

LECTURES ON  
JURISPRUDENCE

OR THE PHILOSOPHY OF POSITIVE LAW

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seduction. (Rape includes injury to the party ravished, and to others who have an interest, etc.)

LECT.  
XVII

There can be no *right* as against self. The end of a right is, that a party may be obliged by a sanction to do or to forbear, towards a determinate person or persons. But the act or forbearance, in this instance, depends upon the pleasure of the party. To give him a right to an act or forbearance to which he himself is bound, were absurd.

*Duties towards persons indefinitely, or towards the Sovereign imposing the duty.*

Treason<sup>67</sup> is properly an offence against the Sovereign. But an offence against a member of a sovereign body is often so considered.<sup>68</sup>

*Duties not regarding persons.*

Towards God (Ascetic observances). (Blackstone, vol. iv. p. 43.)

Towards the lower animals.

The Deity, an infant, or one of the lower animals, *as being the party towards whom a duty is to be performed*, might be said to have a right. But so, in the same case, might an inanimate thing. To call the Deity a person, is absurd.

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LECTURE XVIII.

WILL AND MOTIVE.

IN a former Lecture I entered upon the analysis and explanation of the term 'Rights:' Meaning by 'rights,' *legal* rights, or rights which owe their being to the express or tacit commands of Monarchs or Sovereign bodies.

LECT.  
XVIII

Brief re-  
view of  
preceding  
Lectures.

Now all that can be affirmed of rights *considered in abstract*—or all that can be affirmed of rights *apart from their kinds and sorts*—amounts to a brief and barren generality, and may be thrust into a single proposition, or into a few short propositions.

But before I could shew the little which can be affirmed of rights in abstract—or before I could shew *how* little can be affirmed of rights in abstract—it was necessary that I should advert to *persons*, as *bearing* rights and duties; to *things* and

<sup>67</sup> Blackstone, iv. 81.

<sup>68</sup> Offences against rights residing in *members* of sovereign powers, may be considered breaches of relative duties.

LECT.  
XVIII *persons, as subjects of rights and duties; to acts and forbearances, as objects of rights and duties; and to a certain capital distinction which obtains between rights themselves.*

Accordingly, In the last four Lectures I called your attention to the following *leading* topics; and to numerous *subordinate* topics, with which they are inseparably connected, or which they naturally suggest:

1st, *Persons*, as invested with rights, and as lying under duties.

2ndly, *Things* as subjects of rights, and of duties answering to rights.

3rdly, *Persons*, as placed in a position *analogous* to the position of *things*: That is to say, *not* as invested with rights, or as lying under duties, but as the subjects or matter of rights residing in *other* persons, and availing against strangers or *third* persons.

4thly, *Acts* and *forbearances*, as objects of rights and of duties corresponding to rights.

5thly, and lastly, The *distinction* between the rights which avail against persons *generally*, and the rights which avail against persons *certain* or *determinate*:—A distinction which the Classical Jurists denoted by the opposed expressions, '*Dominium et Obligatio*;' but which numerous modern Civilians (and writers upon general jurisprudence) have marked with the more adequate and less ambiguous expressions, '*Jus in rem* et '*Jus in personam*.'

In reviewing these various topics (and, especially, the principal *kinds* into which rights are divisible), I endeavoured to prepare the way for such a definition of 'Right' as might rest upon a *sufficient induction*: as might apply indifferently to *every* right; or might apply to *any* right, without regard to its class. Accordingly, I proceeded to examine the import of the term 'Right,' considered as an expression for *all* rights, or for rights abstracted from the generic and specific differences by which their kinds and sorts are separated or distinguished. And, in attempting to settle the import of the term 'Right,' I considered implicitly the general nature of the duties which I style '*relative*:' that is to say, which correlate with *rights*, or answer to corresponding *rights*.

But, besides the Duties which I style '*relative*,' there are numerous duties which have *no* corresponding rights, or *no* rights wherewith they correlate: And, as the Analysis through which I am journeying embraces *Duties* as well as *Rights*, it

was necessary that I should advert to duties *without* corresponding rights, as well as to duties which are *relative*.

Accordingly, the class of duties in question (which I distinguish from *relative* duties by the negative epithet '*absolute*') were also considered in the last Lecture.

Every legal duty—whether it be relative or absolute, or whether it be *obligatio* or *officium*—is a duty to do (or forbear from) an outward act or acts, and flows from the Command, (signified expressly or tacitly) of the person or body which is *sovereign* in some given society.

To fulfil the duty which the command imposes, is *just* or *right*. That is to say, the party does the act, or the party observes the forbearance, which is *jussum* or *directum* by the author of the command.<sup>69</sup>

To omit (or forbear from) the act which the command enjoins, or to do the act which the command prohibits, is a wrong or *injury*:—A term denoting (when taken in its largest signification) every act, forbearance, or omission, which amounts to disobedience of a Law (or to disobedience of any other command) emanating directly or circuitously from a Monarch or Sovereign Number—'Generaliter injuria dicitur, omne quod non jure fit.'

A party lying under a duty, or upon whom a duty is incumbent, is liable to evil or inconvenience (to be inflicted by sovereign authority), in case he disobey the Command by which the duty is imposed. This conditional evil is the *Sanction* which enforces the duty, or the duty is *sanctioned* by this conditional evil: And the party bound or obliged, *is* bound or

<sup>69</sup> *Just* is that which is *jussum*; the past participle of *jubeo*.

*Right* is derived from *directum*; the past participle of *dirigo*; or, rather, *right* is probably derived from some Anglo-Saxon Verb, which comes with *dirigo* from a common root. The German *recht*, *gerecht*, *richtig*, *rechters*, (*just*) is from the obsolete *richten* or *rechten* (*dirigo*). Hence *Richter*, a judge. Latin; *Rego*, *Rex*, *Regula*, *Rectum*. (Wrong = *Wrang*; the opposite of *rectum*.)

And as *just* and *right* signify that which is commanded, so do the Latin *Æquum* and the Greek *Dikaion* denote that which conforms to a law or rule. Manifestly, a metaphor borrowed from measures of length. Something equal to, or even with, a something to which it is compared. *Æquum* = *jus gentium*.

The abstracts, *justice*,—*justum di-*

*kaion*, equity, etc., denote conformity to Command; as their corresponding concretes denote a something which is commanded, or equal.

Distinction between *right* as denoting something commanded, and as denoting the position of the party *towards* whom it is commanded. To *do* right, is to obey a command. 'To *have* a right,' is to be placed in such a position that another is commanded to do or forbear towards or in respect of oneself.

In consequence of the intimate connection between the terms, right and obligation are often used indifferently. *E.g.* In old German Law language, *recht* denotes either. So in vulgar English. So the Latin *jus* and *obligatio*. The French *droit*, and the Italian *diritto*, are not free from this ambiguity. The Greek *exousia* is equivalent to *facultas*, *potestas*.

LECT.  
XVIII

obliged, *because* he is obnoxious to this evil, in case he disobey the command.—That bond, *vinculum*, or *ligamen*, which is of the essence of *duty*, is, simply or merely, liability or *obnoxiousness* to a *Sanction*.

Now it follows from these considerations, that, before I can complete the analysis of legal *right* and *duty*, I must advert to the nature or essentials of legal Injuries or Wrongs, and of legal or political Sanctions.—As Person, Thing, Act and Forbearance, are inseparably connected with the terms ‘Right’ and ‘Duty,’ so are Injury and Sanction imported by the same expressions.

Obligation, Injury, and Sanction imply Motive, Will, Intention, Negligence, and Rashness.

But before we can determine the import of ‘Injury’ and ‘Sanction’ (or can distinguish the compulsion or restraint, which is implied in Duty or Obligation, from that compulsion or restraint which is merely physical), we must try to settle the meaning of the following perplexing terms: namely, Will, Motive, Intention, and Negligence:—Including, in the term ‘Negligence,’ those *modes* of the corresponding complex notion, which are styled ‘Temerity’ or ‘Rashness, Imprudence or Heedlessness.’

Accordingly, I shall now endeavour to state or suggest the significations of ‘Motive’ and ‘Will.’ In other words, I shall attempt to distinguish desires, as *determining* to acts or forbearances, from those remarkable desires which are named *volitions*, and by which we are not *determined* to acts or forbearances, although they are the immediate antecedents of such bodily movements as are styled (strictly and properly) human *acts or actions*.

Apology for inquiry into ‘Motive,’ ‘Will,’ etc.

Nor is this incidental excursion into the Philosophy of Mind a wanton digression from the path which is marked out by my subject.

For (first) the party who lies under a duty is bound or obliged by a *sanction*. This conditional evil determines or inclines his *will* to the act or forbearance enjoined. In other language, he wishes to avoid the evil impending from the Law, although he may be averse from the fulfilment of the duty which the Law imposes upon him.

Consequently, if we would know precisely the import of ‘Duty,’ we must endeavour to clear the expressions ‘Motive’ and ‘Will’ from the obscurity with which they have been covered by philosophical and popular jargon.

2dly, The *objects* of duties are acts and forbearances. But

every act, and every forbearance from an act, is the consequence of a volition, or of a determination of the will. Consequently, if we would know precisely the meaning of act and forbearance, and, therefore, the meaning of duty or obligation, we must try to know the meaning of the term 'Will.'

3rdly, Some injuries are *intentional*. Others are consequences of *negligence* (in the large signification of the term). Consequently, if we would know the nature of injuries or wrongs, and of various important differences by which they are distinguished, we must try to determine the meanings of 'Intention' and 'Negligence.'

It is absolutely necessary that the import of the last-mentioned expressions should be settled with an approach to precision. For *both* of them run, in a continued vein, through the doctrine of injuries or wrongs; and of the rights and obligations which are begotten by injuries or wrongs. And *one* of them (namely, 'Intention'), meets us at *every* step, in *every* department of Jurisprudence.

But, in order that we may settle the import of the term 'Intention,' we must settle the import of the term 'Will.' For, although an intention is not a volition, the facts are inseparably connected. And, since 'Negligence' implies the *absence* of a *due* volition and intention, it is manifest that the explanation of that expression supposes the explanation of these.

