

J. Hawley
1791

AN

INTRODUCTORY
LECTURE

TO A

COURSE OF LAW LECTURES.

BY JAMES WILSON, L.L.D.

TO WHICH IS ADDED,
A PLAN OF THE LECTURES.

PHILADELPHIA:
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M,DCC,XCI.

TO THE
PRESIDENT OF THE UNITED STATES,
AND TO
MRS. *W A S H I N G T O N*.

SIR & MADAM,

INSTEAD OF YOUR PRAISE, I MEAN TO PUBLISH MY OWN BY THIS DEDICATION.

MALICE ITSELF, WILL NOT DENY ME THE MERIT OF PROPRIETY IN ADDRESSING IT.

I HAVE THE HONOUR TO BE,

WITH THE HIGHEST SENTIMENTS OF

CONSIDERATION AND REGARD,

SIR AND MADAM,

YOUR MOST OBEDIENT, AND

VERY HUMBLE SERVANT,

JAMES WILSON.

INTRODUCTORY LECTURE, &c.

LADIES and GENTLEMEN,

THOUGH I am not unaccustomed to speak in public, yet, on this occasion, I rise with much diffidence to address you. The Character, in which I appear, is both important and new. Anxiety and self-distrust are natural on my *first* appearance. These feelings are greatly heightened by another consideration, which operates with peculiar Force. I never before had the honour of addressing a *fair* Audience. Anxiety and self-distrust, in an uncommon degree, are natural, when, for the first time, I address a
A fair

fair audience so *brilliant* as this is. There is one encouraging Reflection, however, which greatly supports me. The *whole* of my *very respectable* Audience is as much distinguished by its *politeness*, as a *Part* of it is distinguished by its *brilliance*. From that Politeness, I shall receive—what I feel I need—an uncommon degree of generous Indulgence.

IT is the Remark of an admired Historian, that the high Character, which the GRECIAN Commonwealths long possessed among Nations, should not be ascribed *solely* to their Excellence in Science and in Government. With regard to these, other Nations, he thinks, and particularly that, of which he was writing the history, were entitled to a Reputation, not less exalted and illustrious. But the Opinion, he says, of the Superior Endowments and Atchievements of the GRECIANS has arisen, in a considerable degree, from their peculiar Felicity in having.
their

their Virtues transmitted to Posterity by Writers, who excelled those of every other Country in Abilities and Elegance.

ALEXANDER, when Master of the World, envied the good Fortune of ACHILLES, who had a HOMER to celebrate his deeds.

THE Observation, which was applied to ROME by SALLUST, and the Force of which appears so strongly from the Feelings of ALEXANDER, permit me to apply, for I *can* apply it, with equal Propriety, to the STATES of AMERICA.

THEY have not, it is true, been long or much known upon the great *Theatre* of Nations: Their immature Age has not hitherto furnished them with many Occasions of extending their Renown to the distant Quarters of the Globe. But, in real Worth and Excellence, I boldly venture to compare them with the most illustrious

trious Commonwealths, which adorn the Records of Fame. When some future XENOPHON or THUCYDIDES shall arise to do Justice to their Virtues and their Actions; the Glory of AMERICA will *reveal*—it will *outshine* the Glory of GREECE.

WERE I called upon for my Reasons why I deem so highly of the AMERICAN Character, I would assign them in a very few Words—*that Character has been eminently distinguished by the LOVE OF LIBERTY and the LOVE OF LAW.*

I rejoice in my appointment to *this Chair*, because it gives me the best opportunities to discover, to study, to develop and to communicate many striking Instances, hitherto little known, on which this distinguished Character is founded.

IN *free* Countries—in free Countries, *especially*, that boast the Blessing of a
COMMON

COMMON LAW, springing warm and spontaneous from the Manners of the people—LAW should be *studied* and *taught* as an HISTORICAL SCIENCE.

THE eloquent ROUSSEAU complains that the Origin of Nations is much concealed by the Darknes or the Distance of Antiquity.

IN many parts of the World, the *Fact* may be as he represents it; and yet his *Complaint* may be without Foundation: For, in many Parts of the World, the Origin of Nations ought to be buried in Oblivion. To succeeding Ages the Knowledge of it would convey neither Pleasure nor Instruction,

WITH REGARD to the STATES of America, I am happy in saying, that a Complaint concerning the Uncertainty of their first Settlements cannot be made with Propriety or Truth; though I must add,

add, that, if it could be made with Propriety or Truth, it would be a subject of the deepest Regret.

IF the just and genuine Principles of Society can diffuse a Lustre round the Establishment of Nations ; that of the STATES OF AMERICA is *indeed illustrious*. *Pierce oppression*, rattling in her left Hand, the Chains of *Tyranny* ; and brandishing, in her right Hand, the Torch of *Persecution*, drove our Predecessors from the Coasts of EUROPE : LIBERTY, benevolent and serene, pointing to a *Cornucopia* on one Side, and to a *Branch of Olive* on the other, invited and conducted them to the AMERICAN Shores.

IN discharging the duties of this Office, I shall have the pleasure of presenting to my hearers what, as to the Nations in the *Trans-Atlantic* World, must be searched for in vain—an original Compact of a Society, on its first arrival in this Section of the Globe. How the Lawyers and
 Statesmen,

Statesmen, and Antiquarians, and Philosophers of EUROPE would exult on discovering a similar monument of the ATHENIAN Commonwealth! And yet, perhaps, the historical monuments of the STATES of AMERICA are not, *intrinsically*, less important or less worthy of attention, than the historical monuments of the STATES of GREECE. The latter, indeed, are gilded with the gay decorations of *Fable* and *Mythology*; but the former are cloathed in the neater and more simple Garb of FREEDOM and TRUTH.

THE doctrine of *toleration* in Matters of Religion, reasonable though it certainly is, has not been long known or acknowledged. For its Reception and Establishment, where it has been received and established, the World has been thought to owe much to the inestimable Writings of the celebrated LOCKE. To the inestimable Writings of that justly celebrated Man let the Tribute of Applause be

be plenteously paid : But while immortal Honours are bestowed on the Name and Character of LOCKE ; why should an ungraceous Silence be observed with Regard to the Name and Character of CALVERT ?

LET it be known, that, before the *Doctrine* of Toleration was *published* in EUROPE, the *Practice* of it was *established* in AMERICA. A Law in Favour of religious Freedom was passed in MARYLAND, as early as the Year one thousand six hundred and forty-nine.

WHEN my Lord BALTIMORE was afterwards urged—not by the Spirit of Freedom—to consent that this Law should be repealed ; with the enlightened Principles of a Man and a Christian, he had the Fortitude to declare, that he never would assent to the Repeal of a Law, which protected the natural Rights of Men, by ensuring to every one Freedom of Action and Thought.

INDEED

INDEED the Character of this excellent Man has been too little known. He was truly the FATHER OF HIS COUNTRY. To the Legislature of MARYLAND he often recommended a Maxim, which deserves to be written in *Letters of Gold*:
 “ By Concord a small Colony may grow
 “ into a great and renowned Nation ; but,
 “ by Dissentions, Mighty and Glorious
 “ Kingdoms have declined and fallen into
 “ Nothing.”

SIMILAR to that of CALVERT has been the Fate of many other valuable Characters in AMERICA. *They have been too little known.* To those around them, their modest Merits have been too *familiar*, perhaps too *uniform* to attract particular and distinguished Attention : By those at a distance, the mild and peaceful Voice of their Virtue has not been heard. But to their Memories, Justice should be done, as far as it can be done, by a just and grateful Country.

IN the EUROPEAN TEMPLE of FAME, WILLIAM PENN is placed by the Side of LYCURGUS. Will America refuse a *Temple* to her PATRIOTS and her HEROES? No. She will not. The glorious *Dome* already rises. Its Architecture is of the neatest and chastest Order: Its Dimensions are spacious: Its Proportions are elegant and correct. In its Front a Number of *Niches* are formed. In some of them *Statues* are placed. On the left Hand of the *Portal* are the Names and Figures of WARREN, MONTGOMERY, MERCER. On the right Hand are the Names and Figures of CALVERT, PENN, FRANKLIN. In the Middle is a *Niche* of larger size, and decorated with peculiar Ornaments. On the left Side of it are sculptured the Trophies of War: On the right, the more precious Emblems of Peace. Above it is represented the RISING GLORY of the UNITED STATES. It is without a *Statue* and without a *Name*. Beneath it, in Letters very legible, are *these* Words—"FOR
THE

THE MOST WORTHY." By the enraptured Voice of grateful AMERICA—with the consenting Plaudits of an admiring World, the designation is *unanimously* made. *Late—very late—*may the *Niche* be filled.

BUT while we perform the pleasing Duties of Gratitude, let not other Duties be disregarded. Illustrious Examples are displayed to our View, that we may *imitate* as well as *admire*. Before we can be distinguished by the same *Honours*, we must be distinguished by the same *Virtues*.

