A Short Abridgement of Mr. Blackstone's Commentaries On the Laws of England.

Preface

The following sheets contain the substance of a course of Lectures on the Laws of England read by the Author in the University of Oxford. His original plan took rise in 1753. but Mr. Viner dying in 1756. and leaving ample benefactions to that University for promoting the Study of the Law, a regular public establishment was made two years after agreable to the Author's private undertaking, and he appointed to the new erected Office of Vinerian Professor.

Thus both Duty and Inclination occasioned his investigating the Elements of the Laws, and grounds of Civil Polity, with greater assiduity than many have thought it necessary to do; if in these pursuits he has been able to rectify any former errors concerning this subject, his pains will be sufficiently answered; and where he is still mistaken, he calls on the candour of his Readers for those allowances, to which the difficulties of so new, so extensive, and so laborious a search seem to entitle him.

Though some of his most learned friends thought this work not wholly unworthy the public eye, yet necessity had a greater share in the the publication; for some of his hearers having taken notes that had been lent to others, copies had thus multiplied which could but be imperfect, if not erroneous; thus the fear of a surreptitious impression made him prefer the submitting his own errors to the public, to seeming answerable for those of others.

Introduction

I. On the Study of the Law.

This is the first enquiry into the Laws and Constitution of this Country graced by public Academical Authority, which is the cause that the Gentlemen of England are more deficient in this branch of knowledge, than those of any other European State are of the Laws of their respective Countries, yet there is no Nation where it is so incumbent on every individual to have a general idea of the Law of the Land; for as political or Civil Liberty is the end and scope of the English Constitution, every inhabitant of the Island is interested in the preservation of the Laws, besides the true definition of Liberty is a power of doing whatever the Laws permit.

Gentlemen ought to have a more extensive knowledge of the Law than this, they must be acquainted with the leading principles relating to Estates and Conveyancing, least they should be imposed upon by their Agents; also with the forms of wording last Wills and Testaments, to prevent those mistakes persons are very liable to, who draw them up themselves. They are subject to be called upon to estimate injuries, establish rights, weigh accusations, and on juries to dispose of the lives of their fellow subjects; on all these occasions they must decide upon Oath, yet frequently the fact and Law are greatly blended together. They also commonly compose the Commission of the Peace, here their duty calls upon them to be acquainted with the Laws that regard that Office. and if ever they represent their Country in Parliament, they ought to remember the nature and importance of the trust reposed in them, that they are the Guardians of the English Constitution, the Makers and Repealers of the Laws, that it is incumbent on them to check every dangerous innovation, to propose

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and adopt every solid improvement, and to transmit the Constitution and Laws to posterity amended if possible, but at least not derogated; how can they perform any of these duties unless possessing a compleat knowledge of the Laws.

It must appear strange that though an Apprenticeship is thought necessary for every Commercial and Mechanical Art, and a long course of study to form the Divine, Physician, and Practical Professor of the Laws, yet that every Man of superior fortune should deem himself born a Legislator. this absurdity has given rise to the many inconsiderate alterations in our Laws, to that perplexity which creates great delay in the Courts of Justice, because the Judges are frequently forced by construction of Law to give concord between insensible and disagreeing Words, Sentences and Provisoes, it may not be improper to remark here, how dangerous the exercise of this power is, that has arose from necessity, when exercised without the greatest attention, and the greatest uprightness.

Sir Edward Coke, who does honour to the list of Sages in the Law, declares that in all his practice, he never knew two questions made upon Rights merely depending upon Common Law; if the many errors in Law during the Reign of Queen Elizabeth arose solely from negligence in the Statute Book, they must of course be encreased now there are above ten times as many Statutes, and not more attention in drawing them up.

What has been said with regard to the propriety of Our Gentry applying to the Study of the Law, holds still more forcibly in the case of the Nobility, except in the article of Juries, for they are not only by birth Hereditary Counsellors of the Crown, and Judges upon honour of the Lives of their Brother Peers, but also Arbiters in the last Resort of the

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whole property of their fellow subjects; so that they must decide on the most nice points of Law, examine and correct the decrees of the most experienced Judges; indeed if the Nobility are ignorant of the Law, it is more fatal than in a Judge of a subordinate Court, as there is no Appeal from their decisions. Yet nothing can be so wise as this immence trust being reposed in those of superior birth, as they must be supposed to have more enlarged ideas than other Men, and to be proof against partiality; therefore a Peer affirming an affair on his honour, is deemed in Law equivalent to the oath of any other person.

Enough has now been said to prove the propriety of admitting a knowledge of the Municipal Law into the branches of Academical Education; it may not be improper to give some Account why it has never before taken place.

The Municipal or Common Law was composed originally of unwritten Maxims and Customs which though somewhat altered and impaired by the violence of times, had subsisted immemorially and weathered the rude shock of the Norman Invasion; it owed the esteem in which it stood, to its decisions being publickly known, and its being well adapted to the genius of the Nation.

Learning was so little cultivated in those remote days, that the Clergy that came over at and after the Conquest did not relish it. Theobald a Norman, after his Election to the See of Canterbury introduced the Justinian Pandects; but King Stephen forbad the study of it, which happily prevented its being practiced in the Courts of Law, though the Clergy continued teaching it in their Schools and Monasteries.

In the Reign of Henry III. the Clergy declined any longer performing the function of Judges, as they were obliged to

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swear they would decide agreeably to the known Laws of the Land, yet they continued to exercise the Office of Chancellor, which at that time had but little Judicial Power.

They also forbad all Ecclesiasticks to plead in the Secular Courts, and established Courts of their own, where the Roman or Civil Law was alone practised; they also permitted no other Laws to be taught in the Universities.

The Common Laws would therefore inevitably have fallen into disuse for want of being publickly taught, had not the Court of Common Pleas by the Great Charter of Liberties of King John been fixed to be constantly held in the Palace of Westminster, which was confirmed by that of Henry III. owing to the great detriment that arose to the Suitors of the other Courts from their removing with the Household of the Sovereign, from one end of the Kingdom to the other, thus the Professors of the Municipal Laws being assembled in one place, established a Society for the Study of it, and soon raised those Laws to the perfection they attained under the auspices of our English Justinian King Edward I.

They naturally fell into a kind of Collegiate order and purchased Houses now called the Inns of Courts and of Chancery, where Lectures were read and Degrees conferred, that of Barrister answered to Bachellor in the Universities, and Serjeants to Doctors, here the Young Nobility and Gentry used to be placed to study the Laws, till it was found impracticable to introduce that Regimen and Academical superintendance with regard to the Morals and even to the Studies, that alone could render this Institution of any utility.

Mr. Viner therefore convinced of the utility that must arise from adding the Study of the Municipal Laws to the other branches of Academical Education, after employing above half a Century

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in collecting materials for new modelling and rendering the Study of the Laws of the Land more commodious, consigned his plan to the wisdom of his Parent University.

Thus a private Gentleman has had the honour of accomplishing what must tend to the advantage of every Gentleman that compleats his education at that Seminary of useful knowledge; and doubtless Cambridge will follow the example, so that in a few Years every man that means to acquire the accomplishments of a Gentleman will not omit a competent knowledge of the Laws of his Country.

II. Of the Natures of Laws in general

Law in a general sense signifies a rule of conduct prescribed by some Superior, which the Inferior is bound to obey, and is equaly applicable to Animate, Inanimate, Rational and Irrational Actions.

But Law in a more confined sense, denotes not the rule of action in general, but of human conduct, by which Man though endowed with reason and free will, is commanded to make use of both those faculties in the general regulation of his behaviour.

The Law of Nature is the rule fixed by our All Wise Creator, which in some degree restrains our free will, this Law does admirably interweave eternal justice with the happiness of every individual.

Passion, Prejudice, and Intemperance prevent our perceiving upon all occasions the dictates of this Law of Nature in the occurances of life; the Divine Being has at sundry times and in divers manners discovered and enforced His Laws, by an immediate and direct Revelation; these Doctrines are only to be found in the Holy Scriptures, these on comparison are found to be a part of the Law of Nature, as they tend in all their consequences to Man's felicity, yet this Revealed Law is undoubtedly of greater authority than the Law of Nature, because it is expressly commanded by God Himself; the latter is only what we by the light of human reason suppose to be the Law.

No human law can be valid that contradicts either of these, though it may with propriety decide a number of points concerning which both the above are silent, as they may for the good of Society require to be restrained within certain bounds.

The Law of Nations regulates the mutual intercourse between States, it depends entirely on the rules of Natural Law, or on the Treaties between the several Communities.

Municipal or Civil Law is the rule by which particular Districts, Communities, or Nations are governed, and is properly

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defined to be a rule of Civil conduct prescribed by the Supreme power in a state, commanding what is right, and prohibiting what is wrong; it is not a transient sudden order, but a permanent and universal rule; it is also a rule of Civil or Moral conduct, and obliges every Individual as a Citizen to contribute on his part to the subsistance and peace of the Society he belongs to.

This naturally brings us to enquire in to the nature of Society and Civil Government, and the natural and inherent right that belongs to the Sovereignty of a state, wherever that Sovereignty is lodged of making and inforcing Laws.

The first Society without doubt was composed of a single family, which daily encreasing extended its limits till grown too large to subsist with convenience in that pastoral state, which gave rise to frequent migrations, that in process of time formed so many additional seperate Societies.

The encrease of Agriculture furnished employment for such a number of hands that migrations became less frequent various Tribes also reunited, some by compulsion or conquest, others by accident, or agreement; thus though Society had not its origin from any convention of individuals actuated by their fears and wants, yet it is their weaknesses and imperfections that keep mankind together, and therefore are the solid foundations as well as cements of Society, and reason must have dictated that the Community should guard the rights of each Individual Member, and that each Individual in return should submit to the Laws of the Community; for Society once formed, Government results of course, as necessary to keep that Society in order, but as all the Members of it are equal, it may be asked in whose hands are the Reigns of Government to be placed, the answer is obvious, though the application of it to particular cases has occasioned half the mischiefs that proceed from mistaken political zeal. For all must allow that it ought to be placed in such persons as have Goodness to endeavour to pursue

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the real interest of the Community. Wisdom continually to discern it, and Power to execute this intention and knowledge.

The particular occasion that gave rise to each form of Government we now see, is matter of great uncertainty, and has occasioned infinite fruitless disputes; every form so far agree in principle, as they have a supreme uncontroaled authority wherein the rights of Sovereignty reside.

The antient political Writers declare there are but three kinds of Governments; the first

The first when the Sovereign Authority is vested in an Assembly of all the Members of the Community, which is called a Democracy;

The second when lodged in a Council of selected Members is stiled an Aristocracy.

The third when entrusted in a single person, is termed a Monarchy.

As the right of making Laws in a Democracy resides in the people at large a goodness of disposition will generaly be found in their measures, though a weakness in contrivance and in execution.

In Aristocracies there appears a greater fund of wisdom than in any other form of Government, but less honesty, than in a Democracy, and less strength than in a Monarchy, where greater power and execution will be found than in the two former; this arises from the various sinews of Government being united at the command of the Prince, but there is imminent danger that he may employ it to oppressive purposes.

Thus these three species of Government have each their peculiar perfections and imperfections. Democracies are best calculated to direct the end of a Law, Aristocracies to point out the means of obtaining that end, and Monarchies to carry the means into execution.

In England alone the advantages of each of the three forms has been admirably combined, for the Legislation is jointly entrusted to three distinct powers; the King, the Spiritual and Temporal Peers, and the House of Commons which is composed of the Representatives of the People freely chose by them; thus Parliament is wisely constructed with every guard the Human mind could devise against inconveniences, as either of the three branches can by their negative power repell any innovation which they may

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think either dangerous or inexpedient; the Executive power of the Laws is vested in the Crown alone; thus the advantages of strength, and dispatch the peculiar attendants of absolute Monarchies equaly belong to this, though free from any danger to the Liberties of any individual.

III. Of the Laws of England

The Municipal Laws of England may with propriety be divided into 1st the Unwritten or Common Law which includes not only General Customs, but also the peculiar Customs of certain parts of the Kingdom, and the particular Laws that are observed only in certain Courts and Jurisdictions; and 2d. the Written or Statute Law.

