

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.

A N D 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 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 it's 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:

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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 universally 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 improvement of our antient plan of education ;

^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 it's publication to the establishment of a *manage* in the university.

and

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 it's theory the noblest faculties of the soul, and exerts in it's practice the cardinal virtues of the heart; a science, which is universal in it's use and extent, accommodated to each individual, yet comprehending the whole community; that a science like this should have ever 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 knowlege, it was high time to make it one; and to those who can doubt the propriety of it's 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 knowlege of those laws is the principal and most perfect branch of ethics.

^c Τελεια μάλιστα αρετη, οτι της τελειας αρετης χρησης εστι. Ethic. ad Nicomach. l. 5. c. 3.

FROM a thorough conviction 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 public-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;” he was sensible he could not perform his resolutions 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 receiving it with all possible marks of esteem^f; from their alacrity and unexampled dispatch in carrying it into execution^h; and, above all, from the

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

^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

laws and constitutions by which they have effectually guarded it from the neglect and abuse to which such institutions are liableⁱ. We have seen an universal emulation, who best should understand, or most faithfully pursue, the designs of our generous patron: and with 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 zealous 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 it's method,

ministrators with the will annexed, 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.

ⁱ See an account of this new institution in the postscript.

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

retrenching

retrenching it's 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 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 is 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 one of our learned universities. We
may

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 enquiries; 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 search¹, and addict

¹ SIR HENRY SPELMAN, in the preface to his glossary, gives us a very lively picture of his own distress upon this occasion. *“Emisit me mater Londinum, juris nostri capeffendi gratia; cujus cum vestibulum salutassem, reperissemque linguam peregrinam, dialectum barbaram, methodum inconcinnam, molem non ingentem solum sed perpetuis humeris sustinendam, excidit mihi (fateor) animus, &c.”*

themselves

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 knowlege, 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, by some so very warmly recommended, to drop all liberal education, as of no use to lawyers; and to place them, in it's 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 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 biased many parents, of shortsighted judgment, in it's 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

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: — 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^m, 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*ⁿ is the utmost his knowlege will arrive at; he must never aspire to form, and seldom expect to comprehend, any arguments drawn *a priori*, from the spirit of the laws and the natural foundations of justice.

^m See bishop KENNET's life of Somner. p. 67.

ⁿ Ff. 40. 9. 12.

NOR is this all; for (as few persons of birth, or fortune, 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 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.

THE inconveniences here pointed out can never be effectually prevented, but by making academical education a previous 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
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the historians and orators will best deserve his regard; if he can reason with precision, and separate argument from fallacy, 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. 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 scientific 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

intricate points with an intuitive rapidity and clearness.

I SHALL not insist upon such motives as might be drawn from principles of oeconomy, 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^o) 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 submitted to the public. 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

^o See LOWTH'S *Oratio Crewiana*, p. 365.

country,

country, it's connexions and boundaries, it's 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^p 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 Caesar 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 Papi-

p 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 & 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 leviori via ductus, sine magno labore & sine ulla diffidentia maturius perduci potuisset. Inst. I. 1. 2.

nian, or imported by Vacarius and his followers; but, above all, to that inexhaustible reservoir of legal antiquities and learning, the feudal law, or, as Spelman⁹ 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 of amusement: for as a very judicious writer^r has observed upon a similar occasion, the learner “will be considerably disappointed
“if he looks for entertainment without the ex-
“pence of attention.” An attention, however,

⁹ Of Parliaments. 57.

