

**JOHN AUSTIN**

**LECTURES**

**ON JURISPRUDENCE**

OR THE PHILOSOPHY OF POSITIVE LAW

VOLUME ONE

FIFTH EDITION, REVISED AND EDITED BY ✓  
ROBERT CAMPBELL

CHINA SOCIAL SCIENCES PUBLISHING HOUSE  
CHENGCHENG BOOKS LTD.

## 图书在版编目(CIP)数据

法理学讲演录:英文/(德)奥斯丁著. -影印本.

-北京:中国社会科学出版社,1999.12

(西学基本经典·法学类/西学基本经典工作委员会 编)

ISBN 7-5004-2650-X

I.法… II.奥… III.法理学-英文 IV.D90

中国版本图书馆 CIP 数据核字(1999)第 68356 号

版权总代理:TAO MEDIA INTERNATIONAL

(2790 19th Avenue, Ste. 20, San Francisco, CA 94132 U. S. A)

**西学基本经典·法学类**

西学基本经典工作委员会 编

**中国社会科学出版社** 出版发行

(北京鼓楼西大街甲 158 号 邮编 100720)

E-mail: 5004@Peoplespace.net

**诚成图书有限公司** 制作

中国建筑工业出版社密云印刷厂印刷

新华书店经销

1999 年 12 月第 1 版 1999 年 12 月第 1 次印刷

开本 880×1230 1/32 印张 165.25

法学类全 9 册 定价:450.00 元

## ADVERTISEMENT

TO THIS EDITION.

---

It must be gratifying to all who value and appreciate the work of the late JOHN AUSTIN to know that a new edition of these Lectures has been urgently called for. The circumstance is significant not only as a public recognition of the merit of the lectures themselves, but also as a proof of the growing interest which is becoming awakened in this country towards the philosophical study of jurisprudence.

The present edition has been prepared with the assistance of notes of the original lectures which have been preserved by Mr. J. S. Mill, and were kindly furnished by him to the late Mrs. Austin for the purpose of a new edition which she meditated, but did not live to complete. These notes have now been collated with the lectures as already published, and are found so accurate and full in the parts where the printed lectures are complete that they may be confidently relied on for supplying the lacunæ which, owing to the state of the author's MS. were in the former publication inevitable.

In revising the six lectures which formed the volume published in the author's lifetime, care has been taken to make no material alteration except in accordance with a clearly expressed intention of the author contained in his memoranda preserved by the late editor, and published in the notes to the former edition. Where, however,

such intention was clear upon the face of that text and notes, the present editor has chosen rather to venture on the attempt to embody it explicitly in the text, than to leave the task to each reader of collecting that intention from the scattered passages and fragments. In the instances, confined to the matter of a few pages, where any such alteration has been made, the nature and extent of the alteration is explicitly stated in the foot-notes by the present editor, distinguished by the initials 'R. C.'

With regard to the remaining Lectures, free use has been made of the notes above described (hereafter shortly referred to as 'J. S. M.'s notes'), both for purposes of arrangement and addition. For the purpose of arrangement, these notes have often furnished the clue where, for want of such a clue, inevitable misplacement of passages had taken place in the former edition. Of the additions the most important are in the 39th and 40th lectures. The latter part of the 39th lecture, on the important topic of 'Codification,' formed an entire lecture in the course preserved in J. S. M.'s notes. The 40th lecture, which is described in the former edition as missing, is now restored, and forms the leading chapter of one of the author's main divisions of his subject.

Neglect could not have effaced the impress which John Austin and his work has stamped upon the thought of posterity. But that so much has been recorded in explicit and substantive form, is due to the ability and diligence of the lady whose preface heads the following pages. Mrs. Austin died at Weybridge on the 8th of August 1867, and it may be interesting to the reader, and can scarcely be inappropriate here, to supplement the ensuing preface with a short account of her own life. In doing so the editor takes the liberty of borrowing from the pen of one entitled to speak from long and intimate

acquaintance. The *Times* of the 12th August 1867 contains the following notice:—

It has already been announced, in another part of these columns, that Mrs. Austin, widow of the late John Austin, well known as one of the most eminent professors of the science of jurisprudence whom this country has produced, expired on the 8th inst. at her residence at Weybridge, after an acute attack of a malady of the heart, with which she had long been afflicted. Although the life of Mrs. Austin was spent in the active discharge of her private duties, and although no one was less disposed to court celebrity, which she might have enjoyed in a far larger degree had she cared to seek it, she undoubtedly filled so considerable a place in society and in literature that some record of so remarkable a woman may not unfitly appear in this place. To the attractions of great personal beauty in early life, and of a grace of manner undiminished by years, Mrs. Austin added a masculine intellect and a large heart. It was not by the play of a vivid imagination, or by an habitual display of what is termed wit, that she secured the affections and the friendship of so many of the wisest and noblest of her contemporaries. The power she exercised in society was due to the sterling qualities of her judgment, her knowledge, her literary style—which was one of great purity and excellence—and, above all, to her cordial readiness to promote all good objects, to maintain high principles of action, and to confer benefits on all who claimed her aid.