By unwritten Laws we do not mean that it is at present merely oral, or transmitted from former ages solely by word of mouth; for the present monuments of our Legal Customs are contained in the Records of the several Courts of Justice, in Books of Reports and Judicial Decisions, and in the Treatises of the Learned Sages of that Profession, from the times of highest Antiquity; but because their original institutions are not wrote down, and they receive their binding power from long Usage, and their Universal reception throughout the Realm.

Many of our antient Lawyers pretend that these Customs are as old as the primitive Britons, and even venture to assert that they have never been adulterated, which is scarce credible; for undoubtedly the Romans, Picts, Saxons, Danes, and Normans must insensibly have incorporated their own customs with those that were before established; Lord Bacon is clearly of this opinion, for he says our Laws are as mixed as our language.

Our Antiquarians and Historians universally assure us that our Laws are of this compounded nature, and that the Local Customs of the several provinces of this Kingdom were already so different in the days of Alfred that he found it necessary to compile his Dome Day Book, for the general utility of his subjects which was extant till the Reign of Edward IV. but since lost.

In the beginning of the eleventh Century there were three principal systems of Law, the first the Mercen-Lage or Mercian Law practiced in many of the Midland Counties

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and borders of Wales; the second the West saxon Laye, in the South and West Counties from Kent to Devonshire; the third the Dane-Laye in the rest of the Midland Counties and the Eastern Coast; out of these three King Edward the Confessor framed one uniform digest of Laws, which was probably built upon Alfreds Dome-Day Book; for Historians call him the founder of the English Laws, and Edward the Restorer; the antient Collection of Maxims and Customs thus methodized are now known by the name of Common Laws, thus originaly called, to point out that it was universaly received throughout the Realm.

1°. It is divided into General Customs by which the proceedings and determinations in the Kings Ordinary Courts of Justice are directed; it also ordains that there shall be four superior Courts of Record; the Chancery, King's Bench, Common Pleas, and Exchequer; how Lands are to be inheritated, how property is to be acquired or transfered; the Solemnities and obligations of Contracts; how Wills, Deeds, and Acts of Parliament are to be expounded; the remedies of many Civil injuries, the species of temporal Offences and their punishments, not set down in any written Statute, but depending meerly on immemorial Usage for their support.

These Customs and Maxims are to be known and their Validity determined by the Judges in their respective Courts, who are bound by oath to decide according to the Laws of the Land; they acquire this knowledge by learning the Judicial decisions of their Predecessors, which are carefuly preserved under the name of Records, in places set apart for that purpose; where recourse is had when any critical Question arises, that can acquire light, and assistance from former precedents; and it is a constant rule that precedents are to be implicitly followed, unless evidently absurd or unjust.

II°. Particular Customs or Laws that regard only the Inhabitants of certain districts which were peculiarly permitted to be retained, and have since obtained the confirmation of

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Parliament; many of these are doubtless the remains of the Local Customs above mentioned, out of which Alfred and afterwards Edward the Confessor formed the Common Law; thus Gavelkind in Kent, by which the inheritance is equally divided between the Sons; and that though the Ancestors be attainted and hanged, the Heir shall succeed to the Estate, without any Escheat to the Lord; also the right of Borough English, which in many Boroughs entitles the Youngest Son to inherit in preference to his elder Brothers; in other Boroughs Widows have a right to the whole Estate of their Husbands in lieu of Dower, though at Common Law they could only claim a third part of it; many others could be mentioned equally contrary to the general Law of the Land, and are good only by special Custom.

III^o. Peculiar Laws by custom adopted in certain Courts and Jurisdictions, by these are meant the Civil and Canon Laws, according to the example of Sir Mathew Hale, because neither of these bind the Subjects of England, as they were collected by the Emperors or Popes; for the Legislature of this Kingdom never did recognize any Foreign Power as Superior or Equal to it within this Realm; therefore the only weight the Civil or Canon Laws have obtained in this or any other European Kingdom, arises from having been received by immemorial usage, in some particular cases, and in particular Courts; thus they undoubtedly belong to the Unwritten or Customary Laws; there are some cases where they have been introduced by the consent of Parliament, and then they owe their validity to the Written or Statute Law; this is very clearly explained by the Statute of 25^th. Henry VIII. Chap. 21.

By the Civil Law is properly understood the Municipal Laws of the Roman Empire, as comprized in the Institutes, Code, and Digest of the Emperor Justinian, and

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the Novel Constitutions of himself and some of his Successors; as its Laws must be frequently cited to illustrate our own, it may be proper to give here a general idea of it.

The Roman Law owes its origin to the Constitutions of their Antient Kings, to the twelve Tables of the Decemviri, to the Laws enacted by their Senate or People, the Edicts of the Prætors, the opinions of learned Lawyers, and lastly to the decrees of Successive Emperors, which naturaly swelled it to an immeasurable size; this was in part remedied by the collections of three Eminent Lawyers Gregorius, Hermogenes, and Papirius, and afterwards by a Code compiled by order of Emperor Theodosius the Younger A.D. 438. which was the only Book of Civil Law received as authentic for many Centuries in the Western parts of Europe; and to this it is probable the Franks and Goths payed some regard in framing the Legal Constitutions for their newly erected Kingdoms; the present body of Civil Law was compiled by Tribonian and other Lawyers A.D. 533. by order of Emperor Justinian, who commanded only the Eastern remains of the Empire.

This consists 1.° of the Institutes or first principles of the Roman Law.
2.° Of the Digest or Pandects that is the opinions of eminent Lawyers systematicaly digested.
3.° Of a new Code or collection of Imperial Constitutions, the lapse of a Century having rendered that of Theodosius imperfect.
4.° Of the Novels or Supplement to the Code, containing the Decrees of Successive Emperors as new questions arose; but these however soon fell into neglect and oblivion, till a Copy of Digests was found at Amalfi in Italy about A.D. 1130. the Romish Ecclesiastics eagerly adopted it, and introduced it into several Nations.

The Cannon Law is the Roman Ecclesiastical Law relative to such matters as the Church either has or pretends to have a Jurisdiction over, this is formed
1.° From the Decrees compiled by Gratian an Italian monk in A.D. 1151. From the Antient Fathers, the Decrees of General Councils, and the Decretal Epistles and Bulls of the Popes.
2.° From the Decretum Gregorii Noni published A.D. 1230.

3.° From

3°. From the Sextus Decretalium added by Boniface VIII. A.D. 1298.
4°. From the Decrees of Clement IV. A.D. 1317. and
5°. From twenty of his own Constitutions entitled Extravagantes Joannis.

Besides these Pontifical collections which during the times of Popery were received in this Kingdom, there is also a kind of National Canon Law composed of Legatine and Provincial Constitutions adapted only to this Church and Island.

The Legatine Constitutions were enacted in National Synods held under the Cardinals Otho and Othobon, Legates from Popes Gregory IX. and Adrian IV. in the Reign of King Henry III. about the years 1220. and 1264.

The Provincial Constitutions are the Decrees of Provincial Synods held under the different Archbishops of Canterbury from Stephen Langton in the Reign of King Henry III. to Henry Chichele in the Reign of King Henry V. and adopted by the Province of York in the Reign of King Henry VI.

The Authority of the Canon Law in England now depends on a Statute of King Henry VIII. at the dawn of the Reformation, by which it is enacted that a review shall be made of the Canon Law, but that every part of it repugnant to the Laws of the Land or the King's Prerogative shall remain in full force till that time, but to this hour that work has never been begun. As to the Canons enacted by the Clergy under King James I. A.D. 1603. they do not bind the Laity except as far as they declare the Antient Canon Law, as they were never confirmed by Parliament.

There are four Species of Courts where the Civil and Canon Laws are permitted to be practiced
I. The Courts of the Archbishops and Bishops usually called the Ecclesiastical Courts.
II. The Military Courts.
III. The Admiralty Courts. and
IV. The Courts of the two Universities.

The Courts of Common Law have the Superintendency over all these Courts, to prevent their exceeding the bounds of

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their Jurisdictions; to punish the Officers who execute, and in some cases the Judges that enforce sentences that they have declared illegal; and to grant prohibitions to restrain and controul those Courts from expounding Acts of Parliament in any other sense than what the Common Law puts upon them. The Appeals lye from these Courts to the King in the last resort; therefore they are not independent Species of Laws, but inferior branches of the Customary or Unwritten Laws of England.

We now proceed to the Written Laws of the Kingdom, which are Statutes made by the King with the advice and consent of the Lords Spiritual and Temporal, and Commons in Parliament assembled. The oldest now extant is the Magna Charta as confirmed in Parliament by Henry III. though there must have been many much older.

Statutes are of two kinds, either General or Public Acts, that is Universal Rules that regard the whole Community; these the Courts of Law are bound to take notice of, without the Party who claims any advantage under it particularly pleading it; or Special and Private Acts only operating on particular persons and on private concerns, these the Judges are not obliged

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to take notice of, unless formally shewn and pleaded.

Statutes are also either Declaratory of the Common Law, or Remedial of some defects therein by the former, Parliament to prevent doubts that may arise, declares what the Law is and ever hath been; by the latter, Parliament supplys the defects that may appear in any Law.

The following Rules are to be observed with regard to the Construction of Statutes

1. In a Remedial Statute there are three points to be considered, how the Law stood at the making of the Act, what mischief arose that the Common Law did not provide against, and what remedy Parliament has made.

2. A Statute that treats of things or persons of an inferior Rank, cannot by any general words be extended to those of a superior.

3. Penal Statutes must be construed strictly.

4. Statutes against frauds are to be liberaly and beneficialy expounded, that is where the Statute acts upon the Offender and inflicts a Penalty as the Pillory or Fine, it is then to be taken strictly, but when on the Offence, by setting aside the fraudulent transaction, it is to be liberaly expounded.

5. One part of a Statute must be construed by another that the whole may if possible stand on the same footing.

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6. A saving clause to taly repugnant to the body of the Act is void.

7. Where Common Law and a Statute differ, the former must give place, and an Old Statute to a new one.

8. If a Statute that repeals another be itself afterwards repealed, the first Statute is from that instant revived.

9. Acts of Parliament derogatory from the Power of subsequent Parliaments do not bind.

10. Statutes that cannot possibly be performed are not valid, and if any absurd consequences contradictory to Common reason collaterally arise, they are with regard to those collateral consequences void.

Many have pretended that Acts of Parliament contrary to reason are void; but that is impossible for if the Legislature enacts what is unreasonable, there is no power to controul it.

These are the several grounds of the Laws of England; equity is frequently called in to assist and moderate them in cases of property; but the freedom of our Constitution will not permit a Judge in Criminal Cases to construe the Law otherwise than according to the letter; this caution while it protects the public liberty, can never be hard on any individual, and where the letter induces any apparent hardships, the Crown has the power to pardon.

IV. Of the Countries subject to the Laws of England

The Kingdom of England, over which our Municipal Laws have Jurisdiction, includes not by the Common Law, either Wales, Scotland, or Ireland, or any other dependencies of the British Empire; yet the Civil Laws and Local Customs of this territory do now obtain in part or in all with more or less restrictions in these and other adjacent Countries; of which it will be proper first to take a Review, before we consider the Kingdom of England itself, the original and proper subject of these Laws.

Wales continued for many Centuries independent of England, unconquered, and uncultivated in the Pastoral State ascribed by antient Historians to Britain; by degrees the Welsh were driven from one fastness to another, and by repeated losses deprived of their Wild independence; very early in our History we find their Princes doing homage to the Crown of England; till in the Reign of King Edward I. who may with propriety be stiled the Conqueror of Wales, the line of their antient Princes was abolished, and the King of England's eldest Son from that time has constantly been created their titular Prince; but the finishing stroke to their independency

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was given by the Statute 27. Henry VIII. C. 26. which at the same time greatly advanced their Civil prosperity by admitting them to a thorough Communication of Laws with the Subjects of England; the Statute 34. and 35. Henry VIII. C. 26. confirms the above, divides it into twelve Shires, and in short reduces it into the same order in which it now stands.