WHAT are those Virtues? They are chiefly the same Virtues, which we have already seen to be *descriptive* of the AMERICAN Character—the Love of Liberty, and the Love of Law. But Law and Liberty cannot rationally become the Objects of our *Love*, unless they first become the Objects of our *Knowledge*. The same Course of Study, properly directed, will

will lead us to the Knowledge of *both*. Indeed, neither of them can be *known*, because neither of them can *exist* without the other. Without Liberty, Law loses its Nature and its Name, and becomes Oppression. Without Law, Liberty also loses its Nature and its Name, and becomes Licentiousness. In denominating, therefore, that Science, by which the Knowledge of *both* is acquired, it is unnecessary to preserve, in Terms, the Distinction between them. That Science may be named, as it has been named, the SCIENCE OF LAW.

THE Science of Law should, in some Measure, and in some Degree, be the Study of every free Citizen, and of every free Man. Every free Citizen and every free Man has Duties to perform and Rights to claim. Unless, in some Measure, and in some Degree, he knows those Duties and those Rights, he can never act a *just* and an *independent* Part.

HAPPILY,

HAPPILY, the general and most important Principles of Law are not removed to a very great Distance from common Apprehension. It has been said of *Religion*, that, though the *Elephant* may *swim*, yet the *Lamb* may *wade* in it. Concerning *Law*, the same observation may be made.

THE *Home-Navigation*, carried on along the Shores, is more necessary and more useful too, than that, which is pursued through the deep and expanded Ocean. A Man may be a most excellent *Coaster*, though he possess not the *nautical Accomplishments* and Experience of a *COOK*.

As a *Science*, the Law is far from being so disagreeable or so perplexed a Study as it is frequently supposed to be. Some, indeed, involve themselves in a *thick Mist* of Terms of Art ; and use a Language unknown to all, but those of the Profession.

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By *such*, the Knowledge of the Law, like the Mysteries of some ancient Divinity, is confined to its *initiated* Votaries; as if all others were in Duty bound, blindly and implicitly to obey. But this ought not to be the Case. The Knowledge of those rational Principles on which the Law is founded, ought, especially in a free Government, to be diffused over the whole Community.

IN a free Country, every Citizen forms a Part of the SOVEREIGN Power: He possesses a Vote, or takes a still more active Part in the Business of the Commonwealth. The *Right* and the *Duty* of giving that *Vote*; the *Right* and the *Duty* of taking that *Share* are necessarily attended with the *Duty* of making that *Business* the Object of his Study and Enquiry.

IN the UNITED STATES, every Citizen is frequently called upon to act in this
great

great *public Character*. He *elects* the *legislative*, and he takes a *personal Share* in the *executive* and *judicial* Departments of the Nation. It is true, that a Man, who wishes to be right, will, with the official Assistance afforded him, be seldom under the Necessity of being wrong: But it is equally true, *and it ought not to be concealed*, that the public Duties and the public Rights of every Citizen of the UNITED STATES loudly demand from him all the *Time*, which he can *prudently spare*, and all the *means* which he can *prudently employ*, in order to learn that Part, which it is incumbent on him to act.

ON the public Mind, one great Truth can never be too deeply impressed—that the *Weight* of the *Government* of the UNITED STATES, and of each *State* composing the Union, rests on the Shoulders of the People.

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I express not this Sentiment *now*, as I have *never* expressed it *heretofore*, with a View to *flatter* ; I express it *now*, as I have *always* expressed it *heretofore*, with a *far other* and *higher* Aim—with an Aim to excite the People to acquire, by vigorous and manly Exercise, a Degree of Strength sufficient to support the weighty Burthen, which is laid upon them—with an Aim to convince them, that their *Duties* rise in strict Proportion to their *Rights* ; and that few are able to *trace* or to *estimate* the great Danger, in a free Government, when the Rights of the People are *unexercised*, and the still greater Danger, when the Rights of the People are *ill-exercised*.

AT a general Election, too few attend to the important Consequences of *voting* or *not* voting ; and to the Consequences, still more important, of voting *right* or voting *wrong*.

THE Rights and the Duties of *Jurors* in the UNITED STATES, are great and extensive. No Punishment can be inflicted without the Intervention of one—in much the greater Number of Cases—without the Intervention of more than one Jury: Is it not of immense Consequence to the Public, that those, who have committed Crimes, should not escape with Impunity? It is not of immense Consequence to Individuals, that all, except those, who have committed Crimes, should be secure from the Punishment denounced against their Commission? Is it not, then, of immense Consequence to both, that Jurors should possess the Spirit of just Discernment to discriminate between the *innocent* and the *guilty*? This Spirit of just Discernment requires Knowledge of, at least, the *general Principles* of the *Law*, as well as Knowledge of the *minute Particulars* concerning the *Facts*.

IT is true, that, in Matters of Law, the Jurors are entitled to the Assistance of the Judges ; but it is also true, that, after they receive it, they have the Right of judging for themselves : And is there not to this Right the great *corresponding* Duty of judging *properly* ?

SURELY, therefore, those who discharge the important and, let me add, the dignified Functions of *Jurors*, should acquire, as far as they possibly can acquire, a Knowledge of the Laws of their Country : For, let me add further, the *Dignity*, though not the *Importance* of their Functions, will greatly depend on the Abilities with which they discharge them.

BUT in the Administration of Justice—that Part of Government, which comes Home most intimately to the Business and the Bosoms of Men—there are *Judges* as well as *Jurors* ; those, whose peculiar Province it is to answer Questions of *Law*,

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as well as those, whose peculiar Province it is to answer Questions of *Fact*.

IN many Courts—in many respectable Courts within the UNITED STATES, the Judges are not, and, for a long Time, cannot be Gentlemen of *professional* Acquirements. They may, however, fill their Offices usefully and honourably, the Want of professional Acquirements notwithstanding. But can they do this, without a reasonable Degree of Acquaintance with the Law?

WE have already seen, that, in Questions of Law, the Jurors are entitled to the Assistance of the Judges: But can the Judges give Assistance without knowing what Answers to make to the Questions which the Jury may propose? Can those direct others, who themselves know not the Road?

UNQUESTIONABLY, then, those who fill, and those who expect to fill the Offices

ces of Judges in Courts, not, indeed, *Supreme*, but rising in Importance and in Dignity above the Appellation of *Inferior*, ought to make the strongest Efforts in order to obtain a respectable Degree of Knowledge in the Law.

LET me ascend to a Station more elevated still. In the UNITED STATES, the Doors of public Honours and public Offices are, on the broad Principles of equal Liberty, thrown open to all. A laudable Emulation, an Emulation that ought to be encouraged in a free Government, may prompt a Man to *legislate* as well as to *decide* for his fellow Citizens—to legislate, not merely for a single State, but for the most AUGUST UNION, that has yet been formed on the Face of the Globe.

SHOULD not he, who is to supply the *Deficiencies* of the *existing* Law, know when the *existing* Law is *defective*? Should not he, who is to introduce *Alterations* in-
to

to the existing Law, know in what Instances the existing Law ought to be *altered*?

THE first and governing Maxim in the Interpretation of a Statute is, to discover the *Meaning* of *those*, who *made it*. The first Rule, subservient to the Principle of the governing *Maxim* is, to discover what the Law *was*, before the Statute was made. The Inference necessarily resulting from the joint operation of the Maxim and the Rule, is this, that, in explaining a Statute, the Judges ought to take it for granted, that those, who made it, KNEW THE ANTECEDENT LAW. This certainly implies, that a competent Knowledge of, at least the *general Principles* of Law, is of indispensable Necessity to those, *who undertake* the TRANSCENDENT OFFICE of LEGISLATION.

I say, a Knowledge of the GENERAL PRINCIPLES of Law: For though an accurate,

accurate, a minute and an extensive Knowledge of its *Practice* and *particular Rules* be highly *useful*; yet I cannot conceive it to be *absolutely requisite* to the able Discharge of a legislative Trust.

UPON this Distinction—and it is an important one—I cannot, perhaps, explain myself better, than by delivering the Sentiments, which were entertained, some Centuries ago, by a very learned and able Judge—I mean, the *Lord Chancellor FORTESCUE*.

IN his excellent Book, which he wrote in Praise of the Laws of ENGLAND, he uses a Number of Arguments with his *Pupil*, the *Prince* of WALES, to excite him to the Study of the Law. Of these Arguments the Prince *feels* and *acknowledges* the full Force. “ But, says he, there is one thing, which agitates my Mind in such a Manner, that, like a vessel tossed in the tumultuous Ocean, I know
not

not how to direct my Course : It is, that when I recollect the Number of Years, which the Students of the Law employ, before they acquire a sufficient Degree of Knowledge, I am apprehensive lest, in Studies of this Nature, I should consume the Whole of my Youth."

To relieve his Pupil from this Anxiety, the CHANCELLOR cites a Passage from the Writings of ARISTOTLE, to the following Purpose : " We are then supposed " to know a *Thing*, when we apprehend " its *Causes* and its *Principles*, as high " as its *original Elements*."

