

LECTURE 29 Of Parent and Child

THE next domestic relation which we are to consider, is that of parent and child. The duties that reciprocally result from this connection, are prescribed, as well by those feelings of parental love and filial reverence which Providence has implanted in the human breast, as by the positive precepts of religion, and of our municipal law.

I. Of the Duties of Parents.

The duties of parents to their children, as being their natural guardians, consist in maintaining and educating them during the season of infancy and youth, and in making reasonable provision for their future usefulness and happiness in life, by a situation suited to their habits, and a competent provision for the exigencies of that situation.¹

The wants and weaknesses of children render it necessary that some person maintain them, and the voice of nature has pointed out the parent as the most fit and proper person. The laws and customs of all nations have enforced this plain precept of universal law.² The Athenian and the Roman laws were so strict in enforcing the performance of this natural obligation of the parent, that they would not allow the father to disinherit the child from passion or prejudice, but only for substantial reasons, to be approved of in a court of justice.³

The obligation on the part of the parent to maintain the child, continues until the latter is in a condition to provide for its own maintenance, and it extends no further than to a necessary support. The obligation of parental duty is so well secured by the strength of natural affection, that it seldom requires to be enforced by human laws. According to the language of Lord Coke, it is “nature’s profession to assist, maintain, and console the child.” A father’s house is always open to his children. The best feelings of our nature establish and consecrate this asylum. Under the thousand pains and perils of human life, the home of the parents is to the children a sure refuge from evil, and a consolation in distress. In the intenseness, the lively touches, and unsubdued nature of parental affection, we discern the wisdom and goodness of the great Author of our being, and Father of Mercies.

All the provision that the statute law of this state has made on the subject, applies to the case of mere necessary maintenance, and the provision was borrowed from the English statutes of 43 Eliz. and 5 Geo. 1. The father and grandfather, mother and grandmother, being of sufficient ability, of any poor, blind, lame, or decrepit person whomsoever, not being able to maintain himself, and becoming chargeable to any city or town, shall, at their own charge and expense, relieve and maintain every such person, in such manner as the justices of the peace of the county, at their general sessions, shall order and direct, under the penalty of one dollar and fifty cents for every week’s disobedience of the order. If the father, or if the mother, being a widow, run away and leave their children a public charge, their estate is liable to be sequestered, and the proceeds applied to the maintenance of the children.⁴ The statute justly imposes a similar obligation upon the children and grandchildren, under like circumstances. This feeble and scanty statute provision was intended for the indemnity of the public against the maintenance of paupers, and it is all the injunction that the statute law pronounces in support of the duty of parents to maintain their adult children. During the minority of the child, the case is different, and the parent is absolutely bound to provide reasonably for his maintenance

and education, and he may be sued for necessaries furnished, and schooling given to a child. under just and reasonable circumstances.⁵ The father is bound to support his minor children, if he be of ability, even though they have property of their own; but this obligation in such a case does not extend to the mother.⁶ The legal obligation of the father to maintain his child, ceases as soon as the child is of age, however wealthy the father may be, unless the child becomes chargeable to the public as a pauper.⁷ The construction put upon the statute of 43 Eliz. renders it applicable only to relations by blood, and the husband is not liable for the expenses of the maintenance of the child of the wife by a former husband;⁸ nor for the expense of the maintenance of the wife's mother.⁹ If, however, he takes the wife's child into his own house; he is then considered as standing in loco parentis, and is responsible for the maintenance and education of the child; for, by that act, he holds the child out to the world as part of his family.¹⁰ There was great force of reason and justice in the extra judicial dicta referred to in the case in *Strange*, that the husband ought to maintain the parents of his wife, if he was able, and they were not; because the wife was liable before marriage to support then, and her personal property, and the use of her real estate, passed, by the marriage, to the husband. But the statute does not reach the case; and when the wife, by her marriage, parts with her ability to maintain her children, she ceases to be liable.¹¹ If, however, the wife has separate property, the Court of Chancery would, undoubtedly, in a proper case, make an order charging that property with the necessary support of her children and parents.