Scotland notwithstanding the Union of the two Crowns on the Accession of their King James VI. to that of England, continued a distinct Kingdom for above a hundred Years, and after many difficulties the Union of the two Kingdoms was happily effected in 1707. 5. Anne, when 25. Articles of Union were agreed to by the Parliaments of both Nations, the purport of the most considerable are as follow.

1. That from the first of May 1707. the Kingdoms of England and Scotland shall be United by the name of Kingdom of Great Britain.

2. The Succession to the Monarchy of Great Britain shall be the same as was before settled with regard to England.

3. The United Kingdom shall be represented by one Parliament, to effect this sixteen Scotch Peers are to be chosen to represent the Peerage of Scotland,

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and forty five Representatives of the Scotch Commons; the Sixteen Peers to have the Privileges of Parliament, and the other Peers of Scotland to be Peers of Great Britain and rank after those of the same degree at the time of the Union and have every Privilege of Peers except sitting in the House of Lords and Voting at the Trial of a Peer.

4. There shall be a communication of all Rights and Privileges between the Subjects of both Kingdoms except where it is otherwise agreed.

5. When England raises £2.000.000. by a Land tax Scotland shall raise £48.000.

6. The Standards of Coin, Weights and Measures shall be reduced to those of England throughout the United Kingdom.

7. The Trade, Customs and Excise Laws of England shall be extended to Scotland; all other Laws shall remain in force in the latter, though alterable by the Parliament of Great Britain.

These Articles were confirmed by the 5. Anne C. 8. in which there are also two Acts of Parliament recited; the one for establishing forever the Church and four Universitys of Scotland, and succeeding Sovereigns to take an Oath of inviolably maintaining the same; the other for perpetuating the Acts for Uniformity in the Church of England of 13.

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Elizabeth and 13. Charles II. except as the same had been altered by Parliament at that time.

The Town of Berwick upon Tweed was originally part of the Kingdom of Scotland and as such was reduced for a time by Edward I. into the possession of the Crown of England; He granted a Charter unto it, which (subsequent to Balliols Cession that united this Town forever to the Realm of England) was confirmed by Edward III. with some additions, particularly that it should be governed by the Laws and Usages it enjoyed in the Reign of King Alexander, its Constitution was new modelled by a Charter of James I. which was confirmed in Parliament by the Statute 2. Jac. I. c. 28.

Ireland is a distinct though dependent and subordinate Kingdom, the Kings Stile was only Lord of Ireland till Henry VIII. in the 33d. year of His Reign assumed the title of King which was confirmed by Parliament 35. Hen. VIII. c. 3.

After the conquest of it by Henry II. the Laws of England were received there and sworn

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to at the Council of Lismore, Ireland continues in a State of Dependence, and must necessarily conform to such Laws as the Superior State thinks proper to Prescribe.

The original method of passing Statutes in Ireland was nearly the same as in England, the Chief Governor holding Parliaments at pleasure, which enacted such Laws as they thought Proper, but an ill use being made of this power, particularly by Lord Deputy Gormanstown in the Reign of Edward IV. a set of Statutes were there enacted in the 10.th of Henry VII. whilst Sir Edward Poynings held that Employment, commonly termed Poynings' Laws, one of which to restrain the Power of the Deputy and Parliaments of Ireland enacts that the Chief Governor and Council of Ireland shall certify to the King under the Seal of that Kingdom the reasons for summoning a Parliament and the Articles of Acts proposed to be passed therein; When the King in his Council of England shall have approved any of these Acts, or altered them, and certified them back under the Great Seal of England and

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shall have given Licence to Summon and hold a Parliament, no other Acts but these shall be proposed or received, but to prevent the many inconveniences this occasioned it was provided by the 3.d and 4.th K. Philip and Mary that any new Propositions might be certified to England in the usual forms during the Session of Parliament, but the usage now is that Bills are framed in either House under the Denomination of Heads of a Bill or Bills and thereupon that shape are offered to the consideration of the Lord Lieutenant and Privy Council who receive and transmit such Bills, or reject them without any transmission to England.

By another of Poyning's Laws it is enacted that all Acts of Parliament made before in England shall be of force within Ireland, there no Act in England of a Subsequent date to the 10.th of Henry VII. is binding in Ireland, unless that Kingdom is specially named in it or included by general Words.

Ireland pretended not only to forget its dependency upon England, but even to

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dispute it, therefore by Statute 6. Geo. 1. C. 5.
it is declared that the Kingdom of
Ireland is subordinate to and Dependent
upon the Kingdom of Great Britain as
being inseperably United thereto, and that
the King with the consent of the Lords
and Commons of Great Britain in Parliament,
hath power to make Laws to bind the
People of Ireland, this Statute also
expressly declares that the Peers of
Ireland have no Jurisdiction to affirm
or reverse any Judgments or Decrees
whatsoever, this Power subsisting alone
in the Peerage of Great Britain.

With regard to some of the adjacent
Islands that are subject to the Crown of
Great Britain as the Isles of Wight,
Portland, Thanet &c. they are comprized
within some Neighbouring County and
therefore are a part of the Realm, but
there are others that require to be more
fully treated of.

The Isle of Man is a distinct Territory
from this Kingdom and is governed by its

own

own Laws, neither does any British Act extend to it, unless it be particularly named therein; it was formerly a feudatory Kingdom subject to the Kings of Norway, then to King John and Henry III. of England, afterwards to the Kings of Scotland, then again to the Crown of England, and at length we find King Henry V. claimed it as a Conquest and disposed of it to the Earl of Northumberland on whose Attainder King Henry VII. granted it by the name of Lordship of Man to Sir John Stanley, it continued for eight generations in his lineal Descendants when a controversy arising concerning the inheritance thereof between the Daughters and William the Surviving Brother of Ferdinando Earl of Derby, that caused doubts concerning the Validity of the Grant, the Island was seized by the Crown, James I. made various Grants of it, which being all either expired or surrendered, He afresh granted it to William Earl of Derby and the Heirs Male of his body with

remainder

remainder to his Heirs General, which Grant was confirmed by Act of Parliament the next Year with a restraint of the Power of Alienation by the said Earl & his Issue Male; on the death of James Earl of Derby in 1735. the Male Line of Earl William failing, the Duke of Athol succeeded to this Grant as Heir General by the Female Branch; the Lords of Man had maintained a kind of Regal Authority, by Asserting & Dispersing to Laws, & exercising an Appellate Jurisdiction, yet an Appeal lay to the King in Council; but great inconveniences arising from the distinct Jurisdiction of this little subordinate Royalty, it affording a commodious Asylum for Debtors, Outlaws and Smugglers; the Treasury was authorized by the Statute 12. Geo. I. c. 28. to purchase the interest of the Proprietors for the Use of the Crown, which at length was compleated in 1765. & confirmed by Statute 5. Geo. III. c. 26 & 39. whereby the whole Island is unalienably vested in the Crown & subjected to the regulations of the British Excise & Customs, the Athol

family

family retaining their landed Property, the Manorial Rights and Emoluments, and the Patronage of the Bishoprick and other Ecclesiastical benefices.

The Islands of Jersey, Guernsey, Sark and Alderney belonged to the Dutchy of Normandy, and were united to the Crown of England by the first Kings of the Norman Line; they are governed by their own Laws, which are the old Ducal Customs of Normandy, collected in a Book of great authority entitled le grand coustumier, they are not bound by any Act of Parliament, unless particularly named; Appeals lie from the Bailiffs and Jurats of these Islands to the King in Council.

Our distant Colonies in America are in some respect subjected to the Laws of England, and were for the most part obtained by right of Conquest and driving out the Natives, or by Treaties, therefore the Common Law of England is not of Authority there, they being no part of the Mother Country, but distinct though dependent Dominions, they are subject however to the control of Parliament though not bound by Acts of Parliament, unless particularly mentioned in them.

Our Plantations as to their interior polity are of three sorts; 1st Provincial Establishments the Constitutions of which depend

on

on the respective Commissions issued by the Crown to the Governors, and the Instructions accompanying them, under these Authorities the Provincial Assemblies are constituted, with the power of making local Ordinances not repugnant to the Laws of England.

2°. Proprietary Governments granted by the Crown to Individuals in the nature of feudatory Principalities, with all the inferior regalities and subordinate powers of Legislation, which formerly belonged to the owners of Counties Palatine, but under these express conditions that the Ends of the Grant be pursued & that nothing attempted that may derogate from the Authority of the Mother Country.

3°. Charter Governments in the nature of Civil Corporations, with the power of making By-Laws for their own interior regulation not contrary to the Laws of England.

The form of Government in most of the Colonies is borrowed from that of England, the Governor is named by the King (in the proprietary Colonys by the Proprietor) who is his Representative, they have Courts of Justice from whence Appeals lie to the King in Council, their General Assemblies with their Council of State with the concurrence of the

Governors

Governor make interior Laws; but by Statute 7. & 8. Will. III. c. 22. it is declared that all Laws in practice in any of the Plantations repugnant to any Law made by this Kingdom relative to that Plantation is of none effect. And because several of the Colonies had claimed the sole executive right of imposing Taxes upon themselves the Statute 6. Geo. III. c. 12. declares that all the Colonies in America have been, are and of right ought to be subordinate to and dependent upon the Imperial Crown and Parliament of Great Britain, who have the Power to make Laws & Statutes to bind the Colonies of America in all cases whatsoever.

We come now to consider the Kingdom of England in particular

The Ecclesiastical Divisions of the Kingdom are into two Provinces, those of Canterbury and York, each has an Archbishop & contains divers Dioceses or Sees of Suffragan Bishops, the former includes twenty one the latter three, besides the Bishop of the Isle of Man annexed to it by King Henry VIII. Every Diocese is divided into Archdeaconries of these there are sixty, these into Rural Deanries, and these again into Parishes, which are districts wherein the souls are under the care of one Parson or

Vicar

Vicar, the computation is that the number of Parishes within the Kingdom amount to ten thousand; the exact period when this subdivision was fixed cannot be specified; some Lands from being originally in the hands of irreligious persons, or being situated in Wastes and Forrests continue to this day extra parochial and their Tithes payable by custom to the King instead of the Bishop, from a confidence that he will distribute them to the general good of the Church, yet by Statute 17. Geo. II. c. 37. it is enacted that when Extra parochial Wastes and Marshes are improved and drained, they shall be assessed and contribute to all Parochial Rates in the Parish next adjoining.

The Civil Division of England is into Counties, these into Hundreds, these again into Tythings or Towns, this last division owes its origin to King Alfred, who to prevent the disorders in the Realm, formed every ten families into a Society, they dwelt together and were Sureties for the good behaviour of each individual, one of the principal Inhabitants was annually appointed to preside over the rest with the title of either Tithing-Man, Headborough, Borsholder, or Borough-holder, and strictly no Man was suffered to remain above forty days in the Kingdom unless enrolled in some tithing or Decenary.

Commentaries
on the Laws of England
Book the first
Of the Rights of Persons

I. Of the absolute Rights of Persons

As Municipal Law is a rule of civil conduct commanding what is right, and prohibiting what is wrong; it is proper first to examine the rights that are directed, and then the wrongs that are forbidden by the Laws of England.

The rights of persons are of two sorts, such as are due from every citizen, usually called civil duties, and such as belong to him, which is the most popular acceptation of rights.

The absolute rights of man are commonly summed up in one general appellation, the natural liberty of mankind, which consists in a power of acting as one thinks fit, and uncontrouled but by the Law of Nature; yet on entering into Society every man gives up a part of this natural liberty for the advantages of mutual commerce, this species of legal obedience is most desirable; for were that uncontrouled power retained, every man would equaly exert it, which must destroy the security of individuals in every enjoyment of life.

Political or Civil Liberty is therefore natural liberty so far restrained as is necessary for the general advantage of Society.

