1834

Law Lecture at William and Mary

N. Beverley Tucker

Repository Citation
Tucker, N. Beverley, "Law Lecture at William and Mary" (1834). Faculty Publications. 1286.
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LAW LECTURE AT WILLIAM AND MARY.

A LECTURE on the Study of the Law, being an introduction to a course of lectures on that subject, in the College of William and Mary, by Beverley Tucker, Professor of Law.—Richmond: T. W. White. Nov., 1854.

It is impossible for a Virginian not to feel an interest in old William and Mary. Recollecting the many noble men who have been nurtured within its walls, and generalized as lawyers, legislators and statesmen, we cannot but feel gratified at every effort in its behalf that promises to be of use. From the time of Judge Semple's last appointment as Judge of the General Court, until the month of July, the law chair had remained vacant. A vacancy in so important a department continuing for so long a period, could not fail to be prejudicial to the institution. The circumstance of the professors, logistitale, and statesmen, we can continuing for so long professorships were ably filled. The circumstance of some of the teachers of law having vacated. A vacancy in so important a department could not fail to be prejudicial to the institution. These inferences are strengthened by the fact, that a very important professorship (the professorship of mathematics) had formerly been permitted to remain vacant for even a longer period than that which is the subject of these brief reflections. With such anticipations, it is no wonder that every class has latterly been characterized by the smallness of its numbers.

The Board of Visitors, at their meeting in July, resolved that the vacancy should continue no longer, and conferred the appointment of law professor upon Beverley Tucker. Mr. Tucker is well known as a writer upon constitutional questions, and his appointment to the bench of another state, after a short residence in it, affords evidence of the estimation in which his legal attainments were there held. The same professorship to which he is now appointed, was filled many years ago by his father St. George Tucker, whose edition of Blackstone's Commentaries, and subsequent appointment in the first state and then in the federal judiciary, have given him a reputation with members of the bar throughout the Union.

The latter and answer which precede the introductory lecture of Professor Tucker, sufficiently explain the circumstances under which that lecture is published.

Williamsburg, October 27, 1854.

Dear Sir,—The students of William and Mary, highly gratified by your able and eloquent address, delivered before them this day, have held a special meeting, and unanimously voted adopted the following resolution:

Resolved, (At a meeting of the students in the large lecture room on the 22d inst.) That a committee be appointed to address a note to Professor Tucker, for the purpose of expressing their admiration of the able and interesting lecture which he has this day delivered, introductory to his course on law, and to solicits the same for publication.

We hope for your assurance to this request, and in performing this agreeable duty, we tender you our assurances of respect and esteem.

JNO. W. DEW, 
W. T. FRENCH, 
Professor Tucker.

CHAIR. H. KENNEDY,
JNO. MURCHISON, 
Committee.

Williamsburg, October 29, 1854.

Gentlemen,—I acknowledge the receipt of your polite note, and am happy to comply with the request which it contains.

Identified with the College of William and Mary by the early recollections and warm affections of youth, I have nothing so much at heart as the desire to be found in re-occupying that venerable institution to all its former prosperity and usefulness. Your approbation is dear to me, as encouraging a hope that my efforts may not be unavailing. If I shall be so fortunate as to read out into the world but one more, to be added to the list of illustrious men, who are everywhere found upholding, with generosity, devoted and elevated zeal, the free institutions inherited from our fathers, in their true spirit, I shall have my reward. If I can succeed in impressing on my class the conviction, that freedom has its duties, as well as its rights, and can only be preserved by the faithful discharge of those duties, I shall have my reward. If I can do no more than to furnish to the profession members devoted to its duties, and qualified to sustain its high character for intelligence and integrity, by diligence and fidelity even in its humblest walks, I shall still have my reward. In either case I shall have rendered valuable service to you, to this venerable institution, to this scene of my earliest, happiest and best days, and to Virginia—my mother— the only country to which my heart has ever owned allegiance. For so many years I have wandered from her soil, my affections have always cleaved to her, and to the faithful remembrance, in every climate, worship, with his face towards the tomb of his progenitor, so has my heart turned to her, alive to all her interests, jealous of her honor, respectful of her wrongs, partaking in all her struggles, availing in her triumphs, and mourning her defeats. May she also extend to her former proud attitude and walk before the children of liberty in the future desert where they now wander, as a cloud by day, and a pillar of fire by night.

For yourselves, gentlemen, and those whom you represent, I beg to accept my acknowledgments for the compliment implied in your application. I would ask you to accept the expression of this sentiment, if I knew how to express it. Retiring to Williamsburg after an absence commencing in early life, the long and dearly interval seems obliterated. I find myself returned at once to the scenes and to the feelings of youth. It would seem more natural to me to come among you as a companion than as an instructor. But this may not be much asked. My business is with your heads, but the road to them is through the heart, and if I can only bring you to understand and appreciate my feelings, there will be nothing wanting to facilitate the communication of any instruction I may be capable of bestowing. I come, gentlemen, with high regard, your friend and ohnignant servant.


YOUNG GENTLEMEN:

I gladly avail myself of an established custom, to offer some remarks on the mutual relation into which we have just entered, and the studies which will occupy our attention during the ensuing course.

