

logue of the Assyrian and Babylonish monarchs, the obscurity of their reigns has been attributed to the indolence, effeminacy, and debauchery in which they were plunged. This, however, is a weak supposition. It is against all moral probability that a great empire should have subsisted without a revolution for 800 years, under a series of dissolute, weak, and effeminate monarchs. That character in the prince is the parent of seditions, conspiracies, and rebellion among the people, instead of a quiet and peaceable subjection; and, accordingly, we find that the kingdom of Babylon, till then united with Assyria, shook off its yoke under the weak and dissolute Sardanapalus. If we are at all to form a conjecture of the state of the Assyrian empire during this great chasm in its history, it must be a very different one; namely, that it was governed by a series of wise, virtuous, and pacific princes, the uniform tenor of whose reigns have furnished no striking events for the mouth of tradition, or for the pen of the historian.

Besides the Assyrians, the Egyptians are the only nation of whom profane history, at this early period, makes any mention: but the commencement of their history is as uncertain as that of the Assyrians. Menes is supposed the first king in Egypt, and according to the most probable theory, which connects the sacred with the profane history, he is believed to be the same person with Misraim, the grandson of Noah, whom there are likewise very probable grounds for supposing to be the deified personage whom the Egyptians venerated under the name of Osiris. Osiris is described as the inventor of arts, and the civilizer of a great part of the world. He raised, as we are told, a prodigious army, and overran Ethiopia, Arabia, and great part of India; appeared in all the nations of Asia, and, crossing the Hellespont, continued his progress through a great part of Europe. This extraordinary man disseminated the arts, built cities, and was universally revered as a god. Returning to Egypt, he was assassinated by his brother Typhon; but his death was revenged by his sister Isis, and his apotheosis solemnly performed.

After Menes or Osiris, Egypt was governed by a succession of illustrious men, whom succeeding ages have characterized as gods and demigods. The country was then divided into four dynasties, —Thebes, Thin, Memphis, and Tanis; the inhabitants of which had made great progress in civilization and the culture of the arts, when they were thrown back into a state of comparative barbarism by the invasion of the shepherd kings, a body of marauders from Ethiopia, who made a partition of the whole country, each of the chiefs governing independently a separate province.* The do-

a Latin termination. The disguise is impenetrable where the word itself is attempted to be translated, as *Plexippus* (Harry Hotspur,) *Sophocardius* (Wishart,) *Megalocephalus* (Malcolm Canmore,) &c.

* Mr. Bruce, in his History of Abyssinia, has made it extremely probable

minion of these shepherd kings is said to have subsisted for 259 years, when they were expelled by Aonosis, a prince of Upper Egypt, and forced to retreat with their adherents into the neighboring countries of Syria and Palestine. What space of time elapsed from the termination put to their dominion by the famous Sesostris, is absolutely uncertain; nor with regard to this prince, can we give any credit to those most hyperbolic accounts either of his foreign conquests or his domestic policy, and the wonderful economy of his government. Yet, though we cannot easily believe with Herodotus that the sovereign of a country which is said to have contained 27,000,000 of inhabitants, could effect an equal partition of all the lands of the empire among his subjects; nor with Diodorus Siculus, that the same prince, with an army of 600,000 men, and 27,000 armed chariots, traversed and subdued the whole continent of Asia and a great part of Europe, we may at least hold it probable that the Egyptians had a sovereign of the name of Sesostris, who distinguished himself in those rude ages, both as a conqueror and a legislator. The reverence paid to the name of Sesostris by the ancient Egyptians, and the honors done to his memory as a great benefactor of his country, sufficiently prove the reality of such a personage.

CHAPTER III.

On the nature of the first Governments, and on the Manners and Customs, Laws Arts, and Sciences of the early Nations.

AMIDST the scanty materials of authentic history in those early ages of the world, it may afford matter of amusing as well as useful speculation, to consider what must have been the nature of the first governments; and to endeavor to discover the genius of the ancient nations from those traces of laws, manners and customs, arts and sciences, which are preserved to us, with the aid of such conjectures as are founded on a fair and just analogy.

