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

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Section II.

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## 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, patru, 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 faeminas, 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 filiave, 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-

stry



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.*

G g 2

*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  
of

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.*

The



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. 'MA-  
'RITAGIUM 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 morga-  
'gab 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  
 ‘sucedat.’ *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-*  
*siana, 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, inares, 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-