This day is to you the commencement of the most important era of life. You have herefore been engaged in studies, for the most part useful, but sometimes merely ornamental or amusing. The mind, it is true, can hardly fail to improve, by the exertion necessary to the acquisition of knowledge of any kind, even as the athletic sports of the boy harden and prepare the body for the labors of the man. But, in many particular, what you have herefore learned may be of little practical value in the business of life; and your past neglects may perhaps be attended with no less of prosperity or responsibility in future. Some of you are probably acquainted with sciences of which others are ignorant; but are not for that reason any better prepared for the new course of studies on which you are about to enter. Nor will such knowledge necessarily afford its possessors any advantage at
the bar, or in the senate, or on any of the arenas, where the interests of individuals and nations are discussed, and the strife of men decided. But the time is now past with you, young gentlemen, when you can lose a moment, or neglect an opportunity of improvement, without a lasting and irreparable detriment to yourselves. You this day put on the toga virilis, and enter on the business of life. This day you commence those studies on which independence, prosperity, responsibility, and the comfort and happiness of those who will be dearest to you, must depend. For, trust me, these things mainly depend on excellence in the profession or occupation, whatever it may be, which a man chooses as the business of his life. The humblest mechanic will derive more of all these good things from diligence and proficiency in his trade, than he possibly can from any knowledge unconnected with it.

This, which is true of all occupations, is most emphatically true of that which you have chosen. To be eminent in our profession is to hold a place among the great ones of the earth; and they, who devote themselves to it, have the rare advantage of treading the path which leads to the highest objects of honorable ambition, even while walking the round of daily duties, and providing for the daily wants of private life. The history of our country is full of proof that the bar is the road to eminence; and I beg you to remark how few of its members have attained to this eminence in public life, without having been first distinguished in the profession. To win its honors, and to wear them worthily, is to attain an elevation from which all other honors are accessible: but to turn aside disgusted with its labors, is to lose this vantage ground, and to sink again to the dead level of the common mass. You should therefore learn to look on the profession of your choice, as the source from whence are to flow all the comforts, the honors, and the happiness of life. Let it be as a talisman, on which, under God, you put your trust, assuring yourselves that whatever you seek by means of it you will receive.

I have the more naturally fallen into these remarks, as they are in some sort suggested, and are certainly justified by the history of this institution. If you trace back the lives of the men, who at this moment occupy the most enviable pre-eminence in your native state, you will find that they received the rudiments of their professional and political education at this venerable but decayed seminary. There are certainly distinguished members of the profession, and illustrious men out of the profession, to whom this remark does not apply. But when Virginia (Magna Pares Virum,) is called on to show her jewels, to whom does she more proudly point than to men who once occupied those very seats; who here received the first impulse in their career; who here commenced that generous strife for superiority which has placed them all so high.

The subject of our researches, young gentlemen, will be the municipal law of Virginia. The text book which will be placed in your hands is the American edition of Blackstone’s Commentaries, published thirty years ago by one of my predecessors in this chair. You will readily believe that it would be my pride to walk, with filial reverence by the lights which he has given us, and that, in doing so, I should feel sure of escaping any harsh animadversion from those to whom I am responsible, and who still cherish so favorable a recollection of his services. I shall certainly endeavor to avail myself of this privilege; though it may be occasionally necessary to assume a more perilous responsibility.

A brief sketch of the plan which I propose to myself, will show you how far I shall follow, and where-in, and why, I shall deviate from the path which he has traced.

Municipal law is defined by Mr. Blackstone, “to be a rule of civil conduct prescribed by the supreme power of the state.” By Justinian it is said, “Id quod quisque populus sibi jus constituit, vocatur jus civile;” which has been well rendered thus: “It is the system of rules of civil conduct which any state has ordained for itself.”

Whatever definition we adopt, we shall find that municipal law is distinguishable into four grand divisions, which may be properly designated by the following description:

1. That which regulates the nature and form of the body politic; which establishes the relation that each individual bears to it, and the rights and duties growing out of that relation, which determines the principles on which it exercises authority over him; and settles a system of jurisprudence by which it operates to protect and enforce right, and to redress and punish wrong.

2. That which determines the relations of individual members of society to each other; which defines the rights growing out of that relation; and regulates the right of property, and such personal rights as must subsist even in a state of nature.

3. That which defines the wrongs that may be done by one individual member of society to another, in prejudice of his rights, whether of person or property, and provides means for preventing or redressing such wrongs.

4. That which defines and denounces the wrongs which may be done by any individual member of society, in violation of the duties growing out of his relation to the body politic, and provides means for preventing and punishing such violation.

The first of these divisions is treated by Mr. Blackstone in his first book, under the comprehensive head of “The Rights of Persons.” Under the same head he includes so much of the second division as relates to such personal rights as must have belonged to man in a state of nature, and such
as grow out of his relation to other individual members of society. Such are the relative rights of husband and wife, parent and child, guardian and ward, and master and servant—and the absolute rights, of personal liberty, and of security to life, limb and reputation. These rights are obviously not the creatures of civil society, however they may be regulated and modified by municipal law. They in no wise depend on "the nature or form of the body politic;" nor on "the relations which individuals bear to it;" nor on "the rights and duties growing out of that relation;" nor on "the principles on which it exercises authority over individuals;" nor on "the system of jurisprudence."

