COMMENTARIES

ON

The Laws of England.

IN FOUR BOOKS.

By SIR WM. BLACKSTONE, KNT.

ONE OF THE JUSTICES OF HIS MAJESTY'S COURT OF COMMON PLEAS.

FROM THE LAST LONDON EDITION.

WITH THE LAST CORRECTIONS OF THE AUTHOR; AND WITH

NOTES AND ADDITIONS

By EDWARD CHRISTIAN, Esq.

CHIEF JUSTICE OF THE ISLE OF ELY,

AND THE DOWNING PROFESSOR OF THE LAWS OF ENGLAND IN THE

UNIVERSITY OF CAMBRIDGE.

NEW-YORK:

PUBLISHED BY EVERT DUYCKINCK, GEORGE LONG, COLLINS & CO.

COLLINS AND HANNAY, AND ABRAHAM SMALL,

PHILADELPHIA.

George Long, Printer, No. 71, Pearl-Street.

1822.

TO

THE QUEEN'S MOST EXCELLENT MAJESTY,

THE FOLLOWING VIEW

OF THE LAWS AND CONSTITUTION

OF ENGLAND,

THE IMPROVEMENT AND PROTECTION OF WHICH

HAVE DISTINGUISHED THE REIGN

OF HER MAJESTY'S ROYAL CONSORT,

IS,

WITH ALL GRATITUDE AND HUMILITY,

MOST RESPECTFULLY INSCRIBED

BY HER DUTIFUL

AND MOST OBEDIENT

SERVANT,

WILLIAM BLACKSTONE.

PREFACE.

THE following sheets contain the substance of a course of lectures on the laws of England, which were read by the author in the university of OXFORD. His original plan took its rise in the year 1753: and notwithstanding the novelty of such an attempt in this age and country, and the prejudices usually conceived against any innovations in the established mode of education, he had the satisfaction to find (and he acknowledges it with a mixture of pride and gratitude) that his endeavours were encouraged and patronized by those, both in the university and out of it, whose good opinion and esteem he was principally desirous to obtain.

The death of Mr. VINER in 1756, and his ample benefaction to the university for promoting the study of the law, produced about two years afterwards a regular and public establishment of what the author had privately undertaken. The knowledge of our laws and constitution was adopted as a liberal science by general academical authority; competent endowments were decreed for the support of a lecturer, and the perpetual encouragement of students; and the compiler of the ensuing Commentaries had the honour to be elected the first Vinerian professor.

In this situation he was led, both by duty and inclination, to investigate the elements of the law, and the grounds of our civil polity, with greater assiduity and attention than many have thought it necessary to do. And yet all, who of late years have attended the public administration of justice, must be sensible that a masterly acquaintance with the general spirit of laws and the principles of universal jurisprudence, combined with an accurate knowledge of our own municipal constitutions, their original, reason, and history, hath given a beauty and energy to many modern judicial decisions, with

which our ancestors were wholly unacquainted. If, in pursuit of these inquiries, the author hath been able to rectify any errors which either himself or others may have heretofore imbibed, his pains will be sufficiently answered: and if in some points he is still mistaken, the candid and judicious reader will make due allowances for the difficulties of a search so new, so extensive, and so laborious.

2 *Nov.* 1765.

POSTSCRIPT.

NOTWITHSTANDING the diffidence expressed in the foregoing Preface, no sooner was the work completed, but many of its positions were vehemently attacked by zealots of all (even opposite) denominations, religious as well as civil; by some with a greater, by others with a less degree of acrimony. To such of these animadverters as have fallen within the author's notice (for he doubts not but some have escaped it) he owes at least this obligation; that they have occasioned him from time to time to revise his work, in respect to the particulars objected to; to retract or expunge from it what appeared to be really erroneous; to amend or supply it when inaccurate or defective; to illustrate and explain it when obscure. But where he thought the objections ill-founded, he hath left, and shall leave, the book to defend itself: being fully of opinion, that if his principles be false and his doctrines unwarrantable, no apology from himself can make them right; if founded in truth and rectitude, no censure from others can make them wrong.

ADVERTISEMENT TO THE LAST LONDON EDITION.

The discharge of a duty similar to that to which the world is indebted for the Commentaries on the Laws of England, led the Editor to presume, that in the course of his researches he might be able to collect some observations which might be useful to the Public, and at the same time it suggested the propriety of his endeavouring to contribute to the further improvement of that valuable production.

The extensive sale of the preceding Editions has abundantly proved that the design meets with general approbation.

No alteration has been made in the author's text; but the principal changes, which either the legislature or the decisions of the courts have introduced into the law since the last corrections of the Author, are specified and explained by the Editor in the notes †.

The Commentaries on the Laws of England form an essential part of every Gentleman's library: the beautiful and lucid arrangement, the purity of the language, the classic elegance of the quotations and allusions, the clear and intelligible explanation of every subject, must always yield the reader as much pleasure as improvement; and wherever any constitutional or legal question is agitated, they are the first, and, in general, the best authority referred to. In order to add to their utility in this respect, the Editor has annexed such exceptions and particular instances as he thought would render the information still fuller and more complete. Where he has presumed to question any of the learned Commentator's doctrines, he has assigned his rea-

† The Editor's Notes are separated from the Text and Notes of the Author, by a line, and are referred to by figures, thus, (1); and the pages of the former editions are preserved in the margin.

sons for ill. doubt or dissent; but where he has discovered any inaccuracy arising merely from inadvertence, he has stated it without scrupulous ceremony. We should expect more than human excellence, if we imagined that a work, comprising almost the whole system of English jurisprudence, could be entirely free from mistakes. But it is a matter of great concern to the Profession and to the Public at large, that, in an Author so universally read, so deservedly admired, and in whom such confidence is reposed, every subject should be reviewed with scrupulous and critical precision. It has been, and it will continue to be, the Editor's peculiar study and ambition to advance this learned performance to as great a degree of accuracy and perfection as his attention and ability can effect; and he will always be grateful for any correction of his own errors, or for any useful remarks which may not have occurred to him in his examination of the Commentaries.

To prevent any unfounded animadversions, the Editor, or he ought rather perhaps to call himself the Annotator, wishes the purchasers of this Work to be informed, that he holds himself responsible for the utility and accuracy of the Notes in every edition to which his name is prefixed; but that, with regard to every other circumstance attending the publication, he has no direction or control whatever.

Though the Notes in this Edition have been considerably extended, yet there are some important subjects, which the Author has either entirely omitted, or too concisely touched upon; the Editor is therefore preparing to publish separately such additions as these deficiencies in the Commentaries seem to require.

The professional reader ought to be apprized, that the Editor in the Notes has frequently referred to Annotators and the Authors of Law Treatises in preference to original cases, those learned writers in the places cited having generally collected all the original authorities, which would be too numerous to be introduced into a note to the Commentaries.

E. C.

Lincoln's Inn,
May 1, 1803.

ADDENDA.

SINCE this edition of the Commentaries was printed, a statute has been introduced by Lord Ellenborough, *viz.* the 43 Geo. III. c. 58. which has made the six following important alterations in the criminal law of this country:

I. IF any person shall wilfully and maliciously administer to, or cause to be administered to or taken by, any woman then quick with child, any noxious and destructive substance, with intent thereby to procure the miscarriage of her child, such person, and all who counsel, aid, and abet, shall be guilty of felony without benefit of clergy.

So it is now punishable with death to attempt, by administering drugs, to destroy a living infant *in ventre sa mere*, though it may in no degree be injured. But where medicines are so administered, or any instrument or other means shall be used, to cause an abortion, and the woman shall not be, or shall not be proved to be, at the time quick with child, then such offenders shall be guilty of felony, and shall be liable to be fined, imprisoned, set in the pillory, or whipped, or to one or more of these punishments; or to be transported for any time not exceeding fourteen years, at the discretion of the court.——*See Vol.* I. 130. *n.* 8.

II. IF any person shall wilfully and maliciously administer to, or cause to be administered to or taken by, any of his majesty's subjects, any deadly poison, with intent to murder, he, his counsellors, aiders, and abettors, shall be guilty of felony without benefit of clergy.——*See Vol. IV.* 196.

III. THE severe statute the 21 Jac. I. c. 27. and the similar Irish act the 6 Anne, which made it a capital crime for a mother to conceal the birth of her bastard child, are repealed; and it is enacted, that trials in England and Ireland, of women charged with the murder of their bastard children, shall be conducted by the same rules of evidence as other trials for murder.

But if the prisoner is acquitted of the murder, the jury may find that she endeavoured to conceal the birth of her child; and for that offence, the court may adjudge her to be imprisoned in the gaol, or house of correction, for any time not exceeding two years.——*See Vol. IV.* 198.

IV. If any person shall wilfully and maliciously stab or cut any of his majesty's subjects, with intent to murder, rob, maim, disfigure, or disable him, or to do him some grievous bodily harm, or with intent to resist or prevent the apprehension and detainer of the person so stabbing or cutting, or of any of his accomplices, for offences for which they might be lawfully apprehended and detained, he, his counsellors, aiders, and abettors, shall be guilty of felony without benefit of clergy.——*See Vol. IV. 207. n. 1.*

V. If any person shall wilfully and maliciously shoot at any of his majesty's subjects, or shall present or level any kind of loaded fire-arms at any one, and shall attempt to discharge the same by drawing the trigger, or in any other manner, with intent to murder, rob, maim, disfigure, or disable him, or to do him some grievous bodily harm, he, his counsellors, aiders, and abettors, shall be guilty of felony without benefit of clergy.

Provided, that if it shall appear upon the trial, that such acts of stabbing and cutting, and such shooting and attempt to discharge fire-arms, were committed under circumstances that, if death had ensued, the same would not have amounted to the crime of murder, then the person indicted shall be acquitted.——*See Vol. IV. 203. n. 2.*

VI. If any person shall wilfully and maliciously set fire to any house, outhouse, mill, warehouse, or shop, whether they are in the possession of himself, or of any other person, with intent to injure or defraud his majesty, any of his subjects, or any body corporate, he, his counsellors, aiders, and abettors, shall be guilty of felony without benefit of clergy.——*See Vol. IV. 221. n. 2.*

In Vol. III. p. 368. n. 11. it is said, that the judges of the king's bench were divided in opinion, whether the declarations of paupers respecting their settlement ought to be received in evidence after their death; but they have since unanimously determined, that no hearsay-evidence can be received at the quarter sessions, but such as would be admitted in all other courts.——*See the case of King v. Ferryfrystone, in 1 East's Reports.*

CONTENTS.

INTRODUCTION.

BOOK I.

OF THE RIGHTS OF PERSONS.

INTRODUCTION.

SECTION THE FIRST.

ON THE STUDY OF THE LAW.*

MR. VICE-CHANCELLOR,

AND GENTLEMEN OF THE UNIVERSITY,

THE general expectation of so numerous and respectable an audience, the novelty, and (I may add) the importance of the duty required from this chair, must unavoidably be productive of great diffidence and apprehensions in him who has the honour to be placed in it. He must be sensible how much will depend upon his conduct in the infancy of a study, which is now first adopted by public academical authority; which has generally been reputed (however unjustly) of a dry and unfruitful nature; and of which the theoretical, elementary parts have hitherto received a very moderate share of cultivation. He cannot but reflect that, if either his plan of instruction be crude and injudicious, or the execution of it lame and superficial, it will cast a damp upon the farther progress of this most useful and most rational branch of learning; and may defeat for a time the public-spirited design of our wise and munificent benefactor. And this he must more especially dread, when he feels by experience how unequal his abilities

* Read in Oxford at the opening of the Vinerian lectures; 25 Oct. 1758.

are (unassisted by preceding examples) to complete, in the manner he could wish, so extensive and arduous a task; since he freely confesses, that his former more private attempts have fallen very short of his own ideas of perfection. And yet the candour he has already experienced, and this last transcendent mark of regard, his present nomination by the free and unanimous suffrage of a great and learned university, (an honour to be ever remembered with the deepest and most affectionate gratitude,) these testimonies of your public judgment must entirely supersede his own, and forbid him to believe himself totally insufficient for the labour at least of this employment. One thing he will venture to hope for, and it certainly shall be his constant aim, by diligence and attention to atone for his other defects; esteeming, that the best return, which he can possibly make for your favourable opinion of his capacity, will be his unwearied endeavours in some little degree to deserve it.

The science thus committed to his charge, to be cultivated, methodised, and explained in a course of academical lectures, is that of the laws and constitution of our own country: a species of knowledge, in which the gentlemen of England have been more remarkably deficient than those of all Europe besides. In most of the nations on the continent, where the civil or imperial law under different modifications is closely interwoven with the municipal laws of the land, no gentleman, or at least no scholar, thinks his education is completed, till he has attended a course or two of lectures, both upon the institutes of Justinian and the local constitutions of his native soil, under the very eminent professors that abound in their several universities. And in the northern parts of our own island, where also the municipal laws are frequently connected with the civil, it is difficult to meet with a person of liberal education, who is destitute of a competent knowledge in that science, which is to be the guardian of his natural rights and the rule of his civil conduct.

