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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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Chapter II.

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CHAPTER II.

SECTION I.

(1) **T**HE total change produced in the condition of Europe by the settlements of the barbarous nations, is ascribed by many writers, and by Dr Robertson in particular, to the destructive violence with which they carried on their conquests, and to the havock which they made from one extremity of this quarter of the globe to the other. *History of Charles V. vol. 1. p. 11. 197. 198.*

It is to be remembered, notwithstanding, that the conquerors incorporated themselves, in some provinces, with the vanquished; that much of the havock and violence so pompously described by antient historians, is to be referred to the wars they carried on among themselves; and that, where havock and violence were least known, the change produced was, with the exception of a few circumstances, as general and complete as where they were experienced



experienced in the greatest degree. Thus, chivalry and the feudal institutions prevailed, in every step of their progress, in every country of Europe.

In illustration, indeed, of his opinion, Dr Robertson has said, that where havock prevailed in no great degree, as in England, on the Norman invasion, the antient inhabitants retained their own manners. It is certainly very true that the Anglo-Saxons retained their own manners. This, however, was no effect of the cause he has mentioned. The Norman revolution was not a conquest\*. A victory was obtained by Duke William over Harold and his followers; but no victory was obtained over the people of England. And, even on the hypothesis that the Duke of Normandy had *conquered* England, his illustration is without force. For the manners and policy of the Normans were the same with those of the Anglo-Saxons; with this difference, that the former were, in some measure, a more improved people.

The completeness of the revolution consequent on the settlements of the barbarians, is chiefly to be ascribed, as I observe in the text, to the immense difference of manners in the conquerors and the conquered. The former were in a condition of growing civility; the latter in a state of hopeless corruption. The German was approaching to perfection: The Roman had  
been

\* See a Discourse prefixed to Dr Sullivan's Lectures.



been declining from it. They mutually despised one another, and were urged on in different directions. The former, therefore, yielding to, and governed by the manners to which he had been accustomed, became necessarily the founder of new and peculiar establishments.

(2) 'Agri pro numero cultorum ab *universis* per *vices* occupantur, quos mox inter se secundum dignationem partiuntur. Facilitatem partiendi camporum spatia praestant. Arva per annos mutant, et superest ager.' *Tacit. de Mor. Germ. c. 26.*

This interesting information is well illustrated in the following relation from *Caesar*. 'Suevorum gens est longe maxima et bellicosissima Germanorum omnium. Ii centum pagos habere dicuntur; ex quibus quotannis singula millia armatorum, belandi causa, suis ex finibus educunt. Reliqui domi manent: Pro se atque illis colunt. Hi rursus invicem anno post in armis sunt: Illi domi remanent. Sic neque agricultura, neque ratio, neque usus belli intermittitur: Sed privati ac separati agri apud eos nihil est: Neque longius anno remanere uno in loco incolendi causa licet; neque multum frumento, sed maximam partem lacte atque pecore vivunt, multumque sunt in venationibus.' *De Bell. Gall. lib. 4. c. 1.*

(3) From some remarkable passages in *Tacitus*, it is to be gathered, that, even in his age, the Germans were beginning to

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have



have an idea of a *private* property in land. This improvement would probably take place among the princes or chiefs, and in those districts which joined to the Roman frontiers; and it is to be conceived, that the portions of ground first appropriated, would be those around the cabins or huts of individuals. For each hut was surrounded with an *enclosure*. And it was doubtless out of this enclosure that the German slave, being assigned land by his master, paid, in return, like a tenant, a proportion of corn, cattle, or cloth. ‘Ceteris servis, non in nostrum morem  
 ‘descriptis per familiam ministeriis utuntur. Suam quisque se-  
 ‘dem, suos penates regit. *Frumenti modum dominus, aut peco-  
 ‘ris, aut vestis, ut colono injungit: Et servus hactenus paret.*’  
*Tacit. de Mor. Germ. c. 25.* This appropriation of land, and ex-  
 ertion over it, would spread by degrees, and enlarge the notions  
 of property.

In fact, it would seem, that this conduct was observed after the German conquests; and that the German *enclosure*, or the *lands of the house*, and the assignment of them to slaves or servants, were usual. A proprietor or noble retained, to be cultivated by his servants, for domestic use and hospitality, the land which was *inter curtem*, or within view of the house or hall. What was out of the view of the house or hall, was given out in tenancy. Hence, among the Anglo-Saxons, the distinction of *inland* and *outland*. The inland, was the land *inter curtem*, or the *land of the house*: The outland was the land out of the view  
 of



of the house\*. Brithic, the rich Anglo-Saxon, had inland and outland, and disposed of them, in his will, to different persons †.

What is worthy of observation, the method of paying *in kind*, practised in Germany, and mentioned by Tacitus, continued also in the settlements of the barbarians, and even after they had become acquainted with coinage. Thus, in estates which had been long in any family, there were payments in poultry, and in necessaries for the house. *Du Cange Gloss. voc. Gallinagium et Henedpeny.* At this hour, both in England and Scotland, there are relics of this usage.

In England, it was not till the age of Henry I. that the rents due to the crown were paid in money. ‘In the early days,’ says *Madox*, ‘next after the Norman conquest, (if we are rightly informed), there was very little money, *in specie*, in the realm. Then the tenants of knights fees answered

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‘to

\* ‘*Inland, et Inlandum.* Terra dominicalis, pars manerii dominica. Vox Saxonum, *terram interiorem* significans, nam quae colonis et tenentibus concedatur, *utland* dicta fuit, hoc est *terra exterior*, hodie tenementalis.’ *Spelman, Gloss. p. 316.*

† *Lambard, Perambulation of Kent.* ‘*Lego*,’ says Brithic, ‘*terras dominicales Wulfego, tenementales Ælfego.*’



‘ to their Lords by military services ; and the tenants in socage  
 ‘ lands and demeanes (in great measure) by work and provisions.  
 ‘ The ingenious authour of the Dialogue concerning the Exche-  
 ‘ quer tells us, that, from the time of the Norman conquest, till  
 ‘ the reign of King Henry I. the rents or fermes due to the king  
 ‘ were wont to be rendered *in provisions and necessaries for his*  
 ‘ *household\** : And that, in King Henry the First’s time, the  
 ‘ same were changed into *money*. Afterwards, in the succeeding  
 ‘ times, the revenue of the crown was answered or paid, *chiefly*  
 ‘ *in gold and silver* ; sometimes in palfreys, destriers, chascurs, le-  
 ‘ veriers, hawks, and falcons, (to wit, in horses, dogs, and birds  
 ‘ of game of divers sorts), and in things of other kinds.’ *Hist. of*  
*the Exchequer, vol. 1. p. 272.*

(4) *Allodial* lands were enjoyed in full property, and are there-  
 fore opposed to *feudal* or *beneficiary* possessions, which were re-  
 ceived with limitations, and under the burden of military service  
 to the *grantors*.

The Ripuarians, the Burgundians, and, indeed, all the barba-  
 ric

\* In the Saxon times of King Ina, the provisions paid for ten hides of land  
 were as follows: ‘ Ex decem hydīs, ad nutriendum, decem dolia mellis, tre-  
 ‘ centi panes, duodecim amphorae Wallicae cerevisiae, triginta simplices, duo  
 ‘ adulti arietes, vel decem verveces, decem anseres, viginti gallinae, decem  
 ‘ casei, amphora plena butyro, quinque salmones, viginti librae pondo pa-  
 ‘ buli, et centum anguillae solvantur.’ *LL. Inae ap. Wilkins, p. 25.*



ric nations, appear to have had lands of partition or allodial property. *LL. Ripuar. tit. 56. LL. Angl. et Werin. tit. 6. LL. Baiwar. tit. 2. c. 1. l. 3. tit. 11. c. 5. tit. 17. l. 2. Capit. Kar. et Lud. lib. 3. l. 20. Marculph. Form. 16. 18. 51. 62. 67. ap. Lindenbrog.*

Some writers affirm, that the Salic lands were lands of *lot* or *partition*, and yet contend that they were *feudal*. This is certainly an absurdity. It is to be confessed, notwithstanding, that Du Cange, and many lawyers of great ability, have adopted this notion. *Dissert. 17. sur l'Histoire de St. Louis, p. 244. Selden, vol. 3. p. 1009\**. The authority against them is most express and pointed. It is the text itself of the Salic law which actually treats *de alode*, and refers to no property that was not *allodial*. *LL. Sal. ap. Lindenbrog. p. 342.* What confounded Du Cange, was the following celebrated law of this text. ‘*De terra vero Salica*

\* Selden observes, that ‘the best interpretation of *terra Salica*, is by our *knight's fee*, or land holden by *knight's service*.’ I have an infinite veneration for the learning and abilities of this great man. I cannot, however, but differ from him on this occasion. The *knight's fee* and *knight's service*, were late inventions in the history of fiefs, and cannot be carried back to the early aera of the Salic law. Even if they could, they would still be ineffectual to support his conclusion.





‘Salica nulla portio hereditatis *mulieri* veniat; sed ad *virilem* *sexum* tota terrae hereditas perveniat.’ He knew that women could not, in the commencement of fiefs, pretend to lands which were held by a military tenure; and, as they are thus barred from the Salic lands, he thence conceived that these must be *feudal*.

But the circumstance of the exclusion of the women from the Salic lands is, by no means, to be accounted for on *feudal* principles. The women were excluded from property while the Germans were in their forests; and this law or usage they carried into their conquests. It is thence that, in the lands of *lot* or *partition*, the women were not considered; and it is thus, that this difficulty in the Salic text is to be explained, without the necessity of conceiving the feudality of the Salic lands, in contradiction to the Salic law.

Though the barbarians respected highly their women, the admission of them to land was altogether a new idea. For if, leaving the Salic law, we inquire into the allodial property, and the allodial laws of the other tribes, we shall find, that, even in these, the women were not admitted to land while there existed any male. The ideas of the barbarians required to enlarge before this admission had place, and before they could so far violate their antient customs. The innovation, as might be expected, was gradual. In the title, accordingly, *de Alodibus* in the  
Ripuarian

Ripuarian text, we read, ‘Dum virilis sexus extiterit, *femina* in hereditatem aviaticam non succedat.’ *Lindenbrog. p. 460.* See also *LL. Anglor. et Werinor. tit. 6.* It is, I conceive, by this and similar ordinances, that the celebrated Salic law, which imposed on Du Cange, and on so many lawyers, is to be interpreted. Among the Salians and Franks, as well as among the other barbarous nations, when there were no males, the women were admitted to the property of the lands of *lot* or *partition*.

After having made these remarks, it is fit I should give some account of the word *Allodium*, or *Alode*; and a learned Judge, who is studious to cultivate literature in the intervals of business, and who has distinguished himself by laborious and instructive compositions in an idle and a dissipated age, has done me the honour to present me with the following communication on this subject.

‘*Al-od*, in the Latin of the lower ages *allodium*; hence the adjective *allodialis*; and hence, from the analogy of language, *allodially*, and *allodially* may be formed. Of *Al-od* the French have made *Aleud*, *aleu*.

‘As to the etymology of the word, there is a variety of opinions; for learned men are apt to reject obvious etymologies, and to prefer those which are more remote. It would seem to  
‘ be



‘ be a good rule in such matters, that “ the etymology which is  
 ‘ “ nearest to the word, is the most probable.”

‘ *Al* is *totus, integer, et absolutus*. There is no occasion for  
 ‘ proving this : The sense is in daily use among the northern  
 ‘ nations of Europe. *Od* is *status*, or, *possessio*. The Scottish word  
 ‘ *had*, and the English *hold*, are derived from this source, and  
 ‘ the word itself is still visible in the English compounds, *man-*  
 ‘ *hood, sister-hood, maiden-hood, &c.* The Anglo-Saxon word,  
 ‘ corresponding to this, is *Hod, status* or *possessio*. Thus, *Al-od*,  
 ‘ is *totus integer et absolutus status*, or *tota integra et absoluta pos-*  
 ‘ *sessio*.

‘ The etymology of *Al-od* confirms the opinion of Selden and  
 ‘ others as to the etymology of *Feod*, in the Latin of the lower  
 ‘ ages *Feodum, Feudum*. *Fe* is *beneficium* or *stipendium* ; *Od* or  
 ‘ *Hod*, is *status* ; therefore, *Feod* is *status stipendiarius*, or *possessio*  
 ‘ *stipendiaria*. *Odal* is *Alod* inverted, *status integer*, or *possessio*  
 ‘ *tota et absoluta*.

‘ There is no difference between *odal* and *udal*. The Scots  
 ‘ turned the Norwegian *ore*, a denomination of weight, into *ure*,  
 ‘ and, in like manner, they turned *odal* into *udal*. If the Norve-  
 ‘ gian *o* was pronounced as *oe*, the change is scarcely perceptible.  
 ‘ After the same manner the French have turned *alod* into *aleud*.

‘ It



‘ It may be objected, that there are two syllables more in  
 ‘ *allodial* than in *odal* or *udal*; and that, although etymologists  
 ‘ often drop an embarrassing syllable or two, yet that such liber-  
 ‘ ties are not allowable. The answer is obvious. *Allodial* is  
 ‘ an adjective; and the word *subject*, or *land*, or something simi-  
 ‘ lar, is understood. But *odal* or *udal* is a substantive; and it is  
 ‘ only from ignorance or misapprehension, that the word is used  
 ‘ as an adjective. Thus, in propriety of speech, we say, ‘ The  
 ‘ lands in Orkney are to be considered as *udal* ;’ although, in  
 ‘ common speech, we say, ‘ The *udal lands* of Orkney,’ and the  
 ‘ *udal possession* in Orkney.’”

(5) Dr Robertson has affirmed, that the barbarians, while in  
 their original seats, were not, in consequence of the condition of  
 the landed property, brought under any positive or formal obli-  
 gation to serve the community. *Hist. of Charles V. vol. 1.*  
*p. 213.*

It is obvious, however, that the partition of land received by  
 the individual from the tribe, subjected him to serve the commu-  
 nity. The person who did not serve it had no claim to any par-  
 tition. Persons under the military age had no partitions, because  
 they could give no service. Persons, who had attained this  
 age, could give service, and entitle themselves to partitions. The  
 former were parts of the *family*, the latter were members of the  
*republic*. See Note 2. and compare it with *Tacit. de Mor. Germ.*



c. 13. Of this law of partition, it was even a consequence, that the coward was a criminal, because he could give no service, and was unable to entitle himself to a subsistence or partition. He was therefore deemed unworthy of existence, and put to death, or expelled beyond the frontiers of his nation. *Tacit. de Mor. Germ. c. 12.*

I have said, that the lands of lot or partition, of which the grant or use was the distinction of the freeman and the citizen in the days of Tacitus, were also given after the conquests of the barbarians, under the general obligation of serving the community. And here is my evidence.

‘*Quicumque liber homo a comite suo fuerit ammonitus, aut ministris ejus, ad patriam defendendam, et ire neglexerit, et exercitus supervenerit ad istius regni vastationem vel contrarietatem, fidelium nostrorum capitali subjaceat sententiae.*’ *Capitularia apud Baluz. tom. 2. p. 325.*

‘*Si aliquis in alode suo quiete vivere voluerit, nullus ei aliud quod impedimentum facere praesumat, neque aliud aliquid ab eo requiratur, nisi solummodo ut ad patriae defensionem pergat.*’ *Capit. Car. Calv. Ibid. p. 264.*

‘*Et qui ad defensionem patriae non occurrerint, secundum anti-*  
‘*quam*

'*quam consuetudinem et capitulorum constitutionem judicentur.*'  
*Capit. Car. Cal. tit. 36. c. 27. Ibid. p. 187.*

Hence it is to be concluded, that the stipulation of serving the community was very *antient*; and thus too, the opinion I maintain, that this obligation was known to the old Germans, receives a confirmation. In reality, the sense of the obligation must have been stronger *before* than *after* their conquests. The citizen of a small community enters with ease into its views, and is zealous to promote them. The arrangements, on the contrary, of a great kingdom, are not easily perceived. A plain individual does not know the motives and the agents which put every thing into motion. His attention is more turned from the public, and penal regulations are necessary to preserve him in his duty. History confirms this remark. For, early after the barbaric conquests, regulations of this kind were made; and *allodial* proprietors, to avoid serving the community, devised the fraud of assigning their lands to the church, and of holding them under its exemptions and immunities.

Those, it is observable, who held possessions merely *allodial*, could only be called out in foreign wars, and against the enemies of the state. As they held of no superior or lord, they had no concern in private quarrels, and made no part in the feudal association. This circumstance, if judged by modern ideas,



was advantageous. It was, in fact, however, the reverse, and operated as a cause of the conversion of *allodium* into *tenure*.

(6) *Monfr. Bignon*, in his notes to *Marculphus*, expresses, with a delicate precision, the distinction between *allodial* lands, or the lands of *partition*, and the lands of the *fisc*. ‘*Omnia*  
‘*namque praedia, aut propria erant, aut fiscalia. Propria seu*  
‘*proprietates dicebantur quae nullius juri obnoxia erant, sed op-*  
‘*timo maximo jure possidebantur, ideoque ad heredes transibant.*  
‘*Fiscalia vero, beneficia sive fisci vocabantur, quae a rege ut plu-*  
‘*rimum, posteaque ab aliis, ita concedebantur, ut certis legibus*  
‘*servitiisque obnoxia, cum vita accipientis finirentur.’* *Not. ad*  
*Marculph. ap. Baluz. tom. 2. p. 875.*

It is even from *fiscus* that the term *fief* was formed; and, though the lands of the *fisc* meant originally only the benefices granted out by the sovereign, they came to express the subinfeudations of the crown-vassals. *Du Cange, voce Fiscus, Munus Regium. Assises et bons usages du Royaume de Jerusalem, avec des notes par Gaspard Thaumais de la Thaumassiere, p. 103. 245.*

(7) ‘*Principes jura per pagos vicosque reddunt. . . . Insignis*  
‘*nobilitas aut magna patrum merita, principis dignationem eti-*  
‘*am adolescentulis assignant. Ceteris robustioribus ac jampri-*  
‘*dem probatis aggregantur. . . . Magna comitum aemulatio,*  
‘*quibus*

‘ quibus primus apud principem suum locus ; et principum cui  
 ‘ plurimi et acerrimi comites. Haec dignitas, hae vires, magno  
 ‘ semper electorum juvenum globo circumdari, in pace decus, in  
 ‘ bello praesidium. . . . Cum ventum in aciem, turpe princi-  
 ‘ pi virtute vinci, turpe comitatu virtutem principis non adae-  
 ‘ quare. . . . Illum defendere, tueri, sua quoque fortia facta glo-  
 ‘ riae ejus assignare, praecipuum sacramentum est. Principes pro  
 ‘ victoria pugnant ; comites pro principe.’ *Tacit. de Mor. Germ.*  
 c. 12. 13. 14.

