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**A View Of Society In Europe, In Its Progress From
Rudeness To Refinement: Or, Inquiries Concerning The
History Of Law, Government, And Manners**

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Section III.

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SECTION III.

(1) **E**T Venus in Sylvis jungebat corpora amantum ;
 ' Conciliabat enim vel mutua quamque cupido,
 ' Vel violenta viri vis, atque impensa libido,
 ' Vel precium, glandes, atque arbuta, vel pira lecta.'

Lucret. lib. 5.

(2) ' Interfunt parentes et propinqui ac *munera* probant : Mu-
 ' nera non ad delicias muliebres quaesita, nec quibus nova nupta
 ' comatur ; sed boves et frenatum equum, et scutum cum framea
 ' gladioque. In haec munera *uxor* accipitur, atque invicem ip-
 ' sa armorum aliquid viro offert. Hoc maximum vinculum,
 ' haec arcana sacra, hos conjugales deos arbitrantur.' *Tacit. de*
Mor. Germ. c. 18.

Remains of these usages are to be found during every period
 of the middle ages. About the year 500, on the marriage of
 Alamaberga, the niece of Theoderic King of the Ostrogoths, that
 prince wrote a letter to her husband, Hermanfrid, King of the
 Thuringians ; from which it appears, that dressed or accoutred
 horses

horses were presented; and, in *Loccenius*, there are other examples to the same purpose. *Antiq. Sueogoth. lib. 2.* Among the Irish, a war horse and a spear were conjugal presents, till a late æra. ‘Ejusmodi quidpiam,’ says *Sir Henry Spelman*, in allusion to the passage quoted from Tacitus, ‘apud Germanorum nepotes Hibernicos ipsimet aliquando deprehendimus. ‘Equum scilicet militarem cum frameâ inter jugalia munera solennius fuisse, sed a patre sponsæ donatum. Addebant autem ‘Hiberni cytharam, ut blandioris fortunæ solatium.’ *Gloss. p. 174.*

In the American marriages, an interchange of presents was also an essential circumstance, and gave them a sanction and validity. ‘Le mariage n’est pas plutot resolu que le parentes de ‘l’epoux envoient un present dans le cabane de l’epouse. Ce ‘present consiste en des colliers de porcelaine, des pelleteries, ‘quelques couvertures des fourrures, et d’autres meubles d’usage, ‘qui vont aux parens de la fille, à laquelle on ne demande point ‘de dot; mais seulement qu’elle veuille accepter l’epoux qu’on ‘lui offre. Ces sortes des presents ne se font pas seulement une ‘fois, il s’en fait un espece d’alternative entre les deux cabanes ‘des futurs epoux, laquelle a ses loix prescrites par la coutume; ‘mais, des que les presents sont acceptés, le mariage est censé, ‘conclu, et le contrat passé.’ *Lafitau, tom. 1. p. 565.*

From the words of Tacitus, it appears, that among the Germans the consent of the parents or relations was particularly necessary



necessary in the contracting of marriages; and this is still more obvious from the laws of the barbarians, after they had made conquests. *LL. Wisigoth, lib. 3. tit. 2. 4. 8.* *LL. Saxon. tit. 6.* *LL. Frisionum, tit. 9.* The reason was, that the young men and the young women might not, through passion, marry into families hostile to their own. In a state of society which is confined, and where government is imperfect, divisions and animosities among chiefs are frequent, and carried to extremity. It is useful to remark, that the necessity of this consent, and the similar disorder of the feudal manners, ascertained *the incident of marriage*; in consequence of which, the *wards* of a *superior* could not marry without his approbation. This *incident*, which was to grow so important, is to be traced back to the woods of Germany. *Hist. Dissert. concerning the antiq. of the English constitution, part 2.*

(3) 'Nec se mulier extra virtutum cogitationes, extraque bellorum casus putet, ipsis incipientis matrimonii auspiciis admonetur, venire se laborum periculorumque *sociam*, idem in pace idem in bello passuram ausuramque; hoc juncti boves, hoc paratus equus, hoc data arma denuntiant. Sic vivendum, sic pereundum.' *Tacit. de Mor. Germ. c. 18.*

