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(Add together 2/21 7/11 & 2/5	Find the product of (...) & (...) also (...))
(From 15/31 take 5/11	Divide 84 by .014 & .0125 by 2.5. Friday Oct. 30th))

Notes on Jr Law during the Session of 1846 & 7 by Jno. S. Henshaw of Kentucky

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1 Notes on Junior Law Oct 6th/46

Lecture 1st The history of the Law of Nations.

Subsequent to the 5th cen 5 institutions were formed which had the effect of engraving the law of nations. 1st the institution of the one Religion[.] 2 the Feudal system[.] 3rd the institution of (...) — aldry[.] 4 Trities negotiations & conventions[.] 5 the addoption of a scale of precedence & rank. The first improved the national law because the national law & natural law are connected but many evils grew out of the corruption of christianity. The addoption of this religion also created a beneficial effect by making one common spiritual head. The spirits which gave rise to the crusades was another cause of amelioration all of Europe being united {..} against the Turks & servants & these unions were continued long after the close of the war. The addoption of the Feudal sys operated at first to be inju rious to the law but afterwards it had the effect of settling down the roaring hords in one place it cause a love of learning. The [focus?] of each chief had the perni —cious effects of producing many states and thus causing many disturbances. The feudal system caused a kind of (...) behind which the public setiment might rally. By this law bonds of peace could be demanded from a stronger vassel & not unfrequently these bonds were enforced. It also had the effect of intertwining the states by oaths of fealty. Edward the Black –prince Charlemaine were summonded to account for their conduct. The institution of Chivaldry caused war to be proclaimed by herald & the right ideas of honor. The fourth caused a [posative] & [instituted] code the commerce was facilitated by

protecting the persons engaged in this occupation. These institutions began to be felt about the 11th cenutury & continued to have a beneficial effect til the 17th. Grotius was the 1st to wright a law of nations & was borne at Delft. Puffendorf improved on G— & Vattel of Puffendorf.

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2 Dec 17 Lecture 2nd 1846 A Perfect right is when they do not depend upon anothers discression & may be enforced but {an} imperfect right depends upon the discression of another & can not exist until he person interested decides whether he is capable of affording assistance & can not exist until the person interested decides whether he is capable of affording assistance & can not be enforced. Sec. 21. The voluntary law of nations is when the nations con— cerned are all equally free & independent & consequently be constrained. The voluntary law is not posative but belongs to the necessary being independent of the concent of other nations. The law of N— is primary ordinary or secondary & next as Natural & Posative. Chapt 1st. The people are sovereign & the Governor is ruled by the people as V— says in sec 40, 32, 33 & 39[.] Sec 4. An alliance is unequal when the degnity of the two states are unequal & is explained in sec 107. Sec 10. Chap 2 & 3rd. Sec 30. By the writen code of laws has the effect of correcting errors before they do miss— chief. The constitution of [Clarina?] the Chartio magna the habeas corpus act & the bill of Rights has been considered as a permanent law. Sec 5. The expedience of changing constitution often is wrong & so long as the evil can be borne it is best to stand them. Chap. 4. Sec 1st. Government is instituted for the purpose of protecting & assisting its citizens. There is no such thing as a sovereign as no one has a com— plete power. Sec 54. (Secondly must be (...) in in this section) Charles the 1st was the last one who administered the affairs of England after his own notions. It gives power to the assaults {to} against misdemeanor when the King consults the ministers where as it would not be allowed against the king personally. Read through the 4th Chapter Lecture 3rd Oct 9th 1846. University of Va Chap 5th. Succession & "Hereditary" observe the difference Sec 63. The {right} capacity of the heir is not to be judged by the fac— tion of a state but by the whole boddy but if the bulk deny his capacity they can exclude the lawful heir.

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3 It is better for the sovereign to come by lineage & not by election. Any one can not object to the ascention of an heir or to the pre— sident of the U S without offending the nation & injuring him— self. Where there is a dispute about the crown the nation {po} has the privilege to decide & in which ever way they do this should the crown go. Sec 65. Examine closely. Chapter 6. The government knows every mans business better than he does himself {b} according to V— but Dr. Smith denies the truth of this ascertion & says that government was established for the protection & benefit of its subjects. Additon or extractions from the laws of God by government is unncessary & unwise. The man who at tinds to his own business promotes the general interest in a great degree. If workmen are useful in a country they will stay but if they are wanten they will come without the aid of {workmen} Government. Chap 7th. It is better for Government not to meddle with the private affairs of the nations except in very few cases such as the estab— —lishment of agricultural schools &c. Section 82. Public

graneries should not be allowed as {it is} they are in— jurious according to Lay's Politl Account 198th Page. The best surety against dirth is an uninterrupted commerce. But all of these precepts are not without exception. Chapter 8th. Where Government intermeddles with commerce, it is sure to have an injurious effect. Monopolies should be limited[.] Sec 98. Chapter 9. Neither should government meddle with roads but intrust such things to the local powers. It would be better to levy a tax for the support of the roads but in public improve— ments the state generally takes a part of the the stock. Chap. 10. State governments have no power to coin money but merely the Federal Government. Sec 114. An entire freedom of the press is permitted in this country. Read to Chap. 12[.]

Lecture 4th.,, Oct 10th,, 1846 James IInd of England attempted to reestablish the Roman religion & therefore Parliament determined that no Catholic should ever ascend the throne. The effect of public granaries were injurious — both, in Rome under Julian, & in France. The navigation act of England, was [passed] during the reign of Charles 1st.

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4 A man may be sued for slander through the press or in— dicted for a breach of the peace. (Chap. 12) No remarks are applicable to our country. (" 13) (Sec 159) commits an error in saying that the necessity of laws to self love & ignorance for it is only the diversity of opin— ion among men. An elder of a church is the most proffitable client. (Sec. 162) In this he takes & unjust stand in saying that the sovereign is the administer of justice. Montesquieu Chap 6[.] (Sec 169) Society could not exist without the right of punishment of crime. (Sec 173). The pardoning power is left to the govenor in Va unless the Legislature denies that power[.] 4th artl of consti— tution of Va. 2nd art of [UnS]. The president has the right of {stot} pardoning. Montescue says it would be tyrany to invest the Legislature with judging & (...) No man is allowed to hold a public office who has any thing to do with a duel & if a man kills another he is capitally punished in Va & Ky. This law was made in 1811 in Va. Su(...) R Code page 282. Protection from forreign foes belongs to the U.S. wholely[.] The best way to advance population is to leave it to itself. (Chap 15) All officers in Va are forced to take an oath that they have never (Chap 16) had any thing what ever to do with a duel[.] (Chap 17) Population will increase in proportion to the resources (Chap 18) which the nations has for supporting[.] (Chap 19) The law defines who shall be citizens in every state. All [full?] per sons are citizens if either father or mother are citizens at the time of {its} their birth. England considers all men as citizens who are born in the realms of the king & a man can be a citizen of En— & Va at the same time. {Citizens} Inhabitants are di— vided into citicens & aliens & in E— denizens. In England the law is once a citizen always a citizen. The right of citi— zenship in the United—states are inalienable. Read to Chap. 20

Lecture,, 5th.,, Oct,, 13th,, 1846

(Chap. 20) Notice the dif of public & common property[.] (Sec 40 & 1) The power to lay taxes is invested in the [Repres] & Executive & they should also have the controle of them for the good of the lib— erty & there should be & independent judiciary only subject to being bribed. The constitution of E— is perfectly correct in comparison to other countr{y}ies & this is caused by the inde—

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5 pendent judiciary. These judiciaries should be raised above princely controle & popular clamor. In framing constitutions the independence of the judges & the perfect controle of the money should be taken particular care of.

(Sec 244) Compensation for private property publicly used is generally aggreed upon & sanctioned by the laws.

(Sec 254) Infancy & unsound mind are the only cases in which law inter— feres with the private property. The law makes a proviso for convicts in the penitentiary.

(" 261) Each state has the power of half of the river between them unless by former settlement or custom is otherwise. Kentucky owns all the Ohio on her bounds to low water bounds.

Refferences

Where a country owns a part of the river at its head & another its mouth both states have the power to navigate the whole river. The innoc cent use of a river is free to all. Refer to see. 129. 2nd Book. Spain acquired Louisiana in 1663. Read through Book 1st.

(Sec 281) (Book 2nd Vattel.) Lecture,, Sixth,, Oct 15th,, 1846,, Jr,, Law

Sec 289. A nation may have controle over the sea so far as a cannon shot will reach from its shore & the congress of the United States takes cognisance of this. It has been proposed to leave the dominion of the US all the sea within the lines drawn from the head lands. G.B. exercis —es her right to the seas with more rigor than any other & the U.S. with more justice. Sec 293. The laws of Va give assistance to vessels in danger appointing 2 commission ers in each sea bordering county. The commissions are to pay themselves out of the property saved if it is not paid voluntarily & the remainder is to be put in the public treasury. Goods found onshore belong to the person on whose land it is found.

(Book 2nd) Chapr 1st, 2nd. Commerce is one of the chief sources of wealth of a na— nation. Commerce in erased in proportion to civiliza— tion & education which had its origin in Italy & [Germa]. About the 13th century there was a law passed to protect the commerce from pirates.

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6 This confederacy did not last long being composed ({around G. Hope}) of Hamburg [Breighmen] Frankfurt levees. By a passage (around G. Hope) found by the Spaniards there was great facility given to commerce. The United States is the most enterprising nation in this respect. The [eternal] commerce is buying & selling & exchanging buying in one country & trans— porting. This last [speices] of commerce is call— ed carrying commerce.

(Sec 23) The doctrine of unrestricted trade is justly rec— ognised for it is like every thing else flourish (Sec 26) es{t} most when let alone.

Treaties of commerce are directed to three points[.] 1st to {writes} rights in time of peace. 2nd for rights in time of war. 3rd the rules which governs the (...) in case of two nations being at war {a third partin(...) coming in to the war}.

(Sec 30 & 1) Many instances of this kind can be stated (" 34) Consuls were first appointed about the 12th century on account of the trade with barbarous nations. The utility y of such a power is seen & used by every one in the world & are governed by consl laws & regulatns. V— is wrong in saying that the consul is not subject to the laws. Consuls & deputy consuls differ only in the extent of the country they over— see. The United States confers original jurisdic— tion to her ministers. Consuls are not public ministers.

(Sec 37) Precidence has formerly been claimed by the crown— head of Eng–. There are 4 classes of public foreign officers Ambassador, Ministers resident Extraordinary Plenapotentiary Charge de affairs.

(Sec 54) The right of interference is only for the safety of a nation.

(Sec [76?]) The duty of the aggressors sovereign is to act according to Congress in the state of Va {&} the law punishes any one for delivering up a [disgressor?] to a foreign power[.] The delivery of foreigners is not provided for

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Read through Chapter Sixth for Oct 17th 1846.

Lecture,, Seventh,, October,, 17,, 1846,, Jr Law,,

In signing treaties each minister signs 1st the {treaty} copy which he keeps. The ministers to this country arrange themselves in equal ranks ac— cording to the date of their arrival— the Ambassadors coming 1st Ministers Plenapotentiary 2nd, ministers resident 3rd, & Charge de affairs 4th, & last. —

(Chap 7th) The commerce of two states at war is liable to be the prey of the other. (Sec 85) The appointment of a guardian in one state has no effect in another & therefore the national law does not give validity to the appointt. Cr. 8 Sec 103) In E— & Va the privilege is allowed to a foreigner to have a ju— ry of half foreigner to try him but it is at the discretion of the court in Va.

(Sec 11) Read with care & notice the important distiction between real property which is regulated in the tenure, mode of enjoyment & trans— fer by— Rex rei situe of the place where the land lies while the personal property is reg— ulated by the laws of the owners [domasile]. Thus in willing real property the will must be made according to the laws of the place where the land lies but in personal property according to the laws of the mans domacile which is where the man carries on his business & where he lives. The birth {of} place of a man is his domacile until it appears to have been changed & if a man has 2 places of residence the place where he carries on his bu— siness most particularly is his domacile. Escheat is the falling of (Sec 112)

property to the state for the want of an owner in the state of Virginia. If the property of a dead man is movable his heirs may be looked for over the world but alien heirs can not hold land in the U. S. but the land becomes as Escheat to the nation. This law has been modafied in Va by which both aliens & heirs are allowed to hold land by {his} their going in to court & swearing that {he} they intend to become citizens.

(Sec 115) Marriages contracts can not be vallid unless valid when made & this holds true every where. The validity of a contract is generally considered with regard to the place where the contract was made but every state has the privi{l}— ledge to prevent its own citizens from evading its laws. Thus it is against the laws of Va for a man to

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8 marry his wifes sister & the authority of Va can prevent a man from going to Maryland to make a marriage contract. The {citizen} state has the power to prevent a marriage contract being made out of the state & the same thing with regard to dwelling[.]

(C 105/27-9) (C 115) Where a right is acquired by [usu?] caption the former owner looses it by proscription which is a long & honest possession of a thing. Peace requires that long possession should give right "prima facie" to property so that long hon— est & uninterrupted possession gives an indubi— table right. Read through Chapter 11th/46.

(Chap 8th) Lecture,, Eighth,, Oct 20th, 1846. The domain is the mere simple use which individuals have over the land of a nation or the mere [possessions] of of a nation where as the eminent domain is is the power which the sovereign has of disposing of both private & public property in case of necessity. Judgements in rem are judgments passed upon captured ves— sels which pronounces them to be the property of the cap— tor & if this vessel should return to to its former port under her new owners they can not claim her back for the judgment of the foreign court has become valid. (Chap 9th) Aliens are not allowed to hold land in US because it is prejudicial to her interest. The capacity of a cit— izen to make contracts is determined {1st} upon the laws of the state in which the contract is made ie by the Lex loci contractus. A case of big (...) will not be val id in Va though valid at the place where made.

(Chap 11th) Prescription must be long because the owner may only have left silence for parti cular reasons: it must be honest because nothing should be obtained by fraud it must be uninterrupted because if not that would be proof [posative] that the owner had not given up his claim & adverse because if not it would be proof that the prior owner had the title the property.

(Chap 12th) Sec 154. Treaties are made by the Pres by the [concur] of the senate provided 2/3 of the senate {be} present concur.

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(155) The government has addopted the method of contract— ing treaties & then presenting them to the senate for rat— ification & but one case has happened other wise & that was in the [oragon?] question[.] States must be free to form a treaty. The states of this confederacy have the power to make treaties unless restricted by the con— stitution of the U.S.

(Sec 197) Personal alliances have no power after the king with whom {it} they were made is gone & seal alliances are those made among the states. The validity of a treaty rose in the cabinet in 1793 in Washington. The Cabinet was divided upon the subject of the treaty being val— id with France. Gen Hamilton & his party conten— ded that the treaty should be suspended until peace was restored {or not} when the treaty might be removed or not according to discression. Mr. Jefferson insisted that the treaties should stand & his side prevailed but after wards the treaties were blotted out by the Congress.

(Chap 13) The [Oragon?] question gives us an instance of the re— newal of the treaties between two nations. When a state is joined to another the treaties which be— longed to that state is assumed by the other.

(Chap 14) (...) is only a treaty made by subordinate officers. Sec [264?]. Any contracts are void made by a government whether are made {by} with a nation or private person if it is ruinous but if it is only injurious it can not break it. If it be a citizen of the state the contract can be broken by paying a compensation by power of the emin— ent domain.

(Chap 16) The right acquired by the guarantee is perfect right & the person who is to (...) is the person guaranteed. (...) it other wise the person guarantied might be ruined before the guarantor would be bound to bring (...) Read through the 16th Chapter The difference between treaties & [compacts] is a treaty depends upon a [succession?] of acts whereas a compact is only one.

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10 (Chapter) Lecture,, Ninth,, Oct 22nd,, 1846.

Congress has the power to allow a state to make a con— tract but this is not done often for fear of complica— tion between the states. A state when she subjects her— self to a superior power all — treaties which she may have made which are of a continuous nature must be dropped by her.

(17) The same rules that apply to a private contracts as to a Treaty & statues? (...)BC Page 379. 1 Blackstone 87.

(Section [967?]) The [words] of the grantor should be taken most strongly against {them} himself because persons are not going to injure {himself} themselves. All quibbling in admissable. An instance is mentioned by Puffendorf.

(" 273) Between the (...) & (...) because the (...) [put?] the earth in their shoes & [false?] heads on their shoulders.

(" 284) This rule is frequently used by commentators on books.

(" 287) 1 B.C. 87. Construction ought to be founded on [the?] reason of the act, that is we ought to ascertain the reason which induced the statute, treaty or any pro— viso thereof. In municipal law this is said to be such a construction as will suppress the mischief & advance the remedy.

(Sec 290) Restrictive & extensive interpetations &c. These are not apt words because extensive interpre— tation is as often as wide of the spirit of the law as the restricted. For these we should substitute close & liberal. Close interpretation adhear to the letter liberal to the spirit. In a subsequent section V— uses the word extensive in quite a different sense. Here it means the most comprehensive meaning of the same word. The question is between two or more liberal meanings.

(Sec 311) Collision of laws & treaties. A famous intance of collision of laws is found in the Greek history where one law states that he who kills a tyrant shall have a statue erected to him but another says that no woman shall have a statue erected. A woman killed a tyrant & then the question arose whether or not she should have a statue erected & it was deci—

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11 (Chapter) ded that the law which ordains being more parti(...) should prevail not withstanding the rule which says that the laws which forbid have precedence over those which ordain. Rules 9 & 10. [Solemnities?] and (...) do {not} not add to the obligations of contracts but they show which the parties were more solicitous about & when other things are equal which would have the prefference.

(18) Settling disputes

(Sec 327) We settle most of our national disputes by arbitration or negotiation. We find instances of the latter in the settling of the Maine boundary & that of Oragon. Arbitration. We have resorted to arbitration in two instances both of which were with E—. In the first it was left to the emperor of Rusia to decide whether or not slaves which were on [bord] of English vessels at the close of the war of 1812 & had been taken from the United States belonged to the citizens or not & it was decided in favor of the U.S.

The second instance was with refference to the boundary of Maine & (...). It was left to the King of Holland & he did not settle the question [or?] proposed but marked out an entirely new boundary which both parties objected to & the question was afterwards set— tled by negotiation. Congresses are now frequent. (Sec 339) Retaliation is applicable to the violation of (...) rights. The nation who is (...) an imperfect right may call the one refusing to a sense of duty by refusing rights of a similar character. Reprisals are now prelimi— nary to war & no nation thinks of granting letters of re— prisal unless she intends a declaration of war shortly to follow.

Lecture,, Tenth Oct 24th,, 1846. Book 111

(Chapter 1st) Public war is either national or civil. Civil is a war between citizens of the same state. National is between two different states. Wars with Pirates are both pub— lic & private. No rights grow out of war unless public. (Chapter 2) We rely our militia men between 18 & 45 years of age.

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The law of Congress require them to be enlisted under the state from which they hail & also the appointment of officers. Besides the militia there is a public army called the regular standing army. The presi— dent has a right to call in the M— in case of invasion danger or insurrection. When in service they are subject to the rules of war but can not be made to serve more than 3 months in the year. Hospitals are furnished for the Naval officers sup— ported by (...) appropriations & reductions of pay. They have been established at New York Philadelphia Norfolk Charleston Pensacola & Boston & are under the controle of the "secretarys of the Navy, war & treasury."

(Chap 3) Where ever the spirit of {...}aggrandizement has commenced (Sec 44) it is apt to terminate in a sufficient cause for war. There were two inter positions in England for the purpose of preventing agrandizement. The combination against Napoleon was of the same disposition.

(" 47) England was opposed to the combination against the internal affairs of other states in 1822 when France atemp— ted to over throw the constitution of Spain & sent troops to Portugal in order to maintain the freedom of the king of Portugal.

(" 55) In 1635 there was a declaration of war by herralds but now a manifesto is published but this is not necessary. War puts an end to all inter (...) between the citizens of two nations. The Congress only has power to declare war. A perfect war is where the whole nation is engaged but an imperfect war is confined to [persons] places. The ministers are with drawn from the different countries just be— fore war is declared.

(Chap 5) Every citizen is an enemy and all the prop is an en— emys property. It is the custom not to confis— cate foreigners property as soon as war is com— menced but time is given to remove England is in the (...) of reciprocity. All prop on sea is

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{is} subject to capture. Private ships are licensed to carry arms & are called privateers but they should be abolished & the U.S. has attempted to prevent this {against} by treaty. Read through Chap 6th for [Tuesday].

Lecture,, Eleventh,, Jr Law.,, Oct 26th,, 1846

England has protested against the interference of internal affairs in other nations & as a consequence of this protestation she has with drawn herself from the [wholy] allyance. The U. S. gave her opinion on this subject when some of the Spanish colonies revolted.

Although the movable property of a neutral power found in an enemy's are not subject to the [hostilities?] yet his land is subject to the fate of the country but this is not the general {country} custom.

(Chap 7) While nations are at peace they can carry on commerce with (sec 111 &12) all other nations but in war it is different for those commod— ities which are necessary to war can be prohibited & with these exceptions the commerce can go on as usual among neutrals both with Billigerents & peaceful nations.

These excepted articles are contriband & can be taken & confiscated. These articles are not exactly decided on owing to the interest which one nation has in the [affair] of one of the belligerant parties. The third class is the one of which there is dispute & they consist of such things as are useful both {useful} in peace & war. Our country contends that ship timber and naval stores are con— traband although they be destined to ports that are not for fitting ships provisions are much disputed about es— pecially during the war between E— & F— because England said that it was prejudicial to her interest. The most of nations contended that they even not contraband but in our treaty with E— she acknowledged that they were not generally contraband but might become so. But it was agreed that they might be taken by paying a fair price. Provisions are not generally contraband but may become so in consideration of {its} {for} the {...} condition of the nation to which they are destined. If intended for the army they are but

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14 if they are for the support of the nation they are not. If they are in (...) manufactured state they are not contraband & if they are the growth of the nation from which they are carried & if they are destined to an ordinary port. Sir Wm. Scott discar— ded this last reason. [Where?] contraband is found on bord of a nutral it is {they are} immediately confiscated to the use of the captor. Contraband gives right to the whole cargo — & to the ship if it belong to the owner of the contraband. False papers & destination are the most [hainous?] of all contraband. All these rules are subject to treaties & the U. S. has made treaties with Columbia & Chili (...) the effect that contraband does not affect the rest of the goods or ship. Nutrals can trade in this [articles?] but they must be careful they must not touch at any port of the parties at war. Trading can not go on with places beseiged or blockaded. There is no differ— ence between trying to raise a blockade by arms & carrying on trade with that place in such a case the vessel & all on bord is subject to confis— cation. 1st there must be a blockade. 2nd the party must know of the blockade. 3rd the vessel must be loaded after the blockade commences going in or com— ing out. There must be sufficient authority present to cause a blockade. If the squadrun is about it does not make any difference provided the cause is known but if the blockade is broken for a time it must be noticed if [resumed].

Lecture,, Eleventh,, Oct. [29th?],, 1846 The confiscation of goods of Englishmen who left this country at the commen— cement of the Revolution was contrary to custom but it was justified on the [grounds?] that E— had not treated the U—S— fairly & consequently she could not expect us to ad— hear to the usages of war. [Sir?] Franklin in— sisted that the debts due to English subjects (...) not be collected & he illustrated the justice of his

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15 (Chapter) cause by the anecdote of the "draper & his [dial— er?]." The decision as to the subject of contraband goods belongs to the court of Admiralty & the books refered to would be the text Books on this subject such as Vattel Puffendorf Grotius &c. to the records of the court of admiralty. The right of preemption is the liberty of buying {(...)} goods such as food on the sea from ships which— ar destined some where else in time of war. A notice must be given previous to seizure & this no— tice must be given no difference here. A vessel sailing from a very distant port supposing that the blockade might be raised before reaching has aright to enquire at the port whether or not the blockade is raised but she must not come too close. The blockading party is armed with the right of {(...)} visitation & search for the purpose of preventing contraband. This search is confined to merchant men but if a vessel be searched without justice the captor is bound for all damages & is accountable to the court of his country & if this does not give justice the sovereign of vessel may take it in hand. A ship can be searched by any vessel which it meets whether private or public as a vessel can not carry any paper to prevent this search. Enemies vessels are subject to confiscation as well as all goods on— bord & it has been contended that if goods belong— ing to enemies were found on bord of the nutral that the neutral was subjected to confiscation unless by treaty it is other wise[.] Louis 14th made a law to the [fore going?] effect but no other state agreed to it except France & Spain. It is a law now that [free?] bottoms make free goods (except with England & enemies bottoms enemies goods. A treaty of this kind was first made with Turkey by Henry 4th in 1604 & in 1662 Holland & France & 1668 between Holland & England thus between Holland & other England France & Spain.

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16 Lecture,, Twelfth,, Jr. Law,, Oct. 31st 1846. (Law of 1758) England insists that no [nutral] should carry on {war} (...) in [JS?]) commerce with a belligerant more freely than be fore the commencement of a war. A [nutral] can not carry dispatches & the ship is confiscated. A [nutral] may carry dispatches between its own nation & one of the belligerant. [Written vertically along left margin, read bottom to top] (Treaties with regard to (...) (...) or those which have [gone?] into effect are not affected by war) (Chap 8) The humane maxim of forming the body of National law is creditable to the safety of the world. An— ciently enemies were at the mercy of Congress & the most ag— gravated cruelty exercised towards them was considered as lawful. The progress of civilization first checked the exercise of this rigorous & then taught the principle that it was unlawful. The rights of war are now limited by its objects viz to [avenge] or prevent injury. Not only is every unnecessary violence unlawful but every act which inflicts upon the enemy an injury disproportioned to the benefit of the [injuring] party is contray to the laws of nations. By usage of nations de— serters are put to death but the human custom of mod— ern times has put an end to that or rather provided against it for when a [town] capitulates it is generally stipulated that a (...) of covered wagons shall be alowed to go out which all understand as being for the use of deserters. The (...) rules laid down with regard to injury (...) persons may be applied to property. All injury to prop— erty (...) be comdemned which has not the tenden— cy to [attain?] in the end of war. The great distinction with regard to persons is between armed & unarmed persons combatants & non combatants — against the

first we have no right to commit violence but the 2nd may be treated as enemies. The chief distinction between property on land is between public & private — the 1st may be appropriated the 2nd must be respected. There are exceptions to these rules. Thus public property of such a nation that its destruction will not advance the object of the war must be respected as public buildings not used for the defense of the state monuments tombs &c. If property be found in the hands of individuals of such a nation as to be peculiarly useful in war & of [any] application as arms ammunition horses [equipped] &c. it may be it may be appropriated or destroyed. So a nation may lawfully (...) contributions upon the citizens of the country. The exemption of private property arises from the principles that no injury is to be done which does not advance the interest of the war. The last instance of the confiscation of private property is during the time of Wm. the Conqueror. A conqueror cannot (...) (...) of the property of the citi— zens of a state which has absolutely obeyed him (...) takes it sub— ject to the right of individuals. With regard to things on the sea a different system of ethics prevails. All property formed in the sea is subject to confiscation. The very object of a [marytime] war is frustrated by the abolition of maritime (...). Commerce being the only support almost of mar— itime nations if (...) (...) this they can wage war eternaly. War has the effect annulling treaties unless they be made with refference to war or to the existence of war. The U. S. have several treaties which are not affected by war. The 1st article of the treaty made with Great Britain in the year 1794 is of that character as it provides that in case of a war with country debts obligations &c. shall not be subject to [seisin?] or appropiation[.]

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[scribbled line] [Gno?] S. Henshaw 17 17 [scribbled line]

Lecture,,Fourteenth,,Nov,,3rd,,1846. Jr. Law The right to movable property is complete as soon as the captor has it in his power. But the immovable property is not the property of the captor until the treaty of peace. The circumstances are different when on land & sea. After the captor has had possession for 24 hour on land the possession is complete— but on sea it is differ ent. A (...) for this [proper?] can only arise between the 1st owner & {(...)} a nutral or a 2nd captor. Infra presidia [formerly?] gave{s} absolute power of a capture on sea but this rule is not the rule now for the (...) (...) of a neutral tribunal (...) how long it has been in possession. The [prise] must be kept by the captor until sentence is passed upon it by court of admiralty sitting as it must sit in the territory of the captor or in that of the [alli] but must belong to that of the cap tor. Eng— & U.S. allows an admiralty court to pass condemnation over a (...) in a [nutral] port. It sometimes belongs to a [nutral] nation to pass condemnation or not for if a captured vessel (...) or is (...) but in to its port it has to examine whether its nutrality has been violated. Ransomed [prises] must be paid for by a bill of exchanged & it is {the} {only} one case of the contracts between belligerants [&?] the certificate of [Randsome] must be regarded by all other hostile vessels. Engl— & the US will not allow this for the captor by this means pockets all the procedes of the [cargo?]

(Chap 14) As soon as a capture has been recaptured it does not all ways come to its (...) to the capture but investiga tions must be made whether or not it is changed by (...). The restoration of a recapture does not take place gra— tuitously but [then] must be salvage paid 1/8 of the

val— ue if by a public 1/6 by the private — but if such vessel be armed at the time of its capture or at the time of its recapture 1/2 but if if it be public property (...) if by a private vessel it is recaptured [1/12] if by a public (...) the recaptured vessel is (...) but if it is

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18 armed in case of a recapture by a private vessel 1/4 of its value is to be paid & 1/8 if by a public.

Lecture,,Fifteenth,,Nov 5th 1846. Jr. Law. If the vessel belongs to another country it is to be restored to that nation by the laws which govern the salvage of that country & if such law is not known our own laws are put in force but if no restitution is to be made by the laws of the other nation none is to be granted by us.

The laws are subject are [variable?] by means of the municipal law thus the U.S. gives the [right?] of port [d]— only during the time (...) at sentence and during war but England gives this right during the whole war without any other limitation.

(Sec. 226) The opinion of this section is doubted by some but sustained by more. Captures or hostilities by vessels on sea without authority are not treated as pirates but treated with the severity of the at— (...) extent of the law. The profits [accruing] from [those [noncomissioned] vessel are called rights of admiralty. The U.S. gives the whole capture to the captor if it is of superior force but if inferior only one half.