(8) Of the notion that tribes were the *vassals* of tribes, I have exhibited the most convincing proofs in another treatise. *Hist. Dissert. concerning the Antiq. of the Eng. Constit. part 2.* As the subject, however, is highly curious and important, I shall here offer some additional observations concerning it.

The great bond of the confederacies, and the attachments of the states of the Gauls and Germans, was the *land* assigned by a *superior* community to an *inferior* one. In consequence of this assignment, the latter owed service in war to the former, and was entitled to its protection. In the language of *Caesar*, it was the *client* tribe. While land was yet the property of nations, and unconnected with individuals, the idea was natural, and almost unavoidable. Arroviltus, a prince of a German community, having, with his chiefs and retainers, made a conquest in Gaul, the territory of the vanquished people became the proper-  
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ty of his nation ; and, it was about to bestow a large tract of the acquisition on the Harudes, under the burden of their military aid or assistance, when Caesar interfered in the Gaulic affairs. *Caesar, de Bell. Gall. lib. 1. c. 35—46.*

The idea of tribes in union, without their mutually furnishing *protection* and *assistance*, and without the medium of a grant of *land*, could not be conceived by the German and Gaulic nations. The *client* or *vassal* tribes of Ariovistus, were the Marcomani, Tribocci, Vangiones, Harudes, Nemetes, and Sedusii. *Caesar, de Bell. Gall. lib. 1. c. 51.* The Ubii, at one period, were the *vassal* tribe of the Suevi. *Ib. lib. 4. c. 3.* In an after period, when the Romans imitated the manners of the Gauls and Germans, they were assigned *land* on the banks of the Rhine, under the obligation of *military* service. ‘Super ipsam ‘Rheni ripam collocati, ut arcerent, non ut custodirentur.’ *Tacit. de Mor. Germ. c. 28.* Caesar, at the request of the Ædui, permitted the Boii to remain in Gaul ; and they became the clients or confederates of that people, who assigned them *land* on their confines. ‘Boios, petentibus Æduis, quod egregia virtute ‘erant, ut in finibus suis collocarent, concessit ; quibus illi *agros* ‘dederunt.’ *De Bell. Gall. lib. 1. c. 28.* The extent of land allotted by a superior community to an inferior one, was proportioned to the numbers and the valour of the latter. And, it was this way of thinking which actuated the Helvetii, when they said, that their territories were not suited to their populousness and  
and



and military glory. 'Pro multitudine autem hominum, et pro gloria belli atque fortitudinis, angustos se fines habere arbitrabantur.' *Id. lib. 1. c. 2.*

Thus, the state of land among the Gaulic and German nations directed their *political* condition. This circumstance escaped not the Romans; and the use made of its knowledge by the Emperors, though little attended to, is worthy of remark. To a body of the Vandals, Constantine, with a view to the aid of their arms, assigned a portion of Pannonia. The assignment of land by the Romans to the Burgundians, that they might assist them in opposing the Wisigoths, gave rise to the Burgundian empire in Gaul. And Justinian granted the lands and possessions of the Ostrogoths in Pannonia to the Longobards, under the burden of their defending that country against the Gepidae, the Heruli, and other barbarous nations. *Jornand. de Reb. Get. c. 22. Cassiodor. Chron. Procop. lib. 3.*

Amidst a multitude of examples, to the same purpose, which might be produced, it is proper to take notice of the monarchy of the Franks. Different nations, overpowered by the Franks, became parts of their monarchy, by receiving possessions from them, and acknowledging their superiority. For the lands and protection afforded them, they gave allegiance and service. In other respects they acted under their own dukes or princes, and under their own institutions. I speak of the principalities or duchies



duchies of Bavaria, Aquitain, and Suabia. The Bojoarii, Bojarii, or Boii, for so the Bavarians are called in writers of the middle ages, were conquered by the Franks, and, accepting lands from them, acknowledged their superiority. An old historian, recording this transaction, has these words: 'In bellis auxilio Francis sunt Boii; eosdem pro amicis et hostibus habeant; ceterum suis institutis ac moribus liberi vivant.' *Aventinus, Annal. Boior. lib. 3.* This connection or vassalage is even expressed in their laws. *LL. Baiuvar. tit. 2. c. 1. ap. Lindenbrog. p. 404.* Such also was the case of the Dukes of Aquitain and Suabia. Under the Franconian kings of the first race, they owed fidelity and military service in war, for the lands they enjoyed, and yet governed in their own dominions. These things mark the attachment of nations to their antient usages, and illustrate the idea that communities were first the vassals of communities.

What is not incurious, one of the greatest difficulties in developing the history of the barbaric tribes, has its source in these connections I have mentioned. The inferior, or vassal tribes, are often meant and recorded under the names of the superior ones. Thus, under the general appellation of *Gothi*, there are included the Thuringi, Gepidae, Pucini, Scirri, and other tribes. The historical confusions that were necessarily to arise from this practice are many, and often not to be disentangled.

(9) It



(9) It is observable, that the old German states affected, from grandeur, to have around them a vast extent of *waste* territory. 'Una ex parte a Suevis circiter millia passuum DC agri *vacare* dicuntur.' *Caesar, de Bell. Gall. lib. 4. c. 2.* 'Civitatibus maxima laus est quam latissimas circum se vastatis finibus *solitudines* habere.' *Id. lib. 6. c. 22.* 'Bella cum finitimis gerunt, ut quae circa ipsos jacent *vasta* sint.' *Mela, lib. 3.*

What is remarkable, after land was connected with individuals, and when chiefs distributed portions of their possessions to their followers, they affected also *wastes* of this kind. The Lord of a manor, after having assigned to his servants a tract of ground for the maintenance of his house and hospitality, gave out other divisions to his vassals and tenants, for the support of his political greatness; and these purposes being answered, a large proportion of territory remained often unemployed by him. This *waste* dominion gave an idea of his power, and served to excite, in the stranger, a sentiment of terror. On this tract of land, the inhabitants of the hamlet, connected with his castle, were tempted to feed their cattle. In the course of time, he lost all connection with it. Their connection was recent and in use. Hence *common pasture* and *commons*.

I will venture another conjecture. It was, perhaps, from the idea of magnificence attending the possession of a vast portion of uncultivated territory, more than for the purposes of hunting,

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that



that the kings of Europe affected, of old, to have extensive forests. A deer-park is still flattering to the *magnificence* of the rich, in proportion to its extensiveness; though hunting be no amusement of the proprietor.

(10) It has puzzled the learned to discover the nation of the barbarians which first gave a beginning to fiefs. No inquiry could be more frivolous. In all of them they must have appeared about the same period. And they prevailed in all of them in consequence of the similarity of their situation on their conquests, and in consequence of their being governed by the same customs. It is not, therefore, to the principle of imitation that their universality is to be ascribed.

The annals of France make mention of fiefs in the age of Childebert. The Longobards, at an early period, introduced them into Italy; and the customs and laws which relate to them seem to have advanced rapidly among this people. *Giannone, Hist. of Naples, book 4. sect. 3.* In England, there is little doubt that the feudal law was known in the Saxon times; and on this subject I refer, with pleasure, to what has been lately advanced by Mr Whitaker, in his History of Manchester; a book valuable for deep learning, original thought, and uncommon ingenuity.

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In Spain, the introduction of the feudal tenures preceded the devastations of the Saracens or Moors, which began in the year 710. Among the Goths, who established the monarchy of Spain, lands were granted for service and attachment; and the receiver was the retainer of the grantor. He was said to be *in patrocinio*; and, if he refused his service, he forfeited his grant. It also appears, that the retainer, or vassal, swore fealty to his patron or lord. And it was on this scheme that their militia was regulated. *LL. Wisigoth. lib. 5. tit. 3. l. 4. tit. 7. l. 20.*

The Wisigothic laws were first published by the celebrated Pithoeus, and are chiefly to be valued on account of their high antiquity. But how they came to survive the Moorish conquests, is an incident which I cannot explain. They served as the mine, and gave materials for the code of Spanish jurisprudence, termed the *forum judicum*, or the *fuero juzgo*; a circumstance which seems to prove their authenticity, and which the learned Mr Barrington must have forgot, when he conceived the latter to be the most antient collection of laws in Europe. *Observations on the Statutes, 3d edit. p. 9.*



## SECTION II.

(1) **T**ERRA . . . . pecorum foecunda, sed plerum-  
 que improcera: Ne armentis quidem suus honor,  
 aut gloria frontis: Numero gaudent: Eaeque *solae et gratif-*  
*simae opes sunt.* Tacit. de Mor. Germ. c. 5.

(2) My Lord Kaims ascribes to the meanness of women, and to the disgrace in which they are held, their want of property in rude times. They appear, notwithstanding, to be in high estimation in such times; and their poverty, we see, or their want of property, is no mark or consequence of their meanness and disgrace; but a result of the nature of things. *Sketches, vol. 1. p. 203.*

(3) The eldest son, it would appear, came in place of the father, and continued the family. 'Inter familiam,' says Tacitus, 'et penates, et jura successio- num, equi traduntur: Excipit filius, non ut cetera maximus natu, sed prout ferox bello et melior.' *De Mor. Germ. c. 32.* This testimony in favour of the eldest

eldest son, and the right of primogeniture, is the more strong, as being included in an exception to the general rule. I know that Sir Henry Spelman, in his Glossary \*, Mr Harris, in his History of Kent †, Mr Lombard, in his Perambulation of the same county ‡, and Mr Barrington, in his Observations on the Statutes ||, have given it as their opinion, that, in Germany, the sons succeeded equally to the father; and it is common to account, in that way, for the origin of the custom of *gavel-kind* §, which prevailed in Kent, and in other counties of England. The words, however, of *Tacitus* already cited are a demonstration of the impropriety of these notions.

It is true, notwithstanding, that the authors under remark found or rely upon another passage of the same writer; but I conceive that the sense of it must have escaped them. The passage is as follows. ‘Heredes successoresque sui cuique liberi: Et nullum testamentum: Si liberi non sunt, proximus gradus in possessione, fratres, patruī, avunculi.’ *De Mor. Germ. c. 20.*

Here,

\* Voc. Gaveletum. † p. 457. ‡ p. 584. || p. 115.  
3d Edit.

§ ‘Gaveletum, *Gavelkind*.] Prisca Anglo-Saxonum consuetudo e Germania delata, qua omnes filii ex aequis portionibus, patris adeunt haereditatem (ut filiae solent, prole mascula deficiente). Fratres similiter defuncto sine sole fratre, et nullo existente fratre, sorores pariter.’ *Spelm. Gloss. p. 259.*





Here, in reality, even allowing that the Germans had been acquainted with a property in land, which they constantly suppose, there is no mention of the *equal partition* of it. The children must have succeeded singly and in course; in defect of these, the brothers; and, on the failure of them, the uncles.

This passage, and the former, throw mutually a light to one another; and, from the consideration of both, I think it clear, that the meaning I impute to them is justly to be inferred.

A difficulty, however, more knotty presents itself. As land was among these nations the property of the state, to what does *Tacitus* allude in the passage before us? Conjectures are to be hazarded where proofs are wanting. In general, I should fancy, he must refer to moveables; and, perhaps, he may allude to the *German house* and the *enclosure* connected with it. ‘Colunt discreti ac diversi ut fons, ut campus, ut nemus placuit. . . .’ *Suam quisque domum spatio circumdat.* *Tacit. de Mor. Germ. c. 16.* At least, it is not unnatural to think, that the cabin and its enclosure, as the ideas of property evolved, might be considered as appertaining more peculiarly to individuals, and that thence continuing in their possession, they might go to their posterity.

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It was thus in other rude communities. Among the Hindoos, it appears, by very curious laws, that the landed property first acquired by individuals, was what is termed 'The glebe-lands, houses, and orchards.' *Code of Gentoo laws, ch. 3.* In Otaheite, and in Eastern Island, or Davis's Land, there were plantations laid out by line, of which the beauty struck Captain Cook. These, he conjectures, were the *private property* of the chiefs. *Voyage round the World, vol. 1. p. 294.* His conjecture is very solid. These spots correspond to the enclosure of the German house, and to the glebe-lands of the Gentoo.

(4) 'Dotem non uxor marito, sed uxori maritus offert.' *Tacit. de Mor. Germ. c. 18.* This remarkable usage continued after the German nations had made conquests, and is every where to be met with in their laws.

'Non amplius unusquisque in puellae vel mulieris nomine dotis titulo conferat vel contribat, quam quod decimam partem rerum suarum esse confiterit.' *LL. Wisigoth. lib. 3. tit. 1. l. 5.*

'Quia mulieres, quibus dudum concessum fuerat de suis dotibus judicare, quod voluissent, quaedam reperiuntur, spretis filiis vel nepotibus, easdem dotes illis conferre, cum quibus confiterit nequiter eas vixisse: Ideo necesse est illos exinde percipere commodum pro quibus creandis fuerat assumptum conjugium.

'Denique



Denique constituentes decernimus, ut de *dote* sua mulier habens filios vel nepotes, seu causa mercedis ecclesiis vel libertis conferre, five cuique voluerit, non amplius quam de quarta parte potestatem habeat. Nam tres partes legitimis filiis aut nepotibus, seu sit unus five forsitan plures, absque dubio relictura est. De tota interim *dote*, tunc facere quid voluerit, erit mulieri potestas, quando nullum legitimum filium, filiamve, nepotem vel neptem superstitem reliquerit. Verum tamen feminas, quas contigerit duobus viris aut amplius nubere, atque ex eis filios procreare, non eis licitum erit *dotem* ab alio marito acceptam, filiis aut nepotibus ex alio viro genitis dare: Sed unusquisque filius filiae, nepos aut neptis, ex ipsa linea procreati, *dotem* quam avus aut pater illorum concefferat, post mulieris obitum per omnia consequuturi sunt. *LL. Wisigoth. lib. 4. tit. 5. l. 2. ap. Lindenbrog.*

Mulier si ad alias nuptias transierit, omnia perdat: *Dote* tamen sua quam a marito suo acceperat, quamdiu vixerit, utatur, filio proprietate servata. *LL. Burgund. tit. 62. l. 2.* See farther *LL. Wisigoth. lib. 3. tit. 2. l. 8. lib. 5. tit. 2. l. 4. LL. Ripuar. tit. 37. LL. Saxon. tit. 7. LL. Longobard. lib. 1. tit. 4.* The curious reader may also consult the forms or writings which constituted the *dos*, or dower. *Form. Solen. ap. Baluz. tom. 2.* See *Appendix, No. 1.*

In England, the doctrines and history of the *dos* are to be seen in *Glanvil*, *Braeton*, *Britton*, in the book called *Fleta*, and in *Littleton*. ‘*Dos*, or *dower*,’ says my Lord *Coke*, ‘in the common law, is taken for that portion of lands or tenements which the wife hath for terme of her life of the lands or tenements of her husband after his decease, for the sustenance of herselfe, and the nurture and education of her children.’ 1. *Instit.* p. 31. It is curious to find in the woods of Germany, a rite or custom that makes a figure in all the laws of Europe.

My Lord *Kaims*, whom I am ashamed to contradict so often, has strangely misunderstood this subject. ‘In Germany,’ says he, ‘when *Tacitus* wrote, very few traces remained of polygamy. *Severa illic matrimonia, nec ullam morum partem magis laudaveris; nam prope soli barbarorum singulis uxoribus contenti sunt, exceptis admodum paucis, qui non libidine, sed ob nobilitatem, plurimis nuptiis ambiuntur.* When polygamy was in that country so little practised, we may be certain, *the purchasing wives* did not remain in vigour. And *Tacitus* accordingly, mentioning the general rule, *dotem non uxor marito, sed uxori maritus offert*, explains it away by observing, that the only *dos* given by the bridegroom, were marriage-presents, and that he at the same time received marriage-presents on the bride’s part.’ *Sketches*, vol. I. p. 192.

It would pain me to open up, with minuteness, all the mistakes which are crouded into this passage. I shall just glance

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at them. Polygamy, in fact, never prevailed among the Germans; and of this, the treatise of Tacitus, and the laws of the barbarians after their conquests, are the most striking and decisive proofs. See *Ch. 1. Sect. 3. Note 14.* Neither were women *bought* in Germany, nor does Tacitus affirm, that the *dos* consisted of marriage-presents. The interchange of presents by the married couple and the *dos*, were separate and distinct. The intention of the former I have already explained. See *Ch. 1. Sect. 3. Note 2.* What the latter was, I have just now said; and I appeal to the authorities which support my notion.

The source of all these errors is, the idea entertained and inculcated by this eminent writer, that the women, in rude times, are of so little consideration, that they are objects of traffic. Hence he conceived, that the *dos* must be the *purchase-money* of the wife. That it was not so, we have seen; but, as the opinion has been pretty generally received, and has got the sanction of Professor Millar, as well as that of his Lordship, it is proper to consider its propriety with some attention.

Though it every where appears, from the examination of the barbaric laws, and from the books of the earliest lawyers, that the *dos* or *dower* was the provision allotted for the maintenance of the wife, it is not to be denied, that, in antient legal monuments, there occur the expressions *donatio nuptialis, pretium uxoris, et pretium dotis.* And these, I perceive, have contributed to induce Mr Millar to go into the fancy, that antiently, in Europe,



Europe, the *dos* was the price, or purchase-money of the wife. *Observations on the distinction of ranks, p. 30. 2. edit.* If, however, I am not very widely mistaken, these expressions apply, in no case, to the purchase-money of the wife; but express the provision made for her, in the event of the death of the husband. This, I think, appears from the laws of the barbarians.

‘ Si qua mulier duntaxat Burgundia post mariti mortem ad secundas aut tertias nuptias, ut adsolet fieri, fortasse transferit, et filios habuerit, ex omni conjugio, *donationem nuptialem* dum advivit usu fructu possideat: Post ejus mortem ad unumquemque filium, quod pater ejus dederat, revertatur: Ita ut mater nec donandi, nec vendendi, nec alienandi de his rebus quas in *donatione nuptiali* accepit, habeat potestatem.’ *LL. Burgund. tit. 24.*

It is said of one Folco, that he gave to his wife Gerlint all he had; ‘ *Omnia sua propter pretium in mane quando surrexit.*’ *Giannone, Hist. of Naples, vol. 1. p. 274.* But this was not the price or value of the wife. It was the morgengabe, or morning-present, about which there is so much in the barbaric laws, and of which the extravagance was so great, that regulations were made to repress it.