‘Mrs. Austin was descended from the Taylors of Norwich, a family which has in several generations produced men and women distinguished by literary and scientific ability. She was born in 1793, and she received in her father’s house an education of more than common range. In 1820 she married Mr. John Austin, then a barrister on the Norfolk Circuit, and came to reside next door to Mr. Bentham and Mr. James Mill, in Queen Square, Westminster. Although that house could boast of none of the attractions of luxury, for the fortune of its owners was extremely small, it soon collected within its walls as remarkable an assemblage of persons as ever met in a London drawing-room. There might be seen—a dim and flitting figure of the past—Mr. Bentham and his two disciples, James and John Stuart Mill, the Grotes, the rising lawyers of that day whose success has justified the promise of their dawn, Bickersteth, Erle, Romilly, and Senior; and all this wisdom and learning

was enlivened in later years by the wit of Charles Buller, by the hearty sallies of Sydney Smith, by the polished eloquence of Jeffrey, by the courteous amenity of Lord Lansdowne, and by the varied resources of foreign visitors who found a home by Mrs. Austin's hearth.

'Mrs. Austin never aspired to original literary composition. Except in some of the prefaces to her translations, she disclaimed all right to address the public in her own person. She therefore, devoted the singular power of her pen to reproduce in English many of the best contemporary works of German and French literature. Her translations from the German, more especially, were of the highest excellence, and amongst these her version of Ranke's *Popes of Rome* has been commended by the best judges as deserving to retain a place in English historical literature.

'Much of Mrs. Austin's life was spent abroad, and not a few of the most eminent persons in continental society enjoyed her friendship. She had inhabited two German Universities for the prosecution of her husband's studies, after he had quitted the bar for a chair of jurisprudence in the London University. She had accompanied him to Malta when he was sent as a commissioner to that island. She remained for some years in Paris, where her small *salon* had an intellectual stamp and charm not inferior to that of her London circle. The revolution of 1848 drove the Austins back to England; they established themselves in the village of Weybridge, and calmly anticipated the day when they should rest side by side in Weybridge churchyard. Mrs. Austin, however, survived her husband for several years, and that interval was employed by her in accomplishing a task which to most women would have seemed hopeless. The greater part of the Lectures delivered by Professor Austin on the principles of jurisprudence had remained in manuscript. His ill-health led him constantly to postpone the task of preparing them for the press. After his death his widow, assisted by one or two legal friends on whose judgment she could rely, succeeded in completing the imperfect edifice from the fragments of it that remained; and we owe to Mrs. Austin, already advanced in years, and struggling with a painful disease, the production of a work on jurisprudence, which is unquestionably the noblest monument that could be raised to the memory of her husband.'

In pursuance of a bequest of Mrs. Austin's, the books

on jurisprudence (chiefly of German authors), which had been preserved as those of her husband's which he had chiefly valued and studied, and many of which are filled with observations and analytical notes in his handwriting, are now placed in the library of the Inner Temple in a separate compartment. As these are the volumes which are chiefly denoted by the references in the ensuing Lectures, and as they are there sometimes referred to by their pages, it is important to state the particular editions. A list is accordingly here subjoined of the books forming the collection so placed in the Inner Temple Library.