((...) 227) Our law provides for the punishment as a high misdemeanor in [6?] cases of criminal relations with foreign powers. 1st no citizen of the U.S. within the boundarys there of shall accept any commission from a foreign state to serve in war against a state at peace with the U.S. 2nd No person shall within the jurisdiction of the U.S. enlist or hire another to enlist or go beyond the jurisdiction of the U.S. with the in— tent to be enlisted as a soldier seaman or mariner against or in the ser— vice of any foreign power. This does not extend to foreign citizens tran— sient by in the country. 3rd The person shall fit out or arm or cause to be fitted out or armed or be concerned in fittig out or arming any vessel to commit hostilities against a state in peace with the U.S. so long as said per— son is in the territory of the US. 4th No citizen of the U.S. shall be con— cerned in fitting out a private vessel of war to cruise against the

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19 citizens or property of the U.S. 5th No person shall within the jurisdic— —tion of the US be concerned in increasing the armed forces of a vessel which at the time of her arrival was engaged in the service of the state at war with another state at peace with the U.S.. 6th No person shall set on [foot?] any military expedition against a state or people at peace with the U.S. In all these cases the offender shall be punished by fine or imprisonment. In order to render these provisions for our neutrality efficient it is pro— vided that the owners or consignees of every armed vessel [clearing] the ports of the U.S. shall give [bond?] with [surities] with a penalty of double the value of the ships & cargo including armament that the vessel shall not be employed by said owners or consignees to cruise or com— mit hostilities against any state at peace with the U.S. In determining the time that a truce is to continue V—

thinks that the 1st & last day, mentioned should be both included. G— excludes the 1st day & this is the municipal law of our land unless some interest [posesses] —[When?], as grants are always to be {much} construed most favorably to the grantee. As times are of a favorable nature V— may be right in the application of the rule to times & other favorable contracts. Lecture Sixteenth on Jr. Law. Nov 7th 1846 (Sec. 281 Book [6?]) The custom of ransoming prisoners is now obsolete — but ransom bills are still used in case of ships & the certificate of a ransom bill answers as a safe conduct to a ship. If a ship have a ransom bill certificate she must not deviate from her course without good reason. If she does she is liable to capture & the ran— som in strict justice should then still be payable but according to modern usage the ship is confiscated & the ransom paid out of the procedes the residue going to the second captor. If the ship be— lost in a storm the ransom is still payable the same is the case if the hostage dies who is given for the security of the payment of a ran— som bill. The English government forbids ransoming ships & before this law against the decision of Lords Mansfield no action for a ransom bill could be in the English {courts} courts but a hostage may in an indirect manner force the payment of a ransom by bring ing action against the owners for his release. France & Hol— land always enforce such payments. In F— the hostage is siezed as soon as the vessel comes in port & held until the ransom is paid. A capture of a ransom bill releases the obligation to pay it but

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it is yet an unsettled point as to whether the recaptor is in titled to the whole bill or only salvage. Mr. Minor gives it as his opinion that the recaptor is only in titled to salvage.

Book 4th. Congress declares war but the senate & the president conclude trea—ties. Congress & Congress only has the power of raising money. It was debated in Congress in 1795, 1816, 1831, whether or not Congress only had the power to raise money for the [completion?] of treaties if necessary or whether it had the power also to judge of the propriety of the treaty. It was decided in 1795 that it had both rights. The arguments in favor of this decision was that if it was only in their power to grant the money it was useless for them to have even that power for when the senate [ever] passed a treaty it necessari— ly followed that they must have the power to obtain money. As an exam— ple E— was refered to. General Washington never the less desided that when a treaty was made by the senate it immediately became a law of the land as much as any other & therefore Congress had no power to pass opinion upon it. Chap. 3rd. The times of treaties coming into effect are regulated likes the times of [truces]. 24. Vattel's assertion that the captor is bound only to restore a capture made after peace is declared & before it was known & that it is not bound to repair damages is contradicted by later another it now being the custom to return the capture pay all (...) & then for the sovereign to pay the captor the same amount. If a capture is made before peace commences but {before} after notice is given this capture must be restored that is if the notice is from good authority. When property has become captured & after peace has commenced is recaptured — it must be restored to the former captor as peace gives the same right as a sentence of con— demnation

& moreover puts an end to all hostilities & moreover had put an end to all {hostilities} hope of recovery.

Lecture 17th November 10th, 1846. Right of sending ambassadors is an imperfect right. That is it lies with the nation to whom they are sent to receive them or not — and such nation may refuse to receive one of their own sub— jects or a particular individual as minister. But good reason must be given for such refusal. Religion or sex is not a good re— ason as some authors state that women are better ambassa— dors than men they possessing the requisite qualities for treating in a higher degree than men.

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As to confederated states the instrument which hold together de— termines whether they may send and receive ambassadors. The con— stitution of the U.S. expressly prohibits any state from entering into treaties aliances or confederations &c & that no state shall without the consent of Congress enter into compacts or agreements with an— other state or a foreign power — thus drawing a distinction between treaties compacts & agreements. This very materially [modafies] the original right of sending & receiving ambassadors because it diminishes very much the objects for which ministers are employed. It does not entirely take away this right because the states are permitted to make compacts & agreements with consent of Congress and ministers may be employed for this purpose. The framers of the Constitution probably intended to draw a distinc— tion between compacts & treaties as the latter are entirely pro— hibited whilst the former are permitted with the consent of Congress. Chap. 6. The primative law makes no distinction in the rank of ministers but nations have made this distinction & the settling of a seal of rank has created much confusion. Finally a uniform rule was adopted at Vienna in 1815 & confirmed at [San] Chappelle in 1818 establishing the following order of public ministers. 1st Ambassadors Cardinal Legates & [Nuntios]. 2nd Envoys extraordinary ministers plenapotentiary & [Luter Nuntios]. 3rd Ministers resident & 4th Charge d'affairs. The three first divisions are credited to the sovereign or chief mag— istrate but the last only to the minister of foreign affairs. Consuls & other public agents are not generally considered as pub— lic ministers though they are invested with the immunities of a public minister when sent to the barbarous nations of the Med— iterranean in order that they may be fully protected. Charges are ad hoc & per interim the first being the charge d'affair in his propper office & the 2nd being a substitue for the minis— ter during his absence. In either case they are accredated to the ministers of foreign affairs. Sec. 78. Every nation may declare the grade of minister she sends to a foreign country & the custom is usually to send such as she receives. The U.S. have never sent or received ministers of a higher grade than envoys extraordinary & ministers plenapotentiary

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Although her ministers are usually resident at the courts of for— eign nations yet they are endowed with the rank of envoys ex— traordinary & ministers plenapotentiary in order to give them rank among the ministers of this order. Sec. 99. It is the duty of a public minister on his arrival at a foreign court to notify is to the minister of foreign affairs whatever be his rank. If he be the first rank the no— tice is conveyed by the secretary of ligation or other officer connected with the mission who hands to the minister of foreign affairs the ministers letters of evidence & desires to know when the minister may have an interview with his sovereign. The second & third classes announce their arrival by letter & desire to know where they shall deliver their letters of evidence. The Charge d'affairs also announces his arrival by letter & desires to know when he should have an interview with the minister of for— eign affairs. The ministers of the 1st order are entitled to a public announcement & entry in to the capital but this is usually dispensed with. On arrival at a foreign court the minister must send his card to the other ministers of an equal or higher grade or he will receive no notice from them. The ministers of the same rank take preci— dence at a foreign court according to the date of their arrival. Sec. 81. Inviolability of public ministers took or— igin from the necessity of embassy. It is necessary that should communicate with each other & this must be done (...) a public against but this sight would be perfectly precarious if the inviolability of public ministers was neglected. Hence any violation of their immunities is looked upon as a very aggravated offence against the law of nations & ought to be punished exemplar— ily. This inviolability is violated not only by actual insul— ts & trespases but also by an attempt to subject the min— ister to the civil & criminal jurisdiction of the coun— try. Therefore there are three classes of offence against public ministers. 1st assaults upon & usually to his person.

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2nd suing out or serving any civic [precep?] against him or his prop— erty. 3rd Setting on foot a prosecution against him or his family. Accordingly the laws of the U.S. have provided for most but not all of these offences. 1st To assault wound or im— prison a public minister is punished by imprisonment for any length of time not exceeding 3 years. 2nd Any person who sues out {or} (...) or [precep?] against a minister or his domestics or domestic servants shall be deemed as in violation of this law of Nations & shall be pun— ished by imprisonment not exceeding 3 years & fined at the [discressions]. All other precedings are proclaimed void & the parties concerned punished in some manner. But in order to prevent persons from fraudulently avoid— ing their obligations it is construed to extend not to inhab— itants who contract obligations & then enter the service of the minister. For the greater justice it is also provided that no one shall be punished for suing any assault of the pub— lic minister unless the name of such servant (...) (...) has been handed to the secretary of state who gives it to the marshall of the district where any (...) (...) & has it laid in his office. Upon this law several observations may be made. 1st It punishes violations of the minister person but does not provide for insults unless they may come under the head of other infractions of the laws of nations which the (...) [was]. 2nd No provision is made for offences against the wife or children of the minister unless by them is meant the domestics as distinguished from the domestic servants. 3rd Domestics &c are protected from in— juries. 4th

The constitution of the U.S. confers upon the Federal court exclu— sive jurisdiction in all cases affecting ambassadors other public ministers & (...) & for more particular security has given the supreme court original jurisdiciton in these cases. It has been supposed by some that a minister may be sued by summons in [war?] court but this interpretation would (...).

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24 state both the constitution & statue & the law of nations. Nor is the arguemnt drawn from the Mexican quam [potitior] (...) re [margis valear] good because it may be supposed that the state has refference to those matters which do not concern the minister as a public functionary. Distinc— tions have been drawn between crimes of a lesser & greater [enormity?]. The latter it is said may be punished in a public minister because the inviolability of his charac— ter to be subordinate to the vengeance of the municipal law in this case. Vattel entirely explodes this doctrine & shows the necessity of (...) independence of the civil & criminal jurisdiction of the country. Ministers are often sent on missions disagreeable to the sover— eign & he cannot maintain that independence necessary to the success of his embassy unless he is placed in such cir—cumstances that he has nothing to hope or fear from the foreign sovereign. Without this the office would be (...) nugatory. Finished Vattel. Nov 12th 1846. Lecture 18th Nov. 12th 1846. On Government. The subject of Government had for a century past so much engaged the attention of the American people as well as those of Eu— rope that many propositions which had once to be de— liberately demonstrated in respect to it are now uni— versally received as axioms admitting not of a discussion. To this class belong the most of the doctrines expressed in the bill of Rights of Va & in the Declaration of In— dependence. That all men are created equal free & in— dependent: that all power is originally vested in the peo— ple & derived from them & that government ought to be instituted for the common benefit protection & securi— ty of the community governed are facts which will not be denied. All these I say are truths too familiar to be proved & which it is almost superfluous to illustrate. But although these wholesome fundamental max— ims are rescued from the comtempt & obloquy which once as— sailed them & are placed on a basis generally acknowledged to be impregnable there are many practical problems of

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government yet remaining either unsolved or disputed. The develop— ment & ramification of great principles into [detail?] admits of such variety that speculation is still busy & invention alien. Every month produces some new dogma & every week explodes a theory. It is not therefore idle to devote an attentive consideration to the principles in their widest scope on which government rests & to trace the subject in some of its numerous branches & applications although the [sketch?] must be necessarily imper— fect as well from the hasty consideration which I myself have been able to give it as from the urgency of other sub— jects which demand over attention. I propose to speak I. of the nature & objects of government. II. Of the different simple forms of Government. III. Of the mixed forms of Government. IV. Of the several departments of Government, & the modes of preserving a due equilibrium among them. V. Of the application of the just principles of Govern— ment to the Constitution of Va, with an

examination of the structure of that instrument. VI. Of the nature of confederated governments in gene— ral & that of the U.S. in particular. I shall devote the present lecture to the consideration of II. The origin nature & object of Government. "All government said Sir Robert Filmer is absolutely Monarchy for no man is born free." This remark & the labor—ed efforts to prove it by deduction & abstract reasoning so (...) of a citizen who was [stiled?] & Englishman & a Gentleman excited the warmest indignation of the great Locke & induced him to apply his judicious & discrimi— nating mind to determine the true principles on which government might rationally be supposed to such & to his investigations much of the present enlightened con— dition of mans mind on government is due. Without going back too far in a fabulous or imaginary state of nature where men were asserted to be wholy in— dependent of such other we cannot, without a scepticism

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not less unphilosophical than irreligious refrain from the conviction that there was a period at which there was but one father & one family to occupy the wide domain of earth & constituted its sole human inhabitants. It does not sure— ly require any great stretch of the imagination to believe that that first father exercised over his offspring whilst they were in a state of infancy, childhood, & early youth, that authority which these relative situations rendered nec— essary & which nature prompted him to exert & them to submit to. Nor is it more difficult to realize that chil— dren when grown to mans estate would continue to re— spect though possibly they might no longer acknowledge the patriarchal sway of the venerable saga whose head white with the frosts of many scores of years possessed a sa— gacity which age above could give in those early ages. If occasionally some impetuous Cain actuated by the [firy] impulse of a bad heart burnt through the mild restraint of this {mild} parental controls the consequence of the rash wickedness were sufficient to teach his brethren the value of a superintending power. With the first family of man there commenced government not perhaps as a direct institution but of necessity from the relations subsisting between the earliest occupants of this world. The father commanded, his children, led by the soft impulses of affection obeyed & having thus learned as it were by accident the importance of a common power to the peace good order & happiness of their little commu— nities they were readily induced where death had withdrawn the venerated form of him who had so long presided over them to substitute in his room one who from his age experience & quali— fications might appear most likely to supply his place. It could only be necessary for men to have an oportunity to test the advantag— es of government in order to insure the perpetuation of it & had not the patriarchal form been dictated by circum— stances, reason would soon have suggested some analagous institution so imperiously do our nature & atributes demand a social organization & are established authority.

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The foregoing remarks suppose that society & government were con— temporaneous institutions & that both followed from the origin of the race, & the situation of the first dwellers

upon earth. We have supposed men to have submitted to the patriarch— al government at first not because reason convinced them that some government was necessary & that was the best but from the fortuitous circumstances of their position as {they} {had} originally {experienced} {the} {blessings} {of} {government} the helpless children of our family. Nor was it until they had experienced the blessings of government that they reason— ed of its blessings & necessity & debated its form. Society was in its origin the result of the worlds possessing but one family but we may conceive {of} more directly & irre— pressibly prompted mankind to unite in society than to institute government. Every intrinsic sentiment & propen— sity of our nature argues as to social rather than to solita— ry existence. The other helplessness of long years of in— fancy the mutual yearnings of parental & of filial love the comparative mobility of man when above his nat— ural— I mean his inevitable dependence on his fellow man for aid in supplying his physical wants & in the development of his moral & intellectual qualities which happily constitute the source of his highest enjoyment all do not evince merely the purpose of the divine Author of his being but do fulfill that purpose with a certainty which can know no dis— appointment. Man always was from the moment of his creation a gregarious & so by the law established ineffa— cably upon his nature he must ever remain. To society then he betook himself as to his destined element not so much at the bidding of his reason as at the invitation of instinct. Government however was recommended to him by other & after considerations. Experience & the opening faculties of his in— tellect assured him that society could not be enjoyed without government & for the sake of society he concented his. "Unhoused free condition" To put into circumscription & confine and to yield up some of his natural independence of action for the purpose of realizing comforts & pleasures congenial

to the nature which God had imposed upon him. Thus originated the important institution of govern— ment whose beneficient interests have often been frustrated by [previous] misconception of its nature & objects was to have caused some philosophers to term it a necessary evil and so as often to have plunged whole districts of the world in suffering & crime — nay so as to have made a few doubt whether on the whole 'twere not better to roll back the tide of human impulse, reverse the per— suasive instinct of nature & resolve society into its individual elements in prefference to enduring the pains & inconveniences incident to its organization. Let us see whether there is any thing intrinsic in the nature of government to justify these passionate long— ings for what imagination paints as a state of nature. As government was in its origin sanctioned by the convictions of every community that it was necessary for its welfare, so in its nature it can be nothing more than the authority by which common concent is organized in order to accomplish that object. By common concent is not meant an unanimous concurrence of well in every individual of the society. To expect such a concurrence were idle. But we mean the concurrence of the greater number of individuals only (that is) of the majority. But why it may be asked should the majority be constrained to yield their wishes & preffer— ences in the important question in organizing the au— thoirty which is to operate so essentially on their con— ditions. It might be a sufficient reply to say that the wishes of the greater number should be consul— ted than those of a less but the question

admits of a solu— tion yet more satisfactory. The instinct of nature as we have seen prompts men to society; society cannot exist without government: those then who can agree upon the organization of a public authority form a society of them— selves. If then there are others who before the organiza— tion of that public authority were part of the commun— ity who cannot [acquiesce?] in the new institution they

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29 must either form a new society or submit to the wishes of the greater number. It is clear that the latter alternative would be irresistably recommended in most instances by every consideration of prudence. Thus then the ma— jority's right to govern not merely by the just & natural preferences of the wishes of the greater to the wishes of the less number where wishes alone are to be consulted but it is also sometimes by the subsequent ascent & im— plied ratification of the minority itself. This power & authority of the majority to bend the lesser number is further sustained by adverting both to the organization of society & to the necessary implications thense arising. As society is the result of instinct whilst government is in its na— ture a subsequent contrivance to enable men to live in so— ciety with pleasure & advantage it may be assumed that where men associated together they mutually agreed to whatever might in the issue prove either necessary to the continuance of the association or promotion of its objects. Now for both of these purposes government is necessa— ry but to organize government otherwise than by the as— cent of the greater portion is impossible. Thus men must be understood when they entered in to society to have con— cented to be bound by the greater portion of its numbers. From these considerations it follows that society not on— ly as it respects the institution of government but in all other particulars (a few only excepted) possess the right & the power to do whatever the good of the community may demand. This constitutes what is properly called sover— eignty which therefore is inherent in the people be— ing only the result of their united individual power of willing & acting. The functions of government are only a deligated trust one of the many flowers of sovereignty which belong primarily to society & must not be confounded with the sovereignty which originated them. The nature of government then is understood to be no more than the public authority which society has thought fit by virtue of its sovereign— ty to [create] in order to promote the happiness & wel— fare of the Community.

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Lecture 19th 1846, Nov 14th, On the object of Government. Having exhibited at the last lecture a very superficial view of the origin & nature of government we have now to consider its objects. Men were created equally free & independent. Their na— tures & their necessities constrained them to unite in society they found impracticable without some controlling & superintending agency which is called government. The objects of government then are to be ascertained by con— sidering which it was that natural society wanted & what made government necessary for its continuance. It is not material to one forming a just [estimate] of these wants that history does not inform us of the existance of any society without a government of some sort, for it is the just anticipation of the exigencies of a community of men

without government that occasions its introduction contemporaneously with the very formation of the so— cial compact. It is no cause of wonder then that history should be silent. "Government" indeed as Mr. Locke observes "is eve— rywhere antecedent to records, & letters seldom come in among a people, until a long continuation of civil society has by other more necessary arts provided for their safety ease & plenty: Then they begin to look after the history of their foun— ders & search in to their original when they have outlived the memory of it." It requires but a limited acquaintance of hu— man nature to suggest many reasons why man {could not} could not live in society without government. His distin— guishing quality is {short-sightedness} selfishness. His marked characteristic short-sightedness. He seeks eagerly his own en— joyment but pursues it unwisely by reason of his not look— ing far enough ahead into the consequences of his conduct. Hence he is indolent rapacious & cruel because labor is irksome wealth is a source of comfort & it is easier to indulge malig— nant passions than to repress them. All crime springs from a short-sighted selfishness. Now if there were no governments all persons could to be sure be equal and independent, free to do what ever did no in—

jury to others, but how precarious & uncertain would be their position. Each would be a monarch indeed & man would dispute his right to his narrow reign but all others around him would be kings also & the greater part by nature no strict observers of justice & equity so that both his property & his person would be continually liable to vio— lation & he himself always full of fears. He is industrious & accu— mulates plenty around him. His neighbors find it easier by force or fraud to plunder his [hoarded?] stores than to provide them by their own labor. He resists the injustice & besides being plun— dered is treated with such rigous of personal cruelty as may com— port with the roused passions of unbridled hostility. Some unguard— ed word occasions offence to an associate or petty trespass pro— vokes his anger: the spirit of revenge is {retaliated} satiated with only three fold retaliation & probably demands the utmost penalty of hu— man transgression in the life of the offender. Nor is this all. Adjacent societies are stimulated by the same passions which an— imate their individual numbers. The sympathy of fellowship the restraint of natural laws might be expected somewhat to assuage the mutual robery & murder of persons belonging to the same community, but by what appeal could you expect to induce separate & distinct to curb their lust of [rapine?] & the hateful passion of rage & vengeance! We would expect noth— ing else but that what was spared by the reciprocal selfishness of individual members of the same society, should be destroyed by the yet more ruthless selfishness of contiguous societies. It appears then that society without government could not afford protection to the property or to the persons of its num— bers agaisnt internal violence or against external force. By the terms of the social compact men must be under— stood to have ceded so much of their independence as should be necessary to enable government to accomplish that object but no more. Whatever powers besides are bestowed by the majority are their creature. Government or whatever powers besides government shall usurp without a grant are so many wrongs done to that portion of society who do not assent to them & constitute so many imperfections in the political system. We are now prepaired to understand why some rights are

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said to be unalienable or not capable of being surrendered. They are those rights of individuals which cannot tend to promote the legitimate objects of government. We have been accustomed to hear cited as instances of this class of rights "life, liberty, & the pursuits of happiness" a speci— fication which is extremely loose & indefinite & if liter— ally understood incorrect. For more do & of necessity must give up to society, in the organization of good, the right to de— prive them of liberty & life itself for the purpose of pun ishment & for a similar purpose to [debar] them in many particulars besides of happiness. It is perfectly true however that the wanton & restless invasion of life liberty & hap— piness at the arbitrary & capricious will of a despot can never promote the objects of government & must be understood as having never been consented to. There are many features in the organization of government enlarging its powers or circumscri— bing the liberties of the freemen of society which in the opinion of some men tend to accomplish its end whilst in that of others they are useless & pernicious. This difference of opinion proves the power of restriction to be doubtful but does not justify us in condemning as so far vicious. Still less does such a feature authorize disturbance or resistance on the part of the subject thereof. Indeed if the depar— ture from the true ends of government be ever so plain & [undeniable], it cannot be always allowed to indi— viduals to question its operation, for such & so disastrous would be the consequence of permitting the utmost latitude to individual pediment on this point that each one must be supposed to have impliedly declared his willing ness to endure trials of this sort as long as they are tol— erable, if the majority of the society should think propper to permit them in the political system. That is each individual being understood to agree to what ever is necessary to maintain society & to accomplish its ends must have consented that not only government should be insti— tuted saving all natural rights not requisite for ordinary

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to the attainment of its purposes as they have been now exhibited but also that if a sacriligious hand were laid even on their rights inalienable & reserved he should submit while sub— mission were tolerable rather than plunge society in to discord by a prematurely forcible resistance. To preserve property safe from encroachment & persons from out— rage & violence from within & without many things are wanting, some very direct in their application & use & others more remotely bearing on the object. Thus to protect your house from being burned your corn fields from being trampled down & destroyed, your character from being vituperated & slandered & your person from maltreatment constitutes the direct scope of many regula— tions of the public authority. To find the {direct} {scope} certain means for educating all classes of citizens, to vet a mark of pub— lic reprobation & ignominy upon which whilst they injure no individual so much as him who is guilty of all these [safe?] the foundation of society & surely destroy its happiness such as open & notorious profligacy drunkeness (...) & profanity these are indirect & more remote but surely less necessary applications of the formations of government to perfect its designs. So in the foreign relations of the state to

provide fleets & armines to build [fortress?] to establish [depots?] for naval & military stores & equipment are direct means of getting at the end in view: which negotiations & ministers the instruments of [ingratious?] treaties conventions & alliances are as special but move indirect methods of bringing about the same results.

To ensure the conditions indispensable to ensure the grand object of government there wants 1st an established settled known law received & allowed by common consent to the standard of rights & wrong & the common means to divide all controversies between number of the state.

2nd A known & impartial judge to determine all differences according to the established law.

3rd A power to back & support all sentences when regularly pronounced & to give it due execution.

4th A power to execute & carry into effect the will of

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34 the state whenever it is regularly indicated. Thus we have seen the grand object of government to be resolved into the protection of the property & persons of the community — and the conditions necessary to {preserve} the attainment thereof to be an established law, an im— partial judge & power to execute the judges sentences & the will of the community regularly expressed. The object of an organised public authority are negative rather than posative, not being the good of the whole but to give to each a fair oportunity of exerting his faculties for the promotion of his own re— al happiness without fear & without obstruction. Similar considerations seem to justify the striking remark of a vigorous thinker that an exemp— tion from war & from excessive taxation combined with a tolerable administration of justice will carry a nation to the greatest perfection of which it is capable. Lecture 20th, Nov'r 17th, 1846. Simple forms of Gover. Having endeavored to present you with some general view of the origin the nature & the legitimate objects of government we have next to consider the principals of its structure. These principles must of course have a close & direct relation to the nature & objects of political organization. Thus far government is with us an abstract term or idea. We mean by it only the ruling power the controlling & superintending agency which society has organized for the protection of the persons & the proper— ty of its numbers. What form it may have assumed or how it may be constituted is yet to be considered by us. Before enumerating the different forms & defining {those} which with various combinations among themselves have been supposed to include all possible varieties, it will conduce to a more thorough apprehension of this sub— ject as a practical one to fling together some reflections of a general character. Let us suppose some need society engaged in deba

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35 ting the original & primary erection of a common agency to subserve the purposes of government & realize as far as possible how its thinking minds would reason about it. Thoroughly penetrated as they would be with the necessity of some government they would not fail to discover the dan— gers & difficulty of the undertaking on which they were engaged.

To bestow on the powerful agent to be created much author— ity would endanger those rights which society would choose not to part with. The tendency of power is to expand & not to ex— pand only but to perpetuate itself. You may assign its lim— its & exhaust ingenuity in depriving them by broad & marked lines: You may enjoin a frequent recurrence to first prin— ciples & a profound respect for the source which delegated the power, [limit] the body of society but the unremitted tendency will be to overleap the barriers to set the limitations at nought & to con— tinue the source whence it originated, much power is, therefore, very dangerous. On the other hand if in excessive fear of a great deal of power, you confer on the government agency very little the body politic is exposed to evils not less to be deprecated & what may seem at first view a little paradoxical to the same ultimate result of an escape from all restitutions and an assump— tion of powers never intended to be parted with. In the first place the government possessed of very little power & that little perhaps encumbered with excessively jealous restraints is apt to be too imbecile to accomplish its functions. You want an agency capable of according absolute safety exempt even from the fear of danger to [person] or to property from private hostility & rapaciousness or from foreign aggression. You want your citizens to repose in perfect confidence of se— curity & to pursue their respective paths of honest & useful industry or harmless enjoyment uninterrupted by the remotest apprehensions. The broad {eyes} arms of government is always to be extended over them. Its ever watchful eye is to distinguish ap— proaching peril afar off, & its arm is to be nerved to repell it. By night or by day sleeping or waking in business or diversion an unseen but omnipotent power is to protect them. It is plain that all of this can not be affected by very little

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36 power. A government weakly organized must either terminate in disolution for want of proper power or what is more likely to be the issue must usurp powers requisite for the pub— lic safety. Such usurpation when really necessary is sanc— tioned & commended by the people themselves who on those occasions readily admit the application of this maxim. Salus populi suprema lex, a maxim not the less danger— ous, that in the abstract it is true. Whether as has been strongly remarked the assumption where once began will stop at the salutary point or go from and to the dangerous extreme must depend upon the contingencies of the moment. Tyranny has often grown out of the assumptions of pow— er called for in pressing exigencies, by a defective constitu— tion than out of the full exercise of the longest consti— tutional authorities. The late government of the United Netherlands afforded a curious illustration of these truths. It was a confederacy of states composed of equal and in— dependent cities. Jealousy of the powers of the federa— tion government induced its founders to require (...) ity not only in the states but also in the cities for nearly object of its action. The characters stamped upon it were accordingly imbecility in the government: dis— cord among the provinces foreign influence & in— dignities a precarious existance in peace & pecu— liar calamities from war. There is a happy mean, however hard it may be to hit it which marks the salutary boundary between the power of government & the privileges of the people and combines the proper energies of government with the security of private rights. It is certain however that the powers of government should be coextensive with all probable combinations of circumstances which endanger the safety of individuals or of states. The means must be

proportional to the end. It is clear that the problem would be solved & the object effected if it were possible to divise means to make the interests & inclination of those entrust—

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37 ed with government coincide in all respects with those of the people of society. To accomplish this fully is im— possible for no man can at once be a commander in chief & a subaltern but there may be an approximation to it. We shall see in the sequel, what approach the American constitutions generally have made to it. With these preliminary observations I come to explain the nature of the primary forms of government. They are reckoned to be these Democracy, Aristocracy, & Monarchy. When the body of the people, says Montisquieu are possessed of the supreme power this is called a Democracy. When the power is (...) in the hands of a part of the people then it is an Arristocracy. When the power resides in a single person it is called a Monarchy. There are three requisites necessary in a Democratic govern— ment. 1st A Quorum & fixed place & time. 2nd The major— ity must rule: for without this the government could perform no act. 3rd There must be magistrates to convene the people on extraordinary occasions & execute their decrees. This is the reason why a senate & a congress are necessary in a Democracy. The question in a Democracy is Who shall vote? Whether the vote shall be given by ballot or viva voce. The advantages of a ballot are that it enables the timid to vote without fear & therefore prevents the intrigue. But a great disadvantage is it prevents the ignorant from regarding sufficiently the influence of the reflective & experienced portion of society. Consequently in a Democ— racy open suffrages are best but in a senate ballot. In examining the right of a suffrage, suppose a communi— ty leaving a country are going to settle their form of govern— ment. There must be voting in its formation, obvious— ly the owners of the soil for whose benefit it is to be formed. If others came to this community to reside they would obvi— ously be occupants at will & not entitled to vote unless

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unless the privilege was extended to them by the original owners. Nothing can divest the original owners of the exclusive jurisdiction of their own soil. So the rights of all other nations except themselves would be foun— ded entirely on their conduct. Then the owners alone & them whom they have admitted to the privilege of voting can abolish & alter the civil laws. If a majority of them are against the change of laws & an attempt by the rest of the commun— ity to force the change upon them would be law— less. If any of the owners of the soil are excluded from the administration they have a right to demand admission. In Va until 1830 no one participated in the administration but the original pro— prietors the qualification of a vote being that he should own 25 acres of land & a house 12 feet square. In 1830 it was extended to others & the right of these latter depends on the will of the original proprietors & not on any original right. The progress is onward to universal suffrage. Each new class added to the list of voters more & more excludes all possibility of retrograde. The articles 7/76 gave the power of voting to the owners of the soil. "Thou" it says "ought to vote who can give competent evidence of attachment to & per— manent interest in the country." Advantages & Disadvantages of a Democracy. Democracies have the merit of preserving in {full} view the natrual equality of man.

