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COMMENTARIES
ON THE
LAWS OF MOSES.

BY THE LATE
SIR JOHN DAVID MICHAELIS, K.P.S. F.R.S.

PROFESSOR OF PHILOSOPHY IN THE UNIVERSITY OF GOTTINGEN.

Translated from the German,
BY ALEXANDER SMITH, D.D.

MINISTER OF CHAPEL OF GARIOCH, ABERDEENSHIRE.

IN FOUR VOLUMES.

VOL. I.

Libera Veritas.—MICHAELIS' MOTTO.

LONDON:

PRINTED FOR F. C. AND J. RIVINGTON, 62, ST. PAUL'S CHURCH-YARD;
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1814.

THE
TRANSLATOR'S PREFACE.

THE "*Mosaisches Recht*" of the learned MICHAELIS, of which a Translation is, with all the diffidence becoming a first attempt, here presented to the public, was originally published at Frankfort on the Mayn, in *six* parts, or volumes, between the years 1770 and 1775; and it appears, from the list of the author's works annexed to Professor *Hassencamp's* Collection of Memoirs relative to his life and writings, (for a copy of which Collection the translator is indebted to the friendship of *Sir Joseph Banks*,) that a second edition of the first *five* * parts was completed between 1775 and 1780, and that the work had, before the year 1793, been translated into Dutch and Danish.

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* As the *sixth* part contains, besides the Essay on Punishments, which forms its preface, only a few of the concluding Articles of the work, (the latter half of it being occupied with two enormous indexes of texts and matters,) the translator presumes, that it had not, in consequence of any material improvements made by the author before his death, in 1791, been found necessary to reprint it as a second edition.

From the time of his first appointment to a professorship of philosophy at Gottingen, in the year 1746, Michaelis, already eminent as an Oriental scholar, appears to have directed his chief attention to the critical illustration of the sacred writings; and the unrivalled success with which he prosecuted this most important branch of theology, has been universally acknowledged in this country, since his valuable *Introduction to the New Testament*, rendered still more valuable by the notes and chastenings of Dr. Marsh, has become accessible to English readers, by the elegant translation of that learned theologian.—Michaelis not only gave regular courses of lectures on Oriental philology, Hebrew antiquities, exegetic theology, and other Biblical subjects, but likewise published a number of particular Dissertations, relative to the most important parts of the Mosaic polity, on the illustration of which he brought his great and varied erudition to bear, with the happiest effect. Of these Dissertations, it may here be proper to enumerate those concerning the Mosaic Marriage Laws, the Punishment of Homicide, the Laws of Usury, the Nomads of Palestine, the Hebrew *Census*, the Hebrew Months, the *Troglodytes* of Mount Seir, the Oriental Mode of Sheepbreeding, the Levirate Law, the Sabbatical Year, the Law of Polygamy, the Value of the Shekel, the Prices of Things previous to the Babylonish Captivity,

the Cherubim, the History of Glass among the Hebrews, the Nitre of the Hebrews, the Jewish Architecture in the time of Solomon, the Mosaic Laws made with a view to attach the Israelites to Palestine, the Arguments for the Immortality of the Soul deducible from the Mosaic Writings, &c. &c.—because the materials of most of these Dissertations being either wrought into the present work, or frequently referred to in the course of it, it may justly be considered as a digest of the contents of a variety of treatises, now scarcely to be found even in Germany, and of which, but only one or two have ever made their appearance in English*.

It appears from the dedication of this work to Dr. *Olaus Rabenius*, professor of laws, and syndic of the university of Upsal, that that gentleman, who resided at Gottingen, in the year 1757, had formed an intimate acquaintance with Michaelis, and had requested him to favour him with a course of private lectures†

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* In a volume published at London, in 1773, under the title of *Bowyer's Select Discourses*, we find translations of the Dissertations on the Hebrew Months, and the Sabbatical Year.

† In the original, it is a *Privatissimum*; a term which the translator is enabled, in some measure, to explain, from a catalogue, given him by his friend Dr. Henderson of London, of the half-yearly courses of prelections delivered in winter 1798, in the university of

on select points of the Mosaic jurisprudence. Had it not been for this circumstance, Michaelis says, he would probably never have thought of drawing up any particular treatise on the Mosaic law, but have satisfied himself with offering occasional illustrations of it, in the course of his philological and exegetical prelections.—“But,” adds he, “you, Sir, were then
 “a *Doctor Juris*, and therefore, as you may believe
 “without many assurances on my part, I considered
 “your request as conferring an honour upon me;
 “little thinking, however, that I was thus to enjoy
 “the honour of having, for my hearer, the person to
 “whom the states of Sweden were one day to intrust
 “the important task of drawing up a book of the na-
 “tional laws. You were, therefore, my first pupil, in
 “this new subject of prelection; and as I afterwards
 “read the same course of lectures to some other per-
 “sons, from the preparations thus made, arose not
 “only the plan, but, in part at least, the execution
 “also of this work; which I now thus restore to its

Leipzig; from which it appears, that many of the professors give three different courses of lectures, viz. *publice, privatim, and privatissime*. Thus, CAR. FRED. RICHTER, *Phil. Prof. Extr. publice binis diebus hora IX. Psalmos inde a LXXIII. initium factururus, explicabit; privatim quat. dieb. hora I. in Jesaia Vaticinia commentabitur; neque iis deerit qui privatissime Hebraicam vel aliam Orientis Dialectum, se duce, discere cupiant.*

“ original suggester. It is not very common to find
“ such a connection subsisting between a book, and
“ the person to whom it is dedicated.

“ I can scarcely, however,” continues he, “ expect
“ any reader, to whom my present work will prove so
“ peculiarly interesting, as to the man to whom I
“ now inscribe it. Others may indeed contemplate
“ the Mosaic laws in those points of view which I
“ have noticed in my Introductory Observations ;
“ and I should hope, they will not find my remarks
“ upon them altogether unworthy of their attention :
“ but you, Sir, will regard them with the eye of an
“ actual legislator, on whom his country has devolved
“ the honourable duty of examining the archives of
“ the state, and collecting statutes and decisions ; in
“ order, thence, and from the laws already known, and
“ become burdensome by their multitude, to prepare
“ a new digest of national law, not merely for the in-
“ struction of students, but for the use of the courts.
“ You yourself have informed me, that the civil law
“ of Moses has till very lately been a *jus subsidiarium*
“ in Sweden, and that a relic of this is even yet to
“ be found in the oath taken by the judges ; and you
“ have kindly allowed me to communicate to my read-
“ ers, in your own words, this important fact respect-
“ ing its use ; which, to my countrymen at least, will
“ probably be new ; and although, as you yourself

“ remark, it is now no longer cited in the Swedish
“ courts, it is almost impossible that there should not
“ still remain in the Swedish jurisprudence, many vestiges of its former authority.

“ You will, besides, Sir, methinks, from the influence of national character, be the more interested
“ in tracing the principles of the Israelitish constitution, from that spirit of liberty, which it everywhere
“ displays. For that people, to whose example the
“ defenders of the divine and illimitable rights of
“ kings have so often appealed, were not, on their first
“ establishment, so much as to have kings at all ; and
“ even when kings were afterwards appointed, it is
“ most certain, that they were by no means those unlimited monarchs, whom the advocates of that doctrine have wished to represent as ordained by God
“ himself. For the Deity did not even specify what
“ degree of power the king of Israel was to enjoy ;
“ but left this entirely to the judgment of the people,
“ who were one day to chuse him ; because, in such a
“ case, no universal rule, as to the public welfare,
“ could be given, to suit all future ages ; since it might
“ at one time be expedient, that the power of the
“ crown should be augmented, and at another, circumscribed. Nor can you, Sir, fail to admire the
“ modesty and prudence of Moses, who, though a
“ legislator commissioned by God himself, declined

“ to enact any eternal and immutable law respecting
“ the constitution of the Israelitish state * ; and who
“ also, though he established a free republic, yet, well
“ aware that no form of government applicable to all
“ times and circumstances can be devised, because
“ states, like all other things, grow old, and stand in
“ need of alteration, allowed the appointment of a
“ king at a future period ; but not of an unlimited
“ sovereign, without any check or counterpoise to his
“ power.”

Such is the account which Michaelis himself gives of the origin and progress of this work. The translator has thought it right to give, in the above quotation, the whole of the epistle dedicatory to Rabenius, (which is dated December 23, 1769,) excepting only the introductory and concluding compliments. The extract of the letter from Rabenius, respecting the information alluded to, will be found at the end of this volume. It appears, from the advertisement prefixed by Michaelis to the second edition of the *Mosaisches Recht*, that this eminent civilian unfortunately died, before the completion of the great work which his country had entrusted to his charge.

* “ What I had here in view, but could not, consistently with
“ propriety, explicitly mention in 1769, the reader will now find,
“ by referring to a note in the beginning of Art. LIV.”

It may here be proper to observe, with regard to the sources whence Michaelis drew his illustrations of the Mosaic writings, that he had, from the very first, not only most happily availed himself of the information incidentally furnished by the most creditable travellers, who had previously visited the East, (in which respect, he may fairly be considered as the precursor of our learned Dr. Harmer,) but that he likewise projected the plan of sending a mission of *Literati* to Egypt and Arabia, for the express purpose of investigating every thing connected with the history, geography, antiquities, natural productions, language, and manners of those countries, that could serve to throw any light upon holy writ. This plan he proposed to Count Bernstorff, so early as the year 1756; who, entering into it with a degree of eagerness and zeal, which must immortalize him as an enlightened minister, lost no time in recommending it to his royal master; and it is not the least glorious trait of the reign of Frederick the Fifth of Denmark, that he here heartily seconded the views of his minister, engaged to defray the whole expense of the undertaking, and honoured its projector, by committing to his charge the selection of the travellers, and the arrangement of the plan in all its various details; remunerating him handsomely for his zealous exertions on the occasion.—How worthy Michaelis was of this trust, is sufficiently

weak and untenable arguments, to which *some* authors have resorted for this purpose, Michaelis uniformly takes possession of ground impregnably strong, from which, while he challenges the enemy to attack him, and concedes to him every imaginable advantage, he still defies him to effect his dislodgment*. The translator, therefore, cannot help suspecting that *Dr. Geddes's* acquaintance with the work had been, in every sense of the word, extremely *partial*; and he must also remark, that while, in both his translation and his critical notes, he has availed himself of the labours of the learned professor, at least as largely as he has chosen to acknowledge, he does not always treat him with that candour and respect, which he had a right to look for at his hands.

It appears from the *Literary Correspondence* of Michaelis, that when *Mr. Justamond* was about to announce his translation of this work, a difficulty occurred with respect to the choice of the title most proper to be given it; and that Michaelis himself, who had, in his youth, been 18 months in England, and was well acquainted with the English language, had been consulted on this subject. The learned Orientalist *Dr. Woide*, who seems to have patronised

* In proof of this remark, the reader needs only to be referred to the perusal of some passages in Articles XIV., LXVI., CLXXIX., CCXLVII., CCL., CCLXIII.

Mr. Justamond, in a very friendly manner, says, in one of his letters to Michaelis, “ I have given *Mr. Justamond* the title for the *Mosaisches Recht*, as you “ have transmitted it ;” but unfortunately there is no letter of Michaelis in his Collection, stating what that title was. The literal translation of the original title is, *J. D. Michaelis’s Mosaic Law* ; a title, under which the present translator, before he knew any thing of his predecessor’s difficulty, did not conceive that the work could, with much propriety, be introduced to the English reader ; nor did he altogether approve of that of *Mosaical Jurisprudence*, proposed by *Dr. Geddes*. Both have a bold and quaint appearance ; and neither of them fully intimates to the reader, what he has to expect in the work.

In this embarrassment, therefore, as he could not now resort for advice to the author himself, he very naturally had recourse to *Dr. Marsh*, who may justly be termed his *legitimate representative* ; and it gave him some satisfaction to find, that both he, and *Dr. Adam Clarke*, to whom also he had mentioned the difficulty in question, concurred in thinking the title of *Commentaries on the Laws of Moses*, (which the analogy of the work to that of *Blackstone* had suggested, and led him to propose,) at any rate preferable to either of those already mentioned, and more likely to convey to the reader a correct idea of its nature and

object. He is not sure, after all, whether the *Spirit of the Mosaic Laws*, as indicative of a resemblance to the celebrated work of *Montesquieu*, would not have been a more suitable title than any of the three.

The great object of Michaelis in this work is to investigate and illustrate the philosophy of the Mosaic Laws; to shew their wonderful adaptation in every respect to the very peculiar circumstances in which the people, to whom they were given, had been placed by providence; and, while he takes every opportunity of establishing the claims of Moses to the character of an ambassador from heaven, to inculcate upon human legislators the important lesson of studying those particulars respecting the natural and political situation, the ideas and prejudices, the manners and customs, of their countrymen; by attention to which alone, they can ever hope to make them virtuous, prosperous, and happy.

But here, perhaps, the translator cannot do greater justice to the views and merits of the author, than by quoting those passages of Eichhorn's *Memoir of his Literary Character*, in which he describes the excellencies of the present work, and apologises for its defects. "Already well versed in historical and statistical knowledge, Michaelis had been led to turn his attention to political philosophy, first by his long residence in England, and afterwards by the example of his learned cotemporaries in Germany, who

“ had happily excited a spirit for statistical and poli-
“ tical inquiries among their countrymen, by succeed-
“ ing in their endeavours to establish the study of
“ these subjects as a regular branch of university
“ education. It was altogether in the spirit of Mi-
“ chaelis to keep pace with his cotemporaries in this
“ new and favourite pursuit ; and he very soon began
“ to apply it to its noblest and most valuable use, by
“ making it subservient to the illustration of his own
“ more immediate department of science, while yet
“ no other investigator of ancient learning had ever
“ conceived any such idea. The day of the *Mosaïshes*
“ *Recht* had thus already begun to dawn, in his Trea-
“ tise on the Mosaic Marriage Laws ; for although
“ the plan of that treatise was contrived so much on
“ the theological principles of the Canon law, that po-
“ litical *Esprits forts* might have objected to it, still
“ as it led him to pursue the idea he had struck out,
“ it served him at least as a preparatory ground-work
“ for his future labours ; and accordingly we find,
“ that he proceeded from this partial inquiry, to the
“ consideration of the subject at large, and illustrated,
“ in the style of Montesquieu, the legislative and po-
“ litical constitution of the Hebrews in all its parts.
“ The spirit of philosophical speculation now entered,
“ as it were, into an amicable contest with that of
“ statistical, political, and antiquarian research ; and
“ thus gave birth to a work, before which every prior

“ attempt of antiquarians and politicians vanishes like
“ a shadow ;—a work truly original, and to which we
“ have scarcely any thing on the subject of any go-
“ vernment ancient or modern, that is worthy to be
“ compared. In all preceding treatises on the sub-
“ ject, every thing had been jumbled together in the
“ most heterogeneous manner ; ancient laws and in-
“ stitutions, mingled with modern ; ordinances truly
“ Mosaic, confounded with those of later times, as in-
“ troduced, reformed, or, at least, altered, by the Per-
“ sians, Greeks, or Romans ; and the real statutes of
“ Moses exchanged for mere Rabbinical regulations,
“ originating either in excessive scrupulosity, or silly
“ misconception. In this state of things, and while,
“ in their inquiries and speculations, authors on this
“ subject betrayed only their credulity, and ignorance
“ of political science, Michaelis made his appearance.
“ In conducting his work, he examined the sources
“ of information with all the aid of his historical skill,
“ and philosophical discrimination, and thus gave the
“ subject an interest, which it could never have com-
“ manded, had he confined his attention to the mere
“ illustration of the Mosaic constitution alone. For,
“ those materials of that constitution, which every
“ author before him had regarded with indifference,
“ as mere matters of antiquarian speculation, he ex-
“ hibited in a political point of view ; endeavouring
“ to penetrate into the nature and origin of all its

“ parts ; illustrating these from analogous circum-
“ stances in the laws and government of other na-
“ tions ; and, with those general remarks which he
“ offered relative to the end and design of the several
“ statutes, combining others respecting their local or
“ temporary expediency ; together with such farther
“ observations as are calculated to interest, and even
“ to instruct, the philosopher, the politician, the histo-
“ rian, and the antiquarian, in their several pursuits.
“ Before his time, in hearing lecturers on this subject,
“ we heard only laborious collectors of antiquities ;
“ but in him we hear a philosopher, intimately ac-
“ quainted with historical and political science. Here-
“ tofore we only listened to credulous and undiscern-
“ ing compilers ; but now, to a truly critical inquirer.
“ Hitherto we have here been disgusted with insuffer-
“ able political declamation ; but now we attend, with
“ delight, to the reasonings of true political philosophy.
“ And thus it is, that Michaelis has contrived to intro-
“ duce most important instruction for statesmen into
“ a subject, which before was only considered to be
“ worthy the attention of purblind, plodding, solitary
“ antiquarians.”

Such is the liberal and animated language, in which Professor Eichhorn describes the work of his illustrious colleague ; nor would the translator deem it necessary to add any thing farther with respect either to its design or execution, were it not that a regard to im-

partiality requires him also to observe, that the same learned author, after remarking that *this work left little more to be wished for on the subject*, proceeds to acknowledge, in that spirit of candour which strongly indicates his desire to be considered as something more respectable than a professed and indiscriminating panegyrist, that Michaelis now and then appears to launch out into distant regions and ages, and to speculate upon effects, which Moses, in the circumstances under which he acted, could hardly have had in view; and that, on some occasions, we find him building political castles in the air, on so slight a foundation, that a breath of historical criticism is sufficient to level them with the ground. “Was not this, however,” adds he, “altogether according to the nature of the human mind; and precisely what was to be expected from a writer, who wished to bring into notice and repute, a science previously disgraced by the miserable treatment it had received; and in lieu of the dull langour of declining old age, to reanimate it with the vital spirit of youth and beauty.”

The translator most readily owns, that he had not proceeded far in the first perusal of his original, before he perceived that the author, valuable as his observations on every topic were, had not only fallen into some mistakes which required to be corrected, but also indulged himself occasionally in a latitude of spe-

ulation and conjecture, which, with all his ingenuity and learning, could hardly be admitted, and seemed to demand the application of somewhat of that precautionary chastening, which Dr. Marsh has so judiciously applied to the *Introduction to the New Testament*. For though, in general, a translator is not considered as bound to vindicate, or as accountable for, every thing objectionable in his original, yet in a work of this nature, where the translator is a clergyman, and such things happen to be introduced, it is naturally to be expected, that he will, at any rate, enter his *caveat* against the imputation of either approving them, or of not being aware of the necessity of counteracting their effects.

For this reason alone then, not to mention any more, it was the translator's wish and intention to have accompanied his labours with a series of corrective as well as illustrative notes; but the utter impossibility, after inquiries in which he was most powerfully assisted, of procuring either in Britain, or from abroad, in the obstructed state of literary intercourse with the continent, a proper collection of the works of Michaelis, and the other books necessary to be consulted for such a purpose, obliged him at last to relinquish his intention. This he did with the less reluctance, when he considered that the work, without notes, would extend to four considerable volumes; and that, with all its faults, it was *in itself* (to use the

language of a judge, from whose verdict few would think of appealing) *sufficient to engage the attention of the public* ; and that were he now to translate it, he would, without giving notes, be satisfied with merely exhibiting the author in an English dress.

There was another object which the translator may here be permitted to mention his having had in view, when he first embarked in this work, and which, partly at least, for the reasons now mentioned, he likewise found it necessary to abandon ; and that was, the prefixing to it a *Memoir of the Life and Writings of the Author*,—a work which he has every reason to believe, would, if executed in a manner at all worthy of the subject, be highly interesting and acceptable to the public. He soon, however, found, from the nature and extent of but a few materials furnished him by the kindness of Sir Joseph Banks, Dr. Marsh, and Mr. Alexander Chalmers*, that a satisfactory account of Michaelis' life and correspondence *alone*, could not be comprized within the compass of a volume ; and as he had it not in his power to give, *ex Autopsia*, any account of the greater number of his multifarious writings, which, in a uniform edition, would amount to nearly 100 octavo volumes†, he determined, after

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* Editor of the *British Essayists, Biographical Dictionary, &c &c.*

† Of the *Orientalische Bibliothek* alone there are 32 volumes 8vo.

some progress had been made in arranging the plan and materials, to reserve his intended memoir as the subject of a separate publication, when the renewal of intercourse with the continent should facilitate the procurement of the whole works of the learned author. And as he now means to accompany it with a selection of the most important parts of the dissertations connected with the Mosaic law, which were mentioned in the beginning of the preface, together with such other illustrations of the present work as he may be enabled to collect, he hopes that some, at least, of those literary persons, who take an interest in the cause of theological learning, will be kind enough to favour him with any observations, that may serve either to illustrate the author, or to correct the mistakes of the translation.

It has been the translator's endeavour to exhibit the sense of his original closely, plainly, and faithfully, without omission, alteration, or abridgement; and in those passages where Michaelis gives his own version of the Bible, or of the Koran*, or quotes, in German,

Of his *Version of the Old Testament*, 13 parts, and of the *New Testament*, 6 parts, 4to. Of his *Syntagma and Commentationes*, 4 volumes, 4to. Of his *Supplementa ad Lexica Hebraica*, 6 parts, 4to. His *Introduction to the New Testament*, 2 volumes, 4to. His *Illustrations of the Epistles*, 5 volumes, 4to. &c; besides many treatises consisting of single volumes.

* In the year 1754, Michaelis published a *Latin Translation of the*

Josephus, the Talmud, Herodotus, or any other ancient author, his words have uniformly been rendered as literally as possible ; for this obvious reason, that the train and strength of his arguments often entirely depends upon his own translation. The reader, therefore, must not be surprised to find the language of many Biblical passages materially different from that of the English version ; so much so, in one or two instances, as to alter even the facts ; nor yet, when he recurs to that version, to remark occasionally, the difference of an unit in the numeration of chapters and verses ; which proceeds from the division adopted in the German and Hebrew Bibles being in some places different from ours. In general, however, the variation, when material, has been attended to ; and it may be proper to add, that the English orthography of the scripture names has been for the most part adopted.

The translator is very far from presuming to suppose, that no obscurities or mistakes will be found in the work. Those who have been engaged in a work of such extent well know, and others may easily conceive, that a translator cannot, at all times, proceed with equal spirit, confidence, and satisfaction to him-

Second Sura of the Koran, with Illustrations ; as a specimen of a new version of the whole work : It appeared as an *Inaugural Dissertation*, defended by one of his pupils ; but he does not seem to have continued it.

self; nor is the author of the present translation ashamed to confess, that in reading over the *printed* volumes, he has remarked various passages which he would *now* considerably improve, and some, concerning which he is very doubtful—more doubtful than ever—whether he has exactly hit on the author's meaning. He trusts, however, that the *latter*, at any rate, will not be found numerous; and he is convinced, that, with regard to *both*, he may most confidently rely on the indulgence of those, whose acquaintance with the *natural* difficulties of the German language, or whose experience of the *peculiar* difficulties attending the translation of a work like the present, best enables and entitles them to judge.—In the lists of *errata* prefixed to the different volumes, the translator has included some of the more material alterations respecting particular words and clauses, which a cursory perusal of the work since printed, has pointed out as necessary to be noticed in the meantime; and the reader is requested to mark them with a pen, as they considerably affect the sense. Should the work ever come to be reprinted—an honour which, were it more worthy of the original, the translator is convinced that its interesting nature could not fail very soon to procure it—every improvement and correction, which the private communications of literary friends, the candid criticisms of the public journals, or the diligent revisal of his labours by the translator him-

self, may suggest, shall be carefully attended to.—In making this acknowledgment and declaration, the translator is only imitating that truly noble spirit, which so strikingly characterises all the writings of Michaelis himself,—than whom, perhaps, no author ever manifested a more ardent desire to sacrifice every consideration to the discovery and establishment of truth. We find him, on all occasions, anxious to acknowledge, and correct his errors, when he either discovered them himself, or had them candidly pointed out by others. Of this, the reader will remark many pleasing proofs in the following pages; and, if acquainted with his *Introduction*, will recollect many more.

