First, all laws made are to be subject to the sanction of the Court of Directors—which Court is subject itself to the orders of the Board of Control. Until, however, they are repealed by such authorities, they are (with the exception of some hereafter noticed) to be operative—so that laws for taxation no longer require the previous consent of the Court of Directors. Secondly, no such laws are to affect, or to be deemed to affect, the full Imperial power of the British Parliament to pass laws for India, and to repeal or alter any laws made by the local Government. Thirdly, no such laws are to be contrary or repugnant to the Charter act itself of 1833—or to any future Statutes, or to the Statutes already made for the government of *British soldiers*. Fourthly, no such laws are to affect the *Prerogatives* of the Crown (which have been enumerated and explained in the second Discourse)—or those constitutional, fundamental laws of the whole British Empire, which require the obedience of every subject of the British Crown to its government and laws—which obedience is termed his *allegiance*. Fifthly, no such laws are to affect or alter any of the rights or powers conferred by the Government and Crown of England on the East India Company itself—as represented by the two bodies of the Court of Directors and the Court of Proprietors. Sixthly, no such laws are to impose the punishment of *death* on any *British* subjects, without the previous sanction of the Court of Directors. And, seventhly and lastly, no such laws are to *abolish* either of the Supreme Courts of India, though they may regulate them, and the law and course of justice to be administered by those tribunals. Such is the nature and extent of the *second peculiar power* of the Governor-General of India in Council.

SECTION VIII.

The same subject continued: of other peculiar powers of the Supreme Government.

The *third peculiar power* of the Supreme Government is that of transacting all affairs, of negotiating all treaties, and of making war or peace, with foreign states. Such affairs and treaties, we have seen, can only be carried on, or completed, under the *express orders* of the Supreme Government, except any sudden emergency should arise—and, the better to ensure this superintendence and control, the Act passed in the year 1784 requires that any such treaty made with a foreign state by, or through the medium of a subordinate Government, should in the body of it contain a clause making the treaty conditional on the ratification of the Supreme Government. An important and memorable restriction is imposed by the same Statute on the exercise of this power even by the Governor-General himself. That act solemnly declares that "to pursue *schemes of conquest* and *extension* "*of dominion* in India, are measures *repugnant to the wish*, "*the honour, and policy* of the British nation." It accordingly prohibits the declaration of war, or the commencement of hostilities, against any people, or the guaranteeing the possessions of foreign Princes, without the express command and authority of the Court of Directors—except in those cases in which it shall appear that war has been commenced, or preparations made for war, against the British nation, or against any other nation which the local Governments have engaged to defend. And in these excepted cases the Supreme Government is directed, at the earliest opportunity, to convey all requisite information of its proceedings to the Court of Directors.

The *fourth peculiar power* of the Supreme Government is that of directing the *collection* and *application* of the *Revenues* of all India. This power is, in its nature, of a very *general* and of a *controlling* quality. A large portion of the revenues of India is specifically appropriated by Statutes—as in the paying of dividends to the Proprietors of stock, the maintenance of the forces, and the salaries of the high functionaries of the Indian Governments. Almost all the rest is required for the current and ordinary expenditure of the several Governments, according to the course provided for their administration. The occasions, therefore, for its special directions are few, compared with those in which each local Government is left to apply the financial resources of the country to the exigencies of the public service. Still, it has been thought expedient that the Supreme Government should have power, not only to lay down general rules for all extraordinary expenditure, but also upon occasion to interfere, expressly, either in prohibiting, or in directing particular modes and amount of outlay. And this is a power that is much and often practically exercised.

The *fourth* and last *peculiar power* of the Supreme Government that appears necessary to be noticed, is that of directing the employment of all the military forces of India. This, also under ordinary circumstances, is rather a controlling than a directory power. But it is obviously requisite that, as emergencies arise, the Supreme local power of the state should have the active direction, as well as the general superintendence, of its armies.

SECTION IX.

The same subject continued: of the powers exercised by the Subordinate Governments.

The last subject of this discourse is the consideration of the *functions and powers* of the *Subordinate Governments* of Madras, Bombay, and Agra, including also such of those of the Presidency of Bengal as are not obviously merged with the peculiar powers of the Supreme Government itself.

And, first their *legislative functions* are now confined to the mere *preparation* of *drafts* or projects of regulations, which are to be submitted to the Supreme Government, together with their reasons for proposing them, and upon which the Supreme Government is required to form and communicate its resolutions.

Secondly, the subordinate Governments have the appointment to all offices held in the respective Presidencies among which is the office of a Justice of the peace, whose authority is exercised, not in the name of the local Government, but in the name of the Queen herself

But, it is to be observed, that the Presidency of Agra has no distinct establishment of civil or of military servants, but that those appointed to the Presidency of Bengal may hold, as before, offices in either of those two Presidencies. All these principal offices in the state (with the exception of that of a justice of the peace)—both civil and military—are at present filled by those who are nominated to the service of the Company in India by the Court of Directors. But, although the persons nominated by the Court of Directors to such service, and eventually appointed by the local Governments to such offices, have hitherto been those subjects

of the British Empire termed British subjects by way of distinguishing them from the Asiatic subjects, still there is no restriction *imposed by the law* under which India is governed, either upon the local Governments or upon the Court of Directors, against the appointment of *Natives*. This may probably be new and appear incomprehensible to many Native readers of this work No one instance has ever been known of a member of the Native community having attained to any office which could be held by a *civil servant*, or to any step of that rank in the army which a *commissioned English officer* holds. But the last Charter act has nevertheless declared "that *no Native* of the territories of British India shall, *by reason only of his religion, place of birth, descent, colour*, or any of them, be disabled from holding *any place, office, or employment* under the Company."

What, then, are the grounds of disqualification which prevent members of the Native community attaining the very highest stations which can be aspired to in the Government or service of the Indian Empire? They are these only. That a certain quality of civil offices are by the standing rules of the Court of Directors to be filled by such only as are by them nominated to the Civil service of India as *Writers*; and by Statute it is ordained that no person shall be appointed to the Civil service as a writer unless he shall have been educated at Haileybury College in England. But both the rules of the Court of Directors, and the statute requiring this course of education, are founded on this principle—that by force of such provisions those who *are sufficiently qualified* by mental cultivation, by loyalty to the British Government, and by moral integrity, are likely to be furnished for the service and preservation of the Indian Empire. And on the same principle is the supply made by the Court of Directors of certain persons, denominated *Cadets*, out of whom only those military officers of the Native army are to be appointed who are to hold any rank from that of Ensign or Cornet upwards. While, therefore, the Court of

Directors shall continue to enforce these provisions for the supply of persons to fill the higher classes of civil and military office, the local Governments, who owe obedience to the orders of this Court, must conform to them. At the same time it is unquestionable, that, *should the policy appear sound, and tending to the real prosperity of the country*, and should the just and necessary *qualifications* exist, there is nothing *in the present laws* under which India is governed, which should prevent the Court of Directors from nominating any Native to even the highest post, military or civil, in their disposal; or which should preclude that Court from nominating any Native to enter their service, generally, *as a writer*, who should by possibility have gone through the requisite course of education at Haileybury; or which should restrict that Court from nominating a Native *as a cadet*. Nay, further—there is nothing *in the law* or constitution of the Indian Governments which should preclude a Native from attaining the highest office in India, conferred by the Queen of England, such as that of a Judgeship even of the Supreme Court—so only that such Native should by his mental and moral qualities, and by his acquirements, prove himself to be *competent to the duties* of it.