Each individual feels his importance & consequently they feel more interest in the welfair of their country & are more patriotic. They also encourage honesty of intention in the public good — since the public good depends more {actively} indirectly on their private interests. This does not prevent them though from committing great errors & of the injustice in Government. These are the ad— vantages. The bad qualities [blank space] [excede] these in [no] &

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39 in parlance. This form of government is utterly imprac ticable in large communities on account of the impossi— bility of large assemblages of men say 500,000 perform ing any of the functions of government. And take them in the smallest states & in the best light possible & the following are the disadvantages. 1st They are weak in their efforts for the protection of their citizens. Since many wills have to agree both as to the protection of its modes. They are either slower to a disasterous extent or too violent. 2nd They are apt to be unjust to forcing [in] states on account of the{ir} infinitely divided responsibility of its legislatures. This comes then to act with selfish motives regardless of the rights of other nations. 3rd The public meetings which are necessary turn the attention of the citizens from industry. 4th The want of knowledge in the administration tends to throw the power in to the hands of a few sychophants. 5th They are subject to powerul fits of agitation, ca— pricious whims, fickleness, discord, disorder & to sudden pan ics. View them under the most favorable they are imbecile, slow, inconsiderate, rash, unjust, mutable, capri— cious, with the sure advantages of inspiring love of coun— try, & honesty of intention to words public good. Lecture 21st, Nov 19th 1846. Government. An Arristocracy is that form of government in which the sovereignty rests in a part of the people & if the number be very small to whom the government is entrusted it is called an oligarchy. The most common idea of an aristocracy is that it is a government of nobles & that it will soon come so if not originally. The persons thus entrusted with the sovereignty {is}are not delegated by the people, but {it is} they are one original & self perpetuated assem— bly. The advantages of an arristocracy {are} is the wisdom & experience of the rules which is the result of continued practice & a thor— ough education in the science of government. The disadvantages of this form of government are the deficiences of checks & balances the want of sympathy between the rules & the body of the people

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40 for while the people desire equality & protection the arristocracy want a superiority of rights & privileges & an agrandizement of themselves. It thus reverses the objects of government & is liable to factions since each one strives for power in disregard of the peoples rights & interests. It also perpetuates itself by usurping the power to fill vacancies either by hereditary right or Election. Power is usurped by them not to promote the interests of the people but to advance their own private welfair & concerns. There can be no greater curs upon a nation than to be governed by an over— bearing race of nobility — it is far worse than to be ruled by a des— pot, because in the one case the people are oppressed by one sin— gle man whilst in the other they are oppressed by many tyrants, whose number but adds to their irresponsability & insolence. Aristocracies then to say the most of them are wanting in sym— pathy to the people they are careless of the public good liable to fac— tions self perpetuating destitute of virtue oppressive

to the low— er orders haughty & indolent & self aggrandizing but with all they are not wanting either in wisdom or experience. Monarchy. In all the forms of goverment above mentioned a senate is necessary & even in a Monarchy a senate or counsel is needed in order to carry on the ordinary affairs of govern— ment. An absolute monarch is clothed with all the powers of government viz the legislature judiciary & executive. He may have a coun— cil but his agents are his creatures & wholy dependent on him. In Eng— land the King has the power of appointing judges but after they are appointed they continue in office for life. In an absolute monarchy, the King reserves to himself the right of revoking or vetoing the laws & the sentences of the judges. A monarchy is the primary form of government & is similar to the patriarchal govern— ment it is the consequence of military conquest. Another striking proof of its being the primary form of government is that it is found among all savage tribes. The advantages of a monarchy are simplicity of organ— ization, energy, steadiness of purpose, secrecy & unity in counsel, honesty toward other states, perseverance in its rights, & expeditition in the affairs of government.

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Lecture 22nd, Nov 21st 1846. Government. The reason for the regard which a monarchy has for other nations is that the sovereign stands forward as the mark for ignominy & reproach. If his acts are unjust although his nation may suffer for it in the end, still foreign nations look to him as responsible. There is no di— vision of the responability. A monarchy is less oppressive to the subjects than an aristocracy. It is one tyrant instead of many. The thirty tyrants of Athens & the Decemviri of Rome were more cru— el & oppressive to the people than any single despot mentioned in history. Still a monarchical form of government is not calculated to preserve the rights of the people. The government is too apt to be administered for the good of the prince instead of the body of the people. The monarch is too far removed from the people to have much sympathy with them or their circumstances. A monar— chy is wanting in wisdom. The peace of society requires a mon— archy to be hereditary. If Elective the state is subject to con—vulsions & intrigues of the worst character. Poland is an instance of this. Then if a monarchy is hereditary there is an equal chance to have a monarch deficient in intellect as one who is not. Then his education is not of a character to fit him for performing the functions of government to the advantage of the state. And still more (...) though he were educated & intelligent he sees men & things through a distorted medium. He most probably never has the truth & has not a fair oportunity to judge of the wants of the peo— ple. In a monarchy the people are apt to regard the govern— ment as something totally distinct from the people & not made for their welfare. They therefore form no opinion of & take no interest in its administration. Such lethargy is dangerous to nations and fatal to their happiness. In this respect a Democracy with all its compassion is better than a despotism. No government can fulfill its purposes without the vigilant cooperation of an intelligent people. Without this government would transcende its powers & if it did not it could hardly be adminis tered for the true advantage of the people. To sum up the disadvantages of a monarchy it is selfish

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tends to a disregard of the rights of the people a negligence to the government on the part of the people it tends to the oppression of the people & lastly it has want of wisdom. There is a manner by which the union & energy of a Monarchy the wisdom & experience of an aristocracy & the public spirit and love of country of a democracy can be blended together. England the United States & the states which compose the latter have the most perfect forms of a mixed government. They entirely exclude the democratic form of government & bring in the mod— ern form of representation. According to Mr. Minor there is no such thing as a representative democracy. It originated from a series of accidents & came to us from the British Constitution. Its ad— vantages are honesty of principle & freedom from anarchy & confusion. The English government is a mixture of a Monarchy, an aristocracy & representation. The American government is composed of a Monarchy or rather the one man principle & two representative bodi. The executive department in both countries differs only in the source from whence they came. In England it is rested in the sovereign & here it is in the President. It is a settled maxim of the English government that the King can do no wrong but his Ministers are responsible for all his acts. He has the power of de— clairing war & making peace: this however is a barren preroga— tive since he is entirely dependent upon parliament for supplies & means for carrying into effect such privileges. He has also the veto power but it is but rarely used for fear that parliament will withhold supplies from him. The King has likewis the pow— er to appoint judges but they are independent so soon as they are appointed & hold their office for life. He also appoints council but in this privilege he is likewise dependent on the parliament. In the U.S. the president can go farther against the will of the legislature than in England because here there is a fixed limit of power & the president knows that he will continue in office for a certain time which certainty and limit of power enables him to perform his duties with more freedom & ease. But in England the min— isters remain in office at the will of the parliament & are therefore (...) in the exercise of their functions fearing lest they should be guilty of some offence which would cause them

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to be dismissed. In England the aristocracy is now inert owing to the su— periority of the commons. It however serves as a check on that branch of government. The excessive power of the king made England free for by oppressing the Lords & Commons he caused them to unite against him & re— duce his inordinate power & to force from King John the Magna Charta at [Runemede]. Had this been respected England would have been free but it was disregarded by successive princes & the people were subjected to great oppressions & tyrany before the present form of government was established. In this Magna Charta the commons followed the ex— ample of the Lords & stipulated conditions one of the fundamental prin— cipals of which was that no one should be banished or exiled from his country except by the judgment & decision of his piers. The aristocracy serves as a check upon the innovating spirit of the commons & this separation of the Legislative department in two distinct branches is a

prevention of hasty & crude action. Lecture 23rd, Nov 24th 1846. On Government. It is the province of the Statesman to combine a certain degree of energy & experience in the government together with wisdom. The repre— sentation system secures fidelity together with knowledge of the admin— istration of affairs. The several departments of government must be placed in different hands. If all three or any two are united in the same hands oppression of the people will be the consequence. In Turkey these three departments the legislative executive & judici— ary are united in one head & the Turks suffer all the evils of tyr— any & oppression. In Venice where they are united & in the hands of one body the citizens are not as free as in a monarchy. This separation does not mean that neither department must exert any agency or control within any other but simply that those who exert the powers of one depart must not have the entire power in either of the others. The English constitution which is the model of all good governments has many instances of the exertion of partial controle. So also the constitution of the U.S. thus the President has the power of pardon & the senate is the court in case of impeach— ment. So in E— the house of Lords is the judge in case of impeach— ment. In N. York this mingling of departments is caried to such an extent that the senate is the supreme court of errors in the state. A government should be constituted 1st of a legislative depart—

ment clothed with the power to prescribe rules of action forbidding what is wrong & commanding what is right. It regulates the laws of alienation of property &c & regulates the raising & appropria— tion of the revenue. It should be constituted of a sufficient number of persons to know the wants of all the Citizens & on the other hand it should not be so numerous as to prevent delib— erate discussion or to be subject to the sympathy of opinion which is apt to prevail in large bodies of men. The greatest danger is that the legislative body will be too large. About 250 is the best number. The nominal no. of the house of commons is 6 or 700 but seldom more than 300 in session & even then it is a tremendous assemblage. There is so much danger of hasty judgment passion caprice & mutability that the legislative body is divided into two whose successive consent is necessary to the pasage of any act. The house of lords acts as a check upon the commons in England & the senate upon the con— gress in the U.S.. The congress represents the aggregate pop— ulation of the country the senate the free holders alone. (B) Other reasons have been given for the separation of the legis— lative body into two distinct departments but the true rea— son is that it serves as a check to mutability & pre— cipitate legislative. The executive requires a single man to insure unity se— crecy & energy in the government. Great jealousy will always exist between the executive & the legislative. The legisla— tive being the most potent. The execitive can not encroach upon its powers. The liability is that the legislature will en— croach upon the executive & even upon the judiciary. If power is not given to the Executive to prevent the usurpation of the legislative it would soon usurp all the powers of government & become despotic. Consequently the Executive should have the veto power to serve as a check upon the love of Legisla— tion and innovation. The {executive} veto power is used to a greater extent by the executive of the U S than in England because the President considders himself as much a representative of the people as the

Congress. In Va the govenor has no such power & consequently is a mere chief Clerk of the Legis

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The executive must be cloathed with all the powers necessary for the admin— istration of its department. It should be commander in chief of forces make ap— pointments under government &c except members of the House & of the Legislature. A check is necessary upon him. The check is: he must have no pow— er to raise or use the public money or to enlist soldiers without the consent of the Legislative department. This alone is sufficient to con— trol the greatest tyrant in existance (England is a specamine). All grants of this power to raise troops made by the legislature should be limited. The appointment of officers should be bestowed upon the Ex: & more especially those about him or composing his cabinet. The smaller house of the legislature should have some nega— tive voice in the appointment if the higher officers to ensure good appointments. The Ex: is the safest depository of this pow— er because he feels his responsability more than a body does. Self interest urges him to make the best selection as he is watched by the senate. There would be no responsability in a legis— lature ie it would be too much divided to have any effect. If you wish to give power that shall be resolvable give it to one man. Judiciary is the weakest of these departments for its chief sup— port & safety is its sanctity in the eyes of the people & indepen— dence which the constitution should provide. If the judiciary should become tools to the populace or the king the govern— ment is no longer free. The citizens of that state will soon expe rience oppression & injustice. The executive ought to have the power of appointing the judges with the consent of the least numerous branch of the legislature. They should hold of— fice during good behavior & should have a sufficient salary to secure the services of tallented men. Adam Smith says that a nation not oppressively taxed & with a moderate adminis— tration of justice will attain to the highest state of perfec— tion. The tenure of good behavior makes the judges honest & incor— rupt. A government has fulfilled the object of its organization when it has all powers necessary for the performance of its functions the unnecessary powers being with held. The depart— ments separate checks balances, free & independent judiciary & they should hold by the tenure of good behavior & competency. The legislature & executive have the powers above numerated.

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46 Constitution of Va. A sketch of History. The first charter was granted by James 1st in the 4th year of his reign viz in 1606 to sir Thomas Gates & others. This charter included 100 miles along the east & in the interior & all islands with 100 miles of the shore. The government consisted of a council of 13 appointed by the crown to govern according to the laws & ordinances of England & a council in England of 13 subject to the king & privy council. This council of 13 had many of the prerogatives of magesty but the king gave them general instructions fixing the trial by jury of the descent of estates & capital crimes. In 1609 a new chart was granted extending the limits along the sea 200 miles on both sides of Old Point & in the interior from sea to sea. The council residents was much enlarged & clothed with the power of self per— petuation. In 1611 another charter was granted embracing all is— lands with 300 leagues of the coast & setting the

meetings of the councils in London called the 4 quarterly meetings held to decide the affairs of the colonies. In 1612 this council appointed a governor named a council & instituted a general assembly to be convened by the governor not more than once a year. This assembly was composed of the council of burges— es & appointed two for each township & borough by unlimited suffrage. After the government was established the court could make no orders in respect to the colonies without the consent of the general assembly which boddy was enjoined to follow the law of the realm. Even before the institution of the general assembly Sir George Yeardly in 1619 convened the council in James— town but its acts were not ratified by the council in London. At this period counties were not laid off but the delegates were elected by townships & borroughs the council & general assembly sat in the same chamber to transact business but did not meet for several years regularly. During which time the governor & council is— sued their orders by proclamation{.} In 1624 this third charter was taken away by power of a (...) war (...). It became then a royal province with the same limits or extent of territory until 1776. The limits were then in— fringed by the treaty of Paris which ceded all west of the Mississippi & by the royal act also Maryland Pensylvania & Carolina

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even taken off. After 1776 the state ceded the North west terito— ry to the U S. In Cromwells time when the commissioners came to take power they agreed to let the affairs be administered by the Governor Coun— cil & general assembly. The general assembly elected the Governor & coun— cil & having this & many other powers it {controled} encroached upon other departments until it became vested with all the authority of govern— ment in 1759 the interval between Richard Cromwell & Charles II reign. At this time suffrage was universal & farmers were not com— pelled to leave their plantations to vote but a paper was brought around to which every one subscribed his name. After this they were required to go to the poles under the penalty of 100 pounds of tobacco. The first act which abridged the right of suffrage was passed in 1664. Under this act all persons who wer honest & upright were eligible to the Legislature & all could vote who were house—keepers & only one in a family. This qualification for exercising the right of suffrage was complain— ed of on the ground that those who paid equal taxes & were not house— keepers could not vote. In 1699 the right of voting was extended to all freeholders. In 1786 in order to vote a person must be possessed of a freehold estate containing 100 acres of unimproved land or 25 if improved & with a house on it 12 feet square or the person must possess a lot in town or house & lot or house & part of a lot. After this in 1769 only 50 acres of unimproved land were neces— sary to constitute a vote or 25 acres of improved land with a house or a house & lot in town or a house & part of a lot this law continued until 1800.

Lecture 24th Novr 28th 1846 - On the judiciary. We come now to the history of the 2nd department viz the Judiciary. Justice was 1st administered by commanders of plantations who decided all small cases sub— ject to an appeal to the governor & council who held 4 great courts in a year. In 1643 commissioner of monthly courts superceded commanders of plantations in the administration of justice. In 1645 the commissioners had power granted to

them overall cases over $16,00 & final jurisdiction over all cases under 1600 pounds of tobacco but beyond that amount appeals from their decisions to the governor & council were allowed & thence to the gene— ral assembly, afterwards however appeals to the general assembly were abolished. In 1775 Lord Dunmore was deposed because he wanted the general assembly to meet at Norfolk under the months of British common. In 1776 a constitution was formed with a bill of rights prefixed & in 1830 a convention met & framed a new constitution prefixing the same bill of rights. End of Charles notes.

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The evils complained of in the old constitution were: the inconvenience of the method of administring justice, the restricted right of suffrage, inequality of representation in the counties, & consequently a similar inequality in the different districts of the state. The district west of the Blue Ridge was dis— satisfied in regard to the two last mentioned evils & were disposed to insist up— on a white representation alto gether — but the east said that government was instituted to protect property as well as persons & that the east possess— ed more property in general & especially a class of property of which the west had but little. It was said that the view of the east was farther strenghtened by the fact that from the situation of the east she would need but little internal improvement & the west if in ascen dency would desire & carry out a system of improvement which the east from the amount of property would almost exclusively pay for that the east would be paying for a work which would be a disadvan— tage to it while the west paying but little would reap all the ad— vantage — thus making a rope to hang itself — to speak in common par— lance. While the representatives from the east insisted upon the aboslute right of a property representation they were willing to yield to a mixed basis or a compound basis of property & tax— ation & upon the one or the other of these they stood firm. On the other hand the west insisted as strongly that the representa— tions should be settled upon a white basis alone & declared that it would not regard a representation of the blacks or the other property. They said that distinctions should not be mad between individuals or dis— tricts on account of wealth that it was the duty of government to provide for inter communication among the states to develop its resources that as a bountiful providence had provided these ways of communication to the east it was no reason why the west should not enjoy similar advantages that the east owed certain obligations & that as they desired a preponderance of power in order to wade those obligations it was natural that the west should desire to share that power in order to ensure a perform— ance of those obligations & finally they said that the policy which the east now depricated would ultimately bring the thing they wanted viz an equality of power by the inter communication thus established. (In speakong of the inconvenience of administering justice it should have been said that the inconvenience arose from the fact that chance—

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ry courts were held for large districts & it was very inconvenient & even opress— ive for the poor clasess to prosecute their causes & bsides this the causes were often neglected by the council &c. Another reason has been assigned by some that the expenses were so enormous that there were but few who were able to sustain a suit). The complaints of grievances of the constitution had been swelling for several years in 1828 the question was put at the poles whether a convention should be called to take into consideration amendments to the constitution which question was decided in the affirmative by a majority of the then qualified voters & by the same voters the delegates to that convention were elected thus illustrating in our state the principle described in illustrating the right of suffrage. The consti— tion assembled in 1829 & it was as soon ascertained that an entire & rad— ical discrepancy of opinion in regard to representation [asit] pre— vailed. Finding that it would be impossible to affect a compromise in the positions taken by the two great districts of the state an arbitrary rule was finally adopted distributing the representatives among several districts by which distribution the west obtained about the same no. representatives which she would have had by her own claims but the east was still in the ascen— dency. A clause {was} inserted whereby the legislature was impower— ed to make an apportionment once in ten years two thirds of both hous— es concurring provided the number of the senate be not more than 36 & the house of delegates not more than 150. It was farther more provided that the three departments of government should be placed in distinct hands & that no person should exercis two of them at one time or any part thereof.

Lecture 25th December Second AD 1846. Read the Constitution of Va for this lecture.

Lecture 26th December 4th A D. 1846. Judicial power of Virginia is vested in a supreme court of appeals — in such superior courts as the laws may ordain & estab— lish — in county courts & in courts of single justice. The judges of the court of appeals & superior courts are appoin— ted by the legislature to hold their office during good behavior un— less suspended in amanner prescribed by law — and shall hold no oth— er office — the acceptance of another being considered as

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vacation of his former. The judges shall have fixed salaries which shall not be diminished during their continuance in office. If any law be passed abolishing the court over which they preside their offices shall not be vacated but they may otherwise be employed unless two thirds of the legislature concur in express provision to this effect. The judge may be removed by a vote of 2/3 of each branch of the legislature — but the judge must have 20 days & notice that such proceeding will commence against him with the cause thereof. Justices of the peace shall be appointed as the law direct — thus when a new county is admitted the law provides for justices of peace in that county. When vacancies occur or new justices are appointed the appointment is made by the governor upon rec— ommendation of the county court. As a constituiton ought to contain the principles upon which the government is founded — a bill of rights would seem un— nessary — but the framers of our constitution have also drawn up a bill of rights either in imitation of England's new consti— tution of 1608 or from an extreme caution as this was the

first independent government established in America. The convention in 1830 prefixed the same bill of rights to the a— mended constitution is a spirit of veneration for their ancestors & also a declaration of the causes which led to a separation in 1776. The bill of rights is a part of the constitution it being a more general & abstract rescitation of the principles of government — but if there be a direct confliction between this & the constitution the constitu— tion must prevail as being the most [protentous?] law. But if it be doubtful we must then look to the principles of government. The particular provinces of the bill of rights are that in crimi— nal prosicutions a man shall have a right to demand the cause & nature of his accusation to be confronted with his accuser & witnesses — to a speedy trial by an impartial jury of his own vicinity without whose unanimous consent be seen not found guil— ty & he shall not be compelled to give evidence against himself. No man shall be deprived of his liberty unless by the law of the land or the judgment of his peers — excessive bail shall not be required nor exessive fines imposed — nor cruel & unsual punishments inflicted — no general warrants shall be issued to search or arrest

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that jury trials shall be preserved in civil cases — the freedom of the press can only be restricted by despotic governments — that stan— ding armies in time of peace shall be avoided as dangerous. Nation of a Confederate government & that of the U S in particular. It was once thought that to enjoy liberty a government must be small. This was understood when the people met in primary assem— bly to transact the business of government. But that free governments must necessarily be small has been exploded by two institutions viz representation & confederation. It has been said that if a republic be small it is overpowered by a foreign force if large it is torn & agitated by internal factions & is probable that if some other prin— ciple had not been discovered mankind would still have been compelled to toil and suffer under a despotism. But the principle of confede— ration has obviated every difficulty which stood in the way of estab— lishing a republican form of government in an extended country. It is indeed true that a country possesing a great infusion of monarchy has many better qualifications for managing the af— fairs of a country than any other form — as secrecy disputes &c. while a republican form will be some what (...) & slow in its operations. But by means of confederation this is some what obviated. If indeed England — Scotland & Ireland having 20,000,000 of inhabi— tants — & possessions so large that that the sum never sets upon them are well governed — it is because the English colonies constitute a chain of confederate governments controled by the home gov— ernment. To a country thus extended a confederated governm— ent is indispensable. The general government is charged with the foreign affairs of state & with those general measures in— tended for the welfare of the {state of} great body while the local government provides the peculiar & numerous wants of particular districts — & it is obvious that when the govern— ment is consolidated many of the local wants must be neg— lected. But a confederated government has other recommendations. If an aspiring individual should attempt to usurp the gov— erment & should gain some of the states over to his [interest] — the other states would not only be able but find it to their

interest to put an end to his aspi— ring ambition. The same would be the case if one or more of the states should exhibit sines of this — the others would feel the deepest inter—

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est in suppossing a tendincy to such usurpation. If the general government should attempt to usurp powers — the local authorities would be ready to assist because in the first place they are independent of the general government & secondly because every usurpation by the general government would & [touch] upon the authority of the lo— cal government. And this would not be the confused resistance of the unruled mob but the organized resistance of the {general} regular gov— ernment — a custom to be obeyed & clothed with all the parapher— nalia of power. And besides the people must be supposed to be more strongly attached to the local government whose opera— tions they daily feel than to the federal government whose operations they hearof but never very (...) feel. Should a popular insur— rection break out in our state — the others will be ever ready to quell it. What ever prosperity the grecian states attained they ow— ed to the connection established between them. Montesquieu seems wrongly {to} to ascribe the prosperity of the Romans to this princi— ple of confederation — but their tendency was to consolidate their empire — but he says with more justice that it was the con— federacy formed — beyond the Rhine that enabled the countries of Europe sucessfully to resist the Roman power. About the character of our government whether national or federal there has been strong contentions. Chancellor Kent ot Judge Story con— tend that there was a union of the states previous to the dec— laration of independ. & consequently the act of declaration was a joint act. On the other hand it is contended that the states never had any more dependence upon each other than as con— current subjects of the British crown & that between the dec: of Ind. & the adoption of the article Confederation the states being no— longer subjects of the crown were free & independent sovereigns. In short the one party contends that the articles of confederation gave to the states whatever freedom they enjoy whiile the other holds that the articles of confederation were as a consequence of the independence of the states. In order to show not an actual na— tion by a tendency [athast?] to union several events previous to the Revolution are referred to. In 1643 a league was formed be— tween several of the states commissioners were appointed who met periodically — the league was offensive & defensive & had power to

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decide all affairs of peace & war & of common concerns — but the chief in (...) perhaps was to defend them selves against the tribes of Indians. The members of this league were Masachussetts Plymouth Connecticut & New Haven. This league continued until 1685 when the charters of the New England colonies were vacated by commission of James II. In 1754 a convention assembled at Al— bany — called by the name of the lords commissioners of trade & plantations to consider of the best means for the defense of America should a war breakout with France. This convention had representatives from R. Island N. Jersey Connecticut

Pennsylvania & Maryland Va was not represented. At this convention Dr. Franklin proposed a plan of general government for the colonies — though he did not even contemplate independence at that time — his plan was however rejected by all the colonies & so averse were the colonies to any thing akin to union that in 1761 Dr. Franklin declared that a union of the colonies would be impossible unless driven by {the} direct necessity & oppression. These events he said accustom— ed the people to contemplate union & prepared them for it when the exigensies of the case required — &nd the union which they had been makng for 100 years was consumated when the difficul— ties with England commenced. Accordingly as soon as they saw the dangers of the revolution thicken around them they resorted to connected councils & united resistance — & that the congress of 1774-5 & 6 exercised power without objection from any of the states. To all this it is replied that these events but show the a— version of the colonies to union & that union ought not to be implied from wants that caused many to think a union im— possible & that such even the existing differences of [interests] of habits of feelings & manners & a general inconformity between the different portions of the country that a union seemed impos— sible — that the congress of 1774 was [by] the most imminent dan— ger & at most only had power to recommend & that this was no— more a political union among the states than any of the congress— es which had been held in Europe was a political union among the states of Europe. The same may be said of the 1775 & that of 1776 differs only in the authority given it by the states to declare war which power would have been useless had a union already existed[.]

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The congress of 1776 first used the phrase united colonies — & it is contended that such words only devoted the union against the common danger that they (...) are too trivial & insuf— ficient upon which to found so important an event as the union of independent nations.

Lecture 27th Decr 8th 1846 The declaration of independence result from a recom mendation from Va. She instructed her rep— resentatives in the congress of 1776 to vote for independence & alert for the adoption of articles of confederation if possible — thus showing that independence is the view of Va might exist without union or even confederation. Accordingly about the same time that a committee was appointed to draw a declarartion of independence another was appointed to draw up articles of con— federation & the latter committee the reported eight days after the former. Those representatives who were opposed to the declaration of independence employed the independence of the states as an argument against the declaration at that time because they said there could not be a unanimous consent at that time & especially that the middle states were not ready at that time for such a crisis. Some of the middle states had given express directions to their represen— tations not to vote for a declaration of independence. The articles of confederation were not immediately ratified but in the mean time the colonies contin— ued to make united resistance & during the years of 1777 & 1778 all the states ratified them & it should be borne in mind that they did not bind those states until ratified by them. The language of the confederation has been refered to as show— ing independence {& every former jurisdiction & right} of the colonies there want of

union. Artl. 2nd provided that each state retains its own sovereignity freedom & independence & every power jurisdiction & right which is not by the confederation especially delegated to the U. S. in congress assem— bled. The declaration of independence also recites that these united colonies are & of right ought to be free & independent state.

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Until the close of the war the weakness & inefficiency of the articles of confederation were not perceived by many because the great body of the people were too much engolfed by the contest then waging. When the war was at an end there were various circumstances which developed this imbecility. (...) these the debts contracted during the war stood promi— nent. The only way in which the federal government could raise money was by quotas levied upon the states & some of the states at this time were faithful to the obligation while others were entirely careless in this respect & now the question very forcebly arose: How is the debt to be paid? At this time the government would have been driven to still greater straits had not Mr. Addams fortunately obtained a line from Holland. In addition to this jealousies arose among the states. The smaller states viewed the larger ones with fear — while the larger in their turn looked with con— tempt upon the smaller. Congress resolved to retrieve the fall— in fortunes of the country by laying impost duties but the state of New-york then a prominent member caused the im— posts to be laid under state-authority & by state collection which in a great degree defeated the measure. About the same time a dispute arose about the slaves which the British had carried from this country {which were} & that there were still held by G. B. certain posts which she had stipulated in the treaty of peace to surrender. While G. B. on her part contended that the U. S. had stipulated for the payment of money which had not been complied with & that she only held these places as security. But it was declaired by the U. S. that they had done all they could to perform their obligations & that the default was entirely owing to the reduced state of the country & the truth is that the U. S. was too week & the states too careless to perform the obligations which circumstances has imposed. Another cause of disatisfaction was the crippled trade of the country. Other countries were carrying on a proffitable trade at the expense of the U. S. They had restrictions on commerce while they could bring their products to the U. S.