As to the expression, *pretium dotis*, we meet with it in the following ordinance. ‘ Si puella ingenua ad quemlibet ingenuum

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‘ venerit



‘venerit ea conditione, ut eum sibi maritum acquirat, prius cum  
 ‘puellae parentibus conloquatur; et si obtinuerit, ut eam ux-  
 ‘rem habere possit, *precium dotis* parentibus ejus, ut justum est,  
 ‘impleatur.’ *LL. Wisigoth. lib. 3. tit. 2. l. 8.* The dower, it  
 seems, was at times given to the parent, or to the relation of the  
 woman, to be kept for her use. This is fully explained by the  
 regulation which follows. ‘*Dotem* puellae traditam pater exi-  
 ‘gendi vel conservandi ipsi puellae habeat potestatem. Quod si  
 ‘pater aut mater defuerint, tunc fratres vel proximi parentes,  
 ‘*dotem* quam susceperint, ipsi consorori suae ad integrum restitu-  
 ‘ant.’ *LL. Wisigoth. lib. 3. tit. 1. l. 6. ap. Lindenbrog.*

I know that the custom of presenting *money* at marriages came  
 to prevail among the German and Gothic nations, and among  
 the Franks more particularly. In *Fredegarius*, for example, we  
 read this description of the espousals of Clotildis. ‘Legati offe-  
 ‘rentes *solidum et denarium*, ut mos est Francorum, eam partibus  
 ‘Clodovei sponfant.’ *Gest. Franc. c. 18.* Let us not, however,  
 be deceived. Here no purchase was made. The money pre-  
 sented was only the symbol of a contract. This is illustrated by  
 the *Arra nuptialis* of the Wisigoths. ‘A die latae hujus legis  
 ‘decernimus, ut cum inter eos qui disponendi sunt, five inter e-  
 ‘orum parentes, aut fortasse propinquos, pro filiorum nuptiis  
 ‘coram testibus praecesserit, definitio, et annulus *arrarum*\* no-  
 ‘mine

\* *Arrhes* or *arres* in France, *earnest* in England, and *arles* in Scotland, still ex-  
 press the money advanced in token that a bargain is concluded.



‘ mine datus fuerit vel acceptus, quamvis scripturae non inter-  
 ‘ curret, nullatenus promissio violetur, cum qua datus est an-  
 ‘ nulus, et definitio facta coram testibus.’ *LL. Wisigoth. lib. 3.*  
*tit. 1. l. 3.*

But what refutes, in the most decisive manner, the notion that the wife was *purchased* with the money of the husband, is the following peculiarity. If a free man married his slave, and intended that his children by her should succeed to his fortune, it was necessary that he should make her a present of her liberty. And, what is remarkable, one of the methods of making her free, was the very act which is talked of as buying the property of the wife; it was the assigning her a *dower* or a *morgengabe*. ‘ Si quis ancillam suam propriam matrimoniare volu-  
 ‘ erit sibi ad uxorem, fit ei licentia: Tamen debeat eam liberam  
 ‘ thingare, et sic facere liberam, quod est Widerboram, et  
 ‘ legitimam per garathinx, id est, per libertatis donationem; vel  
 ‘ per gratuitam donationem, id est *morgengabe*; tunc intelligatur  
 ‘ esse libera et legitima uxor, et filii qui ex ea nati fuerint legitimi  
 ‘ heredes efficiantur.’ *LL. Longobard. lib. 2. tit. 1. l. 8.* Among the Longobards the *dower* and the *morgengabe* came to be synonymous, and were fixed at the fourth part of the substance of the husband\*. *LL. Longobard. lib. 2. tit. 4.*

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\* A very singular exception, to the doctrine I advance in this note, is to be found in the records of England, and I am surpris'd that it has escap'd the learned indu-

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I might confirm these remarks by attending to the manners and customs of other nations. Among the inhabitants, for example, of Hindostan, while they were in a similar state of manners with the barbaric states, the ordinances and usages in matrimonial concerns, have a striking conformity with those I have  
 lity of the writers whom I venture to oppose. I trust, notwithstanding, that my general conclusion is not to be affected by it. The case, however, is so odd, that I will give it to the reader in the words of my author.

' John Camois,' says Camden, ' son of Lord Ralph Camois, (a precedent not to be paralleled in that or our own age), *out of his own free will* (I speak from the parliament rolls themselves, Parl. 30. Ed. I.) *gave and demised his own wife, Margaret, daughter and heir of John de Gaidesden, to Sir William Paine, knight; and to the same [William] voluntarily gave, granted, released, and quitclaimed, all the goods and chattels which she had, or otherwise hereafter might have, and also whatever was in his hands, of the aforesaid Margaret's goods and chattels, with their appurtenances. So as neither himself, nor any other in his name, might, nor for ever ought to claim or challenge any interest in the aforesaid Margaret, from henceforth, or in the goods or chattels of the said Margaret: Which is, what the antients said in one word, ut omnia sua secum haberet, that she should take away with her all that was her's. By occasion of which grant, when she demanded her dower in the manour of Torpull, an estate of John Camois, her first husband, there commenced a memorable suit. But she was cast in it, and sentence passed, that she ought to have no dower from thence'*

*Britannia, vol. 1. p. 205.*

Even this example, however, of the sale of a wife, confirms the idea I inculcate as to the *dos* or dower.



have now described. This is evident from the code of Gentoo laws\*.

‘The woman’s property,’ say these laws, ‘is whatever she receives during the *ayàmmi shadée*, the days of marriage.

‘When a woman dies, then, whatever effects she acquired during the *ayàmmi shadée*, even though she hath a son living, shall first go to her unmarried daughter; if there is but one unmarried daughter, she shall obtain the whole; if there are several unmarried daughters, they all shall have equal shares.’

Here there is clearly the *dower* of the barbarians, and its destination on the decease of the wife, in a given or supposed situation. There is something more. For the woman, among the Hindoos, as well as among our barbarians, might acquire other property beside the dower, during the days of marriage. This is illustrated by the following regulations.

The woman’s property among the Hindoos is also ‘whatever she may receive from any person, as she is going to her husband’s house, or coming from thence.

‘Whatever

\* Or Ordinations of the Pundits, from a Persian translation made from the original, written in the Shanferit language. London, printed in the year 1776.



‘ Whatever her husband may at any time have given her ;  
 ‘ whatever she has received, at any time, from a brother ; and  
 ‘ whatever her father and mother may have given her.

‘ Whatever jewels or wearing apparel she may have received  
 ‘ from any person.’

Here we have, obviously, the marriage-presents of the relations and friends, as among the barbarians ; and, in the gifts of the husband, there is a counter part to the morgengabe of our forefathers, which is still farther explained by the following circumstance.

The form of marriage among the Hindoos, termed *asore*, is described to be ‘ when a man gives money to a father and mother, on his marrying their daughter, and also gives something ‘ to the daughter herself.’

Here there is not only the *dos* or dower, to be kept by the relations for the use of the bride, but the morgengabe, or morning-present, in the disposal of the bride herself ; peculiarities which constituted the general characteristics of these transactions among the barbarians.

This coincidence is probably to be found in all nations, in certain ages or periods of their history. It is an evidence of the  
 uniformity



uniformity of the manners of man in the most distinct and distant regions; and it marks strongly the importance of women in the early times of society and civilization. *Code of Gentoo Laws, ch. 2.*

It would be irksome to prosecute this subject at greater length. Law and history uniformly concur to inform us, that antiently, in Europe, the *dos* was the provision allotted to the wife, and not the price paid for her. The customs of other nations offer their testimony to the same purpose. And natural affection and reason, the generosity of manners in rude times, and the limited ideas of property which then prevail, all join to support the conclusion. Yielding to the united force of these particulars, I scruple not to contradict positions which have the sanction of distinguished names.

(5) In the process of time, regular forms or acts were invented for the constitution of the *dower*. Four methods of the dower prevailed more particularly over Europe, and, on that account, it is proper to recite and to explain them. These were the dower *ad osium ecclesiae*, the dower *ex assensu patris*, the dower by the *custom* of particular places, and the dower *de la plus belle*. And from these peculiarities, also, there results the most clear and decisive proof, that the *dos* was not the purchase-money of the wife, but the provision for her maintenance.



1. The dower *ad ostium ecclesiae* took place when the bridegroom, having come to the door of the church or monastery where he was to be married, and having plighted his faith to the woman, and received hers, made public mention of the quantity and proportion of the land he designed for her *dower*. In consequence of this transaction, she might take possession, on his death, of the provision thus allotted to her.

2. The dower *ex assensu patris* took place when the son endowed his wife, with consent of his father, in the lands to which he was to succeed. In this case, the wife, on the demise of the husband, was to enjoy the portion assigned to her in the estate of the father.

3. By the *custom* of some counties, cities, and boroughs, the woman had, for her *dower*, the half of her husband's possessions, or the whole.

4. The dower *de la plus belle* had place when a person, for example, being seised of forty acres of land, of which he held twenty by knight-service, and twenty in soccage, took a wife; had a son, and dying, left him under age. The lord of whom the land was held in knight-service, took possession of the twenty acres, as guardian of the minor *in chivalry*; and the mother entered into the enjoyment of the other twenty, as guardian *in soccage*. In this situation, the mother might bring a writ

writ of *dower* against the guardian in chivalry, to be endowed of the tenements holden in knight-service. But the guardian in chivalry, pleading in his defence, that she is guardian in foccage, might require from the court that she be adjudged to endow herself in the *fairest of the tenements* she possesses. And, if she could not show that the property in foccage was unequal to the purpose of the dower, the guardian in chivalry retained the lands holden of him during the minority of the heir. The woman, then assembling her neighbours, took possession, in their presence, of *the fairest part* of the foccage lands, to hold them during her life, under the title of the *dower de la plus belle*. *Littleton, ch. 5. The Comments of Sir Edward Coke, and Mons. Houard, and the Glossaries.*

It is thus, that the simple regulation, mentioned by *Tacitus*, grew in time various and complicated. It even yet makes a figure in our laws. It is to be seen in the provisions they hold out for the widow. And, it may teach us to suspect, that enactments, which appear to be deeply founded in legislative wisdom, are often nothing more than improvements of the usages which natural reason and expediency have struck out in a barbarous age.

(6) The laws of the different nations of the barbarians vary in the dower or provision they ordained. The Longobardic laws made it the fourth part of the estate of the husband. *LL.*

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*Longobard.*



*Longobard. lib. 2. tit. 4. l. 1.* The Wisigothic constitutions made it the tenth part of the substance of the husband. *LL. Wisigoth. ap. Lindenbrog. p. 53.* And, in England, the legal dower consisted of the third part of the lands or tenements of the husband. *Coke on Littleton, p. 31.*

(7) *Morgin* Germanice significat *mane et gab, donatio*, unde *'dicitur morgengab, donatio facta mane.'* *Gloss. Lindenbrog. p. 1441.* *'De civitatibus vero . . . . quas Gailefuindam tam in dote, quam in morganegiba, hoc est, matutinali dono, in Franciam venientem certum est adquisivisse.'* *Greg. Turon. lib. 9. c. 20.* See farther *LL. Burgund. tit. 42. l. 2.* *LL. Alaman. tit. 56.* *LL. Ripuar. tit. 37. l. 2.* *LL. Longobard. lib. 1. tit. 9. l. 12. &c.*

A learned and ingenious writer has observed, that, in England, there are no traces of the *morgengabe*. *Observations on the Statutes, p. 9. 3d edit.* This I suspect is a mistake. The *morgengabe* is mentioned in the laws of Canute, and in those of Henry I. *LL. Canut. par. 2. c. 71.* *LL. Hen. 1. c. 70. ap. Wilkins, p. 144. 267.* The pin-money of modern times, it is probable, grew out of this usage.

A peculiar kind of matrimonial engagement was called *matrimonium ad morganaticam*, which is to be distinguished from the rite I now mention. This form of marriage did not permit  
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of *dower*, and the wife had only a *morgengabe* or present. It was intended for the benefit of men of rank, who had lost their wives, but had children. In consequence of it, they could legally connect themselves with low women, who, receiving and being entitled to no dower, could not burden their estates. The issue of such connections had no power of succession, and inherited no dignity. But provisions might be made for them. It was out of this source, chiefly, that the church of old was supplied. Men of influence could there deposit, most securely, the spawn of their concubinage. And it still is, and ever will be, wherever it is wealthy, an asylum for this produce, and for the younger sons of noble families.

This scheme of legal concubinage is prevalent, at this hour, in Germany; and women, married after this odd fashion, are termed left-handed wives; because it is a part of the ceremony for the bridegroom to give his left hand to the bride. Of such connections, as in antient times, the issue are bastards, as to inheritance, and bear neither the name nor the arms of the father.  
*Baron von Lowhen on Nobility.*

Beside the *morgengabe*, or the present by the husband, it was common, at marriages, for the relations, and other persons connected with the parties, to express their satisfaction by making *gifts*. 'Gaudent muneribus,' is a part of the characteristic description of the antient Germans by *Tacitus*. 'Franci vero,' says *Gregory*

of





of Tours, when speaking of the marriage of the daughter of Chilperic, ' multa munera obtulerunt; alii aurum, alii argentum, ' nonnulli equos, plerique vestimenta, et unusquisque ut potuit, ' donativum dedit.' *Hist. lib. 6. c. 45.*

This custom pervaded all ranks of society. And the money or penny weddings which still prevail in small villages and hamlets are a remain of it. What, in one age, disgraces not the palace of the prince, is to be confined in another to the hovel of the rustic.

(8) The powers over a *morgengabe*, mentioned in the text, would not probably arise all at once, but gradually. The two former, I imagine, would be long known before the latter; and extensive powers over a *morgengabe*, consisting of money, would sooner be exerted, than over one consisting of land. Of a *morgengabe* in land, there is the following disposition or bequest by Gertrude, a German lady of high rank, in the year 1273.

' Allodium situm in Griezzenpach, ad se donationis titulo pertinens, quod *morgengab* vulgariter nuncupatur, cultum et incultum, quaesitum et inquisitum, cum omnibus attinentiis ecclesiae S. Petri in monte liberaliter et absolute ordinat, testatur, ' tradit, et legat.' *Boekmer de Secund. Nupt. illustr. Perf. c. 2. § 41. ap. Heinnec. Elm. Jur. Germ. p. 121.*

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The clergy, by besieging the beds of the dying, procured many legacies of this kind; and their rapacity, though shocking and abominable, contributed to hasten the powers of the alienation of property.

(9) 'Habeat ipsa mulier morgengab, et quod de parentibus ejus adduxerit, id est, PHADERFIUM.' *LL. Longobard. lib. 2. tit. 1. l. 4.* See also *LL. Alaman. tit. 56.* *LL. Wisigoth. lib. 3. tit. 1. l. 5.* *LL. Longobard. lib. 1. tit. 9. l. 12.*

In England, and in other countries, the term *Phaderfium*, which signifies *paternal estate*, was unknown; but the term *maritagium* implied in them the prevalence of the custom. 'MARITAGIUM dicitur id quod viro datur cum uxore; dotem enim appellamus Angli, non quod vir accipit, sed quod femina.' *Spelm. Gloss. p. 405.* In the *Formulare Anglicanum*, there are preserved antient feofments of land to the husbands of the daughters and sisters of the grantors, in which *maritagium* is the term employed as expressive of the estate of the woman. See *Appendix No. 2.*

The following law of the Langobards, on the subject of the portion, or estate of the woman, seems to be very curious. 'Vidua quae in domo patris aut fratris regressa est, habeat sibi morgengab et methium: De *Jaderfio* autem, id est, de alio dono, quan-



‘quantum pater aut frater dederit ei, quando ad maritum  
 ‘ambulaverit, mittat IN CONFUSUM cum aliis fororibus.’ *LL.*  
*Longob. lib. 2. tit. 14. l. 15.*

This commixtion of the portions of the women, is treated by *Littleton*, in his tenures, *lib. 3. ch. 2.* But nothing of the history, or the philosophy of the custom, appears there. A woman who had been married, and had received her *faderfum*, might, on the death of her ancestor, if the portions of her sisters were to prove higher, make a commixtion of the tenements, and lay claim to an equal share. If they were to prove less, she might retain her *faderfum*. This commixtion was called *Hotchpot*, from a dish of that name. *Littleton*, p. 167. ‘*Hotchpot*,’ says *Cowel*, ‘is a word that cometh out of the lowe countries, where *Hutspot* signifieth flesh cut into pretie pieces, and ‘sodden with herbs and roots.’ *The Interpreter*, Edit. 1607. This dish is still in particular esteem in Scotland. *Littleton*, as cited above, makes *hotchpot*, in its natural meaning, to signify a pudding composed of different ingredients.

The estate brought by the woman to the husband, when a full infeudation, was called *Maritagium liberum*; when otherwise, it was *maritagium servitio obnoxium*. *Glanvil*, *lib. 7. Regiam Majestatem*, *lib. 2.* *Bracton*, *lib. 2.* *Fleta*, *lib. 3.* *Littleton*, *lib. 1.*

(10) The



(10) The *dos*, or *dower*, which had figured so much, was thus to be gradually swallowed up in the *jointure*; and, in this situation, it came to express the estate brought to the husband by the wife. This circumstance is well illustrated by the following example in *Muratori*, an. 1203.

‘Azo, Estensis Marchio, in publico conventu baronum Lombardiae, warrantavit et professus fuit, se accepisse in *dotem* a domina Aliz, filia quondam Rainaldi principis Antiocheni, quam in matrimonio sibi receperit, duo millia marcharum argenti, ac inde jure pignoris et donationis propter nuptias, investivisse dominam Aliz de tantis de suis bonis et possessionibus et immobilibus, ubicumque habeat, vel adquirere debeat, ut valeant duplum suprascriptae *dotis* et donationis.’ *Antiq. Estens. tom. 1. p. 381. ap Heinnecc. Elem. Jur. Germ. p. 120.*

I pretend not to fix the precise time when *dos* assumed this sense. The meaning of words, varying perpetually with the fluctuation of manners and the intermixture of nations, gives an almost impenetrable darkness to the middle ages. The pale inquirer is often to forsake an interpretation he had chosen, and on which he had built. Language is to deceive him. He is to attend to customs and usages; yet customs and usages prevail for a time, are lost, and start up again. He is involved, and wanders in the double gloom of antiquity and barbarism.

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(11) ‘Dul-



(11) ‘Dulcissima filia mea illa, ego ille. Diuturna sed impia  
 ‘inter nos consuetudo tenetur, ut de terra paterna sorores cum  
 ‘fratribus portionem non habeant. Sed ego perpendens hanc  
 ‘impietatem, sicut mihi a Deo aequaliter donati estis filii, ita  
 ‘et a me fitis aequaliter diligendi, ut de rebus meis post meum  
 ‘discessum aequaliter gaudeatis.’ *Charta ap. Marculp. Form.*  
*lib. 2. c. 12.*

‘Inter Burgundiones id volumus custodiri, ut, si quis filium  
 ‘non reliquerit, in loco filii filia in patris matrisque hereditate  
 ‘succeedat.’ *LL. Burgund. tit. 14. l. 1.*

‘Si quis Longobardus sine filiis legitimis masculinis mortuus  
 ‘fuerit, et filiam dereliquerit unam aut plures legitimas, ipsae  
 ‘ei in omnem hereditatem patris vel matris suae, tanquam filii  
 ‘legitimi masculini, heredes succedant.’ *LL. Longob. lib. 2. tit.*  
*14. l. 19.* See farther, *LL. Saxon, tit. 7.* *LL. Angl. et Werin.*  
*tit. 6.* *La Coutume Reformée du Fais et Duché de Normandie,*  
*commentée par Basnage, tome 1. p. 388.* *Selecta Feudalia Thomasi-*  
*fiana, p. 26—29.*

(12) There are frequent examples of ladies exercising the ci-  
 vil rights and the jurisdictions of fiefs. Of courts held by them,  
 and of decrees they pronounced, there are curious evidences in  
*Muratori, Antiq. Ital. Medii Ævi, vol. 1. p. 49. 614. 738.*  
*970. 971.*

In



In a learned work, entitled, *le Droit public de France éclairci par les monumens de l'antiquité*, we meet the following notices, which are authenticated from records.