^r Dr TAYLOR's preface to Elem. of civil law.

not greater than is usually bestowed in mastering the rudiments of other sciences, or sometimes in pursuing a favorite 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^s, 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

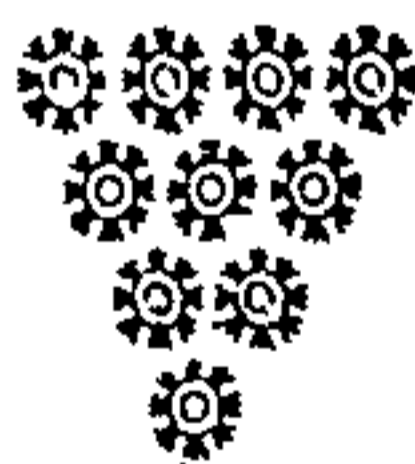
^s *Tibi, princeps, necesse non erit mysteria legis Angliae longo disciplinatu rimare. Sufficiet tibi, — et satis denominari legista mereberis, si legum principia & causas, usque ad elementa, discipuli more indagaveris. — Quare tu, princeps serenissime, parvo tempore, parva industria, sufficienter eris in legibus regni Angliae eruditus, dummodo ad ejus apprehensionem tu conferas animum tuum. — Nosco namque ingenii tui perspicacitatem, quo audacter pronuntio quod in legibus illis (licet earum peritia, qualis judicibus necessaria est, vix viginti annorum lucubrationibus acquiratur) tu doctrinam principi congruam in anno uno sufficienter nancisceris; nec interim militarem disciplinam, ad quam tam ardentem anhelas, negliges; seu ea, recreationis loco, etiam anno illo tu ad libitum perfrueris. c. 8.*

“ well

“ well enough be denominated a lawyer, if
 “ under the instruction of a master he traces
 “ up the principles and grounds of the law,
 “ even to their original elements. Therefore
 “ in a very short period, and with very little
 “ labour, he may be sufficiently informed in
 “ the laws of his country, if he will but apply
 “ his mind in good earnest to receive and ap-
 “ prehend them. For, though such knowlege
 “ as is necessary for a judge is hardly to be ac-
 “ quired by the lucubrations of twenty years,
 “ yet with a genius of tolerable perspicacity,
 “ that knowlege which is fit for a person of
 “ birth or condition may be learned in a single
 “ year, without neglecting his other improve-
 “ ments.”

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 aukward interval from
 childhood to twenty one, between the restraints
 of the school and the licentiousness of politer
 life, in a calm middle state of 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

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 reflexions 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 inform them with a desire to be still better acquainted with the laws and constitution of their country.



P O S T S C R I P T.

IN order that the extent of Mr VINER'S benefaction to the university of Oxford, and the encouragements now given (in consequence thereof) to the study of the law in that place, may be more universally understood, it is thought proper to subjoin to this discourse a short account of the establishment formed by the university, in pursuance of Mr VINER'S will, bearing date 29 December 1755.

The statutes are in substance as follows:

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

2. **T**HAT a professorship of the laws of England be established, with a salary of 200*l.* *per annum*; the professor to be elected by convocation, and to be at the time of his election
at

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 20 *l.* 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

of other auditors such gratuity as shall be settled from time to time by decree of convocation^a: and that, for every of the said sixty lectures omitted, the professor, on complaint made to the vice-chancellor within the year, do forfeit 40 s. to Mr VINER's general fund; the proof of having performed 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 bannition 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.

^a This gratuity is settled to be four guineas for the first course, and two for the second; but nothing for any subsequent attendance. And the present professor hath made it an invariable rule, to admit no other pupils but matriculated members of the university, and the private tutors of matriculated noblemen and gentlemen, allowed by their academical governors.

5. THAT

5. THAT such a number of fellowships with a stipend of 50 *l. per annum*, and scholarships with a stipend of 30 *l.* 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 calendar months at the least: that he do take the degree

gree 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 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 V I N E R'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

nished 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 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.



A N

A N A L Y S I S

O F T H E

L A W S O F E N G L A N D .

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CHAPTER I.