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free of duty. This idea of a convention to form a new consti— tution first originated in Va. Commissioners were appoin— ted to meet Commissioners from Maryland to create mea— sures for the prosperity of commerce should the federal government fail to make such provisions. On their journey some of these meeting with G. Washington — at his suggestion a plan of a general convention was resolved upon as the only means to save the country[.] The commissioners met & recommended that a conven— tion of all the states should be held at Philadelphia. Accordingly in September 1786 a convention met at Phila: five states only being represented. The convention perceived that the no. was too small to make any effectual

measures & adjourned with an earnest recommendation that another convention of all the states should meet at Phila. This recommendation would probably have been lost but that about this time the most alarming conmotions broke out in the new England states especially in Massachusets. Agrarianism was supported & an equal division of Landed property called for & to such an extent did this run that the administration of the justice was entirely prevented until finally one judge declared that he would die a general or sit a judge & at the head of a small band of soldiers held a court & though the no. of rioters was greatly superior yet they were defeated & the leaders driven from the state. The leg— islature of New-York took the land & finally the conven— tion was recommended by Congress. The constitution was compleeted in 1787. It was to be addopted by the states in their sovereign capacity & not by the people of the U. S. in Mass — two of the states rejected the con— titution & it was binding upon none until ratified by them. It was to take effect among them as soon as nine were in favor of it. The government was to have

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been organized on the 4th of march 1789 but on account of the tardiness of the states the house representatives did not as— semble til April & the senate a little later. G. Washington was unanimously chosen President. Pending the question of the adoption of the new constitution a series of papers appeared in print under the name of Publius the object being to show that the proposed government was not too strong & to examine particularly every part of the plan — also a close examination of the defects of the confede— ration. These papers have benn as cetained since to have originated from the pens of Mrsrs. Hamilton Madison & Jay. Upon the study of these papers we are to begin.

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_____ Analysis of the Federalist !!! I Utility of the Union. II Defects of the old articles of Confederation. III Necessity of a government at least as energetic as the one proposed IV Difficulty of forming any plan. V In coherence of the objections to the old Constitution. VI Conformity of the plan to Republican principles. VII The organization of the government. VII Miscellaneous objections to the constitution answered. IX Conflusion.

I. Utility of the Union 1. Strong sense always entertained of its values 2. By insuring the public safety. 3. Use of Union in respect of commerce. 4. In respect of Navy. 5. In respect of revenue. 6. Objections drawn from extent of country answered. II. Defects of the old articles of confederation 1. In the principle of legislating for states instead of individuals. 2. In want of a sanction for its Laws. 3. In want of a neutral guarantee of the state goverments. 4. In being supported by quotas of money derived from the states. 5. In want of a power to regulate commerce. 6. In rising troop by quotas from the states.

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7. In the equality of suffrage among the states. 8. In requiring more than a majority on important measures. 9. In want of a judiciary 10. In the organization of Congress. 11. In not having the satisfaction of the people. III The necessity of a government not leat as energetic as the one proposed. 1. Objects to be provided for. 2. Authority necessary to attain those objects. 3. Upon whom the government ought to operate. 1st Objects &c 1. Common defence 2. Preservation of the public peace against attacks at home & abroad. 3. Regulation of commerce. 4. Supervision of the political & commercial inter— course, among the states & with foreign powers. 2nd Authority &c. 1. To raise armies. 2. Equip fleets. 3. Prescribe rules for the government of both. 4. To direct their operations. 5. Provide for their support. 6. Regulate commerce. 7. Conduct or superintend foreign inter course. 8. To regulate the militia & call them into service on occasion. 9. To raise money by taxation. Reasons for not interdicting standing armies 1. Because we are surrounded by savages & foreign colonies. 2. Adjacent states may enlarge their forces & so endanger our frontier 3. We shall want garisons for our forts & dockyards. 4. Defence of the country can not be entrusted to the several states 5. Because too many restrictions would lead to usurpation. 6. Origin of objection in Engd. directed against the Kings not the pa 7. Because the provision prohibiting appropriation for more than two years is a sufficient safeguard.

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IV. Difficulty of forming any plan.

1. Novelty of undertaking. 2. The necessity of combining energy & stability with liberty. 3. The necessity of drawing distinctly the line between the states & federal jurisdicto. 4. The necessity of reconciling the pretensions of the larger and smaller states. 5. The necessity of reconciling discrepancies of local interests. V. Incoherence of the objections to the Constitution. VI. Conformity of the plan to Republican principles. 1. Definition of a republic. 2. Comparison of the constitution with this standard with refernce to the state constitutions. 3. Examination of an objection to the constitution as national or confederated instead of federal. First. Real character of the constitution. Second. Authority of the convention to frame it. Third. How far circumstances could supply the defect of authority. 4. General view of the powers proposed to be vested in the Gt. First. Sum of powers & whether any or all are dangerous. Second. Distribution of these powers. First. The sum of the powers. (a). Security of the country against foreign danger. (b). Regulation of foreign inter course. (c). Maintainance of harmony & (...) inter course among the states. (d). Miscellaneous objections of general utility. (e). Restraint of the states from certain injurious acts. (f). Provision for giving due efficacy to all these powers. (A). Security &c. (α). To declare war. (β). To grant letters of marque & reprisal. (γ.) To provide armies & fleets. (δ). To regalate & call forth the militia. (ε). Levey taxes & borrow money (B). Regulation of foreign inter course. (α). To make treaties. (β). To send & receive ambassadors &c &c. (γ). To defend & punish piracies & felonies committed on the high seas and offences against the laws of nations. (δ). To regulate commerce including the prospective power to abolish the slave trade.

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(C). Maintainance of harmony among the states. (α). Certain powers of the judicial department. (β). To regulate commerce among the states & with the Indian tribes. (γ). To coin money & regulate its value & that of foreign coins. (δ). Provide for the punishment of counterfiting the coin of the U. S. (ζ). To fix the standard of weight & measures. (ε). To establish a uniform rule of naturalization & uniform laws of bankruptcy. (θ). To prescribe the mode of authenticating records &c. (ι). To establish P. O. & P. roads. (d) Miscellaneous objects of Utility. (α). To provide laws of patents & [c]oppyright. (β). Exclusive legislation over federal districts. (γ). To declare punishment of treason. (δ). To admit new states into the union. (ζ). To dispose & regulate the territory & property of the U. S. (ε). As a guarantee of the republican form of government to the states to support insurrections. (θ). To provide existing debts of the U. S. (ι). To provide for amendments to this constitution. (κ). To provide for the ratification of nine states & to organise the government as to them. (E) Restraining the states from certain injorous acts. (α). From making treaties &c. (β). From granting letters of marque & reprisal. (γ). From coining money (δ). From Emitting bills of credit. (ζ). From making any thing but gold & silver a legal tender in payment of debts. (η). From passing any bill of attainder — ex-post facts law or law impairing the obligation of contracts. (θ). From granting any title of Nobility. (ε). From laying duties on imports, except {ports} &c. (ι). From laying duty on tonage except &c. (κ). From keeping troops in time of peace except &c. (λ). From making agreements with each other or foreign powers except &c. (μ). From engaging in war unless invaded &c.

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(f) Provisions for giving due efficacy to all these powers. (α) To make all laws proper & necessary for carrying into effect the powers vested in the government of the U. S. (β) Constitution, laws of the U. S., treaties &c., supreme law of the land. (γ) Officers &c, bound by oath to support the Constitution. (Miscellaneous) Predilection of the citizens for the state Governments Encroachment of the {state} federal Govt. a signal of alarm.

Laws of the U. S. must be executed by the citizens of said states. VII Distribution of powers in a constitutional government in general. (1) Legislation executive & judicial departments should be kept separate. (a) This maxim not violated by the proposed constitution. (b) Montesquieu the author of it. (c) The Bristish constitution his beau — ideal. (d). Impossible for the three departments to have no connections with each other. (e). Means of giving efficacy to it in practice. (2) Analogy of the plan to state constitutions. (a). Mr Jefferson notes on the constitution of Va proposed. (b) Amendments to be made at the request of two of the departts. (c) Council of censors in Pensylvania. VIII Constitution of the House of Representatives 1. Qualification of Elections & elected. (a) Electors — same with those of the most unnumerous branch of the state Legislature. (b) Elected must be 25 years of age or seven years a citizen of the U. S. an inhabitant of the state he represents & must be in no of— fice under the U. S. during his service. 2. Term of service of the member two years. (a). It is sufficiently short.

Because time is required for them to under— stand the functions of government, Commerce &c If elections were more frequent spurious elections could not be annuled in time. (b) It is sufficiently {short} long: because they might not be sensible of their dependence they might usurp too great powers; they might be transfered with by for— eigners or by leading & influential men in the body. 3. Ratio of representation among the states. (a) Establishment of a common measurs of representation.

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(a) It will prevent an attempt to defraud the union by the proportion of Representatives in each state. (b Those fifths of the slaves are taken into consid— eration because they are a mixed character being partly persons & partly property. 4. Total number of the body. 1. Objections to the smallness of the number (a). It will be an unsafe depository of the public interest. (b). They will not possess a proper knowledge of the local circumstances of their constituents. (c). They will not sympathise with the mass of the people but will aim to elevate the few & depress the many. (d). The number will become more & more disproportion— ate by the increase of the people & the obstacles which will prevent a corresponding increase of Representatives. 5. Future augmentation of the members. 1. Analogy to the manner of augmenting the nos. of Representatives in the state Legislatures. 2. Increase of Representatives has always kept pace with that of the constituents. 3. Peculiarity of the federal constitution & Equali— ty of representatives in the states. 6. Regulations of Elections 1. Times, manners & places of holding elections prescribed by the Legislatures. 2. Congress may alter such regulations except as to places of choosing Senators. 3. Every government ought to contain in itself the means of its own preservation. IX Constitution of the Senate 1. Qualification of its members (a) Must be 30 years of age. (b) Must have been nine years a citizen of the U. S. 2. Manner of appointment (a) By the state Legislature 3. Future of equality of Representation among the states. A compromise unavoidable.

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4. Number of Members 1. The senate will be a check upon the usurpations of the house of Representatives. 2. It will prevent hasty & imprudent legislation. 3. It will supply the deficiency of knowledge about the af— fairs of government & Commerce. 4. It will bring a more stable body & present more ability in the public councils. 5. Duration of the Office. (Six years) 1. It will give to the senate (a) A due sense of National character (b) An attention to the judgment of other nations. (c) A due responsability in the Government to the people. (d) Due time in measures in measures which require a sucession of acts for their accomplishments. 2. The lessons which experience teaches us should be attended &c. 6. Treaty making & judicial power 1. Treaties are made bu the Prest. with concurrence of 2/3 the senate. This secures all the advantages arising from deliberate & prudent action on the one hand & secrecy & despach on the other. (a) It has the power of trying persons for high mis demeanors when impeached & has the most suitable court for the purpose. Could the supreme court have answered better for the

purpose. After an individual has been impeached he may be subjected to a trial befor the judiciary. (b) A body for the express purpose would be too ex— pensive too troublesome & too tardy (c) Objections to the senate as a court for the trial of Impeachments. 1. It confounds legislative & judiciary authorities in the same boddy of men. 2. It contributes to an undue accumulation of pow— ers in that body giving to the government a comitenance too aristocratic. 3. The agency the senate would have in the appointment of officers renders it unfit to be a court for the trial of impeachment .

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64 X. Constitution of the Executive 1. Mode of appointment. (a) To depend upon men elected expressly for the purpose. (b) The electors meeting & voting in the several states will avoid all chance for cabal intrigue & corruption. (c) A comparison between the King of G. B. on the one— hand & between th Governor of N. Y. on the other. 2. General powers & duty of the Executive (a) Energy in the Executive a leading character in the definition of a good government. 1. It is essential to protect the union against for— eign atacks 2. It is essential to the steady administration of the laws. 3. To protect property against combinations that interrupt an ordinary course of justice. 4. To secure liberty against assaults of ambition, faction & anarchy. A feeble Executive implies a feeble exercise of the powers of Government. 3. Unity is conducive to energy in the Executive. It may be destroyed in two ways. 1. By placing the power in the hands of two or more. 2. By giving the power to one subject to the control of a council. (a) Plurality {of power} in the execution would lenf to conceal faults & to destroy responsibility. 4. Duration of power & re—eligibilty. 1. It secures the personal firmness of the Executive. 2. It secures the stability of the system of adminis— tration adopted under his auspices. 5. Ill effects of the exclusion of re—elegibility. 1. It would diminish the inducements to good behavior. 2. It would offer temptation to sordid views of peculation & usurpation 3. It would deprive the community of the advan—

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tage of the experience of the executive. 4. It would banish men from stations in which in certain cases their presence would be of the utmost importance. 5. It would operate as a constitutional interdiction of stability in the Government. 6. Supposed advantages of the exclusion 1. Greater independence in the magistrate. 2. Greater security to the people. 7. Provision for his support. His compensation shall neither be increased or diminished du— ring his term of office, nor shall he receive any other {8.} {C} emolument during that period from the U. S. or any of them. 8. Competent powers. 1. The veto power. (a) It serves as a shield to the executive. (b) It punishes an additional security against the en— actment of improp{p}er laws. (c) It does not suppose the President to have more wisdom than Congress. (d) It may prevent good laws as well as bad laws but stability is more to be desired than unitability. (e) It will employed with great caution on account of the superior weight of the Representatives in the nation. (f) It is not absolute but qualified. 2. Commander of forces. 3. Power of pardoning except in cases of impeachment. (a) Responsibility strongest in proportion as it is undivided. (b) Pardon in case of treason — Representatives might become tainted with the spirit of sedition. (c) The golden opportunity

might slip before the legislature could be convened. 4. Power of making treaties. (a) Intermixture powers. (b) Two thirds of the whole nos. of senators should be re— quired in making treaties. (c) The house of Reps. is too changeable & too multitudinous.

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5. Power of appointing officers of government (a) Test of a good government is its aptitude to pro— duce a good administration. The manner of appointing officers secures this. (b) Responsibility of the chief magistrate (c) Confirmation of the senate acts as a check upon the private inclinations of the President. (d) A council of appointment would be a con— clave in which cabal & intrigue would have their full scope. (e) House of Reps. an unfit depository of this power it being too unstable too multitudinous & too tardy. XI Constitution of the Judiciary Department. 1. Tenure of office. (During good behavior) (a) It is necessary to secure the independence of the judges. (b) To prevent incroachments of the Legislative & Executive. (c) To support the liberties of the people by preventing violations of the Constitution. (d) Periodical appointments would be fatal to their ne— ssary independence. (e) This tenure necessary to secure the requisite quali— fications of the Judges. 2. Provision for their support & Responsibility. a. A fixed provision for their support is necessary because a power over a mans support is a power over his will. b. It may be increased but not diminished. They may be impeached for mal conduct & this secures their responsibility. 3. Extent of their powers. 1. Proper objects of federal jurisdiction. a. Carrying out {of} the law of the {laws} U. S. passed in pur— suance of their just & constitutional powers of Legislation. b. Cases concerning the execution of the articles of Union. c. Cases in which the U S are a party.

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d. Cases {in} which {the U. S. is a party} involve the peace of the confederation whether at home or abroad. e. Cases of admiralty & maritime jurisdiction. f. Cases in which the state tribunals cannot be sup posed to be impartial or unbiased. 2. The national legislation may make such exceptions & pre— sent such regulations as will avoid any in convenien— cies resulting from the extension of jurisdiction. 4. Distribution of its authority into one supreme court & such inferior tribunals as Congress may from time to time ordain & establish. 1. Objections to the distinct organization of the supreme court answered. 5. Miscellaneous objections. 1. States retain preexisting authorities except in three cases. a. Where an exclusive authority is in express terms granted to the Union. c. Where a particular authority is prohibited to the states. d. Where an authority is granted to the Union with which a similar authority in the states would be utterly incompatible. 2. In cases of concurrent jurisdiction in the na— tional & state courts an appeal will be from the lat— ter to the former in three instances. (See G's Digest) 3. Can an appeal be from the state courts to the sub— ordinate federal jurisdictions? 6. In relation to the trial by jury. 1. An amendment to the Constitution Art VII provides that the trial by jury shall be preserved at Commonlaw in all suits where the value in contro— versy shall excede twenty dollars. The arguments under this head there fore do not demand a par— ticular notice. XII

Miscellaneous objections to the Constitution. 1. Want of a bill of Rights a. Many of the state constitutions in the same predicament. b. The constitution in itself equal to a bill of rights. c. The common law adopted by the state could (...) subject to the regulations of the Legislature.

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68 d. A bill of rights would be dangerous. It would afford a color able pretext to claim more than was granted. 2. Powers too large & people too distant from the seat of government to keep watch over their rulers. a. Executive Legislative bodies of each state will act as somany sentinels. b. Public news—papers will afford easy & speady communication. 3. Want of a provision for securing the debts due to the U. S. States neither loose any of their rights nor are discharged from any of their obligations by a change in {in} the form of their civil Government. 4. Expensiveness of the federal Government 1. Multiplication of offices under the new Govt. a. No national difference except as to their judiciary. 2. Congress will not sit so long. The president can {not} attend to a great part of the business. 3. The state legislatures will be relieved of a great deal of business & consequently will not sit so long. XIII Conclusion! Conclusion!!! 1. Anlogy of the plan of the convention to the state constitutions. Same supposed defects in both. 2. Its adoption will afford additional se— curity to liberty property & Republican Government. No. 43. The constitution intended to vest in Congress the exclusive power to pass uniform laws of Naturalization. The requisites for a person to become naturalized are five years actual & unin— terrupted residence & a declaration in a court of record two years before the expiration of the five that he intends to become a citizen. The final oath of allegiance may be taken in any state or federal court of record & the court most be satis— fied be record evidence of five years residence & previous declaration required. The party must not be out of the U. S. during the time. With regard to laws of Bankruptcy such a strict construction has not been made. The States may pass

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Bankrupt laws in the absence of such an act by the Congress; to become void when such law of the U. S. shall be passed. But in such a case the law only applies in the state which passes it — in its own courts & between citizens making contracts under the law now residing in other states. All experience teaches that it is impossible by parchment barriers to restrain other departments of Government. Virginia is an unfortunate {of the} example of this. No. 62. Vacancies in the senate of the U. S. happening during the recess of the legislatures of the respective states are to be filled by the governors there of. The question has arisen: Whether the executive of a state could make an appointment before the vacancy occurs? It was decided that he could not. We have many examples proving the evils of a single Legislative body. Originally the Legislatures of Georgia & Pensylvania had single houses which was productive of the utmost precipitancy of action & confusion until changed. The Italian republics illustrate the same principle & about the time of the French revolution a passion for a single legislature seized the French people & they wished to concentrate all power into (...) common centre that of the nation. The choice of senators is to be made by the Legislatures of the several states which consists of two distinct branches & it would seem natural that they should vote for

senators separetely as they perform their other functions but a contrary practice has generally prevailed & in Va too firmly established to be shaken. The vice President is the presiding officer of the senate but he himself has on one occassion doubted whether he had power to preserve order unless given to him by the senate. A law of the senate has since provided for that. Jan 2nd. 1847 There are thre cases in which a state may be a party. 1st. In Controversies between two or more states. 2nd. In Controversies between a state & citizens of another state. 3rd. In Controversies between a state & a foreign state — citizens & subjects. In regard to the second of these cases two opinions have been held. On the one hand it was contended that the clause subjects a state to be sued as defendant in the —

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70 courts of the U. S. On the other hand it was contended that a state should be a party only as plaintiff. The act of Congress establishing the Judiciary seemed to addopt the 1st. Opinion — & it was accordingly decided by the supreme court of the U. S. in 1793 in the case of Chisholm an Executor vs. the State of Georgia. The plain— tiff was represented by Edmund Randolph Esqr. who maintained {who maintained} the liability of a state to be sued in the federal courts. Messrs Ingersoll & Dallas presented a remonstrance on the part of Georgia but on account of a posative instruction declined to argue the case. Some excitement among the states having been amused {by the states} at the instance of (...) an amendment was adopted declaring that the Ju— dicial power of the U. S. should not extend to cases of law & equity commenced or prosecuted against one of the U. S. by a citizen of any other state — or by citizens or subjects of foreign states. Cases in law & equity as applied to states mean only civil cases as adopted in the Judiciary act & expressed by Judge Gredell in the case above referred to. No. 82. Cases arising under the of the U. S. & laws made in pursuance there of — may be heard & decided in the state courts as if they had a—risen under the laws of foreign states: but Con— gress can not depute to the state courts the power of de— ciding causes which belong properly to the judicial authority of the U. S. because government must act by its own organs exclusively & the states & federal courts are distinct & coordinate jurisdictions. So deci— ded by the court of Va. 2nd. Va cases 34.17 Johnson 20 &c. The relation of state & federal courts in case of concurrent jurisdiction has been a subject of much dis— cussion. The congress of 1789 adopted Mr. Hamilton's confi— dent views {made} made provision for appellate jurisdic— tion for the state courts in certain cases — known as the 23rd section of the Judicial Act. By this act an ap— peal is allowed in any final judgment or decree of the high

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est court of law or equity in any state — having jurisdiction of the suit, to the supreme court of the U. S. in three classes of cases. First. Where is drawn in question the validity or statue of — or an authori— ty ever used under the U. S. & the decision is against such valid— ity. Second. Where is drawn in question the validity of a statute of, or an authority ever used under any state on the ground of their be— ing repugnant to the Constitution, treaties or laws of the U. S. & the decision is in favor of its validity. Third. Where is drawn in question the Constitution of any clause of the Constitution — or of any treaty or statute of or any com— mission held under

the United States & the decision is against such right title — or privilege setup under the same. But in order to give the supreme Court jusrisdiction — two things must appear on the record. First. That some one of these questions did arise in the state court. Second. That a decision was actually made there on in the manner contemplated by the {action} statute. 1 Peters 392. The constitutionality of the provision has been [canvassed]. The supreme court has steadily maintained its constitutional— ity — has been often exercised — generally with the acquies— cence of the state courts from which the appeals were taken. The question arose in the court of appeals of Va in the case of Hunter vs Martin. The case originated in the district court of Winchester & was heard in the court of appeals first in 1810 & a decision was pronounced as Martin alleged adverse to the treaties with England of 1783 & 94. A writ of errors was granted by the superior court & the record was certified to by the President of the court of appeals. The supreme court reversed the decision of the court of appeals & issued a mandate to that court to enter a judgment to a decree of reversal. After full discussion by bench & bar {the court} the court declined obedience to the mandate. A new writ of error was obtained & finally the supreme court decided the cause & awarded execution to its own officers. The principle is now settled in accordance with the principle of the Supreme court.

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Analysis of the Resolutions & Report of the Va Legislature 1798-9 1st. Resolution - To maintain and defend the Constitution of the U. S. 2nd. Resolution - To oppose every infraction of the Constitution. 3rd. Resolution - Powers of the Federal government resulting from the compact to which the states are partners; which powers are limited by the plain sense & intention of the instrument of compact & it is the duty of the states to interfere to arrest a deliberate palpable & dangerous powers not granted. (1) Powers not granted by compact. (2) States are {not} parties. (3) Powers limited by plane sense & intention of compact. (4) States as sovereign parties to the contract must con— strue it in the last resort & judge if it be violated. (5) Violation to justify interposition ought to be deliberate palpable & dangerous. (6) States should interfere solely to arrest usurpation. (7) Whether the judiciary can be the expositor of the Constn. in the last resort (8) Expedience of the declaration contained in the Resolutions. 4th Resolution - The spirit manifested to enlarge the powers of the Federal government by forced Constns. & the tendency there of. 1 Spirit manifest (Besides in the Alien & Sedition Laws) in Bank Questions. Carriage Tax &c. 2 Expounding general phrases so as to destroy the effect of the particular ennumeration of powers. The same phrase occur in articles of Confederation & not so construed. Treasury report of 1791 on Manufactures. Report of Congressional committee on agriculture (...) 1797. 3 Effect of this Constitution to consolidate the states. 4. Result of the Constitution — a Monarchy. By multiplying the objects of Legislative attention. By augmenting Executive patronage. By rendering the Executive office so important as to endanger the [quiet] of elections. 5th Resolution — Protect against the Alien & Sedition acts as alarming infraction of the Constitution.

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I. The Alien Acts 1. They exercise powers not delegated. a. The power is not in the Constitution. b. They confound alien friends with alien enemies in respect of the power over them. c. Considering it even as a measure of preventive{g} justice: is it Constl. (a) Is it constitutional in any shape? (b) Are not its provisions unconstitutional! 1st. In all: owing no (...) against the alien. 2nd. In subjecting the case to no judicial authority. 3rd. In all owing no pledges of good behavior. 4th. In suspending writ of Habeas Corpus. d. But it is in reality highly penal. a. Though admission of aliens be a favor is it revocable at pleasure. b. Though aliens not be parties to the Constitution has Congress unlimited power over them? [c]. Though alien enemies are under the laws of Nations & so subject to the power of Congress yet alien friends except public Ministers are subject to the municipal law. d. This act is not justified by the laws & usages of Nations. e. It is not included in the power to grant letters of marquee &c. f. Nor in the power to declare war. g. Nor in the power to repel invasion. h. Nor does it exist in Congress for the reason that otherwise it could not be exercised at all. i. Nor it is justified by the example of Va in 1785 — 90. 2. It unites Legislative Judicial & Executive in the Executive. a. Lve. Because he is to define who is dangerous & who to be sus— pected & what are secret machinations against Government. b. Judicial — Because he is to determine in each case whether the facts come up to the standard. c. Executive — Because he is to expel. 3. This union of power subverts free government. 4. It also subverst the partial organization of the Federal Government.

II. The Sedition Act 1. It exercises a power not delegated. a - The power is not in the Constitution. b - The common law is not part of the law of the U—States. a. It was adopted with various modification in different

colonies by separate Legislatures. b. It was not introduced by the Revolution for one of its principles was independent Legislation. [c]. Nor by the articles of Confederation. d. Nor by the present Constitution. e. The act limiting the Judicial Power does not in— clude it - for Cases in law & equity do not re— quire such an extension. The phrase is confined to civil cases. [f]. The passages describing the laws of the U. S. omit it. [g]. Difficulties & confusion from supponning the common law a part of the law of the U. S. (...). The consequenses of such construction — If it is a part of the constitution it can't be changed. Would make the power of President unlimited. It would give congress unlimited powers. It would give the Judiciary unlimited powers: unalter able by the Legislature It would destroy the best vestages of state unity. c. The preamble to the Constitution cant justify it because it is inconsistent with the Constitution itself. d. The clause providing for the common defense does not justify it. e. Nor the clause relating to necessary & proper powers for that gives no new power. f. It is not incident to powers to suppress insurrections. 2. The power is posatively forbidden by one of the amendment to the Constn. a. The freedom of the press is not to be determined by the meaning of the phrase in common law. a. Because the British constitution consists of a Legis tive barier against Executive encroachments. b. Because the elective characters of every limited form of Govt. makes greater freedom of animadversion than is requisite. [c]. Because great good has resulted from this unrestrained animadversion. d. Because freedom of conscience is granted in like manner &

cannot be subject to similar construction. b. This provision in the Constitution does not suppose any powers over ther press in Congress. restricted only in respect of abridgement. a. Because the constitutions of several states expressed uneasi—

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ness at the silence of the constitution & demanded amendments. b. Because amendment was introduced to satisfy these fears. 3. The exercise of this power ought to produce universal alarm. a. It prevents a due investigation of the conduct of public servants. b. It places competitors for office at a disadvantge as respects incumbents. c. It places the people at a disanvantage because they cannot choose their servants discreetly. 6th Resolution — Refference to the declaration of the Va {Constitution} Convention which ratified the Constitution about the freedom of the press. 1. Declaration of the Constitution in "totidum verbis" 2. Acquiescence would give similar power over religion & conscience. a. Neither was delegated. b. Both were secured. c. Common law reasoning applies as well to one as to the other. d. Like form of words are used to guarantee both. 7th Resolution — Appeal to the other states to unite in declair in the said acts unconstitutional & taking necessary & proper measures &c. 1. It is no invasion of Judicial authority — but simply a declaration of opinion. 2. States Legislatures have a certain relation to federal government in organizing amendments &c. 3. Measures proposed were to be necessary & proper. a. Object was to maintain the constitution. b. Various means might have been used. 4. Interposition of State governments was expected before the con— stitution was adopted & the convention recommended the Constitution. 8th Resolution — That the above resolutions be sent to the Governor of the Several STATES.

January 5th 1847 In 1789 the U. S. were involved in difficulties with almost all the nations of Europe & it required all the efforts of Washing— ton with his weight of character to maintain our neutrality a— mid the contests that were waging in Europe. At this crisis the government passed to Mr. Adams who probably suffered greater inconveniences than Gen. Washington. These difficulties were increased by the disposition of a number of our citizens to take part with France. In addition to this there were French commissaries in our country & Mosr. Genet the French minis—

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ter was engaged in fitting out privatiers in our ports to engage in the service of France. When remonstrated with by Mr. Jeffer— son the secretary of state he replied that it was not contra— ry to national law & that he (Mr. Jefferson) founded his opinion upon exploded dogmas of Vattel & others. To meet this state of things Mr. Addams obtained the passage of an al— ien law (which by the by was very unjust & the origin of Whigery) by which he was empowered to cause all aliens to depart the country whom he might have reason to suspect. Soon after this & still more injudiciously he obtained the passage of the sedition laws — which is distinct from the alien law although confounded by the common mind. The legislature of Va at its next

session (and very justly too) gave vent to its feelings of indignation generally felt couched in sundry resolu— tions in strong but dignified language remonstrating against the acts as being against the Constitution. These resolutions were transmitted to the executives of the several states & were very uncourtiously received especially by the northern states many of them declaining the conduct of the Va Legislature little less than treasonable. At the next session of the Legislator a committee was appointed of which Mr. Madison was chairman — to draw up a report justifying these resolutions which report we will now commense to study.