That the appointment to these superior offices, both Civil and Military, should have been constantly confined to British subjects must be explained by the history of past events, and the political necessities of the country, as well as by the condition of the people. But the period seems approaching when this policy will appear no longer necessary or expedient. So long as the struggle for dominion was maintained among rival powers, whose success depended only on the sword—so long as the British Empire in India was unsettled and unstable, its institution forming, and its scheme of administration new—so long as the whole body of the people were strangers to all systematic government founded on the supremacy of regular laws, ignorant even of its principles, unenlightened by education, and as yet unat-

tached by feeling to the British rule—it would have been obviously premature, and indeed absurd, to have opened the attainment of influential office to the Natives so recently subjected to the British rule. It would have been at once to have abandoned the country to civil war and destruction, or to have consigned it to the grasp of some other foreign dominion. But, with the diffusion of knowledge and intellectual cultivation, has sprung up a sense of the benefits of a liberal and well regulated government, and some conviction that the prosperity of the country must depend on the permanency of its strength. The spirit of faction—and even that of social repulsion—has been gradually allayed. And, at last, public institutions are forming, not only for the general elementary education of the people at large, but for imparting literary, scientific, and professional proficiency, calculated to raise Native qualifications to a level with the resources of the country, and the capacities of the people.

It is not to be doubted, therefore, if the Native community shall be true to themselves and their real interests, that all the offices of state, and in the administration of the affairs of the country, will be gradually open to their ambition, in proportion to their proved competency to sustain them. As regards the *Military rank* held by British subjects, it will perhaps be long before the members of the higher classes of the Native community will desire to share the responsibilities of such posts. They may probably consider it most conducive to the military strength of the Empire, and most consistent with their own habits and avocations in life, that the Native army should be composed of that quality of men who now embrace that line of public service; and that they should be led into the dangers and enterprizes of war by the same energy and skill that as for a long series of years shed a glory on the Sepoy arms. But, as regards the offices and honors of *civil life*, the ambition of the superior Natives, who are qualified and well-affected towards the British Government, naturally grows in proportion to their right to attain them. It is sufficient to say that, as

well the local Governments as the Imperial Government of England, and its functionaries the Court of Directors have recognized this right *so founded*; the rest must depend on the character, the public spirit, and exertions of the Native people themselves.

Thirdly, may be mentioned the very limited authority reposed in the subordinate Governments of transacting affairs, and negotiating treaties, with foreign Native states and of declaring war or making peace with them. This authority they can only exercise (as we have seen) *in cases of emergency*. All such negotiations must, under ordinary circumstances, be conducted by the Supreme Government—and all treaties entered into by the subordinate governments in extraordinary cases must be made on the face of them subject to ratification by the superior Government. Neither can *any* local Government, Supreme or Subordinate, declare war (except in the circumstances of necessity which have been already noticed) without the express orders of the Court of Directors.

The fourth function of the subordinate Governments to be adverted to is that of the government and direction of the army belonging to each respective Presidency—which military government is administered, mainly, through the Commanders-in-Chief of each Presidency. It is to be remarked, however, that the Presidency of Agra has no separate and distinct military establishment, and accordingly, for all military purposes, that Presidency is still considered, as before, a portion of that of Bengal. The Supreme Government has (as we have seen) the power of superseding the ordinary course of governing and directing the application and employment of those forces under commanders of its own appointment. This, however, is an authority never exercised except with a view to the employment of those forces in active service. But in time of peace, and in the active duties of the armies within the precincts of their own Presidencies, the subordinate governments conduct

the whole of the responsible and important duties of the Military, as they do those of the Civil Government.

Fifthly, the subordinate Governments have the ordinary management and disposition of the revenues of their respective Presidencies. In this financial administration, however, they have, first, to observe those requisitions of Statutes which have expressly regulated the general application of such revenues; and, secondly, to obey the special orders, as well of the Court of Directors as of the Supreme Government, in this department of their duties.

Sixthly, it rests with the Governments of Calcutta, Madras, and Bombay, to fix the boundaries of the Towns of those names, and extend the limits of them, as expediency may seem to require. The districts composing the *territories* of each Presidency are to be settled from time to time by the sole authority of the Court of Directors; and any order of the local Governments fixing the limits of the *Towns* of Calcutta, Madras, and Bombay, must also have the previous sanction of that Court. This authority for limiting the boundaries of the seats of these local Governments is founded on various Statutes, which enabled those Governments to make regulations for the municipal or internal police government of those Towns, and which have made the jurisdiction of the Supreme Courts co-extensive (as regards Natives) with those limits.

Such, then, are the various functions and powers entrusted to the local political authorities of India (subordinate and supreme) for the administration of the whole Civil and Military government of the British Empire established in that country. Many details, as well in respect of these powers, as in respect of the constitution and form of these Governments and the method in which they act, have in a work of this nature been necessarily omitted. They can only be learned, thoroughly, by a reference to the copious volumes of Statutes and Regulations, and to the several

works explaining and commenting upon them. But, it is trusted that a general and intelligible account of the scheme of those Governments has been given, sufficient for all the ordinary objects of such information; and well calculated to form the basis of that further and more accurate acquaintance with the subject which professional or official duty may impose.

SECTION X.

Reflections on the quality of the system of Government in India; and notices of some defects.

And, now that the reader has arrived at the conclusion of this division of my labours, it may perhaps interest him to cast a glance over the course he has passed, and to pause in reflection on the quality of that knowledge he may have gained.

If he shall be induced once more to review with studious consideration those doctrines of political Government which have been summarily expounded in the first of these discourses, he may probably find his facility of comprehending them increased, and his conviction of their soundness confirmed, by the practical information derived from the ensuing pages. On the other hand, a just conception of those principles which lie at the base of all well-constructed governments will serve forcibly to impress on his understanding the origin and quality of that system of local Government under which the Empire of British India is administered.

It will be found that the Government of the British dominions, throughout all their extent, is a *consistent whole*. The *constitution* of England is the grand source of every plan of political administration established in each portion of those dominions. Over that administration the constitutional powers of the British Government hold a constant and an operative superintendence. But the English constitution is not a mere gigantic fabric, without proportion or symmetry—resting on no other foundation than its own weight, or the arbitrary will of its founders. Its parts so correspond and fit with each other as to manifest political judgment and skill of the highest order, expanded through

many generations upon its construction. It is reared upon the foundations of human nature itself in its social relations, and of human reason as applied to those relations.

Whether the English constitution be, or be not, founded on the just principles of government—and whether there be, or be not, that correspondence between its fundamental rules and the true ends of Government, viz, that happiness of the people which consists in the perfect enjoyment of private rights and acquisitions, and personal security from wrong—can only be determined by ascertaining what those just principles are, and then by a thoughtful comparison between those principles and those constitutional rules. An easier, and if not a surer, perhaps a more satisfactory judgment may be formed of the tendency of those rules, from a consideration of their effects. For undoubtedly the effects of those rules are apparent in a greater measure of political strength, prosperity, glory, and intellectual advancement than has ever befallen a nation through the history of mankind. It is a judgment formed from such sources as these which must qualify a subject of the British Crown to serve the political interests of the nation with effect—it is such a judgment, alone, which can inspire him with that loyalty to the Prince, and that permanent and rational attachment to the institutions of his country, in which true patriotism consists.

Although considerations such as these may appear to demand some stretch of thought and of reflection, yet the commonest attention to the details of the preceding discourses must suffice to shew the intimate *bond of connection* between the plan of the local Governments of India and the general system of governments under which the whole British Empire is ruled. The Supreme Government of India (as it is called) and the subordinate Governments of the Presidencies, are all constituted and regulated by *British Statutes*—and to the *British Parliament* are all Indian functionaries responsible for the just exercise of the powers entrusted to them. The *Company* is no more than a body of our own fellow-subjects, *through*

whom (subject to the control of a *Board* composed of another body of our fellow-subjects)—acting ordinarily by their appointed Governors and officers—the administration of the Indian Governments is carried on. This Company consists, as we have seen, of an associated number of *Proprietors of India Stock*, whose chief and almost only active duty is that of electing from among themselves such qualified persons who are to act on behalf of the whole Company in the exercise of those authorities entrusted for a time by the Parliament of England. But it is obvious that the Parliament of England might have selected any *other* body of our fellow-subjects, to wield the same powers as are reposed in the Company—subject to the same control and the same responsibilities. The legislature might have selected another body of Electors than such Proprietors—it might have selected at once, and without any election by others, a certain number of individuals, who, as *Directors*, or under any other name, should have to conduct, as the highest active authority, the Civil and Military government of India; and who might have conducted it upon a different plan, and through the medium of different Governors and officers, than is at present ordained. It is plain that the system of government for India, is only a *method* and a *medium*, through which the *Supreme* Government *of England* governs a portion of the subjects of the British Empire—in the same way as that Supreme Government, to a certain extent, regulates the course of authority exercised in certain cities and districts of England itself.