[5] Nor have the imperial laws been totally neglected even in the English nation. A general acquaintance with their decisions has ever been deservedly considered as no

small accomplishment of a gentleman; and a fashion has prevailed, especially of late, to transport the growing hopes of this island to foreign universities, in Switzerland, Germany, and Holland; which, though infinitely inferior to our own in every other consideration, have been looked upon as better nurseries of the civil, or (which is nearly the same) of their own municipal law. In the mean time it has been the peculiar lot of our admirable system of laws, to be neglected, and even unknown, by all but one practical profession; though built upon the soundest foundations, and approved by the experience of ages.

Far be it from me to derogate from the study of the civil law, considered apart from any binding authority as a collection of written reason. No man is more thoroughly persuaded of the general excellence of its rules, and the usual equity of its decisions, nor is better convinced of its use as well as ornament to the scholar, the divine, the statesman, and even the common lawyer. But we must not carry our veneration so far as to sacrifice our Alfred and Edward to the manes of Theodosius and Justinian: we must not prefer the edict of the praetor, or the rescript of the Roman emperor, to our own immemorial customs, or the sanctions of an English parliament; unless we can also prefer the despotic monarchy of Rome and Byzantium, for whose meridians the former were calculated, to the free constitution of Britain, which the latter are adapted to perpetuate.

Without detracting therefore from the real merit which abounds in the imperial law, I hope I may have leave to assert, that if an Englishman must be ignorant of either the one or the other, he had better be a stranger to the Roman than the English institutions. For I think it an undeniable position, that a competent knowledge of the laws of that society in which we live, is the proper accomplishment of every gentleman and scholar; an highly useful, I had almost [6] said essential, part of liberal and polite education. And in this I am warranted by the example of ancient Rome; where, as Cicero informs us,[a] the very boys were obliged to

a De Legg. 2. 23.

learn the twelve tables by heart, as a *carmen necessarium* or indispensable lesson, to imprint on their tender minds an early knowledge of the laws and constitution of their country.

But as the long and universal neglect of this study, with us in England, seems in some degree to call in question the truth of this evident position, it shall therefore be the business of this introductory discourse, in the first place to demonstrate the utility of some general acquaintance with the municipal law of the land, by pointing out its particular uses in all considerable situations of life. Some conjectures will then be offered with regard to the causes of neglecting this useful study: to which will be subjoined a few reflections on the peculiar propriety of reviving it in our own universities.

And, first, to demonstrate the utility of some acquaintance with the laws of the land, let us only reflect a moment on the singular frame and polity of that land, which is governed by this system of laws. A land, perhaps the only one in the universe, in which political or civil liberty is the very end and scope of the constitution.[b] This liberty, rightly understood, consists in the power (1) of doing whatever the laws permit;[c] which is only to be effected by a general conformity of all orders and degrees to those equitable rules of action, by which the meanest individual is protected from the insults and oppression of the greatest. As therefore every subject is interested in the preservation of the laws, it is incumbent upon every man to be acquainted with those at least with which he is immediately concerned; lest he incur the censure, as well as inconvenience of living in society without knowing the obligations which it lays him under. And
[7] thus much may suffice for persons of inferior condition, who have neither time nor capacity to enlarge their views beyond that contracted sphere in which they are ap-

b Montesq. Esq. L. l. 11. c. 5.

c Facultas ejus, quod cuique facere libet, nisi quid vi, aut jure prohibetur. Just. 1. 3. 1.

---

(1) See the Editor's reasons for his disapprobation of this definition of liberty in note 3, Book I. Chap. 1.

pointed to move. But those, on whom nature and fortune have bestowed more abilities and greater leisure cannot be so easily excused. These advantages are given them, not for the benefit of themselves only, but also of the public: and yet they cannot, in any scene of life, discharge properly their duty either to the public or themselves, without some degree of knowledge in the laws. To evince this the more clearly, it may not be amiss to descend to a few particulars.

Let us therefore begin with our gentlemen of independent estates and fortune, the most useful as well as considerable body of men in the nation; whom even to suppose ignorant in this branch of learning is treated by Mr. Locke[d] as a strange absurdity. It is their landed property, with its long and voluminous train of descents and conveyances, settlements, entails and incumbrances, that forms the most intricate and most extensive object of legal knowledge. The thorough comprehension of these, in all their minute distinctions, is perhaps too laborious a task for any but a lawyer by profession: yet still the understanding of a few leading principles, relating to estates and conveyancing, may form some check and guard upon a gentleman's inferior agents, and preserve him at least from very gross and notorious imposition.

Again, the policy of all laws has made some forms necessary in the wording of last wills and testaments, and more with regard to their attestation. An ignorance in these must always be of dangerous consequence, to such as by choice or necessity compile their own testaments without any technical assistance. Those who have attended the courts of justice are the best witnesses of the confusion and distresses that are hereby occasioned in families; and the difficulties that arise in discerning the true meaning of the testator, or sometimes in discovering any meaning at all: so that in the end his estate may often be vested quite contrary to these his enig- [8]
matical intentions, because perhaps he has omitted one or two formal words, which are necessary to ascertain the sense with indisputable legal precision, or has executed his will in the presence of fewer witnesses than the law requires.

d Education, Sec. 187.

But to proceed from private concerns to those of a more public consideration. All gentlemen of fortune are, in consequence of their property, liable to be called upon to establish the rights, to estimate the injuries, to weigh the accusations, and sometimes to dispose of the lives of their fellow-subjects, by serving upon juries. In this situation they have frequently a right to decide, and that upon their oaths, questions of nice importance, in the solution of which some legal skill is requisite; especially where the law and the fact, as it often happens, are intimately blended together. And the general incapacity, even of our best juries, to do this with any tolerable propriety, had greatly debased their authority; and has unavoidably thrown more power into the hands of the judges, to direct, control, and even reverse their verdicts, than perhaps the constitution intended.

But it is not as a juror only that the English gentleman is called upon to determine questions of right, and distribute justice to his fellow-subjects: it is principally with this order of men that the commission of the peace is filled. And here a very ample field is opened for a gentleman to exert his talents, by maintaining good order in his neighbourhood; by punishing the dissolute and idle; by protecting the peaceable and industrious; and, above all, by healing petty differences and preventing vexatious prosecutions. But, in order to attain these desirable ends, it is necessary that the magistrate should understand his business; and have not only the will, but the power also, (under which must be included the knowledge,) of administering legal and effectual justice. Else, when he has mistaken his authority, through passion, through ig-
[9] norance, or absurdity, he will be the object of contempt from his inferiors, and of censure from those to whom he is accountable for his conduct.

Yet farther; most gentlemen of considerable property, at some period or other in their lives, are ambitious of representing their country in parliament: and those, who are ambitious of receiving so high a trust, would also do well to remember its nature and importance. They are not thus honourably distinguished from the rest of their fellow-subjects,

merely that they may privilege their persons, their estates, or their domestics; that they may list under party banners; may grant or withhold supplies; may vote with or vote against a popular or unpopular administration; but upon considerations far more interesting and important. They are the guardians of the English constitution; the mukers, repealers, and interpreters of the English laws; delegated to watch, to check, and to avert every dangerous innovation, to propose, to adopt, and to cherish any solid and well-weighed improvement; bound by every tie of nature, of honour, and of religion, to transmit that constitution and those laws to their posterity, amended if possible, at least without any derogation. And how unbecoming must it appear in a member of the legislature to vote for a new law, who is utterly ignorant of the old! what kind of interpretation can he be enabled to give, who is a stranger to the text upon which he comments!

Indeed it is perfectly amazing that there should be no other state of life, no other occupation, art or science, in which some method of instruction is not looked upon as requisite, except only the science of legislation, the noblest and most difficult of any. Apprenticeships are held necessary to almost every art, commercial or mechanical: a long course of reading and study must form the divine, the physician, and the practical professor of the laws: but every man of superior fortune thinks himself *born* a legislator. Yet [10] Tully was of a different opinion; "it is necessary (says "he[c]) for a senator to be thoroughly acquainted with the "consitution; and this (he declares) is a knowledge of the "most extensive nature; a matter of science, of diligence, of "reflection; without which no senator can possibly be fit for "his office."

The mischiefs that have arisen to the public from inconsiderate alterations in our laws, are too obvious to be called in question; and how far they have been owing to the defective education of our senators, is a point well worthy the public

[c] De Legg. 3. 18. Est senatori necessarium nosse rempublicam; idque late patet:—genus hoc omne scientiae, diligentiae, memoriae est; sine quo paratus esse senator nullo pacto potest.

attention. The common law of England has fared like other venerable edifices of antiquity, which rash and unexperienced workmen have ventured to new-dress and refine, with all the rage of modern improvement. Hence frequently its symmetry has been destroyed, its proportions distorted, and its majestic simplicity exchanged for specious embellishments and fantastic novelties. For to say the truth, almost all the perplexed questions, almost all the niceties, intricacies, and delays, (which have sometimes disgraced the English, as well as other courts of justice,) owe their original not to the common law itself, but to innovations that have been made in it by acts of parliament; "overladen (as Sir Edward Coke ex-" presses it) with provisoes and additions, and many times on " a sudden penned or corrected by men of none, or very lit-" tle judgment in law." This great and well-experienced judge declares, that in all his time he never knew two questions made upon rights merely depending upon the common law; and warmly laments the confusion introduced by ill-judging and unlearned legislators. "But if," he subjoins, " acts of parliament were after the old fashion penned, by " such only as perfectly knew what the common law was be-" fore the making of any act of parliament concerning that " matter, as also how far forth former statutes had provided " remedy for former mischiefs, and defects discovered by ex-" perience; there would very few questions in law [lii] " arise, and the law need should not so often and so much " perplex their heads to make atonement and peace, by " construction of law, between insensible and disagreeing " words, sentences, and provisoes, as they now do." And if this inconvenience was so heavily felt in the reign of queen Elizabeth, you may judge how the evil is increased in later times, when the statute book is swelled to ten times a larger bulk; unless it should be found, that the penners of our modern statutes have proportionably better informed themselves in the knowledge of the common law.

What is said of our gentlemen in general, and the propriety of their application to the study of the laws of their coun-

try, will hold equally strong or still stronger with regard to the nobility of this realm, except only in the article of serving upon juries. But, instead of this, they have several peculiar provinces of far greater consequence and concern; being not only by birth hereditary counsellors of the crown, and judges upon their honour of the lives of their brother-peers, but also arbiters of the property of all their fellow-subjects, and that in the last resort. In this their judicial capacity they are bound to decide the nicest and most critical points of the law: to examine and correct such errors as have escaped the most experienced sages of the profession, the lord keeper and the judges of the courts at Westminster. Their sentence is final, decisive, irrevocable; no appeal, no correction, not even a review can be had: and to their determination, whatever it be, the inferior courts of justice must conform; otherwise the rule of property would no longer be uniform and steady.

Should a judge in the most subordinate jurisdiction be deficient in the knowledge of the law, it would reflect infinite contempt upon himself, and disgrace upon those who employ him. And yet the consequence of his ignorance is comparatively very trifling and small: his judgment may be examined, and his errors rectified by other courts. But how much more serious and affecting is the case of a superior [12] judge, if without any skill in the laws he will boldly venture to decide a question upon which the welfare and subsistence of whole families may depend! where the chance of his judging right or wrong, is barely equal; and where, if he chances to judge wrong, he does an injury of the most alarming nature, an injury without possibility of redress.

Yet, vast as this trust is, it can no where be so properly reposed, as in the noble hands where our excellent constitution has placed it: and therefore placed it, because, from the independence of their fortune and the dignity of their station, they are presumed to employ that leisure which is the consequence of both, in attaining a more extensive knowledge of the laws than persons of inferior rank; and because the founders of our polity relied upon that delicacy of sentiment, no

peculiar to noble birth; which, as on the one hand it will prevent either interest or affection from interfering in questions of right, so on the other it will bind a peer in honour, an obligation which this law esteems equal to another's oath, to be master of those points upon which it is his birth-right to decide.

The Roman pandects will furnish us with a piece of history not unapplicable to our present purpose. Servius Sulpicius, a gentleman of the patrician order, and a celebrated orator, had occasion to take the opinion of Quintus Mutius Scaevola, the then oracle of the Roman law; but, for want of some knowledge in that science, could not so much as understand even the technical terms, which his friend was obliged to make use of. Upon which Mutius Scaevola could not forbear to upbraid him with this memorable reproof,[g] "that it was a shame "for a patrician, a nobleman, and an orator of causes, to be "ignorant of that law in which he was so peculiarly concern-"ed." This reproach made so deep an impression on Sulpicius, that he immediately applied himself to the study of the law; wherein he arrived to that proficiency, [13] that he left behind him about a hundred and fourscore volumes of his own compiling upon the subject; and became, in the opinion of Cicero,[h] a much more complete lawyer than even Mutius Scaevola himself.