As little indeed do they depend on "the rights of property," but they have much in common with them. Together with them, they collectively form the mass of "individual rights," as contrasted from "political rights." Neither class derives its existence from civil society, although both are alike liable to be regulated by it, and the two together form the subject of almost all controversies between man and man. Now with rights in actual and peaceable enjoyment, law has nothing to do. It is controversy which calls it into action; and as both this class of personal rights, and the rights of property, have the same common origin—both subsisting by titles paramount to the constitutions of civil society; as both are the ordinary subjects of controversy between individuals; and as the controversy are all conducted according to similar forms, decided by the same tribunals, and adjusted by the like means,—it is found convenient to arrange them together in a course of instruction. Such I believe has always been the practice in this institution. Proposing to conform to it, I have thought it best, in the outset, to intimate this slight difference between this practice and Mr. Blackstone's arrangement.

There is another particular in which Mr. Blackstone's order of instruction has been advantageously changed at this place. His is certainly the true philosophical arrangement of the subject. When we are told that "municipal law is a rule of civil conduct prescribed by the supreme power in the state," it is obvious to ask, "what is that supreme power, and whence comes its supremacy?" When we are told that it is "the system of rules of civil conduct, which the state has ordained for itself," the first inquiry is, "what is the state?" Thus whatever definition of municipal law we adopt, the subject of inquiry that meets us at the threshold is the Lex Legum; the law which endues the municipal law itself with authority.

If the individual to be instructed were one who had heretofore lived apart from law and government, yet capable (if such a thing were possible) of understanding the subject, it is here we ought to commence. To him it would be indispensable to explain, in the first instance, the structure of the body politic; to specify the rights surrendered by individuals; and to set before him the equivalent privileges received in exchange. We too might be supposed to require a like exposition before we would be prepared to submit to the severe restraints and harsh penalties of criminal law. But in regard to controversies between individuals we feel no such jealousies. In these, the law, acting but as an arbiter, indifferent between the parties, no question concerning its authority occurs to the mind. The readiness with which we acquiesce in its decisions, is strikingly manifested in the fact, that the whole of England, Ireland and the United States are, for the most part, governed by a law which has no voucher for its authority but this acquiescence. The same thing may be said of the authority of the civil law on the continent of Europe. It thus appears that the mind does not always require to be informed of the origin of the law which regulates and enforces, or protects individual rights, before it will condescend to inquire what are its behests. Prima facie it should be so; but being, in point of fact, born in the midst of law, habituated to it from our infancy, and accustomed to witness uniform obedience to its authority on the part of those whom we were taught to obey, we learn to regard it as a thing in rerum natura, rather than of human invention; a sort of moral atmosphere, which, like that we breathe, seems a very condition of our existence.

There is therefore no inconvenience to be apprehended from taking up the subject in an inverted order, treating first of individual rights, and reserving those that grow out of the relation of the citizen to the body politic, and the correlative duties of that relation, for future inquiry.

While there is nothing to be objected to this arrangement, there is much in favor of it. It is important that they who engage in the study of political law, should come to the task with minds prepared for it; well stored with analogous information, and sobered and subdued by the discipline of severe investigation. There is a simplicity in some views of government which is apt to betray the student into a premature belief that he understands it thoroughly; and then, measuring the value of his imagined acquirements, not by the labor that they have cost him, but by the dignity and importance of the subject, he becomes inflated, self-satisfied and unteachable; resting in undoubting assurance on the accuracy and sufficiency of such bare outlines as his instructor may have thought proper to place before him. But in those countries where the authority of government rests on a questionable title, they who are entrusted with the education of youth, may naturally wish to keep them from looking into it too narrowly. Hence it may be a measure of policy with them, to introduce the student, in the first place, to the study of political law, in the hope of making on his raw and unpractised
mind, such an impression, as may secure his appro-
imation of the existing order of things. The facu-
ity of investigating legal questions, and forming
legal opinions, may almost be regarded as an ac-
quired faculty; so that, in the earlier part of his
researches, the student necessarily acquiesces in
the doctrines which are pronounced ex cathedra by
his teacher. At this time he readily receives
opinions on trust; and if it be his interest to cherish
them, or if he is never called on in after life to re-
examine them, he is apt to carry them with him to
the grave. This is perhaps as it should be in
England and other countries of Europe. Having no
part in the government, it may be well enough that
he should learn to sit down contented with this sort
of enlightened ignorance.