	No. of Vols.
Friedrich Carl von Savigny, Geschichte des römischen Rechts im Mittelalter, Heidelberg, 1815—29 . . . . .	5
„ Das Recht des Besitzes, Giessen, 1827 . . . . .	1
„ System des heutigen römischen Rechts (first volume only) Berlin, 1840 . . . . .	1
„ Vom Beruf unsrer Zeit für Gesetzgebung und Rechtswissenschaft, Heidelberg, 1814 . . . . .	1
„ Translation of the last, by Abraham Hayward. Printed by Littlewood & Co., Old Bailey, London (not for sale) . . . . .	1
Karl Friedrich Eichhorn, Einleitung in das deutsche Privatrecht, Göttingen, 1825 . . . . .	1
„ Deutsche Staats- und Rechtsgeschichte, Göttingen, 1821-23 . . . . .	4
Gustavus Hugo, Jus Civile Ante-Justinianum, with preface, Berlin, 1815 . . . . .	2
„ Lehrbuch der Geschichte des römischen Rechts, Berlin, 1826 . . . . .	1
„ Lehrbuch eines civilistischen Cursus; 4 volumes of different editions, viz. 6 <sup>ter</sup> Band, 2 <sup>ter</sup> Versuch; Berlin, 1818; 2 <sup>ter</sup> Band, 4 <sup>te</sup> Ausgabe; Berlin, 1819; 5 <sup>ter</sup> (sonst) 7 <sup>ter</sup> Band, 3 <sup>te</sup> Ausgabe; Berlin, 1820; erster Band, 7 <sup>te</sup> Ausgabe; Berlin, 1823 . . . . .	4
Gaii Institutionum Commentarii IV., ed. J. F. L. Göschen, Berlin, 1823. (Full of analytical notes by Mr. Austin) . . . . .	1
A. F. J. Thibaut, Theorie der logischen Auslegung des römischen Rechts, Altona, 1806 . . . . .	1
A. F. J. Thibaut, Versuche über einzelne Theile der Theorie des Rechts, Jena, 1817 . . . . .	2
„ Civilistische Abhandlungen, Heidelberg, 1814 . . . . .	1
„ System des Pandekten-Rechts, Jena, 1828 . . . . .	2
Dr. Ferdinand Mackeldey, Lehrbuch des heutigen römischen Rechts, Giessen, 1827, two vols. (bound in one) . . . . .	2

	No. of Vols.
Christian Friedrich Mühlenbruch, <i>Doctrina Pandectarum</i> , Halle, 1827 . . . . .	3
August Wilhelm Hefter <i>Institutionem des römischen und deutschen Civil-Processes</i> , Bonn, 1825 . . . . .	3
D. Christ. Gottlieb Haubold, <i>Institutionum Juris Romani Privati historico-dogmaticarum Lineamenta</i> , Leipzig, 1826 . . . . .	1
„ <i>Institutionum, etc., Epitome</i> , Leipzig, 1821 . . . . .	1
Ernst Spangenberg, <i>Einleitung in das Römisch-Justinianische Rechtsbuch</i> , Hanover, 1817 . . . . .	1
And. W. Cramer, <i>De Verborum significatione Tituli Pandectarum et Codicis cum variae lectionibus Apparatu</i> , Kiliae, 1811 . . . . .	1
Heinrich Moritz Chalybäus, <i>Historische Entwicklung der speculativen Philosophie, von Kant bis Hegel</i> , Dresden and Leipzig, 1839 . . . . .	1
Immanuel Kant, <i>Kritik der reinen Vernunft</i> , 7th edition, Leipzig, 1828. . . . .	
„ <i>Prolegomena zu einer jeden künftigen Metaphysik, die als Wissenschaft wird auftreten können</i> , Riga, 1783 . . . . .	1
„ <i>Zum ewigen Frieden</i> , Königsberg, 1796 . . . . .	1
„ <i>Kritik der practischen Vernunft</i> , 6th edition, Leipzig, 1827 . . . . .	1
„ <i>Die Metaphysik der Sitten</i> , Königsberg, 1st part, 1798, 2nd part, 1803 . . . . .	2
F. Schleiermacher, <i>Grundlinien einer Kritik der bisherigen Sittenlehre</i> , Berlin, 1803 . . . . .	1
Jeremy Bentham, <i>Introduction to the Principles of Morals and Legislation</i> , London, 1789 . . . . .	1
„ <i>Constitutional Code for the use of all Nations and all Governments professing Liberal Opinions</i> , vol. i., London, 1830 . . . . .	1
„ <i>Fragment on Government</i> , Dublin, 1776 . . . . .	1
„ <i>Draught of a New Plan for the Organisation of the Judicial Establishment in France</i> , March, 1790 . . . . .	1
„ <i>Traité de Législation civile et pénale, publiés en Français par Ét. Dumont, de Genève, d'après les manuscrits confiés par l'auteur</i> . . . . .	3
John James Park, <i>Contre-projet to the Humphreysian Code</i> , London, 1828 . . . . .	1
Sir James Mackintosh, <i>Dissertation on the Progress of Ethical Philosophy chiefly during the 17th and 18th centuries, with Preface by Wm. Whewell</i> , Edinburgh, 1836 . . . . .	1
James Mill, <i>Essays on, 1. Government; 2. Jurisprudence; 3. Liberty of the Press; 4. Prisons and Prison Discipline; 5. Colonies; 6. Law of Nations; 7. Education</i> ; London, printed (not for sale) by J. Innes, 61 Wells Street. Oxford Street . . . . .	1
Friedrich List, <i>Das nationale System der politischen Oekonomie</i> , Stuttgart and Tübingen, 1841 . . . . .	1
<i>Allgemeines Landrecht für die Preussischen Staaten</i> , Berlin, 1828 . . . . .	5



