

deed perilous,¹⁶⁹ and I hope my countrymen will be sensible of it, and will apply, at a proper season, the proper remedy; which is a convention to fix the constitution, to amend its defects, to bind up the several branches of government by certain laws, which when they transgress their acts shall become nullities; to render unnecessary an appeal to the people, or in other words a rebellion, on every infraction of their rights, on the peril that their acquiescence shall be construed into an intention to surrender those rights.

QUERY XIV

THE ADMINISTRATION OF JUSTICE AND DESCRIPTION OF THE LAWS?

Laws

The state is divided into counties. In every county are appointed magistrates, called justices of the peace, usually from eight to thirty or forty in number, in proportion to the size of the county, of the most discreet and honest inhabitants. They are nominated by their fellows, but commissioned by the governor, and act without reward. These magistrates have jurisdiction both criminal and civil. If the question before them be a question of law only, they decide on it themselves: but if it be of fact, or of fact and law combined, it must be referred to a jury. In the latter case, of a combination of law and fact, it is usual for the jurors to decide the fact, and to refer the law arising on it to the decision of the judges. But this division of the subject lies with their discretion only. And if the question relate to any point of public liberty, or if it be one of those in which the judges may be suspected of bias, the jury undertake to decide both law and fact. If they be mistaken, a decision against right, which is casual only, is less dangerous to the state, and less afflicting to the loser, than one which makes part of a regular and uniform system. In truth, it is better to toss up cross and pile¹⁷⁰ in a cause, than to refer it to a judge whose mind is warped by any motive whatever, in that particular case. But the common sense of twelve honest men gives still a better chance of just decision, than the hazard of cross and pile. These judges execute their process by the sheriff or coroner of the county, or by constables of their own appointment. If any free person commit an offence against the commonwealth, if it be below the degree of felony, he is bound by a justice to appear before their court, to answer it on indictment or information. If it amount to felony, he is committed to jail, a court of these justices is called; if they on examination think him guilty, they send him to the jail of the

general court, before which court he is to be tried first by a grand jury of 24, of whom 13 must concur in opinion: if they find him guilty, he is then tried by a jury of 12 men of the county where the offence was committed, and by their verdict, which must be unanimous, he is acquitted or condemned without appeal. If the criminal be a slave the trial by the county court is final. In every case however, except that of high treason, there resides in the governor a power of pardon. In high treason, the pardon can only flow from the general assembly. In civil matters these justices have jurisdiction in all cases of whatever value, not appertaining to the department of the admiralty. This jurisdiction is twofold. If the matter in dispute be of less value than 4½ dollars, a single member may try it at any time and place within his county, and may award execution on the goods of the party cast. If it be of that or greater value, it is determinable before the county court, which consists of four at the least of those justices, and assembles at the court-house of the county on a certain day in every month. From their determination, if the matter be of the value of ten pounds sterling, or concern the title or bounds of lands, an appeal lies to one of the superior courts.

There are three superior courts, to wit, the high-court of chancery, the general court, and court of admiralty. The first and second of these receive appeals from the county courts, and also have original jurisdiction where the subject of controversy is of the value of ten pounds sterling, or where it concerns the title or bounds of land. The jurisdiction of the admiralty is original altogether. The high-court of chancery is composed of three judges, the general court of five, and the court of admiralty of three. The two first hold their sessions at Richmond at stated times, the chancery twice in the year, and the general court twice for business civil and criminal, and twice more for criminal only. The court of admiralty sits at Williamsburgh whenever a controversy arises.

There is one supreme court, called the court of appeals, composed of the judges of the three superior courts, assembling twice a year at stated times at Richmond. This court receives appeals in all civil cases from each of the superior courts, and determines them finally. But it has no original jurisdiction.

If a controversy arise between two foreigners of a nation in

alliance with the United States, it is decided by the Consul for their State, or, if both parties chuse it, by the ordinary courts of justice. If one of the parties only be such a foreigner, it is triable before the courts of justice of the country. But if it shall have been instituted in a county court, the foreigner may remove it into the general court, or court of chancery, who are to determine it at their first sessions, as they must also do if it be originally commenced before them. In cases of life and death, such foreigners have a right to be tried by a jury, the one half foreigners, the other natives.