A father is not bound by the contract of his son, even for articles suitable and necessary, unless an actual authority be proved, or the circumstances be sufficient to imply one. Were it otherwise, a father who had an imprudent son, might be prejudiced to an indefinite extent. What is necessary for the child is left to the discretion of the parent; and where the infant is *sub potestate parentis*, there must be a clear omission of duty as to necessaries, before a third person can interfere, and furnish them, and charge the father. It will always be a question for a jury, whether, under the circumstances of the case, the father's authority was to be inferred.¹² If the father suffers the children to remain abroad with their mother, or if he forces them from home by severe usage, he is liable for their necessaries.¹³ And in consequence of the obligation of the father to provide for the maintenance, and, in some qualified degree, for the education of his infant children, he is entitled to the custody of their persons, and to the value of their labor and services. There can be no doubt, that this right in the father is perfect while the child is under the age of fourteen years. But as the father's guardianship by nature continues until the child has arrived to full age, and as he is entitled by statute to constitute a testamentary guardian of the person and estate of his children until the age of twenty-one, the inference would seem to be, that he was, in contemplation of law, entitled to the custody of the persons, and to the value of the services and labor of his children, during their minority. This is a principle assumed by the elementary writers;¹⁴ and the cases of *Day v. Everett*,¹⁵ and *Gale v. Parrott*,¹⁶ are to the same effect, and take the principle to be unquestionable; though, in the latter case, it was observed, that if the minor was eloiigned from the parent, he might, of necessity, be entitled to receive the fruits of his own labor, and that it would require only slight circumstances to enable the court to infer the parent's consent to the son's receipt and enjoyment of his own wages. The father, says Blackstone, has the benefit of his children's labor while they live with him, and are maintained by him, and this is no more than he is entitled to from his apprentices or servants.

The father may obtain the custody of his children by the writ of *habeas corpus*, when they are improperly detained from him;¹⁷ but the courts, both of law and equity, will investigate the circumstances, and act according to sound discretion, and will not always, and of course, interfere

upon *habeas corpus*, and take a child, though under fourteen years of age, from the possession of a third person, and deliver it over to the father against the will of the child. They will even control the right of the father to the possession and education of his child, when the nature of the case appears to warrant it.¹⁸ The father may also maintain trespass for a tort to an infant child, provided he can show a loss of service, for that is the gist of the action by the father.¹⁹

The duty of educating children in a manner suitable to their station and calling, is another branch of parental duty, of imperfect obligation generally in the eye of the municipal law, but of very great importance to the welfare of the state. Without some preparation made in youth for the sequel of life, children of all conditions would probably become idle and vicious when they grow up, either from the want of good habits, and the means of subsistence, or from want of rational and useful occupation. A parent who sends his son into the world uneducated, and without skill in any art or science, does a great injury to mankind, as well as to his own family, for he defrauds the community of a useful citizen, and bequeaths to it a nuisance. This parental duty is strongly and persuasively inculcated by the writers on natural law.²⁰ Solon was so deeply impressed with the force of the obligation, that he even excused the children of Athens from maintaining their parents, if they had neglected to train them up to some art or profession.²¹ Several of the states of antiquity were too solicitous to form their youth for the various duties of civil life, to entrust their education solely to the parent. Public institutions were formed in Persia, Crete, and Lacedaemon, to regulate and promote the education of children, in things calculated to render them useful citizens, and to adapt their minds and manners to the genius of the government. Great pains have been taken, and munificent and noble provision made, in this country, to diffuse the means of knowledge, and to render ordinary instruction accessible to all. Several of the states²² have made the maintenance of public schools an article in their constitutions. In the New England states, each town and parish are obliged, by law, to maintain an English school a considerable portion of the year, and the school is under the superintendence of the public authority, and the poorest children in the country have access to these schools. The state of Connecticut has a large and growing school fund, economically and wisely managed, and appropriated, in a great degree, to the support of common schools. Ordinary education is so far enforced in that state, that if parents will not teach their children the elements of knowledge, by causing them to read the English tongue well, and to know the laws against capital offenses, the selectmen of the town are enjoined to take their children from such parents, and bind them out to proper masters, where they will be educated to some useful employment, and will be taught to read and write, and the rules of arithmetic necessary to transact ordinary business. This law, said the late Chief Justice Reeve,²³ has produced very astonishing effects, and to it is to be attributed the knowledge of reading and writing, so universal among the people of that state.²⁴ In Massachusetts they have nothing which bears the name of a school fund, yet liberal donations have been made for the support of grammar schools, ordained by law in every town of the state of a certain size. The legislature of Virginia, also, some years ago, appropriated the greater part of the income of a literary fund, to the establishment of schools for the education of the poor throughout the state.