The matrimonial gifts among the savages of America, expressed, in like manner, the labour to which the women were to submit, and were doubtless to be understood in the same light, as indications

indications of equality, and expressions of respect. Yet *Charlevoix* affects to consider them rather as marks of slavery, than as testimonies of friendship. *Journal. Hist. let.* 19. Of this author, it is to be wished, that he had given his facts without reasoning upon them; or, that he had endeavoured to be consistent with himself; for, in other parts of his writings, we are led to conceive a high opinion of the state of the American women. My Lord Kaimes and Mr Millar seem, in the present case, to have estimated too highly his opinion. And I am sensible that Dr Robertson has subscribed to their sentiments. They join, in considering the presents to the women as characteristic of the meanness of their condition, and of their being the slaves of the men. They connect slavery with labour and business, without reflecting, that ease and luxury cannot possibly belong to women in barbarous times, and that, in all times, the men and women are to be judged of by different standards. The warrior does not apply the same rules to his son and his daughter, and does not fancy that they are to shine alike in feats of arms. Valour he accounts the chief quality of the former: In the latter, he requires something more of gentleness, and a skill in domestic affairs. Of this there is a very strong and apt illustration in Mr *Adair*, with which I will conclude this note.

‘ The American Indians lay their *male* children on the skins
‘ of panthers, on account of the communicative principle, which
‘ they reckon all nature is possessed of, in conveying qualities ac-
‘ cording



‘ cording to the regimen followed ; and, as the panther is en-
 ‘ dowed with many qualities beyond any of his fellow animals
 ‘ in the American woods, as smelling, strength, cunning, and a
 ‘ prodigious spring, they reckon such a bed is the first rudiments of
 ‘ war. But, it is worthy of notice, that they change the regimen
 ‘ of nurturing their young *females* : These they lay on the skins
 ‘ of fawns, or buffalo-calves, because they are *shy* and *timorous* ;
 ‘ and, if the mother be indisposed by sickness, her nearest female
 ‘ relation suckles the child, but only till she recovers.’ *Hist. of*
the American Indians, p. 421.

I enter not into the dispute, whether there be panthers in A-
 merica, or whether this name is only given to distinguish ani-
 mals which resemble them. In either case, my argument is safe,
 and to the point.

(4) ‘ Pugnatum in obsidentis ; et ereptus Segestes, magna
 ‘ cum propinquorum et clientum manu. Inerant *feminae* nobi-
 ‘ les ; inter quas uxor Arminii eademque filia Segestis, mariti
 ‘ magis quam parentis animo, neque victa in lacrymas, neque
 ‘ voce supplex, compressis intra sinum manibus, gravidum ute-
 ‘ rum intuens. . . . Arminium super insitam violentiam
 ‘ rupta uxor, subjectus servitio uxoris uterus, recordem agebant ;
 ‘ volitabatque per Cheruscas arma in Segestem, arma in Caesarem
 ‘ poscens.’ *Tacit. Annal. lib. 1. c. 57. 59.*

(5)



(5) 'Severa illic matrimonia. . . . Paucissima in tam
 'numerosa gente *adulteria*, quorum poena praefens et maritis
 'permiffa. Accifis crinibus, nudatam coram propinquis expel-
 'lit domo maritus, ac per omnem vicum verberare agit.' *Tacit. de*
Mor. Germ. c. 18. 19.

The power of the husband to punish the adultery of the wife
 continued long during the middle ages. *LL. Wisigoth. lib. 3.*
tit. 4. l. 3. 4. LL. Burgund. tit. 68. l. 1. It seems natural in
 a state of society, before the jurisdiction of the magistrate is ful-
 ly acknowledged; and it is to be found accordingly among the
 Americans and other nations. *Lafitau tom. 1. p. 588. Europ.*
Settlem. vol. 1. p. 180.

It is likewise to be observed, that the same mode of punish-
 ment prevailed long. 'Adulterii poena,' says *Lindenbrogius*,
 'decalvari et fultari per vicos vicinantes.' *Gloss. p. 1349.* See
 farther *LL. Longobard. lib. 1. tit. 17. l. 5.* When the magi-
 strate came to punish this delinquency, and, when the women,
 growing more detached from business, considered themselves as
 objects of luxury and pleasure, the crime of adultery appeared
 less heinous and offensive; and a separation or divorce, with the
 infamy of incontinence, became the punishment of an adul-
 terers.