Allgemeines Criminal-Recht für die Preussischen Staaten, Berlin, 1827	1
Allgemeine Depositat-Ordnung für die Ober- und Unter-Gerichte der sämtlichen königlich-Preussischen Lande, 15th September, 1783, Berlin, 1783	1
Allgemeine Gerichts-Ordnung für die Preussischen Staaten, Berlin, 1822	2
Allgemeine Hypotheken-Ordnung für die gesammten königlichen Staaten, 20th December, 1783, Berlin, 1784	1
Instruction für die Ober- und Untergerichte zur Ausführung der königlichen Verordnung vom 16ten Juni d. J. wegen Einrichtung des Hypotheken-Wesens in dem mit den Preussischen Staaten vereinigten Herzogthum Sachsen, Berlin, 1820	1
Strafgesetzbuch für die herzoglich Holstein-Oldenburgischen Lande, Oldenburg, 1814	1
J. and W. Beck, edition of Corpus Juris Civilis Leipzig, 1825-6 (2nd vol. in two parts)	2
Joachim Hoppe, Commentarii succinta ad Institutiones Justinianeas, Frankfort and Leipzig, 1736	1
Ant. Matthaeus, De Criminibus ad xlvii. et xlviii. Dig. comment. Vesaliae, 1672	1
J. Gottl. Heineccius, Recitationes in elementa Juris Civilis secundum ordinem Institutionum, Vratislaviae, 1789	1
„ Antiquitatum Romanarum Jurisprudentiam illustrantium syntagma, ed. Haubold, Frankfort, 1822	1
John Reddie, Historical Notices of the Roman Law, Edinburgh, 1826	1
L. A. Warnkönig, Versuch einer Begründung des Rechts durch eine Vernunftidee, Bonn, 1819	1
Johann Wening, Ueber den Geist des Studiums der Jurisprudenz, Landshut, 1814	1
Eduard Puggaeus, edition of Theodosiani Codicis Fragmenta, Bonn, 1825.	
Angelus Maius, Juris Romani Ante-Justiniani Fragmenta Vaticana (e codice palimpsesto eruta), Rome and Berlin, 1824	1
D. Christoph Martin, Lehrbuch des Teutschen gemeinen Criminal-Processes, Göttingen, 1820	1
Corpus Juris Fridericianum, erstes Buch. Von der Prozessordnung, Berlin, 1781	1
B. G. Neibuhr and Eh. A. Brandis, Rheinisches Museum für Philologie, Geschichte und griechische Philosophie, Bonn, 1827-8	2
F. C. von Savigny, C. F. Eichhorn, and T. F. L. Göschen, Zeitschrift für geschichtliche Rechtswissenschaft, Berlin, 1815-23	5
Geo. Lud. Boehmer, Principia Juris Canonici speciatim Juris Ecclesiastici publici et privati quod per Germaniam obtinet, Göttingen, 1802	1