- | | | | |
|---|--|-------|-----|
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| } | II. By the mere Operation of Law. | | |
| } | III. By both together, or Suit in Courts; wherein | | II. |
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| { | 2. Their several Distinctions; <i>viz.</i> | | |
| { | 1. Of public or general Jurisdiction; as, | | |
| { | 1. The Courts of common Law and Equity. | | |
| { | 2. Ecclesiastical Courts. | III. | |
| { | 3. Courts military. | | |
| { | 4. Courts maritime. | | |
| { | 2. Of private or special Jurisdiction. | | |
| { | 2. Of the Cognizance of Wrongs, or Injuries, in the Courts | | IV. |
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| { | 2. Military. | | |
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| { | 1. Of the respective Remedies, for Injuries affecting | | V. |
| { | 1. The Rights of Persons, | | |
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| { | 1. Dispossession. | | |
| { | 2. Damage. | | |
| { | 2. In Action; by Breach of Contracts. | | |
| { | 2. Real; by | VII. | |
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| { | 2. Inspection. | | |
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| { | 6. Wager of Law. | | |
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| { | 6. Judgment. | XV. | |
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B O O K IV.

Public Wrongs, or Crimes and Misdemeanors.

In which are considered CHAPTER I.

- I. The general Nature of Crimes, and Punishment.
- II. The Persons capable of committing Crimes; and their several Degrees of Guilt, as if
 - { 1. Principals.
 - { 2. Accessories.
- III. The several Crimes (with their Punishments) more peculiarly offending III.
 - { 1. The divine Law.
 - { 2. The Law of Nations.
 - { 3. The municipal Law: Being such as especially affect IV.
 - 1. The King and Government; viz.
 - 1. High Treason.
 - 2. Felonies injurious to the Prerogative. V.
 - 3. Praemunire.
 - 4. Misprisions and Contempts.
 - 2. The Commonwealth; viz. Offences against VI.
 - 1. Public Justice.
 - 2. Public Peace.
 - 3. Public Trade. VII.
 - 4. Public Health.
 - 5. Public Oeconomy.
 - 3. Individuals; being Crimes against VIII.
 - 1. Their personal Security; by
 - 1. Homicide.
 - 2. Other corporal Injuries. IX.
 - 2. Their personal Liberty.
 - 3. Their Habitations. X.
 - 4. Their Property.
- IV. The Means of Prevention; by Security for XI.
 - { 1. The Peace.
 - { 2. The good Behaviour.
- V. The Method of Punishment; wherein of
 - { 1. The several Courts of criminal Jurisdiction.
 - { 2. The Proceedings there; XII.
 - { 1. Summary.
 - { 2. Regular; by
 - 1. Arrest.
 - 2. Commitment, and Bail.
 - 3. Prosecution; by
 - 1. Presentment.
 - 2. Indictment.
 - 3. Information.
 - 4. Appeal.
 - 4. Process. XIII.
 - 5. Arraignment, and it's Incidents.
 - 6. Plea, and Issue.
 - 7. Trial, and Conviction. XIV.
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 - 9. Judgment, and Attainder; which induce XV.
 - 1. Forfeiture.
 - 2. Corruption of Blood.
 - 10. Avoider of Judgment, by
 - 1. Falsifying, or Reversing, the Attainder.
 - 2. Reprieve, or Pardon.
 - 11. Execution.

AN
ANALYSIS
OF THE
LAWS OF ENGLAND.

BOOK THE FIRST.

CHAPTER I.

Of the Nature of LAWS in general.

I.

LAWS is a Rule of Action, prescribed by a superior Power.

2.

NAURAL Law is the Rule of HUMAN Action, prescribed by the Creator, and discoverable by the Light of Reason.

3.

The **D**IVINE, OR REVEALED, Law (considered as a Rule of Action) is also the Law of Nature, imparted by God himself.

F 3

4. The

4.

The Law of NATIONS is that which regulates the Conduct and mutual Intercourse of independent States with each other, by Reason and natural Justice.

5.

MUNICIPAL, or CIVIL, Law is the Rule of civil Conduct, prescribed by the supreme Power in a State, commanding what is RIGHT, and prohibiting what is WRONG.