But with us the case is different. The authority
of our governments is derived by a title that fears
no investigation. We feel sure, that, the better it is
understood, the more it will be approved. It rests
too on a charter conferring regulated and limited
powers; and the well being of the country requires
that the limitations and regulations be strictly ob-
served. Now every man among us has his "place
in the commonwealth." It is on its own hand,
the duty of every man to aid in giving full effect
to all legitimate acts of government; and on the
other, to bear his part in restraining the exercise
of all powers forbidden or not granted. Every
man therefore owes it to his country to acquire
a certain proficiency in constitutional law, so as to
act understandingly, when called on to decide be-
tween an alleged violation of the constitution, and
an imputed opposition to lawful authority. Such
occasions are of daily occurrence. Sarcroesy a day
has passed, since the adoption of the federal con-
istitution, when some question of this sort has not been
before the public. Such is the effect of that in-
patience of restraint natural to man. So prompt
are the people to become restless under laws of ques-
tionable authority, and so apt are rulers to strain at
the curb of constitutional limitations, that one or
the other, or both of these spectacles, is almost al-
ways before us.

When you come then, young gentlemen, to the
study of political and constitutional law, you will
find it no small advantage to have been engaged
for some months before in studies of a similar char-
acter. The opinions you will then form will be
properly your own. I may not be so successful as
I might wish, in impressing you with those I en-
tertain; but I shall be more gratified to find you
prepared to "give a reason for the faith that is in
you," whatever that faith may be, than to hear you
rehearse, by rote, any political catechism that I
could devise. I shall accordingly postpone any re-
marks on constitutional and political law, until your
minds have been exercised and hardened by the
severe training they will undergo in the study of
the private rights of individuals, of wrongs done
in prejudices of such rights, and of the remedies for
such wrongs. All these topics are embraced in the
second and third division of municipal law, that I
have laid before you.

To these belong the most intricate and difficult
questions in the science of law. In introducing
you to the study of these, let me say, in the lan-
guage of one from whom I am proud to quote,
that, "I cannot flatter you with the assurance that
your yoke is easy and your burden light. I will
not tell you that your path leads over gentle ascents
and through flowery meads, where every new ob-
ject entices us forward, and stimulates to persever-
ance. By no means! The task you have under-
taken is one of the most arduous; the profession you
have chosen one of the most laborious; the study
you are about to pursue, one of the most difficult
that can be conceived. But you have made your
election. You have severed yourselves from the
common herd of youth, who shrink from every
thing that demands exertion and perseverance. You
have chosen between the allurements of pleasure
and the honors which await the disciples of wis-
dom. You yield to others to keep the noiseless te-
nor of their way in inglorious case. You have
elected for yourselves the path that philosophers
and moralists represent as leading, up a rugged as-
cent, to the temple of fame. It may be the lot of
some of you to elevate yourselves by talents and
unabating zeal, in the pursuit you have selected.
But these distinguished honors are not to be borne
away by the slothful and inert. Nulla palma sine
puerere. He who would win the laurel, must en-
counter the sweat and toil of the arena. Nor will
it suffice that he occasionally presses on to the goal.
If he slackens in his efforts he must lose ground.
We roll a Sisyphean stone to an exalted eminence.
He who gives back what his strength had
earned; and sinking under the toil his own indol-
cence increases, will at length give up his unsteady
efforts in despair."—J. T. C. Introduction, p. vi.

I can add nothing to these striking remarks but
my testimony to their truth. There is, perhaps, no
study that tasks the powers of the mind more se-
vcrely than that of law. In it, as in the study of
mathematics, nothing is learned at all that is not
learned perfectly; and a careless perusal of Eu-
clid's elements would not be more unprofitable,
that of a treatise on the laws of property. Nor
will a more effort of memory be of more avail in
the one case than in the other. Both must be
remembered by being understood; by being through
the exercise of intense thought, incorporated as it
were into the very texture of the mind. To this
end its powers must be fully and faithfully exerted.
As, in lifting at a weight, you do but throw away
your labor, until you man yourself to the exertion
of the full measure of strength necessary to raise
it; so, in this study, you may assure yourselves
that all you have done is of no avail, if you pass
from any topic without thoroughly understanding it. And let no man persuade you that genius can supple the place of this exertion. Genius does not so manifest itself. The secret of its wonderful achievements is in the energy which it inspires. It is because its prompting sting, like the sharp goad of necessity, urges to herculean effort, that it is seen to accomplish herculean tasks. He is deceived who fancies himself a favored child of genius, unless he finds his highest enjoyment in intellectual exercise. He should go to the toil of thought like the champion to the lists, seeking in the very certaminis gaudia the rich reward of all his labors.

There may be something startling, I fear, in this exhibition of the difficulties that lie before you, and it is proper to encourage you by the assurance that by strenuous effort they may be certainly overcome. Remember too that this effort will be painful only in the outset. The mind, like the body, soon inures itself to toil, and wears off the soreness consequent on its first labors. When this is done, the task becomes interesting in proportion to its difficulty, and subjects which are understood without effort, and which do not excite the mind to thought, seem flat and insipid.

But lest the student should falter and give back in his earlier struggles, it is the duty of the teacher to afford him such aids as he can. This is mainly to be done by means of such an analysis and arrangement of the subject as may prevent confusion, and consequent perplexity and discouragement. There are two sorts of analysis, each proper in its place. The one philosophical, by which the different parts of a subject are so arranged, as to exhibit in distinct groups those things that depend on the same or like principles, and such as are marked by characteristic points of resemblance; giving a sort of honorary precedence to the most important. The other sort of analysis may be termed logical. It is that method by which different propositions are so arranged, as that no one of them shall ever be brought under consideration, until all others which may be necessary to the right understanding of that one, have been established and explained. Of this last description are Euclid's elements, in which it is interesting to observe that no one proposition could with propriety be made to change its place; each one depending for its demonstration, directly or indirectly, upon all that have gone before.