All public accounts are settled with a board of auditors, consisting of three members, appointed by the general assembly, any two of whom may act. But an individual, dissatisfied with the determination of that board, may carry his case into the proper superior court.

A description of the laws.

The general assembly was constituted, as has been already shewn, by letters-patent of March the 9th, 1607, in the 4th year of the reign of James the First. The laws of England seem to have been adopted by consent of the settlers, which might easily enough be done whilst they were few and living all together. Of such adoption however we have no other proof than their practice, till the year 1661, when they were expressly adopted by an act of the assembly, except so far as "a difference of condition" rendered them inapplicable. Under this adoption, the rule, in our courts of judicature was, that the common law of England, and the general statutes previous to the 4th of James, were in force here; but that no subsequent statutes were, *unless we were named in them*, said the judges and other partisans of the crown, but *named or not named*, said those who reflected freely. It will be unnecessary to attempt a description of the laws of England, as that may be found in English publications. To those which were established here, by the adoption of the legislature, have been since added a number of acts of assembly passed during the monarchy, and ordinances of convention and acts of assembly enacted since the establishment of the republic. The following variations from the British model are perhaps worthy of being specified.

Debtors unable to pay their debts, and making faithful deliv-

ery of their whole effects, are released from confinement, and their persons for ever discharged from restraint for such previous debts: but any property they may afterwards acquire will be subject to their creditors.

The poor, unable to support themselves, are maintained by an assessment on the titheable persons in their parish. This assessment is levied and administered by twelve persons in each parish, called vestrymen, originally chosen by the housekeepers of the parish, but afterwards filling vacancies in their own body by their own choice. These are usually the most discreet farmers, so distributed through their parish, that every part of it may be under the immediate eye of some one of them. They are well acquainted with the details and oeconomy of private life, and they find sufficient inducements to execute their charge well, in their philanthropy, in the approbation of their neighbours, and the distinction which that gives them. The poor who have neither property, friends, nor strength to labour, are boarded in the houses of good farmers, to whom a stipulated sum is annually paid. To those who are able to help themselves a little, or have friends from whom they derive some succours, inadequate however to their full maintenance, supplementary aids are given, which enable them to live comfortably in their own houses, or in the houses of their friends. Vagabonds, without visible property or vocation, are placed in workhouses, where they are well clothed, fed, lodged, and made to labour. Nearly the same method of providing for the poor prevails through all our states; and from Savannah to Portsmouth you will seldom meet a beggar. In the larger towns indeed they sometimes present themselves. These are usually foreigners, who have never obtained a settlement in any parish. I never yet saw a native American begging in the streets or highways. A subsistence is easily gained here: and if, by misfortunes, they are thrown on the charities of the world, those provided by their own country are so comfortable and so certain, that they never think of relinquishing them to become strolling beggars. Their situation too, when sick, in the family of a good farmer, where every member is emulous to do them kind offices, where they are visited by all the neighbours, who bring them the little rarities which their sickly appetites may crave, and who take by rotation the nightly watch

over them, when their condition requires it, is without comparison better than in a general hospital, where the sick, the dying, and the dead are crammed together, in the same rooms, and often in the same beds. The disadvantages, inseparable from general hospitals, are such as can never be counterpoised by all the regularities of medicine and regimen. Nature and kind nursing save a much greater proportion in our plain way, at a smaller expence, and with less abuse. One branch only of hospital institution is wanting with us; that is, a general establishment for those labouring under difficult cases of chirurgery. The aids of this art are not equivocal. But an able chirurgeon cannot be had in every parish. Such a receptacle should therefore be provided for those patients: but no others should be admitted.

Marriages must be solemnized either on special licence, granted by the first magistrate of the county, on proof of the consent of the parent or guardian of either party under age, or after solemn publication, on three several Sundays, at some place of religious worship, in the parishes where the parties reside. The act of solemnization may be by the minister of any society of Christians, who shall have been previously licensed for this purpose by the court of the county. Quakers and Menonists however are exempted from all these conditions, and marriage among them is to be solemnized by the society itself.

A foreigner of any nation, not in open war with us, becomes naturalized by removing to the state to reside, and taking an oath of fidelity: and thereupon acquires every right of a native citizen: and citizens may divest themselves of that character, by declaring, by solemn deed, or in open court, that they mean to expatriate themselves, and no longer to be citizens of this state.