The laws of our own state were formerly exceedingly deficient on this subject, and we had no legal provision for the establishment of town schools, or the common education of children, except the very unimportant authority given to the overseers of the poor, and two justices, to bind out poor children as apprentices, according to their degree and ability, and the obligation imposed upon their masters to learn them to read and write. But since the year 1795, a new and bright light shines upon our domestic annals, and from that era we date the commencement of a great and spirited effort on

the part of government, to encourage common schools throughout the state. The annual sum of 50,000 dollars was appropriated for five years, and distributed equitably among the several towns, for the establishment and encouragement of schools, for teaching children the most useful and necessary branches of a good English education. A sum equal to one half of the sum granted by the state to each town, was directed to be raised by each town, during the same period, for an additional aid to the schools.²⁵ In 1805, a permanent fund for the support of common schools was first provided,²⁶ and it was enlarged by subsequent legislative appropriations.²⁷ An increasing anxiety for the growth, security, and application of the fund, and a deep sense of its value and importance, were constantly felt. In 1811, the legislatures²⁸ took measures for the preparation and digest of a system for the organization and establishment of common schools, and the distribution of the interest of the school fund. In 1812,²⁹ the present system was established, under the direction of an officer known as the superintendent of common schools. The interest of the school fund was directed to be annually distributed among the several towns, in a ratio to their population, provided the towns should raise a sum equal to their proportion, by a tax upon themselves. Each town was directed to be divided into school districts, and town commissioners and school inspectors. were directed to be chosen, and the children who had access to these schools were to be between the ages of five and fifteen years.

This system thus established, has prospered to an astonishing degree. In 1820, the fund distributed was \$80,000, in addition to a like sum, which was raised by taxation, in the several school districts, and applied in the same way. In 1823, there were 7382 school districts, and consequently as many common schools; and upwards of 400,000 children, or more than one fourth of our entire population, were instructed in that year, in these common schools. The sum of \$182,000, and upwards, was expended in that year, from the permanent school fund, and the moneys raised by town taxes, for that purpose, in the support of common schools. The general and local school fund, according to the report of the superintendent of common schools, of the 8th January, 1824, amounted to \$1,637,000; and it is well known to be in a course of steady, progressive enlargement.

According to the last annual report of the superintendent of common schools, made in January, 1827, there were 431,601 children taught at the public schools, without including those belonging to 570 school districts, from which no reports were received. The instruction is probably very scanty in many of the schools, from the want of school books and good teachers; but the elements of knowledge are universally taught, and the foundations of learning are laid. The school fund is solid and durable; and it is placed under the guaranty of the constitution, which declares,³⁰ that “the proceeds of all lands belonging to this state, except such parts thereof as may be reserved or appropriated to public use, which shall hereafter be sold or disposed of, together with the fund denominated the common school fund, shall be and remain a perpetual fund, the interest of which shall be inviolably appropriated and applied to the support of common schools, throughout this state.”

Such a liberal and efficient provision for the universal diffusion of common and useful instruction, may be contemplated with just pride, and with the most cheering anticipations.

The remaining branch of parental duty, consists in making competent provision, according to the condition and circumstances of the father, for the future welfare and settlement of the child; but this duty is not susceptible of municipal regulations, and it is usually left to the dictates of reason and natural affection. Our laws have not interfered on this point, and have left every man to dispose of

his property as he pleases; aid to point out, in his discretion, the path his children ought to pursue. The writers on general law allow, that parents may dispose of their property as they please, after providing for the necessary maintenance of their infant children, and those adults, who are not of ability to provide for themselves.³¹ A father may, at his death, devise all his estate to strangers, and leave his children upon the parish, and the public can have no remedy by way of indemnity against the executor. "I am surprised," said Lord Alvanley,³² "that this should be the law of any country, but I am afraid it is the law of England."