The rudest period of society is that in which the patriarchal

that the shepherds who invaded Egypt were a tribe from the Abyssinian coast of the Red Sea, called *Beni*, who had become acquainted with Egypt in the way of commerce, as the carriers of the Cashile merchants, and observing the weakness of the country, while they envied its wealth, subdued it, after three several invasions.—See Bruce's Travels.

government takes place, or where there is no other subordination known than that of the members of a family to their head or parent. But this simple form of society can be of no long duration. Dissensions arising, and the more powerful families subduing the weaker, combinations would naturally be formed to resist the encroachments of a covetous or ambitious patriarch; and an union of interests would take place as the benefits of such a compact would be felt alike for defence or for revenge, for conquest or for domestic security. But the authority of the patriarch, thus weakened in some respects by the control of a common chief, would not necessarily be extinguished or destroyed. The family would become members of a tribe or clan; but the father would still retain his authority over his children and his servants: the number of these would render his power still considerable; and the chief or king would always find it his interest to pay such deference to the principal patriarchs of his tribe, as to consult with them in all affairs which regarded the common good.*

We may, therefore, fairly presume that a limited monarchy was the earliest form of regular government among the ancient nations. The scriptures, as well as the profane historians, bear evidence to this fact. A republic is an idea too refined and too complex for a rude people to form: and despotic monarchies arise only after extensive conquests, and a great enlargement of empire.

The first monarchies must have been very weak, and their territory extremely limited. The sovereigns would be little desirous of extending them by conquest while the land supplied the wants of its inhabitants. Security is the first idea: ambition is long posterior, and takes place only when population is abundant, and increasing luxury demands increased supplies. In forming our notions of the power of the first monarchies we are apt to be misled by the word *king*, which, in modern language and according to modern ideas, is connected with an extent of territory and a proportional power. Yet the Jewish annals, the most ancient of all histories, ought to have corrected such erroneous notions. Chedorloamer, the first who is recorded to have attempted a military expedition, was, together with three kings, his allies, defeated by the patriarch Abraham with three hundred and eighteen men of his own household. Nimrod is supposed to have been a mighty monarch. All that Moses says of him is, that he was a *mighty hunter*. The very idea of a hunter excludes the supposition of a powerful sovereign, or a great empire. It supposes, what was certainly the case, that the earth was covered with forests, the receptacles of wild beasts, and consequently very thinly inhabited. A hunter-chief, in his excursions, might, no doubt, range over the

* The President Goguet gives a very rational deduction of the origin of the first governments, and of the transition from the patriarchal subordination to the establishment of the monarchical form.—*Origin of Laws*, b. i.

extent of modern kingdoms and empires; but what was his power, and who were his subjects? The control, and even that a very limited authority, over a few hordes or families who pitched their tents in a narrow valley in the midst of deserts, or occupied, perhaps, but a portion of that valley. A single town, or more properly an encampment, was then termed a *kingdom*. There were five kings in the vale of Sodom. Joshua defeated thirty-one kings. Adonibezek, who died a little after the time of Joshua, boasted that he had defeated three score and ten kings, and mutilating their hands and feet, had made them gather their meat under his table.

In those early periods the regal dignity was, in all probability, attained by the personal talents of individuals, on account of eminent services performed to their country; and, of course, the office of king was at first elective.* The progress is natural from thence to a hereditary monarchy. The transmission of the throne to the heir of the last sovereign originated from experience of the mischiefs arising from frequent elections, and the disorders occasioned by ambitious men aspiring to that dignity. The dread of these evils, combining with the natural feeling of regard which a people entertains for the family of the man under whose government they have been happy,—the presumption that his offspring may inherit from nature, example, or education, the virtues of their father; all these circumstances would cooperate to render the kingly office hereditary: and such, therefore, we find from ancient history was the constitution of the earliest governments.

The first ideas of conquest must have proceeded from a people in the state of shepherds, like the wandering Tartars and Scythians, who, necessarily changing their territory in quest of new pastures, would often make incursions upon the fixed dominions of the cultivated countries. And such was the condition of those marauders from Ethiopia, or perhaps Abyssinia, whom we have already mentioned under the name of *shepherd kings*, as having been the conquerors of Egypt. But monarchies or empires, thus founded by the invasion of a rude and wandering people, could seldom be stable or permanent. An extensive monarchy is, therefore, a rare phenomenon not to be looked for in such a state of society. It presupposes a considerable degree of intellectual refinement, gen-

* The account which Herodotus gives of the election of the first king of the Medes is indicative of the rise of monarchy in other rude nations. The Medes, after their revolt from the Assyrians, were subject to all the disorders and miseries of anarchy. An able man, of the name of Dejoces, was extremely successful in quieting these disorders, and by degrees attained to much influence and respect among his countrymen. Oppressed with the fatigues with which this voluntary duty was attended, Dejoces betook himself to retirement. The Medes now felt the want of his authority, and, in a general assembly of the people, it was unanimously resolved to invest their benefactor with the sovereign power.—*Herod. b. 1., c. 97, et seq.*

eral habits of order and subordination, and a regular system of laws, all which is the work of ages; nor will political regulations meet with any respect or obedience unless among a people thus refined and enlightened,—a state of society far advanced beyond the rude condition of shepherds or hunters.