From the assembled relations of the culprit, of whom *Tacitus* speaks, it is to be imagined, that, in conjunction with the husband, they constituted a court, and sat upon her in judgment. *Coram propinquis expellit domo maritus.* Before the jurisdiction of the magistrate is fully understood and unfolded, it appears, that a kind of domestic tribunal exercises authority, and forms a step in the progress of civil and criminal jurisdiction. This, in fact, we know to have been the case among the Romans. *Dion. Halicarn. Antiq. Rom. lib. 2.*

(6) ‘Publicatae pudicitiae nulla venia: Non forma, non aetate, non opibus maritum invenerit. Nemo enim illic vitia ridet: Nec corrumpere et corrumpi seculum vocatur.’ *Tacit. de Mor. Germ. c. 19.*

Tacitus, in this passage, as well as in many other places of his sentimental and incomparable treatise, glances at the depraved manners of the Romans. The expression *non opibus*, of which I have made no use in the text, applies not to the German tribes who inhabited the inland country, but to those who bordered on the territories of the Romans.

The same attentions to chastity, so beautifully described by the Roman historian, prevailed among the Americans. ‘Ils attribuent à la virginité et à la chastité certaines qualités et vertus particulières.’ *Lafitau, tom. 1. p. 339.* Thus it is in all rude nations;



nations ; and, I believe, it will be found, on examination, that those circumstances of immodesty among them, which oppose this way of thinking, have their rise in the weakneses of superstition, and in the abuses of the priesthood.

Nature adorns and protects the female sex with modesty. And, it is a most decisive proof of the respect paid to women, that, in almost all nations, the institution of marriage is connected with usages, which are contrived to favour and encourage their reserve and chastity. It is the male always who solicits ; and, in some states, a kind of violence was employed to support and succour the modesty of the bride. It seems to have been thus in early times among the Romans, and it was obviously so among the Spartans. In the former case, the bride appears to have been carried forcibly from the lap of her mother ; in the latter, the affair assumed the semblance of a rape. *Festus, Catullus, Plutarch in Vit. Lycurg. et Quaest. Rom.* The virgin and her relations, no doubt, understood previously the transaction, and expected this violence. But it was a compliment to her thus to give an air of constraint to her consent, to relieve her embarrassment and distress, her emotion of fear and hope, anxiety and tenderness.

It was with a similar view that the Romans conducted a bride to the house of her husband, with her head covered. And the Germanic nations paid also this mark of respect to the modesty



of their women, after they had made conquests. Compare *Apul. Metam. lib. 4.* *Tacit. Annal. lib. 15. c. 37.* And the laws of the barbarians *de conjugali velatione.*

These circumstances, and those which I formerly remarked, with others not less expressive of the early importance of women, that I am presently to mention, seem to have escaped my Lord Kaims and Mr Millar; and I beg it to be understood, that I oppose thus frequently their opinions from no captiousness of temper, but because, if they are just, mine must be ill founded and improper.

(7) 'Sera juvenum venus; eoque inexhausta pubertas; nec virgines festinantur; eadem juvena, similibus proceritas: Pares valisque miscuntur; ac roborum parentum liberi referunt. . . .
' Quanto plus propinquorum, quo major adfinium numerus, tanto gratiosior senectus: Nec ulla orbitatis pretia. . . .
' Numerum liberorum finire, aut quemquam ex agnatis necare, flagitium habetur.' *Tacit. de Mor. Germ. c. 19. 20.*

(8) 'Sua quemque mater uberibus alit, nec ancillis, ac nutricibus delegantur.' *Tacit. de Mor. Germ. c. 20.* This also is the practice in America and in all rude communities. 'Les sauvages n'ont garde de donner leur enfans á d'autres pour les nourrir. Elles croiroient se dépouiller de l'affection de mere, et elles font dans une surprise extrême de voir qu'il y ait des