II. Of the Rights of Parents.

The rights of parents result from their duties. As they are bound to maintain and educate their children, the law has given them a right to such authority; and in the support of that authority, a right to the exercise of such discipline, as may be requisite for the discharge of their sacred trust. This is the true foundation of parental power; and yet the ancients generally carried the power of the parent to a most atrocious extent over the person and liberty of the child. The Persians, Egyptians, Greeks, Gauls, and Romans, allowed to fathers a very absolute dominion over their offspring, and the liberty and lives of the children were placed within their power.³³ It was not an absolute license of power among the Romans, to be executed in a wanton and arbitrary manner. It was a regular domestic jurisdiction, though in many instances, this paternal power was exercised without the forms of justice. The power was weakened greatly in public opinion by the time of Augustus, under the silent operation of refined manners and cultivated morals. It was looked upon as obsolete, when the pandects were compiled.³⁴ Bynkershoek was of opinion, that the power ceased under the Emperor Hadrian. The Emperor Constantine made the crime capital as to adult children. In the age of Tacitus, the exposing of infants was unlawful; but merely holding it to be unlawful, was not sufficient.³⁵ When the crime of exposing and killing infants was made capital, under Valentinian and Valens, then the practice was finally exterminated³⁶ and the paternal power reduced to the standard of reason, and of our own municipal law, which admits only the *jus domesticae emendationis*, or right of inflicting moderate correction, under the exercise of a sound discretion.³⁷ In every thing that related to the domestic connections, the English common law has an undoubted superiority over the Roman. Under the latter, the paternal power continued during the son's life, and did not cease even on his arriving at the greatest honors. The son could not sue without his father's consent, nor marry without his consent; and whatever he acquired, he acquired for the father's advantage; and in respect to the father, the son was considered rather in the light of property than as a rational being. Such a code of law was barbarous, and unfit for a free and civilized people; and Justinian himself pronounced it inhuman, and mitigated its rigor so far as to secure to the son the property he acquired by any other means than by his father; and yet even as to all acquisition, of the son, the father was still entitled to the use.³⁸

The power allowed by law to the parent over the person of the child, may be delegated to a tutor or instructor, the better to accomplish the purposes of education. The father has also the guardianship and custody of the property of his children, during their minority; and he may take the rents and profits thereof, but he will be responsible for the same to the child when he arrives to maturity. The father may, likewise, by deed or will, dispose of the custody and tuition of his children, under age. This power was given by the English statute of 12 Charles II c. 24; and it has been adopted in this state;³⁹ and the person so invested, may take the care and management of the estate, real and personal, belonging to the infants; and may maintain actions against any person who shall wrongfully take or detain them from his custody.

This power of the father ceases on the arrival of the child at the age of majority, which has been variously established in different countries, but with us is fixed at the age of twenty-one; and this is the period of majority now fixed by the French civil code.⁴⁰ In this respect, the Napoleon code was an improvement upon the former law of France,⁴¹ which, in imitation of the civil law, continued the minority to the end of twenty-five years.

In case of the death of the father during the minority of the child, his authority and duty, by the principles of natural law, would devolve upon the mother; and some nations, and particularly the French, in their new civil code,⁴² have so ordained. The father is, however, under the French law, allowed, by will, to appoint an adviser to the mother, without whose advice, she can do no act relating to the guardianship. This is analogous to our law, which allows the father, and the father only, to create a testamentary guardianship of the child. But if there be no such testamentary disposition, the mother, after the father's death, is entitled to be guardian of the person and estate of the infant, until it arrives at the age of fourteen, when it is of sufficient age to choose a guardian for itself.⁴³

III. Of the Duties of Children.

The duties that are enjoined upon children to their parents, are obedience and assistance during their own minority, and gratitude and reverence during the rest of their lives. This, as well as the other primary duties of domestic life, have generally been the objects of municipal law. Disobedience to parents was punished under the Jewish law with death;⁴⁴ and with the Hindus, it was attended with the loss of the child's inheritance.⁴⁵ Nor can the classical scholar be at a loss to recollect how assiduously the ancient Greeks provided for the exercise of filial gratitude. They considered the neglect of it to be extremely impious, and attended with the most certain effects of divine vengeance.⁴⁶ It was also an object of civil animadversion. Solon ordered all persons who refused to make due provisions for their parents, to be punished with infamy; and the same penalty was incurred for personal violence towards them.⁴⁷ When children undertook any hazardous enterprise, it was customary to engage a friend to maintain and protect their parents; and we have a beautiful allusion to this custom in the speech which Virgil puts into the mouth of Euryalus, when rushing into danger.⁴⁸

The laws of this state have, in some small degree, taken care to enforce this duty, not only by leaving it in the power of the parent, in his discretion, totally to disinherit, by will, his ungrateful children; but by compelling the children, and grand children, (being of sufficient ability,) of poor, old, lame, or impotent persons, not able to maintain themselves, to relieve and maintain them.⁴⁹ This is the only legal provision (for the common law makes none) made to enforce a plain obligation of the law of nature.⁵⁰

IV. Of Illegitimate Children.

I proceed next to examine the situation of illegitimate children, or bastards, who are begotten and born out of lawful wedlock.