I would not be thought to recommend to our English nobility and gentry, to become as great lawyers as Sulpicius; though he, together with this character, sustained likewise that of an excellent orator, a firm patriot, and a wise indefatigable senator: but the inference which arises from the story is this, that ignorance of the laws of the land hath ever been esteemed dishonourable in those, who are intrusted by their country to maintain, to administer, and to amend them.

But surely there is little occasion to enforce this argument any farther to persons of rank and distinction, if we of this place may be allowed to form a general judgment from those who are under our inspection: happy that while we lay down

g Ff. 1. 2. 2. sec. 43. Turpe esse patricio, et nobili, et causas oranti, jus in quo versaretur ignorare.

h Brut. 41.

the rule, we can also produce the example. You will therefore permit your professor to indulge both a public and private satisfaction, by bearing this open testimony ; that, in the infancy of these studies among us, they were favoured with the most diligent attendance, and pursued with the most unwearied application, by those of the noblest birth and most ample patrimony : some of whom are still the ornaments of this seat of learning ; and others at a greater distance continue doing honour to its institutions, by comparing our polity and laws with those of other kingdoms abroad, or exerting their senatorial abilities in the councils of the nation at home.

Nor will some degree of legal knowledge be found in the least superfluous to persons of inferior rank : especially those of the learned professions. The clergy in particular,

[14] besides the common obligations they are under in proportion to their rank and fortune, have also abundant reason, considered merely as clergymen, to be acquainted with many branches of the law, which are almost peculiar and appropriated to themselves alone. Such are the laws relating to advowsons, institutions, and inductions ; to simony, and simoniacal contracts ; to uniformity, residence, and pluralities ; to tithes, and other ecclesiastical dues ; to marriages, (more especially of late,) and to a variety of other subjects, which are consigned to the care of their order by the provisions of particular statutes. To understand these aright, to discern what is warranted or enjoined, and what is forbidden by law, demands a sort of legal apprehension ; which is no otherwise to be acquired, than by use and a familiar acquaintance with legal writers.

For the gentlemen of the faculty of physic, I must frankly own that I see no special reason, why they in particular should apply themselves to the study of the law ; unless in common with other gentlemen, and to complete the character of general and extensive knowledge ; a character which their profession, beyond others, has remarkably deserved. They will give me leave, however, to suggest, and that not ludicrously, that it might frequently be of use to families upon sudden emergencies, if the physician were acquainted with the doc-

trine of last wills and testaments, at least so far as relates to the formal part of their execution.

But those gentlemen who intend to profess the civil and ecclesiastical laws, in the spiritual and maritime courts of this kingdom, are of all men (next to common lawyers) the most indispensably obliged to apply themselves seriously to the study of our municipal laws. For the civil and canon laws, considered with respect to any intrinsic obligation, have no force or authority in this kingdom; they are no more binding in England than our laws are binding at Rome. But as far as these foreign laws, on account of some peculiar propriety, have in some particular cases, and in some particular courts, been introduced and allowed by our laws, so far they oblige, and no farther; their authority being wholly founded upon that permission and adoption. In which we are [15] not singular in our notions: for even in Holland, where the imperial law is much cultivated and its decisions pretty generally followed, we are informed by Van Leeuwen,[i] that "it receives its force from custom and the "consent of the people, either tacitly or expressly given: "for otherwise (he adds) we should no more be bound by this "law, than by that of the Almains, the Franks, the Saxons, "the Goths, the Vandals, and other of the ancient nations." Wherefore, in all points in which the different systems depart from each other, the law of the land takes place of the law of Rome, whether ancient or modern, imperial or pontifical. And, in those of our English courts wherein a reception has been allowed to the civil and canon laws, if either they exceed the bounds of that reception, by extending themselves to other matters than are permitted to them; or if such courts proceed according to the decisions of those laws, in cases wherein it is controlled by the law of the land, the common law in either instance both may, and frequently does, prohibit and annul their proceedings:[k] and it will not be a sufficient excuse for them to tell the king's courts at Westminster, that

[i] Dedicatio corporis juris civilis. Edit. 1663.

[k] Hale Hist. C. L. c. 2. Selden in Fletam. 5. Rep. Caudrey's case. 2 Inst. 599.

their practice is warranted by the laws of Justinian or Gregory, or is conformable to the decrees of the Rota or imperial chamber. For which reason it becomes highly necessary for every civilian and canonist, that would act with safety as a judge, or with prudence and reputation as an advocate, to know in what cases and how far the English laws have given sanction to the Roman; in what points the latter are rejected; and where they are both so intermixed and blended together as to form certain supplemental parts of the common law of England, distinguished by the titles of the king's maritime, the king's military, and the king's ecclesiastical law. The propriety of which inquiry the university of Oxford has for more than a century so thoroughly seen, that in her statutes[l] she appoints, that one of the three questions to be annually discussed at the act by the jurist-inceptors shall relate to the common law; subjoining this reason, "*quia juris civilis studiosos decet haud imperitos esse juris municipalis, et differentias exteri patriique juris notas habere.*" And the [16] statutes[m] of the university of Cambridge speak expressly to the same effect.

From the general use and necessity of some acquaintance with the common law, the inference were extremely easy with regard to the propriety of the present institution, in a place to which gentlemen of all ranks and degrees resort, as the fountain of all useful knowledge. But how it has come to pass that a design of this sort has never before taken place in the university, and the reason why the study of our laws has in general fallen into disuse, I shall previously proceed to inquire.

Sir John Fortescue, in his panegyric on the laws of England, (which was written in the reign of Henry the sixth) puts[n] a very obvious question in the mouth of the young prince, whom he is exhorting to apply himself to that branch of learning; "why the laws of England, being so good, so "fruitful, and so commodious, are not taught in the universi-

[l] Tit. VII Sec. 2. sec. 2.

[m] Doctor legum mox a doctoratu dabit operam legibus Angliae, ut non sit imperitus earum legum quas habet sua patria, et differentias exteri patriique juris noscat. Stat. Eliz. R. c. 14. Cowel. Institut. in procmio.

[n] c. 47.

"ties, in the civil and canon laws are?" In answer to which he gives[o] what seems, with due deference be it spoken, a very jejune and unsatisfactory reason; being, in short, that "as the "proceedings at common law were in his time carried on in "three different tongues, the English, the Latin, and the "French, that science must be necessarily taught in those "three several languages; but that in the universities all "sciences were taught in the Latin tongue only;" and therefore he concludes, "that they could not be conveniently taught "or studied in our universities." But without attempting to examine seriously the validity of this reason, (the very shadow of which by the wisdom of your late constitutions is entirely taken away,) we perhaps may find out a better, or at least a more plausible account, why the study of the municipal laws has been banished from these seats of science, than what the learned chancellor thought it prudent to give to his royal pupil.

[17] That ancient collection of unwritten maxims and customs, which is called the common law, however compounded or from whatever fountains derived, had subsisted immemorially in this kingdom; and, though somewhat altered and impaired by the violence of the times, had in great measure weathered the rude shock of the Norman conquest. This had endeared it to the people in general, as well because its decisions were universally known, as, because it was found to be excellently adapted to the genius of the English nation. In the knowledge of this law consisted great part of the learning of those dark ages; it was then taught, says Mr. Selden,[p] in the monasteries, *in the universities*, and in the families of the principal nobility. The clergy in particular, as they then engrossed almost every other branch of learning, so (like their predecessors the British Druids [q]) they were peculiarly remarkable for their proficiency in the study of the law. *Nullus clericus nisi causidicus*, is the character given of them soon after the conquest by William of Malmsbury.[r] The judges therefore were usually created out of the

o c. 48.
p In Fletam. 7. 7.
q Caesar de bello Gal. 6. 12.
r de gest. reg. l. 4.

sacred order,[s] as was likewise the case among the Normans;[t] and all the inferior offices were supplied by the lower clergy, which has occasioned their successors to be denominated *clerks* to this day.

But the common law of England, being not committed to writing, but only handed down by tradition, use, and experience, was not so heartily relished by the foreign clergy; who came over hither in shoals during the reign of the conqueror and his two sons, and were utter strangers to our constitution as well as our language. And an accident which soon after happened, had nearly completed its ruin. A copy of Justinian's pandects, being newly[u] discovered at Amalfi, soon brought the civil law into vogue all over the west of [18] Europe, where before it was quite laid aside[w] and in a manner forgotten; though some traces of its authority remained in Italy[x] and the eastern provinces of the empire[y]. This now became in a particular manner the favourite of the popish clergy, who borrowed the method and many of the maxims of the canon law from this original. The study of it was introduced into several universities abroad, particularly that of Bologna; where exercises were performed, lectures read, and degrees conferred in this faculty, as in other branches of science: and many nations on the continent, just then beginning to recover from the convulsions consequent upon the overthrow of the Roman empire, and settling by degrees into peaceable forms of government, adopted the civil law, (being the best written system then extant,) as the basis of their several constitutions; blending and interweaving it among their own feodal customs, in some places with a more extensive, in others a more confined authority.[z]

Nor was it long before the prevailing mode of the times

s Dugdale Orig. jurid. c. 8.

t Les juges sont sages personnes et autentiques,—sicome les archevesques, evesques, les chanoines des eglises cathedraulx, et les autres personnes qui ont dignitez in saincte eglise; les abbez, les prieurs conventaulx, et les gouverneurs des eglises, etc. Grand Coustumier, c. 9.

u circ. A. D. 1130.

w LL. Wisigoth. 2. 1. 9.

x Capitular. Hludov. Pii. 4. 102.

y Selden in Fletam. 5. 5.

z Domat's treatise of law. c. 13. sec. 9. Epistol. Innocent. IV. in M. Paris ad A. D. 1254.

reached England. For Theobald, a Norman abbot, being elected to the see of Canterbury,[a] and extremely addicted to this new study, brought over with him in his retinue many learned proficients therein; and among the rest Roger sirnamed Vacarius, whom he placed in the university of Oxford,[b] to teach it to the people of this country. But it did not meet with the same easy reception in England, where a mild and rational system of laws had been long established, as it did upon the continent; and though the monkish clergy (devoted to the will of a foreign primate) received it with eagerness and zeal, yet the laity, who were more interested to preserve the old constitution, and had already severely felt the effect of many Norman innovations, continued wedded to the use of the common law. King Stephen immediately publish-
[19] ed a proclamation,[c] forbidding the study of the laws, then newly imported from Italy; which was treated by the monks[d] as a piece of impiety, and though it might prevent the introduction of the civil law process into our courts of justice, yet did not hinder the clergy from reading and teaching it in their own schools and monasteries.

From this time the nation seems to have been divided into two parties; the bishops and clergy, many of them foreigners, who applied themselves wholly to the study of the civil and canon laws, which now came to be inseparably interwoven with each other; and the nobility and laity, who adhered with equal pertinacity to the old common law: both of them reciprocally jealous of what they were unacquainted with, and neither of them perhaps allowing the opposite system that real merit which is abundantly to be found in each. (2) This ap-

a A. D. 1138.
b Gervas. Dorobern. Act. Pontif. Cantuar. col. 1665.
c Rog. Bacon. citat. per Selden in Fletam. 7. 6. in Fortesc. c. 33. and 8 Rep. Pref.
d Joan. Sarisburiens. Polycrat. 8. 22.

(2) Though the civil law, in matters of contract and the general commerce of life, may be founded in principles of natural and universal justice, yet the arbitrary and despotic maxims, which recommended it as a favourite to the pope and the Romish clergy, rendered

pears, on the one hand, from the spleen with which the monastic writers [e] speak of our municipal laws upon all occasions; and, on the other, from the firm temper which the nobility shewed at the famous parliament of Merton: when the prelates endeavoured to procure an act, to declare all bastards legitimate in case the parents intermarried at any time afterwards; alleging this only reason, because holy church (that is, the canon law) declared such children legitimate: but "all "the earls and barons (says the parliament roll [f]) with one "voice answered, that they would not change the laws of Eng-"land, which had hitherto been used and approved," And we find the same jealousy prevailing above a century afterwards, [g] when the nobility declared with a kind of prophetic spirit, "that the realm of England hath never been unto "this hour, neither by the consent of our lord the king and "the lords of parliament shall it ever be, ruled or governed "by the civil law." [h] And of this temper between the clergy and laity many more instances might be given.