The idea and practice of this political or civil liberty flourish in the highest vigour in these Kingdoms. The Legislature and of course the Laws of England are peculiarly adapted to the preservation of this inestimable blessing even in the meanest subject; for though the absolute rights or liberties of every Englishman have at times been deprived by Tyrannical Princes, at others so luxuriant as to tend to anarchy, the greatest of all political evils, yet the vigour of our free constitution as soon as the struggle was over, has settled the ballance of our rights and liberties at its true level.

The rights of the people of England have been established
1. By the great Charter of Liberties obtained sword in hand

from

from King John, and afterwards confirmed in Parliament by King Henry III. which contains very few new Grants, but declaratory of the principal grounds of the fundamental Laws of England.

II. By the Statute called confirmatio cartarum 25th Edward I. whereby the Great Charter is declared a part of the Common Law, and all judgements contrary to it to be void.

III. By a number of corroborating Statutes from King Edward I. to King Henry IV. [illegible]

IV. By the Petition of right a Parliamentary Declaration assented to by King Charles I. in the beginning of his Reign; and the subsequent concessions made by that unhappy Prince before his rupture with the Parliament.

V. By the Habeas Corpus Act in the Reign of King Charles II.

VI. By the Bill of Rights or declaration delivered by the Lords and Commons to the Prince and Princess of Orange on the 13th of February 1688. afterwards enacted in Parliament when they became King and Queen, and lastly

VII. By the Act of Settlement in the 12th and 13th King William III. Chap. 2. whereby the Crown was limitted to the present Illustrious House and some new provisions were made for better securing our Religion, Laws and Liberties.

The rights themselves may be reduced to three principal Articles, the right of personal security, of personal liberty, and of private property.

I. The Right of personal security consists in a person's legal and uninterrupted enjoyment of his life, limbs, body, health, and reputation.

1°. Life is an immediate gift from God, a right inherent by nature in every individual; it begins in contemplation of Law as soon as an infant is able to move in the mother's womb.

2°. A man's limbs, by which are more particularly understood those Members that enable him to fight, and the loss of which by Common Law amounts only to mayhem, are a gift from the Creator to enable Man to protect himself from external injuries in a state of nature

Both the life and limbs of a Man are of such estimation by the Law of England, that it pardons homicide if committed in order to preserve them; therefore if a man through fear of death or mayhem is prevailed upon to execute a deed or any other legal act, this transaction is null and void on his proving such compulsion; it is also sufficient excuse for the commission of many misdemesnors.

The Law also furnishes Man with every thing necessary for his support, for by the laws for the relief of the poor, he may demand a sufficient supply from the opulent part of the community.

These rights of life and Member can only be determined by the death of the Person, which is either Civil or Natural.

Civil death commences if any Man be banished the Realm by the process of common Law, in which case his next Heir shall have the Estate.

Natural Life cannot be legally dispossessed or destroyed by any individual, but alone by forfeiture for the breach of those Laws of Society which are enforced by the sanction of capital punishments; the Great Charter declares that no free Man can be put to death but by the lawful judgement of his equals.

3°. Besides those Members necessary to Man for his own defence and the annoyance of his enemy, the rest of his body is entitled to security from corporal injuries or wounds, though they may not amount to destruction of life or member.

4°. The preservation of health from such practises as may endanger it.

5°. The security of a man's reputation from detraction and slander.

II. The Right of Personal liberty is the next object of the Law of England; this consists in a right of disposing one's person to whatsoever place one pleases, without restraint unless by due course of Law; the Great Charter declares that no free Man shall be imprisoned but by the lawful judgement of his equals, or by the Law of the Land. and several Statutes of King Edward III. direct that no man shall be imprisoned by suggestion or Petition to the King,

or his

of this Council, unless by legal indictment or the process of the Common Law. By the petition of right 3d. King Charles I. it is enacted that no freeman shall be imprisoned without cause shewn, to which he may answer according to Law. By the 16th. King Charles I. if any person be restrained of his liberty by decree of any illegal Court, or by command of the King, by warrant of the Council Board, or of any of the Privy Council; he shall upon demand of his counsel, have a writ of habeas Corpus to bring his body before the court of King's Bench or Common Pleas; who shall determine whether the cause of his commitment be just, and thereupon do as justice shall direct. By the 31st. King Charles II. Chap. 2. usually called the habeas corpus act, the methods of obtaining this Writ is so obvious that no subject can be long detained in prison, except in those cases in which the Law requires and justifies such detainer. And least this Act should be evaded by unreasonable bail, it is declared by the 1st. King William and Mary Sess. 2. Chap. 2. that excessive bail ought not to be required.

To make imprisonment lawful, it must be either by process from the Courts of Judicature, or by warrant from some legal Officer having authority to commit to prison, which must be signed and sealed by the Magistrate and express the cause of the commitment in order to be examined if necessary upon a habeas Corpus.

The natural consequence of this personal liberty is that no Englishman can be sent out of the Kingdom but by Act of Parliament, for transportation is a punishment unknown to the Common Law, and when inflicted is either by the choice of the criminal to escape a capital punishment or else by the express direction of some modern Act of Parliament.

The King by his prerogative may issue a writ to prohibit any of his subjects from going into foreign parts without licence; but he cannot send any man out of the Realm even

upon

upon the public service against his will, excepting Sailors and Soldiers.

III. The right of private property consists in the free use, enjoyment and disposal of all one's acquisitions without any controul, save only by the Laws of the Land.

The Great Charter declares that no free man shall be divested of his freehold, or free customs but by the judgement of his equals, or by the Law of the Land, and by a variety of Statutes in the Reign of King Edward III. it is enacted that no man's lands or goods shall be seized into the King's hands against the Great Charter and the Law of the Land, and that no man shall be disinherited nor put out of his freehold unless forejudged by course of Law.

So great is the regard of the Law for private property that it will not authorize the least violation of it even for the general good of the whole community. If a new road for instance by being made through the grounds of a private person might be extensively beneficial to the public, no law permits this to be done without the consent of the owner of the Land; in this and similar cases the legislature can alone interpose and compel the individual to acquiesce, but then gives a full indemnification for the injury thereby sustained, and even this is an exertion of power the legislature is duly cautious with caution.

Besides no subject of England can be constrained to pay any aids or taxes even for the defence of the Realm or the support of Government, but such as are imposed by his consent, or that of his representatives in Parliament.

By the Statute 25th King Edward I. Chap. 5. and 6. it is provided that the King shall not take any aids but by the common assent of the Realm, by the 34th King Edward I. St. 4. C. 1. common assent is more fully explained, as it enacts that no talliage or aid shall be taken without the Assent of the Spiritual and Temporal Peers, the Knights, Burgesses, and other Freemen of the Land; the 14th of King Edward III. St. 2. C. 1. the Spiritual and Temporal Lords the Citizens, Burgesses and Merchants shall not be charged to make any aid, if it be not by the common assent of the Great Men and Commons in Parliament; and as this fundamental was shamefully evaded by succeeding Princes,

it was made an article in the petition of right 3d King Charles I. that no man shall be compelled to yield any gift or other charge without common consent by Act of Parliament. And the 1st of King William and Queen Mary St. 2. C. 2. declares that the levying money for the use of the Crown without grant of Parliament is illegal.

The three above absolute rights which appertain to every Englishman would in vain be ascertained had not subordinate rights been established as barriers to protect them, these are,

1st. The Constitution, powers and priviledges of Parliament that will be the subject of the next head.

2d. The limitation of the King's prerogative by such clear bounds that He cannot exceed them without the consent of the People, which shall also be hereafter treated of.

3d. The rights of every Englishman of applying to the Courts of Justice for redress of injuries.

As the Law is in England the supreme arbiter of every man's life, liberty, and property, every subject may take his remedy by the course of law for injury done to him.

It would be endless to enumerate all the affirmative Acts of Parliament by which Justice is directed to be done according to the Law of the Land; but not improper to mention some of the negative Statutes whereby abuses, delays of Justice especialy by the Prerogative are restrained. By Magna Carta no free man can be outlawed but according to the Law of the Land, and by the 1st of William and Mary St. 2. C. 2. the pretended power of suspending or dispensing with Laws or the execution of Laws by Regal Authority without the consent of Parliament is illegal; not only judicial decisions of the Law but the method of proceeding cannot be altered but by Parliament.

4th. The right of petioning the King or either House of Parliament for redress of grievances.

The restrictions upon petitioning in England while they

promote

promote the spirit of peace are no check upon that of liberty;
for by the 13th King Charles II. St. 1. C. 5. no petition to the King
or either House of Parliament for any alterations in Church or
State shall be signed by above twenty persons, and also approved
by three Justices of the Peace, or the Major part of the
Grand Jury in the County; and in London by the Lord
Mayor, Aldermen and Common Council; nor shall any
petition be delivered by more than ten Persons at a time,
but under these regulations by Wm. & Mary
St. 2. C. 2. the subject hath a right to Petition, and all
commitments and prosecutions for such petitioning
are illegal

5th. The right of having arms for defence, which is also
declared by Wm. & Mary St. 2. C. 2. and is
a public allowance of the natural right of self
preservation when the sanctions of Society and Laws
are found insufficient to restrain the violence of
oppression.

(1008)

II. Of the Parliament

The supreme power is divided in this Kingdom into two branches, the one Legislative, that is the Parliament, consisting of King, Lords, and Commons; the other Executive, consisting of the King alone.

The tracing the first institution of Parliament is both difficult and uncertain; the word Parliament is derived from the French, and signifies the place where they met and conferred together.
Under Louis VII. of France it was applied to general assemblies of the States, and before the Norman Invasion all matters of importance were debated and settled in the Great Council of the Realm.

In England this general council hath been held immemorially, under the names of michel-synoth, or great council, michel-gemote, or great meeting, and Witten-a-gemote, or the meeting of Wise Men; as early as the Heptarchy these meetings were in use to direct the affairs of the Kingdom, to make new Laws, or amend the old; after that Alfred directed that these councils should assemble twice in the Year. the titles of the Laws made by the Saxon and Danish Monarchs shew they held frequent councils, and there is no doubt that these were also regularly assembled by the first Princes of the Norman line.

Hence it indisputably appears that Parliaments are coeval with the Kingdom itself; how they were composed has occasioned much dispute among our learned Antiquarians, in which we do not mean to enter, but hold it sufficient that most agree that in the main, the Constitution of Parliament as it now stands was marked out in the Great Charter granted by King John in 1215.

wherein

wherein He promises to summon all Archbishops, Bishops, Abbots, Earls, and Great Barons personally, and all other Tenants in chief under the Crown by the Sheriff and Bailiffs to meet at a certain place, with forty days notice to assess Aids and Scutages when necessary. And this Constitution has certainly subsisted from the year 1266. there being still extant Writs of that date whereby King Henry III. summoned Knights, Citizens and Burgesses to Parliament. We shall therefore now enquire wherein consists this constitution of Parliament and

I. As to the manner and time of assembling.

The Parliament is regularly to be summoned by the King's Writ or letter issued out of the Court of Chancery by the advice of the Privy Council, at least forty days before it begins to sit. It is a branch of the Prerogative that no Parliament can be convened by its own Authority or by any other except that of the King, which is very judicious as He is the only branch of the Legislature that has a seperate existence and is capable of performing any act at a time when no Parliament is in being; nor is it any exception to this rule that by some ancient statutes on the demise of the Sovereign if there be no Parliament in being the last Parliament revives and sits again for six months unless dissolved by the Successor; for this revived Parliament must have been originally summoned by the Crown.

But by a Statute 16th Charles I. c. 1. it was enacted that if the King neglected calling a Parliament for three years

the Peers might assemble and issue out writs for the choosing one; and in case of neglect of the Peers, the Constituents might meet and elect one themselves, but this was liable to such inconveniences that it was repealed by the 16th Charles II. c. 1. and therefore cannot serve as a precedent.

Also the Convention Parliament which restored King Charles II. met above a month before his return, the Lords by their own authority, and the Commons in pursuance of Writs issued in the name of the Keepers of the Liberty of England by authority of Parliament and sat full seven months after the Restoration, and enacted many Laws still in force; but this cannot be drawn into a prejudicial example to the rights of the Crown as this was for the necessity of the thing, which supersedes all Law; for if they had not so met, the Kingdom could never have been settled in Peace, besides the King immediately on his return passed an Act declaring this to be a good Parliament notwithstanding the defect of their Kings Writs; and on many lawyers doubting even whether this healing Act could make this a good Parliament, the next Parliament by Statute 13th Charles II. c. 7. and c. 14. confirmed all its Acts.