THIS Maxim the CHANCELLOR illustrates, by a Reference to several of the Sciences ; and then draws this general Conclusion. *Whoever knows the PRINCIPLES and ELEMENTS of any SCIENCE, KNOWS THE SCIENCE ITSELF—GENERALLY, at least, though not COMPLETELY.* This Conclusion he then applies to
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the Science of Law. “ In the same Manner, when you shall become acquainted with the *Principles* and the *Elements* of *Law*, you may be denominated a *Lawyer*. It will not be necessary for you, at a great Expence of your Time, to scrutinize curious and intricate Points of Discussion. I know the Quickness of your *Apprehension*, and the Strength of your *Genius*. Though the legal Knowledge accumulated in a Series of twenty Years is not more than sufficient to qualify one for being a Judge; yet in one Year, you will be able to acquire a Degree of it, sufficient for you; without, even in that Year, neglecting your other Studies and Improvements.”

THAT a LAW EDUCATION is necessary for Gentlemen intended for the PROFESSION OF THE LAW, it would be as ridiculous to *prove* as to *deny*. In all other Countries, *public Institutions* bear a standing Testimony to this Truth. Ought
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this to be the only Country without them ?
 JUSTINIAN, who did so much for the
 ROMAN LAW, was, as might have been
 expected, uncommonly attentive to form
 and establish a proper Plan for STUDY-
 ING it. All the modern Nations of
 EUROPE have admitted the Profession of
 their municipal Jurisprudence into their
 Universities and other Seminaries of libe-
 ral Education.

IN ENGLAND, numerous and ample
 Provisions have been made for this Pur-
 pose. For young Gentlemen there are
 eight Houses of CHANCERY, where they
 learn the first Elements of Law. For
 those more advanced in their Studies, there
 are four INNS OF COURT. “ All these
 together, says my *Lord COKE*, with con-
 scious professional Pride, compose the
 most illustrious University in the World,
 for the Profession of Law.” Here Lec-
 tures have been read, Exercises have been
 performed, and DEGREES in the COM-

MON LAW have been conferred, in the same Manner as Degrees in the civil and Canon Law in other Universities.

BESIDES all these, the VENERIAN PROFESSORSHIP of LAW has, not many Years ago, been established in the *University* of OXFORD. Of this Professorship, the celebrated SIR WILLIAM BLACKSTONE was the first, who filled the CHAIR.

A Question deeply interesting to the AMERICAN STATES now presents itself. Should the Elements of a *Law Education*, particularly as it respects PUBLIC LAW, be drawn entirely from *another Country*—Or should they be drawn, in Part, at least, from the *Constitutions and Governments and Laws* of the UNITED STATES, and of the several States composing the Union ?

THE Subject, to one standing where I stand, is not without its Delicacy : Let me, however, treat it with the decent
but

but firm Freedom, which befits an *Independent Citizen*, and a *Professor* in INDEPENDENT STATES.

SURELY I am justified in saying, that the Principles of the Constitutions and Governments and Laws of the UNITED STATES, and the REPUBLICS, of which they are formed, are materially DIFFERENT FROM the Principles of the Constitution and Government and Laws of ENGLAND; for that is the *only Country*, from the Principles of whose Constitution and Government and Laws, it will be contended, that the Elements of a Law Education ought to be drawn. I presume to go further: The Principles of our Constitutions and Governments and Laws are materially BETTER THAN the Principles of the Constitution and Government and Laws of ENGLAND.

PERMIT me to mention one great Principle, the *vital* Principle I may well call
call

call it, which diffuses Animation and Vigour through all the others. The Principle I mean is this, *that the SUPREME OR SOVEREIGN Power* of the Society resides in the Citizens at large; and that, therefore, they always *retain* the Right of *abolishing, altering or amending* their CONSTITUTION at whatever *Time*, and in whatever *Manner*, they shall deem it expedient.

BY SIR WILLIAM BLACKSTONE, from whose Commentaries, a Performance in many Respects highly valuable, the Elements of a *foreign* Law Education would probably be borrowed—By SIR WILLIAM BLACKSTONE, *this* great and fundamental Principle is treated as a political *Chimera*, existing only in the Minds of some *Theorists*; but, in *Practice*, inconsistent with the Dispensation of any Government upon Earth. Let us hear his own Words.

“ IT

‘ It must be owned that Mr. LOCKE and other *theoretical* Writers have held, that’ “ there remains still inherent in the “ People, a supreme Power to alter the “ Legislative, when they find the Legislative act contrary to the Trust re- “ posed in them ; for when such Trust “ is abused, it is thereby forfeited, and “ devolves to those, who gave it.” ‘ But however just this Conclusion may be in *Theory*, we cannot *admit* it, nor *argue* from it, under any Dispensation of Government, at present, *actually* existing. For this Devolution of Power to the People at large, includes a Dissolution of the whole Form of Government established by that People ; reduces all the Members to their original State of Equality ; and, by ANNIHILATING the *sovereign* Power, repeals all positive Laws whatsoever before enacted. No human Laws will therefore suppose a Case, which at once must destroy all Law, and compel Men to build afresh upon a new Foundation ;

nor

nor will they make Provision for so *desperate an Event*, as must render all legal Provisions ineffectual*.’

AND yet, even in ENGLAND, there have been Revolutions of Government : There has been one within very little more than a Century ago. The learned Author of the Commentaries admits the *Fact*; but denies it to be a Ground, on which any *constitutional Principle* can be established.

IF the same precise “Conjunction of Circumstances” should happen a second Time; the Revolution of one thousand six hundred and eighty-eight would form a *Precedent* : But were only *one* or *two* of the Circumstances, forming that Conjunction, to happen again; “the *Precedent* would *fail* us†.”

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* Comment. v. i. p. 161. 162.

† Comment. v. i. p. 245.

THE three Circumstances, which formed *that* Conjunction, were these : 1. An Endeavour to subvert the Constitution, by breaking the original Contract between the King and People. 2. Violation of the fundamental Laws. 3. Withdrawing out of the Kingdom.

Now, on this State of Things, let us make a Supposition—not a very foreign one—and see the Consequences, which would unquestionably follow from the Principles of SIR WILLIAM BLACKSTONE. Let us suppose, that, on some Occasion, a Prince should form a *Conjunction* of only *two* of the Circumstances ; for Instance, that he should only violate the fundamental Laws, and endeavour to subvert the Constitution : Let us suppose, that, instead of *completing* the Conjunction, by withdrawing out of his Government, he should only employ some forty or fifty thousand Troops to give full Efficacy to the two first Circumstances : Let us suppose

pose all this—and it is surely not unnatural to suppose, that a Prince who shall form the two first Parts of the Conjunction, will not, like JAMES *the Second*, run away from the Execution of them—Let us, I say, suppose all this ; and what, on the Principles of SIR WILLIAM BLACKSTONE, would be the undeniable Consequence ? In the Language of the Commentaries, “ our *Precedent* would FAIL us*.”

BUT we have *thought*, and we have *acted* upon Revolution PRINCIPLES, without offering them up as *Sacrifices* at the *Shrine of Revolution Precedents*.

WHY should we not *teach* our *Children* those Principles, upon which we *ourselves* have *thought* and *acted* ? Ought we to instil into their tender Minds a *Theory*, especially if *unfounded*, which is contradictory

* Comment. v. i. p. 245.

dictory to our own *Practice*, built on the most *solid Foundation*? Why should we reduce them to the cruel *Dilemma* of condemning either those *Principles*, which they have been taught to *believe*; or those *Persons*, whom they have been taught to *revere*?

IT is true, that the learned Author of the Commentaries concludes this very Passage, by telling us, that “there are inherent, though *latent* Powers of Society, which no Climate, no Time, no Constitution, no Contract can ever destroy or diminish.” But what does this prove? Not that Revolution Principles are, in *his* opinion, *recognized* by the ENGLISH Constitution; but that the ENGLISH Constitution, whether considered as a *Law*, or as a *Contract*, cannot *destroy* or *diminish* those Principles.

IT is the Opinion of *many*, that the Revolution of one thousand six hundred
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and eighty-eight did more than set a mere *Precedent*, even in ENGLAND. But be that as it may : A Revolution *Principle* certainly is, and certainly *should be* TAUGHT as a *Principle* of the Constitution of the UNITED STATES, and of every State in the Union.

THIS Revolution Principle—that, the sovereign Power residing in the *People*, *they* may change their Constitution and Government whenever they please—is not a Principle of *Discord*, *Rancour*, or *War* : It is a Principle of *Melioration*, *Contentment*, and *Peace*. It is a Principle not recommended merely by a *flattering Theory* : It is a Principle recommended by *happy Experience*. To the *Testimony* of PENNSYLVANIA—To the *Testimony* of the UNITED STATES I appeal for the *Truth* of what I say.

IN the Course of these Lectures, my Duty will oblige me to notice some other
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important Principles, very particularly his Definition and Explanation of Law itself, in which my Sentiments differ from those of the respectable Author of the Commentaries. It already appears, that, with Regard to the very first Principles of Government, we *set out from different Points of Departure.*

As I have mentioned SIR WILLIAM BLACKSTONE ; let me speak of him *explicitly* as it becomes me. I cannot consider him as a Zealous Friend of *Republicanism*. One of his Survivors or Successors in Office has characterised him by the Appellation of an *anti-republican Lawyer*. On the Subject of Government, I think I can plainly discover his Jealousies and his Attachments.