	No. of Vols.
Paul J. Anselm, Feuerbach, Betrachtungen über das Geschwornen-Gericht, Landshut, 1813 . . . . .	1
„ Lehrbuch des gemeinen in Deutschland gültigen peinlichen Rechts, Giessen, 1826 . . . . .	1
M. C. F. W. Gravell, Prüfung der Gutachten der königl. Preuss. Immediat-Justiz-Commission am Rhein über die dortigen Justiz-Einrichtungen, Leipzig, 1819 . . . . .	2
Ludwig Heinrich Jordan, Ueber die Billigkeit bey Entscheidung der Rechtsfälle, Göttingen, 1804 . . . . .	2
D. Vincenz August Wagner, Zeitschrift für österreichische Rechtsgelehrsamkeit und politische Gesetzkunde, Wien, 1830 (12th part) . . . . .	1
C. F. Rosshirt, Lehrbuch des Criminalrechts, Heidelberg, 1821 . . . . .	1
C. J. A. Mittermaier, Ueber die Grundfehler der Behandlung des Criminalrechts in Lehr- und Strafgesetzbüchern, Bonn, 1819 . . . . .	1
„ Grundriss zu Vorlesungen über das Strafverfahren . . . . .	1
Cesare Beccaria (Marchese), Dei Delitti e delle Pene, London, 1801 . . . . .	1
A. R. Philippo du Trieu, Manuductio ad Logicam, London, 1826 . . . . .	1
Isaac Watts, D.D., Logick, 9th edition, London, 1740 . . . . .	1
Arthur Schopenhauer, Die beiden Grundprobleme der Ethik, Frankfort, 1841 . . . . .	1
Sir William Blackstone, Commentaries on the Laws of England, 15th edition, by Edward Christian, London, 1809 . . . . .	4
Anonymous, Remarks on Criminal Law, with a plan for an improved system, and Observations on the Prevention of Crime, London, Hamilton, Adams & Co., 1834 . . . . .	1
A volume containing, 1. An article from the 'Edinburgh Review,' 1817, No. 57, entitled "Bentham on Codification;" 2. An article from the same Review, 1843, entitled 'Centralisation,' by Mr. Austin; 3. The Pamphlet 'A Plea for the Constitution,' mentioned in Mrs. Austin's preface to these Lectures; 4. An article from the 'Edinburgh Review,' October 1863, 'Austin on Jurisprudence,' understood to be by Mr. J. S. Mill . . . . .	1
A copy of the former edition (by Mrs. Austin) of these Lectures . . . . .	3
Ranke's History of the Popes, translated from the German by Sarah Austin, London, 1866 . . . . .	3
Henry Roscoe, Digest of the Law of Evidence in Criminal Cases, London, 1835 . . . . .	1
T. R. Malthus, Essay on Population, 4th edition, London, 1807 . . . . .	2
Additions to the same, London, 1817 . . . . .	1
The American's Guide, Philadelphia, 1813 . . . . .	1
A volume without a title-page, containing articles from a French law review, the first (which has been carefully noted on the margin by Mr. Austin), being entitled "Remarques sur la définition et sur la classification des choses," and being a treatise suggested by a work of M. Ponceet, dated about 1817 . . . . .	1

	No. of Vols.
N. Falck, Juristische Encyklopädie, Kiel, 1825 . . . . .	1
Carl von Rotteck and Carl Welcker, Staats-Lexikon, oder Encyklopädie der Staatswissenschaften, Altona, 1842 . . . . .	1
Robert Eden, Jurisprudentia Philologica, Oxford, 1744 . . . . .	1
J. B. Sirey, Les cinq Codes, avec notes et traités, Paris, 1819 . . . . .	1
M. Biret, Vocabulaire des cinq Codes, Paris, 1826 . . . . .	1
M. Camus and M. Dupin, Lettres sur la profession d'Avocat et bibliothèque choisie, Paris, 1818 . . . . .	2
J. A. Rogron, Code de Procédure civile expliqué, Paris, 1826 (bound in 4 parts) . . . . .	2
M. de Vattel, Droit des Gens, Lyon, 1802 . . . . .	3
George Frédéric von Martens, Précis du Droit des Gens moderne de l'Europe, fondé sur les traités et l'usage, Göttingen, 1821 . . . . .	1
Conrad J. Alex. Baumbach, Einleitung in das Naturrecht, Leipzig, 1823 . . . . .	1

In the following pages the notes which belonged to the Author's work published in his lifetime are distinguished by letters thus <sup>(a)</sup>. The notes of the late editor are generally marked by the initials 'S. A.' Those of the present editor by the initials 'R. C.'

# CONTENTS

OF  
THE FIRST VOLUME.

---

PREFACE (by Sarah Austin) . . . . .	Page 1
OUTLINE OF THE COURSE OF LECTURES . . . . .	31

## THE PROVINCE OF JURISPRUDENCE DETERMINED.

ANALYSIS OF LECTURES I.—VI. . . . .	79
-------------------------------------	----

### LECTURE I.

*The purpose* of the following attempt to determine the province of jurisprudence, stated or suggested.—The *manner* of the following attempt to determine the province of jurisprudence.—Law : what, in most comprehensive literal sense.—Law of God.—Human Laws.—Two classes : 1st. Laws set by political superiors ; 2ndly, Laws set by men not political superiors.—Objects improperly, but by close analogy, termed laws.—The two last placed in one class under the name positive morality.—Objects metaphorically termed laws.—Laws or rules, *properly* so called, are a species of commands.—The meaning of the term *command*.—The meaning of the term *duty*.—The terms *command* and *duty* are correlative.—The meaning of the term *sanction*.—To the existence of a command, a duty, and a sanction, a *violent* motive to compliance is not requisite.—Rewards are not *sanctions*.—The meaning of the term *command*, briefly re-stated.—The inseparable connection of the three terms, *command*, *duty*, and *sanction*.—The manner of that connection.—*Laws* or *rules* distinguished from commands which are *occasional* or *particular*.—The definition of a law or rule, *properly* so called.—The meaning of the correlative terms *superior* and *inferior*.—Laws (*improperly* so called) which are not commands.—Laws (*properly* so called) which may *seem* not imperative.—Laws which are not commands, enumerated . . . . . 86

