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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**

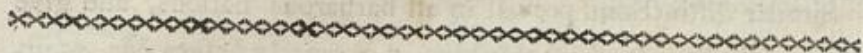
Stuart, Gilbert

Edinburgh, 1778

Chapter I.

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Authorities, Controversy, and Remarks.



B O O K I.

C H A P T E R I.

S E C T I O N I.

(1) ' **A** GRI, pro numero cultorum, ab universis per vices
' occupantur, quos mox inter se secundum digna-
' tionem partiuntur.' *Tacit. de Mor. Germ. c. 26.* ' Privati ac
' separati agri apud eos nihil est.' *Caesar de bell. Gall. lib. 4. c. 1.*
The German tribes passed annually from the fields they had
cultivated. ' Arva per annos mutant.' *Tacit. de Mor. Germ.*
c. 26. ' Neque longius anno remanere uno in loco incolendi causa
licet.'



‘ licet.’ *Caesar de bell. Gall. lib. 4. c. 1.* The condition of property among these nations I have treated in another work. *Historical Dissert. concerning the Antiquity of the English Constitution, Part 1.*

Similar distinctions prevail in all barbarous nations, and give rise to a similar way of thinking. ‘ Formerly,’ says Mr *Adair*, ‘ the Indian law obliged every town to work together in one ‘ body, in sowing or planting their crops; though their fields ‘ are divided by proper marks, and their harvest is gathered separately. The Cheerake and Muskohge still observe that old ‘ custom.’ *History of the American Indians.*

Among the Indians of Peru, it is said, that the territory occupied was the property of the state, and was regulated by the magistrate; and that, when individuals were permitted to possess particular spots, these, in default of male issue, returned to the community. *Royal commentaries of Peru, book 5. ch. 1. and 3.*

It seems to have arisen out of the old custom, which considered land as the property of nations, that in Europe, when all heirs failed, the property of the individual went to the *fiſc*, or to the sovereign as representing the state.

‘ Quod si maritus et mulier sine herede mortui fuerint, et
‘ nullus usque ad septimum gradum de propinquis et quibus-
‘ cunque

‘ cunque parentibus invenitur, tunc res *fiscus* adquirat.’ *LL. Baiwar. tit. 14. l. 9.*

‘ *Fiscus* tunc agat, quando nec parentum, nec filiorum, nec nepotum, nec agnatorum, nec cognatorum, nec uxoris et mariti, quae succedat, extare comperitur persona, *secundum veterum constituta.*’ *Edictum Theoderici Regis, c. 24.*

The fields in pasture belonged to the community or tribe, as well as the fields in tillage. The moment that the flocks or herds of one individual left them, they might be possessed or occupied by those of another; and so on in succession. It was under the influence of such manners that Abraham said to Lot, ‘ Is not the whole land before thee? separate thyself, I pray thee, from me; if thou wilt take the left-hand, then I will go to the right; or, if thou depart to the right-hand, then I will go to the left.’ *Genesis, Ch. xii. v. 9.* And to this condition of society the Roman poets make frequent allusions, though they do not seem to have understood it with accuracy*.

U

When

* Ante Jovem nulli subigebant arva coloni,
Nec arare quidem, aut partiri limite campum
Fas erat; in medium quaerebant; ipsaque tellus
Omnia liberius nullo poscente ferebat. *VIRG.*

Non domus ulla fores habuit, non fixus in agris
Qui regeret certis finibus arva lapis. *TIBUL.*



When the territory of a tribe or nation ceased to be its property, and individuals acquired particular spots or estates, which they cultivated for their use, and transmitted to their posterity, it was a consequence of the old manners, that these improvements were regarded as the usurpations of the powerful on the weak; and historians assure us, that it happened both in Greece and Italy, that the *land-marks* which had been fixed to distinguish the boundaries of property, were frequently removed or destroyed. It seemed an encroachment on the rights of the people, that lands, which, of old, pastured indifferently the cattle of successive occupiers, should be allotted to the use and convenience only of private men. It was, accordingly, not merely necessary to make laws to prevent the violation of private rights; but, what is curious in an uncommon degree, even the *termini* or *land-marks*, that they might remain unremoved for the preservation and the separation of property, were exalted into *divinities*. Thus, religion, as well as policy, held out its terrors to force mankind to learn the art of appropriation, and to accept of power and riches.

Among the Celtic and German barbarians, the defacing and the removing of land-marks were also common delinquencies; and, in the punishment of them, much severity was exercised.

‘ Si quis limites complantaverit, aut *terminos fixos* fuerit ausus evellere, si ingenuus est, per singula signa vel notas vicenos
‘ vi.