6.

SOCIETY is formed for the Protection of Individuals; and STATES, or Government, for the Preservation of Society.

7.

In all States there is an absolute SUPREME Power, to which the Right of Legislation belongs; and which, by the singular Constitution of these Kingdoms, is vested in the King, Lords, and Commons,

8.

The PARTS of a Law are, 1. The DECLARATORY; which defines what is Right, and Wrong. 2. The DIRECTORY; which consists in commanding the Observation of Right, or prohibiting the Commission of Wrong. 3. The REMEDIAL; or Method of recovering private Rights, and redressing private Wrongs. 4. The VINDICATORY Sanction of Punishments for public Wrongs; wherein consists the most forcible Obligation of human Laws.

9. To

9.

TO INTERPRET a Law, we must enquire after the Will of the Maker: Which may be collected either from the Words, the Context, the Subject-matter, the Effects and Consequence, or the Spirit and Reason of the Law.

10.

From the latter Method of Interpretation arises EQUITY, or the Correction of that wherein the Law (by reason of it's Universality) is deficient.

C H A P. II.

Of the GROUNDS and FOUNDATION of the *Laws* of ENGLAND.

1.

THE LAWS of ENGLAND are of two Kinds; the UNWRITTEN or COMMON Law, and the WRITTEN or STATUTE Law.

2.

The UNWRITTEN Law includes, 1. General Customs. 2. Particular Customs. 3. Particular Laws.

3.

GENERAL CUSTOMS, or the COMMON Law properly so called, are founded upon immemorial universal Usage, whereof judicial Decisions are the Evidence; which Decisions are preserved in the public
Records,

Records, explained in the Year-Books and Reports, and digested by Writers of approved Authority.

4.

PARTICULAR CUSTOMS are those which are only in Use within some peculiar Districts; as Gavelkind, the Customs of LONDON, &c.

5.

These — 1. must be proved to exist; — 2. must appear to be legal; that is, immemorial, continued, peaceable, reasonable, certain, compulsory, beneficial, and consistent; — 3. must, when allowed, receive a strict Construction.

6.

PARTICULAR LAWS are such as, by special Custom, are adopted and used only in certain peculiar Courts, under the Superintendance and Controll of the common and statute Law; namely, the ROMAN CIVIL and CANON LAWS.

7.

The WRITTEN OR STATUTE LAWS are the Acts which are made by the King, Lords, and Commons, in Parliament; to supply the Defects, or amend what is amiss, of the unwritten Law.

8.

In order to moderate the Rigor of both the unwritten and written Law, in Matters of private Right, it is the Office of EQUITY to interpose.

C H A P. III.

*Of the COUNTRIES subject to the Laws of
ENGLAND.*

1.

THE LAWS of ENGLAND are not received in their full Extent in any other Territories, besides the Kingdom of ENGLAND, and the Dominion of WALES; which have, in most respects, an entire Communion of Laws.

2.

SCOTLAND, notwithstanding the Union, retains it's own municipal Laws; though subject to Regulation by the BRITISH Parliament.

3.

BERWICK is subject to the SCOTS Law, but bound by all Acts of Parliament.

4.

IRELAND is a distinct subordinate Kingdom, governed by the common Law of ENGLAND; but not bound by modern Acts of the BRITISH Parliament, unless particularly named.

5.

The Isle of MAN, the NORMAN Isles, (as GUERNSEY, &c,) and our PLANTATIONS abroad, are governed by their own Laws; but are bound by Acts of the BRITISH Parliament, if specially named therein.

6. The

6.

The Territory of ENGLAND is divided, EC-CLESIASTICALLY, into Provinces, Dioceses, Arch-deaconries, rural Deanries, and Parishes.

7.