‘des nations au monde, ou cette usage soit recû et établi.’ *Lafitau, tom. 1. p. 593.* The Roman virtue was at an end, says the author of the dialogue concerning orators, when the women gave their children to be suckled and educated by Greek nurses and slaves. *Cap. 29.* In France, till the age of Charles V. princesses, and ladies of high rank, continued to suckle and educate their children. *Mezeray in Bulteel’s translation, p. 388.*

(9) A very ingenious writer has observed, that, before marriage is known as a regular institution, the interest of the mother must be great; children being then, in a particular manner, under her jurisdiction, and having no connection, or a distant one, with the father. His observation is not to be controverted; and, accordingly, he mentions the circumstance, as an exception to his theory. *Prof. Millar concerning the Distinction of Ranks, ch. 1. sect. 2.*

It is obvious, that the respect which the children pay to the mother in this situation, raises the importance of the sex; and it is worthy of notice, that, after marriage is known as an institution, and the husband and wife live together in the same cabin, the influence of the mother is by no means diminished. For, though the father then acquires authority, the more amiable and winning attentions of the mother preserve and continue her consideration; and the military pursuits of the former calling him abroad, and employing his thoughts, leave to her the
task



task of educating their offspring. Thus, among the Gauls and Germans, it was not till children attained a certain age, that they dared publicly to approach their fathers. *Señt. 2. note 3.* ‘Les enfans,’ says *Charlevoix* of the Americans, ‘n’appartiennent qu’á la mere, et ne reconnoissent qu’elles. Le pere est toujours ‘comme etranger par rapport à eux.’ *Journ. Hist. let. 19.* It is our nature to be more attached to what is lovely and gentle, than to what is stern and venerable. It is ‘the soft green of the ‘foul,’ as an elegant writer * expresses it, ‘on which the eye delights to rest.’

(10) ‘Septa pudicitia agunt, nullis spectaculorum illecebris, ‘nullis conviviorum irritationibus corruptae. *Litterarum secreta ‘viri pariter ac feminae ignorant.’ Tacit. de Mor. Germ. c. 19.*

That knowledge and letters were incentives to corruption, we have also the opinion of *Sallust*, who, notwithstanding the freedom of his life, is a beautiful declaimer on the side of morality. It is of *Sempronia* that he thus speaks: ‘Literis Graecis docta: ‘Pfallere et saltare elegantius, quam necesse est probae: Multa ‘alia norat, quae instrumenta luxuriae sunt, sed ei cariora semper ‘omnia quam decus et pudicitia fuit.’ *De Bel. Catilin.*

(11) These things, which are curious, are illustrated by the following passage of *Tacitus*. ‘Melius quidem adhuc eae civitates, ‘in

* Mr Burke.



‘ in quibus tantum virgines nubunt, et cum spe votoque uxoris
 ‘ semel tranfigitur. Sic unum accipiunt maritum, quomodo unum
 ‘ corpus, unamque vitam, ne ulla cogitatio ultra, ne longior cu-
 ‘ piditas, ne tamquam maritum, sed tamquam matrimonium
 ‘ ament.’ *De mor. Germ. c. 19.*

The matrimonial symbols, as was formerly observed, Note 2. consisted chiefly of an interchange of arms; but, among those nations of the barbarians who, after their conquests, became accustomed to the manners of the Romans, this usage suffered an early innovation. The symbols of arms were often neglected for those of money. And the betrothing *per solidum et denarium* grew to be a fashion.

Thus, according to the Salic law, a *virgin* was married *per solidum et denarium*. ‘ Convenit ut ego te solido et denario secundum legem Salicam sponsare deberem; quod ita et feci.’ *Form. Solen. 75. ap. Lindenbrog.* But it was not so with the *widow*. The symbols were augmented; and it is to be conceived, that their augmentation expressed that of the dower. ‘ Si quis homo moriens viduam dimiserit, et eam quis in conjugium voluerit accipere, antequam eam accipiat Tunginus aut Centenarius mallum indicent, et in ipso mallo scutum habere debent, et tres homines causas tres demandare; et tunc ille qui viduam accipere vult, cum tribus testibus qui adprobare debent, *tres solidos aequae pensantes et denarium habere debet.*’ *Lex. Sal. tit.*



46. c. 1. The spirit of the German manners opposing second marriages, made it necessary to bribe, as it were, the modesty of the widow.