‘ Mathilde Comtesse d’Artois eut séance et voix deliberative  
‘ comme les autres Pairs de France, dans le procès criminel  
‘ fait à Robert Comte de Flandres.

‘ Jeanne fille de Raymond Comte de Toulouse preta le serment,  
‘ et fit la foi et hommage au Roi de cette pairie.

‘ Jeanne fille de Bauldouin fit serment de fidelité pour la pairie  
‘ de Flandres. Marguerite sa soeur en herita et assista comme pair  
‘ au celebre jugement des pairs de France, donné pour le Comté  
‘ de Clermont en Beauvoisis.’ *Bouquet, p. 338.* See farther  
*Brussel, usage general des fiefs, liv. 2. ch 14.*

In England, in the reign of Edward III. there were summoned to parliament by writ *ad colloquium et tractatum* by their proxies, Mary Countess of Norfolk, Alienor Countess of Ormond, Anna Despenfer, Philippa Countess of March, Johanna Fitzwater, Agneta Countess of Pembroke, and Catharine Countess of Athol. *Gurdon's Hist. of the High Court of Parliament, vol. 1. p. 202. Parliam. Summons, 265.*



(13) The ornaments of the mother went early by succession to the daughters ; and, from the laws which prove this peculiarity, it is also to be inferred, that the passion of the women for dress was keen and strong.

‘ Ornamenta et vestimenta matronalia ad filias, absque ullo  
‘ fratris fratrumque consortio, pertinebunt.’ *LL. Burgund. tit.*  
*51. l. 3.*

‘ Mater moriens filio terram, mancipia, pecuniam dimittat ;  
‘ filiae vero spolia colli, id est, murenas, nuscas, monilia, inau-  
‘ res, vestes, armillas, vel quidquid ornamenti proprii videbatur  
‘ habuisse.’ *LL. Angl. et Werin. tit. 6. l. 6.*

(14) ‘ Si quis *propter libidinem* liberae manum injecerit, aut  
virgini seu uxori alterius, quod Bajuvarii horgrift vocant, cum  
vi. solid. componat.’ *LL. Baiuvar. tit. 7. l. 3.*

‘ Si indumenta super *genucula* elevaverit quod humilzorun  
‘ vocant, cum xii. solid. componat.’ *Ibid. l. 4.*

‘ Si autem *discriminalia* ejecerit de capite, Wultworf dicunt,  
‘ vel virgini *libidinosè* crines de capite extraxerit, cum xii. fol.  
‘ componat.’ *Ibid. l. 5.*

‘ Si



‘ Si qua libera faemina virgo vadit in itinere suo inter duas  
 ‘ villas, et obviavit eam aliquis, et per raptum *denudat* caput e-  
 ‘ jus, cum vi. fol. componat. Et si ejus vestimenta levaverit, ut  
 ‘ usque ad *genicula* denudet, cum vi. fol. componat : Et si eam  
 ‘ denudaverit ut *genitalia* ejus appareant, vel *posteriora*, cum xii.  
 ‘ fol. componat.’ *LL. Alaman. tit. 58. l. 1.*

‘ Si quis liberam foeminam per *verenda* ejus comprehende-  
 ‘ rit iiii. solid. componat, et duos solidos pro freda.’ *LL. Frision.*  
*tit. 22. l. 89.* See farther *LL. Sal. tit. 22.* *LL. Longobard.*  
*lib. 2. tit. 55. l. 16.*

One must smile at the simplicity of these regulations. They are proofs, notwithstanding, of the respect entertained for chastity. They express, immodestly, the delicacies of a rude, but refining people. They offend virtue, in the very act of promoting it.

Similar institutions or regulations, may be seen in the code of Gentoo laws ; but, as they are expressed with a still greater freedom of language, I avoid to give any examples of them. *Ch. 19.*

S E C-





## SECTION III.

(1) ‘**P**RINCIPES regionum atque pagorum inter suos jus  
 ‘dicunt, controversiasque minuunt.’ *Caesar, de Bell.  
 Gall. lib. 6. c. 22.* See also *Tacit. de Mor. Germ. c. 12.*

These *principes* became lords or barons, after the conquests of the barbarians, and, in this last state, continued and improved the privileges they had previously possessed. *Dissert. concerning the Antiquity of the English Constitution, Part. 3.* In Germany, there was probably no appeal from their decisions. For, in the German communities, it is said, there was no common magistrate. ‘*Nullus communis est magistratus.*’ *Caesar, ibid.* The judging, without appeal, was exercised in all the Gothic kingdoms by the higher division of the nobility. They had the *high* and the *low* justice, the *justice haut et bas, alté et basse.*

It would lead to details improper in this place, if I should attempt to explain the origin and growth of the different privileges

leges of the nobles. But I may hint my surprize, that these topics, so full of curiosity, have so little attracted our antiquaries and lawyers. The jurisdiction and powers exercised by the great, form a remarkable step in the progress of the European governments. Loyseau, indeed, and many French writers, make an easy discussion of this matter, by affecting to treat them as encroachments on monarchy, or on the rights of kings. And Dr Robertson has given his sanction to this opinion. *Hist. of Charles V. vol. 1. p. 60.*

A perfection, however, of government, or of regal jurisdiction, is thus supposed, in the moment of its rise; a circumstance, contradictory alike to natural reason and to story. Government is not perfect all at once: It attains not maturity but by slow degrees. The privileges of the nobles were prior to its perfect state. In fact, it was by the abolition of these that it grew to strength and ripeness. The monarchies of Europe were completed, when the high privileges of the nobility were destroyed. But these privileges were exercised before government was understood, and before kings had ascertained their prerogatives.

(2) An old writer, speaking of the greater barons or lords, has these words. ‘In omnibus tenementis suis omnem *ab anti-quo* legalem habuere justitiam, videlicet, ferrum, *fossam*, *furcas*, ‘et similia.’ *Gervasius Dorobern. an. 1195. ap. Du Cange, voc. Fossa.*

‘Proditores



‘Proditores et transfugas,’ says *Tacitus* of the old Germans, ‘*arboribus suspendunt. Ignavos et imbelles, et corpore infames coeno ac palude, injecta insuper crate, mergunt.*’ *De Mor. Germ. c. 12.* This description has, doubtless, a reference to the German nobles or chiefs who presided in the courts of the cantons and districts into which a tribe or community was divided. And, does it not call to one’s mind the *pit* and *gallows*, or the right to determine *de alto et basso* of the feudal nobility?

The power of mercy, or the pardoning of a criminal after sentence has been pronounced against him, is a curious circumstance in criminal jurisdiction. I should think, that it was exerted by the lord or baron in his dominions before it could be exercised in a general manner by the sovereign. The connection between the lord and the vassal was intimate; and the felony of the latter being chiefly an injury to the former, it might naturally enough be imagined, that he was entitled not only to forgive the offence, but to suspend the punishment. To his proper vassals, the sovereign might also act in the same way. It was thus, in fact, in the Anglo-Saxon period of our history. For the king had then only the power of pardoning crimes as to himself. But, on what principle did the sovereign begin to exert the general prerogative of pardoning criminals, every where through the state, after condemnation? The question is important, and might be argued with great show, and much ingenuity. But the narrow boundaries within which I must confine my

my



my remarks, admit not of either. I can only hint at my idea, and must not wait to insist upon it.

When the territorial jurisdictions of the nobles were to decay, they lost the privilege of giving pardons, as well as the other advantages annexed to their fiefs. The judges who succeeded them, were not to possess their prerogatives. Other, and more cultivated maxims of law and equity, had grown familiar. Unconnected with the distributions and the offices of justice, but as peers, the nobles were to cease to interfere with law and business in their estates or territories. In this condition, their prerogatives could pass no where but to the crown. That of *mercy* was to be swallowed up with the rest. When regular courts were erected, and when the barons neither levied troops, coined money, nor pardoned crimes, all these privileges were to be exercised, exclusively, by the sovereign. All the members of the community were then under one head. The kingdom seemed as it were to be one great fief, and the people looked up to the sovereign as the only superior.

The act of parliament which had the effect to abridge, for ever, the high prerogatives of the nobles, declares, ' That no person  
' or persons, of what estate or degree soever they be, from the  
' first day of July, which shall be in the year of our Lord God  
' 1536, shall have any power or authority to pardon or remit  
' any treasons, murders, manslaughters, or any kind of felonies,

I i

' what-



‘ whatsoever they be ; nor any accessaries to any treasons, murders, manlaughters, or felonies ; or any outlawries, for any such offences committed, perpetrated, done, or divulged, or hereafter to be committed, done, or divulged, by, or against any person or persons, in any part of this realm, Wales, or to the marches of the same ; but that the King’s Highness, his heirs and successors, Kings of this realm, shall have *the whole power and authority thereof*, united and knit to the imperial crown of this realm.’ *Stat. 27. Henry VIII. c. 24.*

(3) Du Cange, Differt. 29. sur l’Histoire de St. Louis. Brussel, usage general des fiefs, liv. 2.

(4) ‘ Suscipere tam inimicitias seu patris seu propinqui, quam amicitias, necesse est.’ *Tacit. de Mor. Germ. c. 21.*

Hence the *deadly feuds* of our ancestors. Such is the state of manners in all rude ages. The American carries his friendships and his resentments to extremity, and delivers them as an inheritance to his sons. He is the best friend, and the bitterest enemy. When he is disposed to be hostile, he knows how to conceal his sentiments : ‘ He can even affect to be reconciled till he catches the opportunity of revenge. No distance of place, and no length of time can allay his resentment, or protect the object of it.’ *Europ. Settlem. in Amer. vol. 1. p. 165.*

It



It was in consequence of the principle or right of revenge, that the Greeks made it a maxim of their creed, that the gods punish the crimes of the wicked upon their innocent posterity. It was a consequence of it, that, even in modern times, those inclement and ungenerous laws were enacted, which taint the blood of a rebel, which dare to violate the sacred rights of humanity, and to punish a blameless progeny with penalties and forfeitures.

(5) ' In Gallia, non solum in omnibus civitatibus, atque pagis partibusque, sed pene etiam in singulis domibus, *factiones* sunt; earumque factionum sunt *principes*, qui summam auctoritatem eorum judicio habere existimantur; quorum ad arbitrium iudiciumque summa omnium rerum consiliorumque redeat.' *Caesar, de Bell. Gall. lib. 6. c. 10.*

After the Germanic conquests, the words *saida*, *feid*, *feeth*, and *feud*, came to express the hostilities of the combination of kindred, who revenged the death of any person of their blood, against the killer and his race. In the Anglo-Saxon period of our history, these factions and hostilities were prevalent to an uncommon degree. And, what is worthy of observation, when a person was outlawed, and could form no combination of this sort for his protection, but might be put to death by any individual who met him, the term *frendles-man*, expressed his condition. 'Talem,' says *Bracton*, 'vocant Anglici *Utlaughe*, et a-



‘lio nomine *antiquitus* solet nominari, scilicet FREN-  
 ‘MAN.’ *Lib. 3. p. 129.*

About the year 944, King Edmund, with a view of repressing the violence and pernicious tendency of such confederacies, enacted the following method for their regulation.

‘Memet, et nos omnes taedet impiarum et quotidianarum  
 ‘pugnarum quae inter nos ipsos fiunt, et propterea in hunc mo-  
 ‘dum statuimus. Si quis alium posthac interfecerit, solus cum  
 ‘interfecti cognatis *faidam* gerito, cujuscunque conditionis fue-  
 ‘rit, ni ope amicorum integram *weram* intra 12 menses persol-  
 ‘verit. Sin destituerint eum cognati et noluerint: Volumus ut  
 ‘illi omnes [praeter reum] à *faida* sint liberi, dum tamen, nec  
 ‘victum ei prebeant, nec refugium. Quod si quis hoc fecerit  
 ‘suis omnibus apud regem mulctator, et cum eo quem desti-  
 ‘tuit nuper, *faidam* jam sustineat propinquorum interfecti. Qui  
 ‘vero ab alio cognatorum quam a reo sumpserit vindictam, sit  
 ‘in *faida* ipsius regis et amicorum suorum omnium, omnibus-  
 ‘que bonis suis plector.’ *LL. Edmund. ap. Spelm. Gloss. p.*  
 209.

The method of compounding, or of buying away the resentment of the injured kindred, is thus described by the same prince.

\* Prudentium



‘ Prudentium est fidas compescere. Primo [de more genti-  
 ‘ um] oratorem mittet interfector ad cognatos interfecti, nuncia-  
 ‘ turum se velle eisdem satisfacere. Deinde tradatur interfec-  
 ‘ tor in manus oratoris, ut coram veniat pacaté, et de solvenda  
 ‘ vera ipsemet spondeat. Sponsam solvi satisfato. Hoc factó,  
 ‘ indictetur mundium regis, ab illo die usque in 21 noctes, et  
 ‘ collistrigii multam dependito; post alias 21 noctes manbotam,  
 ‘ et nocte 21 sequenti primam vere solutionem numerato.’  
*L.L. Edmund. ap. Spelm. Gloss. p. 210. et Wilkins, p. 74. 75.*

Transactions of the same nature, characterise the criminal ju-  
 risprudence of all infant nations. ‘ Criminal matters,’ says a  
 most acute and elegant writer, ‘ are generally compromised a-  
 ‘ mong the Americans in the following manner. The offender  
 ‘ absents himself; his friends send a compliment of condolence  
 ‘ to those of the party murdered. Presents are offered, which  
 ‘ are rarely refused. The head of the family appears, who, in a  
 ‘ formal speech, delivers the presents, which consist often of a-  
 ‘ bove sixty articles, every one of which is given to cancel some  
 ‘ part of the offence, and to assuage the grief of the suffering  
 ‘ party. With the first he says, *By this I remove the hatchet*  
 ‘ *from the wound, and make it to fall out of the hands of him*  
 ‘ *who is prepared to revenge the injury;* with the second, *I dry*  
 ‘ *up the blood of that wound;* and so on, in apt figures, taking  
 ‘ away, one by one, all the ill consequences of the murder.’  
*Europ. Settlem. in America, vol. 1. p. 174.*

The





The hostilities and factions of which I speak, were supported among the Anglo-Saxons, as among the Gauls and the Germans, by the authority and countenance of the chiefs and the nobles. In the Norman times, the barons gave letters or mandates of protection to individuals, whom they were disposed to serve. Even kings gave obligations to abbeys and monasteries, by which they were bound to protect them against violence of every kind. On the consideration of fines, they were even to remit their own animosities, and to protect criminals from justice. See *Appendix*, No 3. The same things had place in the other kingdoms of Europe. Men, weak, and without strength, bought the assistance and protection of the strong and powerful. *Du Cange, voc. Salvamentum, Capitalicium. Form. Solen. ap. Baluz.*

(6) After the beautiful discovery of a magistrate, the violence of the injured is corrected; and it is then, probably, that fines and compensations for offences are invented, or at least established. ‘Nec implacabiles durant,’ says *Tacitus*, of the resentments of the Germans, ‘luitur enim etiam homicidium certo armentorum ac pecorum numero, recipitque satisfactionem univ[er]sa domus.’ *De Mor. Germ. c. 31.*

These fines or compositions, of which it was the object to satisfy the revenge of the relations of the person who had suffered, were originally settled by their agreement with the offender,

or,



or, by the discretion of the magistrate. Afterwards they were fixed by ordinances. The Anglo-Saxon laws, as well as those of the other barbarians, recount not only the stated fines for particular offences, but for particular persons, from the prince to the peasant. When the delinquent could not pay the fine, which was to buy away, or to gratify the resentment of the injured family, the law, before it was improved, delivered him over to their resentment, and the wild state of nature revived again. Compositions of this kind were known, antiently, in Europe, under a variety of names. See in the Glossaries, *Wera*, *Faida*, *Compositio*, *Wergeldum*, &c.

The exaction of fines to the injured, among the antient Germans, I consider as a proof that, in criminal matters, they had proceeded to appeal to a judge. I therefore differ from Dr Robertson, when he observes, that, 'among the antient Germans, 'as well as other nations in a similar state of society, the right 'of avenging injuries was a private and personal right, exercised by force of arms, without any reference to an umpire, or 'any appeal to a magistrate for decision.' *Hist. of Charles V. vol. 1. p. 274.*

In fact, it was not even solely the fine to individuals that was known among the Germans. They had advanced much farther in criminal jurisprudence. It was thought that the criminal, beside offending a particular family by the injury done to any  
of



of its number, had also offended the society, by breaking its peace. A fine, likewise, was, on this account, exacted from him, and went to the public or fisc. And thus Mr Hume, too, is mistaken, when he will not allow that the Germans had made this step towards a more cultivated life. *Hist. of England, vol. 1. p. 154.*

These different fines, the composition to the individuals, and that to the public, are pointedly and beautifully distinguished in the following passage of *Tacitus*. Having mentioned the methods in which the German nations punished the greater crimes, he adds, ‘*Levioribus delictis, pro modo poenarum, equorum pecorumque numero convicti mulctantur. Pars mulctae Regi vel Civitati: Pars ipsi qui vindicatur, vel propinquis ejus, exsolvitur.*’ *De Mor. Germ. c. 12.* It is impossible for an authority to be more express or satisfactory against these eminent writers.

After the conquests of the Germans, the fine for disturbing the public peace was exacted under the name of *fredum*; and, it is observable, that a portion of the profits of it came to constitute the first salary of judges.

The biographer of Charles V. I am sensible, professing to be guided by Baron Montesquieu, denies that ‘the *fredum* was a compensation due to the community, on account of the public peace;’ and considers it as ‘the price paid to the magistrate  
‘ for



‘ for the protection he afforded against the violence of resentment.’ *Vol. 1. p. 300.* This notion seems not to agree with his former opinion, as he conceives that the *fredum* was paid in the age of *Tacitus* \*. And I observe he has also affirmed, that the fine to the injured family may, in like manner, be traced back to the antiënt Germans †, which appears to be another inconsistency with his former declaration. But, waving any consideration of these inadvertencies, I think there is nothing more evident, than that the *fredum* was originally paid to the fisc, or to the sovereign, for the breach of the peace. The following arguments are stubborn, and perhaps conclusive.