But it is not enough to observe that the Governments in India have been modelled *on the basis* of the English constitution—has been regulated through the same legislative authority which dictates the course of Government in England—and depends altogether upon such future interference of the British legislature as may be deemed from time to time expedient. The form and frame of the Indian Governments are so planned, that the system of policy pursued

by them, and all their general and important measures, are *influenced*, and *often directed*, and *always controlled* by the self-same Councils which rule the political administration of the European portion of the Empire. This results from the institution of the Board of Control, as a constant operative power in the scheme of our Indian Government. For the President of that Board, being himself by virtue of his office one of the Queen's Ministers—and the majority of the Board itself being composed of others of those ministers—it must follow that this Board, in the actual exercise of its superior powers in the government of India, must conform both to the general views and expressed wishes of the existing Ministry of England. Thus the great national measures undertaken through and by the local Governments of *India* become—like all others pursued by the *Executive* Government of *England*—the subjects of debate and revision by the British Parliament. On the approbation, or otherwise, by that august assembly of the national measures and general course of policy under which India is ruled, the question of a continuance, or of a change, of the Queen's ministers may depend—in the same manner (though not in an equal degree) as upon the approbation, or otherwise, by that body of the measures of the ministry in the internal administration of England itself. For instance, the late war in Affghanistan was undertaken under the influence, if not the immediate direction, of the English Ministry, and upon their responsibility. And many even of such projects as are limited to general improvements in the condition of the people—such as a change in the system of taxation, a better digested code for the administration of justice, or a comprehensive plan of national education—can scarcely be entertained without the concurrence and support of the same Ministry.

When, therefore, it is commonly said that the territories of India are *governed by the Company*—and that the people of India live under the *Company's Government*—and when we hear of the distinction of *Native subjects* and of

British subjects—We ought to have a right comprehension of the meaning of these terms. The people of India live under the Company's Government, as the people of England live under the Executive Government, the body of the Queen's Ministers. The Company, as represented by the Court of Directors acting through their officers, are no more than a body of our fellow-subjects appointed according to the constitutional scheme of power laid down by the supreme authority of England, to govern India in conformity with the fundamental rules established for its government. And, in like manner, the Ministers of the Queen of England are a certain body of our fellow-subjects appointed according to the scheme of the English constitution, for the government of the English Empire in conformity with the fundamental rules of that constitution, and in strict observance of the Statutes ordained by the supreme authority of the realm. The people of India, like the people of England, are all subjects of the *Queen*, and not of the Company. If some of the Queen's common subjects settled in India are termed *Native* subjects, and others *British* subjects, it is because *justice* and the *equal benefit of all*, require that different laws, and a different mode of administration of those laws—with special reference to peculiar customs, religious tenets, and habits—should regulate *private* rights; and therefore *some* term for distinguishing the different classes of the Queen's subjects became necessary. But this distinction does not imply that a *different measure* of protection in the enjoyment of private rights, and of securing from personal wrong, is dealt out towards the separate classes—or even that the *law* and *constitution* of the Indian *Governments* recognize any difference in the *political* rights and privileges of the one class over the other. A consideration of the *qualifications* of the candidates for offices and honor, and a judgment to be exercised by the regular appointed authorities bearing rule over this country upon such qualifications, are the only principles of selection which are founded on *the law of the land*. The Englishman arriving in India submits himself to the self-

same rules and course of government as bind his native fellow-subject—the Native, should he visit England, partakes in common with his British fellow-subject every political, social, and legal right.

In contemplating the various gradations of authority—the multiplied dependencies—and the checks upon checks—which characterize the scheme of the Indian Governments, many who have little reflected on the just principles of Government, on the tendencies of all political power to abuse, and on the facilities of evading responsibility by rulers governing at a distance from the supreme organs of the state, may deem that scheme too complicated for effectual management, and that a greater simplicity would impart a proportionate increase of strength and national prosperity. But the perfection of a work is not so much to be judged of by the simplicity of its construction, as by the facility and exactness of its operations. The most stupendous of machines, the steam engine, presenting to the eye of ignorance a confused mass of combinations, and of intricate movements, directed to a multitude of diverse objects, is yet so precisely fitted in all its parts, and its motions so appropriately adjusted through all their series to the prime impelling force, that its gigantic task may be accomplished under the guidance of one man's hand. And, in like manner, the grand machine of political Government may be constructed of powers as proportioned to the duties assigned, so regulated in their dependencies on each other, and so intimately connected together by a common bond of union, that the direction of its mightiest, and of its most minute, motions can receive its impulse as from one single mind. The scheme of Government for British India *works* well. The supreme influence of the British constitution is *felt* throughout the whole system. So long as the rulers and the officers engaged, according to their various gradations in the administration of the Indian Governments proceed in the correct and ordinary discharge of their duties, there arises no intermeddling, to embarrass, nor is much occasion taken

to occupy vainly the public attention, or that of the supreme authorities of the State. But, should any design be conceived, or any enterprize be undertaken, affecting the national welfare—should the Collector project an improvement of the national revenues, or the Judge suggest an amelioration of the laws—there is a just consideration ensured to these undertakings throughout all the organization of Government, up to that of the British Parliament itself. It is seldom that such beneficial labors have failed in securing for their authors public honors, and more conspicuous duties. On the other hand negligence, malpractices, and public wrongs can hardly escape notice, retribution, and redress. The public voice is instantly lifted up against them. The scrutiny of a connected gradation of responsible authorities is called forth in judgment upon them. And these are the surest testimonies of a good and efficient system of government—that the national energies have room to expand, while oppression stands rebuked before the frown of authority.

But it is not the object of these discourses to glorify the system of Government for British India; but rather to enable the reader *to form an intelligent judgment* upon it. It may not be, therefore, altogether unbefitting such design to point out even its defects, when they appear obvious. I shall close this discourse by noticing two that seem to be such.

1*st*.—Having regard to those *just principles* of Government, which it was the object of the first of these discourses in some measure to set forth, it will be remarked as a violation of those principles, that any man, or body of men, should be maintained in wealth and luxury, out of the toil and property of the people, as public and national objects of expenditure, who have no public duties to perform, or who are unable or unwilling to perform them adequately. But the Government of British India—compelled originally by the force of circumstances which still have their influence—

fosters in no small degree this violation of just political principles.

I wish not to speak particularly here of that support afforded to various Native powers, by which the dominion of certain families is upheld over the people, without any interference being conceded on behalf of the interests of the people themselves against the misgovernment of their rulers. This characteristic of the British policy—promoted solely by a regard to the interests of England—may be disastrous enough to those Native states who suffer under it. By removing all *check* upon misgovernment through the intervention of the people themselves, the ruler is encouraged in abusing his power for his own private objects. His sense of the *dependence*, both of his own authority and of his people's prosperity, on the interests and *will of a more powerful nation*, deadens within him all hope of raising his country to the level of a rivalry (which might be thought dangerous)—and all desire to govern well at the good pleasure of another power, and at the risk of its disapprobation. The people, in the meanwhile, submit and crouch down under the utmost severity of oppression—for they *cannot* effect a change by a revolution in *their own* Government; nor can they overthrow the treaties by which they are rejected from becoming subjects to another Government. These treaties are not made with the nation on their public behalf; they are rather made with their ruler on his private behalf. But this is a topic of more concern to other states than to our own.