‘vi. solid. componat; si servus est, per singula signa L. flagella
‘fufcipiat.’ *LL. Baiivar. tit. xi. l. 1. et 2.*

‘Si quis liber homo *terminum antiquum* corruperit, aut exter-
‘minaverit, et probatum fuerit, fit culpabilis lxxx. sol. medium
‘regi, et medium in cujus fine fuerit terminus. Si quis servus
‘alienus *terminum antiquum* ruperit, aut exterminaverit, mortis in-
‘currat periculum, aut sol. xl. redimatur.’ *LL. Longobard, lib. 1.
tit. 26. l. 1. et 2.* See farther *LL. Wisigoth. lib. 10. tit. 3. De
terminis et limitibus.*

Boundaries and limits are also an article in the code of Gentoo
laws; and the regulations it holds out on this subject are, per-
haps, a proof, that the mass of the inhabitants of Hindostan, at
the period of their enactment, had not lost the idea of times
which preceded the discovery of the advantages of a landed pro-
perty. *Code of Gentoo laws, ch. 12.*

(2) ‘Dominum ac servum nullis educationis deliciis dignos-
‘cas. Inter eadem pecora; in eadem humo degunt; donec aetas
‘separet ingenuos, virtus agnoscat.’ *Tacit. de Mor. Germ. c. 20.*

(3) ‘Si civitas, in qua orti sunt, longa pace et otio torpeat;
‘plerique nobilium adolescentium petunt ultro eas nationes, quae
‘tum bellum aliquod gerunt, quia et ingrata genti quies, et facilius
‘inter ancipitia clarescunt. . . . Nec arare terram aut

U 2.

expectare.



‘expectare annum, tam facile persuaseris quam vocare hostes et
 ‘vulnera mereri: Pigrum quinimmo et iners videtur sudore acqui-
 ‘rere, quod possis sanguine parare.’ *Tacit. de Mor. Germ. c. 14.*

(4). *Tacit. de Mor. Germ. c. 15. 21. 24.* Struvius, *Corpus historiae Germanicae*, prolegom.

(5) ‘Convictibus et hospitibus non alia gens effusius indulget.
 ‘Quemcumque mortalium arcere tecto, nefas habetur, pro for-
 ‘tuna quisque apparatus epulis excipit. Cum defecere, qui modo
 ‘hospes fuerat, monstrator hospitii et comes, proximam domum
 ‘non invitati adeunt. Nec interest. Pari humanitate accipiun-
 ‘tur. Notum ignotumque, quantum ad jus hospitii, nemo dis-
 ‘cernit. Abcunti, si quid poposceris, concedere moris: Et pos-
 ‘cendi invicem eadem facilitas. Gaudent muneribus; sed nec
 ‘data imputant, nec acceptis obligantur.’ *Tacit. de Mor. Germ.*
c. 21.

The American tribes, who resemble so completely the antient
 Germans, are thus characterised by *Lafitau*: ‘Ils ont le coeur
 ‘haut et fier, un courage a l’epreuve, un valeur intrepide, un
 ‘constance dans les tourmens qui est heroique, une egalité que le
 ‘contre-temps et les mauvais succès n’alterent point: Entre eux
 ‘ils ont un espece de civilité à leur mode, dont ils gardent toutes
 ‘les bienfeances, un respect pour leur anciens, une deference pour
 ‘leur égaux qui a quelque chose de surprenant, et qu’ on a peine

‘ a



' a concilier avec cette indépendance, et cette liberté dont ils pa-
 ' roissent extrêmement jaloux: Ils sont peu careffans, et font peu
 ' de démonstrations; mais non obstant cela, ils sont bons, affables,
 ' et exercent envers les étrangers et les malheureux une chari-
 ' table hospitalité, qui a de quoi confondre toutes les nations de
 ' l'Europe.' *Mœurs des Sauvages Américains, vol. 1. p. 106.*
 See also *Charlevoix, Journ. Hist. lettre 21.* Such, with a few
 exceptions, it is to be thought, is the character of all nations in
 an early age of society.

(6) Tacit. de Mor. Germ. c. 15. Struvius, Corp. Hist. Ger. prolegom. Cluver. Germ. Antiq. lib. 1.

(7) ' Cibi simplices, agrestia poma, recens fera, aut lac con-
 ' cretum. Sine apparatu, sine blandimentis, expellunt famem.
 ' Adversus sitim non eadem temperantia. Si indulseris ebrietati,
 ' suggerendo quantum concupiscunt, haud minus facile vitiis,
 ' quam armis vincentur.' *Tacit. de Mor. Germ. c. 23.*

(8) ' Crebrae ut inter vinolentos rixae, raro conviciis, saepius
 ' caede et vulneribus, transiguntur. Sed et de reconciliandis in-
 ' vicem inimicis, et jungendis affinitatibus, et adsciscendis princi-
 ' pibus, de pace denique ac bello, plerumque *in conviviiis* consul-
 ' tant: Tanquam nullo magis tempore aut ad simplices cogita-
 ' tiones pateat animus, aut ad magnas incalescat. Gens non astu-
 ' ta nec callida aperit adhuc secreta pectoris licentia loci. Ergo
 ' detecta



‘ detecta et nuda omnium mens postera die retractatur : Et salva
 ‘ utriusque temporis ratio est. Deliberant dum fingere nesciunt ;
 ‘ constituunt dum errare non possunt.’ *Tacit. de Mor. Germ.*
 c. 22.