Accordingly, I will now attempt to analyse the expressions 'Will' and 'Motive.'

Certain parts of the human body obey the *will*. Changing the expression, certain parts of our bodies move in certain ways as soon as we *will* that they should. Or, changing the expression again, we have the *power* of moving, in certain ways, certain parts of our bodies. The Will

Now these expressions, and others of the same import, merely signify this:

Certain movements of our bodies follow invariably and *immediately* our wishes or desires for those *same* movements: Provided, that is, that the bodily organ be sane, and the desired movement be not prevented by an outward obstacle or hindrance. If my arm be free from disease, and from chains or other hindrances, my arm rises, so soon as I wish that it should. But if my arm be palsied, or fastened down to my side, my arm will not move, although I desire to move it.

LECT.  
XVIII

These antecedent wishes and these consequent movements, are human *volitions* and *acts* (strictly and properly so called). They are the only objects to which those terms will strictly and properly apply.

But, beside the antecedent desire (which I style a *volition*), and the consequent movement (which I style an *act*), it is commonly supposed that there is a certain '*Will*' which is the cause or author of both. The desire is commonly called an act of the *will*; or is supposed to be an effect of a *power or faculty of willing*, supposed to reside in the man.

That this same '*will*' is just nothing at all, has been proved (in my opinion) beyond controversy by the late Dr. Brown: Who has also expelled from the region of entities, those fancied beings called '*powers*,' of which this imaginary '*will*' is one. Many preceding writers had stated or suggested generally, the true nature of the relation between cause and effect. They had shown that a *cause* is nothing but a given event invariably or usually *preceding* another given event; that an *effect* is nothing but a given event invariably or usually *following* another given event; and that the *power of producing* the effect which is ascribed to the cause, is merely an abridged (and, therefore, an obscure) expression for the customary antecedence and sequence of the two events. But the author in question, in his analysis of that relation, considered the subject from numerous aspects equally new and important. And he was (I believe) the first who understood what we would be at, when we talk about the *Will*, and the *power or faculty of willing*.

All that I am able to discover when I *will* a movement of my body, amounts to this: I *wish* the movement. The movement *immediately* follows my wish of the movement. And when I conceive the *wish*, I *expect* that the movement wished *will* immediately follow it. Any one may convince himself that this is the whole of the case, by carefully observing what passes in himself, when he *wills* to move any of the bodily organs, which are said to obey the *will*, or the *power or faculty of willing*.

For further proof I must refer you to Brown's '*Analysis of Cause and Effect*.'<sup>70</sup> A detailed exposition of the subject, were utterly inconsistent with the limits by which I am confined, and with the direct or appropriate purpose of these Lectures.

Dominion  
of the will

The wishes which are immediately followed by the bodily

<sup>70</sup> Brown's *Enquiry into the Relation Analysis of the Phenomena of the of Cause and Effect.* (For the *Will* in Human Mind, cap. 24, 25. particular, Part I, Section 3.) Mill's



movements wished, are the only wishes *immediately followed by their objects*. Or (changing the expression), they are the only wishes which *consummate themselves*:—The only wishes which attain their *ends* without the intervention of *means*.

LECT.  
XVIII  
limited to  
bodily  
organs.

In every other instance of wish or desire, the object of the wish is attained (in case it be attained) through a *mean*; and (generally speaking) through a *series* of means:—Each of the means being (in its turn) the object of a distinct wish; and each of them being wished (in its turn) as a step to that object which is the end at which we aim.

For example, if I wish that my arm should rise, the desired movement of my arm immediately follows my wish. There is nothing to which I resort, nothing which I wish, as a mean or instrument wherewith to attain my purpose. But if I wish to lift the book which is now lying before me, I wish certain movements of my bodily organs, and I employ these as a mean or instrument for the accomplishment of my ultimate end.

Again: If I wish to look at a book lying beyond my reach, I resort to certain movements of my bodily organs, coupled with an additional something which I employ as a *further* instrument. For instance, I grasp and raise the book now lying before me; and *with* the book which I grasp and raise, I get the book which I wish to look at, but which lies on a part of the table beyond the reach of my arm.

It will be admitted by all (on the bare statement) that the dominion of the will is limited or restricted to *some* of our bodily organs: that is to say, that there are only *certain parts* of our bodily frames, which change their actual states for different states, *as* (and so *soon* as) we wish or desire that they should. Numberless movements of my arms and legs immediately follow my desires of those same movements. But the motion of my heart would not be immediately affected, by a wish I might happen to conceive that it should stop or quicken.

Dominion  
of the will  
limited to  
*some*  
bodily  
organs.

That the dominion of the will extends not to the mind, may appear (at first sight) somewhat disputable. It has, however, been *proved* by the writers to whom I have referred. Nor, indeed, was the proof difficult, so soon as a definite meaning had been attached to the term *will*. Here (as in most cases) the confusion arose from the indefiniteness of the language by which the *subjects* of the inquiry were denoted.

Dominion  
of the will  
extends  
not to the  
mind.

If volitions be nothing but wishes immediately followed by their objects, it is manifest that the mind is not obedient to the will. In other words, it will not change its *actual*, for *different*

LECT.  
XVIII

states or conditions, *as* (and so *soon* as) it is wished or desired that it should. Try to recall an absent thought, or to banish a present thought, and you will find that your desire is not immediately followed by the attainment of its object. It is, indeed, manifest that the attempt would imply an absurdity. Unless the thought desired be present to the mind *already*, there is no determinate object at which the desire aims, and which it can attain *immediately*, or without the intervention of a mean. And to desire the absence of a thought actually present to the mind, is to *conceive* the thought of which the absence is desired, and (by consequence) to perpetuate its presence.

Changes in the state of the mind, or in the state of the ideas and desires, are not to be attained immediately by desiring those changes, but through long and complex series of intervening means, beginning with desires which *really* are *volitions*.<sup>71</sup>

Volitions,  
what.

Our desires of those bodily movements which immediately follow our desires of them, are therefore the only objects which can be styled *volitions*; or (if you like the expression better) which can be styled acts of the will.—For that is merely to affirm, ‘that they are the only desires which are followed by their objects *immediately*, or without the intervention of means.’ They are distinguished from other desires by the name of *volitions*, on account of *this*, their essential or characteristic property.

Acts,  
what.

And as these are the only *volitions*; so are the bodily movements, by which they are immediately followed, the only *acts* or *actions* (properly so called).<sup>72</sup> It will be admitted on the mere statement, that the only objects which can be called

<sup>71</sup> Examples: Taking up a book to banish an importunate thought. Looking into a book to recover an absent thought.

<sup>72</sup> It is not clear whether the author here intends to exclude from the category of acts all processes that do not *immediately* result in a *palpable* bodily movement. If so, he is inconsistent.

The author elsewhere (p. 454) implicitly recognises *meditation* as an act: Further (p. 455), while he regards the conviction produced by evidence as a case of physical compulsion, he recognises that non-belief may be blamable, if the result of insufficient examination, refusal to examine, etc. The process of examination is therefore the object of a duty, and hence, according to his own analysis, it is an act (pp. 367, 395).

And it is difficult to see why *cogito* should not be classed with acts, just as much as *curro* or *haurio*. There

seems no generic difference between the act of taking up a book to banish an importunate thought and the process of entering (without external aid) upon some mental exercise (*e.g.* a problem in geometry) for the same purpose. It is no doubt true that a *given specific* change in the state of the mind cannot generally be the object of a volition. But the same is true of any *given* bodily movement, unless it happen to be one of those movements, very limited in direction and extent, which are immediately in our power to effect.

No doubt the mental processes in question are too impalpable and obscure to enter the domain of positive law, unless evidenced by acts of a more observable kind, which last are sometimes distinguished by the name of *overt acts*, a term devised not without insight. (See p. 441, *post.*)—R. C.

acts, are consequences of Volitions. A voluntary movement of my body, or a movement which follows a volition, is an *act*. The involuntary movements which are the consequences of certain diseases, are *not* acts. But as the bodily movements which immediately follow volitions, are the only *ends* of volition, it follows that those bodily movements are the only objects to which the term 'acts' can be applied with perfect precision and propriety.

The only difficulty with which the subject is beset, arises from the concise or abridged manner in which (generally speaking) we express the objects of our discourse.

Most of the names which seem to be names of acts, are names of acts, *coupled with certain of their consequences*. For example, If I kill you with a gun or pistol, I *shoot* you: And the long train of incidents which are denoted by that brief expression, are considered (or spoken of) as if they constituted an *act*, perpetrated by me. In truth, the only parts of the train which are my act or acts, are the muscular motions by which I raise the weapon; point it at your head or body, and pull the trigger. These I *will*. The contact of the flint and steel; the ignition of the powder, the flight of the ball towards your body, the wound and subsequent death, with the numberless incidents included in these, are *consequences* of the act which I *will*. I *will* not those consequences, although I may *intend* them.

Nor is this ambiguity confined to the names by which our *actions* are denoted. It extends to the term 'will;' to the term 'volitions;' and to the term 'acts of the will.' In the case which I have just stated, I should be said to *will* the whole train of incidents; although I should only *will* certain muscular motions, and should *intend* those consequences which constitute the rest of the train. But the further explanation of these and other ambiguities, must be reserved for the explanation of the term 'intention.'

The desires of those bodily movements which immediately follow our desires of them, are imputed (as I have said) to an imaginary being, which is styled the *Will*. They are called *acts of the will*. And this imaginary being is said to be *determined to action*, by *Motives*.

All which (translated into intelligible language) merely means this: I wish a certain object. That object is not attainable *immediately*, by the wish or desire itself. But it is attainable by means of bodily movements which will immediately follow my desire of them. For the purpose of attaining

LECT.  
XVIII

Names of acts comprise certain of their consequences.

Confusion of will and intention.

Motive and Will.

LECT.  
XVIII

that which I cannot attain by a wish, I wish the movements which will immediately follow my wish, and *through* which I expect to attain the object which is the end of my desires (as in the foregoing instance of the book).

Motives to volitions.