For his *Jealousies*, an easy and natural Account may be given. In ENGLAND, only one *Specimen* of a Commonwealth has been exhibited to public Examination ;
and

and that Specimen was, indeed, an *unfavourable* one. On Trial it was found to be unsound and unsatisfactory. It is not very surprising that an *English Lawyer*, with an Example so inauspicious before his Eyes, should feel a Degree of Aversion, *latent*, yet *strong*, to a *republican* Government.

AN Account, perhaps equally natural and easy, may be given for his *Attachments*. With all *reigning Families*, I believe, it is a settled Maxim, that every Revolution in Government is unjustifiable, except the SINGLE ONE, which conducted *them* to the Throne. The Maxims of the *Court* have always their *diffusive* Influence. That Influence, in favour of *one* Species of Government, might steal imperceptibly upon a Mind, already *jealous* of *another* Species, viewed as its *Rival*, and as its *Enemy*.

BUT, with all his Prejudices concerning *Government*, I have the Pleasure of
be-

beholding him, in one conspicuous *Aspect*, as a Friend to the *Rights of Men*. To those Rights, the Author of the beautiful and animated *Dissertations* concerning *Juries* could not be cold or insensible.

As *Author of the Commentaries*, he possessed *uncommon* Merit. His Manner is clear and methodical ; his Sentiments—I speak of them generally—are judicious and solid ; his Language is elegant and pure. In *public Law*, however, he should be consulted with a *cautious Prudence*. But, even in public Law, his Principles, when they are not proper *Objects of Imitation*, will furnish excellent *Materials of Contrast*. On every Account, therefore, he should be *read* and *studied*. He deserves to be *much admired* ; but he ought not to be *implicitly followed*.

THIS *last* admonitory Remark should not be confined to SIR WILLIAM BLACKSTONE : It ought to be extended to all
political

political writers—must I say?—almost without exception. This seems a *severe* Sentence : But, if it is just, it *must* be pronounced. The Cause of Liberty, the the Rights of Men require, that, in a Subject essential to that Cause and to those Rights, *Error* should be exposed, in order to be avoided.

THE Foundations of *political Truth* have been laid but lately : The genuine Science of Government, to no human Science inferior in Importance, is, indeed, but in its Infancy : And the Reason of this can be easily assigned. In the whole Annals of the *Trans-Atlantic* World, it will be difficult to point out a single Instance of its legitimate *Institution* : I will go further, and say, that, among all the political *Writers* of the *Trans-Atlantic* World, it will be difficult to point out a single Model of its *unbiassed Theory*.

THE celebrated GROTIUS introduces what he says concerning the interesting
Doc-

Doctrines of *Sovereignty*, with the following Information. “ Learned Men of *our* Age, each of them handling the Argument, rather according to the *present* Interest of the Affairs of his Country, than according to *Truth*, have greatly perplexed *that*, which, *of itself*, was not very clear*.” In this, the learned Men of every other Age have resembled those of the Age of *Grotius*.

INDEED it is astonishing in what intricate Mazes *Politicians* and *Philosophers* have bewildered themselves upon this Subject. Systems have been formed upon Systems, all *fleeting*, because all *unfounded*. *Sovereignty* has sometimes been viewed as a STAR, which eluded our Investigation by its *immeasurable* HEIGHT : Sometimes it has been considered as a SUN, which could not be distinctly seen by Reason of its *insufferable* SPLENDOR.

IN

* Gro. B. i. c. .3. f. 5.

IN EGYPT the NILE is an Object truly striking and grand. Its Waters, rising to a certain Height, and spreading to a certain Distance, are the Cause of *Fertility* and *Plenty* : Swelling higher, and extending further, they produce *Devastation* and *Famine*. This stupendous Stream, at some Times so *beneficial*, at other Times so *destructive*, has, at *all* Times, formed a Subject of *anxious* Enquiry. To trace its Source has been the unceasing Aim of the *mighty* and the *learned*. KINGS, attended with all the Instruments of *Strength* ; SAGES, furnished with all the Apparatus of *Philosophy*, have engaged, with Ardour, in the curious Search ; but their most *patient* and their most *powerful* Enterprises have been *equally* vain.

THE Source of the NILE continued still *unknown* ; and because it continued still *unknown* ; the Poets fondly fabled that it was to be found only in a *Superior Orb* ;

Orb ; and, of Course, it was worshipped as a *Divinity*.

WE are told, however, that, at last, the Source of the NILE has been discovered ; and that it consists of—what might have been supposed before the Discovery—a *Collection* of SPRINGS *small*, indeed, but *pure*.

THE Fate of SOVEREIGNTY has been similar to that of the NILE. Always *magnificent*, always *interesting* to Mankind, it has become alternately their *Blessing* and their *Curse*. Its Origin has often been attempted to be traced. The *Great* and the *Wise* have embarked in the Undertaking ; though seldom, it must be owned, with the Spirit of just Enquiry ; or in the Direction, which leads to important Discovery. The Source of Sovereignty was still concealed beyond some impenetrable Mystery ; and, because it was concealed, *Philosophers* and *Politicians*, in this Instance,

stance, *gravely taught* what, in the *other*, the Poets had *fondly fabled*, that it must be something *more* than *human*: It was impiously asserted to be *divine*.

LATELY, the Enquiry has been recommenced with a different Spirit, and in a new Direction; and although the Discovery of Nothing very *astonishing*, yet the Discovery of something very *useful* and *true* has been the Result. The *dread and redoubtable* SOVEREIGN, when traced to his ultimate and genuine Source, has been found, as he ought to have been found, in the *free and independent* MAN.

THIS *Truth*, so simple and natural, and yet so neglected or despised, may be appreciated as the *first* and *fundamental* Principle in the Science of Government.

BESIDES the Reasons, which I have already offered; others may be suggested, why the Elements of a Law Education
ought

ought to be drawn from our own Constitutions and Governments and Laws.

IN every Government, which is not altogether *despotic*, the Institution of Youth is of *some* public consequence. In a *republican* Government, it is of the *greatest*. Of no Class of Citizens can the Education be of more public Consequence, than that of those, who are destined to take an active Part in public Affairs. Those who have had the advantage of a Law Education, are very frequently destined to take this active Part. This Deduction clearly shews, that, in a free Government, the Principles of a *Law Education* are Matters of the greatest public Consequence.

OUGHT not *those* Principles to be congenial with the Principles of *Government*? By the Revolution in the UNITED STATES, a very great *Alteration*—a very great *Improvement*—as we have already
seen,

teen, has taken Place in *our* System of Government: Ought not a *proportioned* Alteration—ought not a *proportioned* Improvement to be introduced into *our* System of *Law Education*?

WE have passed the *Red Sea* in Safety: We have survived a tedious and dangerous Journey through the *Wilderness*: We are now in full and peaceable Possession of the *promised Land*: Must we, *after all*, return to the *Flesh-pots* of *Egypt*? Is there not Danger, that when one Nation *teaches*, it may, in some Instances, *give* the Law to another?

A Foundation of *human Happiness*, broader and deeper than any that has heretofore been laid, is now laid in the UNITED STATES: On that broad and deep Foundation, let it be our Pride, as it is our Duty, to build a Superstructure of adequate Extent and Magnificence.

BUT

BUT further ; many Parts of the *Laws* of ENGLAND can, *in their own Nature*, have neither *Force* nor *Application* here. Such are all those Parts, which are connected with *ecclesiastical Jurisdiction* and an *ecclesiastical Establishment*. Such are all those Parts, too, which relate to the *monarchical* and *aristocratic* Branches of the ENGLISH Constitution. Every one, who has perused the ponderous Volumes of the Law, knows how great a Proportion of them is filled with the numerous and extensive *Titles* relating to those different Subjects. Surely they need not enter into the *Elements* of a Law Education in the UNITED STATES.

I mean not, however, to exclude them from the subsequent Investigation of those, who shall aspire at the Character of accomplished Lawyers. I only mean, that they ought not to be put into the Hands of *Students*, as deserving the same Time and the same Attention with *other* Parts, which

which are to have a *practical* Influence upon their future Conduct in their Profession.

THE numerous Regulations, in ENGLAND, respecting the *Poor*; and the *more artificial* Refinements and Distinctions concerning *real Estates* must be known; but known as much in order to be *avoided* as to be *practised*. The Study of them, therefore, need not be so *minute* here as in ENGLAND.

CONCERNING many *other* Titles of the ENGLISH LAW, similar Observations might be made. The *Force* and the *Extent* of *each* will encrease *Day after Day* and *Year after Year*.

ALL combine in shewing, that the FOUNDATION, *at least*, of a *separate*, an *unbiassed* and an *independent* LAW EDUCATION should be *laid* in the UNITED STATES.