The deliberating on business, and the holding of councils of state during entertainments, was the practice of the Celtic and Gothic nations. And, it is remarkable, that the word *mallum* or *mallus*, which, during the middle ages, denoted the national assembly, as well as the county-court, is a derivative of *mael*, which signifies *convivium*.

From this union of festivity and business, there resulted evils which gave occasion to regulations which cannot be read without wonder. It was a law of the Longobards, ‘ Ut nullus e-
 ‘ brius suam causam in mallum possit conquirere, nec testimoni-
 ‘ um dicere ; nec comes placitum habeat nisi jejunos.’ *LL. Lon-*
gobard. lib. 2. tit. 52. l. xi. We read in *Capit. Kar. et Lud.*
 ‘ Rectum et honestum videtur ut iudices jejuni causas audiant
 ‘ et discernant.’ *Lib. 1. l. 62. ap. Lindenbrog.* And the follow-
 ing law was made in a synod held at Winchester ann. 1308.
 ‘ Item, quia in personis ebris legitimus dici non debet consen-
 ‘ sus, inhibemus, ne in tabernis per quaecunque verba, aut nisi
 ‘ jejuna saliva, vir aut mulier de contrahendo matrimonio sibi in-
 ‘ vicem fidem dare praesumant.’ *Wilkins, Concil. tom. 2. p. 295.*

This



This rudeness, of which we see the source in Tacitus, seems to have continued very long in England. 'Non exolevit hactenus mos antiquus,' says *Sir Henry Spelman*, 'nam in mallis seu placitis, quae assissae jam vocantur, vicecomites provinciarum bis quotannis magnam exhauriunt vim pecuniae, in iudiciis nobilibusque patriae convivendis.' *Gloss. p. 385.* In Scotland, in the memory of persons yet alive, the lawyers and retainers of the courts of justice did business constantly and openly in the tavern. It is likewise observable, that some particulars which regard the institution of the jury, are to be explained and illustrated from these facts, and this way of thinking. *Historical Dissertation concerning the antiquity of the English constit. Part 4. Sect. 2.*

(9) 'Nullas Germanorum populis urbes habitari, satis notum est, ne pati quidem inter se junctas sedes. Colunt discreti ac diversi, ut fons, ut campus, ut nemus placuit. . . . Nec enim cum ubertate et amplitudine foli labore contendunt, ut pomaria conferant, et prata separent, et hortos rigent. Sola terrae seges imperatur. Unde annum quoque ipsum non in totidem digerunt species: Hiems, et ver, et aestas, intellectum ac vocabula habent: Autumni perinde nomen ac bona ignorantur.' *Tacit. de Mor. Germ. c. 16. 26.*

(10) 'Ceterum nec cohibere parietibus deos, neque in ullam humani oris speciem assimilare, ex magnitudine caelestium arbitrantur.'



‘bitrantur. Lucos ac nemora consecrant, deorumque nominibus
 ‘appellant secretum illud, quod sola reverentia vident. Auspicia
 ‘fortesque ut qui maxime observant.’ *Tacit. de Mor. Germ. c. 9.*
Struvius, Corp. Hist. Germ. prolegom.

(11) *Tacit. de Mor. Germ. c. 12.* Cluver, *Germ. Antiq.*
 lib. 1.

(12) ‘Duces exemplo potius quam imperio, si prompti, si
 ‘conspicui, si ante aciem agant, admiratione praesunt.’ *Tacit. de*
Mor. Germ. c. 7.

(13) ‘Nigra scuta, tincta corpora, atras ad proelia noctes le-
 ‘gunt. . . . Cedere loco, dummodo rursus instes, consilii quam
 ‘formidinis arbitrantur.’ *Tacit. de Mor. Germ. c. 6. 43.*

A writer of reputation has, of late, advanced an opinion, that our European ancestors were averse from deceit and stratagem. Yet a propensity to these is perhaps a characteristic of all barbarous nations; and, that it applied to our forefathers, the testimony before us is a sufficient proof. In opposition to the barbarians of Europe, he holds out the American Indians, and contends that they are defective in active courage. Open violence he accounts as descriptive of the former; a reliance on stratagem and surprise, he remarks as peculiar to the latter. And, as the cause of
 this.

this diversity, he assigns different original dispositions. *Sketches of the History of Man, vol. 1. p. 23. 24.*

The truth is, that a proneness to open violence, is to be applied to the American as well as to the European savage; and that the love of stratagem and surprize was not less peculiar to the European than to the American. Stratagem and surprize, in America and in Germany, and indeed in all tribes and nations whatever, are parts of the art of war, or of military prudence, and refer not to courage. When the military art is nearest to perfection, and when cultivation is highest, there will be less of stratagem in war; for cunning, if I may be allowed the expression, is the wisdom of weakness. The ingenious author hazards a conjecture for a discovery, and mistakes for philosophy a fally of vivacity.

(14) 'Latrocinia nullam habent infamiam, quae extra fines
'eujusque civitatis fiunt; atque ea juventutis exercendae ac defi-
'diae minuendae cauta fieri praedicant.' *Caesar de Bell. Gall.*
lib. 6. c. 22. 'Materia munificentiae per bella, et raptus.' *Ta-*
cit. de Mor. Germ. c. 14.