Another instance though equally incapable of being drawn into precedent is that of the Lords and Commons by their own authority and upon the Summons of the Prince of Orange in 1688. assembling in convention and therein disposing of the Crown and

Kingdom

unto K. William and Queen Mary; but this was on full conviction that King James II. had abdicated the Government and consequently the Throne vacant, and accordingly by Statute 1st. William and Mary St. 1. C. 1. this Convention was declared to be the two Houses of Parliament notwithstanding the want of Writs or other defects of form.

By the Antient Statutes the King is bound to permit a Parliament to sit annually or oftener if need be, for the redress of grievances and dispatch of business, but not to call a new one; to remedy the disorder needle which seemed too vague, it is enacted by the 16th. Charles II. c. 1. that the sitting and holding of Parliaments shall not be intermitted above three years at the most; and by Statute 1st. William and Mary St. 2. C. 2. it is declared that Parliaments ought to be frequently held, this indefinity was reduced to a certainty by St. 6. William and Mary c. 2. which enacts that a new Parliament shall be called within three years after the determination of the former.

II. As to the Constituent parts of a Parliament.

These are the King, the Lords Spiritual and Temporal sitting with him in one House, and the Commons who sit by themselves in another. The King must meet these three Estates in person or by representation without which there can be no beginning of a Parliament, and he alone has the power of dissolving it.

The true excellence of the English government consists in a mutual check upon each other from these

three

three constituents parts; for the People are a check on the Nobility, and they on the former, by the mutual privilege of rejecting what the other has resolved; while the King is a check upon both, which preserves the Executive power from encroachments; this provision is very wise as the power of rejecting fully answers the end proposed, that if effected by a power of resolving might have given rise to the greatest evils.

We will now consider each of these three constituent parts in a seperate view; and as the King must be treated of more fully when we investigate the Executive Power, we shall first mention the Spiritual Lords.

These consist of two Archbishops and twenty four Bishops, and at the dispolution of the Monasteries by Henry VIII. consisted likewise of twenty six Mitred Abbots, and two Priors, which made an equal number to the Temporal Nobility; these either hold or are supposed to hold certain antient Baronies under the King; for William the Norman changed the Spiritual Tenure of frankalmoign or free alms, by which they held during the Saxon Government, into the feodal or Norman Tenure by Barony, which subjected their Estates to all Civil charges from which they were before exempt, and in right of succession to those Baronies the Bishops and Abbots obtained their seats in the House of Lords, and though the Lords Spiritual are in Law a distinct Estate from the Lords Temporal, yet from the want of a seperate Assembly and seperate negative of the

Prelates

Prelates, some Authors have argued very cogently that the Lords Spiritual and Temporal are now in reality only one Estate; which in every effectual sense is true, though the antient distinction between them still nominally subsists; for should a Bill pass their House it would be valid though every Spiritual Lord voted against it; on the other hand it would be equally good if the Temporal Lords were inferior to them in number, though every one of those Temporal Lords voted to reject it, Sir Edward Coke seems indeed to doubt of this.

The Lords Temporal consist of all the Peers of the Realm by whatever titles of Nobility distinguished, (the Bishops in strictness are only Lords of Parliament) some of these sit by descent, others by creation, and by the Union with Scotland sixteen Peers of the Scotch Nobility sit by Election to represent that body. The number of Temporal Peers is indefinite and may be encreased at will by the Crown.

The Commons consist of all such Men of any property in the Kingdom as have no seats in the House of Lords; every one of which has a voice in Parliament either personally, or by his Representatives.

In so large a State as ours, it is very wise that the People should do that by their Representatives, that it is impracticable for them to perform in person.

The Counties are represented by Knights elected by the Proprietors of Lands, the Cities and Boroughs by Citizens and Burgesses chosen by the mercantile

part

part, or supposed trading interest of the Nation.

The number of English Representatives is 513. and of Scots 45. in all 558. And every Member though chosen by a particular district when returned serves for the whole Realm, and therefore is not bound to take the advice of his Constituents upon any particular point unless he thinks it proper so to do.

Whatever is enacted for Law by one or two only of the three Constituent parts is no Statute, and to it no regard is due unless in matters relating to their own privileges.

III. As to the Laws and Customs relating to Parliament thus united together and considered as one aggregate body.

The power and jurisdiction of Parliament is unbounded, as it is entrusted by the Constitution of these Kingdoms with that absolute despotic power which must in all Governments reside somewhere.

Mr. Locke and other theoretical writers are of opinion that there remains still inherent in the people a supreme power to remove and alter the Legislative, when they find the Legislative act contrary to the trust reposed in them; for when such trust is abused it is thereby forfeited and devolves to those who gave it; however specious this conclusion may seem in theory, it is so subversive of all Law, that no form of Government actually existing can admit it, as by annihilating the Sovereign power, all the positive laws before enacted would be repealed.

To

To prevent the placing this extensive authority in hands incapable or improper to manage it, no one can sit or vote in either House of Parliament unless he be twenty one Years of Age; hath in the presence of the House taken the Oaths of Allegiance, Supremacy, and Abjuration, subscribed and repeated the Declaration against invocation of Saints and the Sacrifice of the Mass. and be born within the Dominions of the Crown of Great Britain.

Parliament is directed in its proceedings by its own peculiar laws and customs, which are built on this maxim, that whatever matter arises concerning either House of Parliament, ought to be examined, discussed and adjudged in that House to which it relates and not elsewhere.

The priviledges of Parliament are likewise very large and indefinite, they were principally established for the protection of its Members not only from the molestation of their fellow subjects, but from the oppression of the power of the Crown, and consequently have not been defined as it would then have been easy for the Executive power to devise new cases not within those limits, and thus violate the freedom of Parliament.

Some of the more notorious priviledges are wrote down, as freedom of speech, of person, of their domestics, and of their lands and goods.

Such priviledges as derogate from the common law, being only indulged to prevent the Members being diverted from the public business, are no longer in force than the session of Parliament, except that of freedom of person; which in a Peer is sacred and inviolable, and in a Commoner for forty days after every prorogation, and forty

days.

days before the next appointed meeting.

The claim of privilege hath usually been guarded with an exception as to the cases of indictable crimes, or as it hath been expressed, of Treason, felony, breach of the peace, and within a few years the case of writing and publishing seditious libels hath been resolved by both Houses not to be entitled to privilege: so that the chief privilege of Parliament in such cases seems to be the right of receiving immediate information of the detention of any member, with the reasons for which he is detained.

IV. As to the Laws and Customs relating to the House of Lords in particular, exclusive of their judicial capacity which must be reserved for the third and fourth books of these Commentaries.

By the Charter of the Forest every Lord Spiritual or Temporal summoned to parliament, may both in going and returning through the King's Forests kill one or two of the King's Deer without warrant, in view of the Forester, or in his absence, on blowing a horn that it may not seem taking it by stealth.

The House of Lords have the right of being attended and constantly are by the Judges, the Masters of the Court of Chancery, and the Serjeants at Law; formerly the Secretaries of State, the Attorney and Solicitor General used also to attend, and have still their regular writs of Summons issued out at the beginning of every parliament; but as they are now usually Members of the House of Commons their attendance is fallen into disuse.

Every Peer having taken the oaths that parliament, can make another Lord his proxy to vote for him in his absence.

&c

He can also when a vote passes contrary to his opinion enter his dissent on the Journals, provided there has been a division, which is usually stiled his protest.

All bills that may affect the rights of the Peerage by the custom of Parliament are to have their rise in the House of Peers, and not to be altered in the House of Commons

There is also one Statute peculiarly relative to the House of Lords; 6. Anne c. 23. which regulates the election of the sixteen representative Peers of North Britain.

V. The peculiar Laws and Customs relating to the House of Commons consists principally in the raising taxes and the elections of Members to serve in Parliament.

With regard to taxes it is the antient indisputable privilege and right of the House of Commons that all parliamentary aids do begin in their House, although not effectual untill they have the Assent of the other two branches of the Legislature.

As to the elections of Knights, Citizens, and Burgesses, the laws have strictly guarded against usurpation or abuse of this power by

1°. the qualifications of the electors.
2°. the qualifications of the elected.
3°. the proceedings at elections.

The true reason of requiring any qualifications of the electors is to exclude such persons as are in too mean a situation to be supposed capable of having a will of their own. The mode here adopted is much wiser than those by Centuries or Tribes among the Romans, in the former property not numbers turned the scale, in the

latter

latter numbers were only regarded; our constitution steers between the two extremes; for though the richest man has only one vote in a place, yet if his property be diffused, he has probably a right to vote at more places than one, yet a more compleat representation of the people would be very desirable.

Such are only qualified to elect Knights of the Shire who

1°. by Statute 8. Henry VI. c. 7. and 10. Henry VI. c. 2. have a freehold to the value of forty shillings by the year within the County, which by subsequent Statutes is to be clear of all deductions except parliamentary and parochial taxes, which sum is equivalent to twenty pounds at present.

2°. no person under twenty one years is capable of voting for any member; which extends also to those of boroughs.

3°. no person convicted of perjury or subornation of perjury can vote at an election.

4°. no person shall vote in right of a freehold fraudulently granted him for that purpose.

5°. the Voter must have had possession of his freehold for twelve calendar months before, unless come to him by descent, marriage, or promotion to a benefice or office.

6°. no person shall vote in right of an Annuity or rent charge, unless registered with the Clerk of the Peace twelve calendar months before.

7°. the person in possession in mortgaged or trust estates shall have the vote.

8°. Only

8°. only one person can vote for one House to prevent the splitting of freeholds.
9°. no estate gives a right of voting unless assessed to some Land tax aid at least twelve calendar months before the Election.
10°. no Tenant by copy of Court Roll can be permitted to vote as a freeholder.

As the Electors of Citizens and Burgesses were supposed to be the mercantile part or trading interest of this Kingdom; as Towns encreased in Trade and Inhabitants they were admitted by the Crown to a share in the Legislature, but unhappily the deserted boroughs continue to be represented as well as those to whom their Trade and inhabitants have been transferred, except a few that petitioned to be eased of the burthen when the custom subsisted of giving two shillings a day as wages for their representative, Counties allowed a Knight of the Shire four shillings; the right of election in boroughs is various, according to their different Charters, Customs, and Constitutions, though by Statute 2. Geo. II. c. 24. the right of voting for the future shall be allowed according to the last determination of the House of Commons concerning it; and by Statute 3. Geo. III. c. 15. no freeman of any City or borough shall be entitled to vote therein, unless admitted to his freedom twelve calendar months before.

The qualifications of persons to be elected Members of the

House

House of Commons consists in
1°. That they must not be aliens born, nor under the age of twenty one years.
2°. Not any of the twelve Judges, nor of the Clergy, nor persons attainted of treason or felony.
3°. Nor Sheriffs of Counties and Mayors and Bailiffs of boroughs in their respective jurisdictions, as being returning officers, but are eligible in other places.
4°. Nor any persons concerned in the management of any duties or taxes created since 1692. except the Commissioners of the Treasury, nor any of the Officers following (viz Commissioners of prizes, transports, Sick and Wounded, Wine Licences, Navy and Victualling; Secretaries or Receivers of prizes, Comptrollers of the Army Accounts; Agents for Regiments, Governors of Plantations and their deputies; Officers of Minorca or Gibraltar; Officers of the Excise or Customs; Clerks or Deputies in the several Offices of the Treasury, Exchequer, Navy, Victualling, Admiralty, pay of the Navy or Army, Secretaries of State, Salt, Stamps, Appeals, Wine Licences, Hackney Coaches, Hawkers and Pedlars) nor any persons that hold any new Office under the Crown, created since 1705. are capable of being elected Members.
5°. No person having a pension during pleasure or for a term of years under the Crown.
6°. Any Member accepting an office under the Crown except an Officer in the Navy or Army accepting a new commission his seat is void, but is capable of being re-elected.
7°. Knights of Shires must have sufficient estates to be Knights, and by no means of the degree of Yeomen, which is further ascertained by
8°. That every Knight of a Shire must have a clear freehold

or

or Copyhold estate of six hundred pounds per Annum, and every Citizen and Burgess to the value of three hundred pounds; except the eldest Sons of Peers, and of persons qualified to be Knights of Shires, and except Members for the two Universities; of which qualification they must make Oath, and deliver in writing the particulars, at the time they take their Seat.