The translator is perfectly sensible of the immense disadvantage under which his labours must appear, in consequence of the unrivalled excellence of Dr. Marsh's translation of the *other* great work of Michaelis; with which, therefore, he must beg leave to deprecate all comparison,—for the very same reason, for which a novice in any art, who is not alike ignorant and vain, must shrink from the very idea of entering into competition with a great master of that art. Had he not certainly known, that Dr. Marsh had no intention of either translating this work, or writing the life of its author, he would not have engaged in either attempt; and with regard to the former, which he now submits to the public, lest he should be accused of outrageous presumption in undertaking such a work, he hopes he

may be permitted to add, that he did not finally resolve on prosecuting it, until a specimen of his version of the introductory Articles, which Dr. Marsh kindly offered to examine, was returned to him with a testimony of approbation, that gave him great encouragement to proceed. His manifold obligations to the friendship of this eminent theologian, to whom he was previously almost unknown, are such, as, having no means of otherwise repaying, he cannot publicly acknowledge with too much thankfulness. Did he feel himself at liberty to particularize them, they would exhibit a very amiable example of that zeal for the advancement of knowledge, and that liberality and disinterestedness of procedure, which certainly ought always to mark the characters of literary men, but which we see too often sacrificed to the most narrow-minded and unworthy jealousies, or the most shameful indifference.

He must also embrace this opportunity of testifying his obligations to another eminent German scholar, his early friend, Dr. *Alexander Henderson*, physician to the Westminster Dispensary, for the trouble which, when in this country, he was so good as to take, in comparing a part of the translation with the original; and for many other most important favours connected both with this work, and the other literary pursuits of its author.

To the Rev. Dr. *Adam Clarke*, whose eminence as

a bibliographer, orientalist, antiquarian, and general scholar, renders his friendship and correspondence truly valuable to any person engaged in theological studies, he likewise begs leave to express his best acknowledgments, for his anxious exertions to procure him (what he had long sought for in vain,) a copy of the *Mosaisches Recht*; for his useful advices with respect to the translation, and its publication; and for many other friendly offices relative to literary matters.

To *Charles Butler, Esq.* of Lincoln's Inn, he owes the acknowledgment of a very singular mark of attention, in consequence of an application made to him in reference to the work.

It now only remains to apprize the reader,

I. That in order to exhibit, within a small compass, a better view of the multifarious contents of the work, than could be supplied by any index, the translator has, besides marking the subject of each page at top, prefixed to each volume a minute Analysis of the articles included in it; of which he has, besides, attempted a distribution into chapters, and these, again, in some instances, where very extensive, into parts, or sections. He hopes that this distribution will be considered as an improvement on the plan of the original, which is carried on in a series of articles, amounting in all to CCCVII., without any other subdivisions than general ones, expressive of the principal subjects of the work. Of these articles, the arrange-

ment has been necessarily preserved, on account of the numerous references made in one part of the work to another; although, as Michaelis himself admits, it is by no means so correct, in some instances, as it might have been. If the reader will take the trouble to look over the Analysis of all the volumes, or even the titles of the books, chapters, and articles, before proceeding to the work itself, it is presumed, he will not be unlikely to anticipate its importance, and will enter upon the perusal of it with additional interest and advantage.

II. That, to this preface, the translator has annexed a notice of the value of the German monies, weights, and measures, mentioned in the course of the work. The reader will soon perceive, that any attempt to have substituted English denominations for them, would not have answered, in the circumstances under which they are, for the most part, introduced.

III. That various notes in the original, have been incorporated with the text of the translation, where it appeared to the translator, that it could be done with advantage; and farther, that, for a reason which will naturally occur to the learned reader, some passages in certain articles, have been by the translator latinized; not indeed literally, but as closely from the German original, as seemed necessary for the faithful exhibition of the author's meaning.

Lastly, that Part II. of the original, extending from

p. 255. of volume first, to p. 263. of volume second, is translated, not like the other parts of the work, from the *second* edition, but from the *first*. The only copy of the original which, as above stated, could be procured, after a most diligent search both in London and Edinburgh, on various occasions, in the course of several years, was unfortunately found not to be uniform, in regard to the part in question. The translation of it was therefore postponed, and indeed the printing of the work deferred for a considerable time, in expectation that it might still be possible to remedy this defect, either by renewed enquiries at home, or by the only probable means of procuring another copy from the continent. But both measures having been resorted to last summer without success, it was at last judged better to make use of the first edition of Part II., than to delay the publication of the work any longer.—It is only necessary to add, for the satisfaction of the reader, that various circumstances concur to persuade the translator, that the differences of the two editions are here very immaterial. Should he, however, in this be mistaken, he trusts that any person, who may have it in his power, will have the goodness to undeceive him; and he begs leave at the same time, to solicit the favour of a communication from any German scholar, who may happen to be in possession of the *Magazin der Wissenchaften und Literatur*, published at Gottingen by *Lichtenberg* and *For-*

ster ; because he has discovered, that the *second* number of the *fourth* year of it, (1785) contains an *Enquiry*, by Michaelis, *into the Reasons why Moses takes no notice of Child-murder in his Laws* ; meant as an additional article to the *Mosaisches Recht*, and which cannot fail to be alike curious and important.

Manse of Chapel of Garioch, }
MARCH 1, 1814. }

NOTE OF GERMAN MONIES, WEIGHTS, AND MEASURES,

MENTIONED IN THIS WORK.

(From DUBOST's *Elements of Commerce*.)

MONIES.

In Hanover, accounts are kept in current Thalers, (each worth 42.63 pence English,) containing 36 Marien-Groschen, of 8 Pfennigs each.

1 Reichsthaler (rixdollar)	—	1½ Gulden.
1 Current Thaler	—	1 4-5th Marien Gulden.
		or 24 Gute (good) Groschen.
		or 36 Marien-Groschen.
		or 288 Pfennigs.
		or 90 Kreutzers of the Palatinate, Austria, &c.
2½ Thalers	—	1 Ducat.

WEIGHTS.

The Hanover Pound (containing 7494 grains English,) consists of 2 Marcs, 16 Ounces, 32 Loths, 128 Quintins, 512 Oertjens.

The weight used at Hamburg for the appreciation of the precious metals, is a Marc, (of 3608 Troy grains,) divided into 8 Ounces, 16 Loths, 256 Fenigs, and 4552 Aescheus.

MEASURES.

The Himbten	—	contains	1896 Cubic Inches.
The Scheffel (of Berlin)	—		3315 do.
The English Bushel	—		2150.42 do.

ANALYSIS

OF

VOLUME FIRST.

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ERRATA.

The Reader is particularly requested to correct with a pen the following mistakes,
as most of them materially affect the sense.

Page 12. line 21. *for* Icken, *read* Iken.

— 15. — 4 *for* of, *read* that of.

— 32. — 19. *for* ı, *read* ı.

— 34. — 3. *for* security, *read* safety.

— — — 30. *for* acquaintances, *read* persons of his acquaintance.

— 59. — 24 and 26 *for* and downwards, *read* at the bottom.

— 88. — 21. *for* ı, *read* ı.

— 96. — 29. *for* on this coast, or on this land, *read* in this land, or on its coasts.

— 98. — 7. *for* political, *read* public.

— 111. — 4. *for* the, *read* this.

— 131. — 29. *for* THEM, *read* Shem.

— 138. — 10. *for* reason, *read* right.

— 149. — 11. *for* ambiguous, *read* cramping.

— 170. — 13. *for* not, *read* had never.

— 171. — 31. *for* Spicil. *read* Spicil. Geogr.

— 173. — 20. *for* more than, &c. *read* now more than 2000 years old.

— 189. — 26. *for* in time, *read* in after times.

— 204. — 27. *after* nations, *begin* a new line.

— 207. — 9. *for* and, *read* and the.

— 254. — 8. *for* fifteenth, *read* fiftieth.

— 258. — 15. *for* Neocoris, *read* Neocoroi.

— 306. — 10 *for* the, *read* this.

— 378. — 32. *for* judicial, *read* forensic.

— 386. — 16. *for* that the, *read* that in the.

— 402. — 28. *for* to half a, *read* below a.

— 407. — 9. *for* Since, *read* After

— — — 11. *delc* has.

— 478. — 8. *for* ut, *read* ut iste.

BOOK I.

INTRODUCTORY OBSERVATIONS

ON THE IMPORTANCE OF A KNOWLEDGE OF THE MOSAIC LAWS—THEIR ORIGIN, NATURE, AND DESIGN—AND THE VIEW TAKEN OF THEM IN THE PRESENT WORK.

ARTICLE I.

The knowledge of the Mosaic Law useful in philosophising on Law in general, as Montesquieu has done.

ALTHOUGH the laws of Moses are not obligatory on us, they nevertheless merit a fuller elucidation than they have hitherto received ; or rather, they not only deserve to be known in their whole connexion, by the philologist, who, occupied in the study of oriental languages, regards them merely as a branch of Hebrew antiquities ; but even to persons of other pursuits,—to the theologian, the lawyer, and the man who philosophises on legislative policy, they ought not to remain so strange and Asiatic, as they have hitherto been.

They are well worthy of our attention, considered only as the laws of a very remote country, and as relics of the most ancient legislative wisdom. The mere barrister may rest satisfied with knowing the laws that are of authority in his own country ; but the man who

would consider laws philosophically, or (to say more in one single word than a tedious circumlocution would serve to explain,) who wishes to survey them with the eye of a Montesquieu, will deem it his indispensable duty to become acquainted with the laws of other nations ; and the more so, the more remote they are in point of time and climate. To him who knows nothing beyond the limits of his own country, or of the nations contiguous to it in time and situation, many things in law will seem necessary, which yet, in other circumstances, must be otherwise. He will not perceive the arbitrary nature of law, and the variations of legislative policy, which difference of climate, and a hundred other circumstances occasion. Then only will he become sensible of these things, and begin without much perplexity to philosophise, like Montesquieu, on the laws of his country, when he compares a variety of laws that are strange, and seem at first absurd. But what system of laws offers to our consideration a greater number of new views, in this respect, than those of Moses? The people whose government he settled, lived in a climate very different from ours. No law of such high antiquity has, in one connected body, reached our times ; and on this account alone, it is very remarkable. In his day, many things still retained much of their original character, which afterwards underwent alterations, from the multifarious (whether successful or unsuccessful) artifices of policy ; from the introduction of new customs ; from abuses ; and even from their very antiquity. But between his laws, and the ancient laws of other nations, on their first establishment, we

find, in those things wherein they differ from ours, such a remarkable similarity, as would seem to authorise the conclusion, that mankind at first, and during the infancy of nations, naturally light on certain uniform principles of legislation ; which, however, must afterwards be altered, when luxury, and commerce, and chicane, have arrived at maturity among any people. While, therefore, this most ancient law of nations in their infant state remains unknown, the genealogy of our laws may be said to be incomplete : and though the mere lawyer may comfort himself under the defect, the philosopher will always desire to see it repaired.

In this farther respect also are the Mosaic laws different from all other known laws, that the lawgiver who well knew the customs of other wise and enlightened nations, had to establish, for a people whom God in a manner created, a system of polity entirely new. Under such a constitution, some things may be brought to the highest degree of perfection, which, in all other governments, would be impracticable ; of which I will now mention only *one*, but *that* the greatest example, viz. the agricultural laws of the Israelites. History, it is true, points out to us other colonies which have had their lawgivers ; but, compared to the Israelites, they were in their beginnings but *large families*, who required, or at least might be governed by laws very different from those of *a great nation*. But here, the new state consisted of 600,000 men capable of bearing arms, and consequently, of at least 2,400,000 souls, that is, nearly the same number as the present inhabitants of Sweden and Finland ; and this people took

possession of quite a new country, whose whole inhabitants they had to expel or exterminate. Now, to how many things, alike new and important, which we look for in vain in other laws, and can adopt but in very few particulars, such a situation of circumstances would give occasion, needs not be mentioned. I may affirm with confidence that, in the Mosaic writings, we meet with many unlooked-for and shining proofs of legislative policy, which, considered in themselves, deserve to be better understood than they generally are, and which will sufficiently repay all the industry wherewith we can study the works of the most ancient and wisest of lawgivers. And though this were not the case, still would the laws of Moses, merely on account of their great deviations from our own, merit the regard of the philosopher: and every motive that can prompt us to devote our toil to the Grecian laws, will, with equal force, recommend the Mosaic law to our attention.

ART. II.

The knowledge of the Mosaic laws serves to establish our conviction, that they are not obligatory on us. It is also necessary, 1st, to the Lawyer, because some parts of them are still authoritative in our courts; and, 2dly, to the Divine, to enable him to repel the objections of infidels.

SUCH then are the uses of the Mosaic law, considered merely in point of its antiquity, and as given under a different climate from ours, and to a very different people from us; without taking into the account,

that Moses is the earliest writer whose works we read in the Bible. Viewed in this light, a knowledge of his laws becomes in other respects highly important.

All orthodox and sound divines maintain, that his civil laws at least are not binding on us. Yet how oft has superstition pressed upon Christians the adoption of particular parts of them? How many passages do we not find even in our best writers on Dogmatics, inculcating it as a duty on our lawgivers, to abide as closely as possible by the Mosaic laws, as the wisest that can be framed? And how many an anxious and tender conscience may not thus be led to doubt whether the civil law of Moses be really and truly abrogated, and not the constitution of the Jewish church only? and whether, of course, it may not be sinful to live according to other laws, and, for example, to take interest for money, which Moses prohibited? Now all such mistakes and scruples can only be satisfactorily prevented, by surveying the Mosaic laws in connexion, and with their causes. We shall then be soon convinced, that God never meant them to bind any other nation but the Israelites; and that it would be quite foolish to detach particular parts from their connexion with the rest, and to attempt ingrafting them on other systems, to which they must prove incongruous. Of this, we shall have occasion to speak more largely in Art. VI. In the meantime, let it be observed, that, from a connected view of them, the real theologian must see, that they can never serve as a model, or rule of direction, to other legislators; and he will, of course, refrain from blaming our rulers when their laws are contradictory to those of Moses;

as, for instance, in the punishments of theft and adultery ; and from thus exalting himself from a preacher to a legislator : a thing which happens more frequently than we are apt to imagine. It is this very misapplication of them, which renders it so necessary to the civilian, likewise, to understand the Mosaic laws ; that he may be able to defend the enactments of our legislators against the attacks of incompetent critics.

To the divine and the lawyer, it is in still another respect useful to be acquainted with that law which God himself prescribed to the Israelites. For although it cannot, as we have just said, serve us as a model, we may nevertheless hold it as a certain truth, that a law given by Moses, cannot be sinful. For instance, it would not be sinful in a legislator to permit slavery ; for it was allowed by Moses. This single argument refutes a multitude of errors proceeding from ignorance of foreign manners, and from superstition. Most people would hold a sovereign guilty of a horrible sin, who should permit divorce, except in the case of adultery, as specified by Christ. And yet it was permitted by Moses, for the prevention of greater evils, and on account of the *hard-heartedness* of the people. It may therefore be politically inexpedient, but it is not sinful, in a sovereign, even in certain cases not specified by Christ, to permit married persons to separate, on account of their unyielding and irreconcilable tempers. *They* are guilty of a sin in availing themselves of such a permission : but *he* is, as it were, sheltered under the example of God and of Moses, and sins not in granting it unto them to avert greater evils.

There are some of the Mosaic laws which are still in force to a certain extent, and to which reference is frequently made in actions at law. That law respecting *forbidden degrees* is the strongest example of this ; but here a distinction is justly to be made between what Moses has expressly forbidden, and what mere human authority has grafted on his interdiction. In regard also to the punishment of murder, Moses is often quoted, and his authority, at least in the opinion of many lawyers, has still with us the force of law. How frequently likewise is he appealed to, when the question is concerning divorce ? In all these cases, where his authority is (whether justly or not) acknowledged in our courts, it is necessary for a lawyer to understand his laws in all their bearings. I may add, that it is generally the most important, and, at the same time, the most difficult points of law, which give the civilian and the advocate, who are learned in the Mosaic laws, the best opportunities of making a distinguished figure ; while the generality of both professions are, by reason of their ignorance of them, led into the grossest mistakes.

During the violent controversy carried on in the preceding (17th) century, concerning the rights of kings, the party which maintained the divine right of the sovereign, and the servile submission of the subject, appealed very confidently to the Israelitish law, believing that it ought to serve as a pattern to us. Now, although this be false, because every nation may have its own peculiar constitution, the question, nevertheless, becomes now more important, as to the extent to which the power of an Israelitish monarch

reached, and the source from which he derived it : and the answer to this question, from Scripture, turns out to be very much in favour of the nobler side of freedom. The kings of the Israelites were by no means so unlimited, as from 1 Sam. chap. viii. we are apt to represent them : and Moses was so far from appointing a king over them, that he merely gave a permission for this purpose at a future period ; leaving it entirely at the pleasure of the Israelites to chuse one when they should find it expedient ; so that the king among them, was, with all his power, only the creature of the people.

The divine has yet another special inducement to acquire some knowledge of the Mosaic law, viz. that he may be able to undertake the defence of religion. Moses himself extolls the wisdom of his laws, as proceeding from divine inspiration : and some of them are withal so far removed from our usages and ideas, that we are apt, at first sight, rather to regard them as deficient in all the essentials of general legislative policy. As an instance of this, I will just adduce that law, which enjoins, that all the fields throughout the whole country, shall, in one and the same year, lie fallow. Who but must think that this would necessarily occasion a famine ? It appears indeed so preposterous a law, that a late defender of religion thinks fit, from its gross absurdity, to deduce a proof of the divine legation of Moses. For he finds it to such a degree inconsistent with all human reason, that, without the most particular interposition of divine Providence, a nation could not have subsisted under it. “ No man
“ in his senses, therefore, (argues he) could have given

“such a law, if he had not, as a prophet, previously known that the harvest of every sixth year would be doubly abundant: and if God had not verified this prediction of Moses, it would have been impossible for the Israelites to have kept this law. Consequently Moses was sent from God.”—Now, the adversary of religion will very readily admit the absurdity of the law, but reject the conclusions, as dictated by partiality. “Such a law, (he will say) by reason of its impossibility, could never have been enforced among the Hebrews; at least we find in their history, before the final destruction of Jerusalem, no traces of it. Moses enacted it without advert- ing to its consequences, and its absurdity is to me the clearest proof that he was *not* divinely inspired.” And how can a rational divine give an answer to this, if he does not understand the causes and connection of the Mosaic laws?—Other ordinances of the Hebrew legislator have been represented as unjust, fraudulent, tyrannical, barbarous, and cruel; and it is on this point, that MORGAN, in particular, has attacked religion. Whoever wishes to defend it successfully must make himself well acquainted with the Mosaic institutions.

ART. III.

The Laws of Moses confirm, amend, or annul, a more ancient Jus consuetudinarium.

MOSES; in his statutes, frequently presupposes a more ancient law, founded on established usage, (*Jus*

consuetudinarium.) This traditional law he sometimes confirms, sometimes improves, and sometimes annuls. An example occurs in his law concerning divorce. He never expressly authorizes it; but he refers to it as already authorized, in prohibiting, after their separation, a husband from receiving his wife again, if she had married another man. At the same time, he abolishes a custom prevalent among the eastern nations, which permitted the wife to be taken back, or rather made her second marriage the ground of such permission. The authority of this law of custom is the cause of the numberless chasms which we find in the Mosaic laws; where, on many points, nothing is enjoined, the established usages being sufficient, and requiring neither confirmation, improvement, nor abolition. Of these chasms we shall often be sensible; and in Art. XVI. I shall make a more particular acknowledgment of them.

That we may, therefore, the better understand the foundations of many of the laws of Moses, we must have our view directed to a more ancient law of custom, of acknowledged authority. We shall, it is true, seldom be able *precisely* to discover it, for want of records of sufficient antiquity; because any thing that a Grecian could call ancient, is extremely modern, compared to the books of Moses. The only writing of perhaps the same period, if indeed it be not older, is the book of Job; in which, although it affords too little evidence to give us entire satisfaction on the point, we find traces of the existence of a more ancient consuetudinary law, on which the laws of Moses have, as it were, been ingrafted. As a proof of this,

I refer to what I shall have to say, (Art. CXXX.) concerning the prohibition of muzzling the ox when he is threshing the corn.

Farther : in the brief history which Moses has drawn up of earlier times, we find some of his own very laws, and even of those that are most different from ours, already in force long before his time. He enjoins, that a man marry the widow of his brother, if he has died without children ; but that this was held a duty, and even required more rigidly than he has required it, a century and a half before his birth, we learn from the history of Judah and Tamar, in the xxxviii. chapter of Genesis.

But even in cases where (as often happens) both these sources of information, as to the origin of some of the Mosaic precepts, fail us, the very manner wherein they are delivered will often shew that they cannot be new. Thus Moses speaks of a person, to whom he applies the term *Goël*, whose right and whose duty it was by law to avenge the blood of his relation, and from whom the slayer might flee into a city of refuge, if the republic was able to protect him ; and he speaks of this as a matter well understood, giving no particular description of the *Goël*, as a legislator must necessarily have done, who had instituted a new office of so singular a nature ; nor yet assigning to its holder his duties, by any express statute. But, presupposing *both* already well known, he merely guards against the abuse of the law, by providing security to the innocent manslayer, in the sanctity of an asylum. Now, when we find the very same law, though unwritten, among nations closely related to the Israelites, though they never

received the Mosaic law ; when, as for example, we recognise in all his horrors, the *Goël* of the Hebrews, in the *Tair* of the Arabs, whose revenge, however, must in certain sacred places be put to rest ; we can be at no loss to perceive, in this usage of theirs, the source from which the Mosaic precept sprang.

Had we not some knowledge of Arabian manners, we should very seldom be able to illustrate the laws of Moses, by reference to the law of usage. But among a race of people, living separate from other nations, and who have rarely been subjected to a foreign yoke, ancient manners have maintained themselves so perfectly, that, in reading the description of a wandering Arab, one might easily suppose one's-self in Abraham's tent. Accounts of travels in Arabia, and the neighbouring country of Syria, will yield us more assistance in this matter, than, considering the very great remoteness of the period, we could venture to expect : but our views of it would undoubtedly be still more extended, if we knew the manners of the Arabs from their own writers, who could give us far more *correct* and *complete* information than travellers, by whom things are often viewed in a false light, can possibly do ; besides that they would furnish us with more *ancient* accounts likewise, prior even to the time of Mahomet ; and before the conquest of so many nations, and a certain degree of intercourse with them, could have effected any change in the original manners of this people.