### LECTURE II.

The connection of the second with the first lecture.—The Divine laws, or the laws of God.—Of the Divine laws, some are *revealed*, and others are *unrevealed*.—Such of the Divine laws as are *revealed*.—Such of the Divine laws as are *unrevealed*.—What is the *index* to such of the Divine

laws as are unrevealed?—The *hypotheses* or *theories* which regard the nature of that index.—The hypothesis or theory of a *moral sense*, or *innate practical principles*; of a *practical reason*; of a *common sense*, etc. etc.—The theory or hypothesis of *utility*.—A brief summary of the theory of utility.—The following explanations of that summary briefly introduced.—The true *tendency* of a human action, and the true *test* of that tendency.—According to the theory of utility, God's commands are mostly *rules*.—It does not follow from the theory of utility, that *every* useful action is the object of a Divine injunction; and *every* pernicious action, the object of a Divine prohibition.—A current and specious objection to the theory of utility, introduced and stated.—The *two* apt answers to the foregoing objection briefly introduced.—The *first* answer to the foregoing objection stated.—The *second* answer to the foregoing objection briefly introduced.—If our conduct were truly adjusted to the principle of general utility, our conduct would conform, for the most part, to *rules*; rules which emanate from the Deity, and to which the tendencies of human actions are the guide or index.—*Theory* and *practice* are inseparable.—If our conduct were truly adjusted to the principle of general utility, our conduct would be guided, for the most part, by *sentiments* associated with *rules*; rules which emanate from the Deity, and to which the tendencies of human actions are the guide or index.—If our conduct were truly adjusted to the principle of general utility, our conduct would conform, for the most part, to Divine *rules*, and would also be guided, for the most part, by *sentiments* associated with those rules. But, in anomalous and excepted cases (of comparatively rare occurrence), our conduct would be fashioned *directly* on the principle of general utility, or guided by a conjecture and comparison of *specific* or *particular* consequences.—The *second* answer to the foregoing objection, briefly resumed . . . . . Page 103

## LECTURE III.

Apology for introducing the principle of utility.—The connection of the third with the second lecture.—A second objection to the theory of utility, stated.—An answer to that second objection, introduced.—An objection to the foregoing answer, stated.—The foregoing objection to the foregoing answer solved or extenuated.—The second objection to the theory of utility, together with the foregoing answer to that second objection briefly re-stated . . . . . 122

## LECTURE IV.

The connection of the fourth with the third lecture.—The second objection to the theory of utility, resumed.—A further answer to that second objection.—The hypothesis of a *moral sense*, briefly introduced.—‘A moral sense,’ ‘a common sense,’ ‘a moral instinct,’ ‘a principle of reflection or conscience,’ ‘a practical reason,’ ‘innate practical principles,’ ‘connate practical principles,’ etc. etc., are various expressions for one and the same hypothesis.—The hypothesis in question involves two

assumptions.—The first of the two assumptions involved by the hypothesis in question stated in general expressions.—The foregoing statement of the first assumption, exemplified and explained by an imaginary case.—The first of the two assumptions involved by the hypothesis in question, briefly re-stated in general expressions.—The second of the two assumptions involved by the hypothesis in question briefly stated.—As an index to God's commands, a moral sense were less fallible than the principle of general utility.—But is there any evidence to sustain the hypothesis in question?—The hypothesis in question is disproved by the negative state of our consciousness.—The two current arguments in favour of the hypothesis in question, briefly stated.—The first argument in favour of the hypothesis in question, examined.—The second argument in favour of the hypothesis in question, examined.—A brief statement of the fact whereon the second argument in favour of the hypothesis in question is founded.—The fact accords exactly with the hypothesis or theory of utility.—A brief statement of the intermediate hypothesis which is compounded of the hypothesis of utility and the hypothesis of a moral sense.—The division of positive law into *law natural* and *law positive*, and the division of *jus civile* into *jus gentium* and *jus civile*, suppose or involve the intermediate hypothesis which is compounded of the hypothesis of utility and the hypothesis of a moral sense.—The foregoing disquisitions on the index to God's commands, closed with an endeavour to clear the theory of utility from two current though gross misconceptions.—The two misconceptions stated.—The first misconception examined.—The second misconception examined. Page 140