Among the Greeks the same manners were known. It was common among them, in early times, for the more eminent and powerful to exercise, with reputation and honour, the crimes of robbery and piracy. *Thucydides, lib. 1. Homer, Odyss. 3.*

X

Such



Such is the case in all rude communities. In the wilds of America this way of thinking is prevalent at this hour, Warriors, restless and impatient, associate together, and seek for renown and plunder beyond the boundaries of their tribe. It is of bodies of this kind that *Lasitau* speaks in the following passage; which is not to be read, without recalling to one's mind what *Cæsar* and *Tacitus* have said of the *Gauls* and *Germans*.

‘Le partis detachés, qui se forment en pleine paix, pour ne pas intéresser la nation par des hostilités, lesquelles pourroient avoir des suites facheuses, vont porter la guerre chez les peuples les plus reculés. . . . Cette petite guerre est un véritable affassinat, et un brigandage, qui n’a nulle apparence de justice, ni dans le motif qui l’a fait entreprendre, ni par rapport aux peuples, à qui elle est faite; ils ne font seulement pas connus de ces nations éloignées, ou ne le font que par les dommages qu’ils leur causent, lorsqu’ils vont les assommer ou de faire esclaves presque jusques aux portes de leur palisades. Les sauvages regardent cela néanmoins comme un belle action.’
Tom. 2. p. 169.

It was under the influence of such manners that the northern nations carried on those piratical incursions, which, from the time of *Charlemagne*, filled Europe with terror. They were planned and conducted by men of rank, and conferred honour on them, and on the inferior adventurers. Yet modern historians,

ans, who are perpetually applying modern notions to antient times, attend not to this circumstance, and treat these maritime expeditions with a severity that may be moral enough, but which is historically injudicious and absurd.

In the age of Tacitus, the only German community who appear to have conceived the blame of this conduct, was the Chau-ci. For the great superiority and refinement of this people, I pretend not to account. But though, in general, it consisted with honour and merit, among the German states, to commit spoil and plunder among neighbouring nations; yet, it is not to be forgot, that the theft or violence of an individual within the territories of his own tribe, was atrocious, and a subject of punishment. This circumstance, which is curious in the history of morality, is to be explained from the condition of an infant society. Their riches, consisting chiefly of herds and flocks, which wander over vast tracts of country, are only to be protected by the terrors of justice. Hence the laws of the barbarians affixed *death* to the crime of stealing a horse, while the assassination, or the murder of a man, was expiated by a piece of money or a fine. ‘*Qui caballum furaverit, capite puniatur.*’ *LL. Saxon tit. 4. l. 1.* The extent of their forests, while it contributed to render more easy the abstraction of cattle, made it the more necessary to punish the offence. It also was a result of their unappropriated solitudes, that the proprietors of cattle found a difficulty in tracing them. Hence the custom of fixing bells to them.



‘Mos quippe *antiquus* inoleverat Francis, et maxime Aufrasiis,
 ‘ut pascentibus equis *tintinnabula* imponerent, quo si forte lon-
 ‘gius in pascendo aberrassent, eorum fonitu dignosci possent.’
Lindenbrog. Gloss. voc. Tintinnabulum. And what is worthy of
 notice, the taking away of these bells was a heinous delinquency,
 and punished severely. ‘Si quis tintinnabulum involaverit de
 ‘jumento vel bove, solidum reddat. De vacca tremiffes duos;
 ‘De berbicibus vel quibuscunque pecoribus, tremiffes singulos co-
 ‘gatur exfolvere.’ *LL. Wisigoth. lib. 7. tit. 2. l. 11.* See al-
 so *LL. Salic. tit. 29. et LL. Burgund. tit. 4. § 5.* In general,
 the atrocity of theft among the Gothic nations, may be gathered
 from the following Swedish law, which is of high antiquity.
 ‘In furti reum securi, furca, defossione, vivicomburio animad-
 ‘verti posse, nec eo nomine vel haeredibus, vel ecclesiae, vel regi,
 ‘ullam satisfactionem deberi.’ *Stiernbook de jur. Sueon. et Goth.*
vet. p. 366.

These important circumstances in the history of manners, the
 legality of a distant robbery, and the criminality of a domestic
 one, which are so pointedly illustrated by the early state of the
 Greeks, by that of the German and Celtic barbarians, and by
 the condition of the American tribes at this hour, receive a con-
 firmation, of the greatest weight, from the consideration of the
 Gentoo jurisprudence. In the code of Gentoo laws, there is this
 remarkable ordinance.