In the year 1751, two Dissertations by the late *Icken*, were published at Bremen, *De Institutis et Ceremoniis Legis Mosaicæ ante Mosen* ; in which we

might have looked for some satisfaction on this subject; but they contain almost nothing relative to the Mosaic law, being chiefly employed on the ceremonies and worship of the Jews. So that this field hitherto remains almost wholly uncultivated.

ART. IV.

The law of custom, as it appears in some of the Mosaic statutes, is a remnant of the pastoral state of the Hebrews; but the legislative policy of Moses is rather of Egyptian origin.

THE ancient traditionary law which Moses sometimes adopted, and sometimes improved, I find to be principally *Nomadic*, that is, suited to the state of free wandering herdsmen, such as were Abraham, Isaac, and Jacob, the ancestors of the Israelites. And hence the reason why it receives so much light from the manners of the wandering Arabs, the descendants of Abraham. Very probably we should make still more discoveries respecting it, if we were better acquainted with the ancient customs of the countries between the Euphrates and Tigris, from which Abraham himself originally came. Even our travellers might here give us much information; although countries so often conquered by strangers, and for so many years under a foreign yoke, must doubtless have retained less of their ancient usages than that of the Arabs; and what has been retained, must be sought for, not so much in great cities, where commerce, and the arbitrary power of the Bashaws, must, from time to time, have intro-

duced many changes, as in the tents of the country people.

But independent of this ancient consuetudinary law, we find in the writings of Moses, traces of the most judicious policy, and of legislative wisdom, manifestly founded on the results of long experience. Without derogating in the least from his divine mission, we may warrantably conjecture, that he here borrowed from other nations whatever he found good in their constitution. If, as a prophet, he might convert the ancient usages of the wandering Israelites into laws, he would not therefore cease to be a prophet, because he introduced into his written laws the wisest policy of the most flourishing people on earth. When, therefore, I fully consider what in his system is new and unknown to the ancestors of the Israelites, and more especially what displays the most remarkable proofs of a highly refined legislative wisdom, I am compelled to ascribe it in a great measure to Egyptian experience ; as for example, 1. The foundation of the government on a system of agriculture ; which was quite unpractised by the wandering herdsmen : 2. (which is one of the hardest problems in politics,) The formation of a great and powerful state, independently on foreign commerce ; which the Egyptians abhorred : 3. The measures resorted to for keeping the Israelites distinct from other nations, &c. &c. For what is more easy to be conceived, than that Moses should have availed himself of what was good in the laws of a people among whom the Israelites had hitherto lived, and in whose learning and arts he had himself been educated ? And what ancient nation is there, of

whose policy, not indeed directed to foreign conquest, but to the culture and benefit of their own territory, we ought to entertain more exalted ideas, than of the Egyptians? It is almost impossible to survey, even the small remnants of Egyptian history yet extant, or the mighty and imperishable monuments of the power of their kings, and of a country established, nay, as it were, created, on the arts or peace, without feeling the highest veneration for the Pharaohs, and their ministers. And these fathers of their country, and these philosophers, will rise still more highly in our esteem, when we consider that they lived at a period when the people of other nations were barbarians. If we but knew more of the comprehensive, and far-extended legislative knowledge of this people, very probably our own political system, so far at least as connected with agriculture, and as directed to the peaceful increase of our internal strength as a nation, might receive material improvement. For, as to what regards the desolation of foreign countries, it must be owned, that the ancient kings of Egypt were mere children, compared to the Romans, who have left us a perfect model of the policy of a predatory government.

ART. V.

Moses, on account of their hardness of heart, allowed many things to the Israelites, which he did not altogether approve.

To the authority of those more ancient usages and laws which Moses found already in force, we

must ascribe his finding it necessary, on civil grounds, to permit certain things, which he could hardly have approved, or could only have considered as expedient in a political view. For laws run the risk of being disrespected and disobeyed, when they oppose deep-rooted customs, and would deprive the people of long-established and favourite rights. A legislator, who attempts to introduce a system of morality too strict for his subjects, will, by aiming at too much, gain nothing; and only pave the way for their more audacious and extensive transgression of his laws; and what they have successfully tried as to one, they will soon put in practice as to others.

The expression of Christ concerning such inveterate customs is, that *Moses suffered them* in the Israelites, *because of the hardness of their hearts*, (Matth. xix. 8.) and here will occur to every one, that which forms the greatest example of this, the case of Divorce. To the same class belong Polygamy, and the marriage of a childless brother's widow, and the right of the Blood-avenger to attack and kill with impunity, in any other than a sacred place, the person who had slain one of his relations. This right will hardly be reckoned among the laudable institutions of any government. It was, however, a right which the legislator was here forced to tolerate, because it was connected with an imaginary sense of honour, which he could not eradicate from the minds of the people. We see from the experience of our own times, of how little avail the severest laws have proved in repressing an evil of the like nature. The greatest and wisest legislators have laboured to extirpate the foolish and

fatal practice of duelling; but they have only shewn the world, how impotent laws are, when they attack an inveterate *point of honour*. Whoever understands the rights of the blood-avenger, in all their extent, will certainly not regard them as less mischievous and sanguinary than the custom of duelling. But when I come to treat of this subject in the sequel, I shall shew with how much legislative wisdom Moses contrived to prevent their direful effects, without needlessly opposing his people's notions of the point of honour.

ART. VI.

Hence it follows, that the Mosaic laws, though the best that the Israelites could bear, are not absolutely and universally the best, nor yet to be imitated by every people.

THIS leads me to a very important observation. Moses himself extolls the wisdom of the laws which, by God's command, he had given to the Israelites; and he does so justly. But the ideas of some people, on this point, have been carried to such an unfortunate length as to contradict Scripture itself. Because these laws proceeded from God, it has been inferred, that they must be absolutely the best possible laws: and one writer on Dogmatics has thence copied this conclusion from another, that, although Christian sovereigns are not absolutely obliged to abide by the civil laws of Moses, yet since they undoubtedly are the best and wisest of laws, every prince, as in duty bound to chuse

what is best for his subjects, ought, in reason, to imitate them as far as possible, and always adopt them in preference to heathen laws.

Now what is this in fact but to insist, that the civil law of Moses, which our theology has expelled, should be again privately introduced, as by a back door? The apostle Paul declares, without any exception, that the Mosaic laws do not bind us: but how can we, with a good conscience, have other laws, if they are the best, and we are bound to follow this best of models? They may not, it is true, *immediately* bind us, but they do so *mediately*, through the intervention of the moral precept, "Chuse what is best."

But can, then, those divines who have this precept in their creed, understand it rightly, and hold it for true in all its extent? Certainly not. For, can they believe, that a Christian ruler is bound to follow the example of Moses, in allowing polygamy and divorce, without all restraint? Put this question to them, and the probability is, that they will go too far to the other extreme, and maintain, that a ruler were guilty of a sin, in even tolerating such things, although God, by Moses, allowed them; just as if among Christian subjects, no example of Israelitish hardness of heart could ever be found.

From this example we clearly perceive, that the Mosaic laws are *not* always the best in *this* sense, that laws more holy, and more consonant to morality, could never be introduced among any people.—But it will be said, How will I obviate the difficulty, that as the laws of God, they must still be the best? The answer is easy: they are not absolutely so, but only the best

suited to the then circumstances of the people ; not the best for a Platonic, but for an Israelitish republic.

ART. VII.

Moses was often obliged to abide by former usage, though not the best, because the alteration of laws is dangerous.

A WISE legislator, even where no peculiar refractoriness on the part of the people is to be apprehended, will sometimes abide by established laws, although satisfied that, in general, and but for the force of custom, other laws would be more expedient. For any alteration of the law is confessedly dangerous ; and a tolerably good law, founded on long-established use, cannot probably be exchanged for a new one, really better in itself, without serious inconveniences. Such a change generally excites discontent in the minds of those who have already borne with the inconveniences of the old law, and thereby have a right to enjoy its advantages, when their turn comes. Suppose I lived under a government like that of the Hebrews, where daughters could not inherit ; I of course marry a wife without any portion ; and when her father dies, her brothers seize his whole property. But I myself have parents, and a sister. What then is more equitable, and more conformable to the first ideas of a truly equal law, than that I should here be recompensed for my loss, by becoming, in like manner, my father's sole heir ? But if meanwhile a new law is enacted, which gives to my sister an equal share of the inheritance

with myself, am I not thus seriously injured? I know that I must submit to the loss, if the public good requires it; but then it should be a very clear point of public good, that moves a wise and benevolent legislator to risk the aggrivement of perhaps thousands of his subjects, by the dissimilarity of the new and the former law. To give another example: A man, in a country governed by the Mosaic law, was robbed, and of course could obtain no farther redress, than that the thief should make restitution to twice the amount of his theft. Must he not think it hard, if caught in a theft himself next year, that he should be tried for his life, and hanged? Once more: The son of *Titius* is by an old law punished with death for adultery. If then another person debauches the wife of *Titius* himself, he will naturally look for the like satisfaction; and if in the meantime a new law, inflicting a less severe punishment, has been enacted, he will not fail to feel and to complain of its injustice.—I repeat it again, therefore, that the public good sometimes requires such changes; but no good lawgiver will resort to them, except in very clamant cases. For laws are properly nothing else than public restraints, or forbearances of the people one with another; and their credit rests entirely on their equality.

ART. VIII.

The Laws of Moses were necessarily regulated by the circumstances of the Israelites, and are not to be introduced among a people in different circumstances.

For the people of Israel, the laws of Moses might in various other respects be the best possible, while yet among us they would prove very pernicious, and therefore by no means to be imitated. Laws, to be good, must be adapted to the circumstances of the people to whom they are given; and these in every nation are different.—I shall now notice and illustrate some of these circumstances. And,

1. *Climate.* We shall see in the sequel, as Montesquieu has already remarked, that in a warm climate, drunkenness is far more to be dreaded than with us, and therefore merits severer punishment. Will then a wise prince in this part of the world, press the establishment of that law of Moses, which condemns to death a son addicted to drunkenness, who is disobedient to his parents, and cannot be restrained by them? Or, if you should say, this law was enacted *in terrorem*, and could never have been put in execution, because parents would hardly turn complainers at the risk of a son's life; what do you think of the law respecting the sabbath? Moses prohibited the kindling of fire on that day, which might do very well in Palestine; but how unsuitable would it be in Norway? On that day also there durst be no work done, not even in harvest. This again answered quite well in that country where the weather at that season is al-

ways settled ; but with us, and still more, towards the north, where the harvest is later and more precarious, such a law would be intolerable. For the sabbath might, amidst a course of rainy weather, be perhaps the only dry day, on which it would be possible to save the fruits of the earth.—It was on that day forbidden also, to prepare and dress victuals ; which, with us, were equivalent to ordaining a half fast-day every week. But in a warm country, where supper is the principal meal, the sabbath might and would be, by this law, a day of feasting ; for it began at sunset, and the meat was dressed just before, in the afternoon of Friday.

2. *The fertility of the soil.* The Israelites had to give three-tenths of their produce to the public service ; one to the Levites, another to the sacrifice-feasts, and a third, (which, however, only took place in later times,) to the king. This was suited to Palestine, where the returns were more than thirty fold ; but in the heaths of Luneburg, it would be more than the *rent* of the land.

3. *The situation of the country.* That of Palestine was in the highest degree convenient for commerce, and although the inhabitants themselves did not carry it on, they still had plenty of purchasers for their produce. The Sidonians, and, in later times, the Tyrians, applied to them for corn and wine ; and the caravans of merchants from Asia to Africa, took the other gifts of nature off their hands. Had not this been the case, agriculture, and indeed industry in general, might have slept, under a system of laws which gave so little encouragement to commerce. A

state founded on agriculture alone, must remain very weak and inactive, if there be no commercial mart in its neighbourhood. What would Poland be without Dantzic? But settle a people subsisting by agriculture, in the vicinity of Hamburgh, Bremen, or Amsterdam, and they will scarcely feel the want of traders among themselves.

The kings of Israel were, by a fundamental law of the state, interdicted from maintaining a strong force of cavalry. In a mountainous country, like Palestine, this was a wise policy: for it could almost as easily dispense with cavalry for its defence, as Switzerland. But if this were made a fundamental law in the Prussian states, they would be undone.

4. *The power and political relations of neighbouring states.* By commerce, a state may become great and powerful: but will a wise legislator ever think of this resource, if his people are in the immediate vicinity of the greatest, or the only maritime power, at least so long as they are not a match for it? Now this was the case of the Israelites, who had the Sidonians, and, more lately, the Tyrians for neighbours. Any institution for foreign trade among them, in the time of Joshua, and for several hundred years after, would have been as inauspicious as was the Ostend East India Trading Company to the house of Austria, which turned their allies into enemies.

The Israelites on one side had predatory nations as neighbours, with whom they could never conclude a settled peace; and by their war laws, captive young women were carried into slavery. In such a state, polygamy might have been allowed without much in-

jury to population ; for whoever wanted a plurality of wives, might purchase captive girls ; but were we to suppose polygamy established in Germany, those who took more wives than one, would in a manner rob others of theirs, and from the diminution of married pairs, a fearful decrease of population would take place.

5. *The mode of life.* A commercial nation could not subsist under a law prohibiting the interest of money, as did the law of Moses ; but to a nation of husbandmen, such a law was not unsuitable.

6. *The fundamental principle of the state.* No state, not founded on the Mosaic principles, which set out with the conquest of a great and flourishing country, the extirpation of the former inhabitants, and the equal partition of the land, could adopt the agricultural law of Moses, which prohibited the sale of land in perpetuity. Among a people where, at the giving of the law, every one was not put in possession of a piece of ground of sufficient extent, this would be a great hardship on those destitute of a settlement.

7. *The notions of the people as to honour and disgrace, or what we term the point of honour.* The law of the blood-avenger here affords a remarkable example ; because among the Hebrews and Arabians, that man rendered himself perfectly despicable, who left the blood of a relation unrevenged.

That law which enjoined the raising up seed to a deceased childless brother, was partly, at least, grounded on an idea of honour, which we have not. Hence it would be ridiculous to adopt it among us, where to die without issue is no disgrace, and to have children begotten by another, by no means serves to immortalize a man's name.

To this article we may in a particular manner refer the notions entertained of the greatness of injuries. The legislator who, among the jealous orientals, did not punish adultery with death, would only tempt the injured husband to become his own avenger. But if in this part of the world, adultery were made a capital crime, the consequence would be, that it would be rarely punished at all. On the one hand, the judge, inclined to mercy, would require impossible proof; on the other hand, the injured person, not wishing so severe a punishment, would be apt to refrain from accusation. Every offence ought in justice to appear to a lawgiver in such a light, as the majority of those whom it affects, are likely to regard it.

8. *The prevalent notions and feelings as to the nature and severity of punishment.* To punish with imprisonment people inclined to a sedentary life, is to no purpose, unless the place of confinement be extremely disagreeable or unwholesome. In Asia, therefore, blows must effect, in the way of punishment, what an European, restless and impatient of restraint, will suffer, in being confined to a room, better, perhaps, than that in which I am now writing. With us, on the contrary, blows, from the disgrace attached to them, which is a consequence of our right of using the sword to repel an insult, would be an excessive punishment for most crimes.

It is possible for a good lawgiver to select trivial or fancied evils as means of punishment, if the people only regard them as great evils, and are sufficiently afraid of them. Happy the people, who are foolish enough to be scared by such ghosts of laws! But had

Moses ordained, what with us is a military punishment, that the transgressor of such and such laws, should go for a certain time without his sword, as a prisoner, what Israelite would not have laughed at him? On the other hand, *he* could intimidate by the help of a seeming evil, which with *us* would be no punishment. If I married my paternal uncle's widow, the children of such a marriage would not be considered as mine, although entitled to succeed to the inheritance. This would give most people with us very little concern.

9. *Difference of customs.* With Moses, burning after death is a terrible punishment, which it could not have been, had the practice been general among the Israelites.

10. *The forms, kinds, and sources of crimes, and the chicane which defends them.* Where sodomy is not common, moderate punishment may suffice to check its prevalence; but where the people have such a tendency to it, as in southern countries, and where polygamy compels many to live unmarried, it may be necessary to threaten and to inflict capital punishment upon it. How variable and multiplied the forms of crimes are, I need not say. The kinds of them are often no less so.—That act, which in Deut. xxv. 11, 12. Moses punishes with the loss of the hand, is with us so unknown, or at any rate so very seldom heard of, that the lawgiver who should take notice of it, would be considered as acting very strangely indeed.

11. *The peculiar diseases which prevail among the people.* The leprosy required laws among the Israelites, which with us would be useless; and some of their laws relative to diseases, would here be foolishly

severe ; as for instance, if we should shut up the man who had burnt himself, and whose sores had any bad appearance.

12. *Even where all these things do not occur, the system of jurisprudence may yet require other laws, of which we cannot well adopt one, without also introducing others connected with it.* How many extol the goodness of the Mosaic laws, in not punishing theft with death, and expatiate on the rigour of our lawgivers, in not imitating them in this ! I have heard some people speak with as much zeal concerning this, as on a matter of conscience. But is it possible to adopt this law, so long as slavery is not introduced, and the thief who is incapable of making restitution, cannot be sold for a slave ? What can be done at last with the enormous multitude of thieves, where there is no slavery ? Houses of discipline and industry are very expensive to a state. And who would wish to make Christendom a present of the re-introduction of slavery—an evil from which it is happily delivered ?

Such zealots would also wish, that adultery should, as by the law of Moses, be punished with death. But as, in reason, the evidence ought to be very complete, before a person forfeit his life, these rigid legislators must then, for the benefit of husbands, who may not be able to adduce such proof as a capital offence requires, be obliged also to retain that law of Moses, which, without judicial evidence, allows a man to separate from his wife, if *he* only knows that she has been unfaithful to him.

How many fathers of the church, in their zeal for the Mosaic law, condemned the taking of interest,

which is also reprobated by the canon law? But these foes of interest should have previously prohibited the sale of land; for when I can lay out my money on landed property, which yields me interest for it, nothing is more just, than that my debtor should also pay me interest, if he wishes me to lend him my money, and not buy land with it.—These remarks I think sufficient to shew, that our legislators are not obliged to adopt the laws of Moses, as universally the best. If they would wisely imitate his example, let them regulate their laws by the circumstances of the country where they are meant to operate, and depart the farther from *his* laws, the more the situation of their subjects differs from that of the Israelites.

ART. IX.

The civil laws of Moses were not meant to be absolutely unalterable.

WHETHER Moses published his civil laws with a view to their remaining unalterable, while the Israelites should maintain their independence, or, as others would express it, while the Old Testament should subsist, is a more dubious enquiry than one would at first imagine. It would indeed appear, that some of them could not have been meant to be for ever the same; but were, in process of time, to admit of alteration. Thus Moses ordained certain pecuniary punishments: but fines must be increased, as the wealth of a nation increases, and gold and silver lose their value. The highest fine in the Mosaic law was that to be paid

by the man who falsely accused his wife of not proving a virgin on the wedding night ; and it amounted to 100 shekels, that is, according to the common calculation, 100 guildens ; but according to a more correct calculation, not much more than one-fifth of that sum. If such a fine had been seriously felt in the time of Moses, it certainly could be no longer so in the days of Solomon, when commerce had enriched the Israelites? Did Moses anticipate this, or not? Was *he*, like the novice in legislation, who fancies that a dollar will always remain a dollar?—In other places, he estimates the price of things that were to be paid for ; as, for instance, that of a lost slave. This could not possibly continue always the same.

If we but figure to ourselves the artifices to evade laws, which are sure to arise in the course of a few centuries, we shall entertain no doubt, that many of the Mosaic laws must, in process of time, have become ineffectual. If again we think how circumstances change in other respects, we shall readily perceive what alterations would become necessary in them. When, for example, commerce, under Solomon, arose to a great height, trading companies, at least under another name, would be formed, to whom it must have been permitted to give and to take interest ; and then the laws would have been defective, if the rate of interest had not been limited by some statute. —The punishment too of burning after death, must gradually have lost much of its terror and disgrace ; as, in the time of the kings, burning of the dead, became the *acmé* of funereal pomp. Now, if certain crimes increased to such a degree, that their original

punishments became too mild, the severity of those punishments must necessarily have been augmented. We find, accordingly, that some such alterations of the laws did take place after the time of Moses; and they do not seem to have been disapproved. Although Moses had nowhere expressly forbidden commerce, it was nevertheless, in a certain degree, the main scope and spirit of his laws, to keep the Israelites at a distance from commerce, especially by sea. But the causes of this, which might partly proceed from his jealousy of intercourse with the Sidonians, were removed in the time of Solomon, who availed himself of the highly advantageous situation of his territories, to enrich them by an extensive maritime commerce. By the law of Moses, *Exod. xxi. 37. (xxii. 1. Eng. Bib.)* a thief made restitution four or five fold. The punishment must have been gradually increased; for in Solomon's time, it is stated (*Prov. vi. 31.*) at seven fold.—The last chapters of Ezekiel contain, not indeed a historical narrative, but only a representation of a more pure and holy service, imparted to the prophet in a vision; but it appears, that they borrow a great deal from the best usages and maxims prevalent in the times of the latter kings; and at any rate, we cannot suppose that they would account any thing that was sinful, among the improvements of divine worship. And yet we certainly find in them some alterations of the Mosaic laws. Thus they give to the stranger the full right of citizenship; and point out a particular part of the land in which he might possess landed property. See *chap. xlvii. 22.* They give (*chap. xlv. 21, 22.*) to the priests more rigorous rules than Moses did. Ac-

cording to *his* law, the priest could drink no wine when going into the sanctuary; but here, not when going even into the inner court. Moses allowed a common priest to marry a widow; but this, the stricter law of Ezekiel prohibits, unless she was the widow of a priest.

Moses himself sometimes altered his laws; particularly those relating to punishments, although it likewise happened in other cases. His two first statutes merely prohibited the taking of interest from *poor* Israelites; but as chicanery might here have contrived evasions, he at last forbade it altogether among the Israelites, permitting it only to be exacted from foreigners*. We might therefore suppose, that he by no means wished that his ordinances should, contrary to the nature of civil laws, remain unalterable after his death, if we could only get rid of this objection, that to so many of his laws he adds these words, תקח עלם לרורותיכם, *a statute to your generations for ever*. Now this expression can certainly never have been meant to indicate a perpetual unalterability of the law; for we find it in Lev. xxvii. 7. applied to an ordinance, the observance of which was possible only in the wilderness; and which Moses himself (Deut. xii. 15, 20, 21, 22.) afterwards did away. While the Israelites continued encamped in the Arabian Deserts, Moses ordained, as well for the extirpation of idolatry and private sacrifices, as for the maintenance of the priests, that every Israelite who killed an ox, sheep, or goat, should bring it as an offering unto the Lord. Of

* I here refer to my Dissertation (in the 2d Part of the *Syntagma Commentationum*;) *De Mente et ratione legis Mosajce Usuram prohibentis*.

course they could not eat flesh, but at the *sacrifice-feasts*: and it is expressly added, *This shall be to them a statute for ever, throughout their generations*. Yet it was not possible for them to observe such a command, when the people were settled in the land, and the residence of many of them two, three, or more days journey from the altar; and hence even Moses himself ordained, that when they should enter the promised land, it should then be lawful for them to kill their cattle any where, and eat them as common food. Hence we see that the word עולם, which we translate *for ever*, was in the above passage, taken not in its highest, but rather in its most common and original sense, in which it meant *a long time*, properly *a generation*. Those laws, therefore, to which this addition is made, must now manifestly appear to be thus set in opposition merely to those more temporary ordinances, often requisite in civil policy, which are made but for a day, or a week. They were to remain in force, until formally repealed by a subsequent law.