DEEPLY

DEEPLY impressed with the Importance of this Truth, I have undertaken the *difficult, the laborious, and the delicate Task* of contributing to lay *that Foundation*. I feel most sensibly the Weight of the Duty, which I have engaged to perform. I will not promise to perform it *successfully*—as well as it *might* be performed. But I will promise to perform it *faithfully*—as well as I *can* perform it. I feel its *full Importance*.

It may be asked—I am told it has been asked—is it proper that a *Judge* of the *Supreme Court* of the UNITED STATES should deliver *Lectures on Law*? It will not surely be suspected, that I deem too lightly of the very *dignified and independent OFFICE*, which I have the *Honour* to hold, in Consequence of the favourable Sentiments entertained concerning me by those, whose favourable Sentiments are *indeed* an Honour. Had I thought that the *Dignity* of *that Seat* could be *disparaged* by

by an *Alliance* with *this Chair*, I would have spurned it from me. But I thought, and I still think in a very different Manner. By my acceptance of *this Chair*, I think I shall certainly encrease my *Usefulness*, without diminishing my *Dignity*, *as a Judge* ; and I think, that, with equal certainty, I shall, *as a Judge*, increase my *Usefulness*, I *will not say* my *Dignity*, in *this Chair*. He, who is well qualified to teach, is well qualified to judge ; and he, who is well qualified to judge, is well qualified to teach. Every Acquisition of Knowledge—and it is my *Duty* to *acquire much*—can, with equal Facility, and with equal Propriety, be applied to *either Office* : For let it be remembered, that *both Offices* view the *same Science* as their *common Object*.

ANY Interference as to the *Times* of discharging the two Offices—the only one that strikes me as possible—will be carefully avoided.

BUT

BUT it may be further asked—ought a Judge to *commit* himself by delivering his Sentiments in a Lecture? To this Question I shall give a very explicit Answer: And in that Answer I shall include the Determination, which I have taken both as a *Professor* and as a *Judge*. When I deliver my Sentiments from *this Chair*, they shall be my *honest* Sentiments: When I deliver them from the *Bench*, they shall be *nothing more*. In *both* Places I shall make—because I mean to support—the Claim to *Integrity*: In *neither* shall I make—because, in *neither*, can I support—the Claim to *Infallibility*.

MY *House* of Knowledge is, at present, too small. I feel it my Duty, on many Accounts, to enlarge it. But in *this*, as in every *other* Kind of *Architecture*, I believe it will be found, that he, who *adds much*, must *alter some*.

WHEN the greatest Judges, who ever adorned or illuminated a Court of Justice, have candidly and chearfully acknowledged their Mistakes ; shall I be afraid of committing myself ?

THE learned and indefatigable SPELMAN, after all the *immense Researches*, which enabled him to prepare and publish his *Glossary*, published it with this remarkable Precaution : “ Under the Protestation of *adding, retracting, correcting, and polishing*, as, upon more *mature Consideration* shall seem expedient*.”

I hope I have now shewn, that my Acceptance of this Chair, instead of diminishing, is calculated to increase my *Usefulness*, as a Judge. Does it derogate from my *Dignity* ? By no means, in my opinion.

LET

* Sub protestatione de addendo, retrahendo, corrigendo, poliendo, prout opus fuerit et consultius videbitur. SIR H. SPELMAN.

LET Things be considered as they *really are*. As a *Judge*, I can decide whether *Property* in Dispute belongs to the Man on my right Hand, or to the Man on my left Hand. As a *Judge*, I can pass Sentence on a *Felon* or a *Cheat*. By doing both, a Judge may be eminently useful in preserving *Peace*, and in securing *Property*.

Property, highly deserving Security, is however, not an *End*, but a *Means*. How miserable, and how contemptible is that Man, who *inverts* the Order of Nature, and makes his Property, not a *Means*, but an *End* !

SOCIETY ought to be preserved in Peace ; *most unquestionably*. But is this *all*? Ought it not to be *improved* as well as *protected*? Look at *Individuals*: Observe them from *Infancy* to *Youth*, from *Youth* to *Manhood*. Such is the Order of Providence with Regard to *Society*. It is in a *progressive* State, moving on towards
Per-

Perfection. How is this progressive State to be *assisted* and *accelerated*? Principally by *teaching* the young “*Ideas* how to *shoot*,” and the young *Affections* how to *move*.

WHAT *intrinsically* can be more *dignified* than to assist in preparing tender and ingenuous Minds for all the great Purposes, for which they are intended! What, I repeat it, can *intrinsically* be more *dignified* than to assist in forming a *future* CICERO, or a *future* BACON, without the *Vanity* of one, and without the *Meanness* of the other!

LET us see how Things have been considered in *other* Ages and in *other* Countries.

PHILIP of MACEDON, a Prince highly distinguished by his *Talents*, though not by his *Virtues*, was fully sensible of the Value of *Science*. An Heir was born to his Kingdom and his Throne. Could any
Thing

Thing be more interesting to a *Father* and a *King* ? There was, it seems, a Circumstance, which, in his Opinion, enhanced the Importance even of this Event. His Heir was born at a Time, when he could receive a most excellent Education.

PHILIP wrote to ARISTOTLE the following Letter : “ You are to know that a *Son* hath been born to us. We thank the GODS, not so much for having bestowed him on us, as for bestowing him, *at a Time when ARISTOTLE lives*. We assure ourselves that you will form him a *Prince* worthy to be *our* Successor, and a *King* worthy of MACEDON.”

ON ARISTOTLE accordingly was devolved the Charge of superintending the Education of the young Prince, “ that he may be taught, said PHILIP, to avoid those Errors, which I have committed, and of which I now repent.”

WHAT

WHAT PRICE ALEXANDER the *Great* set upon his Education, before his Mind was fatally poisoned by the Madness of Ambition will appear by a Letter from him to ARISTOTLE, in which we find this Sentiment: “ I am not so anxious to appear superior to the rest of Mankind in *Power*, as in the *Knowledge of excellent Things*.” We see here the *Impetus* of strong Ambition; but it had not then taken its pernicious Direction.

IN the most shining Periods of the ROMAN *Republic*, Men of the first Distinction made the Science of Law their *public* Profession, and taught it openly in their Houses as in so many Schools. The first of these *public* Professors was TIBERIUS CORCUNCANIUS, who was raised to the Office of *Chief Pontiff*—the highest in the whole Scale of ROMAN *Honours*. His Example was followed by many distinguished Characters, among whom we find the celebrated Names of the *two*

SCENE

SCÉVOLÆ, of CATO, of BRUTUS, and of others well known to such as are conversant with the Writers of the *classical* Ages. Even CICERO himself, after he had been CONSUL of ROME, after he had had *Kings* for his *Clients*, projected this very Employment, as his future “HONOUR and ORNAMENT*.”

WHETHER, therefore, we consider the *intrinsic* or the *external* Dignity of this *Chair*; we shall find that it is, by no Means, beneath an Alliance with the *bighest Offices* and the *bighest Characters*.

IF any Example, set by *me*, can be supposed to have the least *public* Influence; I hope it will be in raising the Care of Education to that *high* Degree of *Respectability* to which, every where, but especially in Countries that are free, it has the most *unimpeachable* Title.

I have

* *Decus et Ornamentum.*

I have been *zealous*—I hope I have *not* been altogether *unsuccessful*—in contributing the best of my Endeavours towards forming a System of Government; I shall *rise* in *Importance*, if I can be equally *successful*—I will not be less *zealous*—in contributing the best of my Endeavours towards forming a System of Education likewise, in the UNITED STATES. I shall rise in *Importance*, because I shall rise in *Usefulness*.

WHAT are *Laws* without *Manners*?
How can *Manners* be *formed*, but by a
*proper Education** ?

METHINKS I hear one of the *female*
Part of my Audience exclaim—What is
all *this* to *us*? We have heard much of
Soci-

* The ancient Wisdom of the best Times did always make a just Complaint, that States were too *busy with their LAWS*; and too *negligent in Point of EDUCATION*.
2. Ld. Bacon 423.

Societies, of States, of Governments, of Laws, and of a Law Education. Is every Thing made for your Sex? Why should not we have a Share? Is our Sex less honest, or less virtuous, or less wise than yours?

WILL any of my *Brethren* be kind enough to furnish me with Answers to these Questions? I must answer them, it seems, myself; and I mean to answer them *most sincerely*.

YOUR Sex is neither less *honest*, nor less *virtuous*, nor less *wise* than *ours*. With Regard to the *two first* of these Qualities, a Superiority, on *our* Part, will not be *pretended*: With Regard to the *last*, a *Pretension* of Superiority *cannot* be *supported*.

I will name three *Women*; and I will then challenge any of my *Brethren* to name three *Men* superior to them in *Vigour* and *Extent* of *Abilities*. My *female*

CHAMPIONS are, SEMIRAMIS *of* NINEVEH, ZENOBIA the QUEEN of the EAST, and ELIZABETH of ENGLAND. I believe it will readily be owned, that three *Men* of superior *active Talents* cannot be named.

YOU will please, however, to take Notice, that the Issue, upon which I put the Characters of these three LADIES, is not that they were *accomplished*; it is, that they were *able* Women.