‘The



The mode of *shares among robbers* is this: If any *thieves*, by the *command of the magistrate*, and with his *assistance*, have committed depredations upon, and brought any booty from *another province*, the magistrate shall receive a share of one sixth of the whole; if they receive no command or assistance from the magistrate, they shall give the magistrate, in that case, one tenth for his share; and, of the remainder, their chief shall receive four shares; and whosoever among them is perfect master of his occupation, shall receive three shares; also, whichever of them is remarkably strong and stout, shall receive two shares, and the rest shall receive one share; if any one of the community of the thieves happens to be taken, and should be released from the *cutcherry* *, upon payment of a sum of money, all the thieves shall make good that sum by equal shares. *Code of Gentoo laws, p. 146.*

A person who has not considered savage and barbarous manners, will think, with the utmost surprise, that a magistrate should not only command a robbery, and give his countenance and protection to thieves, but even participate in their plunder. Such, notwithstanding, is the system of equity among all rude nations. While distant expeditions, however, and robberies, were thus considered as legal and honourable, the disturbers of domestic quiet and happiness were punished among the Hindoos with the greatest rigour.

‘ If

* A court of justice.



‘ If a man, say their laws, steals an elephant, or a horse, excellent in all respects, the magistrate shall cut off his hand, and foot, and buttock, and deprive him of life.

‘ If a man steals an elephant, or a horse, of small account, the magistrate shall cut off from him one hand and one foot.

‘ If a man steals a camel or a cow, the magistrate shall cut off from him one hand and one foot.’ *Gentoo laws, p. 249.*

There are, in this code, a great variety of laws against domestic thefts and robberies. The state of society of the Hindoos, to which it has a reference, resembles very much that of the German barbarians, when they had overturned the empire of the Romans; and a comparison of it with the laws of the Ripuarians, Burgundians, Longobards, and Franks, would lead to many curious discoveries in the progress of legislation and government.

(15) ‘ Nec regibus infinita aut libera potestas. . . . De minoribus rebus principes consultant, de majoribus omnes. Ita tamen, ut ea quoque, quorum penes plebem arbitrium est, apud principes pertractentur. Coeunt, nisi quid fortuitum et subitum incidit, certis diebus, cum aut inchoatur Luna aut impletur; nam agendis rebus hoc auspiciatissimum initium credunt. . . . Rex vel princeps, prout aetas cuique, prout
‘ ut

‘ ut nobilitas, prout decus bellorum, prout facundia est, audi-
 ‘ untur, auctoritate suadendi, magis quam jubendi potestate. Si
 ‘ displicuit sententia, fremitu aspernantur: Sin placuit, frameas
 ‘ concutiunt.’ *Tacit. de Mor. Germ. c. 7. xi.*

This limitation of government is a consequence of manners
 in early times; and, notwithstanding what is observed by many
 writers of antiquity, it seems very clear, that the popular or re-
 publican mode of administration is prior to monarchy.

In every rude community we know, the government has a
 surprising affinity to that of the Germans, as described by Tacit-
 us. And this is peculiarly observable of the American nations.
 ‘ Tout,’ says *Charlevoix* of the Americans, ‘ doit être examiné et
 ‘ arrêté dans les conseils des anciens, qui juge en dernière in-
 ‘ stance.’ *Journ. Historiq. lettre 18.* ‘ The highest title among
 ‘ the Americans,’ says *Mr Adair*, either in military or civil
 ‘ life, signifies only a chieftain: They have no words to ex-
 ‘ press despotic power or arbitrary kings. . . . The power
 ‘ of their chiefs is an empty sound. They can only persuade
 ‘ or dissuade the people, either by the force of good nature and
 ‘ clear reasoning, or colouring things so as to suit their prevail-
 ‘ ing passions. It is reputed merit alone that gives them any
 ‘ titles of distinction among the meanest of the people. . . .
 ‘ When any national affair is in debate, you may hear every
 ‘ father of a family speaking in his house, on the subject, with
 ‘ rapid

‘ rapid and bold language, and the utmost freedom that a people can use. Their voices, to a man, have due weight in every public affair, as it concerns their welfare alike.’ *Hist. of the American Indians*, p. 428. See also *Lafitau*, tom. 2. p. 475.

(16) ‘ Ac primo statim Chaucorum gens, quamquam incipiat a Frisiis, ac partem litoris occupet, omnium quas exposui gentium lateribus obtenditur, donec in Cattos usque sinuetur. Tam immensum terrarum spatium non tenent tantum Chaucci, sed et implent: Populus inter Germanos nobilissimus, quique magnitudinem suam malit iusticia tueri. Sine cupiditate, sine impotentia, quieti secretique, nulla provocant bella, nullis rapibus aut latrociniiis postulabantur. Idque praecipuum virtutis ac virium argumentum est, quod, ut superiores agant, non per injurias assequuntur. Prompta tamen omnibus arma, ac si res poscat exercitus: Plurimum virorum equorumque: Et quiescentibus eadem fama.’ *Tacit. de Mor. Germ. c. 35.*

‘ Fennis mira feritas, foeda paupertas, non arma, non equi; non penates: Victui herba, vestitui pelles, cubile humus. Sola in fagittis spes, quas inopia ferri ossibus asperant. Idemque venatus viros pariter ac feminas alit. Passim enim comitantur, partemque praedae petunt. Nec aliud infantibus ferarum imbriumque suffugium, quam ut in aliquo ramorum nexu contegantur.