Conveyances of land must be registered in the court of the county wherein they lie, or in the general court, or they are void, as to creditors, and subsequent purchasers.

Slaves pass by descent and dower as lands do. Where the descent is from a parent, the heir is bound to pay an equal share of their value in money to each of his brothers and sisters.

Slaves, as well as lands, were entailable during the monarchy: but, by an act of the first republican assembly, all donees in tail, present and future, were vested with the absolute dominion of the entailed subject.

Bills of exchange, being protested, carry 10 per cent. interest from their date.

No person is allowed, in any other case, to take more than five per cent. per annum simple interest, for the loan of monies.

Gaming debts are made void, and monies actually paid to discharge such debts (if they exceeded 40 shillings) may be recovered by the payer within three months, or by any other person afterwards.

Tobacco, flour, beef, pork, tar, pitch, and turpentine, must be inspected by persons publicly appointed, before they can be exported.

The erecting iron-works and mills is encouraged by many privileges; with necessary cautions however to prevent their dams from obstructing the navigation of the water-courses. The general assembly have on several occasions shewn a great desire to encourage the opening the great falls of James and Patowmac rivers. As yet, however, neither of these have been effected.

The laws have also descended to the preservation and improvement of the races of useful animals, such as horses, cattle, deer; to the extirpation of those which are noxious, as wolves, squirrels, crows, blackbirds; and to the guarding our citizens against infectious disorders, by obliging suspected vessels coming into the state, to perform quarantine, and by regulating the conduct of persons having such disorders within the state.

The mode of acquiring lands, in the earliest times of our settlement, was by petition to the general assembly. If the lands prayed for were already cleared of the Indian title, and the assembly thought the prayer reasonable, they passed the property by their vote to the petitioner. But if they had not yet been ceded by the Indians, it was necessary that the petitioner should previously purchase their right. This purchase the assembly verified, by enquiries of the Indian proprietors; and being satisfied of its reality and fairness, proceeded further to examine the reasonableness of the petition, and its consistence with policy; and, according to the result, either granted or rejected the petition. The company also sometimes, though very rarely, granted lands, independantly of the general assembly. As the colony increased, and individual applications for land multiplied, it was found to give too much occupation to the general assembly to enquire

into and execute the grant in every special case. They therefore thought it better to establish general rules, according to which all grants should be made, and to leave to the governor the execution of them, under these rules. This they did by what have been usually called the land laws, amending them from time to time, as their defects were developed. According to these laws, when an individual wished a portion of unappropriated land, he was to locate and survey it by a public officer, appointed for that purpose: its breadth was to bear a certain proportion to its length: the grant was to be executed by the governor: and the lands were to be improved in a certain manner, within a given time. From these regulations there resulted to the state a sole and exclusive power of taking conveyances of the Indian right of soil: since, according to them, an Indian conveyance alone could give no right to an individual, which the laws would acknowledge. The state, or the crown, thereafter, made general purchases of the Indians from time to time, and the governor parcelled them out by special grants, conformed to the rules before described, which it was not in his power, or in that of the crown, to dispense with. Grants, unaccompanied by their proper legal circumstances, were set aside regularly by *scire facias*,¹⁷¹ or by bill in Chancery. Since the establishment of our new government, this order of things is but little changed. An individual, wishing to appropriate to himself lands still unappropriated by any other, pays to the public treasurer a sum of money proportioned to the quantity he wants. He carries the treasurer's receipt to the auditors of public accompts, who thereupon debit the treasurer with the sum, and order the register of the land-office to give the party a warrant for his land. With this warrant from the register, he goes to the surveyor of the county where the land lies on which he has cast his eye. The surveyor lays it off for him, gives him its exact description, in the form of a certificate, which certificate he returns to the land-office, where a grant is made out, and is signed by the governor. This vests in him a perfect dominion in his lands, transmissible to whom he pleases by deed or will, or by descent to his heirs if he die intestate.

Many of the laws which were in force during the monarchy being relative merely to that form of government, or inculcating

principles inconsistent with republicanism, the first assembly which met after the establishment of the commonwealth appointed a committee to revise the whole code, to reduce it into proper form and volume, and report it to the assembly. This work has been executed by three gentlemen, and reported; but probably will not be taken up till a restoration of peace shall leave to the legislature leisure to go through such a work.