THIS Distinction immediately reminds you, that a Woman may be an *able*, without being an *accomplished* female Character.

IN this *latter* View I did not produce the three female Characters I have mentioned. I produced them as Women, *merely of distinguished Abilities*—of Abilities equal to those displayed by the most *able of our Sex*.

BUT

BUT would *you* wish to be tried by the *Qualities* of *our* Sex? I will refer you to a more proper Standard—that of *your* OWN.

ALL the three *able* Characters, I have mentioned, had, I think, too much of the *masculine* in them. Perhaps I can conjecture the *Reason*. Might it not be owing, *in a great Measure*—might it not be owing *altogether* to the *masculine* Employments, to which they devoted themselves?

Two of them were able *Warriors*: *All* of them were *able Queens*; but in *all* of them, we *feel* and we *regret* the Loss of the *lovely* and *accomplished* WOMAN: And, let me assure you, that, in the Estimation of *our* Sex, the *Loss* of the *lovely* and *accomplished* WOMAN is *irreparable*, even when she is *lost in the* QUEEN.

FOR these *Reasons*, I doubt much, whether it would be proper that *you* should
under-

undertake the *Management* of PUBLIC AFFAIRS. You have, indeed, heard much of *public Government* and *public Law* : But these Things were not made *for themselves* : They were made for *something better* ; and of that *something better*, you form the *better Part*—I mean *Society*—I mean particularly *Domestic Society* : *There the lovely and accomplished WOMAN shines with SUPERIOR LUSTRE.*

By some *Politicians*, *Society* has been considered as only the *Scaffolding* of Government ; very *improperly*, in my Judgment. In the just Order of things, Government is the *Scaffolding* of *Society* : And if *Society* could be *built* and *kept entire* without Government, the *Scaffolding* might be *thrown down* without the least Inconvenience or Cause of Regret.

GOVERNMENT is, indeed, highly necessary ; but it is highly necessary to a *fallen* State. Had Man continued *innocent*,
Society,

Society, without the Aids of Government, would have shed its *benign Influence* even over the *Bowers of Paradise*.

FOR those *Bowers*, how finely was your Sex adapted ! But let it be observed, that *every Thing else* was finished, before Heaven's "*last best Gift*" was introduced: Let it be also observed, that, in the pure and perfect Commencement of Society, there was a striking Difference between the only *two* Persons, who composed it. His "*large fair Front and Eye sublime*" declared that, "*for Contemplation and for Valour HE was formed.*"

"For softness, SHE, and sweet attractive
Grace,
Grace was in all her Steps, Heav'n in
her Eye ;
In every Gesture Dignity and Love.
A thousand Decencies unceasing flow'd
From all her Words and Actions mixt with—
—mild Compliance."

HER

HER *accomplishments* indicated her *Desti-*
nation. Female *Beauty* is the *Expression*
of female *Virtue*. The purest *Complexion*,
the finest *Features*, the most elegant *Shape*
are *uninteresting* and *insipid*, unless we can
discover, by them, the *Emotions* of the
Mind. How *beautiful* and *engaging*, on
the other Hand, are the *Features*, the
Looks, and the *Gestures*, while they dis-
close *Modesty*, *Sensibility*, and every *sweet*
and *tender Affection* ! When these appear,
there is a “ *Soul upon the Countenance.*”

THESE Observations enhance the value
of Beauty ; and shew, that to *possess* and
to *admire* it, is to *possess* and to *admire* the
Exhibition of the finest *Qualities*, *intellec-*
tual and *moral*. These Observations do
more : They shew how Beauty may be
acquired and *improved* and *preserved*.
When the Beauties of the *Mind* are culti-
vated, the Countenance becomes *beauti-*
fully eloquent in expressing them.

I know

I know very well, that mere *Complexion* and *Shape* enter into the Composition of Beauty : But they *form* Beauty only of a *lower* Order. Separate them from *Animation*—separate them from *Sensibility*—separate them from *Virtue* : What are they ? The Ingredients that compose a beautiful *Picſure* or a beautiful *Statue*. I ſay too much ; for the *Painters* and the *Statuaries* know that *Exprefſion* is the *Soul* of *mimic* as well as of *real* Life.

As *Complexion* and *Shape* will not ſupply the Place of the *higher Orders* of Beauty ; ſo thoſe *higher Orders* have an independent Exiſtence, after the inferior Influence of *Complexion* and *ſhape* are gone. Though the *Bloom* of Youth be *faded* ; though the *Impreſſions* of Time be *diſtinctly marked* ; yet, while the Countenance *continues* to be *enlivened* by the *beaming Emanations* of the Mind, it will produce in every Beholder, poſſeſſed of *Sensibility* and *Taſte*, an Effect far more
pleaſing

pleasing and far more lasting, than can be produced by the prettiest Piece of uninformed Nature, however florid, however regular, and however young.

How many Purposes may be served at once, if Things are done in the proper Way ! I have been giving a *Recipe* for the *Improvement and Preservation* of female *Beauty* ; but I find, that I have, at the same Time, been delivering Instructions for the *Culture and Refinement* of female *Virtue* ; and have been pointing at the important *Purposes*, which female *Virtue* is *fitted and intended* to accomplish.

IF NATURE evinces her *Designs* by her *Works* ; YOU were *destined to embellish*, to *refine* and to *exalt* the *Pleasures and Virtues* of *social Life*.

To *protect* and to *improve* social Life is, as we have seen, the *End* of *Government* and *Law*. If, therefore, you have no
Share

Share in the Formation, you have a most intimate Connexion with the Effects of a good System of Law and Government.

THAT Plan of Education, which will *produce or promote or preserve such* a System is, consequently, an Object to you peculiarly important.

BUT if you would see *such* a Plan carried into *complete Effect*, you must, my amiable Hearers, give it your powerful Assistance. The *pleasing* Task of forming your Daughters is almost *solely* yours. In *my* Plan of Education for your *Sons*, I must solicit *you* to co-operate. Their *Virtues*, in a certain Proportion—the *Refinement* of their Virtues, in a much greater Proportion, must be moulded on your Example.

IN *your* Sex, too, there is a *natural*, an *easy*, and, often, a *pure Flow* of *Diſſion*, which is the best Foundation of *Eloquence*, in a free Country, so important to *ours*.

THE *Stile* of some of the finest *Orators* of *Antiquity* was originally formed on that of their *Mothers*, or of *other Ladies*, to whose Acquaintance they had the Honour of being introduced.

I have already mentioned the two *SCEVOLÆ* among the illustrious *Roman* Characters. One of them was married to *LÆLIA*, a Lady, whose Virtues and Accomplishments rendered her one of the principal Ornaments of *ROME*. She possessed the Elegance of Language in so eminent a Degree, that the first Speakers of the Age were *ambitious* of her Company. The *Graces* of her *unstudied* Elocution were the *purest* Model, by which they could *refine their own*.

CICERO was in the Number of those, who improved by the *Privilege* of her Conversation : In his Writings he speaks in Terms of the warmest Praise concerning her singular Talents : He mentions also the

the Conversation of her *Daughters* and *Grand-daughters* as deserving particular Notice.

THE Province of *early* Education by the *female* Sex was deemed, in ROME, an Employment of so much *Dignity*, that Ladies of the *first Rank* did not disdain it. We find the Names of AURELIA and ATTIA, the Mothers of JULIUS CÆSAR and of AUGUSTUS, enumerated in the List of these *honourable* Patroneſſes of Education.

THE Example of the *highly-accomplished* CORNELIA, the daughter of the great AFRICANUS, and the Mother of the GRACCHI, deserves uncommon Attention. She ſhone with ſingular *Lustre* in all theſe Endowments and Virtues that can dignify the *female Character*.

SHE was, one Day, viſited by a Lady of CAMPANIA, who was extremely fond

of Dress and Ornament. This Lady, after having displayed some very rich Jewels of her own, expressed a Wish to be favoured with the View of those which CORNELIA had ; expecting to see some very superb ones in the *Toilet* of a Lady of such *distinguished Birth and Character*. CORNELIA diverted the Conversation, till her Sons came into the Room : “ *These are MY Jewels,*” said she, presenting them to the *Campanian Lady*.

CICERO had seen her Letters : His Expressions concerning them are very remarkable. “ I have read,” says he, “ the “ Letters of CORNELIA, the Mother of “ the GRACCHI ; and it appears that her “ Sons were not so much *nourished* by the “ *Milk* as *formed* by the *Stile* of their “ Mother *.”

YOU

* Legimus epistolas CORNELIÆ, matris GRACCHORUM : apparet filios non *tam* in *gremio* educatos, *quam* in *sermone* matris. Cic. de clar. Orat. c. 58.

Y o u see now, my *fair* and *amiable* Hearers, how *deeply* and *nearly* interested you are in a proper Plan of *Law Education*. By some of you, whom I know to be *well qualified* for taking in it the Share, which I have described, that Share will be taken. By the younger Part of you, the good Effects of *such* a Plan will, I hope, be participated : For those of my Pupils, who *themselves* shall become *most estimable*, will treat you with the *highest Degree* of ESTIMATION.

