. So momentous, however, is the difference between a bad and a good government, that, *if it would lead to a good one*, resistance to a bad one would be useful. The anarchy attending the transition were an extensive, but a passing evil: The good which would follow the transition were extensive and lasting. The peculiar good would outweigh the generic evil: The good

principle of general utility, our conduct would conform, for the most part, to Divine rules, and would also be guided, for the most part, by sentiments associated with those rules. But, in anomalous and excepted cases (of comparatively rare occurrences) our conduct would be fashioned directly on the principle of general utility, or guided by a conjecture and comparison of specific or particular consequences.

which would crown the change in the insulated and eccentric case, would more than compensate the evil which is inseparable from rebellion.

Whether resistance to government be useful or pernicious, be consistent or inconsistent with the Divine pleasure, is, therefore, an *anomalous* question. We must try it by a direct resort to the ultimate or presiding *principle*, and not by the Divine *rule* which the principle clearly indicates. To consult the rule, were absurd. For, the rule being general and applicable to ordinary cases, it ordains obedience to government, and excludes the question.

The members of a political society who revolve this momentous question must, therefore, dismiss the rule, and calculate specific consequences. They must measure the mischief wrought by the actual government; the chance of getting a better, by resorting to resistance; the evil which must attend resistance, whether it prosper or fail; and the good which may follow resistance, in case it be crowned with success. And, then, by comparing these, the elements of their moral calculation, they must solve the question before them to the best of their knowledge and ability.

And in this eccentric or anomalous case, the application of the principle of utility would probably be beset with the difficulties which the current objection in question imputes to it generally. To measure and compare the evils of submission and disobedience, and to determine which of the two would give the balance of advantage, would probably be a difficult and uncertain process. The numerous and competing considerations by which the question must be solved, might well perplex and divide the wise, and the good, and the brave. A Milton or a Hampden might animate their countrymen to resistance, but a Hobbes or a Falkland would counsel obedience and peace.

But, though the principle of utility would afford no certain solution, the community would be fortunate, if their opinions and sentiments were formed upon it. The pretensions of the opposite parties being tried by an intelligible test, a peaceable compromise of their difference would, at least, be possible. The adherents of the established government, might think it the most *expedient*: but, as their liking would depend upon reasons, and not upon names and phrases, they might possibly prefer innovations, of which they would otherwise disapprove, to the mischiefs of a violent contest.

They might chance to see the absurdity of upholding the existing order, with a stiffness which must end in anarchy. The party affecting reform, being also intent upon *utility*, would probably accept concessions short of their notions and wishes, rather than persist in the chase of a greater possible good through the evils and the hazards of a war. In short, if the object of each party were measured by the standard of utility, each might compare the worth of its object with the cost of a violent pursuit.

But, if the parties were led by their ears, and not by the principle of utility; if they appealed to unmeaning abstractions, or to senseless fictions; if they mouthed of 'the rights of man,' or 'the sacred rights of sovereigns,' of 'unalienable liberties,' or 'eternal and immutable justice;' of an 'original contract or covenant,' or 'the principles of an inviolable constitution;' neither could compare its object with the cost of a violent pursuit, nor would the difference between them admit of a peaceable compromise. A sacred or unalienable right is truly and indeed *invaluable*: For, seeing that it means nothing, there is nothing with which it can be measured. Parties who rest their pretensions on the jargon to which I have adverted, must inevitably push to their objects through thick and thin, though their objects be straws or feathers as weighed in the balance of utility. Having bandied their fustian phrases, and 'bawled till their lungs be spent,' they must even take to their weapons, and fight their difference out.

It really *is* important (though I feel the audacity of the paradox), that men should think distinctly, and speak with a meaning.

In most of the domestic broils which have agitated civilized communities, the result has been determined or seriously affected, by the nature of the prevalent *talk*: by the nature of the topics or phrases which have figured in the war of words. These topics or phrases have been more than pretexts: more than varnish: more than distinguishing cockades mounted by the opposite parties.