These unhappy fruits of illicit connection were, by the civil and canon laws, made capable of being legitimated by the subsequent marriage of their parents; and this doctrine of legitimation prevails at this day, with different modifications, in France, Germany, Holland, and Scotland.⁵¹ But this

principle has never been introduced into the English law; and Sir William Blackstone,⁵² has elaborately and zealously maintained, in this respect, the superior policy of the common law.⁵³ We have, in relation to this subject, a memorable fact in English history. When the English bishops, in the reign of Hen. III, petitioned the lords, that they would consent that persons born before matrimony should be legitimate, as well as those born [afterwards, with re]spect to hereditary succession, inasmuch as a canon of the church had accepted all such as legitimate, so far as regarded the right of inheritance, the earls and barons, with one voice, answered, *quod nolunt leges Angliae mutare, quae hucusque usitate sunt et approbatae*⁵⁴ [they would not change the laws of England which were hitherto used and approved].

Mr. Selden, in his Dissertation upon Fleta,⁵⁵ mentions, that the children of John of Gaunt, Duke of Lancaster, born before marriage, were legitimated by an act of Parliament in the reign of Richard II founded on some obscure common law custom; and Mr. Barrington, in his Observations upon the Statutes,⁵⁶ speaks of the Roman law on this subject as a very humane provision in favor of the innocent. The opposition of the English barons to the introduction of the rule of the civil law, is supposed to have arisen, not so much from any aversion to the principle itself, as to the sanction which would thereby be given to the superiority of the civil over their own common law. In the new civil code of France,⁵⁷ the rule of the civil law is adopted, provided the illegitimate children were not offspring of incestuous or adulterous intercourse, and were duly acknowledged by their parents before marriage, or in the act of celebration. Voet⁵⁸ presses this doctrine of legitimating by a subsequent marriage, to a very great extent. Thus, if A. has a natural son, and then marries another woman, and has a son, who is at his birth the lawful heir, and his wife dies, and he then marries the woman by whom he had the natural son, and has sons by her; according to the doctrine of the Dutch law, as stated by Voet, the bastard thus legitimated, excludes, by his right of primogeniture, not only his brothers of the full blood, by the last marriage, but the son of the first marriage. The latter is thus deprived of the right of inheritance, once vested in him by his primogeniture, by an act of his father to which he never consented. The civil law rule of retrospective legitimation, will sometimes lead to this rigorous consequence.

But not only children born before marriage, but those that are born so long after the death of the husband, as to destroy all presumption of their being his; and, also, all children born during the long and continued absence of the husband, so that no access to the mother can be presumed, are reputed bastards.⁵⁹ The question of the legitimacy or illegitimacy of the child of a married woman, is now regarded as a matter of fact, resting on presumptions going to establish a conclusion one way or the other, and it is a question for a jury to determine.⁶⁰ It is not necessary that I should dwell more particularly on this branch of the law, and the principles and reasoning upon which this doctrine of presumption applicable to the question of legitimacy, is founded, will be seen at large in the cases to which I have referred.

A bastard being, in the eye of our law, *nullius filius*,⁶¹ or as the civil law, from the difficulty of ascertaining the father, equally concluded, *patrem habere non intelliguntur*,⁶² he has no inheritable blood, and is incapable of inheriting as heir, either to his putative father, or his mother, or to any one else, nor can he have heirs but of his own body.⁶³ This rule, so far at least as it excludes him from inheriting as heir to his mother, is supposed to be founded partly in policy, to discourage illicit commerce between the sexes. Mr. Selden said,⁶⁴ that not only the laws of England, but those of all other civil states, excluded bastards from inheritance, unless there was a subsequent legitimation. Bastards are, undoubtedly, incapable of taking in this state, under our law of descents, which speaks

of lawful issue, and we follow the rule of the English law; but in several of these United States, the rigor of the English law has been relaxed, and bastards can inherit to their mother equally as if they were her lawful children.⁶⁵ The same rule has been recently declared in Connecticut, in the case of *Heath v. White*,⁶⁶ and it had long before been adjudged, that natural children by the same mother were heirs to each other.⁶⁷ These decisions rest on a very reasonable principle, that the relation of mother and child, which exists in this unhappy case, in all its native and binding force, ought to produce the ordinary legal consequences of that consanguinity. This was agreeable to the ordinance of Justinian, who, to a certain extent, and with exceptions, allowed a bastard to inherit to his mother;⁶⁸ and in several cases in the English law, the obligations of consanguinity between the mother and her illegitimate offspring, have been recognized. The rule, that a bastard is *nullius filius*, applies only to the case of inheritances.⁶⁹ It has been held to be unlawful for him to marry within the levitical degrees,⁷⁰ and a bastard has been considered to be within the marriage act of 26 Geo. II which required the consent of the father, guardian, or mother, to the validity of the marriage of a minor.⁷¹ He also takes and follows the settlement of his mother.⁷² With the exception of the right of inheritance and succession, bastards, by the English law, as well as by the laws of France, Spain, and Italy, are put upon an equal footing with their fellow subjects;⁷³ and in this country we have made very considerable advances towards giving them also the capacity to inherit, by admitting them to possess inheritable blood. We have, in this respect, followed the spirit of the laws of some of the ancient nations, who denied to bastards an equal share of their father's estate, (for that would be giving too much countenance to the indulgence of criminal desire,) but admitted them to a certain portion, and would not suffer them to be cast naked and destitute upon the world.⁷⁴