It deserves remark, that traces of the connection of disgrace with second marriages, as to the women, are to be found in almost all nations; and this circumstance, so favourable to the modesty of the sex, is a striking proof of their early importance. There were ages of the Grecian and Roman manners when this disgrace prevailed in all its force; and even among races of men the most savage, the immodesty of second marriages is repressed by particular usages.

‘Chez les habitans des côtes de Cumana,’ says an ingenious writer, ‘avant que de brûler le corps du mari, on en sèpare la tête; on la porte à sa veuve pour que la main posée dessus, elle jure de la conserver précieusement, et de ne jamais se remarier. Une veuve, chez les Caffres et les Hotentots, chaque fois qu’elle se remarie, est obligée de se couper un doigt.’ *St. Foix, Essais Historiques sur Paris, tom. 5. p. 177.*

(12) The King, according to Domesday-book, demanded 20 shillings for the marriage of a *widow*, and 10 shillings for that of a *virgin*. ‘Mulier accipiens quocunque modo maritum, si vidua dabat Regi 20 s. si puella 10 s. quolibet modo accipiet virum.’ *Domesd. tit. Scropesberie, ap. Spelman, voc. Maritagiū.* There is good evidence, that, in several cities of Germany,

many in the middle times, fines were paid to the magistrate on the marriage of a widow. *Heindec. Elem. Jur. Germ. lib. 1. tit. 10. § 222.*

(13) Thus, the ravishing of a widow was punished more severely than that of a virgin. ‘Si quis *virginem* rapuerit contra ipsius voluntatem et parentum ejus, cum xl. fol. componat, et alios xl. cogatur in fisco. Si autem *viduam* rapuerit quae coacta ex tecto egreditur orphanorum, et pro penuriae rebus, cum lxxx. fol. componat, et lx. cogatur in fisco.’ *LL. Barovar. tit. 7. l. 6. 7.*

By the way, this early severity against rapes, is a strong confirmation of my general argument, and is direct against the opinions of my Lord Kaims and Mr Millar. The reputation of females suffering, in this way, was forever marked with disgrace. No suitors were now to court their alliance. Yet their minds had received no pollution, and their innocence could not be impeached. Their bodies, however, had been abused; and the loss of value attending this abuse, with the severe punishment of their violators, expresses clearly the high and natural importance of the sex.

In the Gentoo code, the consideration of the sex is also illustrated by laws too explicit to admit of doubt or cavil, and still more severe.



‘ If a man by force commits adultery with a woman of an
 ‘ equal or inferior cast, against her consent, the magistrate shall
 ‘ confiscate all his possessions, cut off his *penis*, and castrate him,
 ‘ and cause him to be led round the city, mounted upon an ass.

‘ If a man, by cunning and deceit, commits adultery with a
 ‘ woman of an equal or inferior cast, against her consent, the
 ‘ magistrate shall take all his possessions, brand him in the fore-
 ‘ head with the mark of the *pudendum muliebre*, and banish him
 ‘ the kingdom.

‘ If a man, by violence, or by cunning, or deceit, or against
 ‘ the woman’s consent, commits adultery with a woman of a
 ‘ superior cast, the magistrate shall deprive him of life.

‘ If a man, either by violence or with her consent, commits
 ‘ adultery with an unmarried girl of a superior cast, the magi-
 ‘ strate shall put him to death.’ *Code of Gentoo Laws, ch. 19.*

(14) ‘ *Singulis uxoribus contenti sunt, exceptis admodum pau-*
 ‘ *cis, qui non libidine, sed ob nobilitatem, plurimis nuptiis ambi-*
 ‘ *untur.*’ *Tacit. de Mor. Germ. c. 18.*

This, says *Montesquieu*, explains the reason why the kings of
 the first race had so great a number of wives. These marriages
 were less a proof of incontinence, than a consequence of digni-
 ty;



ty; and it would have wounded them, in a tender point, to have deprived them of such a prerogative. This, continues he, explains, likewise, the reason why the example of our kings was not followed by their subjects. *L'esprit des Loix, liv. 18. c. 25.*