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Blackstone's Commentaries January 12th 1847 Municipal law is defined by Blackstone to be a rule of action pre— scribed by the supreme power ordering what is right & forbidding what is wrong. This deffinition has sometimes been objected to by Amer— ican writers as placing the legislature above the people. Whilst there is nothing objectionable in the language of the commentator yet if he had have been permitted to explain himself he doubtless would have placed superiority in the King & parliament. But an Englishman & an American understand the same thing by the supreme power in a state viz the highest power inder the constitution & hence chancelor Kent adopts the first part of the de{f}finition but rejects the last. But it would seem more congenial to the American principle to define it to be a rule of civil conduct prescribed by the law making power in a state. This of course does not embrace the constitution— al laws because that comes directly from the people. The latter part of the deffinition viz commanding what is right & prohibiting what is wrong has been rejected by all as superflous. A rule — prescribed: It must be prescribed in order ro make it a law — a mere legislative opinion is of no force to bind the subject until that opinion be duly made known. In America thousands of the acts of Congress are circulated throughout the country but few how— ever take the trouble to read them & but few are capable of understanding the technical terms in which they are necessarily couched. Besides this the acts of each session are required to be published in one newspaper in the district of Columbia in the newspapers of each state not exce— ding three in number & pamphlet coppies are distributed to the feder— al officers & the higher officers under the states. Gordon 32. In Va a copy of acts of the assembly at each session is furnished to every clerk & justice of the peace in the various counties of the state. The acts of congress take effect from the time named therein — if they have no specified time then they take effect from the time of the their be— ing signed by the executive. The statutes of Va usually contain a clause stating when they go into operation — if they have no such claus they date from the 1st of [April] next following their passage. Sometimes they are made to commense at a subsequent period as in criminal laws or acts affecting contracts of any kind to pre— vent the injustice that would be produced by the sudden change of the law.

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78 Ex—post facto— laws have always been justly odious to the peo— ple of America & hence the constitution prohibits the exercise of this power to the general government & to the states & this is ratified by the constitution of Va. The term ex post facto is applied only to criminal cases of whatever injustice they may be produc— tion. 3 Dallas 386. 12 Wheaton 266. 2 Peters

830. 8 Peters 88. 6 Cranch 138. Chief—justice Marshall defines an ex post facto law to be one which makes an act punish able in a manner which it was not when committed. Retrospective laws in civil cases are deservedly odius but are no otherwise prohibited by our constitutions than as they impair the obligation of contracts. 8. Peters. 108. Statutes are prima facia prospective in their operation & restropection laws are so odious as never to be so construed but most clearly proved so to be — 3 Call 268. Indeed Judge Tucker declares it to be entirely contrary to the very nature of a law to be restrospective & would be void if from the cause alone. You must observe a distinction between laws affecting rights & those providing remedies. To change or impair my rights to land or to interpose a legal permission to avoid a contract is retrospective odious and per— haps void but it is allowable to the legislature to alter— modify or entirely take away a remedy. The reason of this is not very obvious but it seems to be to avoid tying up the hands of gov— erment — in some cases where it is indispensable to make alterations & modifications in order to provide suitable rem— edies for violated justice & injured rights. But a reme— dial act is not to be considered retrospective unless expressly so declaired. 1—Call 197 — 4 Munford 109 — 3 Call 277 2 Hennings & Munford 181. (38) Laws 'Mala in se' & Mala prohibita — The commentator sug— gests a distinction between these. The first he considers binding upon the conscience — the second no farther binding upon individuals than as they submit to the penalties for violation. This dis— tinction is entirely inadmissable. Doubtless he who violates human & divine laws is the more guilty — but it is certain that it is the duty of any citizen to obey the municipal law as it involves the very foundation of the social compact & he who should be negligent in this respect woulf be deeply guilty.

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Construction of Laws — We should look to the intention of the law giver & this in— tention is marked by certain signs viz. words context subject matter & consequences & spirit & reason of the law under consideration. As to the second of these it is to be observed that not only the context of the same law but all laws in pari materia ie upon the same subject are to be considered upon the general principle that a writer is sup— posed to be consistent with himself & to have a like intention in the different parts of the same subject. Nothing is more reasonable than that his obscure expressions should be interpreted by those that are clear where the subjects are so connected as that one may explain the other. Duglis's Reports 27. 4th As to the effects & consequences it may be remarked that {remarks} arguments ab inconveniente are forcible in law but this is only to be resorted to in in a doubtful meaning. What is clear we are not allowed to interpit at— all. In such cases we take that meaning which is favorable & re— ject that which is incovenient. 1 Co: Lett: 18 Hargraves Note. Lastly the reason & spirit of the law are to be presumed & hence says the commentator arises equity jurisdiction which he defines to be the applica— tions of the law to cases: (which as it could only provide in general) the law could not foresee & hence it is given to the judge to suit the law to the circumstances of these particular cases. This is just & right if he means the general jurisprudence of the country but if he applies it to courts of equity it is quite different from our idea of equity as we are willing to deposit as little discression in the breast of the judge as possible — but rather bind

him down to rules as fixed as those of courts of law. Courts of equity are applied to the decisions of causes which from the mode of trial they are better fitted to decide than the courts of law not but that the latter decide causes according to the spirit & reason of the law as well as equity. Equity may be defined to be a system of jurisprudence whereby remedies are afforded in cases where no remedy can be had at com— mon law. The idea of equity given by Blackstone is very common in England & among some of our most intelligent lawyers Mr. Selden had this idea of equity also.

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Lecture Fourteenth January 14th 1846.

The law of England is divided into the lex scripta & the lex non scripta. We are not to understand by the un— written law that it exists now only in the memory of man but that it does not derive its force from any written stat— utes extan[t] but from memorial usages & custom. What the law is may now be ascertained from the records of the courts & judicial decisions & the works of learned writers founded on those decisions. This law is supposed by many to be as old as the an cient Britains — but was reduced to system by King Alfred. This system was brokenup by the corruption of the Danes when dif— ferent laws were established in different parts of the Kingdom. This common or unwritten law consists of general customs particular customs & particular laws. The most distinguished ancient treaties upon the law were those of Glanvill — Bracton & Fleta. Glanvil's Book was written in the reign of Henry II about the year 1187. It was entitled Tractatus de legibus et consue tudinibus regni Angliae — but not withstanding its general title it was confined chiefly to the curia regis. It was written in Latin. Bracton's treaties was a complete system of law written in Latin also — its stile superior to that of Glanvil — was written in the reign of Henry III about the year 1263 — 2 Reves Hist Engd. Law. Fleta was intended as a suppliment to Bracton although the author had an eye also to Glanvil. It was written in the 15th year of Edward I. It was so called because the author wrote it in the Fleet prison. 2 Reves History of England Law 279. The first reports were the year Books which were eleven in no. & so called because published annually. To these may be ad— ded the reports of sir James Dyer & Plowden which brings us down to the time of my Lord Coke. 753 Lex Mercatoria. It has sometimes been supposed that every custom which acompany of merchants chose to establish is to gov— ern the courts but these customs are to be decided upon the by

the courts so that the courts are to govern the courts & not the customs the courts[.] 773 Requisites of a Custom. Immemorial — continuos — certain compulsory &c. To make a custom valid it must have existed from a period beyond the memory of man. This period had

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been established by some as the reign of Richard I from the fact that there was the state of writs of right — but another period has been adopted for the latter & con fined to a certain term of years there is no reason that the former should remain. Lord Coke & Littleton both contend that the phrase means literally {that} a period where of the memory of man runeth not to the contrary & it is only necessary to show this independently of any fixed period. You must distinguish between custom prescription. Custom is an exception to a general law governing individuals — prescription is the source of title to private property. The first cannot exist in Va because our ancestors brought the greater part of the common free from exception in England & hence any cus- tom must have arisen within a period beyond which the memory &c. But the same cannot be said with regard to private proper— ty with legal certainty though we may with moral certainty. We cannot say but that a mans title to property has not been existing for ever though exceedingly improbable. 7 Leigh 632. We have adopted the civil & cannon law along with the com— mon law so far as existing under the authority of that law. In England these laws are applicable to certain courts as courts of admiralty — military courts — ecclesiatical courts & the courts after two universities. We have no particular courts designated for this law but it is applicable in any of our courts. In May 1776 the general assembly of Va declared that this colony was & of right ought to be free & independent of the authority of Engd. & not having time to form & digest a system of laws they passed an act declairing that the common law & all acts of parlia ment made in aid thereof prior to the 4th years of James I & not local to the realm of England should be the law of Va until repeal ed. 9 Hennings Statutes 127. It was understood nowithstanding the general terms of the act that only so much of the law was adopted as was applicable to our situ ation manners & genius of our people the courts giving it a sub stantial rather than a literal interpretation. Soon after the Revolution the Legislature set about framing a system of laws the civil part of the code being entrusted to Mr. Jefferson & the criminal to Mr. Pendleton. A law was then proposed declairing that all

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British statutes should be abolished & of no force in the state saving remedial & judicial writs. Such statutes as were deem— ed useful were incorporated in our code. The wisdom & perspecu— ity of this code has seldom been equaled. No Bristish statute there fore has been in force in Va since 1792 with the exception above mentioned. The laws of Va then consist of the common law & stat— utes enacted by the legislature. The common law is the basis & the bulk of the law of this state & of all the states except La. 85 [scrible] Public & private acts [scribble] — The difference between these as to their effects is that private acts must be specially plead but the courts are bound to take notice of a public act. We have a statute however declaiming

that private acts may be giv— en as evidence without pleading. Tate 34. You must observe however with regard to this that the courts are still not bound to take notice of private acts but they must be produced by the plaintiff or defendant — 4 Munford 324. Also that the statute merely allows private acts to be given in evi— dence — they may still be pleaded. It is advantageous to plead them when you wish the court to decide the question upon the issue of [blank space] record: but if you wish the jury to decide the fact they must be given as evidence — & this meth— od has the further advantage that the opposing council knows nothing of this defence till the trial comes on. The mode of proof to a jury is by a copy of the act certified by the keeper of the rolls — by a copy which any person will swear he saw com paired with the original or perhaps by a copy struck off by the public printer — 4 Cranch 888 — 1 Dallas 463. It has been decided in Va that copies of acts of Congress struck off by the public printer may be given in evidence here — 5 Leigh 471. In Pensylvania this has been extended to copies of the acts of the legislatures of the several states struck of by the public printer of those states respecting. 1 Dallas 465. In Va several statutes have been made providing for the publication of the laws. One of those provisions is that a public printer be appointed to print the acts of each session. The prival & public separately & another providing for the proper distribution of these. Tate 34.

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95 [scribble] According to Blackstone if a statute repealing another is itself repealed the former statute is renewed. We have a statute declairing that the former statute shall not be renewed without express words to that effect. Our government is one of limited powers & contrary to the principle in Engd. it is admitted that our judges are bound to construe the laws of the gen— eral & state governments — & as they declair our law void because it conflicts with another law so they must declair laws void which con— flict with constitutiions of the several states & of the United States. 1 Cranch 176. 12 Sargeant & Rolle 330. Lecture Third January 16th 1847. Chap I [scribble] - The commentator divides the subject upon which his work is founded — first into Rights & Wrongs. Rights into the Rights concerning persons & the Rights concerning things. Wrongs into Public & Private Wrongs & in the discussion of these the whole book is employed. A subordinate division of Rights is into Perfect & Imperfect. Perfect rights are those which depend upon the judgment of the person to whom the rights belong. Imperfect are those which depend upon the judgment of the person from whom they are to procede & it is his judgment to determine whether the right exists or not according to the circumstances of the case — 123 (2) Rights of Things means the right to or concerning things — the commentator evidently so understood it[.] 124 - [scribble] Another division of rights is into Absolute & Relative. Absolute rights are those which every man inherits from nature inde— pendent from society. Relative rights are those which ow their existance to a state of society & are in herent in man only as a member of society. The annotator evidently mistakes the authors meaning in respect to public & private acts — he speaks of these with refference to ab— solute & relative rights. He does not mean to say that it is not mor rally wrong to be dissipated at home or in private — but as its effects are not felt by society no ones relative rights are violated & it is not a subject of legal investigation. 125 [scribble] Political & Civil Liberty. The commentatoer confounds these[.] (5)

Political liberty is the assurance which every citizen has under the constitution that he will not be molested in the exercise of his nat— ural rights farther than it has been found necessary for the benefit of society.

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Civil liberty is the mere enjoyment of these rights whether there be a quantity of them in continuance or not. So that there may be a high degree of civil liberty where there is no political liberty & even in an absolute monarchy there may be enjoyed a full share of civil liberty. The Bill of Rights of Va declares that all men are possessed of certain inalienable rights of which they can by no means deprive themselves viz the enjoyment of life & liberty with means of acquiring & possesing property & pursuing & obtaining hapiness & {liberty} safety. This is nearly the same as the authors ennumeration of abso— lute rights viz personal security personal liberty & the right of private property. Civil Death — We have a statute made concerning convicts to the penitentiary. It provides that when any person shall be confined in the penitentiary for more than one year a trustee shall be appointed by a court of chancery to pro— vide for his family pay the debts of the convict & shall be liable to actions of the creditors of the convicts & may sue for debts due him & shall act in in all re— spects as though he were an administrator. If the person so chosen shall refuse to act or fail to give bond & security then the sheriff shall perform the same. Tate 184. Another statute provides that for a third conviction a person shall be confined for life & a trustee is ap— pointed to act as administrator but it seems that he will not be considered as civiliter mortius. In New York a law has been passed saying that a convict for life shall be considered as civiliter mortius — 6 Johnson 127. Habeas Corpus. This has been changed in this country to suit our institutions & is a matter of right to ev— ery citizen & not of favor or discression with the judge. It is grantable upon application of any person (by himself or some person for him) detained in custody charged with a crimi— nal offence or not provided be show by affidavit or other evidence probable cause to believe that he is unlawful— ly detained. The writ is made returnable immediately & if it seems necessary the court or judge may require bond &

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security to meet any costs which may be awarded against him. The authority to grant it is the general court sitting — superior court or any judge of the general court during vacation. When the person is brought before the judge he shall inquire into the cause of his imprisonment & shall discharge admit to bail or award him to custody according to the evidence. He may direct against the prisoner the costs of transportation & of the proceedings or he may give costs in his favor or no costs either way. The clerk may issue executions for such costs as though the judg— ment had been rendered in true time. Any person failing to return such writ within three days or if more than 20 miles off so many more days as allowing 20 miles per day for such farther distance shall forfeit to such prisoner three hundred dollars. It shall be lawful for the court of appeals to grant a writ of error to any person who may think himself aggrieved & may reverse

the judgment wholy or in part or cause any other to be entered. It has been said that the judge may require bond & security for the payment of any costs which may be awarded against him — & this might be turned to the oppression of the poor — but that our constitution declares that excessive bail shall not be required. It has been said that the Habeas Corpus might be made a remedy to enable slaves to assert their rights. But it has been held that this is not the proper method in this case. In a case reported in 7 Leigh 448 the judicious distinction was taken between plausable cases of imprisonment & mere colorable. In the 1st case it was held that the court could not try the issue upon a habeas corpus act but must remand the slave to a justice of the peace in the manner prescribed by the statue. But when it was obvious that the person claiming the prisoner as a slave has merely a pretended title then the judge may try the case upon the Habeas corpus writ. The constitution of the U. S. & of the states both have provisions for the maintainence of this writ. The constitution of the U. S. pro— vides that it shall not be suspended except in cases of insurrection & invasion where the public safety shall require it — the qualification being annexed because it has connection with foreign countries

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& it is easy to imagine cases when it would be necessary to suspend it. The constitution of Va declares that it shall in no case be sus—pended. If any person has the body he is bound by the writ to bring him up though he be not the person addressed by the — Writ —

Lecture Fourth January 19th 1847 The only instance in which in this country an application has been made for the suspension of the habeas corpus writ was during the supposed treason Aaron Burr it being uncer— tain to what extent that conspiracy had gone. Ne Exeat — We use this writ of Ne Exeat regno but it is not a pre— rogative writ here but used to prevent a debtor from absconding from the country with his effects before the plaintif can get judgment & execution. The application for such writ must be supported by affidavit & it commands the sherif to take the body of the defendant & keep it imprisoned unless he gives bond & security for his appearance. As the rem— edy to be effectual must be at hand immediately the law provided that it may be granted by any judge of the supreme court or any two justices of the peace. It differs only from bail in this that one is a proceeding in chancery the other at law— the object in both cases being to cause the attendance of the party to be charged. Tate — 571 & 526 — The deportation of persons from Va whether they be citizens or foreigners under the protection of the law is looked upon as a crime of the highest enormity & punished with signal sever— ity. The statute provides that when any person shall deliver up an individual whether by authority as an offi— cer or otherwise to be transported beyond the sea or else where out of the U.S. such person shall be deemed a fel— on & punished by imprisonment not exceeding ten years & not less than one. The statute further provides that if the person transported shall be tried convicted & executed the person or persons so transporting shall be pun— ished in the same manner on proof there of. Tate 229

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The inviolability of private property is certainly a principle of the English law — but guaranteed only by the general genius of her institution. In U.S. the same principles prevail but guaranteed by the constitutions both of the fed— eral government & those of the states. The constitutions of the U.S. & Va both declair that private property shall not be taken for public use without compensation. We are not to understand from the author that private prop— erty cannot be taken in any case in England & that any individual would be allowed unreasonably to refuse to yield such property for the convenience of the public but that by the surrender he shall not be made to bear more than his share of the burden i.e. that he shall receive compensation out of the common treasury. The chief use which the people of Va have for private property is for the construction of canals & railroads.

In 9th Leigh 213 the courts of appeals decided that in estimating the amount of damage which the individual would sustain by such railroad or canal the jury was not to consider the advantages which he would receive in common with others from the improvement to upon the damages but only those advantages which were [peculiar?] to himself as if his land ever drained & no other.

141 (...) To the (...) of primary rights by the author one more must be added in Va viz that of convenience a most essential right recognised both by the state & federal constitutions & very particularly asserted by the bill of rights & constitution of Va. In England this freedom was not entirely recognized & hence the commentator excluded it from his enumeration. The guards to these primary rights mentioned as existing in England are different from ours.

We do not rely on legislation to preserve our primary rights we suppose thhat the legislature may infringe them & we have a more permanent guaranty in our systems of laws which cannot be altered abridged or enlarged by the legislature but derive their force & effect from the great [fount?] of all public authority — the people & can only be altered by them.

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Let us see what protection to the persons of citizens our laws provide. The legislature can pass no ex post facto law — bill of attainder — jury trial shall be preserved — the habeas corpus act shall in no case be suspended — excessive bail shall not be required — cruel & unusual punishments shall not be inflicted. No person shall be arrained to answer felo— ny unless indicted or presented by a grand jury — shall have a speedy & fair trial by jury of 12 men of his vicinage —& shall only be condemned by this unanimous voice — & no man shall be twice put in jeopardy {by} of life or limb for the same offence. No man shall be compelled to condemn himself on oath shall not be subject to arrrest or search of his house unless the writ or warrant state the cause of such arrest or search & in the latter the place to be searched — the freedom of speech & of the press shall not be abridged & finally the right of petition shall not be infringed. The protections of privat property are that private prop— erty shall not be take for public use without compensation be made to the owner. No person shall be deprived of his proper— ty except by a verdict of a jury of his peers & the laws of the land &c. The rights of conscience are provided for by our new constitutions as above mentioned. The using & keeping

of arms is somewhat restricted in England but here there are no restrictions & though there is no constitutional guaranty of the right yet there is no apprehension that it will ever be restricted. Chapter 9 [scribble] We have not time to read the authors discussion with respect to the higher officers of government though the students should by all means read it carefully as not only necessary to accomplished lawyer but also to every polished gentleman. Subordinate Magistrates! These are sheriffs coroners justices of the peace constables surveyors of the highway & overseers of the poor. We have in Va the same offi— cers but they differ in their mode of appointment & some of their functions. Sheriff The mode of appointment of this officer is very similar to that in Engd. He is appointed from the body of the justices of the peace. The county court nominates to the govenor the justices & from these he selects

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the first on the list & grants him a commission for one year. The law presents no rotation but usage has almost made it common law to nominate three of the eldest & the govenor selects the eldest of the three nominated. He holds his office for one year but usage almost invariably extends the commission annother year & sometimes he remains in office even longer for instance — when the next person entitled to the office fails to qualify he holds until such qualification or where the preceding sheriff dies befor the expiration of his term he shall hold the res— idue & his term too. A justice may hold the office twice if he lives long enough. When he returns to justice of the peace no new qualification is necessary to give him a seat on the bench. 343 [scribble] Here the justices reward is the sheriffality & it is optional whether he will receive it or not. It is a lucrative office & not likely to be refused but lest such should be the case the law has provided for a refusal by all. It provides that the Co. C. shall recommend to the governor two substantial freeholders of the county & if no one be found in the county willing then the gov— ernor may appoint any citizen of the commonwealth upon recom— mendation of county court & advice of council. When so appointed he shall have all the rights & be subject to all the penalties of other sheriffs. The judicial acts of a sheriff are few he is a ministerial officer for the most part. He acts judiciously in courts of admeasurement of dower in writs of partition & perhaps in writs of waste but he acts ministerially in writs of ad quod damnum & digit — 4 Johnson 69 — In all judicial acts the sheriff alone can act. The sheriff at— tends elections takes the vote & judges of the election but it seems that this is but a ministerial offic & can be performed by the deputy. As a ministerial officer he is employed in executing the commands of the court. We have no statute making him a con servator of the peace but he derives this office from the com— mon law. 344 [scribble] Collector{s} of the Kings revenue &c. By a statute of Va the sheriff is made collector of all fines & assessments due the commonwealth. He executes to the com— monwealth three bonds with a penalty of 30 thousands dollars each. 1st to collect all taxes & make [the] account there of 2nd

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to collect all fines & make returns there of & 3rd to pay the salaries of all officers & he must take the oath required by the duelling law. The bonds are executed to the common wealth (formerly to the Govenor) & are separate that he may easily obtain security to each. Acts 42-3 page 22 It must be allowed that although the sheriff continues in of— fice two years — yet his commission bond & qualifcation must be annual. 4 Henning & Mumford 220 If however he continue to act his bond is binding upon him though his securities be released. 5 Leigh 297 We have under sheriffs & Gaolers but not Bailiffs though it has been suggested that they might be employed. The un— der sheriff is called a deputy. The deputy is nominated by the high sheriff & confirmed by the county court. The court must satisfied of his competency & general good demeanor. The deputy is the officer of the high sheriff & the commonwealth has nothing to do with him as to his obliga— tions but he executes proper bonds to the high sheriff. In consequence of a case which occurred in one of the Cos of Va a statute was passed providing that unless the court would certify to these facts that no subsequent court should make an appointment when an individual had been rejected by a former court as deputy. 2 Leigh 709. A deputy may serve several terms but unless no has paid over all taxes he cannot serve more than two years in four. The deputy can perform all ministerial acts of the high sheriff with one exception viz where a writ of fieri facias or venditioni exponas issues against the estate of a former sheriff on the part of the commonwealth. 2 Revised Code 55 The High sheriff is responsable for the acts of the deputy & the person wronged may have an action against the High sheriff & or deputy at His option. 2 — Call — 275 — 9 — Leigh 18 The deputy is responsible above for his criminal acts — 4 Leigh 654 Lecture Fifth January 21st 1847 An action against a high sheriff may be threefold an ac— tion against himself for nonpayment of taxes against

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him for nonpayment by his deputy & for failure to make due return of an execution by his deputy. The remedy of the high sheriff against his deputy is by motion in court. Tate 383 If the deputy be improperly turned out of office he may have his action against the high sheriff for damages. 4 Munford 150 —1 Dallas 49 The death of the high sheriff determines the office of the deputy but he may col— lect any taxes fines &c due at the death of the high sheriff & shall be ac— countable for them in the same manner as if the high sheriff were living. Tate 836 — It has been decided that when the sheriff continues in office the second year without renewing his bond he is bound by it as though it was renewed. Then the question arose whether the deputies & securities weere also bound. It has been decided that this depends upon the bond of the deputy. If the deputy binds himself to the sheriff for the peri— od of two years or while he continues in office then he is bound but other wise not. 2. Munford 280 — 6. Munford 81 — 2 Leigh 393. Farming offices is prohibited in England & Va but by a provision of our statute the courts have construed it to except clerks & sheriffs from the penalties or prohibitions of the act. 1 Leigh 42. But the sheriff cannot deputy any other person before he actually re— ceives his commission however certain it may be that he will receive it. Gaolors are the deputies of the sheriff & he is responsible for their con— duct. The treatment of prisoners is very carefully provided for by our law. The jailor is to see that they of provided with sufficient clothing

bedding & fire &c & clothing will often be provided by the county court especially in the case of slaves who have run away. 4 Randolph 256 — Late 466 — We had{e} a statute originally {appointing} providing that at each supe— rior court a community should be appointed by the judge of whom one atleast should be a physician whose duty it should be to visit every room in the prison & see that they were kept in prop— per order and so as to {keep} preserve or atleast not destroy the health of the prisoners. But unfortunately a subsequent statute has committed this duty to the grand jury at each quarterly court. (346) — Coroner — This officer is appointed by the governor upon the nomination of the county court — & executes a bond with a pen— alty of $10.000 to the commonwealth for the faithful discharge of his office. His duties are ministerial & judicial here as in England. His ministerial duties

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the same as in England. His judicial duties are the more important. His inquest differs from an examining court in this that the latter have to try the truth of an accusation made against a particu— lar individual - but the office of a coroner & his jury is to inquire whether an offence has been committed who has committed it if any & other facts connected with the deeds. It would perhaps have been better to comit this to a justice as he could more promptly act. Tate 158 349. Justices of the Peace— are nominated by the county court & appointed by the governor so that this is a self-perpetuating body. When a new county is formed either the act itself appoints or the governor under the law. When vacancies recur they are filled as men— tioned above. The only compensation which they receive is the sher iffalty. Tate 615. The office of a justice is determined in various ways. 1st. By removal from the count: as was first deter— mined by 2 Va cases & afterwards by statute. 2 Leigh 743. 2nd. By accepting any incompatible office as that of deputy sheriff. Tate 617 — 3 Leigh 802 — 3rd. Or the acceptance of any office under the government of the United States. 4. Leigh 642 — 4th. Misbehavior as notorious drunkenness — or even once on the bench — or by felony. 1 Va cases 156 — 308 — 2 Leigh 724 The proper proceding is by information & indictment in the superior court. The duties of the justice are various & important. He is con— servator of the peace & has a variety of civil & criminal jurisdictions in E. the justice had no civil jurisdiction. Singly he has juris diction in cases where the amount is $20 or less & may have slaves punished by stripes & when sitting as a county court the justices have jurisdiction in any amount. Tate 617 — 525 — 273 Constables are appointed by county court. Enter into a bond with a penalty of $2000 & the court must certify & enter of record that he is a man of honesty probity & good demeanor. The county is directed to be divided into districts & a constable to be appointed in each district & not to go beyond his district but this is never observed. His duties are the same as at common law. He is con servator of the peace may arrest rioters &c but his chief func tion is as the ministerial office of the justice.

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(357) Surveyors of the highway — We call these overseers of the road. The county divides all the roads of the county into different presincts & appoints an overseer over each who continues in office until another is appointed. In order to execute his duties he is empowered to cut all timber necessary which may be on the road at a valuation to im— press wheel carriages ploughs &c into service at a valuation for the service so rendered. The labor is performed by all laboring persons in the precinct which means all laboring persons between the ages of 16 & 60. Any person refusing when summoned by the over— seer shall forfeit one dollar & 25 cents per day as often as he shall refuse but the owners of two slaves are exempted from this labor by sending his slaves. The county court may allow or refuse to the surveyors reasonable compensation at its discretion but no compen sation is usually rendered. Lecture Sixth Janurary 3rd 1847 Maintenance of Public roads — 1 Opening Roads This power is vested in the county courts subject to the revision of the superior courts. When application is made by any person wishing to have the road opened the court appoints a {c}committee to examine the situation proposed & report to the court the conveniences & incon— veniences supposed to result. But this new road must be to lead to the courthouse — seat of government some public landing — a mill or to a lead or iron mine. Upon this report if the court is of opin— ion that it will promote public convenience it directs a sum— mons to be issued to the owners of the land through which the road is to pass to appear at the next court & show cause why the road should not be opened — if any they can. Upon such appearance if any of the owners desire it the court will direct the sheriff to sum mon twelve impartial freeholders — & not a near relation to any of the parties concerned & to go upon the road & examine what dam— age if any will result to the owners & they shall not eat or drink until such inquest shall have been completed at the expense of either party. They are to take into consideration the damage to the land the additional fencing & any peculiar advantages which the own— er may derive in mitigation of damages. It is also their duty to examine what the damage is for erecting and keeping one or more gates across the same if the court permit this to be done provided said

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road be not a public or post road. If the inquest cannot be com— pleted in one day the sheriff shall adjourn them from day to day until it be completed. The inquest thus made shall be sign— ed & sealed by all the jury & shall be transmitted to the court under seal & then if upon the whole the {jury} court shall think such road advantageous leave to open the road is granted & at the next court levy the costs & damages will be al— lowed — but if the contrary be the result of the investigation the court will adjudge the costs against the applicant. It will be remembered that the superior court has supervision over the {permits} decision of the county court. In 1835 — a law was passed materially modifying the former law but making it option— al with the county courts to adopt it or not but this like all other partial systems has had no good effect. Sessions acts '34-5. p. 56. It is not required that the purpose for which the road is open— ed should appear in the petition provided by [othe] inform— ation the purpose appears to the court. If the proprietor of the land above is concerned upon his application leave will be granted without farther investigation. 4 Call 374. If viewers are required at all they must act under oath both before the court & at the time of the inquest. The right of way is the only right

which the public requires over such road the freehold still remains in the owner of the land. 3 Randolph 563. 4 Call 441. The deputy may act under the writ of "ad quod damnum" as well as the high sheriff it not being a judicial act. 2 Washington 128 — 1 Call 195 — Discontinuance of Roads. We have seen that as soon as the road is opened a surveyor is appointed to it to all that it is kept in proper order. Besides the power of opening & altering roads the coun— ty court may discontinue a road. The person applying for dis— continuance shall give one months notice by advertising at the court house door of the county where the road runs & the court shall direct the sheriff to impannel a jury as before who upon exam ination shall transmit under this hands the inquest sealed to the court may discontinue or keep it open provided that no post road be discontinued. Tate 800. Bridges & Causways. When it appears to the court that these are necessary a contract may be made for the erection the expenses of which will be allowed at the next levy. If such

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bridge or causway be between two counties the expense shall be paid by both in proportion in proportion to the revenue they pay into the treasury. Three persons shall be appointed by the county court cognizant of such fact — and notice shall be given to the justices of the other county whose duty it shall be to appoint three persons to meet those appointed by the other court at the place appointed on a certain day & the six or any three of them shall determine the manner of construction & provide for the execution thereof. If the justices of the other country shall refuse upon the notice required to make the appointment an applicaiton shall be made to the superior court & a mandamus shall be issued com— pelling the court to perform its duties. No order for the crea— tion of a bridge or causway shall be issued unless a ma— jority of the acting justices of the county concurs — and un— less it be entered of record a month previously that such order will be made. In all cases the person executing the work shall give bond & security for its faithful execution upon which suit may be brought by the court or any person injured & the contractor may bring an action on the contract against the justices for the payment of the stipulated sum. When a mandamus does not lie see 2 Leigh 165. When a mandamus lies see 2 Va cases 9 & 499. The law as to public landings is nearly the same as that of causways & bridges. See Late 805. Gates may be erected &c. Formerly no public road could be stopped by a gate but afterwards being found somewhat convenient especially on those roads not much used a provision was made giving this power to the county courts except as to Turnpikes & post roads a majority of the acting justices concur— ing. But the same authority may remove them when found necessary. Felling trees in the road — injuring signs indices &c may be punished by indictment or prosecuted before a single justice. Surveyors of roads who permit them to be obstructed or out of repair may be indicted or tried before a single justice of the peace & fined by the justice.