The mother, or reputed father, is chargeable by law with the maintenance of the bastard child, in such way as any two justices of the peace of the county shall think meet; and the goods, chattels, and real estate of the parents, are seizable for the support of such children, if the parents have absconded. The reputed father is liable to arrest and imprisonment, until he gives security to indemnify the town chargeable with the maintenance of the child.⁷⁵ These provisions are intended for the public indemnity, and were borrowed from the several English statutes on the subject; and similar regulations to coerce the putative father to maintain the child, and indemnify the town or parish, have been adopted in the several states.

The father of a bastard child is liable upon his implied contract, for its necessary maintenance, without any compulsory order being made upon him, provided he has adopted the child as his own, and acquiesced in any particular disposition of it.⁷⁶ The adoption must be voluntary, and with the consent of the mother, for the putative father has no legal right to the custody of a bastard child, in opposition to the claim of the mother; and, except the cases of the intervention of the town officers, under the statute provisions, or under the implied contract founded on the adoption of the child, the mother has no power to compel the putative father to support the child. She has a right to the custody and control of it as against the putative father, and is bound to maintain it as its natural guardian;⁷⁷ though, perhaps, the putative father might assert a right to the custody of the child as against a stranger.⁷⁸

There are cases in which the courts of equity have regarded bastards as having strong claims to equitable protection, and have decreed a specific performance of voluntary settlements made by the father in favor of the mother of her natural child.⁷⁹ On the other hand, there are cases in which the courts of equity have withheld from the illegitimate child every favorable intendment which the lawful heir would have been entitled to as of course. Thus, in *Fursaker v. Robinson*,⁸⁰ a natural

daughter brought her bill against the heir at law to supply a defective conveyance from her father to her, but the Chancellor refused to assist her, on the ground that she was a mere stranger, being *nullius filia*, and not taken notice of by the law as a daughter, and that the father was not under any legal obligation to provide for her as a child, though he might be obliged by the law of nature, and so the conveyance was voluntary, and without any consideration. This hard decision was made by Lord Cowper in 1717; but the language of Lord Ch. King, in a subsequent case, to which I have just alluded,⁸¹ is certainly much more conformable to justice and humanity. "If a man," says he, "does mislead an innocent woman, it is both reason and justice that he should make her reparation. The case is stronger in respect to the innocent child, whom the father has occasioned to be brought into the world in this shameful manner, and for whom, in justice, he ought to provide."