While things were in this situation, the clergy, finding it impossible to root out the municipal law, began to withdraw themselves by degrees from the temporal courts; and to that end, very early in the reign of king Henry the third, episcopal constitutions were published, [i] forbidding all ecclesiastics to appear as advocates in *foro saeculari*: nor did they long continue to act as judges there, not caring to take the oath of office which was then found necessary to be administered, that they should in all things determine according to the law and custom of this realm; [k] though they still kept possession of the high office of chancellor, an office then of little juridical pow-

e Joan Sarisburiens. Polycrat. 5. 16. Polydor. Virgil. Hist. 1. 9.

f Stat. Merton. 20 Hen. III. c. 9. Et omnes comites et barones una voce responderunt, quod nolunt leges Angliae mutare, quae hucusque usitatae sunt et approbatae.

g 11. Ric. II.

h Selden. Jan. Anglor. l. 2. sec. 43. in Fortesc. c. 33.

i Spelman. Concil. A. D. 1217. Wilkins, vol. 1. p. 574. 599.

k Selden. in Fletam. 9. 3.

---

it deservedly odious to the people of England.—*Quod principi placuit legis habet vigorem*, (Inst. 1, 2, 6.) the *magna charta* of the civil law, could never be reconciled with the *judicium parium vel lex terrae*.

er; and afterwards as its business increased by degrees, they modelled the process of the court at their own discretion.

But wherever they retired, and wherever their authority founded, they carried with them the same zeal to introduce the rules of the civil, in exclusion of the municipal law. This appears in a particular manner from the spiritual courts of all denominations, from the chancellor's courts in both our universities, and from the high court of chancery before mentioned; in all of which the proceedings are to this day in a course much conformed to the civil law: for which no tolerable reason can be assigned, unless that these courts were all under the immediate direction of the popish ecclesiastics, among whom it was a point of religion to exclude the municipal law; pope Innocent the fourth having forbidden [l] the very reading of it by the clergy, because its decisions were not founded on the imperial constitutions, but merely on the customs of the laity. And if it be considered, that our universities began about that period to receive their present form of scholastic discipline; that they were then, and continued to be till the time of the reformation, entirely under the influence of the popish clergy; (sir John Mason the first protestant, being also the first lay, chancellor of Oxford;) this will lead us to perceive the reason, why the study of the Roman laws was in those days of bigotry[m] pursued

[21]

[l] M. Paris ad A. D. 1254.

[m] There cannot be a stronger instance of the absurd and superstitious veneration that was paid to these laws, than that the most learned writers of the times thought they could not form a perfect character, even of the blessed virgin, without making her a civilian and and a canonist; which Albertus Magnus, the renowned dominican doctor of the thirteenth century, thus proves in his Summa de laudibus christiferæ virginis (divinum magis quam humanum opus) qu. 23. sec. 5. "Item quod jura "civilia, et leges, et decreta scivit in "summo, probatur hoc modo; sapien-"tia advocati manifestatur in tribus; "unum, quod obtineat omnia contra ju-"dicem justum et sapientem; secundo, "quod contra adversarium astutum et "sagacem; tertio, quod in causa despe-"rata: sed beatissima virgo, contra ju-"dicem sapientissimum, Dominum; "contra adversarium callidissimum, "dyabolum; in causa nostra despera-"te; sententiam optatam obtinuit."—To which an eminent franciscan, two centuries afterwards, Bernardinus de Busti (Mariale, part. 4. serm. 9.) very gravely subjoins this note. "Nec vide-"tur incongruum mulieres habere peri-"tiam juris.—Legitur enim de uxore "Joannis Andreæ glossatoris, quod "tantam peritiam in utroque jure habu-"it, ut publice in scholis legere posset "sit."

with such alacrity in these seats of learning; and why the common law was entirely despised, and esteemed little better than heretical.

And, since the reformation, many causes have conspired to prevent its becoming a part of academical education. As, first, long usage and established custom; which, as in every thing else, so especially in the forms of scholastic exercise, have justly great weight and authority.—Secondly, the real intrinsic merit of the civil law, considered upon the footing of reason and not of obligation, which was well known to the instructers of our youth; and their total ignorance of the merit of the common law, though its equal at least, and perhaps an improvement on the other. But the principal reason of all, that has hindered the introduction of this branch of learning, is, that the study of the common law, being banished from hence in the times of popery, has fallen into a quite different channel, and has hitherto been wholly cultivated in another place. But as the long usage and established custom, of ignorance of the laws of the land, begin now to be thought unreasonable; and as by these means the merit of those [22] laws will probably be more generally known: we may hope that the method of studying them will soon revert to its ancient course, and the foundations at least of that science will be laid in the two universities; without being exclusively confined to the chancel which it fell into at the times I have just been describing.

For, being then entirely abandoned by the clergy, a few stragglers excepted, the study and practice of it devolved of course into the hands of laymen: who entertained upon their parts a most hearty aversion to the civil law,[n] and made no scruple to profess their contempt, nay even their ignorance [o]

n Fortesc. de laud. LL. c. 25.

o This remarkably appeared in the case of the abbot of Torun, M. 22. Edw. III. 24, who had caused a certain prior to be summoned to answer at Avignon for erecting an oratory contra inhibitionem novi operis; by which words Mr. Selden, (in Flet. 3. 5.) very justly understands to be meant the title de novi operis nuntiatione both in the civil and canon laws, (Ff. 39. 1. C. 8. 11. and Decretal. not Extrav. 5. 32.) whereby the erection of any new buildings in prejudice of more ancient ones was prohibited. But Skipwith the king's serjeant, and afterwards chief baron of the

of it, in the most public manner.—But still as the balance of learning was greatly on the side of the clergy, and as the common law was no longer *taught*, as formerly, in any part of the kingdom, it must have been subjected to many inconveniences, and perhaps would have been gradually lost and overrun by the civil, (as suspicion well justified from the frequent transcripts of Justinian to be met with in Bracton and Fleta,) had it not been for a peculiar incident, which happened at a very critical time, and contributed greatly to its support.

The incident which I mean was the fixing the court of common pleas, the grand tribunal for disputes of property, to be held in one certain spot; that the seat of ordinary justice might be permanent and notorious to all the nation. Formerly that, in conjunction with all the other superior
[23] courts, was held before the king's capital justiciary of England, in the *aula regis*, or such of his palaces wherein his royal person resided; and removed with his household from one end of the kingdom to the other. This was found to occasion great inconvenience to the suitors; to remedy which it was made an article of the great charter of liberties, both that of king John and king Henry the third,[p] that "common pleas should no longer follow the king's court, "but be held in some certain place:" in consequence of which they have ever since been held (a few necessary removals in times of the plague excepted) in the palace of Westminster only. This brought together the professors of the municipal law, who before were dispersed about the kingdom, and formed them into an aggregate body; whereby a society was established of persons, who, (as Spelman[q] observes,) addicting themselves wholly to the study of the laws of the land, and no longer considering it as a mere subordinate

Exchequer, declares them to be flat nonsense: "*in ceux parolx*, contra ibi-"tionem novi operis, *ny ad pas amend-*"*ment*:" and justice Schardelow mends the matter but little by informing him, that they signify a restitution *in their law*: for which reason he very sagely resolves to pay no sort of regard to "them, Ceo n'est que un restitution en "leur ley, pur que a ceo n'avomus re-"gard, &c."

[p] c. 11.

[q] Glossar. 334.

science for the amusement of leisure hours, soon raised those laws to that pitch of perfection, which they suddenly attained under the auspices of our English Justinian, king Edward the first.

In consequence of this lucky assemblage, they naturally fell into a kind of collegiate order, and, being excluded from Oxford and Cambridge, found it necessary to establish a new university of their own. This they did by purchasing at various times certain houses (now called the inns of court and of chancery) between the city of Westminster, the place of holding the king's courts, and the city of London; for advantage of ready access to the one, and plenty of provisions in the other.[r] Here exercises were performed, lectures read, and degrees were at length conferred in the common law, as at other universities in the canon and civil. The degrees were those of barristers (first styled apprentices[s] from *apprendre*, to learn) who answered to our bachelors: as [24] the state and degree of a serjeant,[t] *servientis ad legem*, did to that of doctor.

The crown seems to have soon taken under its protection this infant seminary of common law; and, the more effectually to foster and cherish it, king Henry the third, in the

[r] Fortesc. c. 48.

[s] Apprentices or barristers seem to have been first appointed by an ordinance of king Edward the first in parliament, in the 20th year of his reign. (Spelm. Gloss. 37. Dugdale, Orig. jurid. 55.)

[t] The first mention which I have met with in our law books of serjeants or countors, is in the statute of Westm. 1. 3 Edw. I. c. 29. and in Horn's Mirror, c. 1. sec. 10. c. 2. sec. 5. c. 3. sec. 1. in the same reign. But M. Paris in his life of John II. abbot of St. Alban's, which he wrote in 1255, 39 Hen. III. speaks of advocates at the common law, or countors, (quos banci narratores vulgariter appellamus,) as of an order of men well known. And we have an example of the antiquity of the coif in the same author's history of England, A. D. 1259, in the case of one William de Bussy; who, being called to account for his great knavery and malpractices, claimed the benefit of his orders or clergy, which till then remained an entire secret; and to that end volnit ligamenta coifae suae solvere, ut palam monstraret se tonsuram habere clericalem; sed non est permissus.—Satelles vero eum arripiens, non per coifae ligamina sed per guttur eum apprehendens, traxit ad carcerem. And hence sir H. Spelman conjectures, (Glossar. 335.) that coifs were introduced to hide the tonsure of such renegade clerks, as were still tempted to remain in the secular courts in the quality of advocates or judges, notwithstanding their prohibition by canon.

nineteenth year of his reign, issued out an order directed to the mayor and sheriffs of London, commanding that no regent of any law schools *within* that city should for the future teach law therein.[u] The word, law, or *leges*, being a general term, may create some doubt at this distance of time whether the teaching of the civil law, or the common, or both, is hereby restrained. But in either case, it tends to the same end. If the civil law only is prohibited, (which is Mr. Selden's[w] opinion,) it is then a retaliation upon the clergy, who had excluded the common law from *their* seats of learning. If the municipal law be also included in the restriction, (as sir Edward Coke[x] understands it, and which the words seem to import,) then the intention is evidently this; by preventing private teachers within the walls of the city, to collect all the common lawyers into the one public university, which was newly instituted in the suburbs.

[25] In this juridical university (for such it is insisted to have been by Fortescue[y] and sir Edward Coke[z]) there are two sorts of collegiate houses; one called inns of Chancery, in which the younger students of the law were usually placed, "learning and studying, says Fortescue,[a] the originals, and "as it were the elements of the law: who, profiting therein, "as they grew to ripeness, so were they admitted into the "greater inns of the same study, called the inns of court." And in these inns of both kinds, he goes on to tell us, the knights and barons, with other grandees and noblemen of the realm, did use to place their children, though they did not desire to have them thoroughly learned in the law, or to get their living by its practice: and that in his time there where about two thousand students at these several inns, all of whom he informs us were *filii nobilium*, or gentlemen born.

Hence it is evident, that (though under the influence of the monks our universities neglected this study, yet) in the time of Henry the sixth it was thought highly necessary, and was

u Ne aliquis scholas regens de legibus in eadem civitate de cætero ibidem leges doceat.

w in Flet. 8. 2.

x 2 Inst. proem.

y c. 49.

z 3 Rep. Pref.

a c. 49.

the universal practice, for the young nobility and gentry to be instructed in the originals and elements of the laws. But by degrees this custom has fallen into disuse; so that in the reign of queen Elizabeth sir Edward Coke [b] does not reckon above a thousand students, and the number at present is very considerably less. Which seems principally owing to these reasons: first, because the inns of chancery being now almost totally filled by the inferior branch of the profession, are neither commodious nor proper for the resort of gentlemen of any rank or figure; so that there are very rarely (3) any young students entered at the inns of chancery; secondly, because in the inns of court all sorts of regimen and academical superintendance, either with regard to morals or studies, are found impracticable, and therefore entirely neglected: lastly, because persons of birth and fortune, after having finished their usual courses at the universities, [26] have seldom leisure or resolution sufficient to enter upon a new scheme of study at a new place of instruction. Wherefore few gentlemen now resort to the inns of court, but such for whom the knowledge of practice is absolutely necessary; such, I mean, as are intended for the profession: the rest of our gentry (not to say our nobility also) having usually retired to their estates, or visited foreign kingdoms or entered upon public life, without any instruction in the laws of the land, and indeed with hardly any opportunity of gaining instruction, unless it can be afforded them in these seats of learning.

[b] 3 Rep. Pref.

(3) The inns of court are, the Inner Temple, Middle Temple, Lincoln's Inn, and Gray's Inn, from which societies alone, students are called to the bar. The inns of chancery are Clifford's Inn, Clement's Inn, Lion's Inn, New Inn, Furnival's Inn, Thavies's Inn, Staple's Inn, and Barnard's Inn. These are subordinate to the Inns of court; the three first belong to the Inner Temple, the fourth to the Middle Temple, the two next to Lincoln's Inn, and the two last to Gray's Inn. (Dug. *Orig. jurid.* 320. *and passim.*) Gentlemen are never entered at present in the inns of chancery with an intention of being called to the bar, for admission there would now be of no avail with regard to the time and attendance required by the inns of court.

