

rarely or never exerts; but it is the amount of power in the hands of the government—not the personal character and temper of the monarch—which constitutes the idea of tyranny. The King of England did not habitually exert his power; but whenever his passions or his cupidity were excited, he did exert it. The government was ordinarily administered by the authority of acts of parliament, in the making of which the people, through their representatives, participated.

But as I have before said, these statutes of parliament could not execute themselves; the courts and the judges administered them, but the King was virtually the judge. He might not have said to the judge in words, but he made him understand sufficiently well, that in a particular case, in which his hatred or his avarice was enlisted, the judgment should be such as he desired; or, he would provide another who would feel no difficulty in gratifying him. Take, for an instance, the celebrated case of the corporations, where an English monarch to gratify his cupidity, resolved upon their destruction and made a tool of his judge for the express purpose of effecting his object—yes, sir, and as my friend near me, (Mr. Crisfield,) reminds me—that tool—his Attorney General, who had prepared all the pleadings and arranged the matter as the lawyer, and then took his seat on the bench to consummate as judge the act of lawless injustice. Here was a case of removal by the hand of power for the faithful, firm adherence to duty. No such case can occur now. And why? Simply because the judge now is independent; he was not so then. But he was independent in one sense, and in the sense intended by the class of persons to whom I have alluded. Nominally, he was independent; and, he was so, in fact, of every one except the King. All the rules of law and all the forms of law were prescribed for his government, and these required him, in the one case, to pass a fair and honest judgment, just as much as they did in the other. But what was the practical effect? Why, you find, *the King had control of the law, because he had control of the man who administered the law.* In such a state of things the government and the law cease to afford protection to the rights of the citizen, and it is precisely this want of certain effectual protection which distinguishes tyranny from free government. *Liberty* is but the term by which we designate our rights. It consists, essentially, in the enjoyment, the certain and undisturbed enjoyment of rights, personal, social and political. Rights cannot practically exist where there is a power to control them at will. We can have no certain enjoyment of privileges, civil or religious, if the sovereign power may protect them at pleasure. It is not important, whether through the forms of law or in defiance of the forms of law, this arbitrary or sovereign will exerts its power. The practical consequences are the same. It is a lawless government, an arbitrary, a tyrannical government, the moment the regular course of law is disturbed, and the citizen is thrown upon the whim, the favor or even the sense of justice of the sovereign. This sovereign power, I re-

peat, may consist of *one*, or of *many*. It is not the number of individuals who rule that is to make it more or less a tyranny. It is the absence of restraint upon its will; it is the failure to ensure a just, regular and impartial administration of the law, so as to redeem the promises and pledges, by which it guarantees to every individual in the community, from the highest to the lowest, and to all alike, the safe and certain enjoyment of all the rights and privileges, with which they are invested; it is the unwillingness, or, inability to enforce engagements, to restrain vindictive passions, and violence whenever exerted against the weak, to secure property to its rightful owner when an attempt is made to wrest it from him by force or fraud—it is, I repeat, the failure, unwillingness, or inability, in these respects, which constitutes the defects of Government; and they follow—as logical sequences—making up the character and the curse of a Despotism.

But at every point we are met with the notion, that the people have all power, and ought therefore to have control over the Judiciary. Sir, if the people have power to do wrong, it is the very purpose of government to restrain its exercise; for the only object which men can propose to themselves, by entering into such an association as civil Society is, to secure to themselves the enjoyment of their rights, and protect themselves against wrong. Are the eternal and immutable laws of justice less imperative, upon men when assembled, in *large bodies*, than they are when acting *individually*? Masses are but individuals in combination; and the laws which enjoin the observance of justice, and prohibit violence, or the practice of fraud, are as obligatory in the one case as in the other. Like the Being, from whom they emanate, the Rules of truth and equity are the same to-day, yesterday, and forever. In them “is no variableness, neither shadow of turning.” To say, then, that it is the right of the people to control the judiciary, and this right ought to be exercised, is only to leave the question as we found it. The duty still remains, to decide how, in the exercise of this admitted right, can they control and organise the judiciary, to the best advantage of the community—the best advantage in fact of themselves—the people—the “*whole*” people—for whom all the benefits of government are designed. If, as I maintain, it be not only most useful, but absolutely necessary to the attainment of the objects designed, that your Judges should be independent; then, according to the theory assumed by those who are so jealous of encroachment upon the people’s rights, it is proper to use those rights in the organisation and regulation of the government, so as best to secure the design. If amongst the powers of the people, were included the power to do wrong, or to cause others to do wrong either to themselves, or any portion of themselves, (a proposition which I deny;) still they ought not to desire to do it; nor should we, as their representatives, so exert the power.

It is obvious, then, in any just view of the matter, that it is our duty to adopt such mea-