But the British Government sustains *within its own territories* numerous sovereigns, who are such only *in name*—and who being neither subjects nor rulers, are bereft indeed, through the vigilance exercised over all their actions, of all power to *do mischief*—but at the same time are incapacitated through such control from *doing good*—and are doomed to lead a life of indolence and unmeaning pageantry, which, if not a burden to themselves, is at least an almost intolerable burden to their country. These are dignitaries who,

sprung from ancestors *once* the *real* rulers over the country, are now left to be supported by the common toil and resources of the people, although *the objects* for which such contributions were made have long since ceased. If, indeed, these personages, upon losing all real authority as monarchs, had surrendered also the rank and pretensions of royalty and had been content to become *dignified subjects*, in possession of ample means to maintain the highest position in society—it had been well for their own true interests, and well for those of their people. Neither would the public welfare have been affected by the apportionment of an amount of the public property sufficient for such objects. But, then, all that vain expenditure wasted upon thrones and courtiers, where there is no Government—and upon magistrates and functionaries who have no duties—might be spared for more rational purposes. Those who held their property, and their rank in society, upon the same terms of being responsible to the opinions of society and to the laws for the property and usefulness of their lives, in the same manner as all other subjects under a regular Government, would at least be independent of all that *other* and *far more enslaving* control to which, in the *unreal* capacity of *sovereigns*, they are placed in subjection. There would then be some probability that their fortunes might be expended upon objects in which the rest of the public might have an interest as well as themselves, and which would be productive of benefit in advancing the arts and general industry. It might be expected that a contrary course of mere unmeaning waste and extravagance would be persisted in only so long as neither sense nor self-interest had any influence.

As it is, the common resources and means of the people are exhausted by a constant drain productive of no common or public advantage whatever. A sort of double government is maintained, one for the public purposes of the state, and another for empty show and the enforced sloth of a royal court without subjects. Vain pageantry and idle amusement become of necessity the only occupation of such

a court. For he that enjoys the rank of a monarch is at the same time deprived of all power of interference in the business of the state—and, claiming to be above the law, and under no responsibility for his conduct, he is not allowed the same freedom of action, or even the same liberty of managing his own means, as is conceded to the ordinary subjects of Government who are under the restraint of the law. It must be plain that it would be the same thing if the people of a country were to tax their labour, and contribute their wealth, to fill up the sea, as to bestow it in nourishing the pomp and wastefulness of such as can render no services to the public, nor even share in their common interests. It is to be observed that it is not a large amount of property thus surrendered *once for all*—ample to support its possessor in all the affluence and dignity which is consistent with the highest station of a subject—and granted in consideration of power formerly held and duties formerly performed. It is the unceasing and certain expenditure of an enormous portion of the *public revenues* of the state for sustaining the false splendour of a royal establishment. No nation can make any prosperous progress under such a load. Those resources which might be devoted to public works, to extending the means of communication, to the encouragement of the arts, to fertilizing the soil, and to the spread of education, are almost all swallowed up.

But this is the result of public treaties—of treaties made with the former rulers of the land—not, indeed, made for the public benefit of their people, but made for the private benefit of themselves. But the faith of public treaties must ever be observed: and, so long as the people can endure the injustice of them, and those with whom such treaties have been made shall deem it for their interest also that such endurance shall continue, the faith of such treaties will be observed. The evil of them is, nevertheless, a truth—and a truth which should be known. For the time may come when the real advantage of *all parties* concerned may combine with their common desire for their modification.

2nd.—The other defect in the system of Government for British India, which I would notice, is the want of any plan of *political representation*.

It will be remembered that an endeavour was made in the first of these discourses to establish, as one essential principle of just government, that *the people should have a share in its administration*. That share was shown to consist, partly in the means afforded to the bulk of the people of attaining to the offices and honors of the state, and partly in the means afforded them of influencing and co-operating in the actual measures and proceedings of the supreme authority itself. The exercise of this last species of express share in the administration of the Government it was shewn, could only arise out of some well-organized system of *representation* through election. And, in the second of these discourses, an illustration of such a system was attempted by explaining that of the British constitution.

Upon the nature of that share in the administration of the Government which the people of India possess or may attain to, and which consists in the access afforded to all classes, according to their qualifications, to the honors and offices of the state, I have perhaps already observed sufficiently in this present discourse. But we look in vain throughout the system of government for India for any trace of that share which the people of India can only exercise through some plan of political representation by the election of Representatives. It remains to offer some remarks on the resulting disadvantages.

They may be gathered by the reflecting inquirer from that portion of the first of these discourses to which the reader's attention has just been directed. A full and complete system of representation, such as has been there pourtrayed, and such as our fellow-subjects in England enjoy under its constitution, cannot be reasonably or beneficially advocated for India. *Such* a system would not be compatible with the *present condition* of the people, nor

with the necessary *security and strength of the Government.* Its great distance, moreover, from the seat of Empire and the place of Parliamentary assembling, presents difficulties in the details of any arrangement, not easy to be overcome. But these considerations may not appear sufficient for abandoning all efforts at introducing some practical *approach* to a better constitution of the Indian Governments. So long as the whole body of the Native community of India are without representatives in the supreme, or even in the subordinate, councils of the nation—so long are they without adequate means of exposing the mischiefs of any measures of misgovernment, or of suggesting those which may be most conducive to the national prosperity. It is only from the *people themselves* that rulers can faithfully be taught the good and evil effects of their policy before it is too late. While the people do but grieve and silently submit, public and common disasters become the only monitors. It is doing little to give free liberty of printing and invite the general attention to the quality and tendency of laws before they are passed. *A public* cannot be thus created for any practically useful purpose. The people require a common bond of union; some sufficient organ through whom their sentiments may be made known and their interests be vindicated. Such are political representatives, having constant communion with those who appoint them. It would be their *especial task* to watch on behalf of those whom they represent—it would be their *express duty* to protect them against unjust or erroneous measures—and it would become their *peculiar glory* to advance the prosperity of that country whose destinies are confided to their care. It is only by some means of political representation that the common interests of the people of both these portions of the English Empire can be identified, and their union as fellow-subjects be permanently fixed. These means are at present wanting to the people of India; but it is no vain expectation that they will before long be supplied.

DISCOURSE VI.

On Jurisprudence: or the Principles of Administrative Justice.

Of the quality of the Virtue of Justice; and of the quality of the Science of Administrative Justice. Of the nature and object of human laws for the administration of Justice. Of the origin and nature of Property. Of the transfer and succession of Property. Of the security of the Person. That the laws on which Administrative Justice is founded should be clear and certain. In what manner laws should specify and define rights. Of the Civil Code, for the restoration of rights, and the redress of wrongs. Of the Criminal Code for the Punishment of wrongs. That revenge is not a just principle or object of laws for the punishment of Crime. Of what is the legitimate object of human Punishment. Of the Code of judicial procedure. its nature and objects. Of the evils arising from a defective method of judicial procedure. That the laws of a country ought to depend on certain general principles; and be arranged according to some system—the knowledge of which forms a Science. Of the quality of the English system of law. Of the causes of litigation independently of the quality of laws. Of the expediency of reducing the laws of a Country into a systematic Code.

DISCOURSE VI.

On Jurisprudence: or the Principles of Administrative Justice.

SECTION I.

Of the quality of Justice as a Virtue, and of the quality of the Science of Administrative Justice.

WHAT is *Justice?* What does that *term* imply in the English language? What are the ideas and meanings called into our mind by the word? What are the terms employed in the various languages of the earth to express a notion comprehending so much signification among men of cultivated understanding and virtue?

These are speculations of weight and interest to all elevated minds. They concern, and they more or less in truth occupy, the thoughts of every rational being. The simplest savage has a sense of what has contradicted, or of what has accorded with, some principle or idea of *justice* or *fairness*, towards himself or his neighbour. He confines his notion of justice to the few circumstances attending, or giving rise to, the personal pain, or the personal privation, or the personal pleasure, he is capable of, or exposed to. He probably has no *general* term in use by which he can communicate that notion, apart from the actual thing suffered or enjoyed. But the civilized man,—a member of human society in its most exalted state,—the man of meditation and refinement,—casting his reflections over the vast variety of human actions and passions in the innumerable relations of civilized life,

seeks for some general term or expression by which he can characterise that quality which is *common to an infinite multitude* of the acts and feelings of mankind, and which in his mind he considers to be the quality of *justice*.

So soon does the necessity of this classifying term arise, as the relations of social life and of Government are enlarged, that a nation hardly deserves the name, nor can be considered as emerged from barbarism, whose language possesses no *special word* to denote some *general idea* of justice apart from the term denoting any specific act itself which may be considered just. And, in proportion as a nation extends the various relations of social life, and has advanced in intellectual cultivation, will the significance of the term *justice* be extended, and comprehend a larger variety of applications.