## LECTURE V.

Laws proper or properly so called, and laws improper or improperly so called.—Analogy and metaphor as used in common parlance defined.—Laws improper are of two kinds: 1. Laws closely analogous to laws proper; 2. Laws metaphorical or figurative.—Division of laws proper, and of such improper laws as are closely analogous to the proper.—Distribution of laws proper, and of such improper laws as are closely analogous to the proper, under three capital classes: 1. The law of God, or the laws of God; 2. Positive law, or positive laws; 3. Positive morality, rules of positive morality, or positive moral rules.—Digression to explain the expressions *positive law* and *positive morality*.—Explanation of the following expressions, viz. *science of jurisprudence* and *science of positive morality*; *science of ethics* or *deontology*, *science of legislation* and *science of morals*.—Meaning of the epithet good or bad as applied to a human law.—Meaning of the epithet good as applied to the law of God.—The expression *law of nature*, or *natural law*, has two disparate meanings. It signifies the law of God, or a portion of positive law and positive morality.—The connection of the present (the fifth) lecture with the first, second, third, fourth, and sixth.—The essentials of a law properly so called, together with certain consequences which those essentials import. The laws of God, and positive laws, are laws properly so called.—The generic character of positive moral rules.—Of

positive moral rules, some are laws proper, but others are laws improper. The positive moral rules, which are laws properly so called, are *commands*.—Laws set by men, as private persons, in pursuance of legal rights.—The positive moral rules, which are laws improperly so called, are laws *set or imposed by general opinion*.—A law set or imposed by general opinion, is merely the *opinion or sentiment* of an *indeterminate* body of persons in regard to a kind of conduct.—A brief statement of the analogy between a law proper and a law set or imposed by general opinion.—Distinction between a *determinate* and an *indeterminate* body of single or individual persons.—Laws set by *general opinion*, or opinions or sentiments of *indeterminate bodies*, are the only opinions or sentiments that have gotten the name of *laws*. But an opinion or sentiment held or felt by an *individual* or by *all* the members of a *certain aggregate*, may be as closely analogous to a law proper as the opinion or sentiment of an indeterminate body.—The foregoing distribution of laws proper, and of such improper laws as are closely analogous to the proper, briefly recapitulated.—The sanctions, proper and improper, by which those laws are respectively enforced; the duties, proper and improper, which those laws respectively impose; and the rights, proper and improper, which those laws respectively confer.—The law of God, positive law, and positive morality, sometimes *coincide*, sometimes do *not* coincide, and sometimes *conflict*.—The acts and forbearances, which, according to the theory of utility, are objects of the law of God; and other acts and forbearances, which, according to the same theory, ought to be objects respectively of positive morality and law.—The foregoing distribution of laws proper, and of such improper laws as are closely analogous to the proper, tallies, in the main, with a division of laws which is given incidentally by Locke in his 'Essay on Human Understanding.'—Laws metaphorical or figurative.—The common and negative nature of laws of the class.—The common and negative nature of laws metaphorical or figurative, shewn by examples.—Laws metaphorical or figurative are often blended and confounded with laws imperative and proper.—Physical or natural sanctions.—In strictness, declaratory law, laws repealing laws, and laws of imperfect obligation (in the sense of the Roman jurists), ought to be classed respectively with laws, metaphorical or figurative, and rules of positive morality.—Note on prevailing tendency: 1st, to confound positive law with the science of legislation, and positive morality with deontology: Examples from Blackstone, Paley, the writers on international law: 2ndly, to confound positive law with positive morality, and both with legislation and deontology; Examples from the Roman jurists and Lord Mansfield . . . . . Page 167

## LECTURE VI.

The connection of the sixth lecture with the first, second, third, fourth, and fifth.—The distinguishing marks of sovereignty and independent political society.—The relation of sovereignty and subjection.—Strictly speaking, the sovereign portion of the society, and not the society itself,