A P L A N,

P L A N, &c.

GENTLEMEN,

PERMIT me, at this Time, to address, in a very few Words, the younger and more inexperienced Part of those who attend my Lectures—I say the *younger and more inexperienced* Part; because my Lectures are honoured with the Presence of some, whose *Learning, Talents and Experience* fit them for *communicating* instead of *receiving* Instruction *here*. For the Honour of their Presence, I must consider

sider myself indebted to the Importance of my Subject ; and to a Desire, *generous* and *enlightened*, of countenancing and encouraging every Attempt, however feeble, to diffuse Knowledge on a Subject so important.

You have seen, *my young Friends*, in what an high Point of View *I* consider your Education. Is this on your *own* Account? *Partly* it is—that you may be great and good *Men*. But *solely* it is not ; for more extended Hopes are entertained concerning you : You are designated by your *Education*, and by your *Country*, to be great and good *Citizens*.

IN no other Part of the World, and in no former Period, even in this Part of it, have Youth ever beheld so glorious and so sublime a Prospect before them. Your Country is already respectable for its Numbers ; it is free ; it is enlightened ; it is flourishing ; it is happy : In Numbers ; in Liberty ; in Knowledge ;
in

in Prosperity ; in Happiness it is receiving great and rapid Accessions. Its Honours are already beginning to *bud*: In a few Years, they will “blossom thick” upon you. You ought certainly, by proper *Culture*, to qualify yourselves in such a Manner, that when the *Blossoms fade and fall*, the *Fruit* may begin to appear. Remember that, in a free Government, every Honour implies a Trust, that every Trust implies a Duty ; and that every Duty ought to be performed.

I mean not, that such of you as are designed for the *Practice* of the Law, should be inattentive to the *Emoluments* of your Profession ; but I mean that you should consider it as something higher than a mere Instrument of private Gain. By being fitted for *higher* Purposes, it will not be less fit, it will be more fit for accomplishing this.

IT is peculiarly necessary, that you should, as soon as possible, form proper
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Con-

Conceptions of what ought to be your *Objects* in your Course of Study. Let them not be fixed *too low*: The higher your *Aims*, the higher your *Attainments* will be. To assist you in fixing those Aims, let me lay before you the Sentiments of a Writer, who wrote on some Subjects most excellently, and on others most contemptibly—I mean *Lord BOLINGBROKE*. When he wrote on Politics or Business, he wrote well; because he wrote on what he knew: When he wrote concerning Religion, he wrote ill; because he wrote concerning that, of which he was ignorant. The Passage I am about to quote to you is vouched by the respectable Authority of *Lord KAIMS*, who considered it, and justly, as a Master Piece of Expression and Thought.

“ I might instance,” says he, “ in o-
 “ ther Professions, the Obligations Men
 “ lie under of applying themselves to cer-
 “ tain Parts of *History*; and I can hardly
 for-

“ forbear doing it in that of the *Law*, in
 “ its Nature, the noblest and most benefi-
 “ cial to Mankind, in its Abuse and De-
 “ basement the most sordid and the most
 “ pernicious. A Lawyer now is Nothing
 “ more, I speak of ninety-nine in a hun-
 “ dred at least” (the Proportion in *this*
 Country, I believe, is much smaller)
 “ to use some of TULLY’s Words, *nisi*
 “ *liguleius quidam cautus, et acutus præco*
 “ *ætionum, cantor formularum, auceps syl-*
 “ *labarum* : But there have been Law-
 “ yers that were Orators, Philosophers,
 “ Historians : There have been BACONS
 “ and CLARENDONS. There will be none
 “ such any more, till in some better age”
 (I hope that better Age has found you,
 my young Friends) true Ambition or
 “ the Love of Fame prevail over Avarice;
 “ and till Men find Leisure and Encou-
 “ ragement for the Exercise of this Pro-
 “ fession, by climbing up to the *vantage*
 “ *Ground*, so my Lord BACON calls it, of
 “ Sci-

“ Science*, instead of groveling all their
 “ Lives *below* in a mean but gainful Ap-
 “ plication to all the little Arts of Chicane.
 “ Till this happen, the Profession of Law
 “ will scarce deserve to be ranked among
 “ the learned Professions : And whenever
 “ it happens, one of the vantage Grounds,
 “ to which Men must climb, is *metaphy-*
 “ *sical*, and the other *historical* Know-
 “ ledge.” By metaphysical Knowledge,
 his Lordship evidently means the *philoso-*
phy of the human MIND ; for he goes on
 in this Manner. “ They must pry into
 “ the secret Recesses of the *human Heart*,
 “ and become well acquainted with the
 “ whole *moral World*, that they may dis-
 “ cover the *abstract* Reason of ALL
 “ LAWS : And they must trace the Laws
 “ of *particular States*, especially of *their*
 “ OWN, from the first *rough Sketches* to
 “ the more *perfect Draughts* ; from the
 “ first

* It is not possible to discover the more remote, and
 deeper Parts of any Science, if you stand but upon the Le-
 vel of the same Science, and ascend not to a higher Science.
 2. Ld. Bac. 432.

“ first *Causes* or *Occasions* that produced
 “ them, though all the Effects, good and
 “ bad that they produced†.”

SUCH, my young Friends, are the great Prospects before you ; and such is the general Outline of those Studies, by which you will be *prepared* to realise them. Suffer me to recommend most earnestly this Outline to the UTMOST *Degree* of your *Attention*. It comes to you supported with all the the Countenance and Authority of BACON, BOLINGBROKE, KAIMS—*two* of them consummate in the *Practice* as well as in the *Knowledge* of the *Law*—all of them eminent Judges of *Men*, of *Business* and of *Literature* ; and all distinguished by the Accomplishments of an *active*, as well as those of a *contemplative* Life. The *Propriety*, the *Force*, and the *Application* of their Sentiments will be *gradually unfolded*,

† Boling. of the Study of History.

folded, fully explained and warmly urged to you in the Course of my Lectures.

IT is by no Means an easy Matter to form, to digest, and to arrange a Plan of Lectures on a Subject so various and so extensive as that of *Law*. With great *Deference* to some of you; with anxious Zeal for the Information of others, I lay before you the following Analysis: Reserving, however, to myself, the full Right and Force of the Protestation, which I have already borrowed from SIR HENRY SPELMAN, of *adding, retracting, correcting and polishing*, as, on more mature Consideration, shall appear to me to be expedient.

I begin with the general Principles of LAW and OBLIGATION. These I shall investigate fully and minutely; because they are the Basis of every legal System; and because they have been much *misrepresented* or much *misunderstood*.

NEXT

NEXT I shall proceed to give you a concise and very general View of the *Law of Nature*, of the *Law of Nations*, and of *municipal Law*.

I shall then consider MAN, who is the Subject of *all*; and is the *Author* as well as the *Subject* of the *last*, and *Part* of the *second* of these Species of Law. This great Title of my Plan, dignified and interesting as it is, must be treated in a very cursory Manner in this Course. I will, however, select some of the great Truths which seem best adapted to a System of Law. I will view Man as an *Individual*, as a Citizen, as a Member of a *Confederation*, and as a Part of the great *Commonwealth of Nations*.

HIS Situation, under the *third* Relation, is, in a great Measure, *new*; and, to an AMERICAN, peculiarly important: It will, therefore, *merit* and obtain *peculiar Attention*.

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THE proper Discussion of *this* Title will draw on a Discussion of the Law of Nations under an Aspect, almost wholly *new*. How far, on the Principles of the Confederation, does the *Law of Nations* become the *municipal Law* of the UNITED STATES? The greatness of this Question is self-evident: It would be very unwise, at present, even to hint at an Answer.

AFTER having examined these important preparatory Topics, I shall trace the *Causes*, the *Origin*, the *Progress*, the *History*, the *Kinds*, the *Parts*, and the *Properties* of GOVERNMENT.

UNDER this *Title*, I shall have Occasion to treat concerning *legislative*, *executive* and *judicial* Power; and to investigate and compare the *simple* and the *mixt* Species of Governments and Constitutions—ONE, particularly, that is *simple* in its
Prin^a

Principle, though *diversified* in its *Form* and *Operations*.

THIS will lead me to a particular Examination of the Constitution and Government of the UNITED STATES, of PENNSYLVANIA, and of her SISTER COMMONWEALTHS.

By this Time, we will be qualified to enter with proper Advantage, upon the Illustration of the different Parts of our *municipal Law*. The COMMON LAW is the first great Object, which will here present itself. I shall think it my Duty to investigate very carefully its *Principles*, its *Nature*, and its *History*; particularly the great Event of its TRANSMIGRATION from EUROPE to AMERICA; and the *subsequent* JURIDICAL HISTORY of the AMERICAN STATES.

OUR municipal Law I shall consider under *two* great Divisions. Under the
L *first*

first I shall treat of the *Law*, as it relates to PERSONS : Under the *second*, I shall treat of it, as it relates to THINGS.