The plan of the revision¹⁷² was this. The common law of England, by which is meant, that part of the English law which was anterior to the date of the oldest statutes extant, is made the basis of the work. It was thought dangerous to attempt to reduce it to a text: it was therefore left to be collected from the usual monuments of it. Necessary alterations in that, and so much of the whole body of the British statutes, and of acts of assembly, as were thought proper to be retained, were digested into 126 new acts, in which simplicity of stile was aimed at, as far as was safe. The following are the most remarkable alterations proposed:

To change the rules of descent, so as that the lands of any person dying intestate shall be divisible equally among all his children, or other representatives, in equal degree.

To make slaves distributable among the next of kin, as other moveables.

To have all public expences, whether of the general treasury, or of a parish or county, (as for the maintenance of the poor, building bridges, court-houses, &c.) supplied by assessments on the citizens, in proportion to their property.

To hire undertakers for keeping the public roads in repair, and indemnify individuals through whose lands new roads shall be opened.

To define with precision the rules whereby aliens should become citizens, and citizens make themselves aliens.

To establish religious freedom on the broadest bottom.

To emancipate all slaves born after passing the act. The bill reported by the revisors does not itself contain this proposition; but an amendment containing it was prepared, to be offered to the legislature whenever the bill should be taken up, and further directing, that they should continue with their parents to a certain age, then be brought up, at the public expence, to tillage,

arts or sciences, according to their geniusses, till the females should be eighteen, and the males twenty-one years of age, when they should be colonized to such place as the circumstances of the time should render most proper, sending them out with arms, implements of houshold and of the handicraft arts, feeds, pairs of the useful domestic animals, &c. to declare them a free and independant people, and extend to them our alliance and protection, till they shall have acquired strength; and to send vessels at the same time to other parts of the world for an equal number of white inhabitants; to induce whom to migrate hither, proper encouragements were to be proposed. It will probably be asked, Why not retain and incorporate the blacks into the state, and thus save the expence of supplying, by importation of white settlers, the vacancies they will leave? Deep rooted prejudices entertained by the whites; ten thousand recollections, by the blacks, of the injuries they have sustained; new provocations; the real distinctions which nature has made; and many other circumstances, will divide us into parties, and produce convulsions which will probably never end but in the extermination of the one or the other race.—To these objections, which are political, may be added others, which are physical and moral. The first difference which strikes us is that of colour. Whether the black of the negro resides in the reticular membrane between the skin and scarf-skin, or in the scarf-skin itself; whether it proceeds from the colour of the blood, the colour of the bile, or from that of some other secretion, the difference is fixed in nature, and is as real as if its seat and cause were better known to us. And is this difference of no importance? Is it not the foundation of a greater or less share of beauty in the two races? Are not the fine mixtures of red and white, the expressions of every passion by greater or less suffusions of colour in the one, preferable to that eternal monotony, which reigns in the countenances, that immoveable veil of black which covers all the emotions of the other race? Add to these, flowing hair, a more elegant symmetry of form, their own judgment in favour of the whites, declared by their preference of them, as uniformly as is the preference of the Oranootan for the black women over those of his own species. The circumstance of superior beauty, is thought worthy attention in the propagation of our horses, dogs,

and other domestic animals; why not in that of man? Besides those of colour, figure, and hair, there are other physical distinctions proving a difference of race. They have less hair on the face and body. They secrete less by the kidneys, and more by the glands of the skin, which gives them a very strong and disagreeable odour. This greater degree of transpiration renders them more tolerant of heat, and less so of cold, than the whites. Perhaps too a difference of structure in the pulmonary apparatus, which a late ingenious *experimentalist has discovered to be the principal regulator of animal heat, may have disabled them from extricating, in the act of inspiration, so much of that fluid from the outer air, or obliged them in expiration, to part with more of it. They seem to require less sleep. A black, after hard labour through the day, will be induced by the slightest amusements to sit up till midnight,¹⁷⁴ or later, though knowing he must be out with the first dawn of the morning. They are at least as brave, and more adventuresome. But this may perhaps proceed from a want of forethought, which prevents their seeing a danger till it be present. When present, they do not go through it with more coolness or steadiness than the whites. They are more ardent after their female: but love seems with them to be more an eager desire, than a tender delicate mixture of sentiment and sensation.¹⁷⁵ Their griefs are transient. Those numberless afflictions, which render it doubtful whether heaven has given life to us in mercy or in wrath, are less felt, and sooner forgotten with them. In general, their existence appears to participate more of sensation than reflection. To this must be ascribed their disposition to sleep when abstracted from their diversions, and unemployed in labour. An animal whose body is at rest, and who does not reflect, must be disposed to sleep of course. Comparing them by their faculties of memory, reason, and imagination, it appears to me, that in memory they are equal to the whites; in reason much inferior, as I think one could scarcely be found capable of tracing and comprehending the investigations of Euclid; and that in imagination they are dull, tasteless, and anomalous. It would be unfair to follow them to Africa for this investigation. We will consider them here, on the same stage with the whites, and