I must, however, still allow, that Moses no where explicitly declares whether his people, when circumstances changed, were to be at liberty to alter certain civil laws, or who was to exercise that right: and yet he can never have meant to prohibit the thing itself. We may suppose that, after the final settlement of the government, when a change of any law became necessary, the people, or the king, probably, took counsel with the priests, or had recourse to an enquiry of the Lord, by means of the hallowed lot, which bore the name of Urim and Thummim. In regard to very important alterations, they might also perhaps apply

to the prophets, as David did, in regard to a point of the law of divine worship, when he proposed to erect a temple, instead of the tabernacle of testimony.—But here I am destitute of examples and historical accounts ; and I have no desire to let conjecture usurp the place of facts.

ART. X.

The Supreme Authority, in the Israelitish state, exercised the right of pardon, in regard to the Mosaic laws which inflicted punishments.

A CIVIL law, without all possibility of dispensation, would be subject to very great inconveniences. There are so many particular cases which require the alteration or remission of punishments, that a human legislator cannot possibly provide for them all ; and if Moses, as a prophet, had known and inserted such cases in his law-book, it would have grown into a library, and have lost that brevity which is its most peculiar characteristic. For it is not the least excellence of a code of laws, that the citizens be able to read it over repeatedly in the course of their lives ; and Moses undoubtedly had this in view, in commanding his whole law to be read over by the Israelites once every seven years, during the feast of tabernacles. At the same time, numerous exceptions can never be made with advantage or safety ; for when the cases, in which the remission of punishment may be allowed, stand in the law-book itself, this gives people a sort of boldness to transgress in particular instances, because they can indulge the better hope

of doing so with impunity. A law-book, more especially, which contained such an article as this, that “to powerful citizens, who could not with security be brought to punishment, and to very great and deserving men, whose services the community could not dispense with, the punishment of such and such crimes, as manslaughter, for instance, should be remitted,”—would only give a letter of exemption to all criminals of rank, and so expose the common people to oppressions; until the multitude and greatness of their wrongs roused them to madness, brought on a rebellion, and consigned the privileged order to the wild and disorderly judgments of an incensed populace.

But allowing courts of law not to be despotic, nor any man to be exposed to tyranny, still judgment should always be pronounced, not according to the opinion of *even the most upright judge, however rational, but according to the evidence brought forward.* It may sometimes happen, that the proof of the accused person having committed the crime wherewith he is charged, may be conducted according to all the rules of law and custom, and yet a discreet judge have cause to doubt whether he be really guilty; nay, be convinced of the very reverse. By the Mosaic law, two coinciding witnesses were sufficient to convict a man capitally; and yet it might be possible that both gave a false testimony. We may be satisfied of this, without being able to prove it judicially*. Now, if

* I will here suppose a case, by way of example. Titius goes into a wood with three acquaintances, believed to be his friends. He is there slain, and the three friends bring the supposed murderer, whom they had apprehended, bound before a court of justice. He is a man

there exist no where in the state, a power of pardon, innocence must thus suffer by the very law that was

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with whom Titius had previously lived at enmity ; and all the three unanimously testify, that he had placed himself in the wood, near a foot-path by which Titius had to pass ; had thence suddenly sprung upon him, wounded him mortally before they could prevent it, and then tried to save himself, by escaping among the bushes.—I will here farther add one of two suppositions, either that the clothes of the person thus apprehended as the murderer were covered with blood ; or else, that his leaving his house was suspicious, and that he could give no satisfactory reason for his being at that time in the wood.

As then there are here *three* witnesses, the accused must, by the Mosaic law, necessarily be condemned ; and indeed I believe he would be so, even by the laws of any country that did not compel the accused to convict himself, nor permit the barbarous liberty of extorting confession by torture.

I will now, however, in order to make an exception, add a circumstance, which is indeed so rare that it would scarcely be heeded in a criminal trial. Titius had had a dog with him, which, according to what is related in similar examples, continued close by the dead body, or ran home, as it were, to seek assistance. It happens quite unexpectedly, in the interval between pronouncing and executing the sentence, that this dog attacks one of the friends with the greatest fury. This creates suspicion ; and it is contrived to bring this man and his two companions, together with the supposed murderer, so near the dog as to attract his notice. He repeats again and again his furious attack on all the three friends, without so much as looking at the unfortunate prisoner. Now although this may not be sufficient to convict them of the crime, (for who would bring judicial proof from the act of a dog, and constitute him a witness?) yet every reasonable man will conclude *them* to have been the murderers, and that Titius's former enemy was innocent. This man, perhaps, *had* really meditated something wicked, and had lurked in the wood, as he could give no good reason for his then having left home : but he had not put

made for its protection; than which, no idea can be more horrible. The judge and the supreme magistrate will probably know this, without being able to help it; and, with the executioner of the sentence, be, as it were, compelled knowingly to commit murder.

Hence it follows, that when God himself enacts a body of civil laws, the supreme power on earth that administers them, receives from him a right to depart in extraordinary cases from the strict letter of those laws; to dispense with them; and to grant pardons. This right, prior to the time of the kings, the whole community of Israel may have exercised with the advice of the priest, though of this we find no historical proof: but it is beyond a doubt, that the kings exercised it, and *that* not always from a mere partiality, (as when David left his own two sons, Amnon and Absalom unpunished,) but upon principle, and from consideration of circumstances. The most remarkable example of this is, when David, in a sup-

his wicked purpose in execution, and Titus was murdered by his own friends before he came to the place where his enemy lay concealed. Or it was perhaps by mere accident that he was in the wood; and perhaps he was so magnanimous as to come to the assistance of Titus when he saw him fall, which indeed would seem the more credible from his clothes being stained with blood. One or other of these reasons he himself assigns for his exculpation. But he is by the law condemned to die, because the proof against him is complete. Yet who can think without horror on the execution of this sentence? Who but must wish that some superior power, invested with the right of pardon, could, in opposition to the law, interfere and prevent it?—If any man suppose this detail improbably contrived, and that the story cannot possibly be true, let him peruse *Scaligeri Exercitationes adversus Carolanum*, 202. sect. 6.; and *Bocharti Hierozoicon*, P. 1. lib. 2. c. 56. and he will find examples of murders discovered by dogs.

posed case which was laid before him, grants a murderer his life, who was said to have killed his brother, because the mother herself interceded in his behalf, and his father's race would have been extinct, had he suffered. We find this story in 2 Sam. xiv. 1,—21.; and I here notice it the more briefly, that I have treated of it at large in my *Dissertatio posterior ad Leges Divinas de Pœna Homicidii*, §. 34, 37.

But this is not the only example that occurs. The history of the kings, brief as it is, contains several others. David had been guilty of adultery with Bathsheba. But he does not therefore present himself to a court of justice, to suffer the punishment of that crime, although full of remorse, and perfectly penitent; nor does the prophet Nathan at all urge him to do so. It would seem as if it had been understood, that the king could not do any wrong, or be liable to punishment, so long as he did not transgress the fundamental laws; he being, in the highest sense, the powerful citizen whom criminal law cannot reach, because it might be dangerous, and produce a civil war, if an attempt were made to bring him before a court of justice. This exception, however, is nowhere made in the Mosaic code; to have even mentioned it would have been hazardous: It would have deprived the host of their right to treat David, as the Romans (for the cases are pretty much alike,) did Tarquin; and where that had taken place, a tyrant might have done every day, what only once stains the history of David. It is easy, therefore, to perceive, that to leave this single act of criminality unpunished in a great king, was for the advantage of the people;

and that it would nevertheless have been the most oppressive species of despotism and slavery, if a special law had interdicted the people, or the army, from bringing a king to punishment, who, in the confidence of this privilege, might debauch the wives of his bravest generals, while absent fighting the battles of their country, and daily exhibit before them such lamentable tragedies as was that of Uriah.

But the king on this occasion exercises the dispensing power still farther. He not only does not resign himself to the justice of the states or the army, but he does not even execute the punishment of adultery on Bathsheba. This I approve; and the Bible no where in the least condemns it. It would indeed have formed a very offensive spectacle, a true picture of cruelty, if, while the principal transgressor remained unpunished, the person whom he had seduced, and who had before maintained a virtuous character, had been stoned to death; and in the east, where the king in person is judge, such a scene would have been still blacker than with us. In the meantime, this is another example of the law being dispensed with, in the impunity of the king's partner in guilt.

From another passage of the history of this same Bathsheba, it might perhaps be inferred, that the kings had exercised the farther right of punishing criminals, on account of particular circumstances, with more severity than the law ordained; and that certainly would have been a more formidable and dangerous right than the former, which only went to the remission of punishments. It rests, however, only on a very literal and highly dubious interpretation of

the words. Nathan represents to the king, the case of a rich man forcibly seizing, killing, and treating his guests with the single lamb of his poor neighbour, who had reared it not for slaughter, but for his amusement. Now the punishment of theft and robbery, by the Mosaic law, is never death; but in the case of a sheep, fourfold restitution. David, who saw united in this rapacious act, the guilt of overbearing insolence, of deliberate injustice to a poor neighbour, and of cruelty, in murdering the animal to which the owner had, as is very common in the east, conceived a particular attachment,—with great indignation pronounced the following sentence: *As the Lord liveth, the man shall surely die, and shall restore the sheep fourfold.* David, therefore, seems here desirous to punish a tyrannical act of rapacity with death; but it is only *seeming*: for the Hebrews sometimes put *death* for all and every punishment; and so David may probably apply it here, as he is under the influence of strong emotion, which always leads people to speak figuratively. If one of our judges were to say in a passion, *Such a man should be hanged*, we should hardly take such a speech as a sentence legally pronounced, and literally to be understood. In the present case, the two punishments seem quite incongruous; at least in the second, there is *a great falling off indeed*: the rich oppressor having to forfeit his life, and, over and above, to pay four lambs. I am not inclined therefore to conclude, at least from this doubtful text, that the king of Israel had the arbitrary power of augmenting the punishments ordained by the Mosaic law.

ART. XI.

The boundaries between ethics and politics, of which last legislative policy is one branch.

IF to any of my readers the principles already laid down, should appear offensive, and repugnant to the idea of a law given by God, the cause is to be sought in their not duly attending to the connexion and limits of morals and politics. It is the business of both to promote human happiness, and both alike admit this universal principle, from which all their particular precepts flow—*Endeavour to extend happiness as far as possible.* In the means, however, which they employ for this purpose, they materially differ. Some means of universal happiness remain, in all circumstances and countries, the same; and their contraries are always certain obstacles to it. Thus in any nation, however and wherever situated, theft and whoredom, if prevalent, and regarded as matters of indifference, will never fail to lessen the public happiness. The former will diminish the love of industry and gain, which always increases where property is secure: the latter makes children doubtful, hinders their education, propagates diseases, and so forth. In regard to such matters as these, the rule obviously belongs to ethics. But there is not the same certainty as to the effects of other means: of which, perhaps, there may, for one single point of happiness, be proposed a great variety; and then it comes to be a question, to the solution of which a greater reach of understanding is requisite, which of them all is the

best? Even this will be different in different circumstances. Perhaps a rule may be found, which exactly hits *nine* cases; but the *tenth* forms an exception. When our measures for promoting public happiness are of this nature, they belong to politics; and if even God himself prescribe a system of politics, its rules will be different according to circumstances; nay, will change with time, and even while they are yet generally suitable, have their exceptions. Legislative policy is manifestly a branch of politics, and, indeed, one of the most important and difficult: and can we wonder if civil laws given by God, should in the course of time become unsuitable, and even while in full force, require in particular cases to be dispensed with, or relaxed?

ART. XII.

Not even all the Mosaic laws came into use.

SOME of the laws of Moses, though given with the utmost solemnity and earnestness, may yet, from the obstinacy of the people, never have been fully carried into effect. We shall see below, that those most important laws relative to the sabbatical and jubilee years, may, according to what Moses dreaded, have had this fate. It must not therefore be thought, that it is the real manners and customs of the Israelites which I represent in this treatise; for even the ten commandments did not become an universal law of this people.

ART. XIII.

Moses studies to give to certain laws, politically necessary, a connection with religion and virtue.

IN the legislative policy of Moses, I very generally remark a certain piece of address, which in our days is unusual, and perhaps no longer really necessary. Many laws will be more sacredly observed, if, without disclosing the real reason of their enactment, we connect them with some point of religion or virtue, and thus give them a moral signification and direction. They hereby acquire a certain degree of veneration, because it is believed, that trespassing any such law is an offence against the virtue itself which it betokens.

The small remnants which we have of the legislative policy of the Egyptians, show, that their lawgivers often availed themselves of this expedient: only they carried it too far, in inventing a false religion, to enforce and sanctify those laws which policy counselled. Thus the preservation of certain animals was necessary to the country: and they therefore made them representations of the Deity, or applied to them the doctrine of the transmigration of souls, in order to render them inviolable.—Wine was not produced in Egypt in sufficient quantity to be made a daily drink; and to import it into a country is a very hurtful sort of commerce, because it carries money thence to foreign nations; a circumstance, by the way, which it would, in our northern part of the world, be much for our profit that we duly attended to. Now what,

in such a case, is a legislator to do? Laws against such luxuries as the importation of wine, are commonly quite ineffectual. Were such laws to be enacted in Sweden, Denmark, Britain, and the north of Germany, it would in fact be only to authorize wine to be drunken without duty; for it would be continually smuggled. The Egyptian lawgivers, therefore, gave out, that wine was an invention of the evil deity, who allowed, however, the juice of the grape, before it was fermented. In this way, from the few vineyards that Egypt possessed, persons of very high rank *might* certainly be supplied with *must*, or fresh grape-juice; which we accordingly read of Pharaoh drinking, in Gen. xl. 11.; but neither *must* nor grapes could be imported in sufficient abundance for universal use*.

But by such artifices the legislative policy of a true prophet would certainly be disgraced; and, in fact, they never fail at length to become pernicious, however innocent they may seem on their first introduction, and even for some generations afterwards. To stick to the instance of wine: if religion prohibits the use of it, in northern countries the people will have recourse to *ardent spirits*, and in southern, to *opium*, which occasion greater injury to health and population, than the money saved can ever compensate.

It is only, therefore, when it can be done without fraud, that Moses avails himself of the expedient in question to enforce his laws. Thus to prevent any species of bird from becoming wholly extinct in the country, he prohibits taking from the nest the dam,

* See my Dissertation, *De Legibus Mosis Palæstinam populo caram facturis*, §. 7, 8. See also Art. CXC. of the present work.

with either the eggs or the young. But this law he clothes in such a dress, accompanying it with a promise of the divine blessing and approbation, that a reader commonly understands it as figurative, and as inculcating humanity by an example. If the people regarded such an action as cruel, they would, of course, abstain from it more rigidly, than if they adverted to the real object of the law*.

In the idolatrous worship of the orientals, blood was drunken. Moses, the great enemy of idolatry, whose fundamental law was, “Let JEHOVAH be the king of the people of Israel; let no other god be honoured in his presence,” had to contrive the expulsion of blood from the tables of the Israelites, that they might not at their meals be led into idolatrous devotion. He therefore prohibited the eating of blood on pain of death; but at the same time he gave to his law a figurative interpretation; speaking to this effect to the people, “Ye are never without sinning; and all the blood of all creatures slain belongs to the altar, as an atonement for your sins. Whoever therefore eats blood, robs the altar; and that God, to whom the altar is sacred, will set his face against such a sinner, to cut him off from among the people.”—See Levit. xvii. 12. and Art. CCVI. of the present work.

In a camp, cleanliness is peculiarly necessary, and evil odours will at last breed diseases. Moses therefore enjoins, that every one do his need without the camp, and immediately cover it with earth. The better to maintain this law, he declares that, by rea-

* See *Lex Mosaica*, Deut. xxii. 6, 7. *ex Hist. Nat. et Moribus Ægyptiorum illustrata*. See also Art. CLXXI of the present work.

son of the divine presence which protected them from their enemies, the whole camp is to be regarded as a temple to the Lord, which must not be defiled by any impurities, Deut. xxiii. 10,—15.; see Art. CLXXXII. With us, it is true, such a representation would not be very efficacious, as it is not deemed any want of reverence to defile even the walls of churches in this manner. But an Oriental has, as to such things, a keener feeling of impropriety; and if an Englishman were to pollute a Turkish mosque, as without scruple he would a church at London, the moment he was observed, he would be knocked down, and have his choice of expiating the profanation, either by suffering death or circumcision.

ART. XIV.

Moses no where threatens future punishment in another life, to individuals: but he threatens national judgments on the people at large, which Providence alone could inflict.

MOSES no where threatens future punishments in another world; and this to some has appeared very strange, considering that other ancient legislators have availed themselves of the mighty terrors which these inspire. One author hence infers, that he cannot himself have believed in such punishments; and another considers it as a mark of his divine mission, that he was able to establish his laws without calling them to his aid. I do not at all wonder at this omission, on the part of Moses; but only at the short-sightedness and forgetfulness of those who look for a sanction of

this nature to a civil law. Moses was not, like some ancient legislators, an impostor from patriotic zeal; which, however, that man *must be*, who sanctions civil laws by the terrors of futurity. God certainly does not wish to punish *all*, not even the most heinous crimes, beyond the grave: for even the greatest criminal, by repentance and amendment, may escape eternal misery. There is, therefore, no legislator so silly now-a-days, as to threaten the murderer, adulterer, or robber, with hell-fire. Before suffering death, on the contrary, every such malefactor obtains time to prepare for it, and to seek reconciliation with God. And to *Bishop Warburton* himself, who in his *Divine Legation of Moses*, gives the proofs of his divine mission, and whose opinion I now combat, as to this one, how ridiculous would an act of Parliament appear, which should denounce the pains of hell as the punishment of a crime? I refer to my *Argumenta Immortalitatis animarum ex Mose collecta*, for more satisfaction on this subject.

But Moses, in his procedure with regard to punishments, distinguishes himself from all other legislators, by this most remarkable peculiarity, that he threatens the whole nation, if as a nation they should wickedly transgress his laws, with punishments in *this* life, which no human power could execute; but which divine Providence could, and certainly would inflict upon the people and the land. The xxvi. chapter of Leviticus, and the xxviii. and xxix. of Deuteronomy, are full of such threatenings. No human legislator could have done this; at least so done it as that the issue should not expose to the people the emptiness of

his threatenings. It is the sure criterion of an immediate messenger from heaven, enacting laws by command of the Most High.

ART. XV.

Proverbial expressions in the Mosaic law, and other obscure terms of Hebrew law.

WE sometimes find in the Mosaic law, expressions which in their great brevity, discover something of a proverbial nature. In the number of these, I reckon those *antitheses* which, though pointed, are withal somewhat obscure, and which a legislator would rather have studied to avoid, if they had not already, through common use, acquired a certain definite and well-known meaning among the people. One of these we have in Exod. xxiii. 5. where the phrases עֵב לוֹ, and עֵב עָמִי, are opposed to each other: the former implying, that the ass, succumbing under his load, is left to the owner to do the best he can with him alone, which is forbidden; the latter, that he is not to be left till the owner himself leaves him. It seems to me, as if Moses were here giving to an old established usage, the force of law. Among us Germans, consuetudinary law consists in a great measure of short proverbs, of which we have instructive examples in Professor Eisenhardt's *Proverbial Principles of German Law*.—(*Grundsätzen des Deutschen Rechts in Sprichwörtern.*)

If we were better acquainted with the most ancient Hebrew proverbs, we should probably understand

many points of the Mosaic law more perfectly than we do. But as our original information, with regard to this very early period is so extremely defective, and no one can now write upon the subject in question such a book as that just mentioned, we are often compelled to acknowledge our ignorance. I wonder not, however, that we know so *little*, but that we know so *much* of the Mosaic law.

But there is still another difficulty attending it in common with other laws, although its consequences are not very material. It regards only etymology, about which we might give ourselves the less trouble, if it were not on account of its reference to the practice of Hebrew philologists. We find in it some peculiar words, either not used at all in the other eastern languages, or at least not in a sense applicable here, and whose derivation cannot be traced even in Hebrew; as for instance, *Jabam*, (יבם) *the nearest relation of a deceased husband, who must marry his widow, if he has died childless*; *Goël*, (גאל) *my nearest relation in general, whose duty it is to avenge my blood, and who has the right of redeeming mine inheritance, if sold*. I am well aware that many a novice in Hebrew will think that he knows the etymology of these words, and that גאל signifies to *redeem*, or *deliver*. But if it has this signification, it comes in the first place from *Goël*, and is what is called a *denominative*. Its real meaning, however, is to *pollute*; between which idea and that of a blood-avenger, there is no necessary connection, although the lover of etymology will at all hazards devise one.

ART. XVI.

No Systematic Connection in the Mosaic Laws.

AMONG the Mosaic laws there is no connection ; they are recorded in the order in which they were given, and hence particular laws, which by reason of their frequent transgression, required to be repeated and enforced, occur several times. That concerning the eating of blood, I find most frequently repeated ; whence I conclude, that it was found difficult to abolish that suspicious practice. It would be quite natural, to call the order in which the Mosaic laws follow each other, historical ; for they are not contained in a collection, having the form of a law book, but in a historical detail of the marches of the Israelites through the wilderness. *Institutions* they are not ; and, from the connection in which one chapter stands with the preceding or following one, I have no right to determine the sense of the law concerning which it treats.

I will not, however, deny, that there may not be a connection between individual topics of the several edicts ; for it is manifest, for instance, that the laws contained in the xviii. chap. of Leviticus are all connected. The different edicts are separated from each other by the formula prefixed, *And the Lord said to Moses, speak to the children of Israel*. In each separate edict we may trace a connection ; but not between two following ones. In the book of Deuteronomy, I find, besides, the introduction to the edicts omitted throughout many chapters ; and laws, that are uncon-

nected, so arranged, as the necessity of enacting them may have required, or as they happened to occur to Moses, who is the speaker there.

I shall now be forgiven for the unpleasant confession, that it is not in my power to give a complete system of Mosaic law without chasms. For where, on any subject, there is no edict to be found in the brief history of Moses, I shall not generally be able to determine what was the law. The law of the Israelites itself had not these chasms, but was undoubtedly a system, according to which the judge, in common cases, could always speak : for where there was no *written* law, ancient legal usage supplied its place. But as of this I am in most cases ignorant, I beg leave rather to point out the chasms themselves, than, like those who must know every thing, to supply them with such fictions, as are modestly termed *Learned Inquiries*, or with Talmudical traditions and rabbinical decisions.

ART. XVII.

Moses, as a Historian, studies to select those Facts, which serve to support his Laws.

THE history of his own time, which Moses records in his four last books, is, as it were, the *Bibliotheca*, or *Archives* of his laws ; but even those more ancient historical details, which are contained in the book of Genesis, are sometimes connected with them. From a great number of facts, which might have been recorded, he industriously selects those which had a tendency to establish his laws, and to recommend them to the Israelites. War against the Canaanites is one of the

first fundamental laws of his policy ; he, therefore, forgets not to relate (Gen. ch. ix.) the odious crime of Canaan, and the prophetic curse which the general ancestor of mankind laid upon him. In like manner, he determines to prohibit marriages with the Canaanites : and, from the book of Genesis, we easily perceive, that they were already objects of hatred to the ancestors of the Israelites. So likewise he permits polygamy in general, but not with *two sisters*, which he expressly excepts and forbids ; and whoever reads the history of Jacob, will hardly be inclined to have two sisters for wives at once.