The CIVIL Division is, first, into Counties, of which some are palatine; then, sometimes, into Rapes, Lathes, or Trithings; next into Hundreds, or Wapentakes; and, lastly, into Towns, Vills, or Tithings.

C H A P. IV.

Of the OBJECTS of the LAWS of ENGLAND; and, first, of the ABSOLUTE RIGHTS of INDIVIDUALS.

1.

THE Objects of the LAWS of ENGLAND are,
1. RIGHTS. 2. WRONGS.

2.

RIGHTS are the Rights of PERSONS, or the Rights of THINGS.

3.

The Rights of PERSONS are such as concern, and are annexed to, the Persons of Men: And, when the Person to whom they are due is regarded, they are called (simply) RIGHTS; but, when we consider the Person FROM whom they are due, they are then denominated DUTIES.

4. PER-

4.

PERSONS are either NATURAL, that is, such as they are formed by Nature ; or ARTIFICIAL, that is, created by human Policy, as Bodies politic or CORPORATIONS.

5.

The Rights of NATURAL Persons are, 1. ABSOLUTE, or such as belong to Individuals. 2. RELATIVE, or such as regard Members of Society.

6.

The ABSOLUTE RIGHTS of INDIVIDUALS, regarded by the municipal Laws, (which pay no Attention to DUTIES of the absolute Kind) compose what is called political or civil LIBERTY.

7.

Political or civil LIBERTY is the natural Liberty of Mankind, so far restrained by human Laws as is necessary for the Good of Society.

8.

The absolute Rights, or civil Liberties, of ENGLISHMEN, as frequently declared in Parliament, are principally three ; the Right of PERSONAL SECURITY, of PERSONAL LIBERTY, and of PRIVATE PROPERTY.

9.

The Right of PERSONAL SECURITY consists in the legal Enjoyment of Life, Limb, Body, Health, and Reputation.

10. The

10.

The Right of PERSONAL LIBERTY consists in the free Power of Loco-motion, without illegal Restraint or Banishment.

11.

The Right of PRIVATE PROPERTY consists in every Man's free Use and Disposal of his own lawful Acquisitions, without Injury or illegal Diminution,

12.

Besides these three PRIMARY Rights, there are others which are SECONDARY and subordinate; viz. (to preserve the former from unlawful Attacks)

1. The Constitution and Power of Parliaments:
2. The Limitation of the King's Prerogative:—And, (to vindicate them when actually violated)
3. The regular Administration of public Justice:
4. The Right of Petitioning for Redress of Grievances:
5. The Right of Having and Using Arms for Self-Defence.

C H A P. V.

Of the Rights of Persons in PUBLIC RELATIONS; and therein, first, of the PARLIAMENT.

I.

THE RELATIONS of Persons are, 1. PUBLIC. 2. PRIVATE. The PUBLIC Relations are those of MAGISTRATES and PEOPLE. MAGISTRATES are SUPREME, OR SUBORDINATE. And of SUPREME Magistrates, in ENGLAND, the PARLIAMENT is the supreme LEGISLATIVE, the KING the supreme EXECUTIVE.

2.

PARLIAMENTS, in some Shape, are of as high Antiquity as the SAXON Government in this Island; and have subsisted, in their present Form, at least five hundred Years.

3.

The Parliament is assembled by the King's Writs, and it's Sitting must not be intermitted above three Years.

4.

It's constituent Parts are the King's Majesty, the Lords spiritual and temporal, and the Commons represented by their Members: Each of which Parts has a negative, or necessary, Voice in making Laws.

5.

With regard to the GENERAL Law of Parliament; — It's Power is absolute: Each House is the
Judge

Judge of it's own Privileges: And all the Members of either House are entitled to the Privilege of Speech, of Person, of their Domestics, and of their Lands and Goods.

6.

The PECULIAR Privileges of the Lords are to hunt in the King's Forests; to be attended by the Sages of the Law; to make Proxies; to enter Protests; and to regulate the Election of the sixteen Peers of NORTH-BRITAIN.