*Crawford.¹⁷³

where the facts are not apocryphal on which a judgment is to be formed. It will be right to make great allowances for the difference of condition, of education, of conversation, of the sphere in which they move. Many millions of them have been brought to, and born in America. Most of them indeed have been confined to tillage, to their own homes, and their own society: yet many have been so situated, that they might have availed themselves of the conversation of their masters; many have been brought up to the handicraft arts, and from that circumstance have always been associated with the whites. Some have been liberally educated, and all have lived in countries where the arts and sciences are cultivated to a considerable degree, and have had before their eyes samples of the best works from abroad. The Indians, with no advantages of this kind, will often carve figures on their pipes not destitute of design and merit. They will crayon out an animal, a plant, or a country, so as to prove the existence of a germ in their minds which only wants cultivation. They astonish you with strokes of the most sublime oratory; such as prove their reason and sentiment strong, their imagination glowing and elevated. But never yet could I find that a black had uttered a thought above the level of plain narration; never see even an elementary trait of painting or sculpture. In music they are more generally gifted than the whites with accurate ears for tune and time, and they have been found capable of imagining a small catch*. Whether they will be equal to the composition of a more extensive run of melody, or of complicated harmony, is yet to be proved. Misery is often the parent of the most affecting touches in poetry.—Among the blacks is misery enough, God knows, but no poetry. Love is the peculiar oestrus of the poet. Their love is ardent, but it kindles the senses only, not the imagination. Religion indeed has produced a Phyllis Whately;¹⁷⁶ but it could not produce a poet. The compositions published under her name are below the dignity of criticism. The heroes of the Dunciad¹⁷⁷ are to her, as Hercules to the author of that poem. Ignatius Sancho¹⁷⁸ has approached nearer to merit in

*The instrument proper to them is the Banjar, which they brought hither from Africa, and which is the original of the guitar, its chords being precisely the four lower chords of the guitar.

composition; yet his letters do more honour to the heart than the head. They breathe the purest effusions of friendship and general philanthropy, and shew how great a degree of the latter may be compounded with strong religious zeal. He is often happy in the turn of his compliments, and his stile is easy and familiar, except when he affects a Shandean fabrication of words. But his imagination is wild and extravagant, escapes incessantly from every restraint of reason and taste, and, in the course of its vagaries, leaves a tract of thought as incoherent and eccentric, as is the course of a meteor through the sky. His subjects should often have led him to a process of sober reasoning; yet we find him always substituting sentiment for demonstration. Upon the whole, though we admit him to the first place among those of his own colour who have presented themselves to the public judgment, yet when we compare him with the writers of the race among whom he lived, and particularly with the epistolary class, in which he has taken his own stand, we are compelled to enroll him at the bottom of the column. This criticism supposes the letters published under his name to be genuine, and to have received amendment from no other hand; points which would not be of easy investigation.¹⁷⁹ The improvement of the blacks in body and mind, in the first instance of their mixture with the whites, has been observed by every one, and proves that their inferiority is not the effect merely of their condition of life. We know that among the Romans, about the Augustan age especially, the condition of their slaves was much more deplorable than that of the blacks on the continent of America. The two sexes were confined in separate apartments, because to raise a child cost the master more than to buy one. Cato, for a very restricted indulgence to his slaves in this particular, *took from them a certain price. But in this country the slaves multiply as fast as the free inhabitants. Their situation and manners place the commerce between the two sexes almost without restraint.—The same Cato, on a principle of oeconomy, always sold his sick and superannuated slaves. He gives it as a standing precept to a master visiting his farm, to sell his old oxen, old waggons, old tools,