ART. XVIII.

The illustration of the Mosaic Law not to be taken from the Talmud, and the Rabbinical writers.

ILLUSTRATIONS and reasons of the laws of Moses I never take from the Talmud. The oral traditions of the ignorant Rabbins, which we find collected in that work, may teach us the common law of the Jews, at the period when these men lived, but not the sense of the Mosaic writings. Many of the laws in the Pentateuch would make a strange figure indeed, if we were to interpret them as the Pharisees did, whose expositions, according to Christ's declaration, in many cases, served to inculcate doctrines and precepts directly the reverse of what Moses had taught and commanded. I here refer to what I have spoken more at large, in the 9th and 10th sections of my *Treatise concerning the Mosaic Laws which prohibited marriages of too close affinity.*

Those, therefore, who in this work expect to find a Talmudical law, will be much disappointed. I do not even mean to mention the names of those men, whose oracles are held up to us in the Talmud; nor indeed of the Rabbins in general. Whoever surveys laws with the eye of a Montesquieu, will certainly not be indignant at this declaration; for even with regard to Jewish antiquities, prior to the Babylonish captivity, the Talmud is at least as impure a source of information as the work of Bartoli is, with regard to Roman. Indeed this comparison is even flattering to the Talmud. I most readily allow to it its merits with respect to the antiquities of the second temple; although even here it contains many falsehoods: but as to the manners of the Israelites under the first temple, and still more in the time of Moses, a book so lately written, and which appeals only to oral traditions, can tell us nothing worthy of credit.

When I thus declare, that I treat not of the Talmudical law, it follows of course, that I do not touch upon the laws presently in use among the Jews. The man who would decide the law suits of the modern Jews, according to their own laws, (a matter with which Christians seldom meddle) must not regard my book as written for *his* instruction; but must, besides studying the Talmud, make himself master of the more recent usages and traditions of the Jews, and the present opinions of their Rabbins. That no man, therefore, may seek in this work, what is not to be found in it, I think it proper to mention, *in limine*, that I have nothing to do with the law of the present Jews, or of those who have lived since the Babylonish captivity.

BOOK II.

OF THE PUBLIC LAW OF THE ISRAELITES.

CHAPTER I.

THE GEOGRAPHY OF PALESTINE.

ART. XIX.

The Maps of Palestine.

§ 1. **T**HE country in which Moses purposed to establish the Israelitish government, is known to every one by the name of the *Promised Land*, or *Palestine*. The western part of it, on this side Jordan, has been visited by a great number of travellers from time to time; but so few have hitherto traversed the eastern part beyond Jordan, which is far more extensive, though unfruitful, that its boundaries, rivers, mountains, and towns, which are mentioned in the Bible, have, in general, been laid down on maps in the most arbitrary manner, without any pains being taken to ascertain their real situation.

We are still, therefore, in want of correct maps of Palestine; but whoever makes use of the one which is to be found in Hase's *Regnum Davidis*, or of D'Anville's general map of Asia, will have a notion of Palestine, sufficiently accurate for our present purpose,

if he apply to it the remarks to be made in the sequel. Homann's *old* map was extremely imperfect, and had it even been improved to the utmost, it would still have been useless to us, because it does not extend to the Euphrates, which was meant to be the boundary of the Israelitish territories, and really was so in the most prosperous periods of their government. That, on the other hand, prepared by Harenberg, and published by Homann's heirs, is, by reason of the many places inserted in it by mere conjecture, equally unsatisfactory, and is indeed apt to give a reader who implicitly follows it, very incorrect notions even on material points; as when, for instance, it applies the names *Schilfmeer*, (ים סוף) and *Frath*, (פרת) to waters that were never so denominated. It has besides the fault of including too small an extent of country, and of not having the Euphrates in those regions, where the Israelites regarded that river as their boundary. Re-land's map, and many others, have the same imperfection. If a person is merely learning geography, it is indeed of little consequence, because, by recurring to other maps, he can easily remedy it. But for our present purpose, no map is of use that does not exhibit the whole country destined for the Israelites. If I were to wish for such a one, it would extend from the 50th to the 66th or 67th degree of longitude, (reckoning from the meridian of Paris,) and from the 28th to the 36th degree of latitude. It were needless that any great number of places were marked on it; only I should wish it to have this pre-eminence above the common maps, that *Mount Lebanon*, which forms two irregular triangles, and which profane authors

call *Libanus*, and *Anti-Libanus*, were delineated upon it as fully and truly as possible.

I do not, however, at present consider Palestine as it was accidentally extended by the conquests of its kings; and therefore have no desire for a map extending to *Thiphsach*, (*Thapsacus*), 1 Kings iv. 24.; but only to the boundary specified by Moses in his laws. The principal passages in which this is done, are Gen. xv. 18,—21. and the whole xxxiv. chapter of Numbers. From the history of the conquest of Palestine under Joshua, we may also avail ourselves of Josh. xi. 16, 17. and of Josh. xiii. 1,—7.; at least we may regard what God there says to Joshua, as an authentic illustration of the Mosaic law.

ART. XX.

The Western Boundary of Palestine, viz. the Sea.

§ 2. TOWARDS the west, Moses recognizes no other boundary than the Mediterranean sea. On the coast of Palestine, there are no small islands; and to include those at a distance from it, such as Cyprus or Crete, would be to act contrary to the spirit of his intentions; for it was his wish to keep the whole people together, and prevent their intermixture with other nations. In fact, the Israelites gave themselves so little concern about islands, that we do not once meet with the word in any of the books written before the captivity; for the word so rendered in these books has quite a different meaning, as I have shewn in my *Spicilegium Geogr. exteræ Hebræorum*, T. I. p. 131, —142.

The real boundary of the Israelites, on this side, did not continue so distinct and simple in the succeeding periods as the law would have made it, because they desisted from expelling the Philistines and Canaanites. David first fully executed what the law-giver had commanded on this head ; and yet it would appear that he had rather subdued than exterminated these strange nations. The clear possession of this sea coast is of infinite consequence to a state established in Palestine, even although it carry on no commerce : for without it the boundary can never be secure. As long as the Philistines on the southern side of Palestine continued to occupy but a small tract of coast, the Israelites were never at rest : sometimes they were even brought under the Philistine yoke, as we see from the books of Judges and Samuel. And farther towards the north, the single city of *Acco*, or as the Greeks call it *Ptolemais*, is so decisive of the fate of Palestine, that whoever possesses it, may easily make himself master of the whole country. The history of the Israelites, as well as of the Crusades, establishes this ; and the reason is, that from this port, a great plain extends all the way to the river Jordan, dividing Palestine into two halves. In this plain have been fought most of those decisive battles which have caused the country to change its masters : that, for instance, against Sisera, Judges, chap. iv. ; that wherein Saul fell, 1 Sam. chap. xxxi. ; and that in which Josiah was defeated and slain*, 2 Kings xxiii. 29. It was precisely the same in the time of the holy war,

* See *Historia Vitri apud Hebræos*, § 2. in Part III. of the Comment. Reg. Soc. Gotting.

the chief scene of which was this vale, and the city of Acco itself.

That, on this hand, the sea was certainly to form the boundary of the Israelites, is manifest from this circumstance, that the territory assigned to the tribe of Asher as its portion, (Josh. xix. 26,—29.) reaches from mount Carmel towards *Ecdippa*, (Achzib) on the coast; and that it was reckoned a transgression to this tribe, that they left Acco and Achzib in the hands of the Canaanites, Judg. i. 31. But whether from Achzib the boundary was to extend farther northwards along the coast, is a more difficult question; on which, though with some hesitation, I depart from the common opinion: and in order the better to understand what I have to advance, let the reader have recourse to some good map, such, perhaps, as Maundrell's, of Mount Lebanon, in *Relandi Palestina*, p. 320. or even to those of D'Anville and Hase.

It is generally understood that the sea-coast, 'as far as Sidon, was to form the boundary of the Israelites; so that the country where *Tyre* afterwards stood, (for there was no Tyre in the time of Moses,) and farther on, Sarepta, and at last even Sidon itself, will be included within the limits assigned to them; nor do I deny, that the passage just quoted from Judg. i. 31. where the tribe of Asher is blamed for not having driven out the Sidonians, is very favourable to this opinion. Yet it appears not a little singular, that in later times, as in the reigns of David and Solomon, the Israelites not only had never possessed this coast, nor made a single attempt to conquer it, but had even lived in the strictest friendship with the kings of Tyre.

It is true we read in 2 Sam. viii. 8. of David conquering the city of Bairut, which lay on the coast some miles north of Sidon ; but he did so, not in obedience to the Mosaic injunction, for he did not take it away from the Canaanites, but only from the king of Nesibis, with whom he was at war*. This was therefore only an accidental enlargement of his territory, which was not included in the plan of Moses ; and even David's best ally, in making this northern conquest, was Hiram, king of Tyre : nor do we find in Scripture, the least disapprobation of this alliance, which continued under Solomon, although it be very frequently mentioned there.

From what Moses himself records concerning the Israelitish boundaries, no satisfactory conclusion can here be drawn. Among the nations of Canaan, whose land God (in Gen. xv.) promises to the posterity of Abraham, the Sidonians are not named ; but as in the x. chapter, (ver. 15.) Moses had previously recorded Sidon as the most ancient colony of the Canaanites, or, as he expresses it, *the eldest son of Canaan*, it seems to follow from thence, that Sidon did *not* belong to the land which God meant to give to Israel. I allow, indeed, that arguments drawn from silence, are somewhat uncertain ; but it still remains remarkable that, frequently as the Canaanitish nations to be driven out of the land, are mentioned in his writings, whether in a longer or shorter list, the Sidonians are never included. What occurs concerning Sidon in the blessings of Jacob, Gen. xlix. 13. seems to shew,

* See my *Historia Belli Nesibeni*, § 8. which forms § 13. of Comment. Gotting. Part II.

not that this city should be considered as belonging to the Israelites, but as situated beyond their frontier, in the neighbourhood of the tribe of Zebulun. If we knew what mountain had the name of Hor, or Har, the 7th and 8th verses of the xxxiv. chapter of Numbers would at once decide the question; for there, the northern boundary is pointed out, as extending from *the sea* to that mountain. But in geography, we know nothing of Mount Hor; and, therefore, can conclude from this passage nothing more than that the boundary, leaving the coast, was to run for so far along a certain mountain so called*; but are we to make this mountain Lebanon, which is generally understood to take its rise near Sidon, and thus carry the boundary along the coast to Sidon? Or are we to refer it only to the lower arms of Lebanon, which extend to Tyre † about a German mile from the

* According to the Masoretic points, the name of the mountain is *Hor*; but it may also be pronounced *Har*, that is, *mountain*; and thus have the LXX. (with the Samaritan) rendered it, *παρὰ τὸ ὄρος*, *τὸ ὄρος*, making the second word a proper name. Jerom also so expressed it, and understood it as meaning the *Mountain of mountains*; and accordingly in the Vulgate translated it, *Ad montem altissimum*.

† See *Busching's Geography of Asia*, p. 226, and downwards; and *La Roque's Voyage du Mont Liban*, T. I p. 54. (*et le dernier Terme un peu au dela de Tyr, s'etendant du Nord au Midy,*) and p. 189, downwards. As all depends here on the question, whether the mountain, impending over the coast, terminates near Sidon, where the ancients place the extremity of Libanus, or proceeds as far as Tyre, I will here adduce the testimony of a native, in favour of the latter opinion. Abulfeda, in page 13 of his *Tabula Syria*, says, "In the geography of Syria, Mount Amila (the modern name of Western Libanus) is remarkable, extending on the east side of the sea-coast, (of Phœnicia) southward to the vicinity of Tyre."

sea†, and are thus the nearest mountains which rise not far from the sea? I should almost suppose this latter were the truer notion. But we have, methinks, an authentic illustration of the words of Moses, in the book of Joshua, altogether in its favour. The passage is in chap. xix. 24,—31. and describes the portion of the tribe of Asher which lay nearest to Phœnicia. This portion, in the first place, touches the sea, near Mount Carmel and the river Belus: its bounding line runs thence landward a great way to the north; and then turns back again southward, past Sidon and Tyre, but without reaching the sea in this quarter. Sidon is mentioned indeed in ver. 28.; but in ver. 29. not included among the cities assigned to this tribe; for it is only near Ecdippa (Achzib) that it comes to touch the coast again; so that the small tract of coast north from Ecdippa, which we call Phœnicia, remained to the Canaanites.—I here refer to the remarks in my German version of the Bible, upon this passage, which is the more decisive, as it speaks not of territories actually conquered, but pointed out for conquest, and to be divided by lot. It cannot, therefore, be said to have been the fault of the Asherites, that they did not conquer the sea-coast. Joshua, who is certainly the most sure expounder of the Mosaic law, and who must at any rate have known what mountain was called Flor, had not assigned it as any part of their portion*.

† See Pococke's Description of the East, Part II. § 131. p. 84. of the English edition. Pococke specifies five English miles, which, however, are somewhat less than one German mile.

* What may be advanced against my opinion, and in favour of the

If here I am right, and Moses intended to leave the little stretch of coast that runs at the base of the moun-

common one, which gives Sidon and the whole coast thitherward to the Israelites, is of different degrees of weight. Not to interrupt the text with too extensive a geographical detail, I will here introduce it in the form of a note, which the reader may pass by, if he feels but little interest in the arguments for and against my solution of this question.

1. It is said, "That among the lands, which, according to Deut. i. 7. the Israelites were to obtain, the sea-coast (*Choff hajjam*, חוף הים) is enumerated. Now, the whole coast which we call Phœnicia as a proper name, bears this appellation; or as it is in Arabic, "*Sachil*."

Answer. The Israelites were actually to obtain a part of this coast, namely, near mount Carmel, Acco, and Ecdippa; and this is what Moses seems to intimate in the passage quoted. The common opinion, indeed, gives them this coast, beginning at *Dor*, and reaching to the river *Kibber*, but not the whole of it, for it breaks off at Sidon; so that, according to both opinions, the Israelites were to occupy this coast, not wholly, but in part; and their difference is merely this, that mine makes it less than that of my adversaries does.

2. "In Joshua xiii. 6. among the nations to be driven out by the Israelites, are specified, *all the inhabitants of the hill country, from Lebanon unto Misrephothmain, all Sidonians*."

Answer. This is probably spoken not of the city of Sidon, else it would have been expressly said, *and Sidon*, but only of the Sidonian colonies on mount Lebanon. In this sense we have the more reason to understand it, that in ver. 24. the *cave of the Sidonians* is mentioned, a strong hold which we read of in the Histories of the Crusades, and which *Maximus Tyrius*, (lib. xix. cap. 11) thus describes *Municipium quoddam nostrum in territorio Sidoniensi situm, speluncam, videlicet, inexpugnabilem, quæ vulgo dicitur Cîtea de Tyrum*. Now had Sidon itself been to be allotted to the Israelites, it would have been specified by name, and not merely this cave, which lay within its territory. The omission of the name of such a principal place looks too singular, to let us admit that it was included.

tain from Ecdippa, northwards to Sidon, to the Phœnicians, who actually possessed it, and from whom it

3. "In Josh. xix. 29. the city of Tyre is mentioned among the "boundaries of the tribe of Asher."

Answer. It cannot possibly have *then* been so, for it was not then in being as a city, having, according to Josephus (*Antiq.* viii. c. 3. § 1.) been first built but 240 years before Solomon's temple: and his account is the more to be depended upon, because he has generally taken the history of the Tyrians from writers of their own, now no longer extant. Tyre was then only a castle or tower, near the haven; although seemingly a city lay more inland, and this, *the city near the strong hold Tyre*, as the historian expresses it, fell to the tribe of Asher. It is clear, at least, that to this tribe, the historian does not give what he calls the strong hold Tyre, but a different city.

4. "In Josh. xix. 28. the boundary of Asher is said to reach unto "the great city Sidon."

Answer. So it does undoubtedly; but still so as not to include that city, else would it here reach unto the sea, and *that* according to ver 29. it only does first at Achzib: besides, as I have remarked on Josh. xix. 30. Sidon must not be reckoned among the cities allotted to Asher, else their number will amount to 23 instead of 22.

5. "In Judges i. 31. it is said of Asher, among other things, "that he had not driven out the inhabitants of Sidon; and therefore "it appears that he should have done so, and have taken possession "of it."

This is the strongest objection to my opinion; and I know not what satisfactory answer to make to it. It has indeed occurred to me, that the *Cave of the Sidonians* mentioned, Josh. xiii. 4. might probably be here called Sidon; but the conjecture seems too violent. To declare my opinion honestly, I conceive the words יושבי צידון, *inhabitants of Sidon*, to be of doubtful authority, and a mere interpolation; for judicious criticism might certainly make many important corrections on the text of this book of Judges. The arguments for excluding Sidon from the territories of Israel, are, at any rate, too strong, to allow me to sacrifice them to this single passage in that book, which of all the historical parts of scripture written before the

bears, among the Greeks, the name of Phœnicia, his view therein it is very easy to perceive. To the Israelites this little tract at the foot of Lebanon could have been of no great use, as they were not to be a trading people; but if the trading people who inhabited it had been driven out, and the maritime commerce, which the Israelites could not carry on themselves, had totally ceased, they would have lost the whole sale of their superfluous corn, and the other commodities which they exported by means of the Phœnicians, together with the caravan trade from Arabia to Phœnicia, which must have been very profitable; and, in short, they would have lost all the motives to industry, agriculture, and manufactures. Although they had not the coast, their boundary here was quite secure by means of mount Lebanon, at whose foot the sea flowed; and the inhabitants of so small a tract of coast could not become very formidable. Besides, in the blessings of Jacob, Gen. xlv. 13. it is actually represented as a fortunate circumstance for Zebulun, that he was to have his inheritance on a sea-coast, well frequented by ships, and not far from Sidon.

ART. XXI.

Southern Boundary of Israel on the West, or towards Egypt.

§ 3. THE southern boundary of the Israelites was to commence at the Mediterranean sea, with what was captivity, certainly contains the most numerous difficulties. I admit, nevertheless, that it remains a difficulty with respect to my opinion yet unsolved.

called the *River of Egypt*. What river this was is uncertain. Some think it was the eastern branch of the Nile, which empties itself into the sea at Pelusium; others make it merely a channel, which the Nile, in the season of its overflow, opened for itself into the sea still farther eastward; and others again, a rivulet, which, they pretend, falls into the sea at the place now called *El-arisch*, the *Rhinocorura* of Latin authors. I am not in a situation to say any thing certain on this point, until the third question which I proposed to the learned travellers into Arabia shall be answered.

Farther towards Egypt the Israelitish boundary was not to extend; indeed Moses, by a particular law, Deut. xvii. 16. prohibited the king of Israel from ever *carrying the people back into Egypt*; that is, from ever again making a conquest of the land of Goshen. I have illustrated this law in a Dissertation * to be found in the fourth part of the Commentaries of the Göttingen Society of Sciences, and may, therefore, here treat it with greater brevity.

Concerning the situation of the land of Goshen, authors have maintained very different opinions; but have withal made it impossible for themselves to ascertain the truth, by concurring in the representation of Goshen as the most beautiful and fertile part of Egypt. But is it at all probable, that a king of Egypt would have taken the very best part of his territory from his own native subjects, to give it to strangers, and these too a wandering race of herdsmen, hitherto accus-

* *Commentatio de Legibus Mosis Palestinam populo caram facturis.* Sect. 1—4.

tomed only to traverse with their cattle, the deserts and uncultivated commons of the East? Moses' expression (Gen. xlvii. 6.) מִיטֵב הָאֶרֶץ, translators, expositors, and geographers have perverted without any fault of his; deriving מִיטֵב from טִיב, *good*, and supposing it to mean *the best of the land*; but they would have with more propriety compared it with יַטֵּב, *jatab*, (Arabicé, *ṭatab*) which in Arabic signifies *to sojourn in a place for the sake of pasturage*; and hence the Arabs call a meadow or grazing place *Mautab*. Even the Hebrew מִיטֵב seems itself in Exod. xxii. 4. to appear in this sense: so that, on this ground, Goshen is really described, not as the *best* part of Egypt, but as a tract of land set apart for tents and pasturage. It lay immediately contiguous to Palestine, as is evident from 1 Chron. vii. 21,—23. went southward probably as far as Heliopolis, and included partly those places on this side the Nile, which, from the Ethiopics of Heliodorus, we know under the name *Bucolia*, (a marshy tract, overgrown with reeds and bushes, and only fit for pasture,) and partly those deserts towards the east, in which the wandering hordes found some sustenance for their sheep, and which in some places may have extended to the Red sea. I here adopt these geographical positions without proof; to which, however, I do not mean to stand indebted for ever: I only reserve it for a fitter place than this, in the second part of my *Spicilegium Geographiæ Hebreorum exteræ*.

Goshen may thus have extended pretty far into eastern Africa, and it is possible, that the Israelites might have wished to appropriate it again, at least for the

purpose of letting their herds range in it at large. Moses had also this singular apprehension, that a desire to breed horses might tempt some of their kings to carry the people, in a certain sense, back to Egypt ; certainly, however, not to serve the Egyptians again, (for what sovereign would do such a thing of his own accord ?) but rather to seize upon that province ; and therefore he finds it necessary to guard against this event by a special, fundamental law, which prohibited the Israelites from dwelling in Goshen for ever.

The reasons of that law are probably these : In the first place, it was the design of Moses to establish the Israelitish state, not on the principles of pastoral, but of agricultural life ; and Goshen was only suited to the former. In the next place, the people of Israel would by the possession of Goshen have become a much weaker nation than they were without such a conquest. For they would thus have lost their natural and easily-protected frontier, and, instead of it, had to defend a line of immense extent, and have made, besides, the powerful sovereigns of Egypt their natural and perpetual enemies ; which would not be the case, so long as they confined themselves to Asia. Certain sorts of conquests are hurtful to nations : and those achieved under such circumstances as have been just mentioned, are manifestly so pernicious, that we cannot sufficiently extol the foresight and policy of the lawgiver who prohibits them. Thus England would at present be much less powerful, if in possession of part of France, or the whole of Flanders : and if a king of Prussia conquered Courland, he would thereby be probably more weakened than if he lost all

Prussia*. The situation of Spain in the preceding century, affords an acknowledged example of pernicious conquest. She was not a match for France, although her territories encompassed that country on almost every side.

ART. XXII.

Southern Boundary of the Israelites on the East, or towards Arabia.

§ 4. I do not here mean to trace the curvatures of the southern bounding line, from the river of Egypt to the southern extremity of the Dead Sea, nor to describe the places which, according to Numb. xxxiv. 3, 4, 5. rest upon it; but to content myself with *three* observations, which appear to me more important than a detail of geographical controversies concerning the limits of Arabian deserts.