' contegantur. Huc redeunt juvenes, hoc senum receptaculum.
 ' Id beatius arbitrantur, quam ingemere agris, illaborare domi-
 ' bus suas alienasque fortunas spē metuque versare. Securi ad-
 ' versus homines, securi adversus deos, rem difficillimam affecuti
 ' sunt, ut illis ne voto quidem opus fit.' *Tacit. de Mor. Germ.*
 c. 46.

Y S E C-



SECTION II.

(1) **M**R MILLAR on the Distinction of Ranks, ch. 1. Sketches of the History of Man, vol. 1. Dr Robertson, History of America, vol. 1. p. 318.

(2) 'Verberare servum, ac vinculis et opere coercere, rarum?'
Tacit. de Mor. Germ. c. 25.

(3) 'Domus officia uxor et liberi exequuntur.' *Tacit. de Mor. Germ. c. 25.* 'Liberos suos,' says *Caesar* of the Gauls, 'nisi quum adoleverint, ut munus militiae sustinere possint, palam ad se adire non patiuntur; filiumque in puerili aetate in publico in conspectu patris assistere turpe ducunt.' *De Bell. Gall. lib. 6. c. 18.*

(4) 'Quum ex captivis quaereret *Caesar*, quamobrem Ariovistus proelio non decertaret? hanc reperiebat causam, quod apud Germanos ea consuetudo esset, ut matres familias earum fortibus et vaticinationibus declararent, utrum proelium committi ex usu esset necne, eas ita dicere, non esse fas Germanos superare,

‘*si ante novam lunam proelio contendissent.*’ *Caesar de Bell. Gall.*
lib. 1. c. 50.

(5) Strabo lib. 7. Struvius, *Corpus Histor. German. prolegom.*
Cluver. *German. Antiq.* lib. 1.

(6) ‘*Inesse quinetiam sanctum aliquid, et providum putant.*
‘. . . Vidimus sub Divo Vespasiano Velledam diu apud ple-
‘rosque numinis loco habitam. Sed et olim Auriniam, et com-
‘plures alias venerati sunt, non adulatione, nec tamquam face-
‘rent deas.’ *Tacit. de Mor. Germ.* c. 8.

The honours of divinity came to be prostituted to these wo-
men with a wonderful profusion. Among the monuments of
antiquity in Germany, many altars, with inscriptions to them,
have been discovered; and, both in England and Scotland, there
are remains of the same kind. *Keysser, Antiq. Select. Septentr.*
et Celt. p. 379—448. *Camden, Britannia, passim.* The appel-
lation given them, in Caesar, is *matres familias*; and these in-
scriptions bear *matribus* or *matronis Suevis, Treveris, Aufanis, &c.*

Under Paganism and Christianity, the fatidical arts they prac-
tised drew upon them a very different fate. The credulity of
the Pagan advanced them into goddesses. The more criminal
ignorance of the Christian considered them as witches, and con-
signed them to the fire. Their mutterings were conceived to be

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magical..



magical. It was thought they could fascinate children with a look, were in covenant with demons, to whose embraces they submitted, could blast the fruits of autumn, raise commotions in the air, and interpret dreams. What is remarkable, the laws against such women, and against witchcraft, were not abrogated in England till the year 1736: And, in other countries of Europe, there are still regulations in force against these miserable objects, and this imaginary crime.

(7) 'Ad matres ad conjuges vulnera ferunt: Nec illae nume-
' rare, aut exfugere plagas pavent.' *Tacit. de Mor. Germ. c. 7.*
Cluver. Germ. Antiq. lib. 1.

(8) 'Feminae lineis amictibus velantur, eosque purpura vari-
' ant.' *Tacit. de Mor. Germ. c. 17.* 'Cadurci, Caleti, Ruteni,
' Bituriges, ultimique hominum existimati Morini, imo vero Gal-
' liae univesae vela texunt. Jam quidem et Transrhenani hostes:
' Nec pulchriorem aliam vestem eorum feminae noverunt.'
Plin. Hist. Nat. lib. 19. c. 1. Concerning the Longobards, there
is the following passage in *Paulus Diaconus*: 'Vestimenta eis
' erant laxa, et maxime lineae, qualia Anglo-Saxones habere so-
' lent, ornata infitis latioribus, vario colore contextis.' *Hist.*
Longobard. lib. 4. c. 7. And of the daughters of Charlemagne,
there is this notice in *Eginbard*. 'Filiis lanificio assuescere, co-
' loque ac fuso, ne per otium torperent, operam impendere, at-
' que ad omnem honestatem erudiri jussit.' *Vit. Car. Mag.* In
(9) America,

America, according to *Mr Adair*, the women are the chief, if not the only manufacturers. The men judge, that if they should perform offices of this kind, it would exceedingly disgrace them. *Hist. of the Amer. Indians*, p. 423. These offices, however, being characteristic of the women, are honourable in them. In Rome, during the virtuous times of the republic, the employments of the women were the distaff and the spindle; and *Plutarch* has said, in reproach of Fulvia the widow of Clodius, that she could neither spin nor stay at home. *Vit. Anton.*

(9) ‘Statim e somno, quem plerumque in diem extrahunt,
‘lavantur, saepius calida, ut apud quos plurimum hiems occu-
‘pat.’ *Tacit. de Mor. Germ. c. 22.*

————— ‘Mollesque flagellant

‘Colla comae.’