Blackstone's Commentaries may be cited as an example of philosophical analysis. He has indeed been careful to avoid perplexing his reader, through the want of a strictly logical arrangement, by dealing chiefly in generalities, and never descending to such particulars as might be unintelligible for want of a knowledge of matters not yet treated of. This I take to be the reason why his work has been characterized as being "less an institute of law, than a methodical guide or elementary work adapted to the commencement of a course of study. He treats most subjects in a manner too general and cursory to give the student an adequate knowledge of them. After having pursued his beautiful arrangement, he is obliged to seek elsewhere for further details. After having learnt the advantage of system, he is almost at the threshold of the science, turned back without a guide, to grope among the many volumes of our crowded libraries. This cannot be right. If system is of advantage at all, it is of advantage throughout. Were it practicable, it would be better for the student to have a single work, which embracing the whole subject, should properly arrange every principle and every case essential to be known preparatory to his stepping on the arena. Much, very much indeed, would still be left to be explored in the course of his professional career, independent of the apices juris, which the most vigorous and persevering alone can hope to attain."—Tucker's Commentary, Introduction, p. 4.

The justice of these remarks none can deny. It might be thought unbecoming in me to say how much the writer from whom I quote them has done to supply such a work as he describes. Yet I cannot suffer any feeling of delicacy to restrain me from the duty of recommending that work to your attentive perusal. I shall eagerly, too, avail myself of his permission to make frequent use of it, as I know of no book which so well supplies the necessary details to parts of the subject of which Mr. Blackstone has given only loose and unprofitable sketches. It is to be lamented that in doing this he has so strictly bound himself to the arrangement of that writer. That arrangement, as I have remarked, imposed on Mr. Blackstone the necessity of being occasionally loose and superfluous. For want of one more strictly logical, the Virginia Commentator often finds it impossible to go into the necessary detail, without anticipating matters which properly belong to subsequent parts of his treatise; and too often, where this is impracticable, topics and terms are introduced, the explanation of which is, perhaps, deferred to the next volume.

An instance will illustrate my meaning:—Mr. Blackstone classes remedies for private wrongs, thus: "first, that which is obtained by the mere act of the parties themselves; secondly, that which is effected by the mere act and operation of law; and thirdly, that which arises from suit or action in courts." Now, it probably occurred to him, that he could not go into details on the two first of these three heads, without presenting ideas which would be unintelligible to any who had not already studied the third. In striving to avoid this, he has touched so lightly upon the other two, that his remarks on the important subjects of distress and records, which come under the first head, leave the
student nearly as ignorant as they found him. For this there was no real necessity, as a knowledge of the two first heads is by no means necessary, or indeed at all conducive to the right understanding of the third. Had the pride of philosophical analysis, and symmetry of arrangement, been sacrificed to the laws of logic and reason, there was nothing to forbid the introduction of treatises on these important topics, as copious and elaborate as those supplied by the diligence and research of the Virginia Commentator. The manner in which this has been done, has made it manifest how unfavorable the arrangement of Mr. Blackstone sometimes is to amplification and minuteness. The essays of the President of the Court of Appeals on distresses and accords, leave nothing to be desired. Yet no one can read them profitably without having first studied the law of remedies by suit or action.

These, and some other instances of the same sort, have led me to this determination. Wishing to avail myself of the labors of the Virginia Commentator, without losing the benefit of Mr. Blackstone’s analysis, I propose to preserve the latter, but to make occasional changes in his arrangement, substituting one more logical, though perhaps less philosophical. This, and the postponement of the study of political law, are the only liberties I propose to take. The fourth division, which relates to crimes and punishments, will be the last considered. This will be done not only in a spirit of conformity to Mr. Blackstone’s plan, but also because one of the most important branches of criminal law has reference to an offense of which no just idea can be formed without a previous and diligent study of the Constitution and of the science of government.

This last mentioned subject, young gentlemen, I should perhaps pass over but lightly, were I free to do so, contenting myself with a passing allusion to its connexion with the study of the law, and the encouragement you should derive from the honorable rewards that await distinguished merit in our profession. But this is not a mere school of professional education, and it is made my duty, by the statutes of the College, to lecture especially on the constitution of this state and of the United States. In the discharge of this duty it may be necessary to present views more important to the statesman, than to the mere practitioner. When I think of the difficulty and high responsibility attending this part of my task, I would gladly escape from it; but considerations of its importance and of the benefit to the best interests of our country which has heretofore resulted from its faithful execution, come in aid of a sense of duty, and determine me to meet it firmly and perform it zealously.

The mind of the student of law is the ground in which correct constitutional opinions and sound maxims of political law should be implanted. The study of the common law involves the study of all the rights which belong to man in a state of society.