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A justice may upon his own observation or in formation from a third person summon an overseer of the road & fine for him for neglect of his duty. Prosecutions for any offence under this act shall be commenced within six months after the commis— sion there of. (307) No person can expatriate [&c]. This principle of the common law is irreconsilable with the {(...)}natural liberty of mankind. Desertion of ones country is not only dishonerable but may be punished by the government. But in time of peace & quiet — this liberty ought & cannot justly be prohibited. 2 Mumford 396— The legislature of Va has provided a method by which a citizen may expatriate himself. It may be done either by deed attested by three witnesses or by declaration in court.

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Notes on Intermediate Mathematics Lecture 1st October 5th 1846

Trigonometrical lines. [Trigonometrical] AB measuring the angle ACB. BF its complement figure at left] BD the sine. AT the tangent. CT the secant[.] AD the verse sine. EB= CS the Cosine. FR the Cs tangent. CR the co-secant[.] EF the co-versed sine.

Algebraical signs preficed to the Trigonomical Lines Sine Cosine Tangent Co Tangent In 1st. Quadrant + + + + 2nd " + - - + 3rd " - - + + 4th " - + - -

Values of the Trigonometrical lines corresponding to different areas Arc Sine Cosine Tangent Cotangent Sect. Co sect. Versed sine Coversd. sine 0° 0 +R 0 +∞ +R +∞ 0 +R 90° +R 0 +∞ 0 +∞ +R +R 0 180° 0 -R 0 -∞ -R -∞ +2R +R 270° -R 0 -∞ 0 -∞ -R +R +2R 360° 0 +R 0 +∞ +R +∞ 0 +R

Probl. The sum of the squares of the sine & cosine of any arc is = [geometric fig.] to the square of the radius. In the triangle CBD right angle at D we have $CB^2=BD^2+CD^2$ or $Radius^2 = Sine^2 = Cosine^2$ Remark. The absolute values of the sine cosine &c will obviously depend on that of the radius, for convenience we usually take the Radius = Unity & then the several trigonometrical lines will be expresed in part of that unit. Prop. Let it be requires to find the numerical values of the sine & cosine of an arc of 45° the radius being unity. [geometrical fig. at right] Since AB =45° = 90/2 :. BF = 45° :. FCB = BCA. And since EC & BD are parallel we have ECB = CBD:. CBD = BCA & consequently CD =BD :. $CB^2 = CD^2 + BD^2 = 2BD^2$ or $1^2 = 2\ sine^2\ 45°$:. $sine^2\ 45° = 1/2$:. Sine 45° = √1/2 = 1/2√2 Also cos 45° = 1/2√2 Prop. 3. The sine of an arc is equal to one half the chord of twice that Arc. Let AB be any arc - Take AD = AB & join BD. CD. CA & CD Then since BA =AD we have BE =ED [geometrical figure to right]

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& :. BE = 1/2 BD or sine AB = 1/2 chord of 2 AB Prop 4. Having given the sine & cosine of an arc to find the value of the tangent secant cotangent & co secant [geometric figure at right] The similar triangles CDD. CAF. CBE & CRF give the proportions CD: DB: CA: AT = CAxDB C.D or tangent R x sine. CE: EB:: CF: FR = CF x EB or cot = R^2. CE: CB : : CA : CT = (...) cosine C (...) sine

or see R^2/cos . CE : CB :: CF : CR = CBxCF or [covicant] = R^2/sine CR

When the radius is taken as the unit these formulas assume simpler forms & thus. tan = sine Cot = cos Sec = 1 (...) = 1 cos sine cos sine

It is important to notice that the notation by which algebraic signs are prefixed to the sines cosines tangents &c is in strict conformity to these formulas. Thus when the sine cosine have unlike signs the tangent is negative which should happen since sine = sine cos And when the sine & cosine have like signs the tan gent is posative &c &c. Lecture 2nd. Oct. 9th 1846. Prop. Having given the sines & cosines of two arcs to find the sine & cosine of their sum & difference. [Geometrical fig. at the left] Let AB = a. Bb = Bb = C :. AB = a+b, AB=a-b Then Bi = sine a, Ci = cos a, bo = sine b Co = cos b. bu = sine (a+b) Cn = cos (a+b), bn = sin (a-b). Cn = cos: (a-b) CB = = radius = R - By similar triangles[.] CB: C0 : : Bi : od. bu = od = sin a. cos cb CB: Ci : : bo : bc = sine b cos a R R bB: bo : : Ci : Cd = cos a. cos b bB : Bi : : bo : co = sin a. sin b R R But bn = bc + od. bn = od - bc bn = Cd + co. bn = Cd - cs Hence Sine (a+b) = sine a. cos b + sin b cos a sin (a - b) = R sin a. cos b - sin b. cos a Cos (a + b) = cos a. cos b (...) sin a. sin b R R cos (a - b) = cos a cos b = sin a. sin b. And if R be taken equal to unity R sin (a +/- b) + sin a . cos b +/- sin b. cos a. And cos (a+/- b)= cos a. cos b = sin a sin b Prop. To find the sine & cosine of a multiple arcs. In the formula sin (a + sin b) = sin a. cos b + sin b. cos a suppose a = b or a +b = 2a :. sin 2 a = 2 sin a. cos a. Similarly by supposing successively b = 2 a. b = 3a &c :. sin 3a = sin a cos 2a + sin 2a. cos a sin 4a = sin a. cos 3a + sin 3a. cos a. Sin 5a = sin a cos 4a + sin. 4a cos a &c. Making like substitutions in the formula cos (a + b) = cos a. cos b - sin a - sin b there results cos 2 a = $\cos^2$ .a $\sin^2$ a

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Capt Thomas Davis Stanardsville Greene Co Virginia

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Notes on Chemistry Session of 1846-7 Heat - Camphor & most odoriferous solids will pass off in the form of vapor but as a general rule liquid substances are the only ones which are subject to vaporization. Vaporization is divi— ded into two parts viz by Ebulition & evaporization. Water will not boil at the same temperature in a mettal as in a glss vessel but in the mettal it will boil at 212° & in the glass at 215°. However if you throw pieces of Iron in the glass vessel it will boil at 212. The temperature at which water boils depends somewhat upon the presure which it sustains. Water will boil at a lower temperature in vacus than in the open air by 140°. If a boiler containing water be heated to read heat the water will not touch the boiler but assume what is called the spheroidal shape & then if the boiler is allowed to cool suddenly the water as soon as it is sufficiently cooled will fall upon the boiler & explode into gas. The water whilst in this condition is not at boil— ing point by 7° although the boiler has to be heated to 380° before it will take this form. It will take 50 minutes to boil off the same amount of water when in this state as would evaporate in the ordinary way in one minute. As we ascend in an arithmetical proportion the pressure of the atmosphere dimishes on a geometrical proportion. Water will boil 1° lower for every 550° we ascend. There are four things which have an influence over evaporation of liquids viz 1st. the pressure of the atmosphere 2nd. the surface of the liquid exposed 3rd. the stilleup or mobility of the air & 4th the dryness or dampness of the atmosphere. As we ascend the air becomes less dense & consequently more cold for there is much greater capacity for heat in rarified air than in denser. The pressure of the atmosphere diminishes in a geometrical ratio as we ascend ie for any 2 & 7/10 miles we ascend the air diminishes to one 1/2 of its original density. There is another cause why the air grows colder as you ascend viz the air being more dense near

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the earth it exerts an influence to stop the rays of the sun & by this means makes it much warmer. The heat which the atmosphere receives from the earth is still another cause for the diminution of the temperature as we ascend. Water boils 1° less foe every 550 ft. we ascend but the thermometer falls 1° for every 332 ft. we ascend. Thus by taking the mean temperature at any point on the globe & subtractin 32° from it & then multiplying in 332 by the remainder we may find the hight to which we will have to ascend in order to reach presing point. Thus for example the mean temperature of the equator is about 80° substract 32° from the 80 & we have 48° left then multiplying by 332° by 48° & we get 15936 ft. as the freezing point over the equator. There are two instruments for measuring the evaporation call— ed the [Cryophums] & Duniells dew point Hygromettr. The heat of water boiling at 100° is 1112 or in other words the vapor of water boiling at any temperature will 1212. Vapor is increased in its elastic force by the appli cation of heat. The various sources of heat are the [sun] the earth vitality chemical action & mechanical action. Light eminates from all bodies said to be luminous in straig— ht lines at the ratio of 195,000 {000} of miles per minute — thus the light of the sun reaches the earth in about 8 minutes. It may be reflected transmitted or absorbed & when transmit ted it may

undergo what is called refraction ie a devia— tion from its original direction. Bodies which reflect under certain circumstances will transmit in others. When a ray of light comes from a rare medium into adm— (...) one it is deflected towards the perpendicular but when it again isues from that denser medium again it is deflected from the perpendicular & will resume its original di— rection but not in a straight line with the direction which it entered the denser medium but parallel. A ray of light passing through one object will not be reflected in certain conditions {but will} by another & this is called polarization of light. Absorption is when light falling on a certain absorbing material disappears. The different rays of light have different velocities viz Red has the greates & the velocity diminishes as you procede down the spectrum until you

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3 get to violet wich has the least of all. The [decrease] position of a ray of light from the sun by a prism is called the prismat— ic solar spectrum. There are but three elementary colors viz red yellow & blue the red and yellow forming orange the blue & yellow forming green the blue & a mixture of red & yellow forming indigo & lastly a composition of the elementary colors forming violet. Rays of light in the spectrum have heating powers the red being the hotest. It also possesses chemical powers — the violet pos— sesing this power in the greatest degree. The greater illumina— ting powers is in the edge of the yellow & green. Hershel has late— ly discovered an eighth color in the spectrum caled the lavender which comes after the violet & is a composed of violet & red. [curly bracket at left of page] Daniells Hygrometer for ascertaining the dew point is composed of a bent tube with a bulb at each end one of which is coated with some black material the other being covered with muslin & with in each of these bulbs there is a little water & in the one coated black there is a small thermometer in serted in the water.

Electricity. Modes of producing electricity. Friction & Induction [curly bracket at left of page] Elementary facts. Attraction & Repulsion: Laws for regulating these, Forms. Exci— tation & discharge. Electric & non—electric. Conductors & non-conductors. Insulation & relation of bodies rubbing & rubbed. The two electrical theories.

Electricity derives its name from the Greek word ελμπϴν this being the name which they gave to amber from the circumstance of its attracting light bodies when rubbed. When any resinous substance is subjected to fric— tion it will produce electricity. Silk Gum — elastic & glass will pro— duce electricity but of an opposite nature. When the body of what so ev— er nature it be is rubbed & thus caused to produce electricity it will attract another light body at first but after having touch it, it will repell. Vitrious electricity repells vitrious but attracts resinous & the same rule holds with regard to resinous. Excitation is the production of electricity on a body & when this electricity is let off it is called a discharge. That body which is capable of receiving & retaining electricity is called an electric body but that which does not receive it or retain it is a non—electric. A conductor is a body which will carry off the elec— tricity from an electrified body & such a body is all ways a non—electric. A body which will not carry electricity is a non— conductor & is al— ways an electric. A body is said to be insulated when it is in capable of loos—

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ing its electricity, hence a body which will not convey electricity from another body is also called an insulator. Dufey a French investiga— tor & Franklin announced their opinions in the subject of electricity & they were almost the same Dufey giving the names Vitrious & Resinous to the two kinds of of electricity from the circumstance that he formed one of them produced by resinous bodies & the other by vitrious. Franklin gave the name of positive & negative owing to his belief that it was not in the kind of substance but the redundency of elec tricity in the one body & the want of it in the other that produced the different effects. The body which rubbs another is always ex— cited by a different kind of electricity from that rubbed. We can find the nature of a body of any kind ie as to whether it is of a vitrious or resinous nature by means of electricity: the distinguisher of the elec— trometer being used. Electricity is produced by friction & Induction & is always on the outside of a body as shown by Dulongs experiment. Electricity will diffuse itself upon a round mass equally every where but if it is elongated it will collect a little to the ends & if made in the shape of a cilinder it will be still more at the ends but finally if it is made pointed at the ends it will be formed neutral in the middle but contain the electricity upon the points. Induction is the obtaining of electricity at a considerable distance.

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Notes on Jr. Law - Blackstone's Commentaries Lecture,, Seventh,, January 26th,, 1847

The revenew which the county has at its disposal is raised by means of poll taxes upon all males over the age of 16 & fe— males slaves of the same age. (359) Provision for the poor in Va. The poor laws of Va are founded upon those of England but differ widely from them in detail. Here the poor are provided for at home or at a house provided for the poor of each county: the ex— pense is paid out of a levy by a poll tax upon the class a— bove mentioned. The expenses are computed by the over— seers of the poor the tax assessed by them & levied by the sheriff. The county court is required to divide the county into four districts & in each district three over seers alleast are to be chose by the free holders & housekeepers. The over— seers are to hold an annual meeting to regulate the necessa— ry provision for the year following to estimate the char— ges of the previous year & to assess the necessary tax to incur the charges. They are to make provision fo all poor blind or otherwise disabled persons either at their residences in the respective districts or to send them to the poor house. They are to take care that the poor likely to become chargable do not stroll out of the county into some oth— er & in case the poor of other counties should come into theirs they are to provide for their removal by giving notice to the justices or justice of the peace of the county who shall issue a warrant causing such poor person or persons to be removed to the county where he last had a legal settlement. This legal settlement to entitle one of the benefits of the poor laws is acqui red by one whole years residence — Tate 745. It is the duty of the overseers not only to provide for the present necessities of the poor but also to make provis— ions for the future education & support of orphans or children of indigent parents. It is the duty of each ov— erseer to make monthly returns of all the poor orphans or children of such parents as from their character & cir—

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7 cumstances are not able to bring them up proper manner in their respective districts & the court in its discression will direct them to be bound to a Trade. Escheators — An escheator is appointed for every county nomi— nated by the county court & commissioned by the Governor. His fidelity is secured by a bond of $ 3.000 made pay able to the commonwealth. His duty is to take cognizance of all lands escheating to the common wealth & he must act in person & not by deputy. He takes his inquest at the court house of the county or corporation & by 16 freeholders impanneled by the sheriff. (307) An Englishman can not throw off his allegi— ance &c. The following topics for discussion are suggested here — 1st. Doctrine of allegiance & expatriation in Va. 2nd. Effect of the Revolution upon lands mutually held by British & American citizens in America & England. 3rd. Laws of Naturalization. 4th. Rights of Aliens to lands in Va. 1st. Allegiance is an obligation of the highest character but the principle of the commentator is too nearly allied to that principle of servitude whence it took its origin to obtain in America — that children should follow the condition of their parents is but natural but it is ne— ssary also that they should have an election when they ar— rive at the age competent to form a judgment. Our law de— clares that all persons born in Va shall be citizens of Va. The English law declares that all persons born within the realm & whose father or grand fathers at the times of their birth on the fathers side {at the time of their} shall be citi— zens of Eng. Here we see that there may be a conflict of du ty as a citizen of Eng: may at the same time be a citizen of Va. If then this country should be involved in a war with Eng. this two fold allegiance must make him a traitor to one country or the other according to the principle of the com— mon law without any fault of his own & the only way to escape this inconvenient & unjust consequence is to allow the individual at the proper age to make his elec— tion which country he will adopte as his house.

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But this natural liberty does not allow entire freedom in throwing off an assuming allegiance. To desert ones coun— try in time of danger is a great violation of moral duty & may well call forth the arm of the civil magistrate. The law of Va has prescribed a method by which a citi— zen may expatriate himself. It is by a deed executed in the presence of three subscribing witnesses two of whom are required to to prove it in the general {a} court circuit court or coun— ty court — or by declaration in open court that he relin— quishes his allegiance & then if he actually leave the commonwealth — the statue declares him absolved from the allegiance of the state from the time of such de— parture. The government of the U. S. has never legisla— ted upon this subject though it has been recommended by the supreme court & this want of legislation has earned some inconveniences. The power of Congress to legislate upon this subject has been questioned by some notwith standing the opinion of the judge of the supreme court to the contrary. See 2 Munford 396. What the relation is which a citizen of Va having relinquish— ed his citizenship bears to the federal government is doubt— ful. On the one hand it is said that a citizen of Va owes a separate allegiance to the general government. Others say that it is absurd

to speak of a citizen of the U. S. in any other way than as a citizen of one of the several states. The question whether expatriation from the U. S. can take place inde— pendent of the general government was discussed in 3 John: Without deciding the abstract question it was determin— ed that such expatriation must be bona fide — must be permanent & for a lawful purpose. This question also arose in 2 Cranch 115 — both parties acknowledged the natural right of expatriation. It was further discussed in 7 Leigh 347. Judge Kent con— cludes from all the discussions & authorities that a citizen cannot expatriate himself without an act of the government — 2 Kent 49. Judge Tucker considers that it would be tyrany in

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9 the government to refuse this liberty without deciding the abstract question. 2 Effect of the Revolution upon lands held by citizens of the two countries in England & America. All natives in Va are citizens. All entitled to citizen— ship by former laws & all whose fathers or mothers were citizens at the time of their birth — it is provided by the constitution that that citizens of one state shall be entitled to all the privileges of citizens in every other state — but this means only a modified citizenship — as it was not intended that they should exercise in those states the right of sufferage — &c. 4 Wheaton 46. In Leigh 749 {(...)} the question arose wheth er the same form was required in emigrating from Va to another state of the union as to a foreign country — and it was decided that the same formalities are required. In 1 Munsford 64 it was the opinion of the judges that there was a difference before the revolution between cit— izens of Va holding lands in England & citizens of Eng: holding lands in Va — because in the first case there was an alliegance while in the second there could not even be a pretense of an allegiance but this opinion was not concurred in by the English lawyers. It is the general doctrine that a citizen of Va born before the revolution cannot inherit land in Eng: nor a citizen of England inherit lands in Va un— der the same circumstances — 4 Cranch 321. Ther is a difference between the Eng: & American law— yers as to whom our independence & separation from G. Britain took place. The first contend that the separation took place in 1783 at the conclusion of the peace while the last contend that it took place in 1776 at the declaration of Independence — 7 Kent 59. An alien is should be observed cannot be the President or vice—president of the U. S. nor can one be a member of con— gress until naturalized & has been nine years a citizen & seven years citizenship is required for a member of the house of representatives.

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Laws of Naturalization. The power to pass laws of naturali— zation is vested in congress exclusively — because unless the power be exclusive it cannot be uniform. 2 Wheaton 269. Tate 97. The provisions of the present law are in substance these all free white persons resident in the U. S. for the term of five years without an hours absence who have two years before declared their intention to become citizens {of} in some court of record upon provin to the satisfaction of the court a good character declaring their attachment to our institutions — re— nouncing their allegiance to a foreign country & renoun— cing their title of nobility if any they have may take the final oath of allegiance. Formerly record evidence was requi— red but now their time of residence may be proved by parol. The infant child of parents naturalized share their privileges. 4th. Right of Aliens to lands in Va. At common law we have seen that aliens

could take lands by purchase but not by descent & how ever received could not hold them. Our statutes have made some alteration but the general principles of the common law is retained. The first Va statutes made impor— tant changes but not so important as the latter ones. By one of these statutes it is ordered that if an alien holding lands should sell them or become a citizen before "office found" the common— wealth should have no title to them. Another provided that when ever an alien should here after purchase lands if he sold them or died or became a citizen before procedings commenced that they should not escheat. But the statutes of 1833 made the most effectual provisions. It provide that aliens may purchase & hold lands in Va by simply declaring in a court of record their in— tention to become citizens of the U S & that the airs of such aliens may take them by making a similar declaration - 5 Mun: 17. 116 A trustee being considered merely the conduct through which the es— tate passes from one man to another may be an alien. In a subsequent case it has been decided that a trust es— tate will escheat for alienage as soon as any other. 3 Leigh 492. It has been decided that an alien in Virginia is capable of taking by devise even "flagrante bello". 3 Wheaton 563. 9 Wheaton 489.

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11 Lecture Eighth January 28th 1847 Chap: 14.— In discussing the relation of master & servant the commen— tator considers first the several kinds of servants & how this relation is acquired secondly the effect of this relation upon the parties & thirdly its effect upon strangers. A master is one who by law has a personal authority over another & that person is his servant. To Blackstone four classes of servants in Va we must add slaves. They are those who were so 17th Oct 1789 and descendants of the females of them & those since lawfully introduced their descendants Tate 842. Slaves — Those lawfully introduce since 1819 are such as are borne within the U. S. teritory & are resident there in at the time of removal not being convicts. Previous to 1819 the laws were strict— er. By laws of 1782 & 5 introduction was prohibited unless the own— er removed into the commonwealth to reside or claimed them by descent marriage or devise being himself a citizen & a slave re maining a year was free & the importer forfeited $100. 1 Stat: at L. 122. By act of 1806 the slave became liable to be sold by the overseers of the poor & the importer forfeited $400 for each slave. 3 Stat at large 251—2. The relaxation of policy began about 1811 & now the law is as above. Slavery in Va was introduced not by the will of the people but was forced upon them by Eng:. The early legislative bodys perceiv— ing that this class of persons would probably be injurious be— ing accumulated in our country made efforts to restrict it but every act was vetoed by the King — & it was one of the causes of aggrievance addressed to the world in 1776 that those subjects who had been forced upon the country contrary to its will had been excited to rebellion by those who introduced them. Slave— ry in Va is justified by necessity. It is decidly unprof— itable & adverse to the prosperity of the commowealth. Mr. Jefferson remarked that we had the wolf by the ears & it was equally dangerous to let—go or hold on. Mr. Walker has made some very ingenious & astonishing estimates of the comparative condition of the slaves & free negros in the U. S. 1st. No. of deaf & dumb — blind — idiot & insane of the negroes in the non slave holding states is one to every 96 in the slave holding states 1 out every 672 or 7 to 1 in favor of the slave holding states compared with the none slave holding.

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2nd. No. of whites deaf & dumb — blind idiots & insane in the non slave holding states is one in every 561 being nearly 6 to 1 against the free blacks in the same states. 3rd. No. of negroes deaf & dumb — blind — idiots insane pau— pers & ind prison in the none slaveholding states is 1 out of every 6 & in the slave holding states is 1 out of every 154 or 22 to 1 a— gainst the free blacks as compaired with the slaves. 4th. Taking two extremes. In Main the no. of deaf & dumb blind idiots & insane by census of 1840 is one out of every 12 in Florida 1 out of every 1105 or 92 to 1 in favor of the slaves of Florida in comparison with the free blacks of Maine. 5th. In Mass: by census of 1849 & also by their own official returns to the legislature it appears that no. of free blacks deaf & dumb — blind — idiots & insane or in prison is 1 out of every 13. 6th. The governor in Va in his late message of Decr 1846 states that out of 226 convicts in the penitentiary 82 were free ne— gros & mulatoes & 142 (144) whites - Yet the no. of whites is 740, 968 — & of free blacks only 49,840. 7th. Mr. Walker computes cost to people of 6 states adjacent to slave states of supporting & protecting society against free blacks at in 1853 $3.333.300 in 1865 — $6.666.600 & in 1890 $13.333.200. Removal of free blacks should therfore be as much as possible "pari possu" with emancipation & for this purpose colonization in Africa is deemed a most feasi— ble. The patronage of the commonwealth might be exten— ded with advantage as much as possible to that enterprise. Extinction of slavery in Va is deemed inevitable ultim— ately from the great pecuniary burden which it will entail[.] Mr. Tucker computed its possible duration to any advantage at 80 years. It will cease partly by emancipation & removall but much more by emigration of masters or slaves to the southern states. (424) - The commentator gives two reasons only why a man can not sell himself. Want to adequate compensation for loss of liberty & that this compensation would also belong to the master[.] Of these the first is the material reason because the compen—

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13 sation might be held by a third person for the use of the slave. The annotator seems to misunderstand the commentator here as he evidently speaks of a service acquired by contract & not of the relation of master & slave. Lord Holt declared in 1806 {that} a slave became a freeman upon his landing in Eng: but the same doc— trine was established in Scotland as early as 1776. The constitution of the U.S. provides that the importation of slaves previous to 1808 shall not be prohibited — & in contemplation of the expiration of this time congress passed a law provi— ding that if any citizen of the U.S. on any vessel or any person whatever on a vessel belonging to or in the service if the U S shall seize any person not a slave by the laws of the U.S. with a view to make him a slave whether in the U.S. or in a foreign country — such person shall be considered as guilty of piracy & punished with death. It should be observed that the common law does not for—bid slave ry or anihilate the masters right but it affords no remedy by which the master can assert his right over the slave & hence when the master returns with his slave to his former residence his right revives. 1 Leigh 181. But if the master adopted the new country as his residence or during his stay the slave asserted his right & obtained his freedom — his status becomes fixed & his masters right is extinct i.e. defunct in the abstract to speak techni— cally. 5 Leigh 615. But the slave so recovering his free— dom is allowed no compensation for his detention on an im— plied contract of service — which may seem to be a

hard principle. A negro recovering his freedom can obtain no compensation for the time he has been unjustly held in bondage. 4. Leigh 176. The reason of this given by the judge Tucker is that it is doubtful whether infancy & sickness has not been equal to the labors of the slave & to cut at once the gordion knot the present principle was adopted. 425. Menials — A general hiring is for the term of a year. (5) Note (5) is so contradictory that it is difficult to find out the an— notators meaning. But here it may be considered as a general doctrine that a general hiring is for the term of a year; of all manner of servants. In case of menial or domestic servants they may be dismissed upon a months notice but this is to be — understood as controlled by general custom or special agreement.

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On the last mentioned subject see Chitty on contracts 576. (426) Apprentices. It is remarkable that apprentices & no other kind of servants were always required to be bound by deed — & the law still continue the same: a deed being required in all cases. Our law directs to be bound as apprentices all orphans of no estate or an insufficient one for their support — the children of indigent parents unable to support them & illegitimate chil— dren. The contract must always be made by indenture ex— ecuted by the over—seer of the poor & the master & must be re— corded within six months or no benefit to the master can accrue. The master is required to learn the apprentice to read & write & cipher as far as the single rule of three inclusive & also some trade art or business named in the indenture which inden— ture is of no effect unless by order of the court. What would be considered an art trade or business is doubtful. In Pensyl— vania is has been decided that domestic duties of a waiter would be considered a trade since there by the person is enabled to realize excellent compensation for his labor. For colored servants the master is to pay annually to the moth— er or father of the children except the last year of service it shall be paid to him or herself. Under this act males may be bound until they are twenty one years of age females until they are 18. Our statute provides that the guardian with — the approbation of the court may bind the ward to a trade af— ter he is 16 years of age & that the guardian may extend the time until he is 25. The court is ever open to hear the griev— ances of apprentices & to take care of their interests. 1 Hen: & Mun: 413. If the master dies the executor or administrator may within 3 months assign the apprentice to another master approved by the court. Tate 413. If an apprentice deserts his mas— ter an action lies against him though he were an infant at the time that he signed the indenture. If the master is chosen by the overseers of the poor & fails in his duty an action may be brought against him in the name of the apprentice — but if appoin— ted by the court in the name of the court. 3 chem: 138. 6 [LeI]: [560]. Our statue provides that any person haboring an appren— tice shall forfeit three dollars per day. Where the court bends

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an apprentice his assent is not necessary if by the oversee— rs of the poor the covenant should be given to the apprentice himself. If the apprentice fails to sign in this latter case it is worthless to the master as he cannot hold the apprentice by force of the covenant. At common law there could be no assignment of indentures because there was supposed to be a personal confidence

reposed in the master. But this has been modified in Virginia. No apprentice can be carried out of the state unless stipulated in the indenture or the nature of the trade be such as to require it. All contracts may be disolved by mutual consent of the parties & this applies to the contract of apprenticeship although it was former— ly doubted. 1 Term Reports 139. 1 Sargent & Roll 332. And this may be done thought it be on account of complaints on the one side or the other & though one has been dragged into the coun— ty court at the instance of the other. 1 Saunders 314. Indented servants. These were foreigners introduced under promise to labor for a specified time. We have none of these at this time but in the first settlement of the country this was found very useful as many emigrants paid their passages to this coun— try by personal labor after their arrival. They were ameanable to the county court but the statute makes equitable provision for the due performance of the{ir} contract on either side. These might be assigned with their assent & their comfort as to food clothing is provided for by the statute to prevent the injustice of cruel mas— ters. Tate 824. Laborers Provisions of the Statue of England &c. The only persons whom our law exercises a like authority over are vagrants. In Va all able bodied men found loitering without any visible means of supporting themselves & families — & all free negroes without visible means of support or who have been caught dealing with slaves are vagabonds. The county court may cause these to be hired to masters & take the procedes for the county. Lecture Ninth January 30th 1847 Agencies are express & implied. Express where there is an authority expressly given — implied from recognition of previous acts. Agents are general & special. An agent is general when he transacts all the business of the principal or all in a particular department. Special

when he is charged with the performance of some particular iso— lated thing. An agent is not liable while he keeps within the limit of his authority. There are some cases in which the agent is found for his acts. 1st where he contracts in his own name & does not make known the name of his principal. 2nd where he acts without authority. 3rd where he contracts with a view to his own interest or that of third party. 4th where he contracts under seal or for an unincorporated association — as a jocky club & this because it is supposed that those giving credit look to him & not to the individuals whose scattered situation would render the security imperfect. Servants of government are not responsable because it is supposed that the liabil— ity of the government is contemplated. An agent for an un— incorporated institution is not liable when he has a special authority or the individuals composing it are not so far appart as to raise the presumption above referred to. The master is liable for negligence when the servant is in his service but for a willful injury the master is not liable. In case of negligence the servant is liable to his master for damages but whether directly liable to the party injured is doubtful at this time. The principle is liable however no matter how many sub—agents there may be. The master is not liable for the criminal acts of his servant unless standing by & commanding (& then the slave is not exculpated). In Va there is a restriction upon the punishment of slaves. The master can not kill or maim them — but for cruel treatment he is not accountable by the construction of the courts. Our [sta] related to maiming but seems not to have contemplated cruel beating for the following reasons. 1st The common law took no cognizance of this relation of master & slave. 2nd The Greek—Roman & Jewish laws must be called in to aid in the

construction & these did not punish cruel treatment. 3rd in 1669 a stat was passed saying that if in correcting a slave the master in— flicted death — it should not be felony. 4th Notwithstanding the common law it could not have existed befor 1669 for then a statute was made upon the subject. Judge Brockenboro dis— regarded these reasons & said the slaves were to be viewed partly as

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persons & partly as property & so far as advantage of property was concerned he had absolute controll over him — but was bound to observe the laws of humanity with refference to the slaves per— son; that the repeal of the barbarous principles would intro— duce the common law principle. But let his private right be what it may the master cannot correct has servant in public because it tends to a {p}breach of the peace & is con— trary to public decency. A master can only claim damages for the loss of his slaves labor not for the injury which the slave personally sustains. If the servant be injured without any loss of labor it is [babious] whether his master can bring an action for the injury. Judge Tucker thinks he can others say no! At common law if there was a trespas & a felony the tres pas merges in the felony the reasons assigned were that by the comission of the felony his goods were forfeited & it would tend to discover the prosecution of crime. This is not the case in Va because we have no forferture — the chief reason at common law. A man is liable in Eng'd for hiring another mans servant only when he has notice of the fact. But not so in Va as to slaves because their color is prima facie evidence of slavery until proved otherwise by their papers. If an overseer punishes a slave so as to maim or kill him the master is not liable (but the overseer is both liable to justice & to the mas— ter for his loss). In regard to implied agencies it may be remar ked that they may arrise from the recognition of previous acts or from being incident to an express authority. The connection between the authority granted & the authority exercised must be that of a necessary incident — not a dubious connection. It is not material whether the agent contract in his own name for the principles or the principle contract by means of his agent. The agent must not deal with the substance of the agency for his own benefit. An agency is terminated by death of agent or principle — by finishing the busi ness for the execution of which the agent was employed by a change in the condition of the parties as by the mar riage of a woman — by Lunacy & finally by express rev— ocation.