In its general signification among the best cultivated and most intelligent of mankind, the term *justice* includes many more applications than are appropriate to the immediate object of this discourse. It may be said, indeed, to include every *duty* we owe in social life to every class and quality of our fellow-creatures.

For if justice consists in conceding to every man what God or our conscience declares to be his *due*, it is a virtue which requires of us neither to grasp at, nor to withhold, nor even to entertain designs against his property—it requires that we should lend our help to our fellow-creatures in that same proportion as we feel we may fairly look for it from others—it requires that we should respect the very feelings of others, so that we should inflict no mental distress for the sake of our own gratification—it requires that we should protect and advance those who by nature, or by the circumstances of life, are made dependent on us—and, to accomplish these our *duties*, it requires of us such strict regard to *truth*, as that no paltry fears or interests should induce a deviation from it. Estimated according to such a measure of its signification, the idea or notion of *justice* is that of

the first, or rather the queen, of virtues; for it governs and employs all others.

And that *truth* is the very stay and strength of Justice is plain from this—that those who are willing to do every duty by their neighbours can never give effect to their virtues under ignorance or delusion; and those who are base enough to seek the injury of their neighbours will scarce avow their feeling or intentions, but endeavour to disguise them by every species of falsehood. For, if all the bonds by which society is held together could be burst asunder, if men should altogether disregard the rules of Justice, it is equally certain that such rules could not be regarded without a true knowledge of the actions and feelings to which those rules were to be applied. And thus, also, as we abhor the oppressor, who in the insolence of power openly tramples on the rights of others, so do we despise and punish those who violate those rights through fraud or falsehood. The honesty of the merchant is, that he is *true and just in all his dealings*—the honor of man with man is that he *holds sacred his word;* that "he sweareth to his neighbour and "disappointeth him not, though it were to his own hin-"drance"—the honor of a nation is the observance of *national faith.* Out of these principles of truth arises Justice—and upon Justice is founded as well the individual welfare of every man as a member of society as the prosperity of a nation. We honor the man of truth because he scorns private and unjust advantage, and because he is above even the sensation of fear. And although in singular instances it often happens that fraud or falsehood promotes a temporary advantage (which base men are usually tempted to trust will fall to themselves), yet it generally happens otherwise; and it is absolutely certain that, *in the main*, the real interests of the *whole body* of the people, which ought to be the common cause, suffer. Experience, therefore, has assuredly shewn that national civilization and prosperity advance in proportion to the love of truth and justice.

But I must avoid wandering into discussion rather belonging to the moralist than to the expounder of the principles of human laws and rules of right, which are more properly the subjects of my present discourse. and to which these observations are but introductory.

Of justice, therefore, in its highest and most general meaning—or of that *natural sense* of what is due to each man in his station, which inspires the disposition of a virtuous man—or of that *habit of mind* which leads him voluntarily to render to each what is due—and how this *sense and habit* of justice tends to human happiness—I am not about to treat. Neither shall I examine into those principles of justice which by common consent are, or ought to be, acknowledged between *independent nations*; who, having no power to prescribe rules to each other, refer themselves only to that *natural and rational sense* of right and wrong which suggests voluntary duties. But there are particular acts of justice which are enforced, and particular acts of wrong which are prohibited, by express regulations of human origin, to which we give the name of *laws*. These laws *settle* and *declare* what are rights and what are wrongs—and the observance of them depends, not on the opinions or inclinations of those who live under them, but on the power of the magistrates appointed to enforce them. There are many things which nature itself, or the revealed will of God, has taught us should be done, or should be forborne, and whereby the human race may best attain true happiness in life, which things are nevertheless left to the dictation of our consciences, of our feeling, of our religious faith. But other matters for the better advancement of the peace and interests of mankind, and for the very preservation of the bonds of society, have been necessarily made the subjects of imperative rules, and could not have been left to the erring opinions or frail dispositions of mankind. In the application of these rules to human actions consists that particular quality of justice which may be termed *administrative* justice.

These rules, or *laws*, must be various in different nations, according to the circumstances of each. But all are, or ought to be, governed by certain common principles which are the *laws of laws*. There are definite purposes and objects of *all* laws having in view a true course of administrative justice—and in ascertaining what these objects are, and what are the *essential qualities* of just laws, as tending to effect such objects, consists the science of *Jurisprudence*

SECTION II.

Of the nature and object of human laws for the Administration of Justice.

It would be vain to expect, that such a disquisition as I propose to engage in can be made attractive to the general reader, curious only for amusement. The doctrines and propositions to be submitted involve many considerations, and much reasoning; and are not of a nature to be comprehended without some mental effort. The reader should be warned, therefore, that, unless he brings to his assistance a thoughtful reflection upon the passages he is about to peruse, his attention will be unprofitably wasted. For it is not to be denied that the science of jurisprudence must be classed among those whose province it is to enrich the understanding with fruitful and important truths, rather than to entertain the imagination with pleasing fancies.

Since the *happiness of* man *as a member of Civil Society*, or of an united community, is equally the final end and object as well of all *law* as of all *Government*—and since that happiness consists in the perfect enjoyment of private rights of property and personal security from wrong—it must be obvious that the proper function of all human laws for the administration of justice must be to prescribe *certain rules for the enjoyment of property, and certain rules for the personal conduct*, by the observance of which, those private rights and personal security are best attained. Laws, therefore, can never be properly employed, as some writers have incorrectly suggested, in matters which are *indifferent*; for personal security and private rights can never be matters of indifference. Much good writing has been vainly expended in discussing whether *all* human laws are binding on the *conscience*; or whether every man may

not be at liberty to obey, or not, *some sort* of laws, provided he is willing to undergo, or risk, the punishment affixed to disobedience. But all just and expedient laws whatever —whether existing by nature in our minds, or revealed to us by God himself, or taking their origin purely from human device—are more or less binding on our consciences; because they all have more or less tendency to the same object, namely, to promote human happiness. If once assumed to be just and expedient, they must also be assumed to be conducive to the end of administrative justice, which is the happiness of man in civil society; and, consequently, they cannot fairly give rise to any question as to their being indifferent, and of no moral obligation. Thus, if a law shall prescribe that all boats used for a particular purpose shall be painted with letters in a particular form, it would be a vain distinction to say that this law springs merely out of human opinion, and is not a law by nature. It is a law expressly made for the purpose of better protecting the persons or the property of those using the boats—and it is as much a conscientious *duty*, though in an inferior degree, to obey such a law, as another made for denouncing theft. Neither is any individual member of the community authorized to judge and decide for himself whether any particular law is just and expedient, and therefore to obey it, or not, according to the dictates of that private judgment. For to exercise and act on such *private* judgment, is to disobey the fundamental laws of *Government* and *Society*, which require the surrender of a man's private will and judgment to general rule and order—and which fundamental laws are by nature and necessity; since society and Government are necessary to human happiness. Every man, therefore, is bound by conscience to submit his own opinion to that of the Government under which he lives so long as it is an acknowledged subsisting Government—otherwise there could be neither right nor wrong, nor any fixed notion of justice. But, as to when and how Governments themselves are to be amended or established, that is not a subject of the present discourse.

Still, no human laws can bind us which *contradict* any law of nature. This, however, is not because human laws, merely as such, are not obligatory on our consciences—but because it being impossible to obey *both*, we must observe which is *Superior*, and bend to that law which by contradicting repudiates, and as the superior authority nullifies the other. And we can have no doubt that the law of nature *is* the superior law—for the human intellect continually errs, but nature never. If, therefore, any human law shall prescribe the destruction of children by their own parents, or a cruel burning of innocent and defenceless persons by those on whose protection alone necessity has thrown them, we may be sure that such a law is neither a law of God nor of nature—for it is contradicted and repudiated by the natural feeling of mankind. The superior law is that of nature, universal and eternal in our hearts, and it forbids obedience to the human law which would outrage the natural law

SECTION III.