A motive, then, is a wish causing or preceding a volition:—  
A wish for a something not to be attained by wishing it, but which the party believes he shall probably or certainly attain, by *means* of those wishes which are styled acts of the will.

Motives to motives.

In a certain sense, motives may precede motives as well as acts of the will. For the desired object which is said to determine the will may itself be desired as a mean to an ulterior purpose. In which case, the desire of the object which is the ultimate end, prompts the desire which immediately precedes the volition.

[Give instance.]

Why the will has attracted so much attention: And been thought mysterious.

That the will should have attracted great attention, is not wonderful. For by means of the bodily movements which are the objects of volitions, the business of our lives is carried on. That the will should have been thought to contain something extremely mysterious, is equally natural. For volitions (as we have seen) are the only desires which consummate themselves: the only desires which attain their objects without the intervention of means.

## NOTES AND FRAGMENTS.

See Mr. Locke; Chapter on Power and Will.

His mistake was this. He perceived (though obscurely) that we mean by the 'will,' or by 'volitions,' desires which consummate themselves, or which are followed immediately by their objects. And if he had asked himself '*what* desires are attained by merely desiring them?' he would have arrived at the solution reserved for Dr. Brown.

[The following passage in Hobbes is referred to by Mr. Austin]:—

'In Deliberation the last Appetite or Aversion immediately adhering to the action, or the omission thereof, is what we call the Will; the Act (not the faculty) of Willing. And Beasts that have Deliberation must necessarily also have Will. The Definition of the Will commonly given by the Schools, that it is a rational Appetite, is not good. For, if it were, then there could be no voluntary Act against Reason. For a voluntary Act is that which proceedeth from the Will and no other. But if instead of a rational Appetite, we shall say an Appetite resulting from a precedent Deliberation, then the Definition is the same that I have given here. *Will therefore is the last Appetite in deliberating.* And though we say in common Discourse, a man had a Will once to do a thing that nevertheless he forebore to do; yet that is properly but an Inclination, which makes no action voluntary; because the action depends not of

it, but of the last Inclination or Appetite.'—*Leviathan*, p. 28, edit. 1651.

LECT.  
XVIII

The objects of wishes or desires are desired simply or absolutely, or they are desired for their effects or consequences. Changing the expression, the objects of wishes or desires are desired as *ends*, or they are desired as *means* to ends.

For example, I may desire money for the sake of the advantages which it would procure; or (by virtue of that process of association which I think it needless to explain) I may wish for money without adverting to those advantages, or to any of the consequences which would follow the attainment of my desire.

And the remark which I have applied to *positive* desires, will also apply to those *negative* desires which are styled *aversions*. I may wish to avoid a given pain in prospect, without carrying my intention beyond that given object. Or I may wish that an event in prospect may not happen, on account of some consequence which would certainly or probably follow it, and from which I am averse.

If we steadily keep in view this simple and obvious truth, I think that we may approach to the true distinctions between Motive, Will, and Intention.

*Voluntary*.—Double meaning of the word *voluntary*.

First, a voluntary act is any act done in pursuance of a volition; *i.e.* an act (*s.s.*) with such of its intentional consequences as are included in its import; *e.g.* submission to punishment, in consequence of a knowledge that resistance would be fruitless.

Secondly, a voluntary act is an act done in consequence of an act of the will, *as determined by certain motives*. This last sense includes several related yet different senses; *e.g.* a voluntary act, as opposed to an act done for a valuable consideration: a voluntary act, as opposed to an act done in apprehension of pain.

*Spontaneous*. Mr. Bentham says,<sup>73</sup>

'I purposely abstain from the use of the words *voluntary* and *involuntary*, on account of the extreme ambiguity of their signification. By a voluntary act is meant sometimes, any act in the performance of which the will has had any concern at all; in this sense it is synonymous to "intentional;" sometimes such acts only, in the production of which the will has been determined by motives not of a painful nature: in this sense it is synonymous with unconstrained or *uncoerced*; sometimes *such acts only, in the production of which the will has been determined by motives which, whether of the pleasurable or painful kind, occurred to a man himself, without being suggested by anyone else*; <sup>74</sup> in this sense it is synonymous with *spontaneous*.

'The sense of the word "involuntary" does not correspond completely to that of the word "voluntary." Involuntary is used in opposition to intentional and to unconstrained, but not to spontaneous.'

<sup>73</sup> 'Principles of Morals and Legislation,' pp. 22, 79, 81.

<sup>74</sup> Or rather, by motives *other than* those which are in question. Good

offices proceeding from the Moral Sanction, are, with reference to legal obligation, *spontaneous*.—See 'Principles,' etc. p. 326.—*Marginal Note*.

## LECTURE XIX.

## INTENTION.

LECT. XIX IN the preceding Lectures I have endeavoured to analyse the expressions '*legal Right and Duty*,' or to determine *generally* the nature and essence of *legal Rights and Duties*.

Before I can complete the analysis of 'Right' and 'Duty,' or before I can determine completely the import of those complex terms, I must advert in a general manner to legal Injuries or Wrongs, and to legal or political Sanctions.

But before I could proceed to the consideration of Injuries and Sanctions, or could distinguish Duty or Obligation from physical compulsion or restraint, it was necessary that I should examine the meaning of 'Will' and 'Motive,' 'Intention' and 'Negligence:' Including, in the term 'Negligence,' negligence strictly so called; with the closely allied, though somewhat different notions, which are styled 'Rashness' or 'Temerity,' and 'Heedlessness.'

Accordingly, I examined, in the last Lecture, the meaning of 'Will' and 'Motive;' and I now proceed to the import of 'Intention' and 'Negligence.'

Volitions  
and  
Motives.

As I stated in my last Lecture, some of our wishes or desires are followed *immediately* by their objects. In other words, some of our wishes or desires consummate themselves, or attain their appropriate *ends* without the intervention of *means*.

The only wishes or desires which consummate themselves, are wishes or desires for certain movements of our own bodily organs. All our other desires attain their appropriate ends, by means, or series of means: by means of the bodily movements which immediately follow our desires for them, or by means of those bodily movements coupled with additional means.

[The bodily movements which we will, or which immediately follow our desires of them, are not desired for themselves, but for their consequences. They are not desired as *ends* but as *means* to ends.]

This (I believe) will hold universally. The movements in themselves are perfectly indifferent objects, and derive all their interest from the purposes which they subserve.]

The desires for those bodily movements which immediately follow our desires for them, are sometimes styled '*volitions*:'—

more frequently, 'determinations of the will,' or of 'the power or faculty of willing.' For here (as in other cases of cause and effect) the customary sequence of the bodily movement upon the desire immediately preceding, has been ascribed to a fancied something styled a 'power.' A '*power of willing*' which resides in the man, and by *virtue* whereof he *produces* the movement which is the instant consequence of his wish for it. The fancied something which comes between the wish and the movement, is commonly styled (with more brevity) 'the Will.' And whenever I find occasion to mention this mysterious being, I will (if you please) call it so.

LECT. XIX

For the structure of established speech forces me to talk of '*willing*;' and to impute the bodily movements, which immediately follow our desires for them, to '*the Will*.'

To discard established terms is seldom possible; and where it is possible, is seldom expedient. A familiar expression, however obscure, is commonly less obscure, as well as more welcome to the taste, than a new and strange one. Instead of rejecting conventional terms because they are ambiguous and obscure, we shall commonly find it better to explain their meanings, or (in the language of Old Hobbes) 'to *snuff* them with distinctions and definitions.'

Accordingly, I shall talk of '*willing*;' of '*determinations of the will*;' and of '*motives determining the will*.' But all that I mean by those expressions is this. 'To *will*,' is to *wish* or *desire* certain of those bodily movements which immediately follow our desires of them. A '*determination of the will*,' or a '*volition*,' is a wish or desire of the sort. A '*motive determining the will*,' is a wish *not* a volition, but suggesting a wish which is. The wish styled a '*motive*,' is not immediately followed by its appropriate object: But the bodily movement which is the appropriate object of the *volition*, seems to the party a certain or probable *mean* for attaining the something which is the appropriate object of the *motive*. In case that something be wished as a *mean* to an ulterior object, the wish of the ulterior object is a motive to a *motive*; as the wish of the *intervening* mean is a motive to the *volition*.

The bodily movements which immediately follow our desires of them, are the only human *acts*, strictly and properly so called. For events which are not *willed* are not *acts*; and the bodily movements in question are the only events which we *will*. They are the only objects which follow our desires, without the intervention of means.

Acts.

## Lect. XIX

But, as I observed in my last Lecture, most of the names which seem to be names of acts are names of *acts* strictly and properly so called, *coupled with more or fewer of their consequences.*

And as the names of *acts* comprise certain of their *consequences*, so it is said that those consequences are *willed*, although they are only *intended*. In the case which I have just supposed, it would be said that I *willed* the consequences of my voluntary muscular movements, as well as the movements themselves.

Nor is it in our power to discard these forms of speech, although they involve the nature of will and intention in thick obscurity. They are inseparably interwoven with the rest of established language; and if we attempted to change them for new and precise expressions, we should either resort to terms which others would not understand, or to tedious circumlocutions which others would not endure. To analyse, mark, and remember their complex import, is all that we can accomplish.

Accordingly, I must often speak of '*acts*,' when I mean '*acts and their consequences*;' and must often speak of those consequences as if they were *willed*, though, in truth, they are *intended*.

## Internal Acts.

And here I must pause a moment for the purpose of correcting a mistake which I made in a former Lecture.

In that Lecture, I distinguished acts into acts *internal*, and acts *external*:<sup>75</sup> Meaning by acts *internal*, volitions or determinations of the will; and meaning by acts *external*, the bodily movements which are the appropriate *objects* of volitions.

I am convinced, on reflection, that the terms are needless, and tend to darken their subjects. The term '*volitions*,' or the term '*determinations of the will*,' sufficiently denotes the objects to which I applied the term '*internal acts*.' And it is utterly absurd (unless we are talking in metaphor) to apply such terms as '*act*' and '*movement*' to *mental* phenomena. I, therefore, repudiate the term '*internal acts*;' and, with that term, the superfluous distinction in question. I hastily borrowed the distinction from the works of Mr. Bentham:<sup>76</sup> A writer, whom I much revere, and whom I am prone to follow, though I will not receive his dogmas with blind and servile submission. Impostors exact from their disciples '*prostration of the understanding*,' because their doctrines will not endure examination.