The obliging the Trading interest to make choise of Landed men, in some measure ballances the ascendant the boroughs have gained over the Counties.

The method of proceeding in elections is regulated by the Law of Parliament, and by several Statutes from which the following account is extracted.

On the Summons of a new Parliament the Lord Chancellor (or on a vacancy during Parliament the Speaker by order of the House) sends his warrant to the Clerk of the Crown in Chancery, who thereupon issues out writs to the Sheriff of every County, for the election of all the Members to serve for that County and every City and Borough therein. The Sheriff must send his precept under his seal within three days after the receipt of this writ to the proper returning Officers of the Cities and Boroughs, who must proceed to election within eight days notice from the receipt of the precept, giving four days notice of the same, and return the persons chosen with the precept to the Sheriff.

But elections of Knights of Shires must be proceeded to by the Sheriffs themselves in person at the next County Court after the delivery of the Writ. The County Court is held every month or oftner by the Sheriff to try causes not exceeding forty shillings

in

in what part of the County he chooses to appoint; but the election of Knights of Shires must be at the most usual places. If the Writ be delivered on the day of the County Court, or within six days after, the Sheriff may adjourn the Court and election to some other convenient time, not longer than sixteen days, nor shorter than ten; but he cannot alter the place without the consent of all the Candidates, and ten days publick notice of the time and place of election.

That elections may be perfectly free all Soldiers quartered in the place are to remove at least one day before the election to the distance of two miles from the place, and not to return till one day after the Poll is ended. Riots have likewise frequently been determined to make an election void; the House of Commons have also declared that no Peer or Lord Lieutenant of a County ought to interfere in elections, nor shall the Lord Warden of the Cinque ports recommend any Members there. If Officers of the Excise, Customs, Stamps, or certain other branches of the Revenue, intermeddle in elections, by persuading or dissuading voters, they shall forfeit one hundred pounds, and be disabled from holding any Office.

To prevent bribery and corruption no candidate after the date of the Writ shall give any money or entertainment to his electors, or promise to give any on pain of being incapable to serve for that parliament, and if he bribes a voter he that takes and he that offers shall forfeit five hundred pounds, and be forever disabled from voting and holding any Office in any Corporation.

One

On the day of election the Sheriff or other returning Officer after taking an Oath against bribery and for the due execution of his office, the Candidates having if required sworen to their qualification, and the electors in Counties to theirs; the electors both in Counties and Boroughs may be called upon to take the Oaths of Abjuration, and against bribery and corruption.

The election being closed, the returning Officer in boroughs returns his precept to the Sheriff with the persons elected by the majority, and the Sheriff returns the whole with the Writ for the County and Knights elected thereupon to the Clerk of the Crown in Chancery; before the day of meeting if a new Parliament, or within fourteen days after the election if by an occasional vacancy, under a penalty of five hundred pounds; for a false return he forfeits one hundred pounds, and the Returning Officer in boroughs forty pounds, besides liable to an action in which double damages are recovered, and the person bribing a returning officer to forfeit three hundred pounds; but the members returned by him are the sitting members untill the House of Commons on Petition shall adjudge the return to be false and illegal.

VI. The method of making laws, previous to which we must premise that each house of Parliament has its Speaker; in the house of Lords he is to preside and manage the formality of business, is constantly the

Chancellor

Chancellor, or Keeper of the Great Seal, or any other appointed by the King's Commission, and if none is so named the Lords may elect one. In the House of Commons the Speaker is chosen by the house, but must obtain the approbation of the King. The Speaker of this house cannot give his opinion in the house; but the one of the Lords if a Lord of parliament may. In each house the Act of the majority binds the whole, which is declared by votes openly given.

If the relief sought by a bill is of a private nature, a petition must first be preferred, which must be presented by a member, and is referred in the house of commons to a committee of members, but in that of the Lords to two Judges, who upon examination report the State of it to the house, then leave is given to bring in the bill. In public matters the bill is brought in upon motion made to the house without any petition.

The persons directed to bring in the bill present it within a competent time to the house with many blanks, then it is read the first time, and at a convenient distance a second time, if not rejected during these stages it is referred to a committee, which is selected if the matter is of small importance, if of consequence, the house resolves itself into a committee of the whole house; this is effected by the Speaker quitting the Chair, and a member appointed Chairman. here the bill is canvassed clause by clause, the blanks filled up and sometimes the bill new modelled, then the Chairman reports it to the house with the amendments that have been made, which if agreed to, the bill is ordered to be engrossed, then read a third time when if approved it passes; if a new clause is added it is done by tacking a separate parchment on the bill, which is called a ryder. After this if in the house of commons a member is directed to carry it to the Lords and desire their concurrence. the Speaker comes from the Woolsack to the bar to receive it. The same forms are there used as in the other house, except ing reading that being already done; if rejected no notice is taken to prevent unbecoming altercations; but if the Lords agree to it, they usually send a message by two masters in Chancery

though

though on great occasions by two of the Judges, signifying that they have agreed to the same, and the bill remains with the Lords unless they have made some amendment, when it must be returned to the commons for their concurrence, to which if the Commons do not approve of, a conference usually ensues between members deputed by each house, who commonly adjust the difference; but if both houses remain inflexible the bill is dropped; if the Commons agree to the amendments the bill is returned to the Lords by one of the members with a message acquainting them therewith. The same forms are used when the bill begins in the house of Lords, except that it is carried by two Masters in Chancery or two Judges to the Commons, in either case the bill is always deposited in the house of Lords to wait the Royal assent, except money bills, which are returned to the Commons and presented at the bar by their Speaker for that authenticity.

The Royal assent is either given in person when the King comes to the house of peers in his Crown and Royal Robes, and sending for the Commons to the bar, the titles of the bills that have passed both houses are read by the Clerk of the Crown, and the King's answer declared by the Clerk of Parliament in Norman French, if the King consents to a money bill the answer is, le Roy remercie ses bons sujets pour cette leur benevolence et ainsi le veut; if a public bill le Roy le veut; if a private bill soit fait comme il est desiré; if the King refuses his assent, le Roy s'aviser.

The other mode of giving the Royal Assent is by letters patent under the Great Seal signed with his hand and notified in his absence to both houses assembled together in that of the Lords; wherein the title of each bill is particularly recited, this has been settled by Statute 33. Henry VIII. c. 21.

The Royal Assent given by either of these methods to the bills that are then Statutes or Acts of Parliament, and are placed among the records of the Kingdom, and copies printed at the King's press for the information of all whom it may concern.

Any

An Act of parliament thus made is the exercise of the highest authority that this Kingdom acknowledges upon earth; it has power to bind every subject in the land and the dominions thereunto belonging, nay even the King himself, if particularly named therein, and it cannot be altered, amended, dispensed with, suspended, or repealed, but in the same forms and by the same authority of parliament: formerly the King was supposed capable of dispensing in many cases with the penal statutes, but by 1st. William and Mary St. 2. C. 2. the suspending or dispensing with Laws by regal authority without the consent of parliament is illegal.

VII. The following are the methods of adjourning, proroguing and dissolving parliaments.

Adjournment is the continuance of the session from one day to another, which is done by the authority of each house seperately every day, and sometimes for a fortnight or month together, as at Christmas, Easter, or other particular occasions, but the adjournment of one house is no adjournment to the other. The King has at times signified his pleasure that both or either of the houses should adjourn themselves to a certain day, which they have obeyed least on a refusal prorogation should ensue, which ends the session, and any bills not passed must be a fresh commenced. but by adjournment all things continue in the same state as on their reassembling may be proceeded upon, as if there had been no recess.

Prorogation is the continuance of parliament from one session to another; this is done by the Royal authority expressed either by the Chancellor in the presence of the King, or by commission from the Crown, or frequently by proclamation. It became now a doubt if that a prorogation must be expressly made in order to determine the session, and if parliament shall be seperated by adjournment or prorogation at the time of an actual Rebellion or imminent danger of Invasion, the King is empowered by statute 30. George II. C. 25. to call them together by proclamation with fourteen days notice of the

time

57.

time appointed for their reassembling.

Dissolution is the civil death of the parliament and may be effected.

1°. By the King's will expressed either in person or by representation.

2°. By the demise of the Crown, which used immediately to effect this, but by Statutes 7. and 8. William III. c. 15. and 6. Anne c. 7. the parliament in being shall continue for six months after the death of any King or Queen, unless sooner prorogued or dissolved by the successor; that if the parliament at the time of the King's death shall happen to stand under adjournment or prorogation, they shall notwithstanding immediately assemble, and if no parliament shall be existing, the members of the last parliament shall assemble and again be a parliament.

3°. By length of time; for the Statute 6. William and Mary the same Parliament was allowed to sit three years, after which it was to have no longer continuance; but by 1st. Geo. I. st. 2. c. 38. to prevent the frequent expences of elections, this term was prolonged to seven years.

III. Of the King and his Title

The Supreme Executive power of these Kingdoms is vested by our Laws in a single person the King or Queen, for it matters not to which Sex it descends; but the person entitled to it is immediately invested with all the ensigns, rights, and prerogatives of sovereign power by 1st Mary St. 3. C. 1.

The fundamental maxim upon which the right of succession to the Throne of these Kingdoms seems to be this; that the Crown is by common law and constitutional custom hereditary; and this in a manner peculiar to itself; but that the right of inheritance may from time to time be changed or limited by Act of Parliament, under which limitations the Crown still continues hereditary.

1st It is in general hereditary, which owes its origin to the founders of our constitution; they might have preferred an elective Monarchy which at first sight appears the best suited to the rational principles of government, and the freedom of human nature, and would in reality be as desirable in a kingdom as in other inferior communities, if the individuals who compose that state could always continue true to first principles, uninfluenced by passion or prejudice, unassailed by corruption, and unawed by violence. The best, the wisest and bravest man would then be sure of receiving that Crown which his endowments deserved; and the sense of an unbiassed majority would be dutifully acquiesced in by the few who were of different opinions: but history and observation teach us that elections of every kind are chiefly obtained by influence, partiality and artifice; all societies are liable to this, in private ones suspicions of that kind if false give rise only to jealousies and murmurs which time will effectually suppress, and if true the injustice may be remedied by legal means by an appeal to those tribunals to which every member of society has by becoming such, virtually engaged to submit; but in the great and independent society which every nation composes, there is no superior to resort to but the Law of nature; no method of redressing the infringements of that Law, but by civil and intestine wars. Hereditary succession to the Crown is therefore established in this and most other countries to prevent that

periodical

periodical bloodshed and misery which the history of the Roman Empire, and the more modern experience of Poland and Germany may shew us are the consequences of elective Kingdoms.

2ly. The particular mode of inheritance in general corresponds with the Feodal path of descents, chalked out by the common law in the succession to landed estates, yet with one or two material exceptions. The Crown descends lineally to the issue of the reigning monarch, the preference of males to females, and the right of primogeniture among the males are strictly adhered to; but among the females it descends to the eldest daughter only and her issue, and not as in common inheritances to all the daughters at once; the evident necessity of a sole succession to the Throne having occasioned the royal law of descents to depart from the common law in this respect. The doctrine of representation prevails in the descent of the Crown, as it does in other instances, whereby the lineal descendants of any person deceased stand in the same place as their ancestor if living would have done. And on failure of lineal descendants the Crown goes to the next collateral relations of the late King, provided they are descended from the blood royal, that is from that royal stock which originally acquired the Crown.