7.

The PECULIAR Privileges of the Commons are to raise Taxes on the Subject; and to determine the Merits of their own Elections, with regard to the Qualifications of the Electors, and Elected, and the Proceedings at Elections themselves.

8.

Bills are usually twice read in each House, committed, engrossed, and then read a third Time; and when they have obtained the Concurrence of both Houses, and received the royal Assent, they become Acts of Parliament.

9.

The Houses may adjourn themselves; but the King only can prorogue the Parliament.

10.

Parliaments are dissolved, 1. At the King's Will. 2. By the Demise of the Crown, that is, within six Months after. 3. By Length of Time, or having sat for the space of seven Years.

CHAP. VI.

Of the KING ; and, first, of his TITLE.

I.

THE supreme EXECUTIVE Power of this Kingdom is lodged in a single Person ; the KING OF QUEEN.

2.

This royal Person may be considered with regard to, 1. His Title. 2. His Dignity. 3. His Duties. 4. His Councils. 5. His royal Family. 6. His Prerogative. 7. His Revenue.

3.

With regard to his TITLE ; The Crown of ENGLAND, by the positive Constitution of the Kingdom, hath ever been descendible, and so continues.

4.

The Crown is descendible in a Course peculiar to itself.

5.

This Course of Descent is subject to Limitation by Parliament.

6.

Notwithstanding such Limitations, the Crown retains its descendible Quality, and becomes hereditary in the Prince to whom it is limited.

7.

King *EGBERT*, King *CANUTE*, and King *WILLIAM I.* have been successively constituted the common Stocks, or Ancestors, of this Descent.

8.

At the Revolution the Convention of Estates, or representative Body of the Nation, declared, that the Misconduct of King *JAMES II.* amounted to an Abdication of the Government, and that the Throne was thereby *VACANT*.

9.

In consequence of this Vacancy, and from a Regard to the antient Line, the Convention appointed the next protestant Heirs of the Blood royal of King *CHARLES I.* to fill the vacant Throne, in the old Order of Succession ; with a temporary Exception, or Preference, to the Person of King *WILLIAM III.*

10.

On the impending Failure of the protestant Line of King *CHARLES I.* (whereby the Throne might again have become vacant) the King and Parliament extended the Settlement of the Crown to the protestant Line of King *JAMES I.* viz. to the Princess *SOPHIA* of *HANOVER*, and the Heirs of her Body, being Protestants : And She is now the common Stock, from whom the Heirs of the Crown must descend.

C H A P. VII.

Of the KING'S DIGNITY, DUTIES, COUNCILS,
and royal FAMILY.

I.

THE KING'S DIGNITY consists, 1. In his personal Sovereignty. 2. In his absolute Perfection. 3. In his Perpetuity. 4. In his legal Ubiquity. 5. In that he is bound by no Statute, unless specially named. 6. In that his Deed is a public Record.

2.

The KING'S DUTIES are to govern his People according to Law, to execute Judgment in Mercy, and to maintain the established Religion. These are his Part of the original Contract between himself and the People; founded in the Nature of Society, and expressed in his Oath at the Coronation.

3.

The KING'S COUNCILS are, 1. The Parliament. 2. The Peers. 3. The Judges. 4. The privy Council.

4.

The KING'S royal FAMILY are, 1. The QUEEN, either regnant, consort, or dowager. 2. The Prince and Princess of WALES, and the Princess royal. 3. The other Princes of the Blood.

C H A P. VIII.

Of the KING'S PREROGATIVE.

1.

PRREROGATIVE is that special Power and Pre-eminence, which the KING hath above other Persons, and out of the ordinary Course of Law, in right of his regal Dignity.

2.

Such PREROGATIVES are either DIRECT, or INCIDENTAL. The INCIDENTAL, arising out of other Matters, are considered as they arise: We now treat only of the DIRECT.

3.