NOTES

1. Paley's Moral Philosophy, p. 223. Taylor's Elements of the Civil Law, 383. Pufendorf's *Droit de la Nature*, b. 4. ch. 11. e. 4. and 5.
2. Grotius, b. 2. c. 7. s. 4.
3. Potter's Greek Antiq. vol. ii. 351. Dig. 28. 2. 30. Novel, 115. ch. 3.
4. Laws of N.Y. sess. 36. ch. 78. s. 21, 22.
5. *Simpson v. Robertson*, 1 Esp. Cases, 17. *Ford v. Fothergill*, *ibid.* 211. *Stone v. Carr*, 3 Esp. Cas. 1. *Stanton v. Wilson*, 3 Day, 37. *Van Valkinburgh v. Watson*, 13 Johns. Rep. 480.
6. *Hughes v. Hughes*, 1 Bro. 387. *Whipple v. Dow*, 2 Mass. Rep. 415. *Dawes v. Howard*, 4 Mass. Rep. 97.
7. 1 Lord Raym. 699. *Parish of St. Andrews v. Mendez de Bretz*.
8. *Tubb v. Harrison*, 4 Term Rep. 118.
9. *Rex v. Munden*, 1 Str. 190.
10. *Stone v. Carr*, 3 Esp. Cases, 1.
11. *Billingsly v. Critchet*, 1 Bro. 268. *Cooper v. Martin*, 4 East, 76.
12. *Baker v. Keen*, 2 Starkie, 501. *Valkinburgh v. Watson*, 13 Johns. Rep. 480.
13. Lord Eldon, in 3 Esp. Cases, 252. *Rawlins v. Van Dyke*, 3 Day, 37. *Stanton v. Wilson*.
14. 1 Black's Com. 453. Reeves' Domestic Relation, 290.
15. 7 Mass. Rep. 145.
16. 1 N. H. Rep. 28.
17. *The King v. De Manneville*, 5 East, 221.
18. *Archer's case*, 1 Lord Raym 673. *Rex v. Smith*, Str. 982. *Rex v. Delaval*, 3 Burr. 1434. *Commonwealth v. Addicks*, 5 Binney, 520. *The case of McDowles*, 8 Johns. Rep. 328. *Commonwealth v. Nutt*, 1 Brown's Penn. Rep. 143. *Creuzer v. Hunter*, 2 Cox's Cases, 242. *De Manneville v. De Manneville*, 10 Vesey, 52.
19. *Hall v. Hallander*, 4 Barn. & Cress. 860.
20. Pufendorf, b. 4. c.11. s. 5. Paley's Moral Philosophy, p. 224, 225.
21. Plutarch's Life of Solon.
22. States of Massachusetts, Vermont, Connecticut, Pennsylvania, and Indiana.
23. Domestic Relations, p. 287.

24. During the twenty-seven years in which that distinguished lawyer was in extensive practice of the law, he informs us he never found but one person in Connecticut that could not write.
25. Act of 9th of April, 1795, ch. 75.
26. Act of April 2d, 1805, ch. 66.
27. Act of March 13th, 1807, ch. 32.
28. Act of April 9th, 1811, ch. 246. s. 54.
29. Act of June 19th, 1812, ch. 242.
30. Art. 7. sect. 10.
31. Puf. *Droit de la Nature*, lib. 4. ch. 11. sect. 7.
32. 5 Vesey, 444.
33. Taylor's Elements of the Civil Law, p. 395. 397. 402. *Voyage du Anackarsis en Greece*, tom. 3. ch. 26. Caesar de Bel. Gal. lib. 6, ch. 18. The exposition of infants, was the horrible and stubborn vice of almost all antiquity. Gibbon's Hist. vol. viii. p. 55-57. *Noodt de Partus Expositione et Nece apud veteres*; and which is considered to be a singular work of great accuracy on this subject.
34. *Liceat eos exheredare, quos occidere licebat*. Dig. 28. 2. 11.
35. *Numerum liberorum finire, aut quemquam ex agnatis necare, flagilium habetur. plusque ibi boni mores valent, quam alibi bonae leges*. Tac. de mor. Ger. c. 19.
36. Dr. Taylor, in his Elements of the Civil Law, p. 403-406, gives a concise history of the progress of the Roman jurisprudence, in its efforts to destroy this monstrous power of the parent; but Bynkershoek has composed a regular treatise, with infinite learning on this subject. It is entitled, *Opusculum de jure occidendi, vendendi, et exponendi liberos apud veteres Romanos*. Opera, tom. 1. 346. and it led him into some controversy with his predecessor, the learned Noodt, on the doubtful points and recondite learning, attached to that discussion.
37. 1 Hawk. P. C. b. 1. ch. 60. sect. 23.
38. Inst. 2. 9. 1.
39. L. N.Y. sess. 36. ch. 23. sect. 18, 19.
40. No. 488.
41. *Instit. Droit Francois*, par Argou, b. 1. ch. 7
42. No. 390-402.
43. Litt. sect. 123. 3 Co. 38. Co. Litt. 84. b. 2 Atk. 14. 3 Com. Dig. tit. Guardian, B. D. E. 7 Vesey, 348.
44. Deut. 21:18.
45. Gentoo Code. by Halhed, p. 64. The first emigrants to Massachusetts made filial disobedience a capital crime, according to the Jewish law. Governor Hutchinson, in his History of Massachusetts, vol. i. 441. says that he had met with but one conviction under that sanguinary law, and that offender was reprieved.
46. Ibid, b. 9. v. 454. Odyss. b. 2 v. 134. Hesiod's Oper. & Die. b. 1. v. 182-83.
47. Potter's Greek Antiq. vol. ii. 347-351.
48. *Tu, oro, solare inopem et succurre relictæ*. Aeneid, 9, 283.
49. Laws of N.Y. sess. 36. ch. 78. s. 21.
50. *Edwards v. Davis*, 16 Johns. Rep. 281. *Rex v. Munden*, Str. 190
51. 2 Domat. 361. Code Civil, No. 331. 1 Ersk. Inst. 116. Inst. 1. 10. 13. Code, 5. 27. 10. Butler's note, 181. to lib. 3. Co.