Of the origin and nature of Property

When we speak of private *rights*, and of *property*, and of *personal security*, the protection of which is the object of laws, it is fit that we should have a clear understanding of what is meant by such terms What is *property*? How come men to any *right* to the exclusive enjoyment of it? and what is that *personal security* to which all men have a claim.

Whether we consider mankind in that original state of nature from which many savage nations have not even yet emerged—or whether we consider man in the most advanced stage of civil society—we shall find, upon reflection, that rights to property must depend on *labour*, which is the true origin of all wealth. The savage who roams the jungle in search of food has by his labour in capturing his prey acquired property in it, which cannot be violated by another who has not labored for it at all, without a violation also of our natural sense of justice. The savage settling in his hut, and fencing in and cultivating some portion of the unoccupied earth originally common to all, by that labour creates the fruits of it, and gains a natural right to the enjoyment of it. The manufacturer who produces some new thing out of raw materials, or who exchanges his own products for other commodities (or for money which is the current symbol and procurer of all commodities) comes by the valuable thing he thus creates, or obtains in exchange, through his personal labour, and thus establishes a claim to it which none else can have The merchant who buys for little, and sells for more, obtains the surplus through

his labour. The lawyer, the physician, the painter, the musician, the dancer, although they produce nothing tangible, yet, in so far as they either usefully contribute by their exertions to the attainment of those commodities, which are obtained by labour, or to what is agreeable to the senses or to the minds of mankind, they accomplish something which is desired, and which but for them would not exist at all. The return made to them by commodities or money, is that return which has been created by others' labour, and is given in exchange for what they have created by their own labour. And it can signify nothing whether food, or raiment, or any other tangible commodity be the production, or whether the service of the lawyer, or physician, be the contribution, for which the other commodity or money is given in exchange—for if food is necessary, so is health, and if raiment be necessary, so is a knowledge of the law and a successful advocacy of claims. It would be too much, indeed, to say that a particular delicacy in food, or a peculiar finery of apparel, is more rationally desirable, than the harmony of the musician, or even than the gestures of the skilful dancer. Thus we see that *desirableness* is the incentive and valuation of labour, and labour, as it is the true origin, so is it the only foundation for right or just claim to property. It is a right which co-exists with the very nature of our being; for a man must have as plain and just a right to that which is solely and exclusively produced by his own labour, as he can have to the use of his own faculties—both rights being subject only to be abridged or modified by such rules of Government and Society, without which rules of some kind or other no rights whatever could subsist.

Hence we must also see how vain must be every pretension to property, or in other words to those commodities created by labour, by those who have neither contributed their own exertions or services towards the creation of it, nor have derived it from those who have earned it by theirs.

For no man can naturally, or according to that sense of justice implanted by nature in every man's conscience, claim to make his fellow-man labour for him without requital. If one man could demand the labour of another, without any return or remuneration, he might with equal justice demand the labour of one hundred or of one million. Neither Society, nor Government, nor the well-being of mankind under Government or in Society, require this. *Every* man *desires*, and would endeavour, if nothing prevented him, to get as much of the labour (on which property depends) of other men as he can; and there is no limit to human desires. But it is the business of human laws to prevent men from helping themselves at their own mere will to what they desire, and to limit the right of every man according to what he can himself do or supply in exchange for his possessions, or to what has therefore been done or supplied by others in exchange for those possessions. The King on his throne, as has been said before, has his duties to perform in exchange for all he enjoys, in the same manner as the labourer in the field must give his services or his toil for the remuneration he receives.

SECTION IV.

Of the transfer of and succession to Property.

But property, and the right to it, having once originated by labour, must be sustained, and kept in existence: It must not be abandoned again to some chance occupier, or to the strife of the strongest. Of the various possessions which men even by their own labour gain they can themselves consume or enjoy but a small portion. What is to be done with the surplus? It may be suggested that it cannot justly be allowed to be utterly wasted or destroyed —and, therefore, what a man can neither consume or enjoy ought to return again in common. But this is not consonant to justice—for if property should so return in common, no other man could gain a natural right to it through his labour in producing that property; and Society, which is naturally necessary for man's happiness, would be broken up, if such property become continually the subject of strife. Neither is any thing wasted or destroyed, any more from becoming a surplus beyond what the owner can himself enjoy or consume somebody will soon or late be sure to possess or consume it. It is to be inquired how the transfer to others shall be made, so as best to keep Society well together, and conduce to the general mass of human enjoyment. And, upon such an enquiry, the consideration immediately arises that nature itself has placed others in necessary and immediate dependence on almost all men; and, in particular, he is impelled to provide for his own family. Besides this, every man derives a pleasure in bestowing portions of his property, at least upon his children, and usually upon his friends—and as this is a pleasure he has earned by his labour, he has a natural right to the enjoy-

ment which is had in exchange for that which his labour created. It is clear, therefore, that the right to property carries with it the free right of *disposal of it* to others.

And this right is not put an end to even by a man's death. In most civilized nations, a possessor of property has the right by will to bequeath his property entirely at his own discretion—in others, various modifications and limits are imposed on this discretion. But, in all countries, some provision is made for sustaining a property in some one, after the right of the last possessor has ceased by death. The *mode* in which property after the possessor's death shall descend, or be distributed, is indeed purely a matter for human opinion. In the more barbarous and oppressed nations, we find human custom or express law has given the property to the King or Chief—thus, not only destroying the main incentives to industry, but unjustly increasing the share of enjoyments falling to the Prince, and also his power by the command of those means. In other countries, the provision for *children* or relatives is *enforced* to a greater or less extent. But, as society itself could not subsist while property was left to be continually and universally the source of violent strife, the *right* to it, when once property has been created, must necessarily be sustained by providing a never-failing object for its transfer.

Such is *property*, and such the origin and nature of *rights* to it—let us next examine what is meant by *personal security*, and of rights to that.

SECTION V.

Of the security of the Person.

The security of the person can consist of nothing else than a man's freedom from the infliction of death, or bodily or mental pain, by the acts of others. And this freedom from wilful injury by another to life, or to the feelings, or to the person, is what the inherent sense of every man informs him he has a claim to in justice, or, in other words, a *right* to, unless by some determination of the rules of that society or Government under which he lives (which society and Government, with its rules of action, are also of natural necessity to mankind) he shall have forfeited such right of exemption from personal injury. And it is plain there could not exist any natural right to property, or even to subsistence, without the natural right of full security of person against the unauthorized violence of others. For every man must have a free liberty, as well from bodily pain as from personal imprisonment or restraint, in order for the application of his labour, on which property depends. So, also, though in a minor degree, there must exist a natural right to a man's deserved reputation and good character; for, not only is much misery of mind endured by the consciousness of hatred excited against us, but all our faculties are impaired, and our means and opportunities of industry frustrated, by the aversion of others which slander may have raised.

SECTION VI.

That the Laws on which Administrative Justice is founded should be certain and clear.

These rights, then, are the objects, and the sole objects, of administrative justice—for if the rights of *private property*, and those of *personal security* are fully protected, every good that man can derive from civil Government and Laws is attained. The business, therefore, of laws being the protection of these rights, it remains to enquire what are the essential qualities of those laws which best tend to accomplish that end.

It may be thought a proposition too plain and self-evident to require discussion, that the laws for the administration of justice should be *certain* and *clear*. And yet, plain as the proposition is, the bulk of mankind are apt to misunderstand or misinterpret it. Among barbarous and unenlightened nations there are very few rules of right, *founded on principle*, by which the administration of justice is guided; although it often happens that their bodies of law are made up of a large accumulation of details, applicable to, and probably suggested by particular cases and circumstances, but dependent on no general principles. Decisions or rules of this nature, formed for the most part from the suggestions of the *natural sense* of various-minded judges bearing on individual instances, usually abound in inconsistencies. As each case must have its own peculiar characteristics, there is no good reason for excluding the authority of the same natural sense in deciding new controversies, which sense alone had dictated the rule of right on previous occasions. Uncivilized nations, therefore, whose rules of law are so imperfect, easily submit to a customary course of de-

viation from them: they can conceive no fairer mode, nor any cheaper and more ready, of ascertaining rights than the appeal to the upright judgment of a good man; and their minds are slow to apprehend the advantage or even the possibility, of any system of fixed rules which shall comprise every quality of rights, and the most expedient method of securing them.