Advancement from barbarism to civilization is a very slow and gradual process, because every step in that process is the result of necessity after the experience of an error, or the strong feeling of a want. These experiences, frequently repeated, show at length the necessity of certain rules and customs to be followed by the general consent of all; and these rules become in time positive enactments or laws, enforced by certain penalties, which are various in their kind and in their degree, according to the state of society at the time of their formation. Some political writers have supposed that during the infancy of society penal laws must have been exceedingly mild, from the want of authority in government to enforce such as are severe. On the other hand, it may perhaps appear a more natural conjecture that rude and ferocious manners would incite to rigorous and cruel punishments, and that the ruder and more untractable the people, the severer must be the laws necessary to restrain them. The strength of the violent passions which prompt to crimes in a rude state of society is to be curbed only by the severest bodily inflictions. Punishments which operate by shame, or by restraints upon liberty, would have little effect in a state of this kind. But the fact does not rest upon conjecture. History actually informs us that the most ancient penal laws were remarkably severe. By the Mosaic law, the crimes of homicide, adultery, incest, and rape were punished with burning, stoning, and the most cruel kinds of death. Diodorus Siculus notices the same spirit of severity in the ancient laws of the Egyptians. The first laws of the Athenians, framed by Draco, are proverbial for their cruelty. The earliest laws of the Roman state, at least those of the Twelve Tables, are full of the most severe punishments, and capital inflictions for almost every offence. Cæsar informs us that the Gauls burnt their criminals alive, in honor of their gods. When we contrast these authorities with the opinion of the ingenious Lord Kames, we perceive the danger of writing history upon theoretical principles instead of facts.

Among the earliest laws of all states are those regarding marriage; for the institution of marriage is coeval with the formation of society. The progress is well described by the Roman poet:—

“Inde casas postquam, ac pelles ignemque pararunt,
Et mulier conjuncta viro concessit in unum,
Castaque privatæ veneris connubia læta
Cognita sunt, prolemque ex se videre creatam;
Tum genus humanum primum mollescere cœpit.

Lucret. l. v. 1009.

And this we observe is long prior to the formation of large com-

munities.* It is not till the arts had made some progress that men began to rear towns and cities.

It is impossible to conceive society to exist without the care of children, which presupposes a rule for ascertaining them. The first sovereigns of all nations, therefore, are said to have instituted marriage;—Menes, the first king of Egypt; Fohi, the first sovereign of China; Cecrops, the first legislator of the Greeks. The earliest laws of many civilized nations likewise provided encouragements for matrimony. By the Jewish law, a married man was for the first year exempted from going to war, and excused from the burden of any public office. Among the Peruvians he was free for a year from the payment of all taxes. The respect for the matrimonial union cannot be more clearly evinced than by the severity with which the greater part of the ancient nations restrained the crime of adultery. In reality no moral offence is equally pernicious to society.

In the marriages of many of the ancient nations a custom prevailed in many respects more honorable than the modern practice. The husband was obliged to purchase his wife, either by presents or by personal services performed to her father. When Abraham sent Eliezer to demand Rebecca for his son Isaac, he charged him with magnificent presents. Jacob served seven years for each of the daughters of Laban who were given to him in marriage. Homer alludes to this custom as subsisting in Greece. He makes Agamemnon say to Achilles that he will give him one of his daughters in marriage, and require no present in return. That the same custom was in use among the ancient inhabitants of India, of Spain, Germany, Thrace, and Gaul, appears from Strabo, Tacitus, and many other writers; and the accounts of modern travellers assure us, that it prevails at this day in China, Tartary, Tonquin, among the Moors of Africa, and the savages of America.

As Herodotus is not always to be depended on in matters that did not fall under his own observation, I know not whether we should give implicit credit to what he relates of a singular practice which prevailed among the Assyrians, with respect to marriage; though it seems to have a natural foundation in the custom above-mentioned, which prevailed in most of the ancient nations. In every village, says that author, they brought together once in the year all the young women who were marriageable, and the public crier, beginning with the most beautiful, put them up to auction,

* After a fine description of the first stages of savage life, when man had scarcely advanced beyond the brute, the poet says:—“But when they began to build their first rude huts, to clothe themselves in skins, and had discovered the use of fire; when first one woman was joined to one man in the chaste endearments of mutual love, and saw their own offspring rising around them,—then only did the ferocious manners of the human race begin to soften.”

one after another. The rich paid a high price for those whose figure seemed to them the most agreeable; and the money raised by the sale of these was assigned as a portion to the more homely. When it was their turn to be put up to sale, each woman was bestowed on the man who was willing to accept of her with the smallest portion; but no man was allowed to carry off the woman he had purchased, unless he gave security that he would take her to wife; and if afterwards it happened that the husband for any cause put away his wife, he was obliged to pay back the money he had received with her. The same author informs us that the Assyrian laws were most strict in providing that women should be well used by their husbands. The condition of woman is, in all ages, a criterion of the progress of civilization and refinement of manners.