‘ *Fredum regalis compositio PACIS.*’ *Gloss. Vet. ap. Lindenbrog.*  
p. 1404.

‘ Hoc quoque jubemus, ut iudices supra nominati, five fiscales, de quacunq; libet causa freda non exigant, priusquam facinus componatur. Si quis autem per cupiditatem ista transgressus fuerit, legibus componatur. Fredum autem non illi ju-  
K k ‘ dici

\* ‘ A certain sum, called a *fredum*, was paid to the king or state, as *Tacitus* expresses it, or the *Fiscus*, in the language of the barbarous laws.’ *vol. 1. p. 300.*

† ‘ The payment of a fine, by way of satisfaction to the person or family injured, was the first device of a rude people, in order to check the career of private resentment, and to extinguish those *faidae* or deadly feuds, which were prosecuted among them, with the utmost violence. This custom may be traced back to the antiënt Germans.’ *vol. 1. p. 299*



‘dici tribuat, cui culpam commisit, sed illi qui solutionem recipit,  
 ‘*tertiam partem* FISCO tribuat, ut PAX perpetua stabilis perma-  
 ‘neat.’ *LL. Ripuar. tit. 89.*

‘Si quis liber liberum infra januas ecclesiae occiderit, cognoscat  
 ‘se contra Deum injuste fecisse, et ecclesiam Dei polluisse: Ad ip-  
 ‘sam ecclesiam quam polluit lx. sol. componat. Ad FISCUM vero  
 ‘similiter alios lx. sol. pro FREDO solvat: Parentibus autem legi-  
 ‘timum weregildum solvat.’ *LL. Alaman. tit. 4.*

‘Si nobilis furtum quodlibet dicitur perpetrasse, et negare vo-  
 ‘luerit, cum quinque sacramentalibus juret: Aut si negare non  
 ‘potuerit, quod abstulit in duplum restituat, et ad partem REGIS  
 ‘lxxx. sol. pro FREDO componat, hoc est Weregildum suum.’  
*LL. Frifionum, tit. 3. l. 1.* See farther *LL. Longobard. tit. 30.*  
*l. 13. Capit. Kar. et Lud. hb. 3. tit. 30.*

Among the Anglo-Saxons, the fine for the violated peace was  
 termed *Griethbrech*. *Spelm. Gloss.* It was, as times became mer-  
 cenary, that a part of the *fredum*, and sometimes the whole of  
 it, went to the judge. And the salary thus assigned to him,  
 was not for the protection he afforded, for he was the servant of  
 the public; but as the reward of his growing trouble, and the  
 emolument of his office. See *LL. Sal. tit. 52. l. 3. tit. 55. l. 2.*  
*LL. Baiuvar. tit. 2. l. 16.*

The



The giving a stipend to judges out of the fines for the violated peace, was common in England, as well as in the other states of Europe. This stipend or allowance was usually the *third penny* of the county. An old book of Battel-Abbey, cited by *Mr Selden*, has these words. ‘*Consuetudinaliter per totam Angliam mos antiquitus pro lege inoleverat, comites provinciarum TERTIUM DENARIUM sibi obtinere.*’ *Tit. Hon. part. 2. ch. 5. sect. 7.* Gervase of Tilbury, or whoever wrote the old dialogue concerning the exchequer, speaks thus. ‘*Comes est qui TERTIAM PORTIONEM eorum quae de placitis proveniunt in quolibet comitatu percipit.*’ And the *Earl*, he says, was called *Comes*, ‘*quia Fisco socius est, et comes in percipiendis.*’ *Dial. de Scaccar. lib. 1. c. 17.* This tract is published by *Mr Madox* in his history of the exchequer. ‘*De istis octo libris,*’ say the laws of the Confessor, ‘*[scil. multa violatae pacis] Rex habebat centum solidos, et Consul comitatus quinquaginta, qui TERTIUM habebat DENARIUM de forisfactoris: Decanus autem reliquos decem.*’ *LL. Confess. c. 31. ap. Spelm. Gloss. p. 142.* What shows likewise, beyond a doubt, that the third penny of the county arose out of the fines for the violated peace, is the circumstance, that the *Kings* of England made formal grants of it to subjects whom they favoured. This, the book already quoted concerning the exchequer, lays down in these words. ‘*Hii (it had been speaking of Earls, and of the profits of fines,) tantum ista percipiunt, quibus regum munificentia obsequii praestiti, vel eximiae probitatis intuitu comites sibi creat, et*

K k 2

‘*ratione*

‘ratione dignitatis illius haec conferenda decernit, quibusdam haec re-  
 ‘reditarie quibusdam personaliter.’ *Dial. de Scaccar. ap. Madox,*  
*p. 402.* The higher Earls, or the Earls palatine, it is observable,  
 had all the profits to their own use. Of the Earls who possessed  
 the *third penny*, there is mentioned the Earl of Kent, who had  
 it under William I. And there is evidence, that it was antiently  
 enjoyed by the Earls of Arundel, Oxford, Essex, Norfolk,  
 and Devonshire. *Selden, Tit. Hon. part 2. ch. 5. Madox,*  
*Baron. Anglica, book 2. ch. 1.*

(7) When the right of private war was acknowledged as a  
 legal prerogative of nobility, regulations were made to adjust its  
 nature and exertion. *Beaumanoir, Coutumes des Beauvoisis, ch.*  
*59. Du Cange, dissert. 29. sur l'histoire de St. Louis. Boulain-*  
*villiers on the antient parliaments of France, letter. 5.* What is  
 surprizing, even the neglect of exercising this right, when a pro-  
 per occasion required its exertion, was an offence to the order  
 who professed it, and an object of punishment. ‘La Duc San-  
 ‘dragèfile,’ says *Saint Foix*, ‘ayant été tuè par quelqu’un de  
 ‘ses ennemis, les Grands du Royaume citerent ses enfans qui  
 ‘negligeoient de venger sa mort, et les priverent de sa succession.’  
*Essais histor. tom. 2. p. 88.* In France, this prerogative of the  
 nobles was not entirely abolished in the middle of the fourteenth  
 century. *Brussel, usage general des Fiefs, liv. 2. ch. 2.*

De



Dr Robertfon seems to imagine, that, in England after the Norman invafion, the nobility loft, or did not exercife the right of private war; and he reafons with a view to account for thefe particulars. *Hift. of Charles V. vol. 1. \** It is to be acknowledged, that the hiftorians of England have not been fufficiently attentive

\* After the conquest, the mention of private wars among the nobility, occurs more rarely in the Englifh hiftory, than in that of any other European nation, and no laws concerning them are to be found in the body of their ftatutes. Such a change in their own manners, and fuch a variation from thofe of their neighbours, is remarkable. Is it to be afcribed to the extraordinary power which William the Norman acquired by right of conquest, and tranfmitted to his fucceffors, which rendered the execution of juftice more vigorous and decifive, and the jurifdiction of the King's court more extenfive, than under the monarchs on the continent? Or, was it owing to the fettlement of the Normans in England, who, having never adopted the practice of private war in their own country, abolifhed it in the kingdom which they conquered? It is affirmed, in an ordinance of John King of France, that in all times paff, perfons of every rank in Normandy have been prohibited to wage war, and the practice has been deemed unlawful. *Ordon, tom. 2. p. 407.* If this fact were certain, it would go far towards explaining the peculiarity which I have mentioned. But, as there are fome Englifh acts of parliament, which, according to the remark of the learned author of the *observations on the ftatutes, chiefly the more antient*, recite falfehoods, it may be added, that this is not peculiar to the laws of that country. Notwithftanding the pofitive affertion in this public law of France, there is good reafon for confidering it as a ftatute which recites a falfehood. *Charles V. vol. 1. p. 286. 287.*

The firft queftion that is put by this hiftorian, is founded on a miftake; for William the Norman atchieved no *conqueft* over England. The fecond queftion is founded on a fuppofed fact, which he appears to regard as of no moment; and indeed it does not deferve to be confidered in any other light.





attentive to record the private wars of the nobles. But this elegant writer ought, doubtless, to have remembered, that, in the higher order of its nobility, the right of private war was as much inherent as the coinage of money, the holding of courts, or any other of their prerogatives; and that these received not their last and effectual blow till the age and reign of Henry VIII.

In the appendix, I produce a very curious proof of the exercise of private war in England. It is a truce between two nobles, agreeing to stop hostilities. *Appendix, No. 4.* The following passage of *Glanville*, is also a striking testimony of the existence of the right of private war. ‘Utrum vero ad *guerram suam* mantenendam possint domini hujusmodi auxilia exigere quaero.’ *lib. 9. c. 8.* And the dispute between Richard, Earl Marshal, and Henry III. of which there is a singular relation in Matthew Paris, is certainly to be accounted for on the principle of this prerogative.

Nor is there wanting other evidence of its existence. It was in a great measure, from the exercise of the right of private war, that in England, in the age of Stephen, there were above eleven hundred forts and castles. *Lord Lyttelton's History of Henry II. vol. 1. p. 418.* The *feudum jurabile et reddibile* was likewise a consequence of it, by which a sovereign or a noble put a vassal into any of his castles, in order to defend it, and to guard his stores and his prisoners, and whom he bound by an oath, to re-  
store



fore it in a certain time, or to his call or mandate. This form of fief and tenure was not only known in England, but frequent there; and mention is made of it in the laws of Henry I. The right of private war was, therefore, often exercised in this country; and, what deserves observation, without paying an attention to this right, it is impossible to explain those ordinances of Henry which allude to this feudal peculiarity. Spelman, not attending to it, could not reach their meaning, and pronounces of them, that they are obscure and corrupted. *Gloss. voc. Castellacium*. Their sense, notwithstanding, when tried by this standard, is easy and natural.

(8) The prerogatives of the higher nobility throughout Europe, may be referred to the following heads; the power of making war of their private authority, the right of life and death in their territories, the levying of imposts, the raising of troops, the coining of money, and the making of laws. It is to be wished, that some inquisitive and judicious antiquary would collect from the English laws and records, all the circumstances to be found which have a relation to these topics. He could not offer a more valuable present to the public.

These powers were exercised by the higher nobles among the Anglo-Saxons. For, though *palatinates*, which are generally allowed to have possessed them, were not familiar by name in those times; yet, I cannot but agree with Mr Selden, that the  
sense



ense and substance of them were then fully known. The Anglo-Saxon earls, who had their earldoms to their own use, had regal jurisdiction, and the king's writ of ordinary justice did not run in their dominions. Such, for example, was Etheldred Earl of Mercland, under King Alfred, and his son King Edward. *Selden, Tit. Hon. part. 2. ch. 5. sect. 8. Dissert. concerning the Antiq. of the Engl. Constitution, part 3.*

After the Norman invasion, many of the higher nobility were expressly known as *Earls-Palatine*. Cheshire was a palatinate, and possessed by its earls, *ad gladium, sicut ipse rex totam tenebat Angliam ad coronam suam*. The antient Earls of Pembroke were also palatines, being *domini totius comitatus de Pembroch*, and holding *totum regale infra praecinctum comitatus sui de Pembroch*. This is the language of records. The like regality was claimed in the barony of Haverford. The bishops of Durham had, antiently, *omnia jura regalia, et omnes libertates regales infra libertatem suam Dunelmensem*. The archbishop of York had a regality in Hexham, which, antiently, was styled a *county-palatine*. The bishoprick of Ely was a palatinate, or a royal franchise. The earldom of Lancaster was created *palatine* in the reign of Edward III. Hugo de Belesme Earl of Shrewsbury, under William II. had the title *palatine*. The same thing is mentioned of John Earl of Warren and Surrey, under Edward III. And Humfrey de Bohun, Earl of Hereford and Essex, had a *regality* within the honour of Breknou. *Spelman-Gloss.*  
de



*de Comite Palatino, Selden, tit. Hon. part. 2. ch. 5. sect. 8. Maddox, Bar. Angl. p. 150. Camden, Britan. p. 661. 935.*

(9) *Marculphus* has preserved a form or writing by which the conversion of allodiality into tenure took place. The inquisitive reader may consult it in *Baluz. Capit. Reg. Franc. tom. 2. p. 382. 383.* with the notes of *Hieron. Bignon. p. 896. 898.*

The agreement of an allodial proprietor and the sovereign, or the feudal lord to whom he was disposed to grant his property, with the view of submitting it to tenure, directed the nature and peculiarity of the obligations to which he was to yield in his new situation. In consequence of the protection of a superior, he was generally to give his military service, and all the aids or incidents of fiefs. At other times, however, he was only bound not to take arms against the superior, but to remain at peace, without any connection with the enemies of his lord, and without the burden of the feudal incidents. He was simply to be bound to homage, and a passive fidelity.

It is contended for, indeed, strenuously, and at great length, by *Monfr. Bouquet*, that the greater and lesser jurisdictions were inherent in allodiality. *Le droit Public de France.* *Dr Smith*, in his most ingenious *Inquiries concerning the Wealth of Nations*, gives his suffrage for the same opinion. And *Dr Robertson*,

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bertson,



bertson, notwithstanding what he has said concerning fiefs, is, in some measure, disposed to it. *Hist. of Charles V. vol. 1. p. 303.*

If supreme jurisdiction, however, and eminent prerogatives were connected with allodality, it seems altogether inconceivable, why its possessors should have converted it into fiefs. Perhaps these writers have confounded with allodality the *feodum Francum*, or *honoratum*, which expressed a condition of it after its conversion into feudality. ‘Ut omnia teneant,’ says an old monument cited in Du Cange, ‘ab Abbate et successoribus in *francum feodum sive allodium*, ut pro his homagium francum nobis Abbati et successoribus nostris, amplius facere teneantur.’ ‘Haec omnia,’ says another charter cited by him, ‘habeo et teneo a te D. Raymundo Comite Melgorii ad *feodum francum et honoratum*, pro quibus omnibus prescriptis facio vobis hominum et fidelitatem.’ *Du Cange, voc. Feodum francum et honoratum.* ‘Les fiefs d’honneur,’ says *Salvaing*, ‘font ceux qui ont tellement conservé la nature de leur origine, qu’ils ne doivent au seigneur que la *bouche* et les *mains*, sans aucune charge de quint, de rachat, ni d’autre profit quelconque.’ *cb. 3.*

It is also well known, and might be illustrated by a variety of proofs, that allodial proprietors were so little attended to, and adorned with distinctions, that they could not, without the consent of the king, build, for their protection, a house of strength or a castle. *Brussel, usage-general des fiefs, vol. 1. p. 368.* Yet  
this



this privilege was originally of so little account, that it was enjoyed indifferently by every feudal lord.

(10) Du Cange, voc. Gruarium, Pedagium, Rotaticum, Feudum Nummorum, Feudum Soldatae. Brussel, Usage-generel des fiefs, liv. II. ch. I. sect. II. Affises de Jerusalem, avec des notes, par Thaumassiere, p. 171. 268.

Francum or honorarium, which expressed a condition of its conversion into feudality. Ut omnia tenent, says an old monument cited in Du Cange, ab Abbate et successoribus in Francum feudum sine allodium, ut pro his homagium francum nobis Abbati et successoribus nostris, amplius facere tenentur. Haec omnia, says another charter cited by him, habeo et

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et honoratum, pro quibus omnibus praescriptis facio vobis hominum et fidelitatem. Du Cange, voc. Feudum francum et honoratum. Les fiefs d'honneur, says Salvaing, sont ceux qui ont tellement conserve la nature de leur origine, qu'ils ne doivent au seigneur que la benefice et les manes, sans aucune charge de quai, de rachat, ni d'autre chose quelconque. ch. 3.

It is also well known, and might be illustrated by a variety of proofs, that allodial proprietors were so little attended to, and so much with distinction, that they could not, without the consent of the lord, be sold, or the protection, a house of nobility.

## S E C T I O N IV.

(1) **D**UCES ex virtute sumunt. . . . Duces exemplo  
 'potius quam imperio, si prompti, si conspicui:  
 'Si ante aciem agant, admiratione praesunt.' *Tacit. de Mor. Germ. c. 7.* 'Ubi quis ex principibus in concilio se dixit ducem  
 'fore, ut qui sequi velint profiteantur; confurgunt ii qui et cau-  
 'sam et hominem probant, suumque auxilium pollicentur, atque  
 'ab multitudine collaudantur.' *Caesar, de Bell. Gall. lib. 6. c. 22.*

(2) 'Nihil autem neque publicae neque privatae rei, nisi ar-  
 'mati agunt. Sed arma sumere non ante cuiquam moris, quam  
 'civitas suffectorum probaverit. Tum in ipso consilio vel prin-  
 'cipum aliquis, vel pater, vel propinquus scuto frameaque juve-  
 'nem ornant.' *Tacit. de Mor. Germ. c. 13.*

'These military youths,' says *Comden*, 'were called in their  
 'language *Knechts*, as they are in ours.' *Introd. to the Britannia,*  
*p. 245.*

(3)

(3) 'Patri Regi Rex Ludovicus Ingelheim occurrit, indeque  
 'Renesburg cum eo abiit, ibique *ense* jam appetens adolescentiæ  
 'tempora, *accinctus est.*' *Vit. Lud. Pii, an. 791.* Of King A-  
 'thelstane there is this mention in *Malmsbury*, 'Nam et avus  
 'Alfredus prosperum ei regnum imprecatus fuerat, videns et  
 'gratiosè complexus speciei spectatæ puerum, et gestuum ele-  
 'gantium: Quem etiam premature *militem fecerat donatum*  
 'chlamyde coccinea, gemmato baltheo, *ense Saxonico, cum vagina*  
 'aurea.' *Lib. 2.* 'Henrico nepoti suo David Rex Scotorum *vi-*  
 'rilia tradidit arma.' *Hen. Huntingdon, lib. 8.* See *Du Cange,*  
*voc. Arma.*

Other particulars, expressive of the antiquity of knighthood,  
 may be seen in the Dissertations on the history of St. Louis.  
 And, with regard to our Saxon ancestors in particular, *Mr Sel-*  
*den* has found frequent mention of knights in the charters of  
 that age. *Titles of honour, part 2. ch. 5.* Mr Hume, there-  
 fore, reasons hypothetically, when he admits not of chivalry in  
 the Anglo-Saxon times. *Appendix, 11.*

The addition *Sir* to the names of knights, was in use be-  
 fore the age of Edward I. and is from *Sire*, which in old  
 French signifies *seigneur*, or lord. Though applicable to all  
 knights, it served properly to distinguish those of the order who  
 were not barons. To knights-baronet, who are a modern insti-  
 tution, and no part of the antient chivalry, the addition *Sir* is  
 granted





granted by a clause in their patents of creation. *Ashmole on the Garter, ch. 1.*

The most honourable method of receiving knighthood was from the sovereign. But every possessor of a fief could bestow it; and one knight could create another. 'Eorum,' says *Spelman*, 'fuit militem facere quorum fuit feodum dare.' *Dissert. de milite, ap. Reliq. p. 180.* 'Tout chevalier,' says *St. Palaye*, 'a voit le droit de faire chevaliers.' *Memoires sur l'ancienne chevalerie, tom. 1. p. 70.* A king could receive it from the hands of a private gentleman.