<sup>75</sup> Lect. XIV., p. 365, *supra*.

<sup>76</sup> 'In the second place, acts may be distinguished into *external* and *internal*. By *external* are meant corporal acts; acts of the body; by *internal*, mental

acts; acts of the mind: Thus, to strike is an external or exterior act: to intend to strike, an internal or interior one.'—Bentham, *Principles, etc.* p. 70.



A man of Mr. Bentham's genius may provoke inquiry; and may rest satisfied with the ample and genuine admiration which his writings will infallibly extort from scrutinising and impartial judges. LECT. XIX

The bodily movements which immediately follow our desires of them, are *acts* (properly so called).

But every act is followed by *consequences*; and is also attended by *concomitants*, which are styled its *circumstances*.

To desire the *act* is to *will* it. To *expect* any of its *consequences*, is to *intend* those consequences.

The act itself is *intended* as well as *willed*. For every volition is accompanied by an expectation or belief, that the bodily movement wished will immediately follow the wish.

A consequence of the act is never *willed*. For none but acts themselves are the appropriate objects of volition. Nor is it always *intended*. For the party who wills the act, may not expect the consequence. If a consequence of the act be *desired*, it is probably *intended*. But (as I shall shew immediately) an *intended* consequence is not always *desired*. Intentions, therefore, regard *acts*: or they regard the *consequence of acts*.

When I will an act, I expect or intend the *act* which is the appropriate object of the volition. And when I will an act, I may expect, contemplate, or intend some given event, as a certain or contingent *consequence* of the act which I will.

Hence (no doubt) the frequent confusion of Will and Intention. Feeling that *will implies intention* (or that the appropriate objects of volitions are intended as well as willed) numerous writers upon Jurisprudence (and Mr. Bentham amongst the number) employ 'will' and 'intention' as synonymous or equivalent terms. They forget that *intention does not imply will*; or that the appropriate objects of certain intentions are not the appropriate objects of volitions. The agent may not intend a consequence of his act. In other words, when the agent wills the act, he may not contemplate that given event as a certain or contingent consequence of the act which he wills.

For example:

My yard or garden is divided from a road by a high paling. I am shooting with a pistol at a mark chalked upon this paling. A passenger then on the road, but whom the fence intercepts from my sight, is wounded by one of the shots. For the shot pierces the paling; passes to the road; and hits the passenger.

Now, when I aim at the mark, and pull the trigger, I may not *intend* to hurt the passenger. I may not contemplate the

Intention as regarding present acts, or the consequences of present acts.

Confusion of Will and Intention.

A consequence of an act may not be intended.

Lect. XIX hurt of a passenger as a contingent consequence of the act. For though the hurt of a passenger *be* a probable consequence, I may not think of it, or advert to it, *as* a consequence. Or, though I may advert to it as a possible consequence, I may think that the fence will intercept the shot, and prevent it from passing to the road. Or the road may be one which is seldom travelled, and I may think the presence of a stranger at that place and time extremely improbable.

On any of these suppositions, I am clear of *intending* the harm: Though (as I shall shew hereafter) I may be guilty of *heedlessness* or *rashness*. Before *intention* can be defined exactly, the import of those terms must be taken into consideration.

Where the agent *intends* a consequence of the act, he may *wish* the consequence, or he may *not* wish it.

And, if he *wish* the consequence, he may wish it as an *end*, or he may wish it as a *mean* to an end.

I will illustrate these three suppositions by adducing examples. But before I exemplify these three suppositions, I will endeavour to explain what I mean, when I say 'that a consequence of an act may be wished as an *end*.'

Strictly speaking, no external consequence of any act is desired as an *end*.

The end or ultimate purpose of every volition and act is a feeling or sentiment:—is pleasure, direct or positive; or is the pleasure which arises *indirectly* from the removal or prevention of pain. But where the pleasure, which (in strictness) is the end of the act, can only be attained through a *given* external consequence, that external consequence is inseparable from the end; and is styled (with sufficient precision) the end of the act and the volition. For example, if you shoot me to death because you hate me mortally, my death is a necessary condition to the attainment of your end. The end of the act, is to allay the deadly antipathy. But the end can only be attained through my death. And my death (which is an intended consequence of the act) may, therefore, be styled the *end* of the act and the volition.

I stated in my last Lecture, that the bodily movements, which are the appropriate objects of volitions, are not desired as *ends*.

But that is true of every outward object which is the object of a desire. This, therefore, will not distinguish volitions from other desires.

Nor can it be said, that the appropriate objects of volitions

An intended consequence of an act may be wished or not. And if wished, it may be wished as an *end*, or as a *mean*. Consequence of an act wished as an *end*.

are desired as means to ends external, or to remote ends. In most cases they are. But in some they are not. Namely, dancing, etc., for nothing but the present pleasure. Lect. XIX

The true test is, that they are the only desires immediately followed by their appropriate or direct objects.

Where an intended consequence is wished as an *end* or a *mean*, motive and intention concur. In other words, The consequence intended is also wished; and the wish of that consequence suggests the volition. Concurrence of Motive and Intention.

I will now exemplify those three varieties of intention at which I have pointed already. Exemplifications of the three foregoing suppositions.

The varieties are the following :

1st. The agent may *intend* a consequence; and that consequence may be the *end* of his act.

2ndly. He may *intend* a consequence; but he may desire that consequence as a *mean* to an end.

3rdly. He may *intend* the consequence, without desiring it.

As examples of these three varieties, I will adduce three cases of intentional killing.

You hate me mortally: And, in order that you may appease that painful and importunate feeling, you shoot me dead. Of the first supposition.

Now here you *intend* my death: And (taking the word '*end*' in the meaning which I have just explained) my death is the *end* of the act, and of the volition which precedes the act. Nothing but that consequence would accomplish the purpose, which (speaking with metaphysical precision) is the end of the act and the volition. Nothing but that consequence would allay the painful sentiment of which you purpose ridding yourself when you shoot me. Nothing but that consequence would appease your hate, or satisfy your malice.

Again :

You shoot me, that you may take my purse. I refuse to deliver my purse, when you demand it. I defend my purse to the best of my ability. And, in order that you may remove the obstacle which my resistance opposes to your purpose, you pull out a pistol and shoot me dead. Of the second supposition.

Now here you *intend* my death, and you also *desire* my death. But you desire it as a *mean*, and not as an *end*. Your desire of my death is not the ultimate *motive* suggesting the volition and the act. Your ultimate motive is your desire of my purse. And if I would deliver my purse, you would not shoot me.

Lect. XIX  
Of the  
third sup-  
position.

Lastly :

You shoot at Sempronius or Styles, at Titius or Nokes, desiring and intending to kill him. The death of Styles is the *end* of your volition and act. Your desire of his death, is the *ultimate motive* to the volition. You contemplate his death, as the probable consequence of the act.

But when you shoot at Styles, I am talking with him, and am standing close by him. And, from the position in which I stand with regard to the person you aim at, you think it not unlikely that you may kill *me* in your attempt to kill *him*. You fire, and kill me accordingly. Now here you *intend* my death, without *desiring* it. The *end* of the volition and act, is the death of Styles. *My* death is neither desired as an *end*, nor is it desired as a *mean* : *My* death *suberves* not your end : you are not a bit the nearer to the death of Styles, by killing *me*. But, since you contemplate my death as a probable consequence of your act, you *intend* my death although you *desire* it not.

Forbear-  
ances are  
intended,  
but not  
willed.

It follows from the nature of Volitions, that *forbearances from acts* are not *willed*, but *intended*.

To *will*, is to wish or desire one of those bodily movements which immediately follow our desires of them. These movements are the only *acts*, properly so called. Consequently, 'To will a forbearance' (or 'to will the absence or negation of an act'), is a flat contradiction in terms.

When I forbear from an act, I *will*. But I will an act *other* than that from which I forbear or abstain : And, knowing that the act which I will, excludes the act forborne, I *intend* the forbearance. In other words, I contemplate the forbearance as a *consequence* of the act which I will ; or, rather, as a necessary *condition* to the act which I will. For if I willed the act from which I forbear, I should not will (at this time) the act which I presently will.

For example, It is my duty to come hither at seven o'clock. But, instead of coming hither at seven o'clock, I go to the Playhouse at that hour, conscious that I ought to come hither.

Now, in this case, my absence from the room is *intentional*. I know that my coming hither is inconsistent with my going thither : that, if my legs brought me to the University, they would not carry me to the Playhouse.

If I *forgot* that I ought to come hither, my absence would not be *intentional*, but the effect of *negligence*.

LECTURE XX.

NEGLIGENCE, HEEDLESSNESS, AND RASHNESS.

IN my last Lecture, I endeavoured to distinguish *acts* (properly so called) from the events which are *consequences* of acts; to shew that *acts* are *intended* as well as *willed*; but that their *consequences* are never *willed*, although they are often *intended*. In short, every forbearance is *intended*, but no forbearance is *willed*: the party wills a something inconsistent with the act forborne, *conscious* that the something which he presently wills, excludes (for the time being) *that* from which he forbears.

The motives to *forbearances* (or, rather, to the *acts* which exclude the acts forborne), are different in different cases.

Disliking the consequences of the act from which I forbear, I forbear from the act *because* I dislike those consequences. Or without disliking (or positively liking) those consequences, I *prefer* the consequences of the act which I presently will, and which I could not perform unless I forbore from the other.

In the first of these cases, my motive to the act which I presently will, is styled *aversion*: aversion from the act forborne, or (rather) from its probable consequences. But whether the act which I *will* be promoted by preference or aversion, the act which I will, and *not* the forbearance, is the object of the volition itself. 'To will nothing,' is a flat contradiction in terms.<sup>77</sup>

Forbearances must be distinguished from Omissions.

A *forbearance* (taking the word in its large signification) is the *not* doing a given act with an *intention* of not doing it. The party *wills* something else, knowing that that which he wills excludes the given act.