And that these are the proper places, for affording assistances of this kind to gentlemen of all stations and degrees, cannot (I think) with any colour of reason be denied. For not one of the objections, which are made to the inns of court and chancery, and which I have just now enumerated, will hold with regard to the universities. Gentlemen may here associate with gentlemen of their own rank and degree. Nor are their conduct and studies left entirely to their own discretion; but regulated by a discipline so wise and exact, yet so liberal, so sensible, and manly, that their conformity to its rules (which does at present so much honour to our youth) is not more the effect of constraint than of their own inclinations and choice. Neither need they apprehend too long an avocation hereby from their private concerns and amusements, or (what is a more noble object) the service of their friends and their country. This study will go hand in hand with their other pursuits: it will obstruct none of them; it will ornament and assist them all.

But if, upon the whole, there are any still wedded to monastic prejudice, that can entertain a doubt how far this study is properly and regularly *academical*, such persons I am afraid either have not considered the constitution and design of an university, or else think very meanly of it. It must be a deplorable narrowness of mind, that would confine these seats of instruction to the limited views of one or two learned professions. To the praise of this age be it spoken, a more open and generous way of thinking begins now univer-
[27] sally to prevail. The attainment of liberal and genteel accomplishments, though not of the intellectual sort, has been thought by our wisest and most affectionate patrons, [c] and very lately by the whole university,[d] no small improve-

c Lord chancellor Clarendon, in his dialogue of education, among his tracts, p. 325, appears to have been very solicitous, that it might be made a "part of the ornament of our learned "academies, to teach the qualities of "riding, dancing, and fencing, at those "hours when more serious exercises "should be intermitted."

d By accepting in full convocation the remainder of Lord Clarendon's history from his noble descendants, on condition to apply the profits arising from its publication to the establishment of a *manage* in the university.

ment of our ancient plan of education: and therefore I may safely affirm that nothing (how *unusual* soever) is, under due regulations, improper to be *taught* in this place, which is proper for a gentleman to *learn*. But that a science, which distinguishes the criterions of right and wrong; which teaches to establish the one, and prevent, punish, or redress the other; which employs in its theory the noblest faculties of the soul, and exerts in its practice the cardinal virtues of the heart: a science, which is universal in its use and extent, accommodated to each individual, yet comprehending the whole community; that a science like this should ever have been deemed unnecessary to be studied in an university, is matter of astonishment and concern. Surely, if it were not before an object of academical knowledge, it was high time to make it one: and to those who can doubt the propriety of its reception among us, (if any such there be,) we may return an answer in their own way, that ethics are confessedly a branch of academical learning; and Aristotle *himself has said*, speaking of the laws of his own country, that jurisprudence, or the knowledge of those laws, is the principal and most perfect branch of ethics.[e]

From a thorough convic[illegible] of this truth, our munificent benefactor, Mr. VINER, having employed above half a century in amassing materials for new modelling and rendering more commodious the rude study of the laws of the land, consigned both the plan and execution of these his pub- [28] lic-spirited designs to the wisdom of his parent university. Resolving to dedicate his learned labours "to the benefit of posterity and the perpetual service of his country,"[f] he was sensible he could not perform his resolution in a better and more effectual manner, than by extending to the youth of this place, those assistances of which he so well remembered and so heartily regretted the want. And the sense, which the university has entertained of this ample and most useful benefaction, must appear beyond a doubt, from their gratitude in

e Τελεια μεν λεγω αρετην, ὁ τι της τελειας αρετης χρησις εστι. *Ethic. ad Nicomach.* l. p. 5. c. 3.

f See the preface to the eighteenth volume of his abridgment.

receiving it with all possible marks of esteem; *g* from their alacrity and unexampled despatch in carrying it into execution; *h* and, above all, from the laws and constitutions by which they have effectually guarded it from the neglect and abuse to which such institutions are liable. *i* We have seen an uni-

g Mr. Viner is enrolled among the public benefactors of the university by decree of convocation.

h Mr. Viner died June 5, 1756. His effects were collected and settled, near a volume of his work printed, almost the whole disposed of, and the accounts made up, in a year and a half from his decease, by the very diligent and worthy administrators with the will annexed, (Dr. West and Dr. Good of Magdalene, Dr. Whalley of Oriel, Mr. Buckler of All Souls, and Mr. Betts of University college,) to whom that care was consigned by the university. Another half year was employed in considering and settling a plan of the proposed institution, and in framing the statutes thereupon, which were finally confirmed by convocation on the 3d of July 1758. The professor was elected on the 20th of October following, and two scholars on the succeeding day. And, lastly, it was agreed at the annual audit in 1761, to establish a fellowship; and a fellow was accordingly elected in January following. The residue of this fund, arising from the sale of Mr. Viner's abridgment, will probably be sufficient hereafter to found another fellowship and scholarship, or three more scholarships, as shall be thought most expedient.

i The statutes are in substance as follows:

1. That the accounts of this benefaction be separately kept, and annually audited by the delegates of accounts and professor, and afterwards reported to convocation.

2. That a professorship of the laws of England be established, with a salary of two hundred pounds *per annum*; the professor to be elected by convocation, and to be at the time of his election at least a master of arts or bachelor of civil law in the university of Oxford, of ten years standing from his matriculation; and also a barrister at law of four years standing at the bar.

3. That such professor (by himself, or by deputy to be previously approved by convocation) do read one solemn public lecture on the laws of England, and in the English language, in every academical term, at certain stated times previous to the commencement of the common law term; or forfeit twenty pounds for every omission to Mr. Viner's general fund: and also (by himself, or by deputy to be approved if occasional, by the vice-chancellor and proctors; or, if permanent, both the cause and the deputy to be annually approved by convocation) do yearly read one complete course of lectures on the laws of England, and in the English language, consisting of sixty lectures at the least; to be read during the university term time, with such proper intervals that not more than four lectures may fall within any single week: that the professor do give a month's notice of the time when the course is to begin, and do read *gratis* to the scholars of Mr. Viner's foundation; but may demand of other auditors such gratuity as shall be settled from time to time by decree of convocation, and that for every of the said sixty lectures omitted, the professor, on complaint made to the vice-chancellor within the year, do forfeit forty shillings to Mr. Viner's general fund; the proof of having perform-

versal emulation, who best should understand, or most faithfully pursue, the designs of our generous patron: and with

ed his duty to lie upon the said professor.

4. That every professor do continue in his office during life, unless in case of such misbehaviour as shall amount to banition by the university statutes; or unless he deserts the profession of the law by betaking himself to another profession; or unless, after one admonition by the vice-chancellor and proctors for notorious neglect, he is guilty of another flagrant omission; in any of which cases he be deprived by the vice-chancellor, with consent of the house of convocation.

5. That such a number of fellowships with a stipend of fifty pounds *per annum*, and scholarships with a stipend of thirty pounds, be established, as the convocation shall from time to time ordain, according to the state of Mr. Viner's revenues.

6. That every fellow be elected by convocation, and at the time of election be unmarried, and at least a master of arts or bachelor of civil law, and a member of some college or hall in the university of Oxford; the scholars of this foundation, or such as have been scholars, (if qualified and approved of by convocation,) to have the preference: that if not a barrister when chosen, he be called to the bar within one year after his election; but do reside in the university two months in every year, or in case of non-residence do forfeit the stipend of that year to Mr. Viner's general fund.

7. That every scholar be elected by convocation, and at the time of election be unmarried, and a member of some college or hall in the university of Oxford, who shall have been matriculated twenty-four calender months at the least; that he do take the degree of bachelor of civil law with all convenient speed (either proceeding in arts or otherwise;) and previous to his taking the same, between the second and eighth year from his matriculation, be bound to attend two courses of the professor's lectures, to be certified under the professor's hand; and within one year after taking the same to be called to the bar; that he do annually reside six months till he is of four years standing, and four months from that time till he is master of arts or bachelor of civil law; after which he be bound to reside two months in every year; or in case of non-residence, do forfeit the stipend of that year to Mr. Viner's general fund.

8. That the scholarships do become void in case of non-attendance on the professor, or not taking the degree of bachelor of civil law, being duly admonished so to do by the vice-chancellor and proctors; and that both fellowships and scholarships do expire at the end of ten years after each respective election; and become void in case of gross misbehaviour, non-residence for two years together, marriage, not being called to the bar within the time before limited, (being duly admonished so to be by the vice-chancellor and proctors,) or deserting the profession of the law by following any other profession: and that in any of these cases the vice-chancellor, with consent of convocation, do declare the place actually void.

9. That in case of any vacancy of the professorship, fellowships, or scholarships, the profits of the current year be ratably divided between the predecessor, or his representatives, and the successor; and that a new election be had within one month afterwards, unless by that means the time of election shall fall within any vacation, in which

pleasure we recollect, that those who are most distinguished by their quality, their fortune, their station, their learning, or their experience, have appeared the most zea-
[30] lous to promote the success of Mr. Viner's establishment.

The advantages that might result to the science of the law itself, when a little more attended to in these seats of knowledge, perhaps, would be very considerable. The leisure and abilities of the learned in these retirements might either suggest expedients, or execute those dictated by wiser heads,[k] for improving its method, retrenching its superfluities, and reconciling the little contrarieties, which the practice of many centuries will necessarily create in any human system; a task, which those, who are deeply employed in business and the more active scenes of the profession, can hardly condescend to engage in. —And as to the interest, or (which is the same) the reputation of the universities themselves, I may venture to pronounce, that if ever this study should arrive to any tolerable perfection either here or at Cambridge, the nobility and gentry of this kingdom would not shorten their residence upon this account, nor perhaps entertain a worse opinion of the benefits of academical education. Neither should it be considered as a matter of light importance, that while we thus extend the *pomoeria* of university learning, and adopt a new tribe
[31] of citizens within these philosophical walls, we interest a very numerous and very powerful profession in the preservation of our rights and revenues.

For I think it past dispute that those gentlemen, who resort to the inns of court with a view to pursue the profession, will find it expedient (whenever it is practicable) to lay the previous foundations of this, as well as every other science, in

case it be deferred to the first week in the next full term. And that before any convocation shall be held for such election, or for any other matter relating to Mr. Viner's benefaction, ten days public notice be given to each college and hall of the convocation, and the cause of convoking it.

k See lord Bacon's proposals and offer of a digest.

one of our learned universities. We may appeal to the experience of every sensible lawyer, whether any thing can be more hazardous or discouraging than the usual entrance on the study of the law. A raw and unexperienced youth, in the most dangerous season of life, is transplanted on a sudden into the midst of allurements, to pleasure, without any restraint or check but what his own prudence can suggest; with no public direction in what course to pursue his inquiries; no private assistance to remove the distresses and difficulties which will always embarrass a beginner. In this situation he is expected to sequester himself from the world, and by a tedious lonely process to extract the theory of law from a mass of undigested learning; or else by an assiduous attendance on the courts to pick up theory and practice together, sufficient to qualify him for the ordinary run of business. How little therefore is it to be wondered at, that we hear of so frequent miscarriages; that so many gentlemen of bright imaginations grow weary of so unpromising a search,[l] and addict themselves wholly to amusements, or other less innocent pursuits; and that so many persons of moderate capacity confuse themselves at first setting out, and continue ever dark and puzzled during the remainder of their lives!

The evident want of some assistance in the rudiments of legal knowledge has given birth to a practice, which, if ever it had grown to be general, must have proved of extremely pernicious consequence. I mean the custom [32] by some so very warmly recommended, of dropping all liberal education, as of no use to students in the law: and placing them, in its stead, at the desk of some skilful attorney; in order to initiate them early in all the depths of practice, and render them more dextrous in the mechanical part of business. A few instances of particular persons, (men of excellent learning, and unblemished integrity,) who, in spite of this method

[l] Sir Henry Spelman in the preface to his glossary, has given us a very lively picture of his own distress upon this occasion. "Emesit me mater Lon-
"dinum, juris nostri capessendi gra-
"tia; cujus cum vestibulum salutassem,
"reperissemque linguam peregrinam,
"dialectum barbaram, methodum in-
"concinnam, molem non ingentem so-
"lum sed perpetuis humeris sustinen-
"dam, excidit mihi (fateor) animus, etc."

of education, have shone in the foremost ranks of the bar, have afforded some kind of sanction to this illiberal path to the profession, and biassed many parents, of shortsighted judgment, in its favour; not considering that there are some geniuses, formed to overcome all disadvantages, and that from such particular instances no general rules can be formed; nor observing, that those very persons have frequently recommended by the most forcible of all examples, the disposal of their own offspring, a very different foundation of legal studies, a regular academical education. Perhaps too, in return, I could now direct their eyes to our principal seats of justice, and suggest a few hints, in favour of university learning:[m] but in these all who hear me, I know have already prevented me.