But, further, it is very common to find among the most enlightened and best governed nations, those who undervalue the *rules* of law according to which justice is administered; making continual appeals to *reason and common sense*; as though all forms and requisitions of such rules should be set aside when the judge's natural uninstructed sense could suggest a different view of the case, or a different course of arriving at that view; and as though all such forms and requisitions were but so many whims and fancies invented for the purpose of shackling the efforts of a free understanding. Such notions, however prevalent, are in truth too shallow to deserve refutation. We may assuredly declare that the universal experience of mankind throughout all countries, independently of what our reflective reason would explain, has shewn that a people's prosperity must entirely depend on the certainty and merit of their rules for the administration of justice between man and man. Those who are versed in such laws, who watch and see their operation, who best can observe how peace and security are preserved thereby, can shew forth the grounds and reasonableness of the general rules by which they are guided. But such as prefer the impressions of what they call plain and *common sense* (but by which they can only mean *their own* understanding) are impatient of the restraint of set rules, the meaning and application of which they do not comprehend—they are averse to the trouble which a studious examination of them would impose—and they are mortified at every exposure of the errors which their unguided impressions betray them into. For if ignorance begets a plain boldness of decision in an

arbitrary judge, it perplexes and renders helpless one who is constrained to adjudicate according to law.

In no portion of the civilized world are the rules of justice so uncertain, so obscure, and so contradictory as in India—and if justice is not worst administered there, it is owing rather to the integrity of its functionaries than to any merit of Indian law. It has been said by an Indian Judge of great experience and learning, that "there "is scarce a question of Hindoo law which may not be "*affirmed*, and *also denied*, upon the authority of some "book." It may be well therefore to pass in review some of the more obvious mischiefs arising from the want of *certain* and *clear* rules for the administration of justice.

If judgments shall be given according to the individual's *sense* of what is just—for want of any plain and sure guide in the admitted law—how could any man distinguish between what was the Judge's real sense of what was just, and what was his mere *caprice* and *feeling* ? If such individual sense, or caprice, or personal feeling, was the sole origin of a judgment, who could say, that any judgment was right, or was wrong? For there would be no guide. Every man might say that his own sense was as good as that of another—every man might ascribe to his sense of right, the judgments which, in truth, were dictated by his evil passions; and there could be no check against corruption. No man could feel, nor could he in reality be, safe in his person or his property. Let any one inquire what powers the Hindoo king, or even the Hindoo Brahmin possesses, over the persons of others, and he would seek to define them in vain. The power of the king is *absolute* and *uncontrollable*—he is a powerful *divinity* - but he is directed to act on advice, and generally through the ministration, of the Brahmins—"a divinity in the human form" his first and main duty is "to *inflict punishment* according "to the *Shasters*." How then do the Shasters direct punishment to be inflicted—by what rules and for what

specific criminal acts? And how does the Brahmin contribute his advice, and execute his office? "If a blow, "attended with *much* pain, be given to human creatures "or *cattle*, the king shall inflict on the striker a punish- "ment *as heavy* as the *presumed* suffering!" "A Gold- "smith who *commits fraud* the king shall order to be cut "piece-meal with razors." "Robbers who break a wall, "or steal in the night, the king shall cut off their hands, "and transfix them with a stake." "If a man steal a horse "of *small account*, the magistrate shall cut off one hand "and one foot—if any *small animal*, exclusive of a cat or "weasel, the magistrate shall cut off half his foot" &c. &c. "A Brahmin is a powerful divinity, whether learned or "ignorant." "He need not complain to the king of any "injury—even by his *own power* he may *chastise* those "who injure him." "For *ill language* to a Brahmin "the Soodra must have a red hot iron style, ten fingers "long, thrust into his mouth—for *offering* a Brahmin "*instruction* hot oil must be poured into his mouth and "ears—for sitting on a Brahmin's carpet he shall be liable "to have his buttock cut off." "But a Brahmin himself "shall *neither* lose *his property*, nor be hurt in *his person*, "although he commits *all possible crimes*" "*Whatever* "*orders* the Brahmins shall issue conformably with the "Shasters, the magistrate shall execute" (Vide Laws of Menu.) Let any one examine the institutes of Menu to ascertain when and how a Hindoo son becomes *incapable of inheritance*. He will read of "those distinguished by "*science* and *good conduct* being allowed to take a *greater* "share"—but, among those utterly excluded from any inheritance at all, are enumerated "lame, blind, deaf, afflicted with any incurable disease (as, amongst others, *dysentery*)—those who have no principle of religion—those who have *lost the use* of a limb." It is plain that such general indiscriminate language as this—to say nothing of the palpable injustice of such rules—must leave the application of such laws open to mere arbitrary discretion.

What a fertile source of dispute is the capacity, or not of a Hindoo to bequeath! What are the rights of members of undivided, and of divided families?

Thus a vague and obscure text—together with the peculiarity and variety of irrational customs in different castes—confounds the most vital interests in uncertainty—and arbitrary constructions must supersede all regularity in judgments. In such a state of things no certainty of legal advice is attainable—and where no rights can certainly be known, there can be no end of litigation. Industry, the fountain of wealth, becomes dried up in the barrenness of insecurity of possessions. The people who do not see, or who do not heed such evils as these must be content to live in poverty and dependence—as herds obedient to the voice of their master. What right in another to respect, and what right of his own to claim, no man can surely know—what act under what penalty to refrain from, what duty to undertake, no man can learn. "If the trumpet "give an uncertain sound, who shall prepare himself for "the battle." Those laws, therefore, are best which leave least within the breast of the judge. And a judge, to be truly such, is not one who is merely sagacious in discernment, and imbued with a sincere and upright sense of the principles of justice; but one who is *learned* in *definite laws*. For he is the best judge who leaves the least to himself.

SECTION VII.

In what manner Laws should specify and define rights.

Laws, then, which are to be the sure test of rights, and to be the certain guide to the magistrate in the dispensation of justice, instead of his own wayward and arbitrary will, ought to *ascertain* and *specify* those rights; they ought to set forth how they are acquired, and they ought to point out under what circumstances and in what manner they finally cease.

As to what are the rights of *personal security*, they are few and plain, and have been sufficiently enumerated perhaps already. But the rights of *property* are so various; and subject to so many qualifications—they become so infinite in number and complicated in quality in proportion as the industry of mankind increases and improves the sources of enjoyment—that in the highest civilized nations the currency of legislation can scarcely keep up with them. An exact definition of rights becomes continually more difficult, and a clear and ready knowledge of them requires long and laborious study.

Looking in the present inquiry no farther than to the *principles* of administrative justice, and to what should be the main and universal characteristics of human laws directed to enforce it, we must be content with laying down and establishing general positions, without following them up in detail. We may recognize, upon reflection, this position—that all rights of property must consist in the power conceded by the community of using or employing things or persons in particular modes, so as to derive a gratification from such use or employment. A perfect definition of rights, therefore, should comprise and specify all the *various modes of using or enjoying things*,

and of employing persons. Thus, a piece of land, or a house, may be used in a limited or in an unlimited manner—for a limited or an unlimited time—upon certain conditions or without any conditions. And so also of other and movable articles of property, a man may have the absolute uncontrolled power of using and of disposing of it, or various limitations and conditions may be annexed. And, again, the services of persons may belong to others, either for the purpose of creating or increasing tangible property, or of contributing to the gratification of the senses or intellectual faculties. Accordingly, our enumeration of powers over things, and over persons, for these objects should not only specify the *modes* of using and employing them, but also the *extent* of those powers, or in other words *rights.* The definition of these rights will further ascertain the *beginnings* or grounds of them—such as by *labour,* or by *contract, bequest, succession,* or the declared will of the legislature. And, lastly, it will proceed to specify those facts and circumstances which put *an end* to such rights. Such cessation of right, independently of those circumstances above noticed as expressly transferring such previous rights to others, may arise, not only, of necessity, as by death, but by forfeiture, or by some inexpediency in the further existence of such rights—as for instance rights over slaves—or by abandonment, or by dedication to public objects, and in various other ways. Laws must be proportionably defective as they fail to enumerate and define such various rights of property—for it must be vain to attempt the protection of rights, the existence and nature of which are altogether unknown.

