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.

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 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: it

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 aca-"demies to teach the qualities of riding, dancing, and fencing, "at thoſe hours when more ſerious exerciſes ſhould be inter-"mitted."

[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 [c] perfect branch of ethics.

[c] Τελειοτατη μαλιστα αρετη, ὁτι της τελειας αρετης χρησις εστι. Ethic. ad Nicomach. l 5. c. 3.

FROM

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 [f]," 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; from their alacrity and unexampled diſpatch in carrying it into execution; 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. We have ſeen an univerſal emulation, who beſt ſhould underſtand, or moſt faithfully purſue, the deſigns

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

of

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 [g], or execute thoſe dictated by wiſer heads, for improving it's method, 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 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 enter-

[g] See lord BACON's propoſals and offer of a digeſt.

tain

tain 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 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 embaraſs a beginner. In this ſituation he is expected to ſequeſter himſelf from the world, and

by

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 [h], 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 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

[h] 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 capeſſendi gratia;* "*cujus cum veſtibulum ſalutaſſem, reperiſſemque linguam peregri-* "*nam, dialectum barbaram, methodum inconcinnam, molem non* "*ingentem ſolum ſed perpetuis humeris ſuſtinendam, excidit mihi* "*(fatcor) animus, &c.*"

place

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 ſpight 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 biaſſed 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 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 [i], 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* [k] 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.

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.

[i] See biſhop KENNET's life of Somner. p. 67.

[k] Ff. 40. 9. 12.

THE

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 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 laws 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 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 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

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 that 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 [1]) 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

[1] See LOWTH's Oratio Crewiana, p. 365.

with

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, tho' 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, 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 ori-"ginals and as it were the elements of the law." For if, as Juſtinian [m] 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 ori-

[m] Inſt. I. 1. 2.

ginals

ginals 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 Papinian, 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 [n] 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 adminiſtring a moſt uſeful and rational entertainment to ſtudents of all ranks and profeſſions; and yet it muſt be

[n] Of Parliaments, 57.

con-

confeſſed that the ſtudy of the laws is not merely a *matter of* amuſement: for as a very judicious writer [o] 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, 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 ſubtile 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 [p], when firſt his royal pupil determines to

[o] Dr TAYLOR's preface to Elem. of civil law.

[p] *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

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 denominated a lawyer, if under the "inſtruction of a maſter he traces up the prin-"ciples 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 coun-"try, if he will but apply his mind in good "earneſt to receive and apprehend them. For, "though ſuch knowlege as is neceſſary for a "judge is hardly to be acquired by the lucu-"brations 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 neglect-"ing his other improvements."

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 *principi congruam in anno uno ſufficienter nanciſceris; nec interim militarem diſciplinam, ad quam tam ardenter anhelas, negliges; ſed ea, recreationis loco, etiam anno illo tu ad libitum perfrueris.* c. 8.

only

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 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 knowlege, 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.

AN

ANALYSIS

OF THE

LAWS OF ENGLAND.

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    3. Prosecution; by
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AN

ANALYSIS

OF THE

LAWS OF ENGLAND.

BOOK THE FIRST.

CHAPTER I.

Of the Nature of LAWS *in general.*

1.

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

2.

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

3.

The DIVINE, or REVEALED, Law (considered as a Rule of Action) is also the Law of Nature, imparted by God himself.

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 its Univerſality) is deficient.

CHAP. 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, 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.

CHAP.

CHAP. 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 Community 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, ECCLESIASTICALLY, into Provinces, Dioceſes, Archdeaconries, rurul 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.

CHAP. 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.

CHAP.

CHAP. V.

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

1.

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 ſate for the ſpace of ſeven Years.

CHAP.

CHAP. VI.

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

1.

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

CHAP.

CHAP. VII.

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

1.

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.

CHAP. VIII.

Of the KING's PREROGATIVE.

1.

PREROGATIVE 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.

CHAP.

CHAP. IX.

Of the KING's ORDINARY REVENUE.

1.

THE KING's REVENUE is either ORDINARY or 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 feodal 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.

CHAP. X.

Of the KING'S EXTRAORDINARY REVENUE.

1.

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 and 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.

CHAP.

CHAP. 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, ſtatutably qualified, and commiſſioned by the King's Majeſty; with Authority to conſerve the Peace; to hear and determine Felonies, and other Miſdemeſnors; and to do many other Acts, committed to their Charge by particular Statutes.

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.

CHAP.

CHAP. XII.

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

1.

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,

5. Parſons, and Vicars; to whom there are generally requiſite, holy Orders, Preſentation, Inſtitution and Induction. 6. Curates. To which may be added, 7. Churchwardens. 8. Pariſh Clerks and Sextons.

CHAP. XIII.

Of the LAITY.

1.

THE LAITY are diviſible into three States; CIVIL, MILITARY, and MARITIME.

2.

The CIVIL State (which includes all the Nation, except the Clergy, the Army, and the Navy; and many Individuals among them alſo;) may be divided into the NOBILITY, and the COMMONALTY.

3.

The NOBILITY are Dukes, Marqueſſes, Earls, Viſcounts, and Barons. Theſe had antiently Duties annexed to their reſpective Honours: They are created either by Writ, that is, by Summons to Parliament; or by the King's Letters patent, that is, by royal Grant: And they enjoy many Privileges, excluſive of their ſenatorial Capacity.

4.

The COMMONALTY conſiſt of Knights of the Garter, Knights Bannerets, Baronets, Knights of the

the Bath, Knights Bachelors, Eſquires, Gentlemen, Yeomen, Tradeſmen, Artificers, and Labourers.

5.