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Lecture 10th February 22nd 1847

Husband & Wife. At common law certain circumstances con nected with marriage were considered sinful by the ecclesias tical courts & they declaired marriages so contracted void — pro sa— lute animae. These are known as canonical disabilities but would be more properly termed impedaments. They were precon— tract consanguinity affinity & incurable impotency. There are other circumstances which in the eye of the law invalida marriages & these are properly stiled legal disabilities & are rec ognised in the courts of common law. The effect of these is to re nder marriage void: as prior marriage want of age want of the con sent of parents

or guardians & want of reason. In Va there are no ecclesiastical courts but the distinction be— canonical & legal disabilities exist here as in Eng. and are nec essary to be borne in mind. But in Va it would seem that none of these disabilities render marriage void ab initio — they are void able but only void by a decree of a competent court. While the dis tinction between the causes still exist — the grand feture — the two tribunals in Eng: as well as the effect upon the nuptial con— tract are abrogated. We have a statute declairing that the issue of marriages declared void by law shall be deemed legitimate. In regard to canonical disabilities that of precontract is not supposed to exist here by Judge Tucker. The other impediment viz consanguinity affinity & incurable impotency exist here. Tate 500. Incest. Tate 688. Marriage — The degrees of relationship prohibited in Va correspond nearly to the Eng: statutes & correspond exactly with the Levitical degree. The fourth degree seems to be the nearest relatives permitted to intermarry in both countries. In the constitution of our state as well as in that of Eng: it must be observed that the particular relatives are mentioned merely as examples & that other degrees of relationship embraced by a parity of rea— soning are prohibited by these statues. Tate 500. Incest — By a subsequent statute for a man to marry his wifes sis— ter; is made a misdemeanor & punishable by fine & impris— onment & it would seem the statute did not intend to avoid the marriage.

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19 1st Legal Disability Prior Marriage

This is termed bigamy in our statute — & is punished by confinement in the penatentiary. But there are some circumstances which except the parties from this penalty. Thus where the other party has been absent either within or without the common wealth for a term of seven years with— out being heard — from — marriage is not bigamy. The same is the case where there has been a divorce by the lawful authority — or previous marriage de— clared void by authority — or the parties were within the age of consent. It must be observed that although the statute does not punish second marriage in case of 7 years absence of the other party — yet if this party afterwards re— turn such marriag is void. 4. Johnston 53. The divorce meant is a di— vorce a vinculo. & especially must it be so as our statute declares that no divorce a mensa shall have the effect to authorise the parties to marry again. 2nd Legal Disability Want of Age. It will be observed that this does not make the marriage void — but only void— able — & the parties may confirm it when they come of age — without add— itional ceremony; & the wife is dowable before the legal age of consent pro— vided she be atleast nine years of age. 3rd Want of consent of parents or Guardians At the common law if the parties were underage & had not the proper consent this of itself was sufficient to make the marriage void. In Va the proper person to give consent is the father mother or guardian. In case of infancy this consent must be given in writing formerly under seal — attested by two witneses one of whom shall appear in the clearks office & swear that he saw the father &c sign said writing — & any clerk issuing a lisence contrary to this stat: shall be imprisoned & when the parties are of full age the clerk shall take bond to the amount of $150 that no mpediment exists to the marriage — & if he fail to do so he shall forfeit $150 to the commonwealth. 6 Leigh 636. Any minister of the gospel to whom a circuit shall have been assign— ed on application to the court may obtain lisence to celebrate marriage by giving bond in the penalty of $1500 for the faithful discharge of his

duties. Marriage here may also be celebrated by publication of bans which consists of giving notice at the church door for three successive sabaths that such marriage will take place. We have a statute author— ising the court to appoint a person to celebrate marriage when there is no minister in the county — such person shall give bond as the minister does —

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It is the duty of the minister to return to the clerk's office within 12 months a certificate of each marriage celebrated by him under penalty of a fine. Yet notwithstanding these provisions persons married in the presence of any authorized minister without banns or license can not avoid it. The marriage is neither void or voidable. 2 Kent. 90. Statutes of 4 & 5 Philip & Mary punishing persons for marrying in— fants. These statutes in their general tenor have been created in Va. Our statute provides that any person over 14 unlawfully carrying off any female under the age of 16 against the will of her father &c shall be punished by imprisonment not exceding two years & if such in— fant be married or deflowered the term shal be doubled. And if any infant between the age of 14 & 16 shall marry without the consent of her parents &c the next of kin shall enter upon & enjoy all lands belonging to her in possession remainder or reversion during cov— erture. Must actually contract &c. It seems that indented servants in Va may contract marriage— but any minister celebrating the same shall forfeit $250 to the commonwealth. Slaves are incapable of contracting marriage in Virginia. 5. Cowan 397 — 2. Johnson 1 Any white person intermarrying with a negro shall be impris— oned for six months & pay a fine of $30 & the minister celebrating such marriage shall forfeit $250 to the commonwealth. But in these cases the marriage is valid. It should be observed that Quakers Jews &c are permitted to celebrate marriages accordin to the customs of their societies. Lecture 11th February 4th 1847 — The law of marriage is a part of the jus gentium from which it follows that a marriage contracted according to the laws of one country is valid every where. Some writers upon the civil law say that absenses for the express purpose of marrying in another coun— try where the persons are qualified is an exception to this principle. But this is justly repudiated by most of authorities & the common law principle is deemed much the safest. Hence a marriage in Maryland is valid in Va though this same marriage could not have taken place in Va. 2 Kent 91 — 6. Massachussets Reports 157. This principle has been carried so far that (though those very gross cases

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contrary to the law of civilized mankind are excepted) yet marriage celebra— ted in another state within the prohibited degrees has been allowed to be val id — because according to the law of that other state. Thus if a man mar— ries his wifes sister it is contrary to the law of Va yet if he marries her in another state where the law differs {from} he may live in Va by this principle. For a like reason where a man was divorced a vinculo for adultery & mar— riage was prohibited again under the law where the parties lived they could marry in another state where the same was not prohibited & then return to their own state. Stories Conflict of Laws 105. Our law has made an exception to this principle. A stat: declares that if any per within the prohibited degrees shall go out of Va for the purpose of celebrating mar— riage & afterwards

return to the state they shall be punished as though they were married in the state — & the superior court may decree divorce & require bond & security that they will not again cohabit. Tate 501. The proof of mar— riage must be according to the nature of the suit: varied. Thus in all civil actions except crim: con: general reputation & cohibitation are evi— dences of marriage. But in criminal actions & actions in crim: con: the proof must be by the production of the marriage register. The marriage register is the returns made by the various ministers which returns the clerk records. 2 Va Cases. 95. Dissolution of marriage is by death or divorce. In Eng: divorces are usually granted for canonical disabilities. The civil disabilities make the marriage void ab initio. This is not so in Va: Our law provides for civil disabilities as well as canonical impediments. It will be remembered that the canonical impediments here are consanguinity — affinity & bodily infirmity: the legal disabilities are want of age prior marriage & want of reason. Divorce is generally granted upon application of one of the parties — but in the case of con— sanguiity & affinity the parties would be [inducio] to continue by the same feeling that prompted their union. These are indictable offences but that of bodily infirmity is left to the discretion & choice of the person injured to bear or sue for a divorce. Also a divorce for prior marriage want of age & want of consent is obtained by suit of the injured party. The court having jurisdiction is the circuit court (...) in chancery. The court is empowered to grant a divorce a vinculo for idi— ocy bigamy & impotency of body or for any other excuse under the com— mon law but it seemst that this general phrase embraces [...] particulars.

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The court is to procede upon posative evidence & not to take the confession of the parties. But the issue of such marriages shall be considered legitimate by the express provision of the statute. The grounds for a divorce a mensa in Va are cruelty adultery — just cause of bodily fear & abandonment. This jurisdiction also is commit— ted to the county court sitting in chancery & in no case is the bill to be taken as confessed. For these causes also a court may decree per— petual separation & protection to person & property — may provide a maintainance for either out of the property of the other — may re— store all rights of property to the injured party & provide for the issue of the marriage — & it is declared by statute that a decree of perpetual separation shall have all the effects on property after wards acquired as a divorce a vinculo — but the {property} parties can never marry while both are living as in a divorce a vinculo. There are many other cases not mentioned by the statute for which it would be desirable to grant a divorce a vinculo or a mensa as felony in— sanity &c. In the cases in which the courts are authorized to grant divorces a mensa if a divorce a vinculo is desired application must be made to the legislature as in all cases for such causes as felony insanity &c. To provide against frivolous applica— tions being made to the legislature it is provided that the party intending to make application for a divorce shall file in the clerks office of the county a statement of the causes upon which such application is founded — notice of which shall be given to the other party at least two months before the next court & then the court without pleadings in writing shall cause a {state— ment & their verdict shall be recorded} jury to be impanneled to ascertain the facts set forth in the statement & their verdict shall be recorded. A certified copy of these proceedings shall accompany every petition unless the parties have been divorced a mensa in which a copy of the record shall accompany the petition. But notwithstanding these

precautions the legislature is of— ten improved upon by excuses for not having complied with the recuisitions of the statute — & unfortunately these excuses a too readily admitted. At common law alimony was al— lowed to the wife only in case of divorce but now it is allowed when the husband has driven off his wife or in any case

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23 when the separation becomes necessary. In divorces a vinculo making marriage void ab initio neither party acquires any rights by the marriage as it was only a meretricious marriage. It has been doubted whether the art: of the constitution of the U.S. saying that no law should be passed impairing the obligation of contracts interfered with gran— ting divorces. In 4 Wheaton 623 Judge Marshall declared that the clause only referred to those contracts annulled obviously with— out cause — & not to prohibit the courts from liberating an injured party from a contract which had been violated by the other party. The policy of the different states of the union are varied with re gard to divorces — some granting them with the greatest freedom which in others as in South Carolina divorces are scarce known. This difference of policy has often caused parties to remove to another state merely for the purpose of obtaining a divorce— & this has given rise to various perplexing questions as to the effect of the divorce in the state from which the parties removed. The laws of Scotland & Eng: has given rise to questions of a secular charac— ter — & the difference seems to be irreconsilable as the Eng: courts declare that no contract shall be avoided except by the laws of Eng: & the Scottish courts equally insist upon their right to de— clare such contracts annulled. Stories Conflict 128. The doctrine in America is that the bona fide domicile gives jurisdiction over the local contracts but it is considered that a mere temporary stay — is not such a bona fide domicile. While the parties remain subject to the jursidiction of the state it is certain that the contract can only be dissolved by that law. The husbands domicile is prima facie that of the wife but this does not extend to permitting to remove into another state to avoid the consequences of facts prooved sufficient for a divor— ce in the state where his wife is residing. Such a plea therefore would be invalid & the domicile of the wife would prevail. 10 Mum: 365.14 Pick What the effect of that clause of the constitution is which states that full faith & credit shall be given in each state to the records & ju— dicial procedings of every other state is doubtful. If both parties agree to sub— mit the case to a foreign jurisdiction how would the verdict be acknowledged at the home? From the general principle this verdict would be void but how that

clause in the constitution which says that full faith shall be given a the record of the other states & the acts of congress declairing that the judgments of competent courts in one state shall be valid in all others seems to be difficult to answer

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Lecture 12th February 6th 1847 A woman may be attourney for her husband &c. - All contracts of the wife with express or implied authority bind the husband. This authority may be implied. 1st from the usage & custom of the parties as if the wife has been in the custom of acting for the hus band, 2nd. from the custom of the country as if it be a custom that the wife is

competent to transact all he business of the husband not that the custom alters the general law but mearly that it indi cates the understanding between the parties at the time. 3rd by the husband's voluntarily taking advantage of the contract as if she purchased certain property & gave bond in his name his subsequent use & recognition of that property as his would make him liable. 4th From the peculiar circumstances of the family - as if a merchant be absent transacting business - as in China for instance - it is ob vious that the wife must make contracts[.] Actions by & against Husband & Wife &c I. The husband & wife must join in three classes of cases 1st. Where the cause of action would survive to her & there is no ex press contract after marriage. 2nd. In a real action where the object is to recover land &c. 3rd. In an action for damages for a personal injury done to the wife. II. Husband must sue alone in four classes of cases - 1st. When the original contracts in his name or contracts in her name which surge after coverture 2nd. Where the injury is to the personal property of the husband. 3rd. Where the object is to obtain personal property detained from the wife before coverture. 4th. Where the action is for defamatory words not actionable in them selves & the object is to recover for the special damage of the husband. III. The wife must sue alone where the husband has abjured the realm or being an alien has never been in the realm. IIII. May join or not at this election 1st. Where the cause of action would survive to the wife & there has been an express contract after marriage. 2nd. Where the meratorius cause of action is concerning the wife & there was an express contract with her 3rd. Where there was a promise to them jointly under seal &c. 4th. Where the cause of action accrued upon a contract or (...) re lating to the land of the wife.

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5th. Where act is brought upon a joint judgement. 6th. Where a tort or injury has been comitted to bother. 7th. Where the injury began before marriage but was consumated after. (442). The commentator refers to the liability of the husband for necessa ries purchased by the wife to an implied authority in her. But it should be rather rather referred to his duty - for if he expressly forbids the tradesman to give her credit - he is still liable unless he has made some other competent provision - & certainly an authori could not be implied in this case. Also we have seen that the when ever by the misconduct of the wife the liability ceases the wife is not liable for injuries & crimes commited in the presence of her husband - because she is supposed to act under his authority. But in case of treason perhaps murder & keeping a brothel she is personally liable. The first two on account of the magnitudes of the crimes & the last because she is supposed to be more intimately concerned than her husband. Other crimes making her liable have been suggested such as robing & arson but these are not sufficiently established. If the husband be not present & she not under his command she is as liable as though she were a feme sole: but if the action against her involve a pecuniary mulet the husband must pay for it. The annotator mentions the differences made in the Eng. law between the punishments & rights of males & females. It was murder for the husband to kill the wife but a kind of treason for the wife to kill the husband & in the species of treason men were to be drawn & hanged but women drawn & burned. At com mon law all women were denied the benefit of cleargy & were hang ed for the simplest larceny - because their sex prevented them taking holy orders. Men

who could not read were subject only to [burn ing] in the hand & a few months imprisonment. We have abolish all these distinctions as indeed some of them are abolished in Eng. In civil matters we still retain some of the distinctions. In England these distinctions are found - 1st. Though personal property is equally divided a son will take real property in exclusion of all his sisters. 2nd. The husband becomes absolutely entitled to his wife's personal property & may devise it - if he dies intestate the widow gets one third or one half

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3rd. The husband has the full profits of the wife's lands & may be ten ant and by courtesy - she is intitled to a life estate in one third only. 4th. Husband may be tenant by courtesy of a trust estate but the wife " cannot be endowed. 5th. Womens property taxed & they have not the right of representation. 6th. A father can have no remedy for the seduction of his daughters vir " tue except by stating that she is his servant & sewing for the loss of " her labor in the temporal courts - the most malignant slanders " against the virtue of females may be propigated with impunity. In Va the first difference is entirely abolished & lands & descend in coparcenary to males and females indiscriminality. The second exists here as at Common Law. The third also exists here aswell as the fifth. The fourth is abolished as also the sixth. Notwithstanding the above distinction Bl- comes to the conclusion that women are favorites of the of the common law. (448) (1). It is said that independent of the statute - there is no obligation resting upon the parent to support the child - & this is confirmed by Judge Tuckers opinion. 4 Mass. Reports 198. Prof. Minor thinks that a distinction should be drawn between infants & adults. The first he thinks the parent is legally bound to support for the fol lowing reasons[.] 1st. If the father has property of the child he is not allowed to apply it for the support of the child if he is able to sup port him himself - 1 Brockenboro's Reports 287 - 4 Mass. Reports 198. 2nd. The statutes of Va force a father to support an illegitimate child & a fortiori a legitimate one - besides thes statute makes it the du ty of the county court to cause to be bound out the children of pa rents who are unable to support them thus recognizing the obligation. 3rd. The common law is common reason & enforces every common duty. 4th. In addition to this the parent is entitled to the earnnings of the child & ought to be made to support him on this ground. 5th. We have numerous cases affirming this position. 113 Johntson 480 - G. Randolph 444. The duty of education though of the highest importance is not sufficiently definite to be enforced by the municipa law & might be easily evaded by numerous pretexts but the idea is becoming prevalent that it is the duty of the government to pro-

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27 vide the means of education to all classes of the state. The idea which has become as prevalent in some of the European countries & spe— cially Prussia that it threatens to drive ignorance from its darkest lurking—places has yet made but little progress in the south & western part of our country while our bethren of the north by their lauda— ble efforts have caused a disproportion of intelligence most humili— ating to the southern country. Thus for example Con: with a population of 301.000 has 526 white male citizens over the age of 21 unable to read & write. In Va with a population of 741.000 there are 59.000 of the same class unable to read & write. (453). A father is guardian by nature to his legitimate children but only

as to persons not as to property unless he qualify as guardian & it will make no difference though a testator on his death bed de— sires that the fatjer may take charge of the property. (453) The prima facie rights to the custody of the children is in the father but the courts of chancery may for good cause take them from him & place them under the care of a more suitable person. (454). Bastards!!!. The law of Eng. has been modified by our statutory provis— ions. A bastard is legitimate in Va by the subsequent marriage of the parties provided the father recognises him as his child. Our law also declares that the issue of marriages deemed void in law shall be legitimate. The question of legitimacy is one of fact resulting upon presumptions to be drawn by a jury. 2. Brockenborough. 2{2}58. [L. H.:] Coke Littleton 139 (1) B. Lecture 13th February 13th 1847 In Eng. there are eleven kinds of guardian. 1st. By Nature. 2nd. For Nurture. 3rd In Chivaldry. 4th In Socage, 5th By election. 6th appointed by the lord chancellor. 7th By appointment of the Ecclesiastical courts. 8th. By Stat. of P. & M. 9th. Testamen— tary guardians. 10th Guardians by custom & 11th Ad litem. We have the 1st & it extends to all the children. The 2nd kind would seem to be superceded by the 1st. We have not the 3rd because they are in cident to tenures in knight service. It would seem that the 4th kind can not exist here because we have no tenures but they are recognised by the statute. This probably arose partly from inadvertincy & partly from {in advertancy} Blackstones imperfect deffinition of this species

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guardians & also from the time that it was made be— ing in the early period of our government when its princi— ples were not so clearly defined. This could not exist here for another reason. We have no next of kin who are in ca— pable to inherit. 5th. This class exist wirh us. The election is made by the court if the ward is under the age of 14 if over 14 the ward designates & the court appoints & this is the same as the appointment by the Lord Chancellor. The jurisdiction in Va is inverted in the county & superior courts. They exercise the authority as chancery courts & have the power not only to appoint but also to controll the Guardian's acts. The 6th is embraced in the 5th. We have no Ecclesias: courts & consequently the 7th species are wanting. 8th By Stat. of P. & M. is superceded by our guardians by nature. Testamentary guar: or deed of father: though Chan: Kent thinks a father by deed yet it seems that they can take effect during his life. But the guardian as in other cases must appear be— fore the court & give bond & security for the execution of his duties. The stat. by omission perhaps has not pre— scribed any bond in case of a guardian by deed but speaks of testamentary guardians in presenting the qualifications. Guardians by custom do not exist in this country be— cause there is nothing so remote that mans memory does not reach it in this country. Guardians ad— litum exist here as in Eng: some what modified. The court has the power to compel a person to be Guardian ad litum. Of all guardians those by appointment of court & testamen— tary guardians have a right in the wards property. Guardians by nature is first the father and if there be no fa— ther then the mother and if there be no father or mother then the nearest lineal ancestor. If there be a testa— mentary guardian he has preference over mother or next lineal ancestor — nor can the mother appoint a guar. by testament or deed. If no ancestor of this class the in— fant if he be 14 may elect & the court appoint if undr 14 the court appoints. It has been asked if socage principles would be onserved in the appointment? It seems that our

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courts would disregard this principle entirely & appoint those most fit & likely to be of most benefit to the infant. If the guardian be so appointed by the court he will not be allowed to make an election when he arrived at the age of 14 unless good cause be shown for wishing such a change. 1. John: 25. Marriag. (effect of) As to females it puts and end to their guar— dianship & the care of both person & property are transmit— ted to the {care of the} husband if he be an adult — if he be an in— fant the care of her person is transmitted to him but the care of her property to his guardian. As to males the person is emansipated by the property — remains with his guardian. Reves Domestic Relations. By the act of assembly a guaradian is compelled to make an anual return of the {guardians} wards property — & if the dis— bursements exceed the interest or profits of the estate the court will allow the guardian to take the surplus out of the profits of the next year or if necessary out of the {profits of} principle. If the ballance be in favor of the infant then the court will direct him to put the surplus at interest or be liable himself to compound interest. In order to make guardians prompt in their annual returns the stat. provides that no objection af— ter the infant comes of age shall be found unless it had been proved previously or objected to at one of these an— nual settlements by the ward or some one for him — & is entered of record. If the guardian neglects this duty he may be removed out of office by the court. This duty as well as the payment of compound interest is imposed on all those who act as guardians they being consid— ered quo ad the estate as guardians. 1 Robinson 196. 4 Canl. 453. The imbecility of wards & the capability of guardians to injure them materially if they are so inclined have pro— duced a certain strictness in the performance of the guar— dians duties. In Eng: no compensation is allowed for the guardians ser— vices but in Va a reasonable compensation is allowed 5 percent upon his receipts but the court may change the amount & if the guardian unjustifiably sells the estate or commits any

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other wrong the court will often allow no compensation on the part so disposed of. 6 Leigh 699. A reasonable time is allowed for the guardian to put the wards money at interest which is said to be considered as six months but the truth is that the accounts are closed annually & the interest is charged on the surplus which amounts to about the same thing & presents a great deal of troub— le in keeping minute accounts. Power over property. It is certain that while the guardian may lease the wards land during minority if his guar— dianship continue so long & dispose of his personal prop— erty if perishable & even if not perishable & also may dis— pose of the annual products. Yet he cannot sell the land & personal property may be safely purchased but if an un— necessary sale he will be liable for a a breach of trust. That he may make leases see 1. Washington 90 & 1 Johns Ch: Re: 5. That he may dispose of the produce & perishable property see - 6 Ran: 558 & property not perishable see 6 Leigh 399 & 7 Johns: Ch: Re: 152. That he cannot sell lands see 1 Lord Raymond 131. 7 Johns: 155. If the guardian wishes to sell to meet the expenses of the ward he must apply to a court of chancery because the guardian can really apply only the annual profits to the wards support. 6 Ran: 447[.] The settlements of guardians are scrutinized with the greatest jealousy. The ward cannot release

the guardian befor settle— ment however fair the transaction may be. In 2 Leigh 14 there is a case of a release to a guardian just be— fore settlement & it was declared void. The same rule holds with regard to principle & agent owing to the the similar relation. (483) — In Eng: males & females can dispose of their real property at the age of 21. Males can dispose of their personal property at 14 females at 12. In Va both males & females may dispose of their lands at 21 & personal property at 18 no distinction be— ing made between the sexes. In Va an infant may sue by procheine amy or by guardian ad litum & may de— fend by his proper guardian though the proper course is to defend by guardian ad litum though others is see error. Our stat. of [jeafails?] cures not only a defeat of infancy but many

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31 other defects - after verdict & before verdict by the judgment entered in such ca— ses judgment by default non sum informatus &c. It is generally true that the parties to a contract are bound by that contract. It is very important to distinguish between those contracts of infants which are void & those which are merely voidable. The liability of infants may be briefly stated as follows: When the contract belongs to a class which is generally prejudicial to the interests of the infant it is void & cannot be affirmed. If of a class beneficial it is good & cannot be revoked. If of a doubtful character it is voidable at the infants election. Thus a marriage settlement is of a beneficial class & cannot be re— voked — so contracts for necessaries as it is necessary that infants should be able to get credit. No confirmation is sufficient to make an injurious contract binding upon an infant. This doctrine is adopted by Story. 1 Masons Report 82. It was originated by chief justice Iredell of the Supreme Court. This disability is personal to the infant & can not be taken ad— vantage of by any other so where there are other parties joint ly bound the infant alone can plead his infancy. In such case the infant must also be sued — other wise the {infant} cred— itor himself would be taking advantage if the infancy. In regard to time & Manner: Matters of record must be a— voided during infancy. Matters in pais may be avoided when the infant because of age. The difference is that the fact must be determined by inspection & the infant must be before the court. On common law it is doubtful wheth— er the contract must be confirmed when the infant comes of age. The true doctrine in Va is that executory contracts must be confirmed executed must be disaffirmed or they will be good & this may be by implication as well as expressly. An in— fant cannot be sued on a negotiable note though it be for necessaries. The reason is that suit is brought upon the ne— gotiable note itself & not upon the necessaries — this paper more over passes from hand to hand without adverting to the consideration & if an infant could negotiate a valid note he would be bound whether for necessaries or not & this can— not be admitted unless the principle be modified.

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Lecture 14th February 20th 1847

In Va the institution analagous to an (...) was that each parish had a right to present to the govenor its minister & demand an appointment from him. The support analagius to tithes was an annual tax in tobacco levi— ed upon the people of the parish. The right of fishing in Va is common in a navigable streams i.e. in rivers where the tide flows & ebbs, in those which are not naviga ble the proprietors of the land in each have the exclusive right of fishing to the

middle. But it has been suggested that many of our large rivers where the tide does not ebb & flow should be con sidered as navigable streams & subject to the common law prin ciple. But these streams are subject to the right of passage as a common highway. (35 N 28) — Right of Way. In two Douglas 447 one of the Judges sugges— ted that of necessity a person havin a right to private way might pass over adjoining grounds: In another case it ap— peared that the way was very much cut—-p & the Judge re— marked that if he went before in his shores now let him pluck on his boots. Offices. Blackstones deffinition imperfect. It has been de— fined to be when one man has to do with anothers affairs against his will & without his leave. This deffinition is imperfect as it speaks of the right & neglects the duty. That of Chancellor Kent is considered the most perfect viz a right & corresponding du ty to exercis a public or private employment & take the profits there—of. There is some difficulty in distinguishing between offices & agencies. This distinction is most important on account of the oath of office & specially since our deweling law. Thus it has been determined that a deputy sheriff is an officer while while an attourney is not. In 1 Wmn: 471 the question arose in the court of appeals when Mr. Leigh wished to qualify as a practitioner in that court he having seen engaged in a dewel & it was decided that an attourney was not an officer with— in the meaning of the statute. We have no inheritable offices in Va & consequently they are not hereditaments here. We have a statute prohibiting the sale of offices but it has a provis—

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33 in favor of clerks & sheriffs: they may dispose of their offices af— ter they have received them but not before 10 Leigh 620. This is not productive of any practical evil since the court has to ap— prove of the person to whom the office is formed. Franchise. Corporations are franchises 4 Randolph 466. When a franchise is forfeited by miss user or non user an informa— tion is filed & a write in the nature of a quo warrantor — issued to inquire into the matter. Annuity is a yearly payment out of the procedes of lands but char— ging the person of the grantor & it is at the election of the plantiff to con— sider it as a rent charge or an annuity. 1 Th: Co: Lit: 450. but as soon as his election is determined then his choice can no long— er be exercised. Thus if he distrains for the amount it will be a rent charge. If he brings an action for the money it will be an an— nuity ever after. A rent service is one that may be distrain— ed for a common right. It never exists unless there is a rever— sion in the grantor of the land.