MART. EPIG. lib. I.

‘Partemque vestitus superioris in manicas non extendunt,
‘nuda brachia ac lacertos: Sed et proxima pars pectoris patet.’
Tacit. de Mor. Germ. c. 17. ‘Cet usage,’ says *Pelloutier*,
‘s’est conservé en Saxe, en Prusse, et en Livonie. Les femmes
‘y portent des chemises sans manche, et laissent leur gorge à
‘decouvert.’ *Hist. des Celtes, lib. 4. ch. 4.*

Diodorus Siculus, lib. 5. records the comeliness both of the Gaulic and German women; and *Biffala*, a German beauty, is celebrated by *Ausonius*.

(10)



(10.) 'Matrem suam,' says *Tacitus* of *Civilis*, 'sororesque, simul omnium conjuges, parvosque liberos, consistere a tergo jubet, hortamenta victoriae.' *Hist. lib. 4.* 'In proximo pignora; unde feminarum ululatus audiri, unde vagitus infantium. Memoriae proditur quaedam acies, inclinatas jam et labantes, a feminis restitutas, constantia precum, et objectu pectorum, et monstrata cominus captivitate, quam longe impatientius feminarum suarum nomine timent.' *Tacit. de Mor. Germ. c. 7. 8.* 'Ut virorum cantu, feminarum ululatu, sonuit acies.' *Tacit. Hist. lib. 4.* See also *Caesar de Bell. Gall. lib. 1. c. 51.*

'Adeo ut efficacius obligentur animi civitatum, quibus inter obfides puellae quoque nobiles imperantur.' *De Mor. Germ. c. 8.* *Suetonius*, speaking of the transactions of *Augustus* against the barbarians, has these words: 'A quibusdam novum genus obfidum feminas exigere tentaverit; quod negligere marium pignora sentiebat.' *Vit. Aug. c. 21.*

(11.) 'Sororum filiis idem apud avunculum qui apud patrem honor.' *Tacit. de Mor. Germ. c. 20.* Hence it is, says *Montesquieu*, that our earliest historians speak in such strong terms of the love of the kings of the Franks for the children of their sisters. *L'esprit des Loix, lib. 18. ch. 22.* *John de Laet* remarks of the *Brasilians*, that they call their uncles and aunts fathers and mothers; and the same custom prevails among the north



north American Indians. *Adair hist. of the Amer. Indians*, p. 213. Among the Hurons, says *Charlevoix*, with whom the dignity of the chief is hereditary, the succession is continued through the *women*; so that, at the death of a prince, it is not his own, but his *sister's son* who succeeds; and, in default of him, the nearest relation in the female line. It is added, 'Si toute un branche vient à s'eteindre, la plus noble *matrone* de la tribu, ou de la nation, choisit le sujet, qui lui plait davantage, et le declare chef.' *Journ. Hist. Lett.* 18. 'Æthiopes,' says *Damascenus*, '*sororibus* potissimum honorem exhibent, et successionem tradunt reges, non suis, sed *sorum filiiis*.' *De mor. Gent.* These facts, which coincide so curiously, express, in a forcible manner, the early importance of the sex.

(12) 'Nec aut consilia earum aspernantur, aut responsa negligunt.' *Tacit. de Mor. Germ. c. 8.* To deliberate, in public, on national concerns, was a privilege common to the women in all the Gothic and Celtic tribes. *Plutarch, de virtut. mulier. Polyænus in Stratag. lib. 7.* This advantage they enjoyed also in old times in Greece. *Goguet, part. 2. book 1. ch. 4.* And, at this hour, in America, they are called to the national meetings, to give their advice and counsel. *Charlevoix, Journ. Hist. let. 13. 18.* 'Les femmes,' says *Lafitau*, 'sont toujours les premieres qui deliberent, ou qui doivent deliberer, selon leur principes, sur les affaires particulieres ou communes. Elles tiennent leur conseil à part, et en consequence de leur determination, elles donnent
'avis



‘avis aux chefs des matieres qui font sur le tapis, afin qu’ils en
 ‘deliberent à leur tour. Les chefs, sur ces avis, font assembler
 ‘les anciens de leur tribu; et si la chose dont on doit traiter
 ‘interesse le bien commun, tous se reunissent dans le conseil ge-
 ‘nerale de la nation.’ *Tome 1. p. 477.*

The German women, after their nations had made conquests, still attended to affairs. As they debated, in the days of Tacitus, in the assemblies of their tribes, so they appeared afterwards in the Gothic parliaments. Among the Franks, as well as the Anglo-Saxons, the Queens had an active share in the government; and, among the former, there is the example of a Queen who received a national homage. *Greg. of Tours, lib. 4.* Werburgh, Queen to King Wightred, assisted at the wittenagemot, or national council, held at Berghamsted. *Chron. Sax. p. 48.* *Malmsbury, lib. 2.* mentions a parliament held by King Edgar, in which he was assisted by his mother Alfgina. And Canute is said, in a national assembly, to have acted by the advice of Queen Emma, and the bishops and nobility of England. *Mat. West. p. 423.*

When the crown fell to a prince in his minority, the queen-mother had the guardianship. Thus Fredegund had the guardianship of her son Clotarius II. Brunehild of her grandsons Theodebert and Theoderic, and Balthildis of her son Clotarius III.