SECTION VIII.

Of the Civil Code—for the restoration of rights, and the redress of Injuries.

If the various rights of personal security, and of property with all its subdivisions and qualifications, have been specified and ascertained, it becomes the next essential characteristic by which a good system of laws is to be estimated that it provides efficient means for securing every member of the social community against the violation of those rights. This can be done by two courses only: 1st, By supplying a restoration of such rights, or adequate redress when restoration is impossible; and, secondly, by the infliction of so much pain and suffering on the party who shall invade them as may suffice generally to deter the bulk of mankind from such wrong.

Hence arises a two-fold division of laws for the administration of justice. 1st, That body of laws which expounds the nature of rights, and a course of procedure for recompensing the violation of those rights—2ndly, That class of laws which define what acts shall be offences or *crimes*, and which laws also prescribe a course of procedure with the view of *punishment*. There is no apt term recognized in the English languages to distinguish the first class of laws; but it is generally termed the *Civil Code*, and we may designate it as the *Code of rights*; the second division is with more meaning termed the *Criminal, or penal Code*—or the *Code of crime*.

This two-fold division of laws is founded on reason and principle; as will appear if we pass in review the distinguishing qualities of each body of laws. The *code of rights* having in view the definition of the rights of property is

persons or things—that is, the modes by which services derivable from persons or things shall be enjoyed—how the rights shall be acquired, and how they shall cease—will necessarily be various in different countries. They will be altogether regulated according to the situation, the climate, the quality of the Government and other peculiar extrinsic circumstances of those different countries. There is no *standard general* rule of right for each such law, applicable under all circumstances. Whether a law shall declare that all sons shall inherit equally, or whether it shall declare that they shall succeed in certain proportions—whether a law shall allow the taking of interest at 5, or at 12 per-cent, or at any indefinite amount—may be questions of mere social policy; and either law may be best, according to the condition of the people. Neither is there any *natural* and universally acknowledged *guilt* in deviations from the greater portion of such laws, except in so far that all express laws under settled Governments ought for that reason to carry with them our conscientious obedience. Such laws must also necessarily vary according to the national wealth, and the state of advancement in civilization of the people—and they also necessarily change in the same countries according to the progress of wealth and advancement. In proportion to such increase must be the number of cases which combine new and unprecedented circumstances, unforeseen and unprovided for in express detail, and which either must be shewn to class under the general rule and reason of laws already existing, or else become the subject of new laws, or of original decision according to some natural sense of justice. Contests arising out of such new cases of doubtful rights imply no *guilt*—each contending party may assert his pretensions in good faith—they may be set up through mere misapprehensions of facts, or of law, and such misapprehension may be unavoidable. Moreover there are some omissions of duty, and some deviations from known rules of law, which, however wilful or unjustifiable, yet, being confined in their effects to

the interests of one or a few individuals, may be sufficiently restrained or rectified by a course of law which may nullify such injurious effects, or afford a full restoration of the rights invaded. The distinguishing characteristics of the Civil Code, or *code of rights*, therefore, are that it merely ascertains rights, and supplies remedies for the invasion of them, through *restoration* or *redress* to the injured party. As this object can only be accomplished by means of *Property*, to property alone are its operations confined when called into action. Its aim is not the infliction of any pain or suffering; except, indeed, such become the means, and the only means, by which its real aim that of restoration or redress can be attained. Its method of procedure for the investigation of facts, the declaration of the law, the award of recompence, and the enforcement of its judgments, admits of many differences, according to the nature of the right to be ascertained, and that of the injury to be redressed: but all these differences are guided and governed by the characteristic objects in view, namely, *redress* through the *regulation* or *transfer* of *property*. As the questions which arise in civil litigation are very various and often difficult, its course of procedure for the ascertainment of facts, for the exposition of the law, and for the enforcing of the judgments is the more cautious and complicated. Since no guilt is assumed on either side, or at least beyond the power of redress, its judicial process is *equal* between the opposing parties; and as *property* alone is the subject matter contested for, the immunity and liberty of the *person* is the more respected.

SECTION IX.

Of the Criminal Code for the punishment of Injuries.

The code of crime, or *criminal code*, although it has the same general view as the code of rights—namely, the protection of property and personal security—has reference to an entirely distinct quality of wrongs against property and person, and prescribes a different course for the prevention of such wrongs. It selects a series of acts which contradict the rules of justice between man and man, and the well-being of the social community, which acts it denounces, not as *deviations* to be *rectified*, but as *offences*, or *crimes*, to be *retributed* by public hatred and *personal suffering*. Acts of this quality are, or ought to be, such only as our *natural conscience* suggests to us as unjust. Laws against *Crime*, therefore, are very similar in all countries—all depending on one common principle, and guided by the common sentiments of human nature. The guilt of theft, or murder, depends not on any questions of social policy. Nature itself has stamped the odious and injurious characteristics of such acts. Little controversy can arise respecting the quality of direct, lawless, criminal invasions of rights, compared with the infinite diversity of questions arising out of the contests and doubts attending the acquisition and enjoyment of property. Long and black as the catalogue of human delinquencies may be, they are but few which come within the scope of the Criminal Code. *Crimes* are distinguished as those acts which effect injury through *fraud*, or through *terror*, or through actual *violence*—which thereby create *a general apprehension* of insecurity—and which inflict wrongs for the most part *beyond the means of redress*; and to such acts may be added some which are

criminal only because the perpetration of them excites a *natural hatred* and *abhorrence*. The remedy aimed at is, not the *rectification* of that which is wrong, or merely the *recompense* to be made to the individual injured—which is generally impossible, and always inadequate to the total amount of mischief—but the future protection of the *community generally*, through the personal punishment of the Criminal.

Such being the subject-matter, and such the immediate object of the *Criminal Code*, as distinguishable from those of the *Code of Rights*, we may expect that its course of procedure will also exhibit some corresponding differences. As *every* course of legal procedure, whether as it regards civil rights or criminal acts, is similarly concerned in the investigation of facts, the exposition of the law, and the enforcing of judgments pronounced—some writers have been induced to designate this as a third and separate branch of jurisprudence, under the term of *The Code of Procedure*, and such a threefold division may not be an inconvenient or an incorrect method of classifying the whole subject-matter of human laws. But, as each of the former divisions of jurisprudence, the Code of rights and the Code of Crime, effect their final objects in the protection of property and personal security through *different* modes of judicial proceeding, and *different* resulting operations, those distinctions ought not to be lost sight of, so as to confound the judicial procedure for the investigation and protection of *civil rights* with that for the investigation and punishment of *crimes*.

When a crime has been committed, it is *Society* that suffers, and not merely an individual—it is the further security of society that is to be protected by the punishment of the criminal, and not the party injured to be personally redressed. There is no *personal* interest at stake, therefore, which may bias any individual in putting the law into force. Every man in pursuit of justice against the offender has, or ought, and is supposed to have, *a public object*

only in view—and every member of society is more or less concerned in lending his aid. As a sense of public duty is to be assumed as actuating the party accusing, and some presumption of guilt is fixed upon a party actually charged by any testimony of facts, the accuser and the culprit do not submit the case for judicial enquiry and judgment with equal relative rights and equal relative responsibilities, in the same manner as litigants do when contesting civil rights, each with a view to his own private interest. The quality of the acts charged, the nature of the personal suffering to be undergone by the guilty party, and the presumption of the existing guilt as soon as a specific accusation is credibly made, dictate also a stricter course for ensuring the personal appearance to answer the charge made, in cases where the accused can by his *person* only, and not by his *property*, atone for his crime. And, lastly, in proportion to the severe, and sometimes irremediable, consequences of punishment on the guilty, ought to be the various safeguards supplied for the ascertainment of truth and the defence of the innocent.