Litt. Voet. Com. ad Pand. 25. 7. s. 6. and 11. *Dissertation dans laquelle on discute les Principes du Droit Romain, et du Droit Francois, par rapport aux Batards. Oeuvres de Chancelier D'Aguesseau, tom. 7. 381. 470.*

52. Com. vol. i. 455.

53. It is a remarkable fact, however, that in eleven of the United States, the rule of the civil law prevails on this point, viz. in Vermont, Maryland, Virginia, Georgia, Alabama, Mississippi, Louisiana, Kentucky, Missouri, Indiana, and Ohio. Griffith's Law Reg. *passim*.

54. 1 Black. Com. 456. Stat. of Merton, 20. Hen. III. ch. 9.

55. Ch. 9. s. 2.

56. P. 38.

57. No. 331, 332, 333, 335.

58. Com. ad Pand. 25. 7. s. 11.

59. Cro. Jac. 541. Co. Litt. 244. a. 1 Blacks. Com. 456, 457.

60. 3 P. Wms. 275, 276. Str. 925. Salk. 123. Harg. note, No. 192 to lib. 2. Co. Litt. Butler's note No. 178. to lib. 3. Co. Litt. 4 Term. Rep 251. 356. 4 Bro. 90. 8 East, 123. Code Napoleon, No. 312-318. Com. Dig tit. Bastard, A. B.

61. Co Litt. 123. a.

62. Inst. 1. 10. 12.

63. 1 Blacks. Com. 459.

64. Note C. to Fortescue de laud. leg. Ang. ch. 40.

65. This is understood to be the law in Vermont, Virginia, North Carolina, Tennessee, Ohio, Indiana, and, under certain modifications, in Louisiana. Griffith's Register, *passim*. In Louisiana, if a married man pretending to be single, deceives a woman, the wife and children are entitled to all the rights of a legitimate wife and children. Christy's Dig. tit. Husband and Wife, 2.

66. 5 Conn. Rep. 228

67. *Brown v. Dye*, 2 Root, 280.

68. Code, lib. 6. 57. 5.

69. Buller, J. 1. Term. Rep. 101. *Bow v. Nottingham*, 1 N.H. Rep. 260.

70. *Haines v. Jeffel*, 1 Lord Raym. 68.

71. *King v. Inhabitants of Hodnett*, 1 Term Rep. 96.

72. 3 Johns. Rep. 15. 17 Johns. Rep. 41. 12 Mass Rep. 429. 5 Conn. Rep. 584.

73. *Oeuvres D'Agnesseau*, tom. 7. 384, 385. Butler's note, No. 176. to lib. 3 Co. Litt. 1 Blacks. Com. 459.

74. Potter's Greek Antiq. vol. ii. 340. Gento code, by Halhed, p. 73. The protection and tenderness which the Goddess Fortune is supposed to bestow upon foundlings, is, says Mr. Gifford, one of the most amusing and animated pictures that the keen and vigorous fancy of Juvenal ever drew:

*Stat fortuna improba noctu,
Arridens nudis infantibus. Hos fovet omnes,
Involvitque situ. Sat. 6. v. 603-605.*

75. Laws of N.Y. sess. 36. ch. 12.

76. *Hesketh v. Gowing*, 5 Esp. N. P. Rep. 131.

77. *The King v. Soper*, 5 Term Rep. 278. *The People v. Landt*, 2 Johns. Rep. 375. *Carpenter v. Whitman*, 15 Johns. Rep.

208. *Wright v. Wright*, 2 Mass. Rep. 109.

78. *Rex v. Cornforth*, Str. 1162.

79. *Marchioness of Annandale v. Harris*, 2 P. Wms. 432. *Florton v. Gibson*, 4 S. Car. Equity Rep. 139. *Bunn v. Winthrop*, 1 Johns. Ch. Rep. 338.

80. Prec. in Ch. 475. 1 Eq. Cas. Abr. 128. pl. 9. Gilb. Eq. Rep. 339. Gilb. E. R. 256.

81. 2 P. Wms. 432.