(13) The following particulars, as well as those already mentioned, favour the notion of the importance of women in early times. ‘Apud Saunitas vel Samnites, de adolescentibus et virginibus quotannis publicum habetur iudicium. Quem igitur eorum optimum esse sententia iudicum pronunciarit, is sibi ex virginibus eligit uxorem quem vult, deinde secundus ab eo alteram, et sic de caeteris deinceps.’ *Damasc. de Mor. Gent.* ‘Sauromatae uxoribus in omnibus obtemperant, tanquam dominabus.’ *Ibid.* ‘Lycii vitam sustinuerunt ex latrociniiis. Legibus autem non utuntur, sed consuetudinibus, dominanturque ipsis feminae inde usque ab initio.’ *Heraclides de Politis Graecorum.* ‘In ea regione quam Athamanes habitant, mulieres terram colunt, viri greges pascunt.’ *Ibid.* *Tacitus*, discoursing of the antient Britains, has these words. ‘His atque talibus invicem instructi, Boudicea generis regii femina, duce (neque enim *sexum* in imperiis discernunt) sumpsere universi bellum.’ *Vit. Agric. c. 16.* In Homer, who paints rude manners, the women make a figure. In Virgil, who describes refined manners, they are insipid. Helen, Hecuba, Andromache, Penelope, Nauficaa, and Calypso, have marked and distinct characters. But Lavinia seems to be without passions of any kind, and to have that nothingness of character which, in the ages of civility, is too frequently connected with the most enchanting forms. The women of Egypt were highly prized, and had a kind of authority over the men. The toilets of the goddesses in Homer, and the gay dresses of the Greek ladies, seem to mark the considera-

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tion of the sex. At Sparta, the women interfered in the affairs of state, and assumed a superiority over the men. 'Les femmes,' says *Charlevoix* of the Americans, 'ont la principale autorité chez tous les peuples de la langue Huronne, si on en excepte le canton Iroquois d'Onneyouth, ou elle est alternative entre les deux sexes.' *Journ. Hist. lett.* 18.

The importance of women among the Hindoos, is illustrated in a striking manner by the following laws.

'If a person has called a modest woman unchaste, and the woman, or her husband, should make complaint to a magistrate, whenever the person accused appears before the magistrate, or arbitrator, he shall, upon the spot, answer to the complaint, and make no delay.

'If a woman, impelled by any calamity, should come to any person, and remain with him, if he commits fornication with that woman, the magistrate shall fine him two hundred and fifty *puns* of *cowries*.

'If a man speaks reproachfully of his wife's father or mother, the magistrate shall fine him fifty *puns* of *cowries*.

'If a man is prepared to cast upon a woman's body tears, or phlegm, or the paring of his nails, or the gum of his eyes, or
the



‘ the wax of his ears, or the refuse of victuals, or spittle, the ma-
 ‘ gistrate shall fine him forty *puns* of *cowries*.

‘ If a man throws upon a woman, from the neck upwards, a-
 ‘ ny spue, or urine, or ordure, or semen, the magistrate shall
 ‘ fine him one hundred and sixty *puns* of *cowries*.

‘ So long as a woman remains unmarried, her father shall
 ‘ take care of her; and, so long as a wife remains young, her
 ‘ husband shall take care of her; and, in her old age, her son
 ‘ shall take care of her; and if, before a woman’s marriage, her
 ‘ father should die, the brother, or brother’s son, or such other
 ‘ near relations of the father, shall take care of her; if, after mar-
 ‘ riage, her husband should die, and the wife has not brought
 ‘ forth a son, the brothers, and brothers sons, and such other
 ‘ near relations of her husband, shall take care of her: If there
 ‘ are no brothers, brothers sons, or such other near relations of
 ‘ her husband, the brothers, or sons of the brothers of her father
 ‘ shall take care of her; and, in every stage of life, if the persons
 ‘ who have been allotted to take care of a woman, do not take
 ‘ care of her, each, in his respective stage accordingly, the ma-
 ‘ gistrate shall fine them.’ *Code of Gentoo laws, p. 111. 163.*
 214. 220. 224. 282.

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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 aera. ‘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 framea inter jugalia munera solennius fuisse, sed a patre sponsae donatum. Addebant autem ‘Hiberni cytharam, ut blandioris fortunae 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 presens 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 presens 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 praesens et maritis permiffa. Accifis crinibus, nudatam coram propinquis expellit 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 fully 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 punishment 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 magistrate 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 adulterer.



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.’ *Tacitus 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 chasteté 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 sont 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. *Seët. 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, express 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

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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 première année, après le mariage contracté, sans le consommer; Et quoique les époux passent la nuit ensemble, c'est sans préjudice 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 Mor.*



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 forem: 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.

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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.

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