An omission (taking the word in its large signification) is the *not* doing a given act, without adverting (at the time) to the act which is not done.

The term 'forbearance' (as it is often used) is restricted to *lawful* forbearances:—to such as are exacted by duties, or are not inconsistent with duties.

The term 'omission' (as it is often used) is restricted to *unlawful* or culpable omissions:—to such as are breaches of *duties*.

"It is not perhaps rigidly true that every forbearance is preceded or accompanied by an *act*.

LECT. XX  
Acts are willed *and* intended: Consequences are *intended*. Forbearances are intended. Motives to Forbearances.

Forbearances distinguished from Omissions.

Ambiguities of the terms 'Forbearance and Omission;' 'Commit and Omit.'

## LECT. XX

And, taking the terms in those restricted senses, we have no names for unlawful or culpable forbearances, or for lawful omissions. Not unfrequently, the term 'omission' is extended to *all* omissions, and also to *all* forbearances. Or the term 'omission' denotes such omissions and forbearances as are unlawful or culpable. And, in either of those cases, the *not* doing, which is unintentional, is confounded with the *not* doing, which is intentional.

'Omit' (as opposed to 'commit') is also defective or ambiguous. To 'commit,' is to *do* an act inconsistent with a duty. 'To omit,' is to omit *unlawfully*; or to omit (or *forbear*) unlawfully. In the first case, *culpable forbearance* is *dropped*. In the last case, culpable forbearance is confounded with *culpable omission*.

I think that the usage of numerous and good writers authorises the large significations which I attach to the terms in question. At all events, those significations are so clear, precise, and commodious, that I should venture to annex them to the terms, in the teeth of established usage.

Those significations I will repeat.

'To forbear' is *not* to do, with an *intention* of not doing.

'A forbearance,' is a *not* doing, with a like intention.

'To omit,' is *not* to do, but without thought of the act which is not done.

'An omission,' is a *not* doing, with a similar absence of consciousness.

If we would denote 'that a forbearance or omission is a breach of duty,' we can easily accomplish the purpose by express restriction. We can style it 'injurious' or 'unlawful,' or we can call it 'culpable.' Injurious or culpable omissions are frequently styled 'negligent.' The party who omits is said to 'neglect' his duty. The omission is ascribed to his '*negligence*.' The state of his mind at the time of the omission, is styled '*negligence*.'

Negligence.

These (I think) are the meanings usually attached to these terms; although the Roman Lawyers (as I shall shew immediately) have given them a larger signification.

Taking them in the meanings which (I believe) are usual, the term '*negligent*' applies exclusively to injurious omissions:—to breaches by omission of positive duties. The party omits an act to which he is *obliged* (in the sense of the Roman Lawyers). He performs not an act to which he is obliged, because the act and the obligation are absent from his mind.

'*Heedlessness*' differs from negligence, although they are closely allied.<sup>78</sup>

Lect. XX  
Heedless-  
ness.

The party who is negligent *omits* an act, and breaks a *positive* duty :

The party who is heedless *does* an act, and breaks a *negative* duty.

*Acts* (properly so called) are not injuries or wrongs, independently of their consequences. Where an act is forbidden, the duty and the sanction are pointed at consequences which constantly or usually follow it. And (as I shall shew hereafter) the guilt or innocence of a given actor, depends upon the state of his consciousness, with regard to those consequences, in the given instance or case.

If he intend or expect them, he is guilty of the wrong at which the sanction is aimed. And, though he expect them not, they are rationally imputed to him, provided he *would* have expected them, if he had thought of *them* and of his duty. Where he does the act without adverting to those consequences, he is clear of *intending* those consequences, but he produces them by his *heedlessness*.

I endeavoured in my last Lecture to illustrate my meaning, by an example to which I now refer you.<sup>79</sup> In the case supposed, I did not advert to the probable consequence of my act. And, since it was my duty to advert to it, I am guilty of *heedlessness*, although I am clear of *intentional* injury.

The states of mind which are styled 'Negligence' and 'Heedlessness' are precisely alike. In either case the party is inadvertent. In the first case, he does *not* an act which he was bound to do, because he adverts not to it. In the second case he *does* an act from which he was bound to forbear, because he adverts not to certain of its probable consequences. Absence of a thought which one's duty would naturally suggest, is the main ingredient in each of the complex notions which are styled 'negligence' and 'heedlessness.'

Negli-  
gence and  
Heedless-  
ness com-  
pared.

The party who is guilty of Temerity or Rashness, like the party who is guilty of heedlessness, does an act, and breaks a positive duty. But the party who is guilty of heedlessness, thinks not of the probable mischief. The party who is guilty of rashness *thinks* of the probable mischief; but, in consequence of a missupposition begotten by insufficient advertence, he assumes that the mischief will not ensue in the given instance or case. Such (I think) is the meaning invariably attached to the

Rashness.

<sup>78</sup> Bentham, 'Principles,' etc. pp. 86, 161.

<sup>79</sup> See p. 421, *ante*.

Lect. XX expressions, 'Rashness,' 'Temerity,' 'Foolhardiness,' and the like. The radical idea denoted is always this. The party runs a risk of which he is conscious; but he thinks (for a reason which he examines insufficiently) that the mischief will probably be averted in the given instance.

I will again illustrate my meaning, by recurring to the example to which I have just alluded.

When I fire at the mark chalked upon the fence, it occurs to my mind that a shot may pierce the fence, and may chance to hit a passenger. But without examining carefully the ground of my conclusion, I conclude that the fence is sufficiently thick to prevent a shot from passing to the road. Or, without giving myself the trouble to look into the road, I assume that a passenger is not there, because the road is seldom passed. In either cases, my confidence is *rash*; and, through my *rashness* or *temerity*, I am the author of the mischief. My assumption is founded upon evidence which the event shews to be worthless, and of which I should discover the worthlessness if I scrutinised it as I ought.

By the Roman Lawyers, Rashness, Heedlessness, or Negligence is, in certain cases, considered equivalent to 'Dolus:' that is to say, to intention. 'Dolo comparatur.' 'Vix est ut a certo nocendi *proposito* discerni possit.' Changing the expression, they suppose that rashness, heedlessness, or negligence can hardly be distinguished, in certain cases, from intention.

Now this (it appears to me) is a mistake. Intention (it seems to me) is a *precise* state of the mind, and cannot coalesce or commingle with a different state of the mind. 'To intend,' is to believe that a given act will follow a given volition, or that a given consequence will follow a given act. The chance of the sequence may be rated higher or lower; but the party *conceives* the future event, and believes that there *is* a chance of its following his volition or act. Intention, therefore, is a state of consciousness.

But negligence and heedlessness suppose *unconsciousness*. In the first case, the party does *not* think of a given act. In the second case, the party does *not* think of a given consequence.

Now a state of mind between consciousness and unconsciousness—between intention on the one side and negligence or heedlessness on the other—seems to be impossible. The party thinks, or the party does *not* think, of the act or consequence. If he think of it, he *intends*. If he do not think of it, he is



*negligent* or *heedless*. To say that a negligence or heedlessness may run into intention, is to say that a thought may be *absent* from the mind, and yet (after a fashion) *present* to the mind. LECT. XX

Nor is it possible to conceive that supposed mongrel or monster, which is *neither* temerity *nor* intention, but partakes of both:—A state of mind lying on the confines of each, without belonging precisely to the territory of either.

The party who is guilty of Rashness *thinks* of a given consequence: but, by reason of a missupposition arising from insufficient advertence, he concludes that the given consequence will *not* follow the act in the given instance. Now if he surmise (though never so hastily and faintly), that his missupposition is unfounded, he *intends* the consequence. For he *thinks* of that consequence; he believes that his missupposition *may* be a missupposition; and he, therefore, believes that the consequence *may* follow his act.

I will again revert to the example which I have already cited repeatedly.

When I fire at the mark chalked upon the fence, it occurs to my mind that the shot may pierce the fence, and may chance to hit a passenger. But I assume that the fence is sufficiently thick to intercept a pistol-shot. Or, without going to the road in order that I may be sure of the fact, I assume that a passenger cannot be there *because* the road is seldom passed.

Now if my missupposition be absolutely confident and sincere, I am guilty of rashness only.

But, instead of assuming confidently that the fence will intercept the ball, or that no passenger is then on the road, I may surmise that the assumption upon which I act is not altogether just. I think that a passenger may chance to be there, though I think the presence of a passenger somewhat improbable. Or, though I judge the fence a stout and thick *paling*, I tacitly admit that a brick wall would intercept a pistol-shot more certainly. Consequently, I *intend* the hurt of the passenger who is actually hit and wounded. I think of the mischief, when I will the act; I believe that my missupposition *may* be a missupposition; and I, therefore, believe there is a *chance* that the mischief to which I advert may follow my volition.

The proposition of the Roman Lawyers is, therefore, false.

The mistake (I have no doubt) arose from a confusion of ideas which is not unfrequent:—from the confusion of *pro-*

LECT. XX *bandum* and *probans*:—of the *subject* of an inquiry into a matter of fact, with the *evidence*.

The state of a man's mind can only be known by others through his acts: through his own declarations, or through other conduct of his own. Consequently, it must often be difficult to determine whether a party *intended*, or whether he was merely negligent, heedless, or rash. The acts to which we must resort as evidence of the state of his mind, may be *ambiguous*: inso-much that they lead us to one conclusion as naturally as to the other. Judging from his conduct, the man may have *intended*, or he may have been negligent, heedless, or rash. Either hypothesis would fit the appearances which are open to our observation.

But the difficulty which belongs to the *evidence* is transferred to the *subject of the inquiry*. Because we are unable to determine *what* was the state of his mind, we fancy that the state of his mind was itself *indeterminate*: that it lay between the confines of consciousness and unconsciousness, without belonging exactly to either. We forget that these are antagonist notions, incapable of blending.

When it was said by the Roman Lawyers, 'that Negligence, Heedlessness, or Rashness, is equivalent, in certain cases, to *Dolus* or Intention,' their meaning (I believe) was this:—

Judging from the conduct of the party, it is impossible to determine whether he *intended*, or whether he was negligent, heedless, or rash. And, such being the case, it shall be *presumed* that he *intended*, and his liability shall be adjusted accordingly, *provided that the question arise in a civil action*. If the question had arisen in the course of a criminal proceeding, then the presumption would have gone in favour of the party, and not against him.