3ly. The doctrine of hereditary right does not imply an indefeasible right to the Throne; unquestionably the supreme legislative authority of this Kingdom, the King and both Houses of Parliament can defeat this hereditary right, and by particular entails, limitations, and provisions exclude the immediate heir and vest the inheritance in any one else; and if such a power were not lodged somewhere, our polity would be very defective, for if the heir apparent should be a lunatic, an ideot, or otherwise incapable of reigning, how miserable would the condition of the nation be, if he could not be set aside; on the other hand if this power were expressly

lodged

lodged in the hands of the subjects only to be exerted whenever prejudice, caprice, or discontent should take the lead, the inheritance and regal dignity would be much too precarious; therefore it is most wisely placed in the two houses of Parliament by and with the consent of the reigning King who can scarcely agree to any thing prejudicial to the rights of his own descendants.

4°. However the Crown may be limited or transferred it still retains its descendible quality and becomes hereditary in the wearer of it; so that the right of sovereignty is fully invested in the successor by the very descent of the Crown; and therefore however acquired it becomes in him absolutely hereditary unless by the rules of the limitation it is otherwise ordered and determined.

IV. Of the King's Royal Family

The first and most considerable branch of the Royal family is the Queen, who is either Regent, Consort, or Dowager. If Queen Regent she holds the Crown in her own right and has the same powers and rights as if she had been a King, but the Queen Consort is the Wife of the Reigning King, and by virtue of her marriage is participant of divers prerogatives above other women.

She is a public person exempt and distinct from the King, and does not like all other married women lose all legal and seperate existence, so long as the marriage continues. For the Queen can purchase lands convey them, and do other acts of ownership without the concurrence of her lord, which no other married woman can do. She hath seperate counsel and officers distinct from the King's not only in matters of ceremony but of law, and her Attorney and Solicitor General are entitled to a place within the Bar of the King's Court together with his counsel. She may likewise sue and be sued alone without joining her husband, and have a right to dispose of her goods and lands by will; in short in all legal proceedings she is looked upon as a single, not as a married woman.

Though the Queen is in all respects a subject, yet in point of the security of her life and person she is put on the same footing with the King; by Statute 25. Edward III. it is equally treason to compass or imagine the death of our lady the King's companion as of the King himself, and to violate or defile the Queen Consort amounts to the same high crime as well in the person committing the fact as in the Queen herself if consenting. If the Queen be accused of any species of treason whether Consort or Dowager, she shall be tried by the House of Peers, as Queen Anne Boleyn was in the 28. Henry VIII.

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The husband of a Queen Regnant as Prince George of Denmark was to Queen Anne is her subject and may be guilty of High Treason against Her, but not subject to the same penal restrictions in the instance of conjugal fidelity, which is reasonable as he cannot debase or bastardize the heirs of the Crown.

A Queen Dowager is the Widdow of the King and as such enjoys most of the privileges belonging to her as Queen Consort, but the conspiring her death or violating her Chastity is not high treason, but no man can marry a Queen Dowager without special Licence from the King on pain of forfeiting his lands and goods. Sir Edward Coke says that by 6. Henry VI. She is entitled to a Dower after the Demise of the King, though born an alien, which no other Alien is. A Queen Dowager when remarried again to a subject, doth not lose her royal dignity, as peeresses dowager do their peerage when they marry Commoners.

The Prince of Wales or Heir apparent to the Crown, and also his Consort, and the Princess Royal, or eldest daughter of the King are likewise peculiarly regarded by the Laws. For by St. 25. Edward III. to compass or conspire the death of the former or violate the chastity of either of the latter is high treason. The heir apparent is usually created Prince of Wales and Earl of Chester, but the King's eldest son is by inheritance Duke of Cornwal without any new creation.

The younger Sons and Daughters of the King are little further regarded by the Laws than to give them precedence before all peers and publick officers as well Ecclesiastical as Temporal.

V. Of the Councils belonging to the King

The first of these is the High Court of Parliament which we have already treated of at large.

The second is the Peers of the Realm who are as such the hereditary Counsellors of the Crown and may be called together by the King for their advice either in time of Parliament or when there is none in being; for which reason they are free from arrests &c. even when no Parliament is sitting.

The third is the Judges of the Courts of Law, for law matters.

The fourth is the Privy Council which by way of eminence is called usually the Council. The King's will is the sole constituent of a privy councellor, which also regulates the number, anciently it consisted of twelve of thereabouts; no person born out of the Dominions of the Crown of England unless of English parents even though naturalized by Parliament can be of the Privy Council.

The power of the Privy Council is to enquire into all offences against the Government, and to commit the offenders to safe custody, in order to take their trial in some courts of law; but they can only enquire, not punish; and by Statute 16. Charles I. c. 10. persons committed by them are as much entitled to their habeas Corpus as if committed by an ordinary Justice of the Peace. In Admiralty or Plantation Causes arising without the Jurisdiction of this Kingdom, and in matters of Lunacy and Idiotcy, the appeal lies to the King in Council, as also any disputes between the provinces in America or elsewhere concerning their original Charters, boundaries and the like; which Judicial authority is usually exercised in a Committee of the whole Privy Council who hear the allegations and proofs, and make their report to the King in Council, by whom Judgement is finally given.

The privileges of privy councellors as such consist principally in the security which the law has given them against attempts

and

and conspiracies to destroy their lives. For by Statute 3 Henry VII. c. 14. any of the King's household servants conspiring to take away the life of a Privy Counsellor though nothing is done, is guilty of felony; this is now understood to extend only to the King's menial servants. And by Statute 9. Anne c. 16. any person attempting to kill, assault strike or wound a privy counsellor in the execution of his Office shall be felons and suffer death as such.

The disolution of the Privy Council depends on the King's pleasure, and he may at any time dismiss any particular Counsellor; it used to be dissolved ipso facto by the demise of the King; but by Statute 6 Anne c. 7. the Privy Council shall continue six months after the demise of the Crown, unless sooner determined by the successor.

VI. Of the King's Duties

The principal duty of the King is to govern his people according to law; to obviate all doubts and difficulties it is expressly declared by Statute 12 and 13. William III. c. 2. that the Laws of England are the birthright of the people thereof; that the Kings and Queens of this realm ought to administer the Government of the same according to the said Laws, and all their Officers and ministers ought to serve them respectively according to the same; and therefore all the Laws and Statutes of this realm for securing the established Religion, and the rights and liberties of the people thereof, and all other laws and Statutes of the same now in force are by his Majesty by and with the advice and consent of the Lords Spiritual and Temporal and Commons, and by authority of the same ratified and confirmed accordingly.

The original Contract between the King and people is now couched in the Coronation Oath which by 1. William and Mary St. 1. c. 6. is to be administered to every King or Queen who shall succeed to the Imperial Crown of these realms, by one of the Archbishops or Bishops of the realm in the presence of the people, who on their parts do reciprocally take the oath of allegiance to the Crown.

The purport of this Coronation Oath is that the Sovereign will govern according to Law; that he will execute judgement with Mercy; and that he will maintain the established religion.

VII. Of the King's Prerogative

We have considered as formerly heads to be observed that one of the principal bulwarks of the British Constitution is the limitation of the king's prerogative by such certain bounds that he cannot exceed them without the consent of the people or an open violation of that original contract which [illegible] expressly subsists between him and his subjects. We shall now shew that the powers vested in the Crown by the laws of England are necessary for the support of society, and do not further intrench on natural liberty than the maintenance of civil liberty makes expedient.

By the word prerogative is understood that special pre-eminence the King hath over and above all other persons, out of the ordinary course of common law in right of his regal dignity, and can only be applied to those rights and capacities he enjoys alone in contradistinction to others, and not to those he holds in common with any of his subjects.

Prerogatives are either direct or incidental; the direct are such positive substantial parts of the royal character and authority, as are rooted in and spring from the King's political person, considered by itself without reference to any other extrinsic circumstance; as the right of sending Ambassadors, of creating Peers, and making Peace or War. The incidental are such as always bear a relation to something else distinct from the king's person, and are only exceptions in favour of the Crown, to those general rules that concern the rest of the community; such as that no costs can be recovered against the King, that he cannot be a joint tenant, that his debts shall be preferred before that to any of his subjects.

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The substantive or direct prerogatives may be further divided into three kinds, the kings royal character, his royal authority, and his royal income; without these he could not maintain the executive power in due vigour and independence; the two former will be considered here, the latter will require a distinct examination.

The preeminence of the King consists in that no suit or action can be brought against him even in civil matters, as no court can have jurisdiction over him. from hence also the person of the king is sacred, even though the measures pursued in his reign be completely tyrannical and arbitrary; for no jurisdiction on earth can try him in a criminal way, much less condemn him to punishment. if any foreign jurisdiction had this power as was claimed by the Pope, the independence of the kingdom would cease. and if any domestic tribunal had this power, the constitution would soon be destroyed by annihilating the free agency of one of the constituent parts of the sovereign Legislative power. yet should the Crown invade the rights of the people by private injuries or public oppressions there are remedies provided by law.

If any person has in point of property a just demand upon the king, by petitioning him in his Court of Chancery, the Chancellor will administer right as a matter of grace though not on compulsion.

As to cases of ordinary public oppression where the vitals of the Constitution are not attacked, the Law has assigned a remedy; for as a king cannot misuse his power without the advice of evil counsellors and the assistance of wicked ministers these men may be examined and punished.

As to such public oppressions as tend to dissolve the Constitution they are cases the law cannot out of decency suppose, since such a distrust would have rendered the exercise of the supreme power precarious and impracticable; for had the two houses of parliament or either of them a right to animadvert on the king, or each other, or the king or either of them, that branch of the legislature so subject to animadversion would instantly cease to be part of the supreme power.

Though positive laws are silent, the case of king James II. teaches us, that should any future Prince endeavour to subvert the constitution by breaking the original contract between the king and people, should violate the fundamental laws and withdraw himself out of the kingdom, undoubtedly this conjunction of circumstances would amount to an abdication, and the Throne would be thereby vacant.

It is a maxim in law that the King can do no wrong, which does not mean that every thing transacted by the government is of course just and lawful, but that whatever is exceptionable is not to be imputed to the king, and that the prerogative of the crown does not extend to do any injury; and the privilege of canvassing the personal acts of the Sovereign either directly or through the medium of his reputed advisers belongs to no individual, but is confined to the two houses of Parliament, and there the objections must be made with great respect and deference.

No

No lapse of time can be used to debar the king from recovering any lands; but by an Act of 9th George III. this is restrained as in private persons to the term of sixty years. If the heir to the Crown were attainted of treason and felony, and should the Crown afterwards descend to him this would purge the attainder of itself. In the judgement of the Law a king is never a minor or under age unless by the particular authority of Parliament on certain occasions a Protector, Guardian, or Regent has been appointed for a limited time.

By the law the King never dies, for on the decease of the Reigning king his dignity is from that instant vested in his heir.

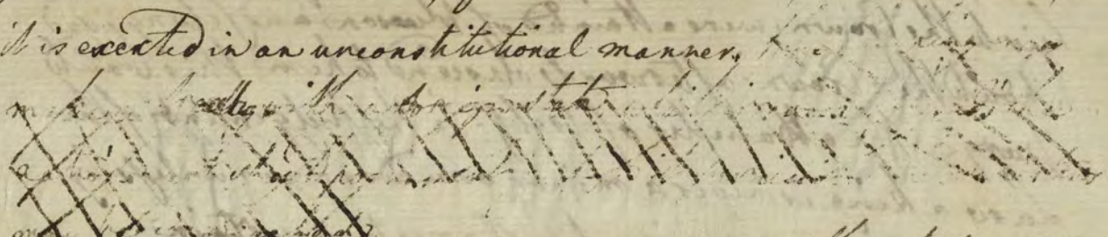
We now come to those branches of the Royal prerogative which invest the King with a number of authorities and powers, in the exertion of which consists the executive part of government. The King is therefore properly the sole magistrate of the Nation, all others acting under his commission.