The history of the common law is a history of the occasional invasions of these rights, of the struggles in which such invasions have been repelled, and of the securities provided to guard against their recurrence. A mind thoroughly acquainted with the nature and importance of the writ of habeas corpus, and the trial by jury, and rightly understanding the indestructible character of the right of private property, will hardly fail to be awake to any attack which may be aimed at liberty from any quarter. Hence liberty finds in the students of the law a sort of body guard. Their professional apprenticeship serves as a civil polytechnic school, where they are taught the use of weapons to be wielded in her defence. The history of our country from the first dawning of the revolution is full of proofs and examples of this. The clear view of the rights of the colonies which led to the Declaration of Independence, was one which hardly any but lawyers could have taken, and of the accuracy of which none but lawyers could have been sure. It was from them the ball of the revolution received its first impulse, and under their guidance it was conducted to the goal. Some few others were placed forward by circumstances; but they soon fell back, or found their proper place of service in the field; leaving the great cause to be managed by those whose studies qualified them to know where to insist, and where to conceal; when to ward, and when to strike. The state papers emanating from the first congress will, accordingly, be found worthy to be compared with the ablest productions of the kind recorded in history; displaying an ability, temper, and address, which prepares the reader to be told that a large majority of the members of that body were lawyers.

In Mr. Blackstone’s introductory lecture are some remarks on the importance of the study of the law to English gentlemen, strictly applicable to this view of the subject. “It is,” says he, “perfectly amazing, that there should be no other state of life, no other occupation, art, or science, in which some method of instruction is not looked upon as necessary, except only the science of legislation, the noblest and most difficult of any. Apprenticeships are held necessary to almost every art, commercial or mechanical: a long course of reading and study must form the divine, the physician, and the practical professor of the laws: but every man of superior fortune thinks himself born a legislator. Yet Tully was of a different opinion: ‘it is necessary,’ says he, ‘for a senator to be thoroughly acquainted with the constitution; and this,’ he declares, ‘is a knowledge of the most extensive nature; a matter of science, of diligence, of reflection; without which no senator can possibly be fit for his office.’”

If the part in the government allotted to the people of England renders this admonition im-
important to them, how much more important must it be to us, who are in theory and in fact our own rulers. Not only is every office accessible to each one of us; but each, even in private life, as soon as he puts on manhood, assumes a “place in the commonwealth.” In practice, as in theory, the sovereignty of the state is in us. Born to the purple, the duties of that high destiny attach upon us at our birth; and unless we qualify ourselves to discharge them, we must cease to reproach the ignorance and folly, the passion and presumption, which so often disgrace the sovereigns of the old world, and heap wretchedness and ruin on their subjects. The same causes will have the like effects here as there. Power does not imply wisdom or justice, whether in the hands of the few or the many; and it is only by the diligent study of our duties in this important station that we can qualify ourselves to administer its functions, as to save the free institutions inherited from our fathers, from the same reproach which the testimony of history fixes upon all other governments.

Not only is this true in reference to us as well as to the kings of the earth, but it is more emphatically true of us than of them. Whatever be their theory of sovereignty, and however they may prate about divine right, they all know, and feel, that, after all, they are but kings by sufferance. They take of the absolute sovereignty, and claim for government that sort of omnipotence which is said to reside in the British parliament. But, after all, they know and feel, that there is much they cannot do, because there is much they dare not do. The course of events now passing in England is full of proof of this. We have just seen that same omnipotent parliament, new-modeling itself to suit the wishes of the people. This act indeed, was itself an exertion of this pretended omnipotence, but wisely and discreetly exercised, in surrendering power. It was certainly done with a very bad grace; and at this moment we see that body anxiously watching the temper of the multitude, and adapting its measures, not to the views of its members, not even to the views of the constituent body, but to the real or supposed interests of the great unrepresented mass. Such is the check, which in spite of all positive institutions, the physical force of numbers, however degraded, and, professedly, disregarded, must exercise over their rulers; and in this check, they find a motive to justice, forbearance, and circumspection, which, in a measure, restrains the abuse of power.

But may not we, the sovereign citizens of these states, abuse power too? When men are numerous and “strong enough to set their duties at defiance, do they cease to be duties any longer?” Does that which would be unjust as the act of ninety-nine, become just, as being the act of an hundred? Is it in the power of numbers to alter the nature of things, and to justify oppression, though it should fall on the head of only one victim? It would be easy to point to instances in which we all believe that majorities have done great wrong; and that under such wrongs we have suffered and are still suffering we all know. But where is the check on such abuse of power? Constitutional authority and physical force are both on the same side, and if the wisdom and justice of those who wield both does not freely afford redress, there are no means of enforcing it. “There is no sanction to any contract against the will of prevalent power.”

The justice of these ideas is recognized in the forms of all our governments. The limitations on the powers of congress and the state legislatures, are all predicated on the certain truth “that majorities may find or imagine an interest in doing wrong.” Hence there are many things which cannot be lawfully done by a bare majority; and many more, which no majority, however great, is authorised to do. Two-thirds of the senate must concur in a sentence of impeachment. The life and property of an individual cannot be taken away but by the unanimous voice of his triers; and all the branches of all our governments collectively cannot lawfully enact a bill of attainder, or an ex post facto statute.