Lecture 15th February 23rd 1847 The jurisdiction of Eng: has been translated to this country almost entire & the common law exists in Va with fewer modifications than in England. Our jurisprudence being founded upon the feudal law of Eng: & they being derived from the continent it is necessary that we should extend our investigations beyond the realm of England. In order to acquire some indispensa— ble knowledge of the subject see 1 Humes Hist: of Eng: 102 appendix. 1 sect: of Rob: Charles V. 1 Hallams middle ages 2 chap Montesquieu's spir: Laws — B. 30—1. 2 Hallam chap 8 part: 102 1-61. (...) on Eng: Constitution. Sullivans lectures. Day — simple{s} on Tenures Revis Hist: Eg: Law — Hargraves note on finds with Butter's annotation. The author remarks that the socage tenures are the result of the old sax— on tenures. The nature of the saxon tenures has been a subject of much dispute some contending that they had tenures but not at— tended with the burthens which the Normans imposed. Others contend that the lands were alludial & that the military tenures were introduced by the conquest.

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After the overthrow of the Roman Empire by the Northern na— tions the feudal system was adopted by western Europe for self defence. So in Eng: it was adopted in order to put the country in a state of defence. Under the feudal law there was a con— cert of action — & in absence of a general government made a— mends for the weakness of the magistrate — & the baron was quick to avenge not only every insult offered to himself but to his tenants as well. In consequence of the ties which uni— ted lord and tenant from the highest to the lowest — there was a strenghth created which otherwise would never have been existed. Besides this there was a mutual hostility between the Nor— mans who thus held their lands & the saxon land—holders & by this union they possessed the same advantage over holders of allodial land as a crowd possesses over an indi— vidual — & thus being at the mercy of their stronger neigh— bors & suffering from their hatred our saxon ancestors were glad to retire within the strong defences of the feudal sys— tem and surrender their lands to the conqueror & receive them again subject to all the feudal burthens. This accounts for the ease with which the conqueror imposed the feudal burthens upon the Saxons. From this it appears that the law of Eng: recognizes no allu— dial estate in lands but all are hold in some superior. Sir H. Spelman defines a feud to be usufruct of law of which another has the property. Feuds were not hereditary not even alien able without the consent of the lord. Many attempts were made to evade this restriction among those was the practice of subinfudation but this proved more disagreeable to the old lords than alienation & therefore they pro— cured the statute of quia emptores. By this statute it was provided that the subtenant should hold not of the [mesone] lord but from the lord paramount as the lessor held by the same services while an unlimited power of alienation was allowed. Thus it was the lords were secured & the ten— ants invested with the power of free alienation. The king was not included within the statute & therefor his tenants could not alien without his consent.

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(81) The authors opinion with regard to the holding of lands by socage ten— ure is opposed to the highest authority & many reasons concur to prove that saxon lands were held allodially — Sullivan's Lectures 254. According to Mr. Jefferson lands in Va were always held by allodi— ally — although they were constantly recognized as being held by free & common socage. This view has not been supported in Va & in most of the states laws have been passed abolishing all tenures. The Va act is very pointed on the subject. 10 Henning's Stat: at large 154. 2 Kent 54. Till the Revolution laws were held in free & common socage since then all are allodial - 1st Tucker's Com: Book 2-18 Lecture 16th February 25th 1847 Blackstone's doctrine of abeyance has been succesfully controverted by Mr. Feanie. In Estates tail heirs necessary &c. The rule of the common law requiring the word heirs in a conveyance to make an estate of inheritance has been altered in Va providing that an estate given to a man without farther words will convey an inheritance unless it appears that there was an intention to limit a less estate. So that the common law rule that is an estate for life without heirs is reversed in Va it bring an inheritance unless it be limi— ted to an estate of a less quantity. For the rules of favorable construc— tion

of Divises see — 1. Washington 98. 1. Call 127. 2 Munford 458. In Va the rule applies to all conveyances. Estates tail long existed here as in Eng. with the same properties — same incidents & barrable in the same manner. But while in Eng: the tendency was to throw off the restrictions here the restric— tions were increased. In 1705 the sole power of alienating them was at the discretion of the legislative assembly. This method of applying to the legislature being found in convenient to that body & burthersome to wholders of small estates — in 1734 an act was pass allowing owners of entailed lands by having these facts established by a writ of the nature of ad quod dominum to alien such land. Thus continued the law till 1776. As soon as our independence was declared in 1776 a law was passed abolishing entails entirely. The two main props of aristocracy were abolished soon after our independence viz - estates tail & primogeniture. Mr. Jefferson was the instrument of both & was opposed by some of the best men of the state among

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whom was Mr. Pendleton. The great body of our laws was fraimed by Mssrs. Pendleton Jefferson & Wythe. Mr. Jefferson proposed 4 bills by which he said that every fibre of the ancient aristocracy would be eradicated — viz abolition of entails of the right of primo geniture — securing religious freedom — & the adoption of a system of education. Three of these have been adopted but it is to be regreted that no efficient provision has yet been made for a system of ed— ucation. Upon our statute abolishing entails two remarks may be made 1st that it converts estates tail & not conditional & base fees into fees simple. 2nd that the statute de donis does not embrace base fees & as there are some estates which the statute does not embrace — & these are conditional fees in Va — as the statute only converted estates tail. Of this class is an annuity. Estates for life by a general grant are materi— ally modified in Va so that a conveyance which at common law would only give an estate for life would give an estate in fee in Va. Incidents to estates for life — Emblements are the an— nual products of the soil in production of which nature combines with art. The common law has been materi— ally modified by our statute concerning emblements. Our statute provides that if the tenant for life dies after the 1st of March or before the 31st of Decr. his executors are entitled to emblem— ents — or to the crops which can be reaped before the 31st of Decr. If after the 31st of Decr & befor the 1st of March the growing crops will go to the next person entitled to the estate. This applies to the death of the tenant himself but not to the determination of the estate by the death of another — as if it were an estate per autore vie & in such case the common law rule will prevail. By a provision of our statute if a man holds lands for the life of another & that man dies after the 1st of March the tenant shall remain till the 31st of Decr. paying rent. Where there is an un— der tenant of a lessee for life & the lessee die during the term after the 1st of March he will be entitled to the profits of the land du— ring the year — but if after the 31st of Decr & before the 1st of March the common law rule will prevail. By a special act tenants in dower are allowed to bequeath the crop growing on their dower land. The stat: of 11 George II has been reenacted here. It provides that where

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slaves are hired & land rented for life or other uncertain interest & the ten— ant dies the rent shall be proportioned between the representatives of the dead & him who shall succeed to the land or slaves . Tate 405 & 232. We have no tenants after possibility of issue extinct because we have no entails. (128) Curtesy. Issue must be born and the seisin must be of such a nature that the issue might inherit. The proposition that this is the reason why seis— in by deed is required is confirmed by Lord Coke. 1 Co: Litt: 577 & 8. It does not seem to have been adverted that the seisin must be of such a nature that the most important reason was to induce the husband to litigate his wife claimes — & reduce them to possession. At least this is the on— ly operative reason in Va — because our law does not require seisin for the issue to inherit & in consequence of this principle of our law it has been said by some that actual seisin is not require in Va: they not adverting to the real reason for requiring actual seisin. Dower. Our statute provides that the widow of any person dying intes— state or otherwise shall be endowed of one full & equal third of all the lands tenements & other real estate whereof the husband was seised or any other to his [ers] of an estate of inheritance at any time during the covature to which she shall not have relinquished her dower by deed executed acknowledged & recorded in the manner prescri— bed by law for that purpose Tate 289. Lecture 17th February 27th 1847 (130). The purpose to consider the subject of Dower under three heads viz: 1st. Capacity to endow — 2nd Capacity to be endowed — &c 3rd Marriage necessary. 1st. At common law all men were capable of endowing except id— iots — aliens & persons attainted & pardoned. Idiocy incapacitates the husband because it incapacitates the husband not ipso facto as in Eng: but when so decreed by a competent tribunal & it is pre— sumed that idiocy would not prevent the dower unless the marriage was pronounced void by a judicial decree during the life of the party. Aliens can not endow because they can not hold lands. See Tate 41. Sessions actc of 42—3 The doctrine concerning aliens is much modified by the Va law. In case of an alien husband & native wife there is no doubt that he can endow because under our stat: aliens may hold land. But if the wife be an alien it is supposable that she may be endowed by the hus—

band as the heir is allowed to take the lands by inheritance. Attainder here is not an incapacity as our constitutions have guarded against any attainder for crime. 2nd Capacity to be Endowed — At common law all persons could be endowed except those incapacitated by idiocy: being an alien or by want of age. Idiocy has the same operation as in the case of husband but in Va it must be remembered that a divorce must be declared. An alien wife cannot be endowed in Eng: But in Va as the law allows aliens to purchase & hold lands & a dowess is in fact a purchasor & within the equality of the of the statute & may take as others by making the usual declaration in court. Hence the principle must be taken here with the modifica— tions made by our statute. Want of age requires no comment — she is supposed to be incapable of bearing issue — & as one object of dower is to support the children it is supposed she ought not to be endowed. Marriage. A valid & subsisting marriage is necessary. In Eng: any incapacity avoids the marriage ipso facto but here a divorce a vinculo matrimonii is necessary. But Judge Lomax is of opin— ion that prior to marriage want of reason & want of age render the marriage void ipso facto. There seems to be an objection to this view as the statute declares certain disabilities to render marriage void — & that certain tribunals shall have the juris— diction of decreeing them

so & if already void why appoint tribunals to declare them so. It will be remembered that the causes for a divorce a vinculo in Va are idiocy bigamy & in curable impotency. The divorce to prevent dower should regularly be a vinculo but as the courts are empowered to decree a per— petual separation for causes a mensa having all the effects of a divorce a vinculo upon property this would have the same effect. Of what a widow shall be endow. Tenant in dower says Lit: is when a man having lands in fee simple pretail general or as heir in special tail & dies — his wife shall be endowed of one third of such lands as he was siezed of during coverture. Our statute is nearly the same as we{e} have seen (p. 194). Let us see first the subject matter of the dower. Second. The seism required &c & Third. The nature of the estate.

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At common law a woman was to be endowed of the lands & tena— ments of her husband — by our statute of lands tenaments & other real estate — but they now amount to the same. "Other real estate" was intended to embrace slaves — but they are reduced to personal property by stat: which has abolished that difference between the Eng: & ours. There can be no dower in Va of an annuity because it is merely personal property — binding the person only. 1 Lomax Digest 81. The widow is entitled to one half of the personal property if there be no children — & if children only one third of this absolutely but in slaves she is entitled only to life estate which is recurrant of our old law. Seisin. At common law it must have been legal seisin in contra distinction to equitable ownership & this at some time during the coverture. Our law allows dower of any equitable estate of which she would have been endowed had it been a legal one. But on the other hand mere legal seising without beneficial ownership confers no right. In law she would be entitled to dower — but equity will enjoin it. Seisin is not required to continue for any particular length of time for a single in— stant is sufficient — but when there is no beneficial seisin as if the estate be conveyed away by the same transaction by which it was received provided it be in pursuance of the original con— tract. 5 Mun: 346. 4 Leigh 30. Gilmer 200. 15 Johnson 458. It may be {supposed} mentioned that possibilities are calculated where no better ev— idence can be obtained in order to render the widow dowable. Thus when: a ship was lost at sea containing a father and son — & nothing was ever heard of her more — it was considered from the greater strength of the son he would survive the father & would in— herit his estate & that his wife might be endowed. Nature of the estate. The husband must be seised during cover— ture of the immediate freehold — within the first estate of inheritance without any intermediate vested estate of freehold & the estate must be such that issue between them might inherity. This last (...) of but little importance as all issue can inherit here — in Eng: it (...)tied to special tail. Thus husband & wife are seised in special (...) — the wife dies & he marries another — now as no issue of hers (...) inherit the estate she shall not be endowed — but an heir in

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special tail in this respect is the same as a dowee in general tail. The first part of the rule is very important. By it a wife is not dowable of a remainder or reversion after a freeehold nor if there be an intermediate estate of freehold became the remainder man would be postponed a whole

life before he could enjoy his estate. Out of this rule grows the doctrine of dos de dote peti non debet. Thus the lands descend to the heirs; the widow calls for her dower — he endows her & living the widow he dies — his wife is endowed of one third of his estate & after the widow dies the widow of the son shall not be endowed of this dower land because {(...)}her husband was never seised of the immediate estate of freehold. This principle does not apply in case of purchase. Thus A. sells to B. & dies A's. widow is endowed by B. & he dies — afterwards the widow dies now the widow of B. shall be endowed of this dower because here was seisin sufficient. Widows in Va may be endowed of all equitable estates. At common law the widows of joint ten— ants could not be endowed because the paramount title of survivorship anticipated the right of the widow as it were Survivorship has been abolished in Va & with it the consequen— ces have fallen. (132). On the ancestors death the freehold descends to the heir whose duty it is to assign dower — & originally the widow had no right on the premises — but now in Va she has the right to remain on the premises until dower assigned & also the premises attached. The obligation to assign dower is not ef— fected by infancy & the assignment is binding unless it be in excess — in which case he may have a writ of ad meas— urment of dower. If the heir be not in possession the tenant in possession must assign & though be be a wrongful tenant it is sufficiently explained in the text. We assign one full third in value & do not assign one third of each tenament if there be several. The remedies at common law for dower were writ of dower's writ of right dower. The first was used when our part of the dower had assigned & since called a writ of dower unde nihil habet second was used when a part has been assigned but she was

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receiver the remainder. The difference was nearly abolished by stats. of Edward I. by which it was provided that the writ of dow— er might be used in all cases except when a part of her dow— er had been assigned by the same person out of the same law. By Magna Charta she was allowed to remain 40 days on the land — called her quarentine — but this had but title effect as there was not remedy to enforce the assignment & by statute of Morton 20 Henry III. it was provided that the widow should re— cover damages from the time of her husbands death provided he died seised. It has been decided that this stat: extended to writs of dower & not to writs of right to dower because no damages could be recovered in a writ or right which decided the title & be— sides the action was considered to be too dignified to recover any thing except {the right to the} the land. It also decided that it ap— plies to dower at common law — lastly that dower must be de— manded soon after the husbands death in order that he may not say that he has always been ready to assign dower. Finally all these methods have given way to application to chancery which assigns commissioners to assign dower. The legislation of Va is almost identical with that of Eng: but profiting by experience ours is more efficient. Besides the remedies in Eng: she is entitled to remain on the land not 40 days merely but until dower is assigned her & to have the profits of the plantation annexed & if she is evicted she may have a [vi cou— tial] writ in the nature of quarrentina habenda (so called be called because the sheriff does not restrict) upon which such speady procedings shall be had as are used in a de-quarrentina & the right is thus tried by a jury in the country & the widow im— mediately put in

possession by the sheriff. Fitz: Natura brevium 161—2. We have stat: of Morton giving damages from the death of the hus— band & also that of Westminster. 2 Leigh 457. If the procedings be by bill in chancery as it generally is eq— uity will follow the law & will give damages only when the hus— band dies actually seised — & if he had sold the land in his life— time will only give damages from the issuing of the subpoena which commences the action. 4 Leigh 507. 5 Robinson 534. (136). Dower is barred in Va in several ways. 1st by eloping &

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continuing with an adulterer unless the husband is volun— tarily reconciled. 2nd by a divorce a vinculo. Divorce a vinculo does not have this effect — but a decree of perpetual separa— tion may have the effect of baning dower if it be for causes a mensa. 3rd by death of husband before wife is 9 years old. 4th by detaining the deeds or other evidence of the estate. It is du— bious as to whether that cause exists here on account of our register acts — & at most it only suspends the dower until they are delivered. 5th by release after death of husband to the person of whom she is to demand dower. 6th by the wife being in full age uniting with her husband to convey the lands according to the provision in the stat: If she be not of full age the act is no more binding upon her than upon any other infant. 6 Leigh 9. 7th by jointure. Our statute closely resembles that of Eng: 4 H & M. 122. These are the differences. 1st Here she is allowed to elect if the join— ture be made before marriage & she was an infant — in Eng: it is binding upon her. 2nd here the intent of the jointure to be in lieu of dower may be proved by averment — not so in Eng:. The difference between dower & courtesy may be very properly introduced here. There are 5 leading differences. 1. Dower consists of 1/3 of the lands — courtesy of the whole 2. Seisin in law sufficient in Dower — seisin deed for courtesy 3. No issue necessary for dower — issue necessary for courtesy 4. Dower must be assigned — tenant by courtesy may enter without ceremony 5. The wife forfeits dower by eloping & continuing with an adulterer the hus— band does not. Lecture 18th March 2nd 1847 (141). It will be seen from note 3 page 140 that the character of the month as applied to statutes belongs also to bonds and other instruments. In Eng: according to custom among merchants bills of exchange & prom— issory notes are exceptions to the rule. In {Eng:} Va the doctrine with re— gard to all instruments seems to be different & by a decision moths are reckoned as calendar months. Where a contract is made to take from a particular day & to continue for a spe— cified time the first day is excluded as a note given to be paid at a particular time. Otherwise a note made payable one day after date would be demandable on the same day. 3 Kent 95

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43 A different rule prevails when an interest passes. The day is there to be included as all contracts are to be construed against the grantor. A contrary doctrine has been maintained in the U. S. courts. 9 Branch 119. (144) No estate of freehold &c. We have abolished this principle & in Va a freehold may be made to commence in futuro by deed in like— manner as by will. (145) — Emblements. Where there is an undertenant — & his estate determined by the death of his lessor the tenant for life remains in possession until Christmas — takes the profits and pays rent — if the tenant die after the 1st of March. A question has arisen in Va as to the way groing crops. Suppose a tenant is to quit in April for instance — when the crop has been sown

— a practice has {been}obtained of per— mitting the tenant to return and reap his crops. This right cannot be enforced unless it can be construed so as to interpret the agree— ment in doubtful cases by the custon — which has no legal force. (146) — When tenant at will determines his estate he loos— es profits & pays rent to the next time of payment. (147) — The courts are dipsosed to construe an agreement to be a tenancy from year to year rather than a tenancy at will. The distinction is important as notice is necessary from year to year but not at will. The common law rule was 6 months notice. Our state provides that 3 months notice in writing befor the end of any year in {writing} town & 6 months in the country. The same rule holds with regard to notice by the tenants. We have not the stat: of 4 George II but the stat: of forcible entry & detainer allowing the owner to enter upon ten days notice which seem to an— swer the same purpose. Tate 442. Upon the principle of im— plied contract all forfitures at common law arrose. This doc— trine is clearly stated at page 274-5. The consequence is remov— ed in Va by a stat. which declares that all alienations & warran— tees shall operate to pass just so much as the tenant had a right to pass. Tate 174. Lecture 19th March 4th 1847 (156). Impossible conditions — void &cs. With regard to impossible conditions the most important distinc— tion is between conditions precedent & subsequent. If the con— dition be precedent it must happen before any estate can vest.

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If subsequent then it must be considered in what manner the condition became impossible. It must have become as by the act of God — by the act of the grantor or by the act of the grantee. If subsequent and impossible at the time of the creation the estate is absolute. If it become so afterwards by the act of God or by the act of the feoffer it is also absolute. If by the act of the feoffee the estate is void. The doctrine is nearly the same as to bonds. If the conditions be impossible & known to the parties at the time the obligor is bound absolutely. If it become impossi— ble by act of god or obligee the obligation is saved as also if it be illegal. Mortgages in Va are legal securities governed by the principles of the common law — but are almost entirely superceded by deeds of trust — by which the land is conveyed to a third impartial person. (159 Note 10) We have neither the stat: of 7 George II nor that of 405 Wm. & Ma — mentioned in the text. We have succesfully tried the register principles & deeds of trust & mortgages are of no validity unless recorded as{if} against creditors & subsequint purcha sors — in the county where the land or property is. Tate 162—173 & when so recorded shall be valid agains every body which has abolished the doctrine of bying up the first mortgage. (160). Stat: & staple & Merchant — We have not the statutes orig— inating these. Estates by elegit exist in Va in consequence of a stat: similar to that of Westminster I. Tate 960. The writ recites the judgt & that the plaintif hath chosen to have all the goods except oxen and beasts of the plough & one half of the land of the difendant until his judgt is satified. The writ is executed by the sheriff going on the land with a jury estimating the value of the goods & the annual value of half the land — & this is called an inquisition indented. The reason assigned by Black: why these estates are not considered as freehold is not the true reason. These estates are not held as freehold — but have a certain {&}end as soon as calculation the calcu— lation of the annual value is made — & this is the reason why they are chattels. Bacons abridgment. Executors B. 7. The fact that

they are uncertain is justified by the possibility of some sudden profit which would determine the estate sooner

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(166) This rule as to freeholds is abolished in Va the statute does not em— brace conveyances under the stat: of uses & could apply only to the com— mon law mode. 3 Thomas Coke on Littleton, 102. Nt G. The reason that a freehold could not be made to commence in futuro on the following. 1st That the lord might know who to call upon for the military service there due. 2nd That others might know against whom to prosecute this demise which could only be against the tenant of the freehold. Freeholds were also to com— mence by livery of seism & there could not be a livery of seisin to commence in futuro — & in all feoffments the estate must pass out of the grantor & vest somewhere. By conveyance un— der the stat: of uses the estate must vest in the mean time in the grantor — & the freehold is not without a tenant & here the reason does not apply. Also in a devise of lands to commence in futuro it passes in the mean time to the heir. It may be laid down as a general rule that there must in all con— veyances be some person in whom the estate may vest or else it will be void. (167). If the particular estate be destroyed. Remainder the same &c. As to contigent remainders this is true but as to vested re— mainders not true unless the particular estate be[e] void in creation. Mr. Fearn os disposed to limit the cases in which a remainder is vested adter distruction of particular estate to a small no. But if the remainder be only vested by a good title no distinction of the particular estate can defeat it. But a stat: of Va has obviated all this difficulty by providing that no alienation of any particular estat upon which any remainder may depend whether such alienation be by deed or will nor shall the union of such particular estates with the inheritance by purchase or by descent so operate by merger or otherwise as to defeat impair or in any way affect such remainder. Tate 174. Lecture 20th March 6th 1847 (169). The deffinitions of the text do not comprehend all the cases of remainders. The real criterion by which a vesture is distinguished from s contigent remainder is not men— tioned viz — the present capacity to take effect in possesssion

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should the particular estate determine. In a vested re— mainder this quality exists — in a contingent it does not. This incapacity may arise from several causes — the uncertain ocurrence of the event — the uncertainty or non existance of the person — or the chance of the particular estate determin— ing before the happening of the event. The following deffini— tions are proposed. A vested remainder is one so limited to a certain person and on a certain event that there is a present capacity to take effect in possession should the particular estate at this time determine. The def— initeness of Blackstones deffinition may be illustrated by the case of a limitation for life to J. S. & after death to J. B. — to S. N. in fee — this is a contingent re— mainder though the persons & events are certain. A contigent remainder therefore is one limited to an uncertain person upon an uncertain event or so limi— ted to a certain person & on a certain event that there is no present capacity to take effect in possession if the particular estate determine. (169). Stat: of 10 & 11 Wm III Posthumous children. This stat: has been

reenacted in Va. Tate 336. Alienation by tenant for life is said to defeat the rem— ainder but this must be understood of alienation by fine or feoffment of a greater state whereby the estate is forfeited. This does not happen where only for life or under the stat: of uses. We have frequently had occa— sion to mention the provision of our stat: on alien— ation of particular estates. (175). Note Lord Kenyon's explanation of limitation of ex centory devises. We have not the the stat: of 39 & 40 George II. (181) No. & Connection of — tenants. Joint estates &c &c. Incidents. U{tili}nity &c. The principle that a joint estate must vest in all at the same time has been much shaken by authority. If required at all it must be by the authority of common law conveyance. In conveyance under statute of uses an explanation

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may be given not compromising the principle. Thus a conveyance to the children of A. When first child born estate vests in him when second the estate vests in both as joint tenants— & so on — the estate remainning in the grantor to serve the user as they arise. As occa— sion occurs the old estate is vested & a new one arises. Tucker's commentaries Book 2 170. 1 Lomax 475-6 Lecture 21st March 9th 1847 In a joint estate to husband & wife they take by entirity. This estate here has the same properties as in England. In Thom: v Thom: 3 Ran: 179 it was decided that upon the death of the wife the husband was entitled to the whole estate so held. The stat of West: included tenants in common but joint tenants coming within the mischief were considered as coming under the stat: We have the same subject to the same construction. Stat: allowing actions of account also reenacted here. 1 Thos: Coke Littleton 788. 1. Lomax Digest. 149. Survivorship has no place among partners in trade & state companies for the public benefit. In Va we have abolished it altogether — our stat: providing that the shares of the deceas— ed shall descend & pass as though they were tenants in common. T. 725. It has been suggested that this stat: is defective as it gives no pow— er of survivorship — & that this might be very useful in case of trustees. But this seems to be unnecessary construc— tion as such a power might be expressly given. In some of the states as New York survivorship will exist if a joint tenancy be expressly enacted. It has been abol— ished in S. C. — Ga — Pa — Ten &c. In Miss. & Mary. it re mains as at common law. Partition if of freehold to be by deed &c. By sta: of Va all conveyance of land for a longer time than five years must be by deed— & consequently a parti— tion of joint tenancy must be by deed. If joint tenants are of full age & without fraud or misrepresentation make par— tition however unequal it may be it is absolutely binding Stat: of Wm. III & Henry VIII have been reacted. But by over— sight the stat: extends the joint tenants & tenants in common

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of the freehold only. In Eng: parceners were females for the most part — here males & females indiscriminately. Par ceners — might do it by parole. 1 Thos. Coke on Littleton. 704. Joint tenants & tenants in common must by deed—except except that the latter might by feoffment & livery. The Eng: stat: requires all conveyances & contracts to be in writing how far a partition of parceners is a conveyance will or contract is doubtful. At common law no action of waste could be mantained by parceners — but by a stat: of Va such actions may be maintained. (190).

Hotch. Pot. — exists in Va a far greater extent than in Eng. Anterior to the revisal of 1819 real property was brought in with real & personal with personal — but since that time real and personal estates are mingled indiscriminately. This stat: applies to children or issue of children — received from the ancestors from whom the property to be shared descended. It applies to advancements — as to what they are see Toller. 377. Maintainance, education or a gift of money are not. The property — brought into hotch—pot is to be estimated accor— ding to its value at the time it was received. 1. Wash. 224. Neither rents nor profits are to be accounted against the distrib— uter who brings his property into hotch-pot. 3 Ran 120—559. Lord Coke mentions several instances of partitioners in law. As if two persons are married this operates as a partition for the benefit of husband. 1 Thos. Coke on Littleton. 708. As before remarked we have the statutes of W III & Henry VIII compelling partition. It shall be done by a writ of departitio— ne fecundia. At common law parceners would volun— tarily make partition by parol — as also could tenants in common but not joint tenants. In Va all must be by deed except perhaps persons whose partition is neither properly a contract or conveyance. The stat: of Ann has been reenacted in Va making tenants liable for waste. The most usual way for making partition is by bill in chancery. Appli— cation is made to the court stating the circumstances & praying that a decree of partition may be made. There is a provision in our law for a case in which some of the parties shal be unknown. Tate 726.

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49 (196) Lecture 22nd March 11th 1847

An easy & expeditions method for recovering land is by action of for— cible entry & detainer — which action is applicable in three cases viz— when a person enters without right — where a person enters forcibly through with right & when a person holds over with— out right. Tate.442. (198). Complete Title &c. The periods of limitation in Va {are} as to real {property} actions have been modified. A man must enter if at all within 15 years he must bring his writ of right or possessory action within 20 years & if he claimes by the seisin of his ancestors 25 years. Entry may be made ordinarily by mear entry — by forcible entry & detainer & eject— ment. When the tenant in possession has gained a pos— sesory right apparently it may be regained by the posses— sory actions — writ of entry & assize. When the title is re— duced to a mere right the droitural actions must be used which are one of the several species of writs of right. 3 Geo: 197. Such is the marked difference between possessory & droitural actions — that it is singular to find in our stat: the phrase writs of rights & other possessory actions. This over right was as follows — at first the limitation was 30 years & the stat: recited that writs of right of entry & assisse — & other actions possessory shall be brought within this time. In the revisal of 1748 the ennumeration of possessory actions was omitted & hence the incongruous phrase.

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50 Lecture 23rd March 13th 1847

All titles are acquired by act of law act of parties or act of law concurring with{e} the act of parties. An ancestor cannot devise to his heir just what he would take by descent — because before the stat: of fraudulent devises it might operate unjustly against creditors. We have

reenacted the stat: of fraudulent devises. Tate 282. At first action of debt was allowed against heir & devisee joint— ly but since extended to actions of covenant also. (243). Two difference between descent & purchace. 1st Abolished by our law as adult descents — as to infants it is different as their estates are directed in a different course. In Va the doctrine extends to purchace also — & on the other— hand more favorable — as it will bot look very far on that side for heirs. 2nd Difference not affected by our laws. (244). Escheat is properly neither a purchase nor descent — but more nearly allied to the latter — because it is subjected to the charges of the {King} tenant.

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L. A. Bringer L. A. Bringer $Cos^2 + sin^2 = 1$ Bringer

[drawing of a head 44 20)1684 (84 Cos 2 (...)= 1-1(...)

44 [illegible equations]

[sketch of same face] L. A Bringer [illegible equations]

[sketch of same figure on figure's nose]

[ink drawing of a fat man with a stick [?]] "Don't fool with me b'hoyses." "I'll get made" [words coming from his mouth]

La. Bringer [written on chest of fat man]

[pencil drawing of same figure] 8al"

Riding Switch [vertical inscription on stick]

[drawing of same figure on fat man, triangle, and pencil mathematical operations all over the page]