* Τὸς δόλος εταξεν ὥρισμένῳ νομισματὸς ὁμίλειν ταῖς θεραπαίνουσιν.
—Plutarch.¹⁸⁰ Cato.

old and diseased servants, and every thing else become useless. “Vendat boves vetulos, plaustrum vetus, ferramenta vetera, servum senem, servum morbosum, & si quid aliud supersit vendat.”¹⁸¹ Cato de re rusticâ. c. 2. The American slaves cannot enumerate this among the injuries and insults they receive. It was the common practice to expose in the island of Aesculapius, in the Tyber, diseased slaves, whose cure was like to become tedious.¹⁸² The Emperor Claudius, by an edict, gave freedom to such of them as should recover, and first declared, that if any person chose to kill rather than to expose them, it should be deemed homicide. The exposing them is a crime of which no instance has existed with us; and were it to be followed by death, it would be punished capitally. We are told of a certain Vedius Pollio, who, in the presence of Augustus, would have given a slave as food to his fish, for having broken a glass.¹⁸³ With the Romans, the regular method of taking the evidence of their slaves was under torture. Here it has been thought better never to resort to their evidence. When a master was murdered, all his slaves, in the same house, or within hearing, were condemned to death. Here punishment falls on the guilty only, and as precise proof is required against him as against a freeman. Yet notwithstanding these and other discouraging circumstances among the Romans, their slaves were often their rarest artists. They excelled too in science, insomuch as to be usually employed as tutors to their master’s children. Epictetus, Terence, and Phaedrus,¹⁸⁴ were slaves. But they were of the race of whites. It is not their condition then, but nature, which has produced the distinction.—Whether further observation will or will not verify the conjecture, that nature has been less bountiful to them in the endowments of the head, I believe that in those of the heart she will be found to have done them justice. That disposition to theft with which they have been branded, must be ascribed to their situation, and not to any depravity of the moral sense. The man, in whose favour no laws of property exist, probably feels himself less bound to respect those made in favour of others. When arguing for ourselves, we lay it down as a fundamental, that laws, to be just, must give a reciprocation of right: that, without this, they are mere arbitrary rules of conduct, founded in force, and not in conscience: and it is a problem which I give to the master

to solve,¹⁸⁵ whether the religious precepts against the violation of property were not framed for him as well as his slave? And whether the slave may not as justifiably take a little from one, who has taken all from him, as he may slay one who would slay him? That a change in the relations in which a man is placed should change his ideas of moral right and wrong, is neither new, nor peculiar to the colour of the blacks. Homer tells us it was so 2600 years ago.

Ἡμῖον, γὰρ τ' ἀρετῆς ἀποαἰνῶναι εὐρύθπα Ζεὺς
Ἄνερὸς, εὖτ' ἂν μιν κατὰ δόλιον ἤμαξ ἔλθῃν.
Od. 17, 323.

*Jove fix'd it certain, that whatever day
Makes man a slave, takes half his worth away.*¹⁸⁶

But the slaves of which Homer speaks were whites. Notwithstanding these considerations which must weaken their respect for the laws of property, we find among them numerous instances of the most rigid integrity, and as many as among their better instructed masters, of benevolence, gratitude, and unshaken fidelity.—The opinion, that they are inferior in the faculties of reason and imagination, must be hazarded with great diffidence. To justify a general conclusion, requires many observations, even where the subject may be submitted to the Anatomical knife, to Optical glasses, to analysis by fire, or by solvents. How much more then where it is a faculty, not a substance, we are examining; where it eludes the research of all the senses; where the conditions of its existence are various and variously combined; where the effects of those which are present or absent bid defiance to calculation; let me add too, as a circumstance of great tenderness, where our conclusion would degrade a whole race of men from the rank in the scale of beings which their Creator may perhaps have given them. To our reproach it must be said, that though for a century and a half we have had under our eyes the races of black and of red men, they have never yet been viewed by us as subjects of natural history. I advance it therefore as a suspicion only, that the blacks, whether originally a distinct race, or made distinct by time and circumstances, are inferior to the whites in the endowments both

of body and mind. It is not against experience to suppose, that different species of the same genus, or varieties of the same species, may possess different qualifications. Will not a lover of natural history then, one who views the gradations in all the races of animals with the eye of philosophy, excuse an effort to keep those in the department of man as distinct as nature has formed them? This unfortunate difference of colour, and perhaps of faculty, is a powerful obstacle to the emancipation of these people. Many of their advocates, while they wish to vindicate the liberty of human nature, are anxious also to preserve its dignity and beauty. Some of these, embarrassed by the question "What further is to be done with them?" join themselves in opposition with those who are actuated by sordid avarice only. Among the Romans emancipation required but one effort. The slave, when made free, might mix with, without staining the blood of his master. But with us a second is necessary, unknown to history. When freed, he is to be removed beyond the reach of mixture.