Such (I think) is the meaning which floated before their minds: Although we must infer (if we take their expressions literally) that they believed in the possibility of a state of mind lying between consciousness and unconsciousness.

If I attempted to explain the matter fully, I should enter upon certain distinctions between civil and criminal liability, and upon the nature of *presumptiones juris* or legal presumptions.

It is, therefore, clear to me, that Intention is always separated from Negligence, Heedlessness, or Rashness, by a precise line of demarcation. The state of the party's mind is always *determined*, although it may be difficult (judging from his conduct) to ascertain the state of his mind.

Before I quit this subject, I may observe that *hasty* intention is frequently styled *rashness*. For instance, an intentional manslaughter is often styled *rash*, because the act is not premeditated, or has not been preceded by deliberate intention. Before we can distinguish *hasty* from deliberate intention, we must determine the nature of intention *as it regards future acts*. But it is easy to see that sudden or *hasty* intention is utterly different from *rashness*. When the act is done, the party contemplates the consequence, although he has not *premeditated* the consequence or the act.

To resume :

It is manifest that Negligence, Heedlessness, and Rashness, are closely allied. *Want* of the *advertence* which one's duty would naturally suggest, is the fundamental or radical idea in each of the complex notions. But though they are closely allied, or are modes of the same notion, they are broadly distinguished by differences.

LECT. XX

Negligence, Heedlessness, and Rashness, likened and distinguished.

In cases of Negligence, the party performs not an act to which he is obliged. He breaks a positive duty.

In cases of Heedlessness or Rashness, the party does an act from which he is bound to forbear. He breaks a negative duty.

In cases of Negligence, he adverts not to the act, which it is his duty to do.

In cases of Heedlessness, he adverts not to *consequences* of the act which he does.

In cases of Rashness, he adverts to those consequences of the act; but, by reason of some assumption *which he examines insufficiently*, he concludes that those consequences will not follow the act in the instance before him.

And, since the notions are so closely allied, they are (as might be expected) often confounded. Heedlessness is frequently denoted by the term 'negligence'; and the same term has even been extended to rashness or temerity. But the three states of mind are nevertheless distinct; and, in respect of differences between their consequences, shall be distinguished.

Having tried to analyse intention (where it is coupled with will), and to settle the notions of negligence, heedlessness, and rashness, I will now trouble you with a few remarks upon certain established terms.

*Dolus* denotes, strictly, *fraud*<sup>80</sup>:—'Calliditas, fallacia, Dolus. machinatio, ad circumveniendum, decipiendum, fallendum alterum, adhibita.'

<sup>80</sup> Bentham, Pr. 91.

## LECT. XX

By a transference of its meaning which is not very explicable, it also signifies *intention*,<sup>81</sup> or *intentional wrong*:—‘*Injuria qualiscunque scienter admissa*:’—‘*Injuria quam quis sciens volensque commisit*.’

The use of the term *dolus* for the purpose of signifying *intention*, may, perhaps, be explained thus:

Fraud imports *intention*: For he who contrives or machinates *ad decipiendum alterum*, pursues a given purpose. For want, therefore, of a name which would denote *Intention* generally, the Roman Lawyers expressed it (as well as they could) by the name of a something which necessarily implied it.

It is an instance of those generalizations which are so common in language: of the extension of a term denoting a species, to the genus which includes that species. [*e.g.* Virtue.]

## Culpa.

*Culpa* (when opposed to *Dolus*) imports negligence, heedlessness, or temerity; or any injury consequent upon any of these: ‘*Omnis protervitas, temeritas, inconsiderantia, desidia, negligentia, imperitia, quibus citra dolum, cui nocitum est*.’ But (used in a larger sense), *Culpa* is equivalent to the English ‘*Guilt*.’ It denotes that the party has broken a duty, intentionally, negligently, heedlessly, or rashly. ‘*Generatim, culpa dicitur quævis injuria ita admissa, ut jure imputari possit ejus auctori*.’ In order that a given mischief may be *imputed* to another, ‘*necesse est, ut culpâ ejus id acciderit*.’ That is to say, through his *intention*; or through his negligence, heedlessness, or temerity (as I have explained them above).

*Culpa*, therefore, is sometimes opposed to *Dolus*; and it sometimes comprises *Dolus*.

Again: the term *Culpa* is sometimes opposed to *Negligentia*. In which case, these words have a very peculiar meaning.

*Culpa* is restricted to *delicts* (*stricto sensu*). *Negligentia* denotes breaches of obligations (*s. s.*).

The injuries done through *Culpa* (in this sense) ‘*faciendõ semper admittantur*.’

The injuries done ‘*Negligentiâ*’ (in this sense) are committed ‘*faciendõ aut non faciendõ*.’

Obligations (*stricto sensu*) are positive or negative.

Here then *Negligentia* includes, Intention, Negligence (properly so called), Heedlessness, and Temerity.

Origin of this application. *Negligentia* opposed to *Diligentia*: *i.e.* that care which (ex obligatione) the obliged party<sup>82</sup> is often obliged to employ about the interests of another.

<sup>81</sup> But for a modification of this statement see p. 465, *post*. <sup>82</sup> Trustees, Bailees, etc.

I have already remarked upon the extension of Dolus to Intention generally. In the English law (in certain cases) we have employed the word 'Malice' for a similar purpose. As malice (*stricto sensu*) implies intention, it has been extended to cases in which there is no malice. As I have already shewn, it does not in this extended sense denote the motive. And it is manifest that the motive to a criminal action may be laudable.<sup>83</sup> The intention of an action suggested by a blamable motive, lawful.

LECT. XX  
Malice.

A few words for the purpose of applying what has been said to the Roman Law. Unintentionality, and innocence of intention, seem both to be included in the case of *infortunium*, where there is neither *dolus* nor *culpa*. Unadvisedness coupled with heedlessness, and misadvisedness coupled with rashness, correspond to the *culpa sine dolo*. Direct intentionality corresponds to *dolus*. Oblique intentionality seems hardly to have been distinguished from direct; were it to occur, it would probably be deemed also to correspond to *dolus*.<sup>84</sup>

Dolus and  
Culpa.  
Roman  
law.

*Meanings of Dolus, etc.*

Dolus bonus et malus.—Mühlenbruch, vol. i. pp. 191, 332.

Dolus=Voluntas nocendi. Consequently it neither includes indirect, nor sudden intention.—Mühl. 190, 300 *et seq.* Feuerbach,<sup>85</sup> 51-2, 58. Rosshirt, 37-9, 43. Bentham's Princ.

Dolus indeterminatus.—Feuerb. 56. Rossh. 39.

Culpa=Crimen, Delictum, Injuria.—Rosshirt, 42.

Culpa=Guilt: Dolus et Negligentia (in any of its modifications).—Feuerb. 78-9. Rossh. 35, 42. Mühl. 326, 330 *et seq.*

Culpa as opposed to Dolus. Includes indirect and hasty intention, with negligence in all its modifications.—Feuerb. 51-3, 54-5; 80. Rossh. 42-3-4. Mühl. 330 *et seq.*

Culpa dolo determinata.—Feuerb. 47. Rossh. 39

Negligentia ob obligationis vinculum præstanda.—Mühl. 333. Mackeldey, ii. 160.

Injuria, Delictum, Crimen.—Mühl. 325-6, 185. Feuerb. 24. Rossh. 2.

Injuria (generaliter)='Omne quod non jure fit.'—Justinian.

The obvious division is into 1°, Wrongful Intention with its various modifications, 2°, Wrongful inadvertence with, etc.

Inconsistencies consequent upon putting indirect and sudden intention into *culpa*, and excluding them from *dolus*.—Feuerb. 80. Rossh. 86.

<sup>83</sup> Bentham, 'Principles,' etc. pp. 89, 115, 132, 142.

<sup>84</sup> It is included in *culpa*. [*Scientia*, but without the *voluntas nocendi*. *Prope dolus*, but not *dolus*.] Nothing can be more accurate.