For example, If the bulk of the people of England had thought and reasoned with Mr. Burke, had been imbued with the spirit and had seized the scope of his arguments, her needless and disastrous war with her American colonies would have been stifled at the birth. The stupid and infuriate majority who rushed into that odious war, could perceive and discourse of nothing but the

sovereignty of the mother country, and her so called *right* to tax her colonial subjects.

But, granting that the mother country was properly the sovereign of the colonies, granting that the fact of her sovereignty was proved by invariable practice, and granting her so called *right* to tax her colonial subjects, this was hardly a topic to move an enlightened people.

Is it the interest of England to insist upon her sovereignty? Is it her interest to exercise her right without the approbation of the colonists? For the chance of a slight revenue to be wrung from her American subjects, and of a trifling relief from the taxation which now oppresses herself, shall she drive those reluctant subjects to assert their alleged independence, visit her own children with the evil of war, squander her treasures and soldiers in trying to keep them down, and desolate the very region from which the revenue must be drawn? — These and the like considerations would have determined the people of England, if their dominant opinions and sentiments had been fashioned on the principle of utility.

And, if these and the like considerations had determined the public mind, the public would have damned the project of taxing and coercing the colonies, and the government would have abandoned the project. For, it is only in the ignorance of the people, and in their consequent mental imbecility, that governments or demagogues can find the means of mischief.

If these and the like considerations had determined the public mind, the expenses and miseries of the war would have been avoided; the connection of England with America would not have been torn asunder; and, in case their common interests had led them to dissolve it quietly, the relation of sovereign and subject, or of parent and child, would have been followed by an equal, but intimate and lasting alliance. For the interests of the two nations perfectly coincide; and the open, and the covert hostilities, with which they plague one another, are the offspring of a bestial antipathy begotten by their original quarrel.

But arguments drawn from utility were not to the dull taste of the stupid and infuriate majority. The rabble, great and small, would hear of nothing but their *right*. 'They'd a *right* to tax the colonists, and tax 'em they would: Ay, *that* they would.' Just as if

a *right* were worth a rush of itself, or a something to be cherished and asserted independently of the good that it may bring.

Mr. Burke would have taught them better: would have purged their muddled brains, and 'laid the fever in their souls,' with the healing principle of utility. He asked them what they would get, if the project of coercion should succeed; and implored them to compare the advantage with the hazard and the cost. But the sound practical men still insisted on the *right*; and sagaciously shook their heads at him, as a refiner and a theorist.

If a serious difference shall arise between ourselves and Canada, or if a serious difference shall arise between ourselves and Ireland, an attempt will probably be made to cram us with the same stuff. But, such are the mighty strides which reason has taken in the interval, that I hope we shall not swallow it with the relish of our good ancestors. It will probably occur to us to ask, whether she be worth keeping, and whether she be worth keeping at the cost of a war? — I think there is nothing romantic in the hope which I now express; since an admirable speech of Mr. Baring, advising the relinquishment of Canada, was seemingly received, a few years ago, with general assent and approbation.

There are, then, cases, which are anomalous or eccentric; and to which the man, whose conduct was fashioned on utility, would apply that ultimate principle immediately or directly. And, in these anomalous or eccentric cases, the application of the principle would probably be beset with the difficulties which the current objection in question imputes to it generally.

But, even in these cases, the principle would afford an intelligible test, and a likelihood of a just solution: a probability of discovering the conduct required by the general good, and, therefore, required by the commands of a wise and benevolent Deity.

And the anomalies, after all, are comparatively few. In the great majority of cases, the general happiness requires that *rules* shall be observed, and that *sentiments* associated with rules shall be promptly obeyed. If our conduct were truly adjusted to the principle of general utility, our conduct would seldom be determined by an immediate or direct resort to it.

The second answer to the foregoing objection briefly resumed.