Its value may be remarked in the following peculiarity. 'Scitis,' said a Lombard king to his courtiers, 'non esse apud nos consuetudinem, ut regis filius cum patre prandeat, nisi prius a rege gentis exteræ arma susceperit.' *Paul. Diac. lib. 1. ap. Honoré de Sainte Marie, dissert. sur la chevalerie, p. 182.* 'Liberos suos,' said *Caesar* of the Gauls, 'nisi quum adoleverint, ut munus militiæ 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.*

'Dans les premiers temps,' says *St. Palaye*, 'la plus illustre naissance ne donnoit aux nobles aucun rang personnel, à moins qu'ils n'y eussent ajouté le titre ou le grade de chevalier. Jusqu' alors on ne les consideroit point comme membres de l'état,

‘*Petat*, puisqu’ ils n’en étoient point encore les *soutiens et les*  
 ‘*defenseurs* : Les Ecuyers appartenoient à la *maison* du maître  
 ‘qu’ ils servoient en cette qualité ; ceux qui ne l’étoient pas en-  
 ‘core, n’ appartenoient *qu’ à la mere de famille* dont ils avoient  
 ‘reçu la naissance et la première éducation.’ *Tom. 1. p. 298.*

*Tacitus*, having described the ceremony of investing the Ger-  
 man with arms, adds, ‘*Haec apud illos toga, hic primus juventae*  
 ‘*honos, ante hoc domus pars videntur, mox reipublicae.*’ *De*  
*Mor. Germ. c. 13.*

This tendency and concurrence of circumstances is striking ;  
 and to these institutions we may trace the contempt with which  
 the rights of *minors*, both of high and low condition, were treat-  
 ed, in the middle ages. To be in minority was to be nothing.  
 Before his majority, or the investiture of arms, the individual did  
 not seem a citizen or a subject.

(4) ‘*Virtutem proprium hominis bonum : Deos fortioribus*  
 ‘*adesse.*’ *Tacit. Hist. lib. 4. c. 57.*

(5) ‘*Est et alia observatio auspiorum, qua gravium bellorum*  
 ‘*eventus explorant. Ejus gentis, cum qua bellum est, captivum*  
 ‘*quoquo modo interceptum, cum electo popularium fuorum,*  
 ‘*patriis quemque armis committunt. Victoria hujus vel illius*  
 ‘*pro praesudicio accipitur.*’ *Tacit. de Mor. Germ. c. 10.*

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An instance of the duel is described in *Livy, lib. 28. c. 21.* And the prevalence of this mode of trial is mentioned by *Paterculus, lib. 2. c. 118.* It was by single combat that the Celtic and Gothic nations decided the succession to offices, when the candidates were numerous and of equal merit. This was leaving it to the Deity to determine their pretensions. It was in this manner, that, among the Gauls, the place of the sovereign Druid was supplied, in cases of doubt. ‘His autem omnibus  
 ‘Druidibus praeest unus, qui summam inter eos habet auctoritatem. Hoc mortuo, si quis ex reliquis excellit dignitate, succedit. At si sunt plures pares suffragio Druidum adlegitur: Nonnunquam etiam de principatu armis contendunt.’ *Caesar, de Bell. Gall. lib. 6. c. 12.*

This form of deciding controversies and disputes, continued to prevail after the conquests of the barbaric nations; is to be seen every where in their laws; and became an important article in the jurisprudence of the middle times. The following ordinances illustrate its use and purposes.

‘Qui terram suam occupatam ab altero dixerit, adhibitis idoneis testibus, probat eam suam fuisse: Si occupator contradixerit, *campo dijudicetur.*’ *LL. Saxonum, tit. 15.*

‘Si quis Adalingum occiderit DC. fol. componat. Qui liberum occiderit, CC. fol. componat. Et de utroque si negaverit, cum

‘cum xii. juret, aut in *campum exeat*, utrum ille voluerit, ad  
 ‘quem causa pertinet.’ *LL. Angl. et Werinor. tit. 1.*

‘Qui domum alterius noctu incenderit, damnum triplo faciat,  
 ‘et in fredo solid. lx. aut si negat, cum undecim juret, aut *cam-*  
 ‘*po* decernat.’ *Ibid. tit. 8.*

‘Si aut calumniator, aut ille cui calumnia irrogata est, se so-  
 ‘lum ad sacramenti mysterium perficiendum protulerit, et dix-  
 ‘rit: Ego solus jurare volo, tu si audes nega sacramentum me-  
 ‘um, et armis mecum contende. Faciant etiam illud, si hoc eis ita  
 ‘placuerit; juret unus, et alius neget, et in *campum exeant.*’  
*LL. Frison. tit. 11. l. 3.*

‘Si mulier in morte mariti sui consiliata fuerit per se, aut per  
 ‘suppositam personam, sit in potestate mariti sui de ea facere  
 ‘quod voluerit: Similiter et de rebus ipsius mulieris. Et si illa  
 ‘negaverit, liceat parentibus eam purgare aut per sacramentum,  
 ‘aut per *pugnam*, id est, per *campionem.*’ *LL. Longobard. lib. 1.*  
*tit. 3. l. 6.*

Even from rude times, it is observable, that this trial took  
 place at the command of the magistrate. And, it is probable,  
 that it was in a good measure at his discretion, whether it took  
 effect. If the truth was to be investigated by witnesses, so that  
 complete evidence appeared, and there was no room for doubt,

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the battle might be avoided. It was, however, much to the taste of martial times. The barbarians, also, believed firmly that providence actually interfered in their affairs. And this absurdity was encouraged by the Christian clergy, who, like the priests of all religions, found an interest in deceiving the vulgar.

(6) The word *nidering* or *nidernig*, was a term of dishonour among the Normans and Danes; and, it is told by the historians of William Rufus, that, on an occasion which required the speedy aid of his vassals, including in his summons, that those of them who neglected to repair to him should be accounted *nidering*, his standard was immediately crouded. *Du Cange, voc. Nidering.*

To apply to a person the term *arga* among the Longobards, was to say, that he was a *coward* and a *worthless* fellow; and this offence to his honour could not be pardoned. If the accuser persisted in the assertion, the *combat* took place; and, if he confessed his crime, he was subjected to a fine. *LL. Longobard. tit. 5. l. 1.*

Of *arga*, it is remarkable, that, in its original and proper signification, it meant a person who permitted the infidelities of his wife. 'Proprie *arga* is dicitur,' says *Du Cange*, 'cujus uxor moechatur, et ille tacet.' *Gloss vol. 1. p. 319. Spelm. p. 40.* A person of this kind was infamous in the extreme, and generally  
of

of the vilest condition. The word *cucurbita* had also this sense; and hence the French *coucourd*, and our *cuckold*. Each of these terms, accordingly, in its enlarged acceptation, came naturally enough to signify a *mean, cowardly, and stupid fellow*. To have a *caput cucurbitinum*, was to be a *block-head*. And, from the confusion of the proper sense of *cucurbita*, and its enlarged one, the infamy seems to have arisen which, to this hour, constantly attends even an *involuntary cuckold*. It is thus, that even words operate upon manners.

The point of honour in Sweden, in early times, is well illustrated by the following law, which I give in the words of *Stiernbook*, whose book is not commonly to be met with.

‘ Si dicat vir viro probrosum verbum : Non es vir viri compar,  
 ‘ aut virili pectore : Ego vero sum vir [inquit alter] qualis tu. Hi  
 ‘ in trivio conveniunto. Si comparet provocans, nec provocatus ;  
 ‘ talis esto [provocatus] sequior ut dictus fuit, ut qui nec pro fe-  
 ‘ mina nec viro sacramentalis esse queat, intestabilis : Si vero com-  
 ‘ paret provocatus, nec provocans, quam vehementissime trino  
 ‘ immani clamore exclamet, et signum in terra radat, et sit vir  
 ‘ ille [provocans] eo deterior, quod verba locutus est, quae prae-  
 ‘ stare non ausus sit. Si jam uterque comparent, justis instructi  
 ‘ armis, et cadat provocatus, dimidio mulctae pretio [caedes]  
 ‘ expiator. Si vero provocans cadit, imputet temeritati. Capi-

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‘ talis



‘ talis ei linguae suae petulantia, jaceat in campo inxpiatus.’  
*De Jure Sueonum et Gothorum vetusto, lib. 1. c. 6.*

Among the antient Germans, in the age of *Tacitus*, the point of honour was carried so high, that a gamester having risked and lost his liberty and person on the last throw, submitted to voluntary servitude, allowing himself, though stronger and younger than his antagonist, to be bound and sold by him. ‘ *Ea est in re prava pervicacia; ipsi fidem vocant.*’ *Tacit. de Mor. Germ. c. 24.* The other words of the passage are: ‘ *Alem quod mirere, sobrii inter feria exercent, tanta lucrandi perdendive temeritate, ut cum omnia defecerunt, extremo ac novissimo jactu, de libertate et de corpore contendant. Victus voluntariam servitutum adit: quamvis junior, quamvis robustior, alligare se ac venire patitur.*’

It is not foreign to the purposes of this work, to remark, that the passion for play followed the conquests of the barbarians; that many ordinances were made to suppress it; and that, to this hour, it is a *point of honour* to extinguish game-debts. There is something interesting in this subject, and I cannot leave it without starting a conjecture.

The idea of borrowing under an obligation of repayment, was too cultivated for the German gamester. When he had lost every

every thing \*, he therefore staked his liberty and his person. Having left his woods, he improved upon this usage; and, instead of endangering his person, gave a *pledge* as a security that he would pay his loss. ‘*Wadia dabat.*’ *Lindenbrog. Gloss. voc. Wadium.* The usage was not lost. ‘En 1368,’ says a French historian, ‘le Duc de Bourgogne ayant perdu soixante francs á la ‘paume contre le Duc de Bourbon, Messire Guillaume de Lyon ‘et Messire Guy de la Trimouille, leur laissa, faite d’argent, sa ‘ceinture: Laquelle il donna encore depuis *engage* au Comte ‘d’Eu pour quatre vingt francs par lui perdu au meme jeu.’ *Le Laboureur, ap. Saint Foix. tom. 1. p. 343.*

The custom of *pledges* introduced by gaming, grew common in other transactions, and in debts of every kind. From moveables, which were the first pledges, a transition was soon made to land. Hence the *mortuum-vadium* †, the pawn of land, or the

\* It does not appear what the German usually played for. It might be, sometimes, the coins of the Romans. ‘*Jam et pecuniam accipere docuimus.*’ *Tacit. de Mor. Germ. c. 15.* His chains and ornaments, utensils and furs, were probably his common stakes.

† ‘It is called a *dead-gage*,’ says *Cowel*; ‘because, whatsoever profit it yieldeth, yet ‘it redæmeth not itself by yielding such profit, except the whole sum borrowed be ‘likewise paid at the day.’ *The Interpreter, voc. Mortgage.*





the mortgage ; and hence also the legal doctrine of *distresses* \*. Such a mixture is there of whim and accident in the greater as well as the minuter precautions of civil polity !

(7) The forms of trial in the *duel* at common law, and in the *duel* for points of honour, were distinct. This subject will be treated in the sequel.

(8) ‘ Genus spectaculorum unum atque in omni caetu idem. ‘ Nudi juvenes, quibus id ludicrum est, inter gladios se atque infestas frameas saltu jaciunt. Exercitatio artem paravit, ars decorem. Non in quaestum tamen aut mercedem. Quamvis ‘ audacis lasciviae pretium est, voluptas spectantium.’ *Tacit. de Mor. Germ. c. 24.*

There is a remarkable passage in *Procopius* with regard to King *Totilas*, from which we may learn the dexterity which was exhibited in such military sports.

‘ Ipse

\* ‘ *Namium et namus*] Captio, a Sax. naman, al. nyman capere. Voces prisca fori, haec apud Scotos, illa apud Anglos veteres usitata: Res, bona, animalia, quae per *distractionem* capiuntur significantes: Hoc est, ea quae a possessore auferuntur, legitimèque retinentur, mulctae vel *pignoris* nomine, quousque id fecerit vel praestiterit, quod non sine injuria recusaverit.’ *Spelm. Gloss.* See farther the other *Glossaries*, and *Coke on Littleton*.

‘ Ipse equo eximio vectus, inter geminas acies armorum lu-  
 ‘ dum scite ludebat. Equum enim circumagens ac reflectens u-  
 ‘ troque versum, orbis orbibus impediabat. Sic equitans, hastam  
 ‘ in auras jaculabatur, eamque, cum tremula relaberetur, aripie-  
 ‘ bat mediam, et ex altera manu in alteram saepe trajiciens, ac  
 ‘ dextere mutans, operam huic arti feliciter navatam ostendebat :  
 ‘ resupinabat sese, et flexu multiplici nunc huc nunc illuc ita in-  
 ‘ clinabat, ut appareret diligenter ipsum a pueritia didicisse sal-  
 ‘ tare.’ *Lib. 4. c. 31.*

These ideas make a figure even in the paradise of the Gothic nations. ‘ Tell me,’ says *Gangler* in the *Edda*, ‘ How do the  
 ‘ heroes divert themselves when they are not drinking ?’ ‘ Every  
 ‘ day,’ replies *Har*, ‘ as soon as they have dressed themselves, they  
 ‘ take their arms ; and, entering the lists, fight till they cut one  
 ‘ another in pieces : This is their diversion. But, no sooner does  
 ‘ the hour of repast approach, than they remount their steeds all  
 ‘ safe and sound, and return to drink in the palace of *Odin*.’ *The  
 Edda, or antient Icelandic or Runic mythology, ap. Northern An-  
 tiquities, vol. 2. p. 108.* See also *Keysser, Antiq. Select. Sep-  
 tentr. et Celt. p. 127.*

(9) In the books of the middle times, torneaments are called  
*ludi militares, militaria exercitia, et imaginariae bellorum prolusi-  
 ones.* A writer in *Du Cange* says, ‘ Torneamenta, dicunt quae-  
 ‘ dam nundinae, vel feriae, in quibus milites ex edicto convenire  
 ‘ solent,



‘solent, et ad ostensionem virium suarum et audaciae temere  
‘congregari, vel congregari.’ *Gloss. voc. Torneamentum.*

These exercises were the great schools of discipline and war. Their high antiquity on the continent may be seen in the dissertations on the history of St Louis. And, there is mention of them in England in the days of King Edgar, and at a more antient period. *Selden, duello, ch. 3.* Mr Madox was therefore in a great mistake, when he ascribed the rise of the spirit of torneying to the holy wars. *Bar. Angl. p. 281.*

The frequent accidents which necessarily happened in the exercise of these representations of war, through the impetuosity of valour, and the extravagance of heroism; the fulminations of the church; and, above all, the jealousy of princes which was excited by armed nobles and their retainers, gave them powerful checks. They continued, notwithstanding, to be long in fashion. In England, they were practised in the reign of Queen Elizabeth; and their total disappearance was preceded, under the elder James and his son Charles, by a gentle method of them, termed *caroufals*.

Torneaments originally were celebrated by all warriors at their pleasure. In after times, the sovereign, as the head of chivalry and arms, claimed their direction, and issued out his licenses and prohibitions. Richard I. by the following patent to Hubert,  
Arch-



Archbishop of Canterbury, gave license for lists or torneaments in five places within the kingdom.

‘ Sciatis nos concessisse, quod torneamenta sint in *Anglia* in  
 ‘ quinque placeis, inter *Sarum* et *Wilton*, inter *Warwick* et *Ke-*  
 ‘ *lingworth*, inter *Stamford* et *Walingford*, inter *Brakeley* et *Mixe-*  
 ‘ *ber*, inter *Bly* et *Tikehill*, ita quod pax terrae meae non infrin-  
 ‘ getur. Et comes qui ibi torneare voluerit, dabit nobis 20 mar-  
 ‘ cas, et baro 10 marcas, et miles, qui terram habuerit, 4 mar-  
 ‘ cas, et qui non habuerit, 2 marcas. Nullus autem extraneus  
 ‘ ibi attorneabit. Unde vobis mandamus, quod ad diem tornea-  
 ‘ menti habeatis ibi 2 clericos et 2 milites vestros, ad capiendum  
 ‘ sacramentum de comite et barone, quod nobis de praediecta pe-  
 ‘ cunia ante torneamentum satisfaciet, et quod nullum torneare  
 ‘ permittant antequam super hoc satisfecerit; et inbreviari faci-  
 ‘ ant quantum et a quibus receperint. Et 10 marcas pro carta  
 ‘ ad opus nostrum capiatis, unde comes *Sarum*, et comes de *Clara*,  
 ‘ et comes de *Warrena* plegii sunt. Teste meipso, apud villam  
 ‘ episcopi 22 die Augusti.’ *Ex lib. Rubro Scaccarii, ap. Selden*  
*in the Duello, ch. 3.*

Edward I. and Edward III. granted the liberty of holding yearly a just *viris militaribus comitatus Lincoln*. Richard Redman, and his three companions in arms, had the license of Richard II. *hastiludere cum Willielmo Halberton cum tribus sociis apud civitat. Carliol*. And a similar liberty was granted to John



de Gray by Henry IV. *Cottoni Posthuma*, p. 63. Edward I. commanded, by proclamation, that no torneaments or justing, or seeking of adventures, and no feats of arms should be celebrated or undertaken without his permission. 'Publice fecit  
'proclamari, et firmiter inhiberi, ne quis, sub forisfactura terra-  
'rum et omnium tenementorum, torneare, bordeare, justas face-  
're, aventuras quaerere, seu alias ad arma ire praesumat, sine li-  
'centia Regis speciali.' *Cot. Post. p. 67.* There are also prohibitions of torneaments by Henry III. and other princes. They command all earls, barons, knights, and others, under their faith, homage, and affection, and under pain of losing their lands and tenements, that they presume not to torney, make justs, seek adventures, or go to feats of arms within the realm, without the King's express leave. See *Appendix*, No. V.

(10) 'Tum ad *negotia*, nec minus saepe ad *convivia*, procedunt *armati.*' *Tacit. de Mor. Germ. c. 22.*

This usage continued during the middle times. The posterity of the Germans went in armour to their parliaments and public councils, and to their private visits and meetings. Justice, says *Mezeray*, was rendered among the Franks by people in arms: The axe and the buckler were hung upon a pillar in the midst of the *malle* or the court. See *his history under Clotaire II.* From this practice among the Anglo-Saxons, the hundred court was, in some counties, called the *Wapentake*. The hundreder, holding



holding up his lance, it was touched by those of all the members, and thus the assembly was constituted. *LL. Edward. Confes. c. 33.* *Wapnu*, says Whitelocke, is arms, and *tac*, touch. *Notes upon the King's writ for members of Parliament, vol. 2. p. 39.*

To this day, in the kingdoms of Europe, the wearing of a sword is a part of dress. We go in arms to a feast as well as to a battle, and retain, in orderly times, a custom which habitual danger, and the defects of legislation, made necessary to barbarians. The clergy, it seems, pertinaciously opposed the custom, and it was retained with obstinacy. What is more surprising, they have ceased to exclaim against it, and yet it continues!