<sup>85</sup> *Imputation, Imputability, and*

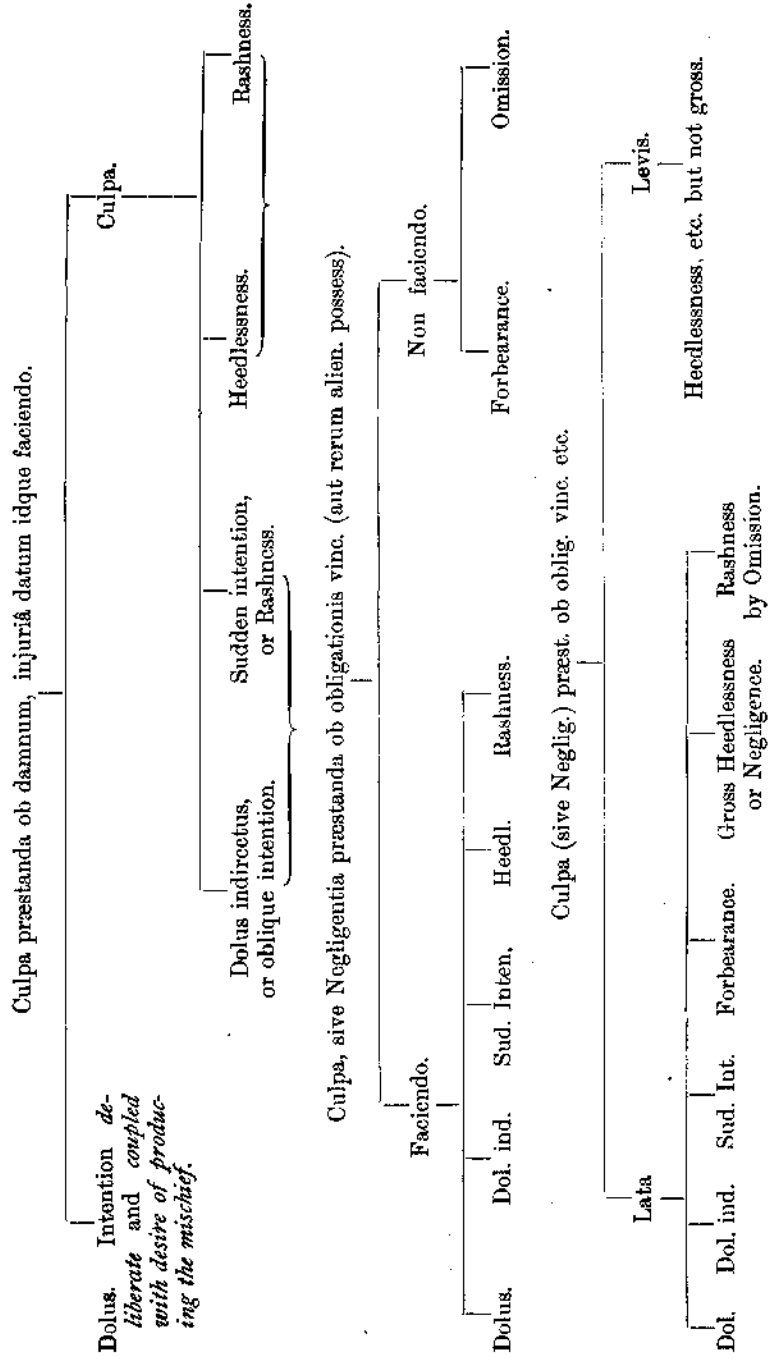
*Guilt. Conditions of imputation:*

1. Knowledge, actual or possible, on the part of the accused, of the criminality of his act or omission:

2. Dependence on his own wishes, of the forbearance or performance due.—

*Marginal Note.*

LECT. XX



LECTURE XXI.

INTENTION FURTHER CONSIDERED.

THE intentions which I considered in my last Lecture, are coupled with present volitions, and with present acts.

LECT. XXI  
Intentions coupled with volitions and acts.

The party wishes or wills certain of the bodily movements which immediately follow our desires of them: He expects or believes, at the moment of the volition, that the bodily movements which he wills will certainly and immediately follow it: and he also expects or believes, at the moment of the volition, that some given event or events will certainly or probably follow those bodily movements.

In other words, he presently *wills* some given act; intending the act (as the consequence of the volition), and intending some further event (as the consequence of the volition and the act).

But a *present* intention to do a *future* act, is neither coupled with the performance of the act, nor with a present will to do it. The present intention is not coupled with the present performance of the act. For the intention, though present, regards the future. Nor is it coupled with the present *will* to *do* the act intended. For to *will* an act is to *do* the act, provided that the bodily organ, which is the instrument of the volition and the act, be in a sound or healthy state.

Present intention to do a future act, distinguished from an act with a present volition and intention.

Consequently, to do an act with a present intention, is widely different from a present intention to do a future act. In the first case, the act is willed and done. In the second case, it is neither willed nor done, although it is intended.

A present intention to do a future act, may (I think) be resolved into the following elements.

Present intention to do a future act, what.

First, The party *desires* a given object, either as an end, or as a mean to an end.

Secondly, He *believes* that the object is attainable through acts of his own: Or (speaking more properly) he believes that acts of his own would give him a chance of attaining it.

Thirdly, He *presently* believes that he shall do acts *in future*, for the purpose of attaining the object.

Distinguished from a simple desire of the object.

A *belief* 'that the desired object is attainable through acts of our own,' and 'that we shall do acts thereafter for the purpose

Lect. XXI of attaining it,' are necessary constituents of the complex notion which is styled 'a present intention to do a future act.'

If these be absent, we simply desire the object.

Unless I believe that the object be attainable through acts of my own, I cannot presently believe that I shall do acts hereafter for the purpose of attaining the object. I cannot believe that I shall try to attain an object, knowing that my efforts to attain it are utterly ineffectual.<sup>85</sup>

Intention supposes that the object is attainable through conduct of our own. Or (as it is commonly said) that the attainment of the object depends upon our will. And though I believe that the object be attainable through acts of my own, I *simply desire* or *barely wish* the object, unless I *presently* believe that I shall do acts *hereafter* for the purpose of attaining it.

For example, if I wish for a watch hanging in a watch-maker's window, but without believing that I shall try to take it from the owner, I am perfectly clear of *intending* to steal the watch, although I am guilty of *coveting* my neighbour's goods (provided that the wish recur frequently).

Present intention to do a future act, re-stated.

The belief 'that the desired object is attainable through acts of our own,' is necessarily implied in the belief 'that we shall do acts hereafter for the purpose of attaining it.'

Consequently, a present intention to do a future act may be defined to be: 'A present *desire* of an object (either as an end or a mean), coupled with a present *belief* that we shall do acts hereafter for the purpose of attaining the object.'

It may also be distinguished briefly from a present volition and intention, in the following manner:

In the latter case, we presently will, and presently act, *expecting* a given consequence. In the former case, we neither presently will nor presently act, but we *presently* expect or believe that we *shall* will *hereafter*.

Confusion of Will and Intention.

When we *will* a present act, intending a given consequence, it is frequently said 'that we *will* the consequence as well as the act.' And when we intend a future act, it is frequently said 'that we *will* the act *now*, although we postpone the execution to a future time.' In either case, will is confounded with intention.

When we intend a future act, it is also commonly said 'that

<sup>85</sup> *E.g.* Desire to be King. But no Kingly Office; i.e. to pursue a course of conduct leading him to the throne. a madman) can intend to aim at the



we resolve or determine to do it;’ or ‘that we make up our minds to do it.’ Frequently, too, a verbal distinction is taken between a strong and a weak intention; that is to say, between a strong or a weak belief that we shall do the act in future. Where the belief is strong, we are more apt to say ‘that we *intend* the act.’ Where the belief is weak, we are more apt to say ‘that we *believe* we shall do it.’

Such being the forms of language, it is somewhat difficult to admit, at first hearing, ‘that a present *intention* to do a future act is nothing but a present *belief* that we shall do an act in future.’ But that nothing but this really passes in the mind any man may convince himself by examining the state of his mind when he intends a future act.

When we speak of *willing* a future act, we are not speaking of our intention to do the future act, but of our wish for the object which we believe may be attained through the act. Or, rather, our wish for the object, and our intention of resorting to the mean, are blended and confounded. And as every volition is a desire, and is also coupled with an intention, the compound of desire and intention is naturally styled a volition, although it is impossible (from the nature of the case) that we *can* will an act of which we defer the execution.

When we say ‘that we have resolved or determined on an act,’ or ‘that we have made up our minds to do an act,’ we merely mean this: ‘that we have examined the object of the desire, and have considered the means of attaining it, and that, since we think the object worthy of pursuit, we believe we shall resort to the means which will give us a chance of getting it.’

Here also, the desire of the object is confounded with the *belief* which properly constitutes the intention. Every genuine volition being a desire, and every genuine volition being coupled with an intention, we naturally extend the terms which are proper to *volitions* to every desire which is combined with an intention.

It is clear that such expressions as ‘determining,’ ‘resolving,’ ‘making up one’s mind,’ can only apply in strictness to ‘volitions’: that is to say, to those desires which are instantly followed by their objects, and by which it may be said that we are *concluded*, from the moment at which we conceive them. He who wills necessarily acts as he wills, and cannot will (with effect) that he will retract or recall the volition. He has ‘*determined* :’ he has ‘*resolved* :’ He has ‘made up his mind.’

Lect. XXI He is *concluded* by his own volition. He cannot *un-will* that which he has willed.

But when such expressions as 'resolving' and 'determining' are applied to a present intention to do a future act, they simply denote that we desire the object *intensely*, and that we believe (with corresponding confidence) we shall resort to means of attaining it.

And this perfectly accords with common apprehension, although it may sound (at first hearing) as if it were a paradox. For, every *intention* (or every so-styled *will*), which regards the future, is *ambulatory* or *revocable*. That is to say, the present *desire* of the object may cease hereafter; and the present *belief* that we shall resort to the means of attaining it, will, of course, cease with the wish for it. We cannot *believe* that we shall try to get that, for which we *know* that we care not.

Intending  
a future  
forbear-  
ance.

It is clear that we may presently intend a future forbearance as well as a future *act*.

We may either desire an object inconsistent with the act to be forborne, *or* we may positively dislike the probable consequences of the act. In the first case, we may presently believe that we shall forbear from the act hereafter, in order that we may attain the object which we wish or desire. In the latter case, we may presently believe that we shall forbear from the act hereafter, in order that we may avoid the consequences from which we are averse.

[*Every* present *forbearance* from a given act, is not preceded or accompanied by a present *volition* to do another act.

It may be preceded or accompanied by mere inaction; *e.g.* I may lie perfectly still, *intending* not to rise.

But, still, it is generally true, that every present forbearance *is* preceded or accompanied by a volition. In our waking hours, our lives are a series (nearly unbroken) of volitions and acts. And, when we forbear, we commonly do a something inconsistent with the act forborne, and which we are conscious is inconsistent with it.]

Where a forbearance is preceded or accompanied by inaction, the desire leading to the forbearance is not to be compared to a volition. The forbearance is not like the act, the direct and appropriate object of the wish.

All that can be said (in generals) of intentions to *act* in future, may be applied (with slight modifications) to intentions to *forbear* in future. I confine myself to intentions to *act* in future, in order that my expressions may be less complex, and, by consequence, more intelligible.

When we intend a future act, we also intend certain of its consequences. In other words, we believe that certain consequences will follow that future act, which we presently believe we shall hereafter will. This is necessarily implied in every intention of the sort. For our present wish or desire of some probable consequence of the act, is our reason for believing *presently* that we shall do the act *in future*.

LECT. XXI

An intended consequence of an intended future act, is not always desired.

But we may also intend or expect that the act may be followed by consequences, which we do not desire, or from which we are averse. For example; I may intend to shoot at and kill you, so soon as I can find an opportunity. But knowing that you are always accompanied by friends or other companions, I believe that I may kill or wound one of these in my intended attempt to kill you.