1. In the *first* place, the neighbours of the Israelites on this side were first the Edomites, who had a well regulated government, and a cultivated country; then came a great multitude of wild Arabian tribes, Amalekites, and others, of whom mention is made in 1 Sam. xxvii. 8. With these last, it was impossible to maintain settled peace: they lived chiefly by depredations, and were in the practice of carrying away young women

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* I must remark that this was written in 1770, while the king of Prussia had not West Prussia. At present, (1774) the expression would be too unqualified. Yet still Courland would be a pernicious conquest for Prussia, while Russia is so powerful as at present, unless Samogitia likewise formed part of the acquisition.

as slaves. A neighbour of such a character is more inconvenient than a wilderness; and therefore we need not blame Moses for taking occasion, in consequence of a sudden attack from the Amalekites, to make the extirpation of that people a fundamental law of Israel, Exod. xvii. 8,—16. Prudence requires that we should clear the deserts of such neighbours, when their repeated injuries give us a just right to do so: and so would the English now think and act towards the scalping Indians of North America, if they did not account them worth sparing for the sake of the fur trade, and of drawing some profit from a country which they themselves could not inhabit and people. But it was quite otherwise in the case of the Amalekites, whom Moses commanded to be exterminated as soon as possible; and with no more cruelty, than if a European legislator of a commercial nation should take the first opportunity of ordering the nests of the Barbary pirates to be destroyed, to obviate the necessity of carrying on a perpetual warfare with them in miniature. Till that command could be carried into effect, while they continued to live in the Arabian deserts, it was necessary for the Israelites to regulate *their* procedure according to that of such neighbours. If they for the sake of plunder, made excursions into Palestine, nothing could be more just than that they should be requited with the like treatment; which we accordingly find that David did, (1 Sam. chap. xxvii.) as a thing perfectly allowable; convinced that it would subject him to no reproach, as he did not here plunder Israelites, but only their enemies. It would appear too, that he continued the same procedure as a king,

and allowed his soldiers, who would otherwise have wanted subsistence, to resort to depredations, at a time when we cannot perceive that any war was regularly carrying on. See 2 Sam. iii. 22. In such a situation, this was as little unjust or dishonourable, as if any man now-a-days were to go a cruizing against pirates, or forage in an enemy's country at the head of a body of light troops ; only that our manners require, that for such a purpose he should obtain authority from his sovereign ; whereas *then*, every one had naturally a right to carry on hostilities against the enemies of his country. Our plan is the better and more secure of the two ; but the other was the natural one, before the artificial refinements of modern warfare were invented and introduced.

2. We must not represent these nations to ourselves as having had their boundaries completely defined and protected. This is a notion that often involves the readers of the Bible in difficulties. They consisted partly of wandering herdsmen, who pastured the open country, without possessing one foot of it in property ; and in the midst of the Amalekites, there might be encampments of Midianites and other tribes attending their cattle. We see this very clearly from 1 Sam. xv. 6. where Saul, intending to attack the Amalekites, sends previous warning to the Kenites, (another tribe of herdsmen who, intermixt with them, grazed their cattle in the same desert) and begs them to withdraw for a time from that quarter. These Kenites were the very people, of whom, as we read in Judg. iv. 17. certain hordes traversed Palestine, and were living at peace with the Canaanites, with whom

Israel waged war. It is hence easily conceivable, how Balaam from the rocks of Moab, could see so many various nations, as is insinuated in Numb. chap. xxiv. They were not *whole* nations ; but only hordes of the various nations whose fates he predicted, when he cast his eye upon their different encampments, scattered over the wide desert below.

Even Idumea we must not conceive to have had its frontiers by any means *distinct*. Uncultivated and unappropriated wastes overspread the country, and only the cities and arable fields could be said to be under the dominion of the king of Edom. The history of the march of the Israelites proves this beyond controversy. The land of Edom borders with the southern parts of Palestine, and it reaches also to the Red Sea, on which was the port of Eziongeber, belonging to the Edomites. Now had there been here an exclusive and well-defined boundary, it was impossible to have marched from Sinai to the east bank of Jordan, without touching it. Yet Moses made this march. At one time, indeed, (Numb. xxxiii. 35,—37.) he was quite close to it ; but instead of passing it, he made a circuit *round* their territory, after they had refused him a passage *through* it.

3. I do not find that the lawgiver of the Israelites had it ever in view that they should establish any settlements on the Arabian Gulf. It is true, that in Exod. xxiii. 31. he promises them, in God's name, that their border should reach *from the Red Sea to the sea of the Philistines* ; and this actually took place under David and Solomon. But a promise or prediction is no law, nor yet even in all cases, so much as an autho-

city. God, who foresaw that the Edomites after four or five hundred years, would give the Israelites a just pretence for a war, and that in the course of it the latter would subdue the whole country even to the Red Sea, might foretell the same, without thereby authorising the Israelites to go to war with the Edomites, until compelled to take arms, and become conquerors. Perhaps, however, the passage above quoted, does not really go the length of authorising what David did, in bringing the whole of Idumea under subjection, but only intimates thus much, that the Israelites should pasture their herds in the open and uncultivated deserts as far as the Red Sea, yet without taking possession of any sea-port upon it. At least an opportunity of this very advantage, if he could have thought it such, *did* offer itself to the Israelitish legislator, of which he did not avail himself. The Edomites had two ports on the north point of the Ælanitic Gulf, *Aela*, (אֵילָה) which is still known by the same name, and *Eziongeber*. The king of Edom treated the Israelites in a very unfriendly manner, when they requested permission to pass peaceably and unmolested through his territories. He not only threw aside all fraternal regard, but even marched at the head of an army to oppose them, and offered them battle, (Numb. xx. 20.) Here the Israelites might have so acted, as when Sihon, king of the Amorites, did the same, (Numb. xxi. 21,—25.); when a victory gained would have given them possession of all Idumea, or at any rate, of these ports. But God expressly forbade them, with the assurance that he would not give them one foot of their kinsmen's country, (Deut. ii. 19,—22.)

This procedure of the Israelites will appear almost too generous and disinterested to those who think of the immense advantages which would have accrued to the inhabitants of the promised land, from the possession of a port in the Red Sea. It has been remarked very long ago, that Palestine is the natural seat of great maritime commerce ; which, indeed, first arose in that quarter, although afterwards unnaturally, as it were, it removed to other less convenient shores. To perceive this, we need only cast an eye on the map of this country. It lies between two seas, from which there is a direct navigation to the farthest eastern and western parts of the globe. The land-carriage of commodities from India and other oriental countries, unloaded at Aela, and to be transported to the Mediterranean sea, is very easy, and by the use of camels very cheap ; and the caravan trade betwixt Asia and Africa must likewise take its way through Palestine. I know no country in the world which, in point of situation for commerce, is at all to be compared to it, except the Isthmus which connects North and South America ; although, if I am not mistaken, high mountains deprive *it* of the advantages which it would otherwise enjoy from its vicinity to the Atlantic and Pacific oceans. If then a nation inhabiting Palestine would take due advantage of its fortunate situation, it ought certainly to secure a port in the Arabian Gulf. Moses, considered merely as a human legislator, could not, from ignorance, have failed to perceive the benefits resulting from such a possession : for the Canaanites had made this discovery long before. They had originally, and long before Abraham's

time inhabited Idumea* ; and from thence had, for the sake of commerce, settled those colonies in Palestine, which afterwards engrossed almost the whole trade of the world ; and among which, I need only mention the name of Sidon. It was then neither from want of consideration nor foresight, that Moses omitted to lay hold of the advantage in question ; but in doing so, he shews us the great principle of his polity, which was to prevent the Israelites from becoming a commercial people. It was on this account that he gave himself no trouble about possessions, which to maritime commerce, would have been of infinite importance. Solomon, on the other hand, who wished by trade either to enrich himself or his subjects, fully understood the value of these sea-ports. His father had conquered them, as well as the whole of Idumea ; and the son made them the emporiums of Oriental commerce, and from them would seem even to have circumnavigated Africa.—But with this my present subject has no concern.

ART. XXIII.

Eastern Boundaries of the Israelitish Territory.

§ 5. PALESTINE, properly so called, of which the Israelites were to make themselves masters by war, and, when divided into fields and inheritances, to

* I have treated of this point more at large in my two dissertations, *De Nomadibus Palestinæ*, and *De Troglodytis*, and also in my *Specileg. Geogr.* part. 1. in illustration of Gen x 6. I here only assume the historical facts there established,

make their fixt abode, is bounded on the east by Jordan, Numb. xxxiv. 11, 12.; and Moses laid no claim to the country on the other side of that river. The Moabites and Ammonites, the descendants of Lot, were not without provocation to be attacked by the Israelites, Deut. xi. 9.; and even from Sihon, king of the Amorites, Moses asked for nothing more than to pass quietly and unmolested, in going to take possession of the country on the west side of Jordan. But as Sihon, to prevent this, advanced against the Israelites beyond his frontier, and into the wilderness, and probably also, (though that is uncertain) in answer to their request made the first attack upon them, and was unsuccessful, Moses, by the right of war, immediately seized his territories, as he did in like manner the kingdom of Bashan: the details of which events we have in Numb. xxi. 21,—35. But even after these conquests, a remarkable distinction was made between the country on the west and east sides of Jordan; the latter was by its own inhabitants accounted far less holy than Palestine properly so called, Josh. xxii. 24,

And yet we find that in other passages of the Mosaic writings, (Gen. xv. 18. Exod. xxiii. 31.) the Euphrates is promised to the Israelites as their boundary on the east!

In this, however, there is no real contradiction. The boundary of the holy land, which they were to divide after expelling the inhabitants, and which constituted in a manner the citadel of the state, was *one* thing; the boundary beyond which they were not to extend their conquests eastward, or, in other words, that of its outworks, was *another*. Jordan made the

former ; Euphrates the latter. The intervening space between these rivers, was not necessarily to be occupied exclusively by the Israelites, but to serve as pasturage to their cattle, the greater part of it being fit for no other purpose. Those wandering herdsmen from whom the Israelites sprang, were in the practice of thus traversing these countries ; and even in Palestine, on this side Jordan, had their ancestors dwelt, exercising this right, as I shall in the sequel more particularly notice. Although Moses then prohibited the Israelites from spreading themselves with their herds over Africa, and the wastes and marshes belonging to Egypt ; yet he left them at liberty to do so, towards the east, where partly the Euphrates, and partly the inaccessible deserts of Arabia formed to them a secure frontier against their enemies. It follows of course that for the protection of their pastures, they erected fortresses, and established colonies in convenient situations towards the Euphrates. But it would appear that this appointment of that river as a boundary, included in it a prohibition to the Israelites not to extend their dominion beyond it ; which indeed they never did, not even in the reign of David, although he obtained great victories over the kings of Mesopotamia.

I must still farther illustrate this boundary from history, because to those who peruse the Bible but superficially, it always appears strange, that the Israelites should ever have extended their dominion to the Euphrates. This, most people think, could at most only have taken place in the latter years of David's reign, and under Solomon ; and in reference to the funda-

mental laws of any people, of what account, say they, is the short period of sixty years, when a state has previously subsisted for so many centuries?

The countries beyond Jordan which Moses had taken from Og and Sihon, were peculiarly adapted to the rearing of cattle; and on that account, the tribes of Reuben and Gad, who were rich in herds, requested and obtained them as their portion, Numb. xxxii. The land of Gilead was then inhabited by the Amorites, a Canaanitish nation, whom Moses treated as enemies to Israel. The half-tribe of Manasseh conquered and obtained it for a habitation, Numb. xxxii. 39,—42. Some smaller conquests I purposely omit. In maps, we generally find these countries confined within so very narrow limits that they are kept at a very great distance from the Euphrates. It is perhaps considered as indiscreet to assign to two tribes and a half an inheritance far exceeding in extent the whole of Palestine; but it is forgotten, that that inheritance fell among deserts, where only a few little spots that contained springs and rivulets lie scattered, like fertile islands, in the midst of barren sands; and that it was, moreover, in many places intersected by the wandering herds of the Arabs. This circumstance rendered a hundred square miles of such barren, arid, unimproveable land, less valuable than one square mile of the country on this side Jordan, which from long culture, and greater natural fertility of the soil, consisted of nothing but fields, vineyards, and olive-gardens*.

* In Josephus, Book III. §. 2, 3. of the Jewish war, we find a comparison instituted between Galilee and Perea, which still more

But we must not here be guided implicitly by the maps. Our travellers never venture across Jordan; and rivers, mountains, and provinces, are, for the most part, delineated not according to mensuration, from real accounts, of which we have almost none, but marked at random on the empty space, according to the caprice of the designer.

It is, methinks, past a doubt, that Mount Gilead, properly so called, from which the whole country had its name, lay far *without* the space which the common maps of Palestine include, and was at no great distance from the Euphrates. For proof of this, I refer to the last paragraph of my *Dissertation on the Mode of breeding Sheep among the wandering Tribes of the East*; in which I have calculated the situation of this mountain, from the days-journeys of Jacob in his flight from Laban. How far the land of Gilead may have stretched beyond the peaks of the mountain, and whether it extended quite to the Euphrates, it is impossible to determine; and indeed, of the eastern and northern boundaries of the lands belonging to the two tribes and a half, we know almost nothing. The city *Kirjathana*, which Moses apportioned to the tribe of Reuben, (Numb. xxxii. 37.) lay probably only one day's journey from Palmyra; though Büsching places it much farther within Arabia.—See my *Oriental. Bibliothek*, iii. 120.

But whether these tribes in the time of Moses pastured their herds as far as the Euphrates, or not, this at least is certain, that they *afterwards* did so, and at fully proves this. The passage is too long for quotation, but it well deserves to be read.

length drove out a people who made use of the same pasturage, and *that* even before the reign of David. If this circumstance has not been noticed, it proceeds from its standing in a book, which, consisting chiefly of bare dry genealogies, is but little read; so that many remarkable historical occurrences which it really contains, are overlooked. But the 1st book of Chronicles, chap. v. 9. expressly says, that *Reuben's posterity dwelt eastward as far as the Euphrates, because their herds had multiplied exceedingly in the land of Gilead*, and adds, ver. 10, 18,—22. the following remarkable history; that the two tribes and a half beyond Jordan, in the reign of Saul, without the aid of the other tribes, carried on a war against four Arabian nations, among whom I here only notice the inhabitants of the province of *Hagr**, (or as we would write it in German, *Hedschr*,) on the Persian Gulf. The issue was, that these tribes, who marched out 44,760 men strong, obtained a decisive victory; took 100,000 prisoners, besides several thousands of cattle; and, as it is expressed, *dwelt in the tents of these nations throughout all the east of Gilead*; and maintained these conquests till the time of the Assyrian captivity.

In the reign of David, not only were these possessions rendered more secure, but conquests were made of other neighbouring territories, concerning the occupation of which, however, Moses left no commands. With these, I am not here concerned; but I cannot omit remarking, that the celebrated city of *Tadmor*, or *Palmyra*, which was not farther than one day's

* I have spoken of this more at large in my *Historia Belli Nesibeni*.

journey from the Euphrates, was *built* by Solomon; that is, either *founded anew*, or at any rate, *fortified*; for the phrase, *to build a city*, has both these meanings in the Oriental tongues* ; 1 Kings ix. 18. 2 Chron. viii. 4. The situation of this city, which became afterwards so renowned in history, was extremely remarkable, and that eye had a fortunate glance which first selected it for improvement. Springs arising in the midst of barren sandy wastes, made it practicable here to build an important city for the protection of the Israelitish herds; while the surrounding deserts rendered the subsistence of any army that might attempt to besiege it, very difficult. It is still farther related of Solomon, 1 Kings iv. 24. that *he had dominion over all the region on this side the Euphrates from Thiphsach†, (חפסח,) which must without doubt be the city of Thapsacus on that river, even unto Azzah.*

On this hand, also, towards the south, the tracts which the Israelites either inhabited or pastured, extended pretty far eastward, and lay in part beyond the land of Moab. *Maon*, which belonged to the tribe of Judah, (Josh. xv. 55.) and where Nabal dwelt, (1 Sam. xxv. 2.) is described by *Abulfeda* as the farthest city

* See the Expositors, on Josh. vi. 26. and Art. CXLV. of the present work.

† That Thapsacus was situated on the Euphrates is certain, but how far north is doubtful, Cellarius places it in lat. 35. Asseman in *Biblioth. Orient.* T. III. P. II. p. 560. has a city of this name, in lat. 37. farther north than Bir. Could Solomon's dominions have really extended so far north? Büsching admits two cities of the name of Thapsacus. The investigation of this geographical question, which does not properly belong to this work, I refer to my *Spicileg. Geograph. Hebr. Ext.*

of Syria towards Arabia, and as two days journey beyond Zoar‡. We may thence, although it is not marked in D'Anville's map of Asia, conclude with some degree of certainty how far within Arabia this place lay, to which David's history gives so much renown, and which was in possession of the Judahites as early as Joshua's time.

Of other colonies which settled in these eastern regions, as for instance on Mount Sinai, in the reign of Hezekiah, we find scattered notices in the book of Chronicles ; which, however, I will not here collect, because they belong to later times ; and Moses himself gave no directions concerning the colonization of those parts. Thus much may be nevertheless already perceived, that the territories of the Israelites, even before the days of David and Solomon, were far more extensive than the maps in general represent them : and hereby will that difficulty be obviated, which the enumeration of the people undertaken by David, commonly occasions, as to the possibility of so small a country as Palestine affording sustenance to a population which furnished more than 1,300,000 full-grown males : although, indeed, from certain causes which I have pointed out in the last paragraph of my Dis-

‡ Tab. Syriæ, p. 33, 34. In the first edition of this work, I had described it as lying *six* days journey east from Jaffa, which is also correct, and mentioned by Abulfeda himself. But what I added as to its lying thrice as far from the Mediterranean as Damascus, which, according to him, was but two days journey distant from Tripoli, I retract, because the six days journey is not according to the direct line, but in a great curve, by 1. Ramla ; 2. Jerusalem ; 3. Jericho : 4. Zoar ; 5. Scharat ; 6. Maon.

sertation, *De Nomadibus Palestinæ*, the same extent of country in a warm climate, will serve for a much greater number of people than in a cold one.

I may here properly remark, that even in those eastern deserts, the Israelitish state could boast of some very opulent and powerful citizens. The breeding of cattle, and more especially in such extensive and unlimited pastures, tends, when successful, to produce greater riches than the cultivation of paternal fields: and we actually find, from 2 Sam. xvii. 27, —29. that *three* private persons in Gilead were in such circumstances as at their own expense to supply David's whole army with food and other necessaries.

ART. XXIV.

Eastern Neighbours of the Israelites.

§ 6. THE Israelites had many neighbours on their eastern boundary. From the Dead Sea to the Euphrates, it was indeed lost among the sandy deserts of Arabia, which the Israelitish poets sometimes called אֶפְסֵי אֶרֶץ, *Terræ fines, the ends of the earth*. But even here, many Arabian nations (those *four*, for instance, with whom the two and a half tribes carried on the war above mentioned,) pastured their herds either at no great distance from the Israelites, or promiscuously with theirs: for these wastes were not the exclusive property of any particular people, but, like the sea, belonged alike to all.

Where mountains arose amidst these arid plains, there generally were found, as I mentioned above,

fertile spots, like islands, surrounded by an ocean of sand; for from mountains flow springs and rivulets, whose waters people, in such a country, soon learn to use with very great economy; and as far as these spots extended, the land admitted of culture. The territory of the Moabites and Ammonites was a land thus cultivated, and full of cities. Moses expressly forbade the Israelites to molest the Moabites in the possession of this land, Deut. ii. 9. The meaning of which law could not possibly be, that they were to suffer all manner of injuries from the Moabites, without conquering their country, even though forced into war with them, (for who could have given so absurd a law as that?) but only, that they should not with a view to conquest, without any farther reason, go to war with them, as they did with the Canaanites on this side Jordan.

The brook Arnon, which falls into the Dead Sea, formed in one place the boundary with the Moabites: but this was disputed, and became the cause of wars. I know not the course of the Arnon, which is laid down in maps arbitrarily, and without authority: but thus much is clear from Moses' account, that before his time, the Moabites possessed *both* sides of it, which are described by Abulfeda, as beautiful and fertile. Sihon, king of the Amorites, had, however, seized on all that lies on the north side of the rivulet, and of course when the Israelites conquered his whole land, what had before belonged to Moab, came also into their power. Moses relates this history in Numb. xxi. 13,—16. and xxvi. 30. so circumstantially, that it is easy to see that the Moabites must still have

dreamed of a title to these lost lands, which rendered it necessary for him to inform posterity by what right they here dwelt. A great part also of the land of the Ammonites came probably in the same way, out of Sihon's hands, into the possession of the tribe of Gad, (see Josh. xiii. 25. and Judg. xi. 13,—26.) and was, some hundred years after, the occasion of a war which is related in the chapter last quoted. The Ammonites laid claim to all the country lying between the Jordan, Arnon, and Jabbock, and which before Sihon's time had belonged partly to them, and partly to their brethren the Moabites, alike descended from Lot with themselves. How they came to interfere with the pretensions of the Moabites, the history does not relate. The quarrel was *then* decided by a victory in favour of the Israelites; but these descendants of Lot had afterwards recovered many places, whereof the Israelites had previously had possession; for those cities of the two and a half tribes beyond Jordan, which are mentioned by Moses in the xxxii. chapter of Numbers, are by the prophet Isaiah, in his xv. and xvi. chapters, partly numbered again among the cities of Moab.

Besides these descendants of Lot, there were in the fertile spots of Arabia, other small kingdoms, or independent states, such as *Tob*, and *Maacha*, called in Greek, *Epicaerus*; concerning which, however, it is here unnecessary to say more. Those more powerful tribes, the Midianites and Ishmaelites, who dwelt farther east, make, it is true, a sufficiently prominent figure in the history, and sometimes bore hard upon the Israelites, while weak and undisciplined; but the

Mosaic laws ordain nothing concerning them, and so long as the Israelites abstained from molesting them, these nations, which since the days of Mahomet have inundated the world, do not seem to have been formidable, nor even so much as a match for them. Their wandering mode of life prevented their numbers and military strength from increasing.

On the Euphrates, the Israelites had some pretty powerful neighbours among the Mesopotamian kings; but they could not in general put themselves on a footing with the greatness of a true Israelitish monarch. Even in the time of David, Mesopotamia was partitioned among several sovereigns. One of them, the king of *Nesibis**, made conquests on this side the Euphrates, which reached to the Mediterranean, and shortly excited David to jealousy and war. The other kings of Mesopotamia were then dependent on the king of Nesibis, and compelled to side with him against David; but the fortune of war declared in favour of Israel. Between the time of Solomon and Hezekiah, the Mesopotamian kingdoms seem to have yielded one after another to the Assyrian arms; which conquests are noticed in Isaiah, ch. x. 9,—11. and xxxvii. 11,—13.

This observation will illustrate many things otherwise obscure; for, in the *first* place, we now see at once how it happened that the Israelites, notwithstanding their vicinity to it, were seldom involved in war with Mesopotamia. It was divided among several kings, who in general did not seek to provoke hos-

* See my Dissertation, *De Syria Sobaa, quam David sub jugum misit Nesibi.*

tilities with so powerful a nation as Israel; and as only the desert pastures traversed by the Israelitish herds were immediately contiguous to them, the causes which commonly give rise to wars, hardly operated; and those very deserts that intervened between the two nations, rendered the carrying on of war peculiarly difficult. In the *next* place, that doubt will now vanish, which many readers of the history of David and Solomon have been led to entertain, as to the possibility of the Assyrians having so calmly looked upon the increasing power of the Israelites, and not having gone to war with them. The Assyrian monarchy in these ancient times, was by no means so extensive as the Greek and Roman writers represent; who were too little acquainted with Asia from its own records, to relate every thing with certainty concerning it. It did not reach to the Euphrates, but was still confined to the farther side of the Tigris; nor did the whole of Assyria acknowledge one sovereign. Thus, for example, in the time of Hosea, *Arbela* (chap. x. 14.) was attacked and conquered by Shal-lum, king of Assyria; and of course it had previously been an independent state. At the same time, we see from the lxxxiii. Psalm, that the Assyrians were concerned in the great league into which many nations had entered against David.