But though such acts are forbidden by the constitution, they may nevertheless be passed, and judges may be found to enforce them, if those holding legislative and judicial offices shall be so minded. The constituents, too, of a majority of the legislature may approve and demand such acts. Where then is the security that such things will not be done? Where can it be but in the enlightened sense of justice and right in the constituent body?

I am not sure that such restraints on the powers of public functionaries are not even more necessary in a republican government than in any other. A king can scarcely have a personal interest in ruining one portion of his dominions for the benefit of the rest, and he would not dare to ruin the whole, while a spark of intelligence and spirit remained among the people. But in a republic, whenever the inclination and the power to do such a wrong concur, the very nature of the case secures the rulers from all fear of personal consequences. The majority is with them. Their own constituents are with them. To these is their first duty; and shall they hesitate to do that which is to benefit their constituents, out of tenderness to those who are not their constituents? We know how such questions are answered, when the occasion is one where a fixed majority have a fixed interest in the proposed wrong. Is not this the reason why legislative encroachment so much disposes men to acquiesce in executive usurpation? Is it not this, which, when the barriers of constitutional restraint are seen to fall, drives minorities, as by a sort of
fatal instinct, to seek shelter under the arm of a common master, from the all pervading tyranny of majorities exercising the power of universal legislation? The wrongs of America were the act of the parliament of England, goaded on by the people. It was they who claimed a right to legislate in all things for the colonies. It was they who demanded a revenue from America; and the colonies, eagerly looking to the crown for protection, maintained an unshaken loyalty, until the king was seen to take part with their oppressors. The wrongs of Ireland are the act of the people of England. Ireland is the rival of England in agriculture, manufactures and commerce; and every concession to the former, seems to the multitude to be something taken from the prosperity of the latter. But the representation of Ireland in parliament is to that of England as one to five; and when the Irish people cry to parliament for redress, they are answered as all appeals from minorities are answered by the representatives of majorities. But how would they be answered if the representative and constituent bodies were both thoroughly instructed in the sacred character and paramount authority and importance of the duties which belong to the high function of sovereignty? We justly deny and deride the divine right of kings; and we assert and maintain the divine right of the people to self government. And it is a divine right. It is a corollary from the right and duty to fulfill the purposes of our being, which accompany each one of us into the world. The right and the duty both come from the author of that being. He imposes the one when he gives the other, and thus fixes on us a responsibility which clings to us through life. We deceive ourselves if we think to get rid of any portion of this responsibility by entering into partnership with others, each one of whom brings into the concern the same rights, the same duties, and the same responsibilities;—neither more nor less than ourselves. We do but multiply, and divide again by the same number. Each receives, by way of dividend, the same amount of right, duty, and responsibility that he carried into the common stock. Of so high a nature are these, and so vast are the interests with which they are connected, that it has been truly said, that, whether we mount the hussings or go to the polls, we may well tremble to give or to receive the power which is there conferred.

Gentlemen; if these ideas be just, how important is the duty imposed on me by that statute of the college which requires me to lecture on constitutional law! How desirable is it that there should be every where schools, in which the youth of our country should be thoroughly imbued with correct opinions and just sentiments on this subject! It was Agesilus, I think, who said that "the business of education was to prepare the boy for the duties of the man." How pre-eminently important, then, must be that branch of education which is to qualify him to perform this highest of all social duties, and to bear worthily his part in that relation which has been characterized as "a partnership in all science, in all art, in every virtue, and in all perfection; a partnership, not only between those who are living, but between those who are living, those who are dead, and those who are yet to be born."

These striking words, which are from the pen of the celebrated Edmund Burke, call to mind the high testimony which he has borne in favor of the study of the law, as a school of political rights. After having acted an important part in procuring the repeal of the stamp act, he made his last effort in favor of the rights of the colonies, in March, 1775. On that occasion, laboring to dissuade the British parliament from pushing America to extremities, he descended on the love of freedom, which he pronounced to be the predominating feature in the character of our fathers. The prevalence of this passion he ascribed to a variety of causes, none more powerful than the number of lawyers, and the familiarity of the people with the principles of the common law. His ideas I will give you in his own words, for it is only in his own words that his ideas ever can be fittingly expressed.

He says, "In no country perhaps in the world is the law so general a study. The profession itself is numerous and powerful; and in most provinces it takes the lead. The greater number of the deputies sent to the congress were lawyers. But all who read, and most do read, endeavor to obtain some smattering in that science. * * * * * This study renders men acute, inquisitive, dexterous, prompt in attack, ready in defence, full of resources. In other countries, the people, more simple, and of a less mercenary cast, judge of an ill principle in government only by an actual grievance; here they anticipate the evil, and judge of the pressure of the grievance by the badness of the principle. They augur misgovernment at a distance, and snuff the approach of tyranny in every tainted breeze."

Such, young gentlemen, is the important and useful influence which the study of our profession enables its members to exert. But if, instead of preparing their minds by this study, the very men to whom the people look up for light, do but provide themselves with a few set phrases contrived to flatter and cajole them, what but evil can come of it?