The revised code further proposes to proportion crimes and punishments. This is attempted on the following scale.

- I. Crimes whose punishment extends to *Life*.
 1. High treason. Death by hanging.
Forfeiture of lands and goods to the commonwealth.
 2. Petty treason. Death by hanging. Dissection.
Forfeiture of half the lands and goods to the representatives of the party slain.
 3. Murder.
 1. by poison. Death by poison.
Forfeiture of one-half as before.
 2. in Duel. Death by hanging. Gibbeting, if the challenger.
Forfeiture of one-half as before, unless it be the party challenged, then the forfeiture is to the commonwealth.
 3. in any other way. Death by hanging.
Forfeiture of one-half as before.
 4. Manslaughter. The second offence is murder.
- II. Crimes whose punishment goes to *Limb*.
 1. Rape, } Dismemberment.
 2. Sodomy, }
 3. Maiming, } Retaliation, and the forfeiture of half the lands and goods to the sufferer.
 4. Disfiguring, }

III. Crimes punishable by *Labour*.

1. Manslaughter, 1st offence.	Labour VII. years for the public.	Forfeiture of half as in murder.
2. Counterfeiting money.	Labour VI. years.	Forfeiture of lands and goods to the commonwealth.
3. Arson.	Labour V. years.	Reparation threefold.
4. Asportation of vessels.		
5. Robbery.	Labour IV. years.	Reparation double.
6. Burglary.		
7. Housebreaking.	Labour III. years.	Reparation.
8. Horse-stealing.		
9. Grand Larceny.	Labour II. years.	Reparation. Pillory.
10. Petty Larceny.	Labour I. year.	Reparation. Pillory.
11. Pretensions to witchcraft, &c.	Ducking.	Stripes.
12. Excusable homicide.	to be pitied, not punished.	
13. Suicide.		
14. Apostacy, Heresy.		

Pardon and privilege of clergy are proposed to be abolished; but if the verdict be against the defendant, the court in their discretion, may allow a new trial. No attainder to cause a corruption of blood, or forfeiture of dower. Slaves guilty of offences punishable in others by labour, to be transported to Africa, or elsewhere, as the circumstances of the time admit, there to be continued in slavery. A rigorous regimen proposed for those condemned to labour.

Another object of the revisal is, to diffuse knowledge more generally through the mass of the people. This bill proposes to lay off every county into small districts of five or six miles square, called hundreds, and in each of them to establish a school for teaching reading, writing, and arithmetic. The tutor to be supported by the hundred, and every person in it entitled to send their children three years gratis, and as much longer as they please, paying for it. These schools to be under a visitor, who is annually to chuse the boy, of best genius in the school, of those whose parents are too poor to give them further education, and to send him forward to one of the grammar schools, of which twenty are proposed to be erected in different parts of the country, for teaching Greek, Latin, geography, and the higher branches of numerical arithmetic. Of the boys thus sent in any