I cannot here adduce the proofs of what I have said concerning Mesopotamia, Syria, and the king of Nesibis; but they are given in my two Dissertations, *De Syria Sobæa*, and *De Bello Nesibeno*.

It is easy to perceive that the Israelitish state, while it was protected, *first*, by a desert, in which, the

few spots that commanded water being occupied and fortified by its own citizens, its enemies could not subsist an army, and *then* by the river Euphrates, was much more fortunate and powerful, than if it had overstepped these secure limits, and had the kings of Mesopotamia and Assyria for neighbours and enemies. And it was peculiarly unfortunate for it, that when this at last took place, it was after the Assyrian monarchy had swallowed up all the intervening kingdoms. Yet, after all, the Israelites, from their distant situation, would not have had so much to dread, if their power had continued united, and themselves as one people ; but when they were split into two kingdoms, of which one called in the aid of the Assyrians against the other, and against Damascus ; and when the Assyrians, after the conquest of Damascus, became their immediate neighbours on this side the Arabian Desert, it was then quite impossible to ward off that misfortune which they had by their disunion, brought upon themselves.

ART. XXV.

Northern Boundary of the Israelites.

§ 7. I now turn to the northern boundary of the Israelites, which I reckon to commence from the Euphrates, whereon we now stand ; but at what city or region on that river, I know not : for this is a point attended with more obscurity and uncertainty than could be expected. By the victories of David, who conquered Damascus, it became considerably extend-

ed : but with this accidental boundary, which was not long maintained, I have here nothing to do, for Moses ordained nothing respecting it.

We may in general represent the Israelitish boundary on this quarter, as an extremely serpentine line, running from the Euphrates to Lebanon, and leaving Palmyra on the south or inner side ; but Damascus on the north or Syrian side, including a tract chiefly of desert or pasture country : But how far north it extended, or what curves it made, it is impossible to say ; partly for want of ancient records, and partly from modern ignorance of these regions. Those maps are constructed with most prudence which here mark no boundary at all. Syria, which lay all along the north side of the land of the Israelites, we must not represent to ourselves as that mighty Syria with which the history of the Macedonian monarchy makes us acquainted, and which had then so many other countries under its dominion. It was at this time split into several kingdoms, not one of which would have been a match for that of Israel. That kingdom whose principal city was Damascus, had most connection with the people of Israel, and is often mentioned in their history. This city, which stood on the east of Antilibanus, on two pleasant streams that issued from that mountain, appears in history even in the days of Abraham, Gen. xiv. 15. and xv. 2. and is therefore far more ancient than the time of Moses ; and as he nowhere mentions it among the boundaries of the Israelites, it cannot have been destined as any part of their portion. That king, however, who reigned in it in the days of David, and whom history represents as

the most valiant and greatest of all its sovereigns, took a share in the war which the king of Nesibis carried on against David, and gave the latter an opportunity of subduing the whole kingdom of Damascus, 2 Sam. viii. 6. Yet, in the time of Solomon, Damascus again revolted, and shook off the yoke, 1 Kings xi. 24, 25. and became, as it were, the hereditary enemy of Israel ever after.

It appears that Ramoth in Gilead, whose situation is not now known, was a very important frontier city, of which the Syrians had made themselves masters, and which belonged to the ancient land of Israel. In consequence of the Israelites laying claim to it, a war ensued; and what served as another handle for that war, was a peculiar right of the wandering hordes, which, to us, seems very strange indeed. These people, who acknowledged no exclusive territory, traversed the pasture-commons with their herds, without being subject to the rulers to whom the circumjacent country and cities belonged. These pasturing places were, in Hebrew, among other names, called *Chuzoth* (חִצּוֹת) * that is, *outer places*. In conformity to this Nomadic right, the Damascene herdsmen traversed the deserts that lay between the cities of Israel, (a sure occasion of perpetual discord,) till at last, after a war which turned out unsuccessfully for them, they were deprived

* The word might also be translated *streets* or *paths*; and so might the places in question in all cases be denominated, because though the hordes were always moving from one place to another, yet in their progress, year after year, they always kept the same track.—(See my Dissertation on the Sheep-breeding system of the Orientals) With the derivation of the name I do not here meddle.

of their right, and on the other hand, a right was granted to the ten tribes to pasture in the deserts of Damascus. This singular treaty of peace, which is recorded in 1 Kings xx. 34. I have illustrated in § 6. of my Dissertation *De Nomadibus Palestinæ*.

The greatest misfortunes that befel the kingdoms of Israel and Judah, from their separation, until the destruction of the former, arose from this troublesome neighbour. At one time the kings of Damascus carried on war with the ten tribes, who were unlucky enough to be most immediately in their vicinity; and at another time, they leagued with them against the kings of Judah. Both the Israelitish kingdoms by turns sought assistance from Egypt and Assyria, and thus opened to the mighty monarchs of these countries an entrance into Palestine. Ahaz promised to the king of Assyria a tribute, which his son Hezekiah discontinued to pay. Assyria availed itself of this favourable opportunity to extend its power: it swallowed up Damascus, and along with it the ten tribes; and Sennacherib had, in consequence of Hezekiah's refusal of the tribute, well nigh destroyed the kingdom of Judah. These alliances were, therefore, extremely pernicious; and the prophets exerted themselves against them with the utmost zeal, but rather as forbidden not by religion, but by the interest of the state.

I now take my leave of these eastern regions, and enter upon the northern boundary towards the west. The river Jordan arose under the summit of a very lofty ridge of Mount Lebanon, which was by a particular name, called Hermon. That this region be-

longed to the Israelites is past all doubt : but here is commonly fixt their northern boundary, though it certainly went farther north, and among the mountains. To understand this thoroughly, however, one must have a just idea of Lebanon, which will be best obtained from Büsching's Geography of Asia ; (see his Modern Geography, Part V. sect. 1. p. 244. Germ. Original.) This extensive mountain is divided into various ridges, and thus receives several different names, of which but few are rightly known in geography. But it is more especially parted by a fertile and pleasant vale (whose direction and windings yet remain insufficiently described,) into two divisions, which, as some say, have nearly the form of two irregular triangles, thrust one upon the other. The eastern chain, under whose lofty peaks the Jordan arises, is by the Greek and Latin writers named *Antilibanus*, and is that which is best known in the Bible. The other, lying opposite to it on the west, they call *Libanus* ; and in the Bible both are included under the general name of Lebanon.

Now thus much is certain, that at least two cities, which are named as in the boundary-line of the Israelites, lay farther north than the sources of Jordan ; which, however little known otherwise, we must therefore place in the mountain. For, in describing the eastern limit of the promised land, properly so called, Moses (Numb. xxxiv. 10, 11.) begins it towards the north at Hazar-Enan, whence it proceeds to Shepham, and thence farther *southward* * to Ribla,

* Moses says, *down to Ribla* ; on which I must remark, that in

which is said to lie opposite to Phiala, whence the Jordan springs. So that at any rate some of the bounding marks lay north of Phiala, which itself is to the north of the proper source of this river, which runs for so far under ground, and then emerges again into light.

Add to this, that (from Numb. xxxiv. 8. and many other passages) the boundary on the north side was to extend to Hamath. Now we know with perfect certainty, that Hamath was that city on the Orontes, which the Greeks called *Epiphania*. To its very walls, indeed, the land of Israel could hardly have reached; for if so, it is inconceivable that the name Orontes should not once appear in the whole Hebrew Bible. It would in fact, contrary to the nature of the Mosaic laws, have been an unnatural and insecure boundary, if the Israelitish dominion had stretched over Lebanon into the valleys along the Orontes. By Hamath, therefore, we must understand the whole territory dependent on that city. How far its limit extended southward, we have indeed no historical knowledge; but when we observe the natural situation of the country, and recollect that Moses appropriated Lebanon to the Israelites, we shall be inclined to believe that they must have possessed the eastern

the geography of the Hebrews, *up* means north, and *down*, south. My late father, in a Dissertation, *De Notione superi et inferi apud Hebræos*, has treated this point at full length, and will probably convince the attentive reader. But whether or not, is all one to the present question. For if we take the expression, *to go down*, in the common acceptation, Ribla must have stood *lower*, and Shepham *higher*, and of course farther into the mountains.

part of that mountain, perhaps to the place where the Orontes rises, and the valleys begin.

If we might call in the aid of the modern names by which certain parts of Antilibanus are called among the inhabitants, this point would be still clearer. In Deut. iii. 8, 9. *Hermon*, *Sirion*, and *Shenir*, seem to be names of one and the same mountain; although possibly Moses but meant, that the Amorites gave the name of *Shenir* to that part of the mountain which lay nearest themselves. But it is manifest that in 1 Chron. v. 23. *Shenir* is distinguished from *Hermon*, and yet the boundary of the Israelites is extended to it. But according to Abulfeda, Lebanon should receive the name of *Shenir* only where it begins to be more northerly than Damascus; before that, and while it is more southerly, it should be called *Gahal Eltalg*, or the Snowy Mount, which also is its common name in Chaldee. According to Camus, *Shenir* is, in like manner, that part of Lebanon which is between Emessa and Baalbek. Even the latter of these cities, still celebrated for its magnificent ruins, and called by the Greeks *Heliopolis*, belonged, as Iken * has shewn, to the Israelites. It lies in the beautiful vale that separates Libanus and Antilibanus from each other, and at the foot of Antilibanus.

The ruggedness of this long chain of mountains gave to the Israelites a secure and almost indisputable boundary towards Hamath: and we find accordingly

* In his Dissertation, *De Baal-Hamon and Baal-gad*, the xv. of his *Dissertationes Philologico-Theologicæ*. I think I could on other grounds confirm his opinion, and in two particulars correct him; but here it would form too extensive a geographical enquiry.

that the two kingdoms were never involved in war : they were rather in alliance, though Hamath was inhabited by Canaanites ; and it appears from 2 Sam. viii. 9, 10. that the king of Hamath saw with satisfaction the victories and conquests of David.

Of the western chain, or triangle of connected mountains next the Mediterranean sea, which the Greeks called *Libanus*, the Israelites seem also to have possessed a part that stretched northward beyond Sidon, or at least, according to the sense of the Mosaic laws, they should have conquered and occupied it. Their boundary, according to Josh. xiii. 4. was to reach to *Aphek*, which city was actually allotted to the tribe of Asher, Josh. xix. 30. This city we have every reason to consider as that Aphek, or Afaka, which lay between Heliopolis and Byblus, or (if the modern names are preferred) between Baalbek and Gible (Büsching spells it Dschibla) on a small lake, well described by *Cellarius*, (p. 440 of his *Ant. Geogr.*) and also marked on his map of Syria. But *Cellarius* did not think that this could be *our* Aphek ; and *Reland* (in his *Palestina*, p. 572.) expressly says it lies too far north to be taken for the Aphek mentioned in the book of Joshua. This proceeded from an universal prejudice, which confined the Israelitish boundaries within too narrow limits : but if Baalbek in the vale between Libanus and Antilibanus belonged to them, it is not incredible that the Aphek which lay opposite to it, and but a little more northerly, on Lebanon itself, fell also within their border*. Here,

* There are several cities of the name of Aphek in Palestine and

however, their boundary seemingly terminated, for they made no pretensions to the northern parts of Lebanon. Cedars, which grew in the western triangle of Lebanon, a little to the north of Aphek, Solomon had not within his own territory, but received them from the Tyrians, 1 Kings v. 6,—10. and ix. 11. Thereabout, also, partly on Lebanon, or inland, and partly on the coast, lay some other Canaanitish cities which were not unknown to Moses, but which he expressly mentions in Gen. x. 17, 18. in his brief genealogy of the nations; but never notices, when speaking of those nations whose territories the Israelites were to conquer. In the 2d Part of my *Hebrew Geography* I shall find an opportunity to treat of them at large;

Syria, which Reland enumerates in the place above-quoted, none of which, however, at all suits the passage in Joshua. Another Aphek, which Reland did not know, is described by Abulfeda, p. 34. of his *Syria*, as lying between Damascus and Tiberias, at the distance of a day's journey from the latter. This may probably be the Aphek mentioned in 1 Kings xx. 26.; but *ours* it cannot be; which we can only seek for on Lebanon, and north of Sidon: for in Josh. xiii. 4. it is placed beside the *cave of the Sidonians*; from whence the Israelitish boundary reached to Aphek; and there also the *land of Gibli*, and the whole of East Lebanon from Baal-gad, (Baalbek) is mentioned as the continuation of this boundary. The *land of Gibli*, which, if translated, signifies the *Highlands*, is probably that part of Lebanon which lay above Byblus; for Byblus is by the Hebrews called Gibal; (see Hist. Belli Nesibeni, § 15. No. 5.) Here therefore should be the Aphek in the vicinity of Gibla and Baalbek, betwixt which the northern Aphek described by Cellarius is situated.—Should any reader think it incredible that the northern boundary of the Israelites extended so far, I must remind him that David subdued Bairut (Berytus) in this same country, situated on the Mediterranean sea.—See *Histor. Bell. Nesib.* § 8. and 14.

here, therefore, I shall but give the Mosaic names of their inhabitants; the *Arkites**, *Sinites*†, *Aradites*‡, *Simrites*, and lastly, the *Hamathites*, or inhabitants of Epiphania, on the Orontes, whose territory, as Moses himself describes it as beyond the boundary of the Israelites, it is therefore certain that he did not intend should be subdued.

That the whole of the narrow coast stretching along the foot of Lebanon, particularly Sidon, and the *port* of Tyre, (for the *city* was later built) was not, even where the mountain itself belonged to them, to be reckoned within the boundary of the Israelites, has been already noticed in Art. XX.

These northern Canaanites, therefore, and the maritime Sidonians, were not among the nations against whom Moses commanded them to wage implacable war. We even find they were their most peaceable neighbours; and the book of Judges, in describing a quiet people, little versed in the arts of war, compares them to the Sidonians, chap. xviii. 7. In the time of David, Tyre had become what Sidon had been in more ancient times. In one passage (Psal. lxxxiii. 8.) we find the name of this city among the nations leagued against David; but in such a manner, that it is uncertain whether it actually carried on war with

* The inhabitants of that city which in the Greek, Latin, and Arabian authors, is called Arka, or Arke, situated at the foot of Lebanon, about from two to three German miles, (10 or 15 Eng.) south of Tripoli.

† They dwelt on Mount Lebanon, around Sina, or Sinna, which was destroyed by Pompey the Great.

‡ The people of the celebrated city Aradus.

him. Afterwards, the king of Tyre was not only an ally, but the confidential friend of David and Solomon: and so little did the Israelites seek to extend their power in this northern region, that the rivers, not inconsiderable ones, that run through Phœnicia, as for instance the *Lycus*, that falls into the sea at Tyre, the *Adonis*, and even the *Orontes* itself, are not so much as once named in the Bible. And once, when the Tyrian merchants are spoken of as dealing, for gain's sake, in Israelitish slaves, *that* is represented as a breach of a truly brotherly covenant, Amos i. 9. The indulgence thus shewn to certain Canaanitish nations, and their permanent friendship with the Israelites, is remarkable in a political view, and the more so, considering the declared hostility of the Mosaic laws to the Canaanites. The Sidonians, however, were good neighbours for Palestine, whose inhabitants, as above mentioned, they relieved of their superfluous corn, wine, oil, and manufactures, Ezek. xxvii. 17. Prov. xxxi. 24. And in like manner, the Sidonians, and afterwards the Tyrians, derived much advantage from the Israelites possessing Palestine. Their own little territory could not produce nearly so much as was necessary for populous trading cities that had yearly a number of ships to victual; so that a nation of husbandmen was their best neighbour. Their own brethren, the Canaanites, whom the Israelites extirpated, would have regarded them with jealousy if settled on this coast, or on this land: for they were their natural rivals in trade; and to the Tyrians, for instance, it must have been more agreeable to see *Ptolemais* an Israelitish city, than a Phœnician free port.

The mercantile spirit is generally not very martial by land, and seeks not continental conquests; which to a state founded on commerce can only be burdensome. To the Tyrians or Sidonians, conquests in Palestine were of no consideration. Factories and colonies on the other side of the Mediterranean, which gave them advantages for trade, were more to their mind. And thus they were perfectly suited, as peaceable neighbours, to the uncommercial Israelites. When in the reign of Solomon the Israelites became sensible of the benefits of commerce, that formed a new bond of friendship between them. Solomon had ports in the Red Sea, but no seamen: the Tyrians had seamen, but no ports there. The two monarchs united, and formed a trading company, which without perfect unanimity could not have subsisted.

CHAPTER II.

POPULATION OF PALESTINE.

ART. XXVI.

Could Palestine contain as many inhabitants as Moses purposed to settle in it?

§ 1. THE population of a country does not belong to the subject of political law, because a lawgiver cannot determine or fix it, by statutes, but to its historico-political description. The reader, however, will not be displeased to find here some remarks on this point as an appendix to the preceding Articles; more especially as so many doubts have been started as to the number of citizens sometimes ascribed to the Israelitish state in the course of their history. But indeed the number of fighting men mentioned by Moses himself, has a closer relation to the object of the present work than at first appears: for if to them he has assigned for a habitation a country included within certain limits, and incapable of supporting so great a number, his laws must be considered as deficient in those principles that are acknowledged as incontrovertible by the universal sense of mankind; more especially as their chief object was the still farther increase of population, and as withal he had established

his policy on this principle of agriculture, that every citizen was to possess his own hereditary land unalienably. In a state depending for its prosperity solely on trade or manufactures, it is of no moment whether the land be sufficient to support the people or not; (Holland here furnishes a remarkable example,) but the Israelites were to live, not by trade, but by husbandry, which rendered it indispensably requisite that there should be a just proportion between the extent and fertility of the land, and the number of the inhabitants.

Moses has left us accurate enumerations of the Israelites. The men able to bear arms somewhat exceeded 600,000; and, including the Levites, amounted to nearly 620,000. If, according to the usual principle of calculation, we admit the whole people, women and children included, to have been four times as many, we shall then have nearly 2,500,000 souls for the amount of the population; that is, about 500,000 more than Büsching gives to the kingdom of Sweden. Yet we must add something farther, on account of polygamy and slavery, although these only took place in the families of the more opulent; and I should therefore think that, upon the whole, the number of people that Moses had to carry into Palestine could not have been less than 3,000,000. Now the question is, Was it possible, within the limits of Palestine, to find hereditary possessions and support for so prodigious a population?

No doubt if we include all the country from beyond Jordan to the Euphrates, there was quite room enough for three millions. But Moses' first object

was to bring the whole people into the country on this side Jordan, and to leave the nations on the Arabian side of it unmolested, if they granted him free passage into Palestine. The Israelites were not to continue wandering herdsmen, but to learn every one to love and improve his own allotted and hereditary fields: and even after the conquest of some of the kingdoms beyond Jordan, none but the two tribes and a half, which could not muster quite 120,000 men, received their settlements there; so that still 500,000 men able to bear arms, or in other words, a population of about two millions and a half, were to be provided for in the small territory on this side that river. Was this possible? Palestine, as to its extent and limits, is not so perfectly known as that I can venture on the mensuration of it in German square miles. But any one who measures it but slightly on the map will admit, that the part on this side Jordan could not contain less than 300, nor more than 400 German square miles. Now, distributing 500,000 fighting men, or 2,500,000 souls over that extent, each square mile would include about 1500 warriors, or from 6,000 to 7,000 people. This seems to be too great a number; because allowing that every man would thus have 20 acres allotted him for his support, still there are in every country many pieces of ground quite useless: and besides, people have many more wants than that of bread-corn alone. The whole Prussian territories, including the very populous province of Silesia, had, before the last war, in the year 1756, about 4,700,000 inhabitants; and therefore, exclusive of foreign mercenaries, 1,175,000 natives able to bear arms.

They contain, according to Büsching's calculation, 3000 German square miles, and although in many districts the soil is not fertile, might undoubtedly support a much greater population, because corn is exported. Agriculture is also improving, and many places, in which the king endeavours to get foreigners to settle, are susceptible of cultivation; but still, how great the difference between 1,200,000 men able to bear arms, on 3,000 square miles, and 500,000, on 300 or 400? Supposing Prussia so much improved as to maintain 1,500 men on a square mile, it would altogether maintain no less than 4,500,000; and women and children included, at least 18,000,000 of people. But will any man conceive such a degree of improvement practicable? Nay, though I had here made a mistake in the number of square miles, and they did not quite amount to 3,000, the difficulty would still remain very weighty.

In order, therefore, to remove this objection to the possibility of Moses having been able to put the very first and most important of all his laws in execution, I must beg the reader's attention to the following remarks.

In the *first* place, it will be allowed from what has been said, in the preceding chapter, on the geography of Palestine, that even the promised land, strictly so called, was more extensive than our maps make it. A good part of Lebanon, with the fruitful vales that intersect it, ought to be included in it; and the ten tribes and a half on this side Jordan, extended their settlements southward a good way into Arabia.

In the *second* place, Palestine is represented by

Moses as a remarkably fertile country; in which the best modern travellers, particularly Dr. Shaw*, entirely agree with him. I cannot enter into the dispute that has arisen on this point; but it seems to me that we may fairly admit the testimony of Moses as valid. He had himself sent spies into the country, and was at pains to obtain satisfactory information as to its nature; and these spies, not excepting those who excited the Israelites to mutiny against him, gave their testimony to its extreme fertility. Had all this then been untrue, and Palestine as barren as some modern writers would insinuate, Moses, in designing to introduce so great a multitude into it, and to establish a state on the agricultural system, would have shewn himself not only an impostor, but also a fool; and *that*, not even his enemies are wont to account him. Those who describe Palestine as unfruitful, appeal to the evidence of Greek and Latin authors; but the passages which they adduce, refer only to the country around Jerusalem; and what land is there that has not some barren spots? But of the country in general, Tacitus, the most creditable of all the classic authors, says, on the other hand, that it is as fertile as Italy. His words are, (Hist. v. 6.) *Rari imbres, uber solum. Exuberant fruges, nostrum ad morem, præterque eas, Balsamum et Palmæ.* Considering the time when it was given, this is a pretty favourable testimony. The country about Jerusalem was no doubt ill adapted for tillage; but its vineyards and olive-grounds highly enriched it.

* See p. 336, 337. of the English edition of 1757.

Allowing, however, that it had been absolutely barren, that was not the case with the whole of Palestine. The great Arabian geographer, Abulfeda, king of Hama in Syria, who in his journey to Egypt had certainly been in Palestine, says, even in the 13th century, that *Palestine is the most fertile part of Syria**; and concerning the neighbourhood of Jerusalem, described by Strabo as very barren, he does not indeed deny its want of watert†, but still declares it to be *one of the most fruitful parts of Palestine‡*. Now should we not put more faith in this native Syrian writer, than in a foreigner, who, though an excellent geographer, had never been in Palestine himself? From the present situation of that country, for now more than a thousand years laid waste by war, and the tyranny of barbarians, no conclusion can be drawn to its times of culture. Having been cultivated like a garden, and, according to Maundrell's remark, the cold rocks being by the hand of industry covered with soil, and thus made fertile, it cannot but have become very unlike itself, after seventeen hundred years de-

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* See Abulfeda *Tabulæ Syriæ*, p. 9. Köler's edit.