In PREROGATIVE consists the executive Power of Government.

4.

In FOREIGN Concerns; the KING, as the Representative of the Nation, has the Right or PREROGATIVE, 1. Of sending and receiving Embassadors. 2. Of making Treaties. 3. Of proclaiming War or Peace. 4. Of issuing Reprisals. 5. Of granting Safe-Conducts.

5.

In DOMESTIC Affairs; the KING is considered as the General of the Kingdom, and may raise Fleets and Armies, build Forts, and confine his Subjects within the Realm, or recall them from foreign Parts.

6. The

6.

The KING is also the Fountain of Justice, and general Conservator of the Peace; and therefore may erect Courts, prosecute Offenders, pardon Crimes, and issue Proclamations.

7.

He is likewise the Fountain of Honour, of Office, and of Privilege.

8.

He is also the Arbiter of DOMESTIC Commerce; (not of FOREIGN, which is regulated by the Law of Merchants;) and is therefore entitled to the Erection of public Marts, the Regulation of Weights and Measures, and the Coinage or Legitimation of Money.

9.

The KING is, lastly, the supreme Head of the Church; and, as such, regulates Synods, nominates Bishops, and receives Appeals in all ecclesiastical Causes.

C H A P. IX.

Of the KING'S ORDINARY REVENUE.

i.

THE KING'S REVENUE is either ORDINARY OF EXTRAORDINARY. And the ORDINARY is, 1. ECCLESIASTICAL. 2. TEMPORAL.

2.

The KING'S ECCLESIASTICAL Revenue consists in, 1. The Custody of the Temporalties of vacant Bishopricks. 2. Corodies and Pensions. 3. Extra-parochial Tithes. 4. The first Fruits and Tenths of Benefices.

3.

The KING'S ordinary TEMPORAL Revenue consists in, 1. The demesne Lands of the Crown. 2. The hereditary Excise; being Part of the Consideration for the Purchase of his feudal Profits, and the Prerogatives of Purveyance and Pre-emption. 3. An annual Sum issuing from the Duty on Wine Licences; being the Residue of the same Consideration. 4. His Forests. 5. His Courts of Justice. 6. Royal Fish. 7. Wrecks, and Things jetsam, flotsam, and ligan. 8. Royal Mines. 9. Treasure trove. 10. Waifs. 11. Estrays. 12. Forfeitures for Offences, and Deodands. 13. Escheats of Lands. 14. The Custody of Ideots and Lunatics.

C H A P.

CHAP. X.

Of the KING'S EXTRAORDINARY REVENUE.

I.

THE KING'S EXTRAORDINARY REVENUE consists in Aids, Subsidies, and Supplies, granted him by the Commons in Parliament.

2.

Heretofore these were usually raised by Grants of the (nominal) TENTH or FIFTEENTH Part of the Moveables in every Township; or by SUBSIDIES assessed upon Individuals, with respect to their Lands and Goods.

3.

A new System of Taxation took place soon after the Revolution: Our modern Taxes are therefore, 1. ANNUAL. 2. PERPETUAL.

4.

The ANNUAL Taxes are, 1. The Land-Tax, or the antient Subsidy raised upon a new Assessment. 2. The Malt Tax, being an annual Excise on Malt; Mum, Cyder, and Perry.

5.

The PERPETUAL Taxes are, 1. The Customs, or Tonnage and Poundage of all Merchandize exported or imported. 2. The Excise Duty, or inland Imposition, on a great Variety of Commodities. 3. The Salt Duty, or Excise on Salt. 4. The Post Office, or Duty for the Carriage of Letters.

5. The Stamp Duty on Paper, Parchment, &c.
 6. The Duty on Houses and Windows. 7. The
 Duty on Licences for hackney Coaches and Chairs,
 8. The Duty on Offices and Pensions.

6.

Part of this Revenue is applied to pay the Interest of the national Debt, till the Principal is discharged by Parliament,

7.