(11) ‘*Scutum* reliquisse praecipuum flagitium. Nec aut facris adeste, aut concilium inire ignominioso fas.’ *Tacit. de Mor. Germ. c. 6.*

Hence a high composition was allowed to the Frank, who had been reproached injuriously with the loss of his shield. ‘Si quis homo ingenuus alio improperaverit, quod *scutum* suum jactasset, et fuga lapsus fuisset, et non potuerit adprobare, DC. den. qui faciunt sol. xv. culpabilis judicetur.’ *Pactus legis Sallicae, ap. Georgisch. p. 69.* It was by raising him aloft on a shield, and supporting him on their shoulders, that the Germans proclaimed their sovereign, or lifted up a general to command their armies. *Tacit. Hist. lib. 4. c. 15.* It was by the same ceremony

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that



that the Kings of the Franks were acknowledged. This was their inauguration. The escutcheon or shield, says *Favine*, is the essential note of a nobleman, a knight, and an esquire. *Theatre of Honour, book 1. ch. 2.*

The usages which had their rise from arms, make a curious figure in the Gothic nations. We know from *Tacitus*, that the founding or clashing of arms, expressed approbation in the German assemblies; that a javelin wet with blood, and a war horse, were the rewards of German valour; that suits of armour were a flattering present to the more distinguished chiefs in the German communities; that an interchange of arms constituted the ceremonial of marriage among this people; and, that their only public amusement was the leaping amidst the threatening points of swords and lances. *De Mor. Germ. c. 11. 15. 18. 24.*

Charlemagne used to seal his treaties with the pommel of his sword: 'With the point of it,' said he, 'I will maintain them.' *St. Foix, Ess. Hist. vol. 2. p. 74.* To take his arms from a free man, was to deprive him of his rank, and to reduce him to the condition of a slave. *LL. Alfr. c. 1.* And to put into the hands of a slave the arms of a free man, was to give him his liberty. When an individual gave his oath in a court, or would bind himself in the most solemn manner to the performance of his contracts, he laid his hand on his sword. In the judicial combat, the customs growing out of arms were numerous: Thus,  
to

to strike a person with a club, or to give him a blow on the face, was to treat him like a villein; because villeins were permitted to fight only with clubs, and were not allowed to cover their faces with armour. *L'esprit des Loix, liv. 28. ch. 20.* A free man could not part with his sword as a part of his ransom. *LL. Longobard, lib. 1. tit. 11. l. 33.* And what shows, in a particular manner, the severity of the forest-laws, the killing of a royal stag inferred the loss of the shield, or the reduction of a free man to a slave. *LL. Forest. Canut. c. 25.* From the change of arms there resulted a change of usages. Thus, when archery was introduced, to wound the finger which sends off the arrow, was punished more severely than the maiming of the other fingers. *Lindenbr. Gloss. voc. Digitus.*

The old Germans rushed to battle with a loud noise, applying their shields to their mouths, that their voices might rise by repercussion into a fuller and more sonorous swell. ‘Sunt illis haec quoque carmina, quorum relatu quem *barditum* vocant, accendunt animos, futuraeque pugnae fortunam ipso cantu augurantur; terrent enim, trepidantve, prout sonuit acies. Nec tam voces illae, quam virtutis concentus videntur. Affectatur praecipue asperitas soni, et fractum murmur, objectis ad os scutis, quo plenior et gravior vox repercussu intumescat.’ *Tacit. de Mor. Germ. c. 3.*

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It merits observation, that, from this usage, there grew the *cry d'armes* of the middle ages. These cries were supposed to incite to valour, and to make the soldier precipitate himself upon the enemy. *Montjoie Saint Denis*, was a famous cry of the Franks. *Deus adjuva*, *Deus vult*, were cries during the crusades. Every banneret, or every knight who had a banner, had a cry peculiar to himself and the troops under him. Barons had also their cries. There were thus general and particular cries. While fiefs and the feudal militia continued, these cries prevailed in Europe. They were lost on the introduction of an improved military discipline, and of standing armies. Perhaps, it is to these cries, that we must trace the origin of the mottos to ensigns armorial.

(12) 'Scuta lectissimis coloribus distinguunt.' *Tacit. de Mor. Germ. c. 6.*

On the foundation of the *sagum*, or the short vest of the Gaul and the German, which covered his arms, shoulders, and breast, *coats of arms* arose. 'La cotte d'armes a esté le vêtement le plus ordinaire des anciens Gaulois: il estoit appellé par eux *sagum*, d'ou nous avons emprunté le mot de *saye*, ou de *sayon*.' *Dissert. 1. sur l'Histoire de St Louis, p. 127.* 'Tegumen omnibus *sagum*,' says *Tacitus, c. 17.*

According to this instructive historian, the *sagum* was adorned with spots and with bits of fur. 'Eligunt feras, et detracta velamina spargunt maculis, pellibusque belluarum.' *c. 17.* And  
we



we know from *Herodian*, that it was sometimes ornamented with silver. *Lib. 4.*

These things are very curious; and it is impossible not to see in them the *colours*, the *furs*, and the *metals* which are the materials of the science of blazonry.

When *Tacitus* mentions the shield, he takes occasion to remark, that the German warriors had the knowledge of *coats of mail*, and of *head-pieces* or *helmets*, but seldom made use of them. His words are ‘*Paucis loricae, vix uni alterive cassis, aut galea.*’ *c. 6.* They were about to be more fashionable.

(13) *Valer. Maximus*, lib. 5. c. 6. *Florus*, *Rom. Rer. Hist.* lib. 3. c. 3.

(14) These captives were of the tribe of the *Catti*, a Germanic people; for, it is surely this tribe that *Dio* means, when he speaks of the *Cenni*. ‘*Horum captae a Romanis uxores, interrogatae ab Antonino, utrum vendi, an occidi mallent, mori se malle responderunt: quumque essent postea venditae, omnes mortem sibi consciverunt: Nonnullae una filios interfecerunt.*’ *Excerpt. e Dion. p. 876.* A multitude of examples, to the same purpose, might easily be collected, if it were necessary.

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But, while we reflect on these things, it must not be fancied, that the German women were deficient in gentleness. A high independent spirit is not inconsistent with the softest passions. There are a few beautiful and energetic words in *Tacitus*, which may be employed on this occasion, and finely express the distinctive characters of the sexes in antient Germany. ‘Lamenta ac lacrymas cito: dolorem et tristitiam tarde ponunt. *Feminis* lugere honestum est; *viris* meminisse.’ *De Mor. Germ. c. 27.*

(15) *Tacit. de Mor. Germ. c. 7.*

(16) Saint Foix, *Essais Historiq. sur Paris*, tom. 5. p. 184.

(17) ‘Regnator omnium Deus, cetera subjecta atque parentia.’ *Tacit. de Mor. Germ. c. 39.* This testimony of the purity of the German theology, is well illustrated by the following passage of the Icelandic Edda.

‘*Ganglerus* orsus est tunc suum sermonem. Quis est supremus, seu primus deorum? *Har.* respondet: Qui nostra lingua Pantopater dicitur. Tunc *Gang.* Ubi est hic Deus? Aut quid potest efficere? Aut quid voluit ad gloriam suam manifestandam? *Har. resp.* Ille vivit per omne aevum, ac gubernat omne regnum suum, et magnas partes et parvas.’ *Edda, ap. Northern Antiq. vol. 2. p. 283.*

(18)



(18) 'Auspicia, fortesque ut qui maxime observant.' *Tacit. de Mor. Germ. c. 9.* See also, *Du Cange, voc. Aucones et Sors.* The following form of divination was common to all the German tribes. 'Virgam frugiferae arbori decifam, in furculos amputant, eosque notis quibusdam discretos super candidam vestem temere ac fortuito spargunt. Mox si publice consulatur sacerdos civitatis, sin privatim, ipse pater familiae precatus deos, coelumque suspiciens, ter singulos tollit, sublatis secundum impressam ante notam interpretatur.' *De Mor. Germ. c. 10.* Of this folly, there is yet a remain in the *Baguette Divinatoire* of the miners in Germany; and it is to be observed, that the heralds of the Franks had *consecrated twigs*, which they bore as the emblems of peace. Thus the heralds sent by Gundobald to Guntram appeared 'cum virgis consecratis, juxta ritum Francorum, ut scilicet non contingerentur ab ullo.' *Gregory of Tours, lib. 7. c. 32.* But, what is more remarkable, these *twigs* came to figure in the investiture of lands. Hence the feoffment or *sale* *per fustem et per baculum, per virgam et per ramum.* Hence the *tenure par la verge*, which is formally treated by Littleton. On what a simple foundation does there rise institutions, important and interesting in business and society!

(19) Hence the Gothic ordeals, the fire ordeal, and the water ordeal. Of the antiquity of these trials I have spoken in another work. *Dissert. on the Antiq. of the Eng. Constitut. part 4.* It is observable, that the trials of fire and water, though absurd

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in the greatest degree, were much encouraged by the Christian clergy. What is more disgraceful to them, they invented modes of trial, founded in the same superstition, and not less absurd. These were the judgment of the cross, the corsned or consecrated morsel, the Eucharist, and the *sortes sanctorum*. By the first, the criminal was to remain with his arms extended before a cross for six or seven hours, without motion. If he failed in sustaining this trial, he lost his cause, and was judged guilty. By the second, the accused person swallowed a bit of bread or cheese, over which the priest had muttered a form of execration. If he was guilty, he was suffocated by the morsel; if innocent, he escaped without injury. In the judgment of the Eucharist, the symbols of the blood and body of Christ were employed; and they convicted the guilty, by acting as a poison, which inflicted death or sickness. The *sortes sanctorum* consisted in the opening, at a venture, the Bible, or any holy book, and in considering as oracular the first passage that presented itself. See *Du Cange, voc. Crux, Corsned, Eucharistia, Sors*. This impiety, and these impositions on the common understanding of mankind, advanced the temporal emolument of the priesthood; an end, which is at all times more important to them than the interests of religion and virtue.

(20) ' Matrem Deum venerantur. Insigne superstitionis, for-  
' mas aprorum gestant. Id pro armis omniumque tutela, securum  
' deae



‘*deae cultorem etiam inter hostes praeftat.*’ *Tacit. de Mor. Germ.*  
c. 45.

‘I know a fong,’ said *Odin*, ‘by which I soften and enchant  
the arms of my enemies, and render their weapons of none ef-  
fect. I know a fong which I need only to fing, when men  
have loaded me with bonds; for the moment I fing it, my  
chains fall to pieces, and I walk forth at liberty. I know a  
fong useful to all mankind; for, as soon as hatred inflames the  
sons of men, the moment I fing it, they are appeased. I know  
a fong of fuch virtue, that, were I caught in a storm, I can hush  
the winds, and render the air perfectly calm.’ *The Magic of  
Odin, ap. North. Antiq. vol. 2. p. 217. Du Cange, Literae Solu-  
toriae, et voc. Incantare.*

By secret or magical operations, it was not only supposed, that  
men could defend themselves against all dangers whatever, and  
render themselves invulnerable; but that they could even change  
themselves into wolves, and other animals. The word *werwolff*  
expressed this metamorphosis, and the extravagancy is to be tra-  
ced to a distant antiquity. ‘*Neuri, ut accepimus, stas temporibus  
in lupos transfigurantur; deinde, exacto spatio quod huic  
forti attributum est, in pristinam faciem revertuntur.*’ *Solinus,*  
c. 15. To late times this ridiculous fancy was continued down  
among the Irish; and *Camden* was puzzled to account for it.  
*Britannia by Gibson, vol. 2. p. 1350.*



(21) These things appear clearly and strongly from the laws which were made against them, after the introduction of Christianity, and from other authentic evidence. *Capit. Kar. et Lud. lib. 7. LL. Longobard. lib. 2. tit. 38. Du Cange, voc. Fons, Arbor, &c. Pelloutier, Hist. des Celtes, vol. 2. edit. par Mons. de Chiniac.*

(22) *Du Cange, voc. Fadus, Fada, Caragus, Dufii, Folleti Daemones, Tempestarii. Edda. Keyser, Antiq. Septentr. et Celt.* Here we have the source of the wonders and extravagancies of the old romance.

(23) ‘Deo imperante quem adesse bellantibus credunt.’ *Tacit. de Mor. Germ. c. 7.* This deity was called *Teut* or *Tis*. After the age of *Tacitus*, if I am not mistaken, he had usually the name of *Odin*; and, it is of *Odin* that *Wormius* thus expresses himself, ‘Suam implorantibus opem in bello, instar senis monoculi equo insidentis, et albo clypeo tecti, quandoque se conspiciendum praebuit.’ *Monument. Dan. c. 4.*

(24) Traces of the spirit of gallantry and love, it is to be remarked, appear in a striking manner, even in the religious system of the Gothic nations.

‘*Freya*,’ says the *Edda*, ‘is the most propitious of the goddesses. The place which she inhabits in heaven is called “the union.”’



“ union of the people.” She goes on horseback to every place  
 ‘ where battles are fought, and asserts her right to one half of  
 ‘ the slain; the other half belongs to Odin. Her palace is large  
 ‘ and magnificent; thence she sallies forth in a chariot drawn by  
 ‘ two cats. She lends a very favourable ear to those who sue for  
 ‘ her assistance. It is from her that the ladies have received the  
 ‘ name which we give them in our language. She is very much  
 ‘ delighted with the songs of lovers; and such as would be hap-  
 ‘ py in their amours, ought to worship this goddess.’ p. 76.

In another fable of the *Edda*, there are the following particu-  
 ‘ lars. ‘ Gefione is a virgin, and takes into her service all chaste  
 ‘ maids after their death. Fylla, who is also a virgin, wears  
 ‘ her beautiful locks flowing over her shoulders. Her head is  
 ‘ adorned with a golden riband. She is entrusted with the toil-  
 ‘ lette and slippers of Frigga, and admitted into the most impor-  
 ‘ tant secrets of that goddess. . . . . Siona employs herself  
 ‘ in turning men’s hearts and thoughts to love, and in making  
 ‘ young men and maidens well with each other. Hence lovers  
 ‘ bear her name. Lovna is so good and gracious, and accords  
 ‘ so heartily to the tender vows of men, that, by a peculiar power  
 ‘ which Odin and Frigga have given her, she can reconcile lo-  
 ‘ vers the most at variance. Varra presides over the oaths that  
 ‘ men make, and particularly over the promises of lovers. She  
 ‘ is attentive to all concealed engagements of that kind, and pu-  
 ‘ nishes





‘ nishes those who keep not their plighted troth.’ *Ibid.* p. 96.  
97.

It is also remarkable, that, in the Gothic Elyfium, it was beautiful virgins named *Valkyriae*, who poured out their liquor to the heroes. *Keyfser, Antiq. Septr. et Celt.* p. 152.

(25) *St Palaye*, speaking of the candidates for chivalry, says, ‘ Les premieres leçons qu’on leur donnoit regardoient principalement *l’amour de Dieu et des dames*, c’est a dire, la religion et ‘ la galanterie.’ *Mem. sur l’ancienne cheval.* tome 1. p. 7. The Christian knight was not less devout than the Pagan warrior. Anciently, during the celebration of mafs in every country of Europe, he drew his sword, and held it out naked, in testimony of his readiness to defend the faith of Christ. *Favine*, p. 54. *Keyfser, Antiq. select. Celt.* p. 164.

It was the influence of such manners which induced ‘ that agreeable libertine Boccace very seriously to give thanks to *God Almighty* and the *Ladies* for their assistance in defending him ‘ against his enemies ;’ and which made Petrarch compare ‘ his mistress *Laura* to *Jesus Christ* ;’ circumstances which appeared so absurd to Mr Hume. See his *Essays*, p. 277.

When the Count de Dunois was about to attack the English army which besieged Montargis, la Hire, a knight and a man of fashion



fashion who served under him, having received absolution, joined devoutly his hands, and thus prayed. ‘ Dieu, je te prie que  
 ‘ tu fasses aujourd’hui pour la Hire autant que tu voudrois que  
 ‘ la Hire fist pour toi, s’il étoit Dieu, et tu fusses la Hire.’ *St  
 Foix, Ess. hist. tome 1. p. 347.*

A picture, not less strange, and still more profane, is in the poetry of *Deudes de Prades*, a canon who had the reputation of being wise and spiritual. He thus laments the death of Brunet, a troubadour, or one of the provencal bards. ‘ Il chantoit si  
 ‘ bien, que les rossignols se taissoient d’admiration pour l’entendre.  
 ‘ Aussi Dieu l’a t’il pris pour son usage. Je prie Dieu de le pla-  
 ‘ cer a sa droite. Si la Vierge aime les gens courtois, qu’elle  
 ‘ prenne celui-la.’ *Histoire litteraire des Troubadours, tome 1.  
 p. 320.*

These strokes are expressive, and illustrate, more than the most careful reasonings, the nature and spirit of the devotion of the ages of chivalry. Amidst the decencies and the proprieties which philosophy introduces in cultivated times, we look back, with surprize, to this gross familiarity with the supreme Being, and to this blasphemous insolence. Yet, it is difficult, at the same time, not to remember, that these things are equalled, if not exceeded, among us, by those gloomy and fanatical men, who, having got what they term the *new light*, conceit themselves the society of the *elect*, and the *friends* of God!