is independent, sovereign, or supreme.—In order that a given society may form a society political and independent, the two distinguishing marks which are mentioned above must unite.—A society independent but natural.—Society formed by the intercourse of independent political societies.—A society political but subordinate.—A society not political, but forming a limb or member of a society political and independent.—The definition of the abstract term *independent political society* (including the definition of the correlative term *sovereignty*) cannot be rendered in expressions of perfectly precise import, and is therefore a fallible test of specific or particular cases. In order that an independent society may form a society political, it must not fall short of a *number* which cannot be fixed with precision, but which may be called considerable, or not extremely minute.—Certain of the definitions of the term *sovereignty*, and of the implied or correlative term *independent political society*, which have been given by writers of celebrity.—The ensuing portion of the present lecture is concerned with the following topics:—1. The forms of supreme government; 2. The limits of sovereign power; 3. The origin of government, or the origin of political society.—The forms of supreme government.—Every supreme government is a *monarchy* (properly so called), or an *aristocracy* (in the generic meaning of the expression). In other words, it is a government of *one*, or a government of a *number*.—Of such distinctions between aristocracies as are founded on differences between the proportions which the number of the sovereign body may bear to the number of the community. Of such distinctions between aristocracies as are founded on differences between the modes wherein the sovereign number may share the sovereign powers.—Of such aristocracies as are styled *limited monarchies*.—Various meanings of the following terms:—1. The term 'sovereign,' or '*the sovereign*;' 2. The term 'republic,' or 'commonwealth;' 3. The term 'state,' or '*the state*;' 4. The term 'nation.'—Of the exercise of sovereign powers by a monarch or sovereign body, through political subordinates or delegates representing their sovereign author. Of the distinction of sovereign, and other political powers into such as are *legislative*, and such as are *executive* or *administrative*. The true natures of the communities or governments which are styled by writers on positive international law *half sovereign states*.—The nature of a *composite state* or a *supreme federal government*: with the nature of a *system of confederated states*, or a *permanent confederacy of supreme governments*.—The limits of sovereign power.—The essential difference of a positive law.—It follows from the essential difference of a positive law, and from the nature of sovereignty and independent political society, that the power of a monarch properly so called, or the power of a sovereign number in its collegiate and sovereign capacity, is incapable of *legal* limitation.—Attempts of sovereigns to oblige themselves, or to oblige the successors to their sovereign powers.—The meanings of the epithet *unconstitutional*, as it is contradistinguished to the epithet *illegal*, and as it is applied to conduct of a monarch, or to conduct of a sovereign number in its collegiate and sovereign capacity.—The meaning



of Hobbes's proposition, that 'no law can be unjust.'—*Just* or *unjust*, *justice* or *injustice*, is a term of relative and varying import.—Considered severally, the members of a sovereign body are in a state of subjection to the body, and may therefore be legally bound, even as members of the body, by laws of which it is the author.—The nature of political or civil liberty, together with the supposed difference between free and despotic governments.—Why it has been doubted, that the power of a sovereign is incapable of legal limitation.—The proposition is asserted expressly by renowned political writers of opposite parties or sects.—A sovereign government of one, or a sovereign government of a number in its collegiate and sovereign capacity, has no *legal rights* (in the proper acceptation of the term) *against its own subjects*.—'Right is might.'—'Right' as meaning 'faculty,' and 'right' as meaning 'justice.'—'Right' as meaning 'faculty,' and 'right' as meaning 'law.'—From an appearance of a sovereign government before a tribunal of its own, we cannot infer that the government lies under legal duties, or has legal rights against its own subjects.—Though a sovereign government of one, or a sovereign government of a number in its collegiate and sovereign capacity, cannot have legal rights against its own subjects, it may have a legal right against a subject or subjects of another sovereign government.—The origin or causes of political government and society.—The proper purpose or end of political government and society, or the purpose or end for which they ought to exist. The position 'that every government continues through the people's *consent*,' and the position 'that every government arises through the people's *consent*,' examined and explained.—The hypothesis of the *original covenant* or the *fundamental civil pact*.—The distinction of sovereign governments into governments *de jure* and governments *de facto*.—General statement of the province of jurisprudence as defined in the foregoing lectures. Page 219

## ANALYSIS OF PERVADING NOTIONS.

### LECTURE XII.

Recapitulation.—Natural and moral rights, or rights which are merely sanctioned religiously or morally.—Ideas, the analysis of which is inevitably involved in that of right. Obligations or duties are positive or negative.—Forbearances cannot be styled with propriety *negative services*.—Obligations are relative or absolute.—Rights imply *persons, things, acts, and forbearances*.—Persons, natural or fictitious.—Meaning of 'physical person,' or 'person' simply.—'Person' frequently synonymous with 'status' or 'condition.'—Fictitious or legal persons. . Page 343

### LECTURE XIII.

Recapitulation.—Meaning of 'thing.'—Distinctions between things.—Things signifying acts and forbearances.—Corporeal and incorporeal things.—Distinction between *jura rerum* and *jura personarum* briefly introduced 357