The Produce of these several Taxes were originally separate and SPECIFIC FUNDS, to answer SPECIFIC LOANS upon their respective Credits; but are now consolidated by Parliament into three principal Funds, the AGGREGATE, GENERAL, and SOUTH-SEA FUNDS, to answer ALL the Debts of the Nation: the public Faith being also superadded, to supply Deficiencies, and strengthen the Security of the Whole,

8.

The Surplusses of these Funds, after paying the Interest of the national Debt, are carried together, and denominated the SINKING Fund: Which, unless otherwise appropriated by Parliament, is annually to be applied towards paying off some Part of the Principal.

9.

But, previous to this, the SINKING Fund is charged to make up the Deficiencies, if any, in the CIVIL LIST; which is the immediate proper Revenue of the Crown, settled by Parliament on the King at his Accession, for defraying the Charges of civil Government.

C H A P.

C H A P. XI,

Of SUBORDINATE *Magistrates.*

1.

SUBORDINATE Magistrates, of the most general Use and Authority, are, 1. SHERIFFS. 2. CORONERS. 3. JUSTICES of the PEACE. 4. CONSTABLES. 5. SURVEYORS of the HIGHWAYS. 6. OVERSEERS of the POOR.

2.

The SHERIFF is the Keeper of each County, annually nominated in due Form by the King; and is (within his County) a Judge, a Conservator of the Peace, a ministerial Officer, and the King's Bailiff.

3.

CORONERS are permanent Officers of the Crown in each County, elected by the Freeholders; whose Office it is to make Enquiry concerning the Death of the King's Subjects, and certain Revenues of the Crown; and also, in particular Cases, to supply the Office of Sheriff.

4.

JUSTICES of the PEACE are Magistrates in each County, statutely qualified, and commissioned by the King's Majesty; with Authority to conserve the Peace; to hear and determine Felonies, and other Misdemeanors; and to do many other Acts, committed to their Charge by particular Statutes.

5. CON-

5.

CONSTABLES are Officers of Hundreds and Townships, appointed at the Leet, and empowered to preserve the Peace, to keep Watch and Ward, and to apprehend Offenders.

6.

SURVEYORS of the HIGHWAYS are Officers appointed annually in every Parish; to remove Annoyances in, and to direct the Reparation of, the public Roads.

7.

OVERSEERS of the POOR are Officers appointed annually in every Parish; to relieve such impotent, and employ such sturdy Poor, as are SETTLED in each Parish, — by Birth; — by Parentage; — by Marriage; — or by forty Days Residence, accompanied with, 1. Notice. 2. Renting a Tenement of ten Pounds annual Value. 3. Paying their assessed Taxations. 4. Serving an annual Office. 5. Hiring and Service for a Year. 6. Apprenticeship. 7. Having a sufficient Estate in the Parish.

C H A P. XII.

*Of the PEOPLE, whether ALIENS, or NATIVES;
and, among the latter, first of the CLERGY.*

I.

THE PEOPLE are either ALIENS, that is, born out of the Dominions, or Allegiance, of the Crown of GREAT BRITAIN; or NATIVES, that is, born within it.

2.

Allegiance is the Duty of all Subjects; being the reciprocal Tie of the People to the Prince, in return for the Protection he affords them; and, in NATIVES, this Duty of Allegiance is natural and perpetual; in ALIENS, is local and temporary only.

3.

The Rights of NATIVES are also natural and perpetual; those of ALIENS local and temporary only; unless they be made Denizens by the King, or naturalized by Parliament.

4.

NATIVES are also either CLERGY, that is, all Persons in holy Orders, or in ecclesiastical Offices; or LAITY, which comprehends the rest of the Nation.

5.

The CLERICAL Part of the Nation, thus defined, are, 1. Archbishops and Bishops. 2. Deans and Chapters. 3. Archdeacons. 4. Rural Deans. 5. Parsons,