I know that my Lord Kaims has spoken of the polygamy of the Germanic nations; but the authority to which he appeals in proof of his notion, is the passage now cited from Tacitus, which is most directly against him. *Sketches, vol. 1. p. 192.* And indeed he has remarked, in another portion of his work, 'That polygamy was never known among the northern nations of Europe.' *Vol. 1. p. 316.* I am at a loss to reconcile these opinions; and this ingenious author appears to have forgotten, that, in the states of Germanic and Gothic origin, there were even severe laws against polygamy. *LL. Longob. lib. 2. tit. 13. l. 1. 3. 5. LL. Wisigoth. lib. 3.*

The plurality of wives is a consequence of luxury and pride, and does not uniformly distinguish rude times, even in climates which encourage and inspirit the passions. In general, one man is then connected with one woman, and satisfied with her; and it is a proof of the antiquity of monogamy, that, when a plurality of wives is uniformly indulged, which happens not till the ages of property, there is always one of these who seems

B b 2

more



more peculiarly the wife; the rest appearing only as so many concubines.

The appetite for the sex, it is to be observed, is not nearly so strong in rude, as in cultivated times. Hardship and fatigue, the great enemies of inordinate love, waste the barbarian. 'Il est de l'ancien usage,' says *Lafitau*, 'parmi la plûpart des nations sauvages, de passer la premiere année, après le mariage contracté, sans le consommer; Et quoique les epoux passent la nuit ensemble, c'est sans prejudice de cet ancien usage.' *Tome 1. p. 575.* Ease and good living, on the contrary, flatter the senses in the ages of property. And, an abstinence of this sort would, doubtless, surprize very much the most timid and the most delicate of our virgins.

(15) The fortunate marriages of the relations of Dumnorix, are said, by *Caesar*, to have constituted a great proportion of his power. *De Bel. Gall. lib. 1. c. 18.* In the same author, there is the following notice concerning the wives of Ariovistus. 'Duae fuerunt Ariovisti uxores, una Sueca natione, quam dum secum adduxerat; altera Norica, regis Vocionis soror, quam in Gallia duxerat, a fratre missam.' *De Bel. Gall. lib. 1. c. 53.*

Tacitus says expressly, that deliberations on the subject of marriage were frequent in the councils of a German state. *De Mori*



Mor. Germ. c. 22. And, in that singular work, the *Atlantica* of *Rudbeck*, there is this passage. ‘In conciliis Upsalensibus decretum fuit, ut Olaus Rex Sueoniae filiam suam in matrimonio daret Olao Regi Norvagiae.’ *P. 214.*

(16) After the introduction of Christianity, a multitude of laws were enacted against incestuous marriages; and these prove, that little delicacy was previously paid to relation or descent. ‘Uxorem habere non liceat focrum, nurum, privignam, novercam, filiam fratris, filiam sororis, fratris uxorem, uxoris fororem: Filii fratrum, filii sororum, inter se nulla praesumptione jungantur.’ *LL. Baiivar. tit. 6. l. 1.* See also *LL. Longob. lib. 2. tit. 8.* *LL. Alaman. tit. 39.* *LL. Sal. tit. 14. l. 16.*

In Scotland, about the year 1093, ‘it was not uncommon,’ says my *Lord Hailes*, ‘for a man to marry his step-mother, or the widow of his brother.’ The learned and ingenious author adds, ‘I presume that this was not owing to vague lust, but to avarice; for it relieved the heir of a jointure.’ *Annals of Scotland, p. 39.* The observation is acute; but I am afraid that, though in some instances it might be just, it will not vindicate the Scots from the grossness and indecency which the prevalence of the custom fixes upon them. Even in France, at a later period, an. 1454, the Count D’Armagnac married publicly his own sister. *St Foix, Ess. Hist. vol. 5. p. 130.* The strange liberties taken by antient nations are sufficiently known.

A



A Persian acted in conformity to the laws, and to justice, when he married his mother ; and an Egyptian when he married his sister.

In times of refinement and delicacy, virtue takes the alarm, even at the recital of such facts ; but the philosopher, struck with their universality over all societies, however distant and distinct, is disposed to inquire, Where it is that nature has placed her barriers ; and what, on this head, in the codes of nations, is to be explained by natural law, and what by a policy civil and religious ? The topic is full of curiosity, but not for the present purpose.

CHAP-