one year, trial is to be made at the grammar schools one or two years, and the best genius of the whole selected, and continued six years, and the residue dismissed. By this means twenty of the best geniusses will be raked from the rubbish annually, and be instructed, at the public expence, so far as the grammar schools go. At the end of six years instruction, one half are to be discontinued (from among whom the grammar schools will probably be supplied with future masters); and the other half, who are to be chosen for the superiority of their parts and disposition, are to be sent and continued three years in the study of such sciences as they shall chuse, at William and Mary college, the plan of which is proposed to be enlarged, as will be hereafter explained, and extended to all the useful sciences. The ultimate result of the whole scheme of education would be the teaching all the children of the state reading, writing, and common arithmetic: turning out ten annually of superior genius, well taught in Greek, Latin, geography, and the higher branches of arithmetic: turning out ten others annually, of still superior parts, who, to those branches of learning, shall have added such of the sciences as their genius shall have led them to: the furnishing to the wealthier part of the people convenient schools, at which their children may be educated, at their own expence.—The general objects of this law are to provide an education adapted to the years, to the capacity, and the condition of every one, and directed to their freedom and happiness. Specific details were not proper for the law. These must be the business of the visitors entrusted with its execution. The first stage of this education being the schools of the hundreds, wherein the great mass of the people will receive their instruction, the principal foundations of future order will be laid here. Instead therefore of putting the Bible and Testament into the hands of the children, at an age when their judgments are not sufficiently matured for religious enquiries, their memories may here be stored with the most useful facts from Grecian, Roman, European and American history.¹⁸⁷ The first elements of morality too may be instilled into their minds; such as, when further developed as their judgments advance in strength, may teach them how to work out their own greatest happiness, by shewing them that it does not depend on the condition of life in which chance has placed them, but is

always the result of a good conscience, good health, occupation, and freedom in all just pursuits.—Those whom either the wealth of their parents or the adoption of the state shall destine to higher degrees of learning, will go on to the grammar schools, which constitute the next stage, there to be instructed in the languages. The learning Greek and Latin, I am told, is going into disuse in Europe. I know not what their manners and occupations may call for: but it would be very ill-judged in us to follow their example in this instance. There is a certain period of life, say from eight to fifteen or sixteen years of age, when the mind, like the body, is not yet firm enough for laborious and close operations. If applied to such, it falls an early victim to premature exertion; exhibiting indeed at first, in these young and tender subjects, the flattering appearance of their being men while they are yet children, but ending in reducing them to be children when they should be men. The memory is then most susceptible and tenacious of impressions; and the learning of languages being chiefly a work of memory, it seems precisely fitted to the powers of this period, which is long enough too for acquiring the most useful languages antient and modern. I do not pretend that language is science. It is only an instrument for the attainment of science. But that time is not lost which is employed in providing tools for future operation: more especially as in this case the books put into the hands of the youth for this purpose may be such as will at the same time impress their minds with useful facts and good principles. If this period be suffered to pass in idleness, the mind becomes lethargic and impotent, as would the body it inhabits if unexercised during the same time. The sympathy between body and mind during their rise, progress and decline, is too strict and obvious to endanger our being misled while we reason from the one to the other.—As soon as they are of sufficient age, it is supposed they will be sent on from the grammar schools to the university, which constitutes our third and last stage, there to study those sciences which may be adapted to their views.—By that part of our plan which prescribes the selection of the youths of genius from among the classes of the poor, we hope to avail the state of those talents which nature has sown as liberally among the poor as the rich, but which perish without use, if not sought for and cultivated.

—But of all the views of this law none is more important, none more legitimate, than that of rendering the people the safe, as they are the ultimate, guardians of their own liberty. For this purpose the reading in the first stage, where *they* will receive their whole education, is proposed, as has been said, to be chiefly historical. History by apprising them of the past will enable them to judge of the future; it will avail them of the experience of other times and other nations; it will qualify them as judges of the actions and designs of men; it will enable them to know ambition under every disguise it may assume; and knowing it, to defeat its views. In every government on earth is some trace of human weakness, some germ of corruption and degeneracy, which cunning will discover, and wickedness insensibly open, cultivate, and improve. Every government degenerates when trusted to the rulers of the people alone. The people themselves therefore are its only safe depositories. And to render even them safe their minds must be improved to a certain degree. This indeed is not all that is necessary, though it be essentially necessary. An amendment of our constitution must here come in aid of the public education. The influence over government must be shared among all the people. If every individual which composes their mass participates of the ultimate authority, the government will be safe; because the corrupting the whole mass will exceed any private resources of wealth: and public ones cannot be provided but by levies on the people. In this case every man would have to pay his own price. The government of Great-Britain has been corrupted, because but one man in ten has a right to vote for members of parliament. The sellers of the government therefore get nine-tenths of their price clear. It has been thought that corruption is restrained by confining the right of suffrage to a few of the wealthier of the people: but it would be more effectually restrained by an extension of that right to such numbers as would bid defiance to the means of corruption.

Lastly, it is proposed, by a bill in this revisal, to begin a public library and gallery, by laying out a certain sum annually in books, paintings, and statues.