The MILITARY State, by the ſtanding conſtitutional Law, conſiſts of the Militia of each County, raiſed from among the People by Lot, officered by the principal Landholders, and commanded by the Lord Lieutenant.

6.

The more diſciplined occaſional Troops of the Kingdom are kept on foot only from Year to Year, by Parliament; and, during that Period, are governed by martial Law, or arbitrary Articles of War, formed at the Pleaſure of the Crown.

7.

The MARITIME State conſiſts of the Officers and Mariners of the BRITISH Navy; who are governed by expreſs and permanent Laws, or the Articles of the Navy, eſtabliſhed by Act of Parliament.

CHAP.

CHAP. XIV.

Of the PRIVATE RELATIONS *of* MASTER *and* SERVANT, *and of* HUSBAND *and* WIFE.

1.

THE PRIVATE, oeconomical, RELATIONS of Perſons are thoſe of, 1. MASTER and SERVANT. 2. HUSBAND and WIFE. 3. PARENT and CHILD. 4. GUARDIAN and WARD.

2.

The firſt Relation may ſubſiſt between a MASTER and four Species of SERVANTS; (for Slavery is unknown to our Laws:) viz. 1. Menial Servants; who are HIRED. 2. Apprentices; who are BOUND by Indentures. 3. Labourers; who are caſually EMPLOYED. 4. Stewards, Bailiffs, and Factors; who are rather in a MINISTERIAL State.

3.

From this Relation reſult divers Powers to the Maſter, and Emoluments to the Servant.

4.

The Maſter hath a Property in the Service of his Servant; and muſt be anſwerable for ſuch Acts as the Servant does by his expreſs, or implied, Command.

5.

The ſecond private Relation is that of MARRIAGE; which includes the reciprocal Rights and Duties of HUSBAND and WIFE.

6. MAR-

6.

MARRIAGE is duly contracted between Perſons, 1. Conſenting: 2. Free from canonical Impediments, which make it VOIDABLE: 3. Free alſo from the civil Impediments, — of prior Marriage; — of Want of Age; — of Non-Conſent of Parents, &c, where requiſite; — and of Want of Reaſon; either of which make it totally VOID. And it muſt be celebrated by a Clergyman, in due Form and Place.

7.

Marriage is diſſolved, 1. By Death. 2. By Divorce in the ſpiritual Court; not *a Menſa & Toro* only, but *a Vinculo Matrimonii*, for canonical Cauſe exiſting previous to the Contract. 3. By Act of Parliament; as, for Adultery.

8.

By Marriage the Huſband and Wife become one Perſon in Law; which Unity is the principal Foundation of their reſpective Rights, Duties, and Diſabilities.

CHAP. XV.

Of the PRIVATE RELATIONS *of* PARENT *and* CHILD, *and of* GUARDIAN *and* WARD.

1.

THE third, and moſt univerſal, private Relation is that of PARENT and CHILD.

2.

CHILDREN are, 1. LEGITIMATE; being thoſe who are born in lawful Wedlock, or within a competent time after. 2. BASTARDS, being thoſe who are not ſo.

3.

The Duties of Parents to LEGITIMATE Children are, 1. Maintenance. 2. Protection. 3. Education.

4.

The Power of Parents conſiſts principally in Correction, and Conſent to Marriage. Both may after Death be delegated by Will to a Guardian; and the former alſo, living the Parent, to a Tutor or Maſter.

5.

The Duties of LEGITIMATE Children to Parents are Obedience, Protection, and Maintenance.

6.

The Duty of Parents to BASTARDS is only that of Maintenance.

7. The

7.

The Rights of a BASTARD are ſuch only as he can acquire; for he is incapable of inheriting any thing.

8.

The fourth private Relation is that of GUARDIAN and WARD, which is plainly derived from the laſt; theſe being, during the Continuance of their Relation, reciprocally ſubject to the ſame Rights and Duties.

9.

GUARDIANS are of divers Sorts. 1. Guardians by Nature, or the Parents. 2. Guardians for Nurture, aſſigned by the eccleſiaſtical Courts. 3. Guardians *in* Socage, aſſigned by the common Law. 4. Guardians by Statute, aſſigned by the Father's Will. All ſubject to the Superintendance of the Court of Chancery.

10.

FULL AGE in Male or Female for all Purpoſes is the Age of twenty one Years; (different Ages being allowed for different Purpoſes;) till which Age the Perſon is an INFANT.

11.

An INFANT, in reſpect of his tender Years, hath various Privileges, and various Diſabilities in Law: Chiefly with regard to Suits, Crimes, Eſtates, and Contracts.

CHAP. XVI.

Of Bodies politic, or CORPORATIONS.

1.

BODIES politic, or CORPORATIONS, which are ARTIFICIAL Perſons, are eſtabliſhed for preſerving in perpetual Succeſſion certain Rights, which, being conferred on NATURAL Perſons only, would fail in Proceſs of Time.

2.

Corporations are, 1. AGGREGATE, conſiſting of many Members. 2. SOLE, conſiſting of one Perſon only.

3.

Corporations are alſo either SPIRITUAL, erected to perpetuate the Rights of the Church; or LAY. And the LAY are, 1. CIVIL; erected for many temporal Purpoſes. 2. ELEEMOSYNARY; erected to perpetuate the Charity of the Founder.

4.

Corporations can only be erected, and named, by virtue of the King's royal Charter.

5.

The Powers incident to all Corporations are, 1. To maintain perpetual Succeſſion. 2. To act in their corporate Capacity like an Individual. 3. To hold Lands, ſubject to the Statutes of Mortmain. 4. To have a common Seal. 5. To make By-Laws.

Which