Making therefore due allowance for one or two shining exceptions, experience may teach us to foretell that a lawyer thus educated to the bar, in subservience to attorneys and solicitors,[n] will find he has begun at the wrong end. If practice be the whole he is taught, practice must also be the whole he will ever know: if he be uninstructed in the elements and first principles upon which the rule of practice is founded, the least variation from established precedents will totally distract and bewilder him: *ita lex scripta est*[o] is the utmost his knowledge will arrive at: he must never aspire to form, and sel-
dom expect to comprehend, any arguments drawn *a priori*, from the spirit of the laws and the natural foundations of justice.

Nor is this all; for (as few persons of birth, or for-
[33] tune, or even of scholastic education, will submit to the drudgery of servitude and the manual labour of copying the trash of an office) should this infatuation prevail to

m The four highest judicial offices were at that time filled by gentlemen, two of whom had been fellows of All Souls college; another, student of Christ Church; and the fourth a fellow of Trinity college, Cambridge (4.)

n See Kennet's Life of Somner, p. 67.

o Ff. 40. 9. 12.

---

(4) The two first were, Lord Northington and Lord Chief Justice Willes; the third, Lord Mansfield; and the fourth, Sir Thomas Clarke, Master of the Rolls.

any considerable degree, we must rarely expect to see a gentleman of distinction or learning at the bar. And what the consequence may be, to have the interpretation and enforcement of the laws (which include the entire disposal of our properties, liberties, and lives) fall wholly into the hands of obscure or illiterate men, is matter of very public concern (5).

The inconveniences here pointed out can never be effectually prevented, but by making academical education a pre-

(5) The learning, which of late years has distinguished the bar, leaves little reason to apprehend that such will speedily be the degraded state of the laws of England. Our author's labours and example have contributed in no inconsiderable degree to rescue the profession from the reproaches of Lord Bolingbroke, whose sentiments upon the education of a barrister, correspond so fully with those of the learned judge, that they deserve to be annexed to this elegant dissertation on the study of the law.

"I might instance (says he) in other professions, the obligation men lie under of applying to certain parts of history; and I can hardly forbear doing it in that of the law, in its nature the noblest and most beneficial to mankind, in its abuse and debasement the most sordid and the most pernicious. A lawyer now is nothing more, I speak of ninety-nine in a hundred at least, to use some of Tully's words, *nisi legulejus quidem cautus, et acutus fræco actionum cantor formularum, auceps syllabarum.* But there have been lawyers that were orators, philosophers, historians: there have been Bacons and Clarendons. There will be none such any more, till in some better age true ambition, or the love of fame, prevails over avarice; and till men find leisure and encouragement to prepare themselves for the exercise of this profession, by climbing up to the *vantage ground*, so my Lord Bacon calls it, of science, instead of groveling all their lives below, in a mean but gainful application to all the little arts of chicane. Till this happen, the profession of the law will scarce deserve to be ranked among the learned professions; and whenever it happens, one of the vantage grounds to which men must climb is metaphysical, and the other, historical knowledge.

"They must pry into the secret recesses of the human heart, and become well acquainted with the whole moral world, that they may discover the abstract reason of all laws; and they must trace the laws of particular states, especially of their own, from the first rough sketches, to the more perfect draughts; from the first causes or occasions that produced them, through all the effects, good and bad, that they produced." (Stud. of Hist. p. 353. quarto edition.)

vious step to the profession of the common law, and at the same time making the rudiments of the law a part of academical education. For sciences are of a sociable disposition, and flourish best in the neighbourhood of each other: nor is there any branch of learning, but may be helped and improved by assistances drawn from other arts. If therefore the student in our laws hath formed both his sentiments and style, by perusal and imitation of the purest classical writers, among whom the historians and orators will best deserve his regard; if he can reason with precision, and separate argument from fallicy, by the clear simple rules of pure unsophisticated logic; if he can fix his attention, and steadily pursue truth through any the most intricate deduction, by the use of mathematical demonstrations; if he has enlarged his conceptions of nature and art, by a view of the several branches of genuine, experimental philosophy; if he has impressed on his mind the sound maxims of the law of nature, the best and most authentic foundation of human laws; if, lastly, he has contemplated those maxims reduced to a practical system in the laws of imperial Rome; if he has done this or any part of it, (though all may be easily done under as able instructors as ever graced any seats of learning,) a student thus qualified may enter upon the study of the law with incredible advantage and reputation.

[34] And if, at the conclusion, or during the acquisition of these accomplishments, he will afford himself here a year or two's farther leisure, to lay the foundation of his future labours in a solid scientifical method without thirsting too early to attend that practice which it is impossible he should rightly comprehend, he will afterwards proceed with the greatest ease, and will unfold the most intricate points with an intuitive rapidity and clearness.

I shall not insist upon such motives as might be drawn from principles of economy, and are applicable to particulars only: I reason upon more general topics. And therefore to the qualities of the head, which I have just enumerated, I cannot but add those of the heart; affectionate loyalty to the king, a zeal for liberty and the constitution, a sense of real honour, and well grounded principles of religion; as necessary to form

a truly valuable English lawyer, a Hyde, a Hale, or a Talbot. And, whatever the ignorance of some, or unkindness of others, may have heretofore untruly suggested, experience will warrant us to affirm, that these endowments of loyalty and public spirit, of honour and religion, are no where to be found in more high perfection than in the two universities of this kingdom.

Before I conclude, it may perhaps be expected, that I lay before you a short and general account of the method I propose to follow, in endeavouring to execute the trust you have been pleased to repose in my hands. And in these solemn lectures, which are ordained to be read at the entrance of every term, (more perhaps to do public honour to this laudable institution, than for the private instruction of individuals,[p]) I presume it will best answer the intent of our benefactor and the expectation of this learned body, if I attempt to illustrate at times such detached titles of the law, as are the most easy to be understood, and most capable of historical or critical ornament. But in reading the complete course, which is annually consigned to my care, a more regular method will be necessary; and, till a better is proposed, I shall take the liberty to follow the same that I have already [35] submitted to the public.[q] To fill up and finish that outline with propriety and correctness, and to render the whole intelligible to the uninformed minds of beginners, (whom we are too apt to suppose acquainted with terms and ideas, which they never had opportunity to learn,) this must be my ardent endeavour, though by no means my promise, to accomplish. You will permit me however very briefly to describe, rather what I conceive an academical expounder of the laws should do, than what I have ever known to be done.

He should consider his course as a general map of the law, marking out the shape of the country, its connexions and boun-

p See Lowth's Oratio Crewiana, p. 365.

q The analysis of the laws of England first published A. D. 1756, and exhibiting the order and principal divisions of the ensuing Commentaries; which were originally submitted to the university in a private course of lectures, A. D. 1753.

daries, its greater divisions and principal cities: it is not his business to describe minutely the subordinate limits, or to fix the longitude and latitude of every inconsiderable hamlet. His attention should be engaged, like that of the readers in Fortescue's inns of chancery, "in tracing out the originals and "as it were the elements of the law." For if, as Justinian[r] has observed, the tender understanding of the student be loaded at the first with a multitude and variety of matter, it will either occasion him to desert his studies, or will carry him heavily through them, with much labour, delay, and despondence. These originals should be traced to their fountains, as well as our distance will permit; to the customs of the Britons and Germans, as recorded by Cæsar and Tacitus; to the codes of the northern nations on the continent, and more especially to those of our own Saxon princes; to the rules of the Roman law either left here in the days of Papinian,
[36] or imported by Vacarius and his followers; but above all, to that inexhaustible reservoir of legal antiquities and learning, the feodal law, or, as Spelman[s] has entitled it, the law of nations in our western orb. These primary rules and fundamental principles should be weighed and compared with the precepts of the law of nature, and the practice of other countries; should be explained by reasons, illustrated by examples, and confirmed by undoubted authorities; their history should be deduced, their changes and revolutions observed, and it should be shewn how far they are connected with, or have at any time been affected by, the civil transactions of the kingdom.

A plan of this nature, if executed with care and ability, cannot fail of administering a most useful and rational entertainment to students of all ranks and professions; and yet it must be confessed that the study of the laws is not merely a matter

r Incipientibus nobis exponere jura populi Romani, ita videntur tradi posse commodissime, si primo levi ac simplici via singula tradantur: alioqui, si statim ab initio rudem adhuc et infirmum animum studiosi multitudine ac varietate rerum oneravimus, duorum alterum, aut desertorem studiorum efficiemus, aut cum magno labore, saepe etiam cum diffidentia (quae plerumque juvenes avertit) serius ad id perducemus, ad quod, leviore via ductus, sine magno labore, et sine ulla diffidentia maturius perduci potuisset. Inst. I. 1. 2.

s Of Parliaments, 57.

of amusement; for as a very judicious writer [z] has observed upon a similar occasion, the learner "will be considerably "disappointed, if he looks for entertainment without the ex- "pense of attention." An attention, however, not greater than is usually bestowed in mastering the rudiments of other sciences, or sometimes in pursuing a favourite recreation or exercise. And this attention is not equally necessary to be exerted by every student upon every occasion. Some branches of the law, as the formal process of civil suits, and the subtle distinctions incident to landed property, which are the most difficult to be thoroughly understood, are the least worth the pains of understanding, except to such gentlemen as intend to pursue the profession. To others I may venture to apply, with a slight alteration, the words of sir John Fortescue, [a] when first his royal pupil determines to engage in this study. "It "will not be necessary for a gentleman, as such, to examine "with a close application the critical niceties of the law. It "will fully be sufficient, and he may well enough be denomi- "nated a lawyer, if under the instruction of a master "he traces up the principles and grounds of the law, [37] "even to their original elements. Therefore in a very "short period, and with very little labour, he may be suffi- "ciently informed in the laws of his country, if he will but "apply his mind in good earnest to receive and apprehend "them. For, though such knowledge as is necessary for a "judge is hardly to be acquired by the lucubrations of twenty "years, yet, with a genius of tolerable perspicacity, that know- "ledge which is fit for a person of birth or condition may be "learned in a single year, without neglecting his other im- "provements."

To the few therefore (the very few I am persuaded) that entertain such unworthy notions of an university, as to suppose it intended for mere dissipation of thought; to such as mean only to while away the awkward interval from childhood to twenty-one, between the restraints of the school and the licentiousness of politer life, in a calm middle state of

z Dr. Taylor's pref. to Elem. of civil law.

a De laud. Leg. c. 8.

mental and of moral inactivity; to these Mr. Viner gives no invitation to an entertainment which they never can relish. But to the long and illustrious train of noble and ingenuous youth, who are not more distinguished among us by their birth and possessions, than by the regularity of their conduct and their thirst after useful knowledge, to these our benefactor has consecrated the fruits of a long and laborious life, worn out in the duties of his calling; and will joyfully reflect (if such reflections can be now the employment of his thoughts) that he could not more effectually have benefited posterity, or contributed to the service of the public, than by founding an institution which may instruct the rising generation in the wisdom of our civil polity, and inspire them with a desire to be still better acquainted with the laws and constitution of their country. (6)

---

(6) It is remarkable that the celebrated historian Mr. Gibbon, animadverting freely upon the lectures and institutions of Oxford, speaks only of the Vinerian professorship with respect; for, after noticing the establishment of the riding-school, he adds, the Vinerian profes- "sorship is of far more serious importance. The laws of his country "are the first science of an Englishman of rank and fortune, who is "called to be a magistrate, and may hope to be a legislator. This "judicious institution was coldly entertained by the graver doctors, "who complained (I have heard the complaint), that it would take "the young people from their books; but Mr. Viner's benefaction is "not unprofitable, since it has at least produced the excellent Com- "mentaries of Sir William Blackstone." *Gibbon's Life*, p. 53. And in another part, having stated his inducements for bestowing attention upon new publications of merit, he tells us, "a more respectable "motive may be assigned for the third perusal of Blackstone's Com- "mentaries, and a copious and critical abstract of that English work "was my first serious production in my native language." p. 141. Such, it may be observed, are even the remote consequences of every liberal and literary institution, that Viner's Abridgment may have contributed in no inconsiderable degree to the elegance and perspicuity of the Decline and Fall of the Roman Empire.

SECTION THE SECOND.

OF THE NATURE OF LAWS IN GENERAL.

LAW, in its most general and comprehensive sense, signifies a rule of action; and is applied indiscriminately to all kinds of action, whether animate or inanimate, rational or irrational. Thus we say, the laws of motion, of gravitation, of optics, or mechanics, as well as the laws of nature and of nations. And it is that rule of action, which is prescribed by some superior, and which the inferior is bound to obey.