In an early period of society, next in importance to the regulations of marriage, are the laws which regulate the division of a man's estate after his death. Anciently, among most nations, the father of a family seems to have had the absolute power of disposing of his effects in any manner he chose. Abraham bequeathed at his death his whole possessions to Isaac, though he had many other children. To these he had made some gifts during his lifetime. Jacob gave Joseph a portion above the rest of his brethren of the land he had taken from the Amorites. Job divided his whole inheritance in equal portions among his sons and daughters. The history of Jacob and Esau, however, affords a proof that certain rights and privileges were attendant on primogeniture, as the control over the younger children, of which even the parent could not deprive his first-born; an authority which we learn from Homer and Herodotus was inherent in the eldest son, by the custom of the most civilized nations of antiquity.

These laws, or rather consuetudinary regulations, which I have mentioned, it will be easily seen, must have arisen necessarily and imperceptibly from the state of society, rather than from any express enactments, of politicians and legislators. It was not till agriculture had first established the distinction of property and increased its value, till the wants of man were multiplied, and arts and commerce were introduced to supply them, that the rights of individuals became complicated, and regular systems of laws, enforced by proper penalties, became necessary to secure and defend them. Hence we may perceive the connection between history and jurisprudence, and the lights which they mutually throw upon each other. The surest key to the interpretation of the laws of a country is its history; and in like manner, where the history of a country is in any periods dark and uncertain, those obscurities are best elucidated by the study of its ancient laws.*

* Many laws contain in their preamble an explicit declaration of the political emergency which required their enactment. The evil to be remedied is par-

The invention of writing is among the improvements of a society, where men have attained to a considerable degree of civilization;* but long before such invention, the more important affairs even of a rude society demand some solemn method of authentication. Contracts, sales, testaments, marriages, require a certain publicity and solemnity of transaction in order to enforce their observance; and accordingly we find that among the early nations, or those which are yet in a state of barbarism, such affairs of importance are always transacted in public and before witnesses. Abraham, in the presence of the whole people, concludes a bargain for a place of burial for his wife Sarah. Homer, in his description of the sculpture which adorned the shield of Achilles, represents two citizens pleading concerning the fine due for a homicide. The cause is heard before the people, and both plaintiff and defendant appeal to the testimony of witnesses:—

“There in the forum swarm a numerous train,
The subject of debate a townsman slain:
One pleads the fine discharged, which one denied,
And bade the public and the laws decide:
The witness is produced on either hand:
For this or that the partial people stand:
Th’ appointed heralds still the noisy bands,
And form a ring with sceptres in their hands.
On seats of stone, within the sacred place
The reverend elders paused upon the case;
Alternate each th’ attesting sceptre took,
And rising, solemn, each his sentence spoke.”

Pope's Iliad, b. 18.

Some of the northern barbarous nations use, at this day, a mode of authenticating contracts by symbols, which is a nearer approach to the solemnity of writing. After the agreement is made, the parties cut a piece of wood irregularly into two tallies; each party keeps one of these, and both are given up and destroyed when the bargain is fulfilled. A custom of this kind supposes a state of society where all agreements are of the simplest nature; for these tallies, though they might certify the existence of a contract, could never give evidence of its tenor.

An invention somewhat more refined than this, and approaching still nearer to writing, was the Peruvian quipos, or cords of various colors, with certain knots upon them of different size, and differently combined. With these they contrived to accomplish most of the purposes of writing; they formed registers which con-

ticularly specified. In this view, such laws are in themselves a species of history. Other laws point out merely the state of manners, without reference to any particular facts; but attending to the period of time when those laws were enacted, such information is perhaps even of greater importance than the other; for it supplies often what is either wanting, or but imperfectly to be gathered from the historical annals of a nation.

* On the origin of alphabetic writing see a very ingenious and elaborate dissertation by M. Goguet. *Orig. des Lan t. 1. liv. 2. c. 6.*