Here, the object which I wish or desire is your death. I *intend* the act, or I believe that I *shall* will it, because I desire your death. But I also believe that the act will be followed by a consequence from which I am averse:—by a consequence which is not the *ground* of my present intention, although I intend *in spite of it*. I intend a future act. I intend a consequence which I desire. And I also intend a consequence from which I am averse.

The execution of every intention to do a future act, is necessarily postponed to a future time.

Intentions to do future acts are certain or uncertain;

Every intention to do a future act, is also revocable or ambulatory. That is to say, Before the intention be carried into execution, the desire which is the ground of the intention may cease or be extinguished, or, although it continue, may be outweighed by inconsistent desires.

But though the execution of the intention be always contingent, the intention itself may be certain or uncertain. I may regard the intended act as one which I shall certainly will; or I may regard it as one which I shall will, on the happening of a given contingency. In either case, I may either intend a precise and definite act, or I may merely intend some act for the purpose of attaining my object.

Are matured or undigested.

For example; I may intend to kill you by *shooting*, at a given *place* and *time*. Or (though I intend to kill you) I may neither have determined the *mode* by which I shall attain my object, nor the *time* or *place* for executing the murderous design. In cases of the first class, the intention, design, or purpose, is settled, determinate, or matured. In cases of the latter class, it is unsettled, indeterminate, or undigested.

LECT. XXI  
A *consilium*, or  
compassing.

It not unfrequently happens, that a long and complex series of acts and means is a necessary condition to the attainment of the desired object (supposing it can be attained). To determine these means, or to deliberate on the choice of them, is commonly styled 'a compassing of the desired object.' Or, when the intended means are thus complicated, the intention is frequently styled *consilium*. Either of the terms denotes the deliberation of pondering, which necessarily attends the intention before it becomes precise.

Such (I think) are the proper meanings of *compassing* and *consilium*. Where the intended means are few and simple, there is no necessity for that long and laborious deliberation, which seems to give to the intention (in the cases in question) the names of 'compassing' or *consilium*.

It must, however, be confessed, that the terms are frequently applied loosely. In the language of the English Law, you would *compass* and imagine the death of the *King*, although you intended to slay him by the shortest and simplest means. For instance, by shooting him with a rifle in a theatre. And, in various books, I have seen the word '*consilium*' used for '*propositum*' or intention.

It is only by the *complexity* of the means, that a compassing or *consilium* is distinguished from another intention. In all other respects, the two states of mind are exactly alike. There is a present desire of a given object, with a belief that we shall resort to means (precise or indeterminate) for the accomplishment of the desire.

At-  
tempts.\*

It frequently happens that the desired object is not accomplished by the intended act. For example, I point a gun, and pull the trigger, intending to shoot you. But the gun misses fire, or the shot misses its mark. In this case, the act is styled an *attempt*: an attempt to accomplish the desired object. It also frequently happens, that several acts must be done in succession before the desired object can be accomplished. And the doing any of the acts which precede the last, is also an *attempt* to accomplish the desired object, or is rather an endeavour *towards* the accomplishment of the object. For example; to buy poison for the purpose of killing another, or to provide arms for the purpose of attacking the king, are attempts or endeavours towards murder or treason. Attempts are evidence

\* 'Delictum consummatum. Conatus delinquendi.' Consummate Crimes and Criminal Attempts.—*Feuerbach*, p. 41. *bringung eines Verbrechens zum Zwecke hat, ohne den bezweckten verbrecherischen Thatbestand wirklich zu machen, ist ein Versuch.*—*Rosshirt*, p. 85.

of the party's intention; and, considered in that light, are LECT. XXI styled in the English Law, 'overt acts.'

Where a criminal intention is evidenced by an attempt, the party is punished in respect of the criminal intention.<sup>88</sup> Sometimes he is punished as severely as if he had accomplished the object. But more commonly, with less severity.

Why the party should be punished in respect of a mere intention, I will try to explain hereafter.

The reason for requiring an attempt, is probably the danger of admitting a mere confession.<sup>89</sup> When coupled with an overt act, the confession is illustrated and supported by the latter. When not, it may proceed from insanity, or may be invented by the witness to it.

I have considered the import of the term '*Intention*,' in order that I might elucidate the general nature of Injuries and Political Sanctions.

But the word 'intention' is often employed, without reference to wrongs. We speak of the intention of the legislator, in passing a law; of the intention of testators; of the intention of parties to contracts, and so on. In each of these cases, the notion signified by the term '*Intention*' may be reduced to one of the notions which I have already endeavoured to explain: namely, a present volition and act, with the expectation of a consequence; or a present belief, on the part of the person in question, that he will do an act in future.

Intention  
of Legis-  
lator, etc.

When we speak of the intention of the legislator, we either advert to the purpose with which he made the law; or we advert to the sense which he annexed to his own expressions, and in which he wished and expected that others would understand them.

If we advert to the purpose with which he made the law, we mean that he willed and performed a given act, *expecting* a given consequence. In order that he might attain the purpose, he made and published the law. And when he made and promulgated it, he *intended* the purpose: that is to say, he *expected* or *believed* that the purpose which moved him to make and promulge it, would follow the making and promulgation *as a consequence*.

If we advert to the sense which he attached to his own expressions, we also mean that he willed and performed an act,

<sup>88</sup> I venture to think, in accordance with my remarks in the note on p. 414 *ante*, that the ratio of this punishment is more simple, and that the *consilium* or *cogitatio* for which the party is punished is an *act* evidenced by the *overt act*.—R. C.

<sup>89</sup> Example of man punished for confessed intention (without overt act) to kill Henry III. of France.

Lect. XXI *expecting* a consequence. We mean that he used expressions with a certain sense, *expecting* that those to whom he addressed them would receive them in the same sense.

The intention of the testator regards the purpose of the provision, or the sense which he attached to his words. In either case, we mean by 'his intention,' that he did a certain act expecting a certain consequence: That he made the provision, expecting the purpose would follow it; or that he used his words with a certain sense, *expecting* that others would understand them in the same sense. When we say, that 'the will or intention of the testator is ambulatory,' we mean that 'he may will and intend anew.'

When we speak of the *intention* of contracting parties, we mean the intention of the promisor, or the intention of the promisee.<sup>90</sup> If we mean the intention of the promisor, we mean his intention as it regards the *performance* of his promise, or we mean his intention as it regards the nature or extent of it. In the first case, we mean that he intends (when he makes the

<sup>90</sup> Or rather, the sense in which it is to be inferred from the words used, or from the transaction, or from both, that the one party gave and the other received it. Paley's rule would lead to this: that a mistaken apprehension of the apprehension in which the promisee received, would exonerate the promisor. This would be to disappoint the promisee. If the apprehension of the promisee did not extend to so much as the promisor apprehends that it did, it is true that the promisor is not surprised by a more onerous obligation than he expected; but then there is no reason for giving the promisee an advantage which he did not expect: pain of loss being greater than the mere pleasure of gain; which this advantage would be: there being, by the supposition, no expectation and therefore no engagement in consequence.

If, on the other hand, the promisor underrates the expectation of the promisee he disappoints an expectation.

'Where the terms of a promise admit of more senses than one, the promise is to be performed "in that sense which the promisor apprehended, at the time that the promisee received it."

'It is not the sense in which the promisor actually intended it, that always governs the interpretation of an equivocal promise; because, at that rate, you might excite expectations which you never meant, nor would be

The true rule is the understanding of both parties. The very use of Paley's rule shows that it embraces both. In the example, Paley seems to confound the sense which the promisor, in common with all, must have put on his promise, with his secret intention of breaking it.

(See 'Intention,' regarding future.)

The *sense* of the promise, i.e., the meaning which each party apprehends that the words or transaction must denote, is a totally different thing from the *intention* with which it is made. The one uses, and he knows he uses, words of such an import; the other hears words which he knows to be of the same import; from these words ensue an obligation, the extent of which each knows, and the compulsory performance of which *in terminus* would not disappoint the expectations of the parties, whatever might be their intentions.

obliged, to satisfy. Much less is it the sense in which the promisee actually received the promise; for, according to that rule, you might be drawn into engagements you never designed to undertake. It must therefore be the sense (for there is no other remaining) in which the promisor believed that the promisee accepted his promise.—*Paley, Moral and Polit. Philosophy*, vol. i. chap. v.

promise) to do or forbear in future. In the second case, we mean that he makes a certain promise, *expecting* that the promisee will understand it in a certain sense. In the first case, we mean that he believes he shall do or forbear in future. In the second case, we mean that he does a present act, expecting a given consequence. LECT. XXI

If we mean the intention of the promisee, we mean that he accepts the promise, understanding it in a certain sense, and expecting a future consequence: namely, that the promisor will perform it.

He does a present act, expecting a given consequence.

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## LECTURE XXII.

### DUTY, INJURY, AND SANCTION.

I HAVE endeavoured to analyse and to fix the meanings of the following related expressions:—'Motive,' 'Will,' 'Intention,' 'Negligence,' 'Heedlessness,' 'Rashness.' LECT. XXII

I now proceed to the essentials of Injury and Sanction, and of that Compulsion or Restraint which is imported by Duty or Obligation.

Every legal duty (whether it be relative or absolute, or whether it be *officium* or *obligatio*) is a duty to do, or forbear from, an act or acts, and is imposed by a Command (express or tacit) of the person or body which is *sovereign* in a given society. Duty.

As every injury or wrong is a breach or violation of duty, it supposes that an act enjoined is *not* done, or that an act forbidden *is* done. Injury.

A party lying under a duty, or upon whom a duty is incumbent, is liable to evil or inconvenience (to be inflicted by sovereign authority), in case he violate the duty, or disobey the command which imposes it. The evil to be incurred by the party in case he disobey the command, *enforces* compliance with the command, or secures the fulfilment of the duty. In other words, it inclines the party to obey the command, or to fulfil the duty or obligation which the command imposes upon him. By reason of his liability or obnoxiousness to the eventual or conditional evil, there is a *chance* that he will *not* disobey: A chance which is greater or less (foreign considerations apart), as the evil itself, and the chance of incurring it by disobedience, Sanction.