Thus when the supreme being formed the universe, and created matter out of nothing, he impressed certain principles upon that matter, from which it can never depart, and without which it would cease to be. When he put that matter into motion, he established certain laws of motion, to which all moveable bodies must conform. And, to descend from the greatest operations to the smallest, when a workman forms a clock, or other piece of mechanism, he establishes at his own pleasure certain arbitrary laws for its direction; as that the hand shall describe a given space in a given time; to which law as long as the work conforms, so long it continues in perfection, and answers the end of its formation.

If we farther advance, from mere inactive matter to vegetable and animal life, we shall find them still governed by laws; more numerous indeed, but equally fixed and invariable. The whole progress of plants, from the seed to the root, and from thence to the seed again; the method of animal nutrition, digestion, secretion, and all other branches of vital economy; are not left to chance, or the will of the creature itself, but are performed in a wondrous involuntary manner, and guided by unerring rules laid down by the great creator.

This then is the general signification of law, a rule of action dictated by some superior being: and, in those creatures that have neither the power to think, nor to will, such laws must be invariably obeyed, so long as the creature itself subsists, for its existence depends on that obedience. But laws, in their more confined sense (1), and in which it is our present bu-

---

(1) This perhaps is the only sense in which the word *law* can be strictly used; for in all cases where it is not applied to human conduct, it may be considered as a metaphor, and in every instance a more appropriate term may be found. When it is used to express the operations of the Deity or Creator, it comprehends ideas very different from those which are included in its signification when it is applied to man, or his other creatures. The volitions of the Almighty are his laws, he had only to will γενεσθω φως και εγενετο. When we apply the word *law* to motion, matter, or the works of nature or of art, we shall find in every case, that with equal or greater propriety and perspicuity, we might have used the words *quality*, *property*, or *peculiarity*. We say that it is a law of motion, that a body put in motion *in vacuo* must for ever go forward in a straight line with the same velocity; that it is a law of nature, that particles of matter shall attract each other with a force that varies inversely as the square of the distance from each other; and mathematicians say, that a series of numbers observes a certain law, when each subsequent term bears a certain relation or proportion to the preceding term: but in all these instances we might as well have used the word *property* or *quality*, it being as much the property of all matter to move in a straight line, or to gravitate, as it is to be solid or extended; and when we say that it is the law of a series that each term is the square or square-root of the preceding term, we mean nothing more than that such is its property or peculiarity. And the word *law* is used in this sense in those cases only which are sanctioned by usage; as it would be thought a harsh expression to say, that it is a law that snow should be white, or that fire should burn. When a mechanic forms a clock, he establishes a model of it either in fact or in his mind, according to his pleasure: but if he should resolve that the wheels of his clock should move contrary to the usual rotation of similar pieces of mechanism, we could hardly with any propriety established by usage apply the term *law* to his scheme. When *law* is applied to any other object than man, it ceases to contain two of its essential ingredient ideas, viz. disobedience and punishment.

siness to consider them, denote the rules, not of action in general, but of *human* action or conduct: that is, the precepts by which man, the noblest of all sublunary beings, a creature endowed with both reason and freewill, is commanded to make use of those faculties in the general regulation of his behaviour.

Man, considered as a creature, must necessarily be subject to the laws of his creator, for he is entirely a dependent being. A being, independent of any other, has no rule to pursue, but such as he prescribes to himself; but [illegible] of dependence will inevitably oblige the inferior to t[illegible]ill of him, on whom he depends, as the rule of his conduct: not indeed in every particular, but in all those points wherein his dependence consists. This principle therefore has more or less extent and effect, in proportion as the superiority of the one and the dependence of the other is greater or less, absolute or limited. And consequently, as man depends absolutely upon his maker for every thing, it is necessary that he should in all points conform to his maker's will.

This will of his maker is called the law of nature. For as God, when he created matter, and endued it with a principle of mobility, established certain rules for the perpetual direction of that motion; so, when he created man, and endued him with freewill to conduct himself in all parts of life, he laid down certain immutable laws of human nature, whereby that freewill is in some degree regulated and [40] restrained, and gave him also the faculty of reason to discover the purport of those laws.

Considering the creator only as a being of infinite *power*, he was able unquestionably to have prescribed whatever laws

---

Hooker, in the beginning of his Ecclesiastical Polity, like the learned judge, has with incomparable eloquence interpreted *law* in its most general and comprehensive sense. And most writers who treat *law* as a science, begin with such an explanation. But the Editor, though it may seem presumptuous to question such authority, has thought it his duty to suggest these few observations upon the signification of the word *law*.

he pleased to his creature, man, however unjust or severe. But as he is also a being of infinite *wisdom*, he has laid down only such laws as were founded in those relations of justice, that existed in the nature of things antecedent to any positive precept. These are the eternal, immutable laws of good and evil, to which the creator himself in all his dispensations conforms; and which he has enabled human reason to discover, so far as they are necessary for the conduct of human actions. Such among others are these principles: that we should live honestly, (2) should hurt nobody, and should render to every one his due; to which three general precepts Justinian[a] has reduced the whole doctrine of law.

But if the discovery of these first principles of the law of nature depended only upon the due exertion of right reason, and could not otherwise be obtained than by a chain of metaphysical disquisitions, mankind would have wanted some inducement to have quickened their inquiries, and the greater part of the world would have rested content in mental indolence, and ignorance its inseparable companion. As therefore the creator is a being, not only of infinite *power*, and *wisdom*, but also of infinite *goodness*, he has been pleased so to contrive the constitution and frame of humanity, that we should want no other prompter to inquire after and pursue the rule of right, but only our own self-love, that universal principle of action. For he has so intimately connected, so in-

a Juris praecepta sunt haec, honeste vivere, alterum non laedere, suum cuique tribuere. Inst. I. 1. 3.

---

(2) It is rather remarkable that both Harris, in his translation of Justinian's Institutes, and the learned Commentator, whose profound learning and elegant taste in the classics no one will question, should render in English, *honestè vivere*, to live honestly. The language of the Institutes is far too pure to admit of that interpretation; and besides, our idea of honesty is fully conveyed by the words *suum cuique tribuere*. I should presume to think that *honestè vivere* signifies to live honourably, or with decorum, or *bienseance*; and that this precept was intended to comprise that class of duties, of which the violations are ruinous to society, not by immediate but remote consequences, as drunkenness, debauchery, profaneness, extravagance, gaming, &c.

separably interwoven the laws of eternal justice with the happiness of each individual, that the latter cannot be attained but by observing the former; and, if the former be punctually obeyed, it cannot but induce the latter. In consequence of which mutual connection of justice and human felicity, he has not perplexed the law of nature with a multitude [41] of abstracted rules and precepts, referring merely to the fitness or unfitness of things, as some have vainly surmised; but has graciously reduced the rule of obedience to this one paternal precept, "that man should pursue his own true "and substantial happiness." This is the foundation of what we call ethics, or natural law. For the several articles into which it is branched in our systems, amount to no more than demonstrating, that this or that action tends to man's real happiness, and therefore very justly concluding that the performance of it is a part of the law of nature; or, on the other hand, that this or that action is destructive of man's real happiness, and therefore that the law of nature forbids it.

This law of nature being coeval with mankind, and dictated by God himself, is of course superior in obligation to any other. It is binding over all the globe in all countries, and at all times: no human laws are of any validity, if contrary to this (3); and such of them as are valid derive all their force, and

(3) Lord Chief Justice Hobart has also advanced, that even an act of Parliament made against natural justice, as to make a man a judge in his own cause, is void in itself, for *jura naturae sunt immutabilia*, and they are *leges legum*. (Hob. 87.) With deference to these high authorities, I should conceive that in no case whatever can a judge oppose his own opinion and authority to the clear will and declaration of the legislature. His province is to interpret and obey the mandates of the supreme power of the state. And if an act of parliament, if we could suppose such a case, should, like the edict of Herod, command all the children under a certain age to be slain, the judge ought to resign his office rather than be auxiliary to its execution; but it could only be declared void by the same legislative power by which it was ordained. If the judicial power were competent to decide that an act of parliament was void because it was contrary to natural justice, upon an appeal to the House of Lords this inconsistency would

all their authority, mediately or immediately, from this original.

But in order to apply this to the particular exigencies of each individual, it is still necessary to have recourse to reason: whose office it is to discover, as was before observed, what the law of nature directs in every circumstance of life; by considering, what method will tend the most effectually to our own substantial happiness. And if our reason were always, as in our first ancestor before his transgression, clear and perfect, unruffled by passions, unclouded by prejudice, unimpaired by disease or intemperance, the task would be pleasant and easy; we should need no other guide but this. But every man now finds the contrary in his own experience; that his reason is corrupt, and his understanding full of ignorance and error.

This has given manifold occasion for the benign interposition of divine providence; which in compassion to the frailty, the imperfection, and the blindness of human reason, [42] hath been pleased at sundry times and in divers manners, to discover and enforce its laws by an immediate and direct revelation. The doctrines thus delivered we call the revealed or divine law, and they are to be found only in the holy scriptures.—These precepts, when revealed, are found upon comparison to be really a part of the original law of nature, as they tend in all their consequences to man's felicity. But we are not from thence to conclude that the knowledge of these truths was attainable by reason, in its present corrupted state; since we find that, until they were revealed, they were hid from the wisdom of ages. As then the moral precepts of this law are indeed of the same original with those of the law of nature, so their intrinsic obligation is of equal strength and perpetuity. Yet undoubtedly the revealed law is of infinite-

---

be the consequence, that as judges they must declare void, what as legislators they had enacted should be valid.

The learned judge himself declares in p. 91, "if the parliament "will positively enact a thing to be done which is unreasonable, I know "of no power in the ordinary forms of the constitution, that is vested "with authority to control it."

ly more authenticity than that moral system, which is framed by ethical writers, and denominated the natural law. Because one is the law of nature, expressly declared so to be by God himself; the other is only what, by the assistance of human reason, we imagine to be that law. If we could be as certain of the latter as we are of the former, both would have an equal authority; but till then, they can never be put in any competition together.

Upon these two foundations, the law of nature and the law of revelation, depend all human laws; that is to say, no human laws should be suffered to contradict these. There are, it is true, a great number of indifferent points, in which both the divine law and the natural leave a man at his own liberty; but which are found necessary for the benefit of society to be restrained within certain limits. And herein it is that human laws have their greatest force and efficacy; for with regard to such points as are not indifferent, human laws are only declaratory of, and act in subordination to, the former. To instance in the case of murder: this is expressly forbidden by the divine, and demonstrably by the natural law; and from these prohibitions arises the true unlawfulness of this crime.

Those human laws that annex a punishment to it, do not at all increase its moral guilt, or superadd any fresh obligation *in foro conscientiae* to abstain from its perpetration. Nay, if any human law should allow or enjoin us to commit it, we [43] are bound to transgress that human law, or else we must offend both the natural and the divine. But with regard to matters that are in themselves indifferent, and are not commanded or forbidden by those superior laws; such, for instance as exporting of wool into foreign countries; here the inferior legislature has scope and opportunity to interpose, and to make that action unlawful which before was not so.

If man were to live in a state of nature, unconnected with other individuals, there would be no occasion for any other laws, than the law of nature (4), and the law of God. Neither

---

(4) The law of nature, or morality, which teaches the duty towards one's neighbour, would scarce be wanted in a solitary state, where

could any other law possibly exist: for a law always supposes some superior who is to make it; and in a state of nature we are all equal, without any other superior but him who is the author of our being. But man was formed for society; and, as is demonstrated by the writers on this subject,[b] is neither capable of living alone, nor indeed has the courage to do it. However, as it is impossible for the whole race of mankind to be united in one great society, they must necessarily divide into many; and form separate states, commonwealths, and nations, entirely independent of each other, and yet liable to a mutual intercourse. Hence arises a third kind of law to regulate this mutual intercourse called "the law of nations:" which, as none of these states will acknowledge a superiority in the other, cannot be dictated by any; but depends entirely upon the rules of natural law, or upon mutual compacts, treaties, leagues, and agreements between these several communities: in the construction also of which compacts we have no other rule to resort to, but the law of nature; being the only one to which all the communities are equally subject; and therefore the civil law[c] very justly observes, that *quod naturalis ratio inter omnes homines constituit, vocatur jus gentium.*

[44] Thus much I thought it necessary to premise concerning the law of nature, the revealed law, and the law of nations, before I proceeded to treat more fully of the

b Puffendorf, l. 7. c. 1. compared with Barbeyrac's commentary.

c Ff. 1. 1. 9.

---

man is unconnected with man. A state of nature, to which the laws of nature or of morals more particularly refer, must signify the state of men when they associate together previous to, or independent of, the institutions of regular government. The ideal equality of men in such a state no more precludes the idea of a law, than the supposed equality of subjects in a republic. The superior, who would prescribe and enforce the law in a state of nature, would be the collective force of the wise and good, as the superior in a perfect republic is a majority of the people, or the power to which the majority delegate their authority.

principal subject of this section, municipal or civil law; that is, the rule by which particular districts, communities, or nations are governed; being thus defined by Justinian,[d] "*jus* "*civile est quod quisque sibi populus constituit.*" I call it *municipal* law, in compliance with common speech; for, though strictly that expression denotes the particular customs of one single *municipium* or free town, yet it may with sufficient propriety be applied to any one state or nation, which is governed by the same laws and customs.