S E C-



## S E C T I O N V.

(1) **T**HE character or station which preceded knighthood, was that of the *ecuyer*, or armour-bearer. The candidate for chivalry had formerly been a *page*, a *valet*, or a *damoiseau*. The last term was applied to the sons of men of rank. *G. André de la Roque, Traité de la noblesse, p. 7. Moeurs des François par le Gendre, p. 63. Daniel, Hist. de la milice Française, tome 1. p. 94. 95. St Palaye Mem. sur l'anc. Cheval. partie 1.*

In those times, the terms *pagé* and *valet* were not expressive of meanness and low condition, as at present. *Du Cange, voc. Valeti et Domicellus. Sir John Fortescue*, who was chief justice under Henry VI. has observed, when speaking of England, ‘*Sunt Valecti diversi in regione illa qui plus quam sexcenta scuta per annum expendere possunt.*’ *De Laud. Leg. Angliae, c. 29.*

(2) The age of knighthood, it is probable, varied with the nature and weight of the arms which were in use at different periods. In general, it has been fixed by antiquaries and historians at 21 years. This rule, however, could be infringed in favour

favour of signal merit or high birth. The noviciate of the knight commenced in his seventh year. In that tender age, he turned his attention to the art of war, his mistress, and his catechism. *Daniel, Milice Françoise, lib. 3. ch. 4. Reliq. Spelman, p. 174. St Palaye, Mem. sur l'anc. Cheval. partie 1.*

(3) The power of the German priests did not escape the penetration of *Tacitus*. 'Neque animadvertere, neque vincere, neque verberare quidem nisi sacerdotibus permiffum.' *De Mor. Germ. c. 7.* The Christian priests were no less selfish and ambitious. In every country of Europe, they attained immense wealth, and prodigious influence. They presided in the inferior courts with the civil magistrates; they took their seats in the national assemblies; and, in the preambles of the barbaric laws, they are often mentioned next to the Kings themselves. 'Incipiunt,' says the prologue to the Capitularies of Charlemagne, 'capitula regum et episcoporum, maximeque nobilium omnium Francorum.' *Baluz. Capit. Reg. Franc. tome 1. p. 698.* It is thus, also, in some of the prefaces to the Anglo-Saxon laws. The powers they assumed were exorbitant, and often improperly exercised. To use the strong language of *Bacon*, 'they were lovers of lordships, and troublers of states.' *Hist. and polit. discourse on the laws and government of England.*

(4) *Selden, Tit. hon. part. 2. ch. 5. sect. 34. 35. Ashmole, Institutions of the Garter, ch. 1. sect. 9. Du Cange, voc. Miles.*

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Daniel, Milice Françoise, lib. 3. ch. 4. La Roque, p. 354. 356. A description of the ceremonies used at the creation of knights of the bath, is inserted in the *Appendix*, No. 6. They were nearly the same with those employed in the creation of the knight-bachelor, and illustrate the manners of old times.

(5) The *festum tyrocinii*, which is the name given in the old historians to the rejoicings on the investiture of knighthood, often lasted many days; and, in the cases of persons of distinction, was solemnized with torneaments and shows. The season of torneaments was also embraced as a fit occasion for conferring knighthood on those whose birth and fortune did not entitle them to exhibit these solemnities. And this, from the principle of giving encouragement to the military art. For the same reason, public entries into cities, coronations, and festivals of every kind, were opportunities for the creation of knights.

(6) Spelman, voc. Auxilium. Ashmole, ch. 1. sect. 9. St. Palaye, tom. 1. p. 195. 248. Daniel, Milice Françoise, liv. 3. ch. 4.

When the celebrated Joan d' Arc raised the siege of Orleans, the English commander, the Earl of Suffolk, ' was obliged to yield himself prisoner to a French man called Renaud; ' but, before he submitted, he asked his adversary whether he ' was a gentleman? On receiving a satisfactory answer, he de-  
' manded,

‘manded, Whether he was a *knight*? Renaud replied, That he  
 ‘had not yet attained that honour. *Then I make you one*, replied  
 ‘Suffolk. Upon which he gave him the *blow* with his sword,  
 ‘which dubbed him into that fraternity; and he immediately  
 ‘surrendered himself his prisoner.’ *Hume, vol. 2. p. 340.*

(7) The knights affected great magnificence, and more parti-  
 cularly after the holy wars. ‘Portabant autem diversi generis  
 ‘species preciosas, aurum et argentum, pallia oloferica, purpu-  
 ‘ram, siclades, ostrum et multiforium vestium ornamenta;  
 ‘praeterea arma varia, tela multiplicis generis, infinitas loricas,  
 ‘culcstras de serico acu variatas operose, papiliones et tentoria  
 ‘preciolissima,’ &c. *Brompton, ap. Baron. Angl. p. 281.*

(8) The horse and armour of a knight were called his *conten-  
 nementum*, or *countenance*. *Selden, Tit. Hon. part 2. ch. 5. sect.*  
 37.

The respectful behaviour, even to vanquished knights, and  
 indeed the extreme honour in which knights in general were  
 held, is exemplified very strongly in the conduct of Edward III.  
 to Eustace de RibauMont. This prince thought it necessary to  
 leave England privately for the protection of Calais, and carried  
 with him the Prince of Wales. The day after his arrival at  
 Calais, a battle ensued between his troops and the French forces  
 commanded by Geoffrey de Charni, who, notwithstanding the



truce which had been concluded between the contending powers, had bribed the governor of Calais to surrender the place to him. To prevent this circumstance, was the intention of Edward's visit.

This great prince, who fought as a private gentleman under Sir Walter Manny, encountered Eustace de Ribamont, a hardy and valorous knight, who beat him twice to the ground. Pushed to extremity, Edward had occasion for all his strength and address. After an encounter, sharp and dangerous, he vanquished his antagonist, who surrendering his sword, yielded himself his prisoner. The next day the English enjoyed their victory, and in the evening the French prisoners were invited to sup with the Prince of Wales and the English nobility. After supper, Edward himself entered the apartment, and conversed, in a strain of compliment and familiarity, with the prisoners. His behaviour to his antagonist Eustace de Ribamont was more particularly attentive, and is thus described by *Froissard*. ‘ Vint le Roi  
 ‘ à Messire Eustache de Ribamont : Vous êtes le chevalier au  
 ‘ monde que veisse onques plus vaillamment assaillir ses enemis,  
 ‘ ne son corps deffendre, ni ne me trouvai onques en bataille où  
 ‘ je veisse qui tant me donnaist affaire corps à corps, que vous  
 ‘ avez hui fait ; si vous en donne le prix sur tous les chevaliers  
 ‘ de ma court par droite sentence. Adonc print le roi son cha-  
 ‘ pelet qu’il portoit sur son chef (qui estoit bon et riche) et le meist  
 ‘ sur le chef de Monseigneur Eustache, et dit : Monseigneur Eu-  
 ‘ stache,

‘ stache, je vous donne ce chapelet pour le mieux combattant de  
 ‘ la journée de ceux du dedans et du dehors, et vous prie que  
 ‘ vous le portez cette année pour l’amour de moi. Je sai que  
 ‘ vous êtes gai et amoureux, et que volontiers vous trouvés entre  
 ‘ dames et damoiselles, si dites par tout où vous irez, que je le  
 ‘ vous ai donné. Si vous quite votre prison, et vous en pouvez  
 ‘ partir demain, s’il vous plaist.’ *an.* 1348.

(9) Favine, Theater of Honour, book. 1. St Palaye Mem:  
 sur l’anc. Cheval. partie 4. Selden, Tit. hon. part 2. ch. 5. sect.  
 37.

(10) The chief strength of armies consisted, at this time, of  
 cavalry. The skilful management of a horse was, of conse-  
 quence, one of the great accomplishments of a knight or a warri-  
 our. It is to be noticed, that this way of thinking characterized  
 some of the German tribes, even in the age of *Tacitus*. The  
 following energetic description of the *Tencteri*, is applicable,  
 in a striking manner, to the purer ages of chivalry, ‘ *Tencteri*  
 ‘ *super solitum bellorum decus, equestris disciplinae arte praece-*  
 ‘ *lunt. Nec major apud Catos peditum laus, quam Tencteris*  
 ‘ *equitum. Sic instituere majores, posteris imitantur. Hi lusus*  
 ‘ *infantium, haec juvenum aemulatio, perseverant senes.’ De*  
*Mor. Germ. c. 32.*

(11)





(11) Hence the distinction of knights *banneret* and knights *bachelors*; the latter expression denoting the simple knight; the former, the knight who had a standard and followers. The number of knights and esquires who served under the banneret, varied in proportion to his riches, and influence. It is also observable, that this dignity was not always feudal. It was sometimes personal. *Selden, Tit. hon. part 2. ch. 3. sect. 23. and ch. 5. sect. 39. Du Cange, Dissert. sur l'Histoire de S. Louis. Spelm. voc. Banerettus. Daniel, Milice Française, liv. 3. ch. 5.*

(12) Favine, Theater of Honour, book 10. St Palaye, Mem. sur l'anc. Cheval. partie 6.

(13) An old ceremonial of chivalry has these words: ‘ Le Roy  
‘ Artus d’Angleterre, et le Duc de Lencastre ordonnerent et fi-  
‘ rent la table ronde, et les behours, tournois, et joustes, et moult  
‘ d’autres choses nobles, et jugemens d’armes, dont ils ordonnerent  
‘ pour juger, *dames et damoiselles*, Roys d’armes et heraux.’  
*Dissert. 7. sur l’ Histoire de S. Louis, p. 179.*

(14) The greater torneaments were those given by sovereigns and princes, to which knights were invited from every part of Europe; for, over Christendom, the honour and privileges of knighthood were the same. The lesser torneaments were those given by the barons.

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It deserves observation, that the exhibition of torneaments produced an intercourse between the nations of Europe, which could not but contribute to knowledge and civilization. When there were no exprefs prohibitions, knights followed the more important torneaments wherever they were celebrated, for the purpose of studying the art of war; and that they might find signal and proper opportunities of distinguishing themselves, and of cultivating the friendship and acquaintance of illustrious persons of both sexes. It was even the fashion for knights to avoid the restraint of marriage for some years after their installation into the order, that they might consecrate them to the travelling into distant countries, and the visiting of foreign courts, 'a fin de s'y rendre chevaliers parfaits.' *St. Palaye, tom. 2. p. 8.*

From these circumstances, it is obvious, that the strong conclusions of Dr Robertson, concerning the little intercourse between nations, during the middle ages, are not to be relied upon in all their force, but to be understood with much reserve, and many limitations. *Hist. of Charl. V. vol. 1. p. 325. et seq.*

(15) This present was called *faveur*. *St. Palaye, tom. 1. p. 95.* Hence the pieces of lace or riband which are yet sometimes distributed at marriages, are termed the bride's *favours*.

(16) It would be tedious to enumerate and to describe the different forms of exercise or combat which were practised in the torneaments;



torneaments; and it is not necessary in this work. The *jouste* was the combat of one against one; *les armes à outrance*, were the combats of six against six, and consisted occasionally of more or fewer persons. *Le pas d'armes*, was the defence of a pass by one or more persons against every assailant. The curious reader may consult the books which treat expressly of torneaments.

(17) Favine on torneaments. St Palaye, Mem. sur l'anc. Cheval. partie 2.

(18) 'Effigiesque et signa quaedam detracta lucis in praelium ferunt.' Tacit. de Mor. Germ. c. 7. The posterity of the Germans were equally superstitious under the light of the gospel. 'Les Germains,' says St Foix, who had this passage of Tacitus in his eye, 'portoient à la guerre des drapeaux, et des figures qui étoient en dépôt pendant la paix dans les vois sacrées.' He adds, 'Nos Rois alloient prendre de même la chappe de S. Martin sur son tombeau, et l'oriflamme dans l'église de S. Denis, et les reportoient lorsque la guerre étoit finie.' *Ess. Hist. sur Paris, tom. 2. p. 187.*

(19) The Edda, Keyfler, Antiq. select. Septentr. p. 149.—163. Pelloutier, Hist. des Celtes, liv. 3. ch. 18.

(20)



(20) The discerning reader will perceive, that I describe Christianity from the writings of the clergy ; because, it is always from their representations of it that it acts upon society and manners. I therefore speak politically, and not as an inquirer into theology.

From the pretended friends of Christianity, and from its most zealous partizans, too, I fear, it has received deep and cruel wounds. Its most enlightened and genuine admirers have reason to regret, that it has not been left to defend itself. Were it possible to destroy the comments, the explanations, the catechisms, and the systems of divines, a very considerable blow would be given to infidelity. One can respect the honest doubts of philosophy. But, is it possible to withhold indignation or scorn, when ability stoops to be uncharitable and disingenuous, when bigotry presses her folly, and spits her venom ?

(21) It was Gregory VII. whose magnificent mind first formed the plan of the croisés. The fanaticism, the heroic spirit, and the wild enterprize of knighthood, suggested, doubtless, the idea of them. The advantages they were to give to the holy see, and the church in general, were numerous and great. The Popes not only conferred remission, or pardon of their sins, on all those who yielded to this madness ; but, what was no less interesting, they undertook the protection of their families and affairs. The clergy, of consequence, drew immense wealth, by acting as tu-

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tors



tors and trustees for widows, pupils, and minors. The troops designed for these pious projects, could be employed by the church to protect and enlarge its temporalities; and, under the pretence of recovering the holy sepulchre, prodigious sums were to be extracted from women, the devout, the infirm, and the dying.

From the holy wars it followed, that new fraternities of knight-hood were invented. Hence the knights of the holy sepulchre, the hospitallers, templars, and an infinite number of religious orders who shed blood, and deformed society, for the glory of God. Many of these acquired great riches, and all of them increased the influence of the church.

Some writers have fancied, but very absurdly, that the croises gave rise to chivalry. Without chivalry the croises could not have been carried into execution. The Popes and the clergy would in vain have preached, that they were the road to salvation and the gates to heaven.

From the cultivated state of manners in the east, some improvement was imported into Europe by the crusaders. But the crusades deserve not to be considered as the first, or indeed as a very powerful cause of refinement in Europe; though it is to be allowed, that they encouraged a respect for order, and ideas of regular government; and that they made additions to the  
science



science of heraldry and the fashions of liveries, and heightened the splendour of equipage and dress.

When the medal, however, is reversed, there appear many and great disadvantages. They drained the kingdoms of Europe of their inhabitants; they took away their riches, and thereby discouraged trade and the arts; they removed kings and nobles beyond the seas, and introduced into states disquiets and disorder; they added to the power of the Roman see, by affording favourable opportunities for the operation of its policy, and for establishing the right of the Popes to interfere in the temporal affairs of nations; and, in fine, they promoted every pious impertinence, and advanced the most abject superstition.

It is also worthy of remark, that some writers, who have no tincture of philosophy, have treated chivalry and the holy wars as primary and distinctive causes of the refinement of the European states; yet the latter, being really the consequences of the former, their influence ought to have been ascribed to them.

The same want of penetration is perceivable in those, who, while they urge as a primary source of improvement, the revival of literature, hold out, distinctively, as another cause of it, the civil code, or the laws of the Romans. They might, with equal propriety, record as particular and distinctive sources of refinement, the writings of Cicero, of Livy, or of Tacitus.

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During the prevalence of chivalry, it is likewise to be observed, that the ardour of redressing wrongs seized many knights so powerfully, that, attended by esquires, they wandered about in search of objects whose misfortunes and misery required their assistance and succour. And, as ladies engaged more particularly their attention, the relief of unfortunate damsels was the achievement they most courted. This was the rise of knights-errant, whose adventures produced romance. These were originally told as they happened. But the love of the marvellous came to interfere; fancy was indulged in her wildest exaggerations, and poetry gave her charms to the most monstrous fictions, and to scenes the most unnatural and gigantic.

(23) ‘Supplicem aut debilem vel arma abjicientem hostem occidere, etiam hodie apud Gothos sempiterno opprobrio dignum computatur.’ *Jo. Magnus, Hist. Suec. lib. 4.*

In the battle of Poitiers, fought by the heroic Edward Prince of Wales, the King of France was made prisoner; and the behaviour to the captive monarch illustrates, more than any particulars I can mention, the nobleness of the principles of chivalry. The Earl of Warwick conducted the French king, with many demonstrations of respect, to the Prince's tent.

‘Here,’ says a great historian, ‘commences the real and the truly admirable heroism of Edward: For victories are vulgar things;



' things, in comparison of that moderation and humanity disco-  
 ' vered by a young prince of twenty-seven years of age, not yet  
 ' cooled from the fury of battle, and elated by as extraordinary  
 ' and as unexpected success, as had ever crowned the arms of  
 ' any general. He came forth to meet the captive king with  
 ' all the signs of regard and sympathy; administered comfort to  
 ' him amidst his misfortunes; paid him the tribute of praise due  
 ' to his valour; and ascribed his own victory merely to the blind  
 ' chance of war, or to a superior providence, which controuls all  
 ' the efforts of human force and prudence. The behaviour of  
 ' John shewed him not unworthy of this courteous treatment:  
 ' His present abject fortune never made him forget a moment  
 ' that he was a king: More sensible to Edward's generosity than  
 ' to his own calamities, he confessed, that, notwithstanding his  
 ' defeat and captivity, his honour was still unimpaired; and  
 ' that, if he yielded the victory, it was at least gained by a prince  
 ' of such consummate valour and humanity.

' Edward ordered a magnificent repast to be prepared in his  
 ' tent for the prisoners, and he himself served the royal captive's  
 ' table, as if he had been one of his retinue. He stood at the  
 ' King's back during the meal; constantly refused to take a place  
 ' at table; and declared, that, being a subject, he was too well  
 ' acquainted with the distance between his own rank, and  
 ' that of his royal Majesty, to assume such freedom. All his  
 ' father's pretensions to the crown of France were now bu-  
 ' ried





‘ried in oblivion : John, in captivity, received the honours of  
 ‘a king, which were refused him when seated on the throne :  
 ‘His misfortunes, not his title, were respected : And the French  
 ‘prisoners, conquered by his elevation of mind, more than by  
 ‘their late discomfiture, burst out into tears of joy and admira-  
 ‘tion ; which were only checked by the reflection, that such ge-  
 ‘nuine and unaltered heroism in an enemy, must certainly, in  
 ‘the issue, prove but the more dangerous to their native coun-  
 ‘try.’ *Hume, hist. of England, vol. 2. p. 214.* See also *A/b-*  
*mole, p. 673.*

Morsels of story like these are precious, and distinguish those historians who can render instructive the details which common writers are only attentive to make agreeable.

(24) The following was one of the oaths administered by the constable in the duel. ‘A. de B. ye shall lay your hand  
 ‘ayen on the holy gospels, and swere that ye shall have no moo  
 ‘wepnes or poynts, but tho that ben assigned you by the con-  
 ‘stable and marefchall, that is to wite, gleyve, long sward, short  
 ‘sward, and dagger : Nor no knyfe, small ne grete ; ne none  
 ‘engine, ne none othir instrument with poynt : Nor stone of  
 ‘vertue, nor hearb of vertue ; nor charme, nor experement, nor  
 ‘none othir enchauntment by you, nor for you, whereby ye  
 ‘trust the better to overcome C. de D. your adversarie, that shall  
 ‘come ayens you within these lists in his defence ; nor that ye  
 ‘trust



‘ trust in none othir thyng properly, but in God and your body,  
 ‘ and your brave quarell ; so God you help, and all halowes,  
 ‘ and the holy gotpells.’ *Dugdale, origin. juridic. p. 82.*

(25) The solemn taking away of the sword, the cutting off the spurs, the tearing from the body the coat of arms, and the bruising every piece of the knight’s armour, appear to have been ceremonies of the degradation. *Selden, Tit. hon. part 2. ch. 5. Sect. 38. Ashmole, p. 620.*

Religion came also to concern itself in a matter so important. Priests pronounced over the culprit a psalm, containing imprecations against traitors. Water was thrown upon him to wash away the sacred character conferred by his installation into the order. And, at length he was dragged on a hurdle to the church, where there were said and performed over him the prayers and the ceremonies which are used for the dead. *St Palaye, tome 1. p. 320.*

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