THE DIVISION of the UNITED STATES into *Circuits*, *Districts*, *States*, *Counties* and *Townships* will, probably, be introduced here, with some Remarks concerning the *Causes*, the *Operation*, and the *Consequences* of those *Divisions*.

IN considering the Law as it relates to *Persons*, the LEGISLATIVE *Department* of the UNITED STATES will occupy the *first* Place ; the EXECUTIVE *Department*, the *second* ; and the JUDICIAL *Department*, the *third*.

UNDER the *first*, the *Institution* and *Powers* of CONGRESS will come into View. The *Principles* on which the SENATE and HOUSE of REPRESENTATIVES are *separately* established, will be carefully *discriminated* ; and the necessary Remarks

marks will be made on the great Doctrine of REPRESENTATION. The *Importance* and the *Manner* of LEGISLATION will also claim a Portion of our Regard.

IN considering the *executive* Authority of the UNITED STATES, the *Appointment*, the *Powers*, and the *Duties* of the PRESIDENT, will first attract our Notice: We will then proceed to consider the *Number* and the *Nature* of the subordinate executive DEPARTMENTS. We shall here have an Opportunity of taking a very general view of the *civil*, *commercial*, *fiscal*, *maritime* and *military* Establishments of the UNITED STATES.

WHEN we come to the *judicial* Department, our Attention will be first drawn to the SUPREME COURT of the UNITED STATES. Its *Establishment*, and its *Jurisdiction* will be particularly considered; as also the *establishment* and *Jurisdiction* of the CIRCUIT and DISTRICT Courts.

HERE

HERE the *Nature*, the *History* and the *Jurisdiction* of Courts in general; and the *Powers* and *Duties* of JUDGES, JURIES, SHERIFFS, CORONERS, COUNSELLORS, and ATTORNIES will be naturally introduced.

PERHAPS this may be the proper Place, likewise, for some general Observations on the *Nature* and *Philosophy* of EVIDENCE; a proper System of which is the greatest *Defideratum* in the Law.

THE Investigation of the different Parts of the *Constitution* and *Government* of the UNITED STATES, will lay the Foundation of a very *interesting* PARALLEL between them and the *Pride* of EUROPE—the BRITISH CONSTITUTION.

If the Consideration of the *legislative*, *executive* and *judicial* Departments of the SISTER-STATES can, without Intricacy or Confusion, be *severally arranged* under the three *corresponding* Articles in the *Constitution* of the UNITED STATES; the
Parts

Parts of my Plan will be considerably reduced in their *Number*. I *hope*, but I am not *confident*, that this can be done. Upon *this*, as upon every *other* Part of my Plan, I shall be thankful for Advice.

BODIES politic and inferior Societies will be described and distinguished.

THE Relations of *private* and of *domestic* Life will pass in Review before us; and after these, the *Rights* and *Duties* of Citizens will come under Consideration.

HERE the important *Principles* of ELECTION will receive the merited attention.

THE Rights, Privileges and Disabilities of ALIENS will then be examined.

HAPPY would it be, if the great *Division* of the Law, which relates to *Persons*, could be closed here. But it cannot be done. We are under the sad Necessity of viewing *Law* as sometimes *violated*, and *Man* as sometimes *guilty*. Hence the

ungracious Doctrine of PUNISHMENT and
CRIMES.

I will introduce this disagreeable Part of my System with general observations concerning the *Nature of Crimes*, and the *Necessity* and the *Proportion of Punishments*: Next I will descend into a particular ENUMERATION and DESCRIPTION of each: And I will afterwards point out the different Steps prescribed by the Law for *apprehending, detaining, trying and punishing* Offenders.

HERE *Warrants, Arrests, Attachments, Bail, Commitments, Imprisonment, Appeals, Informations, Indictments, Presentments, Process, Arraignments, Pleas, Trials, Verdicts, Judgments, Attainders, Pardons, Forfeitures, Corruption of Blood, and Executions* will be considered.

WITH REGARD to criminal Law, this Observation may be made even in a *Summary*: It greatly needs *Reformation*. In the UNITED STATES the *Seeds of Reformation* are *sown*. As

As to the second great *Division* of our municipal Law, which relates to THINGS ; it may be all comprehended under one Word—*Property*. Claims, it is true, may arise from a Variety of Sources, almost infinite ; but the *Declaration* of every Claim, concludes by alleging a *Damage* or a *Demand* ; and the *Decision* of every successful Claim concludes by awarding a *Satisfaction* or a *Restitution* in *Property*.

I shall trace the History of Property from its lowest rude Beginnings to its highest artificial Refinements ; and, by that Means, shall have an Opportunity of pointing out the *Defects* of the first, and the *Excesses* of the last.

PROPERTY is of two Kinds ; *public* and *private*. Under *public* Property, *common Highways*, *common Bridges*, *common Rivers*, *common Ports* are included. In the UNITED STATES, and in the *States*
com-

composing the *Union*, there is much Land belonging to the *Public*.

PRIVATE Property is divided into two Kinds ; *personal* and *real* : Things *moveable* are comprehended under the first Division : Things *immoveable*, under the *second*.

ESTATES in *real* Property are measured by their *Duration*. An Estate of the greatest Duration, is that which is in *Fee*, or “ to a Man and his Heirs,” in the Language of the *Common Law*. Real Property of shorter Duration is known by the Names of *Estates-Tail*, Estates in Tail after Possibility of Issue extinct, Estates by the Curtesy of England, Estates in Dower, Estates for Life, Estates for Years, Estates by Sufferance, and Estates at Will.

ESTATES may be either *absolute* or *conditional*. Under the Title of *conditional Estates*, the excellent Law of PENNSYLVANIA with Regard to *Mortgages* will deserve particular Consideration.

ESTATES

ESTATES may be in *Possession* or in *Expectancy*. Under the last Head, *Reversions, Remainders, vested and contingent, and executory Devises* will be treated.

PROPERTY may be *joint or cotemporary*, as well as *separate and successive*. Here we will treat concerning *Coparceners, Partners, Joint-tenants, and Tenants in Common*.

PROPERTY may be *acquired* by *Occupancy, Conveyance, Descent, Succession, Will, Custom, Forfeiture, Judgment* in a Court of Justice. In much the greatest Number of Instances the *Acquisition* of Property by *one* is accompanied with the *Transfer* of it by *another*.

CONVEYANCES are by *Matter of Record*; as a *Fine, a common Recovery, a Deed enrolled*: Or by *Matter in Pais*; as *Livery, Deed*: Here the *Nature* and different *Kinds of Deeds, at Common Law, and by Virtue of Statutes* will be particularly considered.

PROPERTY may consist of *Things in Possession*, or of *Things in Action*.

LAND, Money, Cattle, are Instances of the *first* Kind ; *Debts, Rights of Damages,* and *Rights of Action* are Instances of the *second* Kind.

THESE are *prosecuted* by SUIT.

YOU have heard much concerning the *Forms of Process and Proceedings and Pleadings*. Much has been written in *Praise*, and much has been written in *Ridicule* of this Part of *Law Learning*. It has certainly been *abused*: In some Hands it has become, and daily does become *ridiculous*. And what is there that has been exempted from a similar Fate ? Religion herself, elegant and simple as she is, yet, when dressed in the tawdry or tattered Robes put upon her by the false Taste of her injudicious Friends, assumes an awkward and ridiculous Appearance.

LAW has experienced the same Treatment with her elder Sister. But though
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the Learning with Regard to Pleas and Pleading has been *abused*, it may certainly be employed for the most excellent Purposes.

WHEN properly directed and properly used, the Science of well Pleading is, indeed, in the Language of LITTLETON, “ one of the most honourable, laudable, “ and profitable Things in our Law.” Let me also adduce, in its Favour, the weighty Testimony of EARL MANSFIELD. “ The substantial Rules of Pleading, says this very able Judge, are founded in strong Sense, and in the soundest and closest *Logic* ; and so appear when well *understood* and *explained* : Though, by being *misunderstood* and *misapplied*, they are too often made Use of as the Instruments of Chicanery.”

PERMIT me to add, that some of the *Forms of Writs and Pleas*, particularly those, that are most *ancient*, are Models of *correct* Composition, as well as of *just* Sentiment.

THE History of a Suit at Law, from its *Commencement*, through all the different Steps of its *Progress*, to its *Conclusion*, presents an Object very interesting to a Mind sensible to the Beauty of strict and accurate Arrangement. The Dispositions of the Drama are not made with more Exactness and Art. Every Thing is done by the proper *Persons*, at the proper *Time*, in the proper *Place*, in the proper *Order*, and in the proper *Form*.

THIS History may be comprised under the following Titles—*Original Writ, Process, Return, APPEARANCE, in Person, by Guardian, by next Friend, by Attorney, Bail, Declaration, Profert, Oyer, Imparlance, Continuance, PLEAS, in Abatement and Bar, Replication, Rejoinder, Issue, Demurrer, Trial, Demurrer to Evidence, Bill of Exceptions, Verdict, new Trial, Judgment, Appeal, Writ of Error, Execution.*

F I N I S.