Municipal law, thus understood, is properly defined to be "a rule of civil conduct prescribed by the supreme power in "a state, commanding what is right and prohibiting what is "wrong (5)." Let us endeavour to explain its several properties, as they arise out of this definition.

[d] Inst. 1. 2. 1.

(5) Though the learned Judge treats this as a favourite definition, yet when it is examined, it will not perhaps appear so satisfactory, as the definition of civil or municipal law, or the law of the land, cited above from Justinian's Institutes; viz. *Quod quisque populus ipse sibi jus constituit, id ipsius proprium civitatis est, vocaturque jus civile, quasi jus proprium ipsius civitatis.*

A municipal law is completely expressed by the first branch of the definition, "A rule of civil conduct presribed by the supreme power "in a state." And the latter branch, "commanding what is right "and prohibiting what is wrong," must either be superfluous, or convey a defective idea of a municipal law; for if right and wrong are referred to the municipal law itself, then, whatever it commands is right, and what it prohibits is wrong, and this clause would be insignificant tautology. But if right and wrong are to be referred to the law of nature, then the definition will become deficient or erroneous; for though the municipal law may seldom or never command what is wrong, yet in ten thousand instances it forbids what is right. It forbids an unqualified person to kill a hare or a partridge; it forbids a man to exercise a trade without having served seven years as an apprentice; it forbids a man to keep a horse or a servant without paying the tax. Now all these acts were perfectly right before the prohibition of the municipal law. Though the latter part of Cicero's definition of a law of nature is something similar, yet, when it is considered, it will be found to be free from the objections here suggested.

And, first, it is a *rule*: not a transient sudden order from a superior to or concerning a particular person; but something permanent, uniform, and universal. Therefore a particular act of the legislature to confiscate the goods of Titius, or to attaint him of high treason, does not enter into the idea of a municipal law: for the operation of this act is spent upon Titius only, and has no relation to the community in general; it is rather a sentence than a law. But an act to declare that the crime of which Titius is accused shall be deemed high treason; this has permanency, uniformity, and universality, and therefore is properly a *rule*. It is also called a *rule*, to distinguish it from *advice* or *counsel*, which we are at liberty to follow or not, as we see proper, and to judge upon the reasonableness or unreasonableness of the thing advised: whereas our obedience to the *law* depends not upon *our approbation*, but upon the *maker's will*. Counsel is only matter of persuasion, law is matter of injunction; counsel acts only upon the willing, law upon the unwilling also.

[45] It is also called a *rule* to distinguish it from a *compact* or *agreement*; for a compact is a promise proceeding *from* us, law is a command directed *to* us. The language

---

Lex est summa ratio insita à naturâ quæ jubet ea, quæ facienda sunt prohibetque contraria. Cic de Leg. lib. i. c. 6.

The description of law given by Demosthenes is perhaps the most perfect and satisfactory that can be conceived: Οἱ δὲ νόμοι τὸ δίκαιον καὶ τὸ καλὸν καὶ τὸ συμφέρον βούλονται, καὶ τοῦτο ζητοῦσι. καὶ ἐπειδὰν εὑρεθῇ, κοινὸν τοῦτο πρόσταγμα ἀπεδείχθη, πᾶσιν ἴσον καὶ ὅμοιον. καὶ τοῦτ' ἔστι τοῦτο, ᾧ πάντας προσήκει πείθεσθαι διὰ πολλὰ, καὶ μάλιστα, ὅτι πᾶς ἐστι νόμος εὕρημα μὲν καὶ δῶρον θεῶν, δόγμα δ' ἀνθρώπων φρονίμων, ἐπανόρθωμα δὲ τῶν ἑκουσίων, καὶ ἀκουσίων ἁμαρτημάτων, πόλεως δὲ συνθήκη κοινὴ καθ' ἣν πᾶσι προσήκει ζῆν τοῖς ἐν τῇ πόλει. "The design and object of laws is to ascertain what is "just, honourable, and expedient; and when that is discovered, it is pro- "claimed as a general ordinance, equal and impartial to all. This is "the origin of law, which, for various reasons, all are under an obliga- "tion to obey, but especially because all law is the invention and gift of "Heaven, the resolution of wise men, the correction of every offence, "and the general compact of the state; to live in conformity with "which is the duty of every individual in society." *Orat.* 1. *cont. Aristogit.*

" of a compact is, " I will, or will not, do this ;" that of a law " is, " thou shalt, or shalt not, do it." It is true there is an obligation which a compact carries with it, equal in point of conscience to that of a law ; but then the original of the obligation is different. In compacts, we ourselves determine and promise what shall be done, before we are obliged to do it ; in laws, we are obliged to act without ourselves determining or promising any thing at all. Upon these accounts law is defined to be " *a rule.*"

Municipal law is also " a rule *of civil conduct.*" This distinguishes municipal law from the natural, or revealed ; the former of which is the rule of *moral* conduct, and the latter not only the rule of moral conduct, but also the rule of faith. These regard man as a creature, and point out his duty to God, to himself, and to his neighbour, considered in the light of an individual. But municipal or civil law regards him also as a citizen, and bound to other duties towards his neighbour, than those of mere nature and religion : duties, which he has engaged in by enjoying the benefits of the common union ; and which amount to no more, than that he do contribute, on his part, to the subsistence and peace of the society.

It is likewise " a rule *prescribed.*" Because a bare resolution, confined in the breast of the legislator, without manifesting itself by some external sign, can never be properly a law. It is requisite that this resolution be notified to the people who are to obey it. But the manner in which this notification is to be made, is matter of very great indifference. It may be notified by universal tradition and long practice, which supposes a previous publication, and is the case of the common law of England. It may be notified, *vivo voce*, by officers appointed for that purpose, as is done with regard to proclamations, and such acts of parliament as are appointed to be publicly read in churches and other as- [46]
semblies. It may lastly be notified by writing, printing, or the like ; which is the general course taken with all our acts of parliament. Yet, whatever way is made use of, it is incumbent on the promulgators to do it in the most public and perspicuous manner ; not like Caligula, who (accord-

ing to Dio Cassius) wrote his laws in a very small character, and hung them up on high pillars, the more effectually to insnare the people. There is still a more unreasonable method than this, which is called making of laws *ex post facto*; when after an action (indifferent in itself) is committed, the legislator then for the first time declares it to have been a crime, and inflicts a punishment upon the person who has committed it. Here it is impossible that the party could foresee that an action, innocent when it was done, should be afterwards converted to guilt by a subsequent law; he had therefore no cause to abstain from it; and all punishment for not abstaining must of consequence be cruel and unjust.[c] All laws should be therefore made to commence *in futuro*, and be notified before their commencement; which is implied in the term "*prescribed.*" But when this rule is in the usual manner notified, or prescribed, it is then the subject's business to be thoroughly acquainted therewith; for if ignorance, of what he *might* know, were admitted as a legitimate excuse, the laws would be of no effect, but might always be eluded with impunity.

But farther: municipal law is "a rule of civil conduct pre-"scribed *by the supreme power in a state.*" For legislature, as was before observed, is the greatest act of superiority that can be exercised by one being over another. Wherefore it is requisite to the very essence of a law, that it be made by the supreme power. Sovereignty and legislature are indeed convertible terms; one cannot subsist without the other.

c Such laws among the Romans were denominated *privilegia*, (6) or private laws, of which Cicero (de leg. 3. 19. and in his oration pro domo, 17.) thus speaks: "Vetant leges sacratae, vetant "duodecim tabulae, leges privatis ho-"minibus inrogari; id enim est privile-"gium. Nemo unquam tulit, nihil est "crudelius, nihil pernicifius, nihil quod "minus haec civitas ferre possit."

(6) An *ex post facto* law may be either of a public or of a private nature: and when we speak generally of an *ex post facto* law, we perhaps always mean a law which comprehends the whole community. The Roman *privilegia* seem to correspond to our bills of attainder, and bills of pains and penalties, which, though in their nature they are *ex post facto* laws, yet are seldom called so.

This will naturally lead us into a short inquiry concerning the nature of society, and civil government; [47] and the natural, inherent right that belongs to the sovereignty of a state, wherever that sovereignty be lodged, of making and enforcing laws.

The only true and natural foundations of society are the wants and the fears of individuals. Not that we can believe, with some theoretical writers, that there ever was a time when there was no such thing as society, either natural or civil; and that, from the impulse of reason, and through a sense of their wants and weaknesses, individuals met together in a large plain, entered into an original contract, and chose the tallest man present to be their governor. This notion of an actually existing unconnected state of nature, is too wild to be seriously admitted: and besides it is plainly contradictory to the revealed accounts of the primitive origin of mankind, and their preservation two thousand years afterwards; both which were effected by the means of single families. These formed the first natural society among themselves; which, every day extending its limits, laid the first though imperfect rudiments of civil or political society: and when it grew too large to subsist with convenience in that pastoral state, wherein the patriarchs appear to have lived, it necessarily subdivided itself by various migrations into more. Afterwards, as agriculture increased, which employs and can maintain a much greater number of hands, migrations became less frequent: and various tribes, which had formerly separated, reunited again; sometimes by compulsion and conquest, sometimes by accident, and sometimes perhaps by compact. But though society had not its formal beginning from any convention of individuals, actuated by their wants and their fears; yet it is the *sense* of their weakness and imperfection that *keeps* mankind together; that demonstrates the necessity of this union: and that therefore is the solid and natural foundation, as well as the cement of civil society. And this is what we mean by the original contract of society; which, though perhaps in no instance it has ever been formally expressed at the first institution of a state, yet in nature and reason must always be

[48] understood and implied, in the very act of associating together: namely, that the whole should protect all its parts, and that every part should pay obedience to the will of the whole, or, in other words, that the community should guard the rights of each individual member, and that (in return for this protection) each individual should submit to the laws of the community; without which submission of all it was impossible that protection could be certainly extended to any.

For when civil society is once formed, government at the same time results of course, as necessary to preserve and to keep that society in order. Unless some superior be constituted, whose commands and decisions all the members are bound to obey, they would still remain as in a state of nature, without any judge upon earth to define their several rights, and redress their several wrongs. But, as all the members which compose this society were naturally equal, it may be asked, in whose hands are the reins of government to be intrusted? To this the general answer is easy; but the application of it to particular cases has occasioned one half of those mischiefs, which are apt to proceed from misguided political zeal. In general, all mankind will agree that government should be reposed in such persons, in whom those qualities are most likely to be found, the perfection of which is among the attributes of him who is emphatically styled the supreme being; the three grand requisites, I mean of wisdom, of goodness, and of power: wisdom, to discern the real interest of the community; goodness, to endeavour always to pursue that real interest; and strength, or power, to carry this knowledge and intention into action. These are the natural foundations of sovereignty, and these are the requisites that ought to be found in every well constituted frame of government.

How the several forms of government we now see in the world at first actually began, is matter of great uncertainty, and has occasioned infinite disputes. It is not my business or intention to enter into any of them. However they
[49] began, or by what right soever they subsist, there is and must be in all of them a supreme, irresistible, ab-

solute, uncontrolled authority, in which the *jura summi imperii*, or the rights of sovereignty, reside. And this authority is placed in those hands, wherein (according to the opinion of the founders of such respective states, either expressly given, or collected from their tacit approbation) the qualities requisite for supremacy, wisdom, goodness, and power, are the most likely to be found.

The political writers of antiquity will not allow more than three regular forms of government; the first, when the sovereign power is lodged in an aggregate assembly consisting of all the free members of a community, which is called a democracy; the second, when it is lodged in a council, composed of select members, and then it is styled an aristocracy; the last, when it is intrusted in the hands of a single person, and then it takes the name of a monarchy. All other species of government, they say, are either corruptions of, or reducible to, these three.

By the sovereign power, as was before observed, is meant the making of laws; for wherever that power resides, all others must conform to, and be directed by it, whatever appearance the outward form and administration of the government may put on. For it is at any time in the option of the legislature to alter that form and administration by a new edict or rule, and to put the execution of the laws into whatever hands it pleases; by constituting one, or a few, or many executive magistrates: and all the other powers of the state must obey the legislative power in the discharge of their several functions, or else the constitution is at an end.

In a democracy, where the right of making laws resides in the people at large, public virtue, or goodness of intention is more likely to be found, than either of the other qualities of government. Popular assemblies are frequently foolish in their contrivance, and weak in their execution; but generally mean to do the thing that is right and just, and have always a degree of patriotism or public spirit. In aris- [50]
tocracies there is more wisdom to be found, than in the other frames of government; being composed, or intended to be composed, of the most experienced citizens: but