There is no legal authority that can either delay or resist him in the exertion of lawful prerogative, he may reject bills, make treaties coin money create peers, pardon offences, unless where the constitution hath expressly or by evident consequence laid down some exception or boundary. This is very wise, for civil liberty consists in protecting the rights of individuals by the united force of society, without obedience to some sovereign power society cannot be maintained nor exert any protection, and obedience is a vain name if every individual has a right to decide how far he himself shall obey.

Should the prerogative be exerted to the manifest grievance or dishonour of the King dom, parliament will call the advisers to a just and severe account, for

prerogative

prerogative consisting (as Mr. Locke has well defined) in the discretionary power of acting for the public good, where the positive laws are silent, if it be abused to the public detriment, it is exerted in an unconstitutional manner.



The king is the delegate or representative of the whole nation in foreign concerns, what is done without his concurrence in those matters is only the act of private men. He has therefore, 1. the sole right of sending and receiving Ambassadors.

The rights, powers, duties and privileges of Ambassadors are fixed by the law of nature and nations, not the municipal constitutions of any state. for as they represent their respective masters, who owe no subjection to any laws but those of their own country, their actions cannot be subjected to the laws of the state where they reside. if he grossly offends or makes an ill use of his character, he may be sent home and accused before his master, who must either do justice upon him, or avow himself an accomplice of his crimes. Much learning hath been shewn in attempting to discover how far this exemption goes; but within this century few if any examples have happened, wherein an Ambassador has been punished for any offence however atrocious in its nature.

In respect to civil suits our law books are silent whether an Ambassador or any of his train can be prosecuted, foreign jurists agree they cannot: but by the statute 7. Anne c. 12. It is declared that no Ambassador or his domestic servant shall be arrested or his goods distrained or seized; and that the persons prosecuting, soliciting, or executing such process, shall be deemed violaters of the laws of nations, and disturbers of the public repose, and shall suffer such penalties and corporal punishments as the Lord Chancellor and the two Chief Justices or any two of them shall think fit. but it is

expressly provided that no trader within the description of the bankrupt laws, though in the service of an Ambassador shall be privileged or protected by this Act, nor shall any one be punished for arresting the servant of an Ambassador, unless he be registered with the Secretary of State, and by him transmitted to the Sheriffs of London and Westminster.

2°. The making treaties, leagues and alliances with Foreign States is also the kings prerogative. least this plenitude of authority should be abused to the detriment of the public, parliamentary impeachments of such ministers as have been concerned is here interposed by the constitution to check the misapplication of this power.

3°. The sole right of making Peace and War, so that in order to make Peace completely effectual it is necessary that it be publickly declared and proclaimed by the Kings authority, the same must be ceased on making Peace, and the same check of Parliamentary impeachment is in general sufficient to restrain the ministers of the Crown from a wanton or injurious exertion of this great prerogative.

But as the delay of making war may sometimes be detrimental to individuals who have suffered by depredations from foreign potentates it is declared by Statute 4. Henry V. c. 7. that if any subjects of the realm are oppressed in time of truce by any foreigners, the King will grant letters of marque and reprisal in due form, to all who feel themselves aggrieved; the sufferer is first to apply to the Lord Privy Seal, who shall make out letters of request under the Privy Seal, and if the party required do not within convenient time make due satisfaction or restitution to the party grieved, the Lord Chancellor shall make him out letters of marque under the Great Seal, by virtue of which he may seize the property of the

aggressor

agressor nation, without hazard of being condemned as a robber or pirate.

4°. The granting of safe conducts, without which by the law of nations no member of one society has a right to intrude into another.

The Law of England pays a very particular regard to foreign merchants in innumerable instances. nay even by Magna Carta it is provided that all merchants unless publicly prohibited beforehand shall have safe conduct to depart out of (come into, or tarry in) the kingdom for the exercise of their merchandize without any unreasonable impost to except in time of war. Montesquieu has remarqued (with admiration) that the English have made the protection of foreign merchants one of the articles of their national liberty.

In domestic affairs the King is considered in a great variety of characters, from whence arises many of their prerogatives.

1°. He is a constituent part of the supreme legislative power and as such has the prerogative of rejecting such provisions of parliament as he judges improper to pass, the expediency of this provision we have fully entered in the second Chapter, we shall only add here that the King is not bound by any Act of Parliament, unless he be named therein by special and particular words; for it would be highly detrimental to the public if the strength of the executive power could be curtailed by constructions and implications of the subject without its own express consent; yet where an Act of parliament is expressly

made

made for the preservation of public rights and the suppression of public wrongs, and does not interfere with the established rights of the Crown, it is said to be as well binding on the King as on the subject, and the King may also take the benefit of any particular Act though he be not especially named.

2°. He is considered as generalissimo within the Realm and as such the military power is placed in his hands, he therefore has the sole power of raising and regulating Fleets and Armies which is fully declared by Statute 13. Charles II. c. 6. and also the erecting and manning of forts, and of appointing ports and havens; To prevent defrauding the revenue of the Customs it is enacted by the Statutes of 1. Elizabeth c. 11. and 13 and 14. Charles II. c. 11. §. 14. that the Crown may by commission ascertain the limits of all ports, and assign proper wharfs and quays in each port, for the exclusive landing and loading of Merchandize.

The King hath the exclusive power of erecting beacons, light houses, and sea-marks as well on the lands of the subject as on the demesnes of the Crown, which power is usually vested by letters patent in the Office of Lord high Admiral, and by Statute 8. Elizabeth c. 13. the corporation of the Trinity-house are impowered to set up any beacons or sea-marks wherever they shall think them necessary, and if the owner of the land or any other person shall destroy them, or shall take down any Steeple, tree, or other known sea-mark, he shall forfeit £100. or in case of inability to pay it, shall be ipso facto outlawed.

To

To this branch of the prerogative may also be referred the power vested in the Crown by Statutes 12. Charles II. c. 4. and 29. George II. c. 16. of prohibiting under severe penalties the exportation of arms or ammunition out of the kingdom, of preventing his subjects from going out of the realm by writ of ne exeat regnum under the great seal, or of recalling them from beyond sea by sending a writ for that purpose, if either of these injunctions are disobeyed the offender is liable to fine and imprisonment.

The King is also the distributor of justice and general conservator of the peace of the kingdom, therefore has alone the right of erecting Courts of judicature, to maintain the dignity and independence of the Judges in the superior courts, it is enacted by Statute 13. William III. c. 2. that their commissions shall be made not as formerly durante bene placito, but quamdiu bene se gesserint and their salaries ascertained and established, but that it may be lawful to remove them on the address of both houses of parliament, which by Statute 1. George III. c. 23. has been greatly improved for the judges are continued during their good behaviour notwithstanding the demise of the Crown and their full salaries are absolutely secured to them during the continuance of their commissions.

In criminal proceedings the King is looked upon as the Prosecutor, for those are offences against the executive power, which gives rise to another branch of the prerogative the pardoning of offences, both of which will be more fully examined hereafter.

In this distinct and separate existence of the judicial power in a peculiar body of men nominated, but not removeable at pleasure, consists the preservation of the public liberty.

The King may issue proclamations which are binding when founded upon and enforcing the laws of the realm, thus the established law enables the King to prohibit any of his subjects from leaving the realm, a proclamation therefore laying an embargo upon all shipping in time of war, will be equally binding as an act of parliament because founded on a prior law. also for disarming the papists is equally binding as it only orders the executing what the legislature has first ordained by [illegible]

All the degrees of Nobility, of Knights and other titles, and the disposal of offices are another branch of the prerogative, besides the conferring the privileges upon private persons, such as granting place or precedence to any of his subjects. the converting aliens in to denizens, whereby some very considerable privileges of natural born subjects are conferred upon them, the erecting corporations, whereby a number of private persons are united and knit together, and enjoy many powers in their politic capacity, which they were utterly incapable of in their natural, which will all be hereafter more fully treated of.

The King's prerogative as far as it extends to mere domestic commerce consists in permitting markets and fairs with the tolls thereunto belonging; the regulating weights and measures; in coining of money.

By Statute 26. Henry VIII. c.1. the King is declared the only Supreme Head of the Church which was confirmed by Statute 1. Elizabeth c.1. in virtue of which Authority

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he convenes, prorogues, restrains, regulates and dissolves all ecclesiastical synods or convocations. The convocation is composed of the Archbishops who presides, the Upper house consisting of the Bishops, the Lower house of the Representatives of the several Dioceses at large, and of each particular chapter therein; This constitution was owing to the policy of Edward I. who admitted the inferior Clergy to obtain taxes on Ecclesiastical benefices by consent of convocation.

From being Head of the Church the King has the right of nominating to all vacant Bishopricks, and to certain other benefices, and an appeal lyes to him in Chancery from the sentence of every ecclesiastical judge.

Notes on reading Blackstone's Commentaries on the Laws of England

Preface

The Author declares that this work is the substance of a course of Lectures on the laws of England, which he read in the University of Oxford; his original plan took its rise in the year 1753. and though a new attempt met with great success.

The benefaction bequeathed to that University by Mr. Viner for promoting the study of the Law, produced about two years afterwards a regular and public establishment of what the Author had privately undertaken, and he was unanimously elected the first Vinerian Professor.

Introduction
Of the Study, Nature, and Extent of the Laws of England

The Author expresses great diffidence and apprehensions from feeling how much will depend upon his conduct in the infancy of a Study, which has generally however unjustly been reputed of a dry and unfruitful nature; and of which the theoretical elementary parts have hitherto received a very moderate share of cultivation.

The Science committed to his charge, is the cultivating, methodizing, and explaining the laws and constitution of England, a species of knowledge in which the Gentlemen of the Country have been most remarkably deficient. On the continent where the Civil or Imperial Law under different modifications is closely interwoven with the municipal laws of the land, no gentleman, or at least no scholar thinks his education is compleated,

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till he has attended a course or two of lectures, both on the institutes of Justinian, and the local constitutions of his native country. And in the northern parts of our Island, where the municipal laws are frequently connected with the civil, it is difficult to meet with a person of liberal education, who is destitute of a competent knowledge in that science, which is to be the guardian of his natural rights and the rule of his civil conduct.

The Imperial laws have not even in this nation been totally neglected, from whence a fashion has prevailed of sending the Youths into Switzerland, Germany, and Holland, whose Universities have been esteemed the best nurseries of the civil law; whilst our admirable system of laws have been neglected, and even unknown, by all but one practical profession, though built upon the soundest foundations, and approved by the experience of ages.

The above ~~suggestion~~ is not meant to condemn the study of the civil law, if considered as a collection of written reason; the general excellence of whose rules, and the usual equity of whose decisions deserve the highest praises; but we must not carry our veneration so far as to sacrifice our Alfred and Edward to the manes of Theodosius and Justinian; or to prefer the Edict of the Prætor, or Rescript of the Roman Emperor, to our own immemorial customs, or the sanctions of an English Parliament. If an English Man must be ignorant either of the one or other system of laws, he had better be a stranger to the Roman than the English institutions.

But as this study has been so universally neglected in England it may not be ~~superfluous~~ useless to demonstrate the utility of some acquaintance with the laws of the land, whose system is framed to secure political or civil liberty; which liberty rightly understood consists in the power of doing whatever the laws permit; which is only to be effected by a

general

general conformity of all orders and degrees to those equitable rules of action, by which the meanest individual is protected from the insults and oppression of the greatest.

Notes on reading Blackstones Commentaries on the Laws of England

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The Author expresses great diffidence and apprehensions from the importance of the trust reposed in him, and from how much will depend on his conduct in the infancy of a Study, which has generally however unjustly been reputed of a dry and unfruitful nature, and of which the theoretical, elementary part to have hitherto received a very moderate share of cultivation.

The Science committed to his charge, is the cultivating, Methodizing, and explaining the laws and constitution of our own Country: a species of knowledge, in which the Gentlemen of England have been more remarkably deficient than those of all Europe besides. On the continent where the Civil or Imperial Law under different modifications is closely interwoven with the municipal laws of the land, no gentleman, or at least no scholar,

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Introduction

The Author is conscious of the difficulty of the honorable distinction conferred upon him, as the study of the law has generally though unjustly been reputed of a dry and unfruitful nature, and as the theoretical and elementary part of it have hitherto received but little cultivation.