"The people can do no wrong." Why! this is but what all sovereigns hear from their flatterers. In one sense, it is indeed true of both, for there is no human tribunal before which either king or people can be arraigned. But neither can make right and wrong change places and natures.

"Vox populi, vox Dei." "It is the voice of God."
So said the Jews of the impious Herod. But the judgments of the insulted Deity showed how mere a worm he was; and his judgments are not limited to kings, nor withheld by numbers. We may preserve all the outward forms of freedom, the checks and balances of the constitution may remain to all appearance undisturbed, and yet he who can "curse our blessings" may give us over to all the evils of despotism, if we do not "lay to heart" the high duties of that freedom wherewith he has made us free.

I am sensible, young gentlemen, that, to many, these ideas will not be acceptable. And for an obvious reason. "Men like well enough," it is said, "to hear of their power, but have an extreme disrelish to be told of their duties." Yet in a government of equal rights, these are strictly correlative. The rights of each individual are the exact measure of the duties which others owe to him, and of course, of those he owes to others. This is so obviously true, that it needs but be stated, to be recognized at once as a man recognizes his face in the glass. But he "goeth his way, and straightway forgettesth what manner of man he was." Let us do likewise.

But there is another reason why many will hear with impatience of the difficulties attendant on the proper discharge of duties, which are too often made the low sport of a holiday revel. None can deny the truth and justice of the remarks already quoted from Mr. Blackstone; but few, I fear, are willing to bring them home, and to acknowledge the necessity of such severe preparation to qualify themselves to exercise the franchises of a citizen. Let me hope, young gentlemen, that you will view the matter in a different light, and go to your task with the more cheerfulness, from the assurance that you will thus be qualified to derive a blessing to yourselves and to your country, from the discreet and conscientious exercise of a privilege, which others, from a want of correct information and just sentiments, so often pervert to the injury of both.

Before I conclude, give me leave to offer a few remarks on a subject in which every member of the faculty has an equal and common interest. If there be any thing by which the University of William and Mary has been advantageously distinguished, it is the liberal and magnanimous character of its discipline. It has been the study of its professors to cultivate at the same time, the intellect, the principles, and the deportment of the student, laboring with equal diligence to infuse the spirit of the scholar and the spirit of the gentleman. He comes to us as a gentleman. As such we receive and treat him, and resolutely refuse to know him in any other character. He is not harassed with petty regulations; he is not insulted and annoyed by imperient surveillance. Spies and informers have no countenance among us. We receive no accusation but from the conscience of the accused. His honor is the only witness to which we appeal; and should he be even capable of prevarication or falsehood, we admit no proof of the fact. But I beg you to observe, that in this cautious and forbearing spirit of our legislation, you have not only proof that we have no disposition to harass you with unreasonable requirements; but a pledge that such regulations as we have found it necessary to make, will be enforced. If we did not mean to execute our laws, it might do little harm to have them minute and much in detail on paper. It is because we do mean to enforce them that we are cautious to require nothing which may not be executed without tyranny or oppression, without degrading ourselves or dishonoring you.

The effect of this system, in inspiring a high and scrupulous sense of honor, and a scorn of all disingenuous artifice, has been ascertained by long experience, and redounds to the praise of its authors. That it has not secured a regular discharge of all academical duties, or prevented the disorders which characterize the wildness of youth, is known and lamented. But we believe and know, that he who cannot be held to his duty, but by base and slavish motives, can never do honor to his instructors; while we are equally sure that such a system as keeps up a sense of responsibility to society at large, is most conducive to high excellence. We think it right, therefore, to adapt our discipline to those from whom excellence may be expected, rather than to those from whom mediocrity may barely be hoped. Such a system is valuable too, as forming a sort of middle term between the restraints of pupillage and the perfect freedom and independence of manhood: Experience shows that there is a time of life, when the new born spirit of independence, and the prudence of incipient manhood will not be repressed. They will break out in the air or in the graces of manhood. Between these we have to choose. The youth of eighteen treated as a boy, exhibits the former. Treated as a man, he lays aside these foibles, and displays the latter. This system is thus believed to afford the best security against such offences as stain the name of the perpetrator. Of such our records bear no trace; nor is there, perhaps, a single individual of all who have matriculated here, that would blush to meet any of his old associates in this school of honor.

May we not hope then, young gentlemen, when so much is trusted to your magnanimity, that the dependence will not fail us? May we not hope, when we are seen anxious to make our relation, not only a source of profit, but of satisfaction to you, that you will not wantonly make it a source of uneasiness and vexation to us? I persuade myself that you, at least, commence your studies with such dispositions as we desire. If this be so, there
is one short rule by which you may surely carry them into effect. "Give diligent attention to your studies." This is the best security against all unpleasant collision with your teachers, and against that weariness of spirit which seeks relief in excess or mischief. It carries with it the present happiness, which arises from a consciousness of well doing; it supplies that knowledge which encourages to farther researches, and renders study a pleasure; it establishes habits of application, the value of which will be felt in all the future business of life; and lays the foundation of that intellectual superiority by which you hope to prosper in the world, and to be distinguished from the ignoble multitude who live but to die and be forgotten.  

Williamsburg, October 27, 1834.