† See p. 10. of the same book. "Jerusalem has, some springs excepted, no water, at least not enough to water corn-fields." But the country is not therefore barren; for in the first place, it consists not of corn-fields but of vineyards and olive-grounds; and in the next place, Abulfeda himself had said, a little before, that Palestine was supplied with water from rain, and had its corn and trees watered from heaven. And this in the east they account far preferable to artificial irrigation.—See Deut. xi. 10, 11. and my remark upon it.

‡ P. 10. of the same work.

vastation; and if the vine was one of the chief bounties which nature had bestowed upon it, it is easy to see how much it must have suffered by its non-cultivation for more than ten centuries, under the dominion of the Mahometans, to whom wine is interdicted. But, independent of these circumstances, let any man consider the present state of Germany with respect to cultivation, and the descriptions which Cæsar and Tacitus have left of this now so extremely fertile country, and he will be sensible, that if from these it could never have been conceived, that Germany could by culture have become what it now is; so from the descriptions of desolated Palestine, its former situation, in the times when agriculture and industry flourished, can by no means be judged of. What that really was, may be seen in a very remarkable passage of Josephus, (De Bello Jud. Lib. III. cap. 3.) who knew it when in its glory, before the Roman war. That passage where, in a particular manner, the fertility, cultivation, and prodigious population of Galilee, are described, is, however, too long for quotation here.

In the *third* place, as every Israelite had his land altogether his own, and could inclose and use it as he chose, except in the seventh year; and as, by the herds being driven into the deserts, common pasturage occasioned no obstruction or damage to individual proprietors; Palestine could thus sustain a greater population than a country equally good, in which, from the rights of *common*, they are prevented from making the best possible use of their fields.

In the *last* place, a country of equal fertility in the 32d degree of latitude, will support more inhabitants

than in the 51st. Our colder countries require extensive spaces for woods; and if, for each man able to bear arms, I reckon only four cords of wood yearly, (each 216 cubic feet) how much space will be necessarily occupied with timber, where 2,000,000 of cords must be annually felled? In a warm climate, very little wood is required for fuel, and in Palestine that article was actually very scarce.—Again, how much more wool and linen do we require for our clothing than the inhabitants of Palestine? These wants occasion the occupation of a great deal of land, in raising flax and sheep. The Israelites most probably had more wool than they could consume; and of course had it in their power to manufacture and sell it to strangers*, and with the money thence arising, purchase articles which their own country did not produce in sufficient abundance.—Farther, a country lying in a climate somewhat better than ours, admits the planting of vineyards, and finds drink to its inhabitants on the hills, which with us are barren, or at best adapted only for wood. We, on the contrary, must employ a part of our best land in raising barley, which furnishes our principal drink.—Once more, in the 32d degree of latitude, the same ground, treated as a garden, may be cropped oftener within the year, than with us; an advantage for which Moses expressly celebrates Palestine in Deut. xxxiii. 14.

It will perhaps appear somewhat trifling to observe, that people in southern climates are satisfied with less food than in northern: but it is nevertheless very

* That this actually took place, we see from Prov. xxxi. 24.

certain, and well known from church-history, (see Mosheim's *Institutiones Hist. Eccl.* p. 169.) that on the introduction of the Asiatic fasts, the stomachs of the French were very differently affected from those of Egyptians. But it is more important to remark, that the industry of husbandmen in countries where rain rarely falls, and where the fields must be artificially watered, far surpasses any thing that our farmers exhibit. There they learn to make use of every foot of land: they cover the naked rocks with earth, and raise walls to prevent showers from washing it away. In those parts of Switzerland where vines can be reared, we see numberless examples of this most laudable economy; and that Palestine was anciently cultivated in the same manner, Maundrell discovered many traces in the course of his travels.—This is sufficient to justify the law of Moses, who designed to provide at least 480,000 men able to bear arms, with land on this side Jordan. When in process of time the population increased, they had it in their power to settle colonies in those parts of Arabia, till then only used for pasturage, where water was somewhat abundant, (for in such a climate, the very sand is fertile, where water is found); or else in the valleys of Mount Lebanon; and that this was actually done, we learn from 1 Chron. iv. 39,—42. and from Judges, chap. xviii.

ART. XXVII.

Concerning the later enumerations of the Israelites.

§ 2. HAVING said thus much concerning the numbers of the Israelites in the time of Moses, as my readers may have the curiosity to make some enquiries concerning the later enumerations of that people, I will for their satisfaction add a few particulars relative thereto, though not strictly belonging to the illustration of the Mosaic law. Those to whom it may be irksome to read what is not indispensably necessary on this subject, may pass over the following paragraphs.

The enumerations made by Moses are those alone in which we can with certainty confide. In the time of the Judges, we find in all Israel only 426,700 men able to bear arms; and during a short war carried on with great fury, they became 66,000 fewer, (Judg. xx. 2, 15, 17, &c.) Saul could not bring more than 330,000 men together*. But whether, on either of these occasions, those residing in the more distant parts towards the Euphrates, were included, is uncertain; and at Saul's command, the tribe of Judah, whereof he found only 32,000 men, appears to have come forward very sparingly; for Saul seems in general to have had but little authority over that tribe. Nor is it at all to be wondered that the population should have diminished during so many unsuccessful

* 1 Sam. xi. 8. There is great variety of lection as to the numbers in this passage, concerning which see the *Orientalische Bibliothek* Part V. p. 247. I here follow the common text.

wars, and those too, with nations who made slaves of their prisoners, and by carrying off young women, rendered the number of marriages less among the vanquished.

The next enumeration was the celebrated one undertaken by David. From the command issued by him, from the time of nine months allotted for carrying it into effect, and from the words of 2 Sam. xxiv. 1,—8. we clearly see, that this census, or rather enrollment, comprehended the people in the most remote places, even in the Syrian and Arabian deserts; only that the tribes of Levi and Benjamin, the two weakest of all, are said to have been spared, 1 Chron. xxi. 6. The great amount of the numbers need not therefore appear incredible, because between the Mediterranean and the Euphrates, even more might have found room. It would, however, have been impossible that in the course of one generation, the whole people, *by births alone*, should have increased from 330,000 to more than a million; or that the tribe of Judah, if in Saul's time (1 Sam. xi. 8.) it could really muster only 32,000 men, should now, by births alone, have amounted to 500,000. But it would appear that many who had before, by reason of the bad times, retired into foreign lands, or had been carried away as slaves, had now returned again under David's reign*; and besides, many proselytes from the conquered countries might be included. But we can by no means fully rely on the numbers given. For no man who has critically perused the books of Samuel, in the

* See my Dissertation, *De præliis Rerum apud Hebræos*, § 10.

last chapter of the second of which this enumeration is related, will hesitate to admit, that many parts of them, but above all the two last chapters, have come to us somewhat disfigured. But the books of Chronicles are in general more carelessly copied than any of the other books of the Bible, and not to be depended upon, as to the accuracy of the numbers which they give, and which appear indeed somewhat incredible. Add to this, that in regard to the numbers in question, these two books do not accord. For Joab found,

According to Samuel,	800,000 in Israel—Chronicles,	1,100,000
	500,000 in Judah,	470,000
	<hr/>	<hr/>
	1,300,000	1,570,000
	<hr/>	<hr/>

which numbers I know not how to reconcile. The tribe of Judah, according to both, is prodigiously strong; very probably because most of the proselytes attached themselves to the tribe to which the king belonged, when they desired to participate in the civil rights of the Israelites, while they adopted their religion.

But even according to the least number, the people of Israel, women and children included, amounted to more than 5,000,000; about as many as the Prussian states at present contain*. And yet these were not all the subjects that David could boast; for we must add 150,000 tributary Canaanites, with their wives and children; as also the conquered nations, at least

* I must here remind the reader that I wrote this in the year 1770, and therefore spoke of the *then* Prussian states. But now, that West Prussia must be taken into the account, their population will be considerably augmented.

those among them who had not by circumcision become Israelites; and the slaves, who might, however, chiefly belong to the conquered nations. If partiality towards the Jewish state, has not greatly magnified these numbers, David must certainly have been a very powerful prince, but still not to be compared with an Egyptian monarch.

The number of the Israelites under Jeroboam and Abijah, which is mentioned, 2 Chron. xiii. 3. is pretty nearly the same with that under David, if we only suppose that all who could bear arms were present in one battle. For the ten tribes mustered 800,000; and Judah, with Benjamin, 400,000. But these numbers are manifestly any thing but accurate; for the battle to which they relate, wherein 500,000 men are stated to have fallen, could never have been so bloody but by the mistake of transcribers*.

The list of fighting men, 2 Chron. xvii. 14,—18. belonging to the kingdom of Judah alone, under Jehoshaphat, being no less than 1,160,000, looks likewise suspicious, by reason of its great amount; which may be very reasonably ascribed to errors in transcription, more especially, as about a century after, in the reign of Uzziah, only 307,500, able to bear arms, could be mustered, (2 Chron. xxvi. 13.); and *that at* at a time when all the citizens were obliged to defend their country. In short, all the enumerations of the Israelites and Jews, subsequent to the time of Moses, are from the faults of transcribers uncertain, or manifestly erroneous.

* See Syntagma Comment. P. I. p. 13, 14. and Kennicott's Second Dissertation, p. 196, &c.

CHAPTER III.

OF THE RIGHT OF THE ISRAELITES TO PALESTINE.

ART. XXVIII.

Different Opinions on the point stated and examined.

§ 1. THE country above described, that part of it at any rate which lies on the west side of Jordan, was in the time of Moses inhabited by the Canaanites. By his first fundamental law, he commanded the Israelites to take forcible possession of this country, and to extirpate all the Canaanites who would not voluntarily leave it, instead of accepting them as subjects, by treaty, or even taking them for slaves. See Exod. xxiii. 32, 33. xxxiv. 12,—16. Deut. vii. 1,—5. xx. 15,—18. This extirpation of the Canaanites, which generally strikes the reader at first as a very extraordinary command, and from which the mind recoils, as little savouring of divine authority, was yet nothing more than the natural consequence of a war carried on, not by a sovereign for the sake of acquiring new subjects, but by a people to obtain lands; and who, in order to secure their acquisitions, have no other alternative than to dispatch those who obstinately stand in their way, and who will not resign what they hold. There were besides, two special reasons for the total

extirpation of the Canaanites: in the *first* place, Moses represents them as a people enormously wicked, much in the same way as the Romans did the Canaanitish colony, Carthage; and he was anxious to guard against the Israelites being infected by the vices of such detestable fellow-citizens; and in the *next* place, the great object of his policy was to maintain among his people the service of one only God: and idolatry was then so contagious, that he could not but fear lest the Israelites should learn it from the Canaanites, if they continued to dwell together in the land. Admitting the general justice of the war against the Canaanites, it is quite conceivable, from these reasons, why it should have been carried on according to the mere law of nature, which permits the destruction of enemies, and not according to the far more humane principles of the law of nations, established in later times. But the justice of the war itself is by no means clear. The inhabitants of Palestine had not hitherto conducted themselves as enemies to the Israelites. The sepulchres of the ancestors of the Israelites in Hebron and Sichem, in the midst of the Canaanites, had seemingly remained inviolated. Nay, it would even appear, that the city of Sichem, which Jacob had presented to his son Joseph, notwithstanding its situation in the heart of Palestine, still continued the property of the Israelites. At least we find them at Sichem soon after the invasion of Palestine, (Josh. viii. 30,—35.) without any previous notice of their having conquered it; and during their abode in Egypt, we find (1 Chron. viii. 24.) that Sherah, the great grand-daughter of Joseph, had built Upper and

Nether Bethoron, which are in the neighbourhood of Sichem; so that consequently the Israelites must have enjoyed peaceful possession of this their property in the midst of Palestine. How Moses, therefore, should have declared war against a nation that had never attacked the Israelites, and should, in the name of God, have made a gift of their country to his people, appears somewhat incomprehensible; and, in fact, much of a piece with the Pope's generosity to the Spaniards, in making them a present of America. Nor has, indeed, the opportunity been overlooked, of attacking Christianity in this quarter, as founded on the Mosaic dispensation, and of representing the war which Moses authorized, as in the highest degree unjust.

The friends of religion have been at great pains to devise an apology, and to draw up a manifesto in vindication of this war, after some thousand years from its conclusion: for, as far as I know, it is but of late that the justice of this war has been hotly contested. But Moses most certainly would have disclaimed most of the defences thus made for him; because they have only done injury to his cause, by imputing to him motives that are either ridiculous, or such, as that the people who should urge them as pretexts for war, would deserve to be exterminated from the face of the earth, by the united efforts of all other nations.

Justice indeed requires, that in this whole enquiry we should make allowance for the remoteness of the period to which it relates, and for the style and manner of the Hebrew and other ancient historians, who relate wars without ever mentioning the causes that

gave rise to them. But still, who will ever think of thence concluding, that there was no cause whatever for *this* war, or conceive himself justified in devising one without real documents, and thus affecting to know the precise ideas of right and wrong that lodged in men's minds in these early times?—In regard to the war against the Canaanites, Moses left only positive and express laws; and in giving laws, it is not usual to enter into their reasons, or to make logical deductions from them. Nor have we from him any thing resembling a manifesto, or declaration of war. After his death, Joshua passed over Jordan. What pretext he made use of, the historian of his life does not mention; but contents himself with detailing his victories. Most probably, however, he *had* said something in justification of the war: but as long as we know not *what*, it is truly uncandid either to condemn the Israelites as unjust, because, like many other ancient nations, they carried on a war, of which, after some thousand years interval, the causes are unknown to us; or yet to put their cause, as it were, into the hands of every modern pettifogger, whose ignorance and impudence can only serve to ruin it.

Moses, it is true, frequently speaks of the enormous sins of the Canaanites, and animates the Israelites to war against them, by declaring, that God meant to punish them on account of that heinous pitch of wickedness, so long previously borne with patience, at which they had now arrived. He even assures the Israelites that God would give them the land of Canaan; and in the book of Genesis, he records some ancient promises of God to that effect. But still this

is by no means to be looked upon in the light of an *intimation to the Israelites of their right* to invade Palestine. Every country which a people conquers by force of arms, is given into their hands by Providence ; and even their victories are its gift : and the same Providence may punish a guilty nation by the hands of its enemies, be their cause just or unjust, as it may ; but then this is no argument for the justice of war, otherwise we must admit, with all its consequences, the principle, that *whatever is, is right*. If, when going about some abominable deed, a robber meets me in a wood, puts me to death, and sends me thus ill-prepared into eternity ; this is certainly a punishment from the hand of God. But though God here makes use of a villain for that purpose, the instrument of his vengeance is not thereby justified. It is precisely the same, when, to punish a whole people, God permits barbarians, who regard the laws neither of nature nor of nations, to invade them. By the successful issue of war, God thus allots their lands to their enemies ; but though we previously knew with infallible certainty, that such would be the event, we should nevertheless look upon that declaration of war to be very strange indeed, which took its sole pretext from the circumstance of these barbarians being convinced that God would give them the victory. Divine predictions have the same relation to the future, that history has to the past ; and we should be as far from regarding a prediction, how truly soever divine, as a just reason of war, as for concluding from history, that such and such wars must have been just, because the

conquerors actually seized the countries that tempted them to commence hostilities.

And yet many have been actually inclined to ground the justice of the war against the Canaanites altogether on *their* criminality, and the divine donation of their country to the Israelites. "The Israelites," say they, "were the chosen people of God; and God, "as the sovereign of the whole world alike, might "employ *them* as his army; might commit to them "the punishment of a nation sunk in an abyss of "guilt; and bestow on them, as a recompense, the "land of Canaan, which, with all the earth beside, is "his alone, and at his absolute disposal."—That God *may* act thus, admits of no doubt: but then, *will* he in any case act thus, and avail himself of his power to injure the cause of religion? He has exactly the same right to give to any individual the power of putting a villain to death, and thus to constitute him, as it were, the executioner of his fellow-creature; or again, to bestow upon the righteous the goods of the wicked. But does he ever make use of this right; and, for the sake of his favourites, abrogate on occasions (for this in fact would be to abrogate) by special intervention, the two commandments, *Thou shalt do no murder*, and *Thou shalt not steal*? If he did so, true religion would appear in a very suspicious and odious form indeed; and the sight of a regenerated Christian would affect us in much the same manner as the approach of a highwayman. But if God never gives any such privilege to individual favourites, what right can a whole people have to pretend, that God has commanded *them* to wage war against a nation that has done them

no injury? True and false religion have like rights with respect to each other; for every one holds his own religion to be true: and hence, whenever I ascribe any right to true religion, every other man may claim the same right for his religion. Now, I would ask, if we should hold a people of another religion justified, in point of right, if, without any other cause than the mere pretext of having a command from their God, they should commence hostilities against us? What would we think if, in the spirit of such a right as this, the Pope should seize some favourable opportunity to absolve all the Catholic powers from the obligations of their treaties with Protestants, and give them (they would indeed require more faith in him than at present) an order, in the name of God, to convert, or to exterminate us all? Or what, if the Turks, who seem to have had some difficulty in making out a manifesto for their present war with Russia, had at once appealed to prophecies, promising them victories and conquests over that nation? They have in fact such prophecies, and thereby their people were encouraged to demand a war. Yet the Turks have not yet become such shameless barbarians, as to urge these prophecies as pretexts for war. In fact, no nation could be secure in the neighbourhood of a people who should imagine themselves entitled to make war at the mere command of God; because it would always have reason to dread, that they would sooner or later make such a command a pretence for hostilities; and whether the command really come from God, or not, the aggressors are themselves the judges. To other nations, in such a case, the only

remaining alternative is to unite their power for the purpose of extirpating such fanatical monsters from the face of the earth.

To give this pretext for the war against the Canaanites an aspect somewhat more tolerable, some have maintained, “that, without the immediate intervention of the Supreme Being, it is in general lawful to declare war against a nation enormously wicked, whether it has or has not injured, or is likely to injure us, because by its crimes it disgraces human nature, and, of course, injures mankind in general.” Now this were, in fact, to found a right to murder millions, on a mere figure of speech. If it be, in the proper sense of the term, a disgrace to human nature, that a nation is enormously wicked; in whose eyes, we would ask, is it so? Most likely, not in the eyes of either brutes or angels, but only of men themselves; and if they think that thereby injustice is done to them, let them only learn to have a better opinion of human nature, and call in the aid of their own virtue to draw another picture of it. For in fact, it is not disgraced by the conduct of the most wicked people that can be conceived; but, on the contrary, represented according to strict truth; that is, as capable of a high degree of vice, as well as of virtue. And were it allowable, on account of their vices, to invade nations who have done us no wrong, and against whom no injured people has sought our aid, what nation could for one moment be in security with another? How great the particular degree of vice should be that would justify a war, no one can determine: nor have we, besides, any instrument for ascertaining with

accuracy the measure of national vices and virtues. We might, therefore, justly regard the world in the light of a forest full of privileged ruffians, if any nation were entitled to fall upon its neighbours when they had, in its judgment, become enormously wicked.

What should we say, if at present the French upbraided the English, or the English the French, or a third nation either of the two, with their enormous sins, and the contempt of religion prevalent in London or Paris ; with this crafty addition, that such enormities should be no longer borne, and that it felt itself compelled to avenge the honour of human nature by the sword ? Who but would say, that such a pretence was devised upon the spur of the occasion, and resorted to just because no other could possibly be found ; and that the party urging it were determined to have war at all events ? The very same judgment, then, must we form of the conduct of the Israelites, if they invaded the territory of the Canaanites without any better reason, than merely to punish them for their national wickedness.

ART. XXIX.

Other untenable claims of the Israelites to the Promised Land—Noah's Testament, and the Partition Treaty of his Sons.

§ 2. ANOTHER justification of the Israelitish war, which, however, in some respects coincides with the preceding, only that it converts prophecies into testaments, has been drawn from a supposed will of Noah,

and a treaty entered into by his sons, whereby they partitioned the world among them. Without stopping to notice what former authors have written on this point, I shall only state how it has been represented in its best and fullest light, by Dr. Nonne of Bremen, in a Dissertation published in 1755, the title of which is, *Dissertatio Theologica de Justitia Armorum Israelitarum adversus Canaanæos, præside Nicolao Nonnen, defensa, die 22 Augusti, 1755.* In my account of this Dissertation, I shall frequently make use of the same words which appear in a review of it given in the *Göttingisch. Gelehrt. Anzeig.* (Gottingen Literary Notices) for 1756 ; and for this reason, that I am the author of that review, and hold it needless to rewrite it, merely as an *Exercitium variatorium* ; because, in such cases, the reader is always sure to be a loser, from an author being forced, in place of his original and appropriate expressions, to resort to new language, always less energetic, and often less perspicuous, that he may not be accused of copying from himself.

“ Noah’s three sons, Shem, Ham, and Japheth, according to what may be called a tradition, more or less ancient, are said to have divided the earth among themselves, in a congress at Rhinocorura ; and in this partition, Palestine fell to the descendants of Shem ; whence it follows, that the Canaanites, who are of the posterity of Ham, could have no title to dwell in that country. This partition is held to be confirmed by a testament of Noah himself, in which he (consigns, shall we say ? or) condemns all the posterity of Canaan to perpetual slavery, (see Gen. ix. 25.) ; because Canaan, as is

“ pretended from a very improbable exposition of ver.
“ 22. of that chapter, was the fruit of an incestuous
“ commerce of Ham, with his father’s concubine.
“ From this slavery, the Canaanites had broken loose,
“ and had, besides, established themselves in Pales-
“ tine, which did not belong to them ; so that the Is-
“ raelites, as descendants of Shem, had a right to re-
“ claim that country as a habitation, and the Canaan-
“ ites as slaves, and to put to death all who would not
“ voluntarily submit to slavery, as runaway and rebel-
“ lious servants.”

Now this is really a most improbable story, and we may be very well pleased that Moses, and the other authors of the Bible, require not of us the belief of it, as a test of faith. For where is the man to whom this partition-treaty must not appear *passing* strange ? That these three brothers, at a time when their offspring could not be very numerous, and when, for want of experience, they could not calculate on the increase of mankind, should have thought of making a regular partition of the world, how incredible is it ? For some thousand years to come, they must have seen, that there would be room enough for their descendants, provided they did not continue all together, but spread themselves over the globe ; on which, to this day, there are many extensive and fertile countries inhabited but thinly, or not at all.—Where, then, the purpose of a partition, which at best could only prevent the posterity of one son from occupying and improving the portion allotted to another, into which chance or inclination might carry him, and which, perhaps, the other would never inhabit him-

self? The mutual interest of Noah's descendants required that they should keep together, and if they wanted new lands, settle on those most contiguous to the parts already cultivated; just as the late English settlers in North America have cut down the woods, and formed plantations westward behind the colonies, but as close to them as possible. For men stand in need of each other's help, and the improvement of a country goes always on the more easily, the nearer that help is at hand; and besides, the air at a distance from cultivated lands, is generally unwholesome, and often fatal; of which, Dr. Lind, in his late *Essay on the Diseases of Hot Climates*, has treated more fully, and given the reasons. And yet, instead of studying to keep their posterity together, these patriarchs are here said to have made such a partition of the world, as that every grandson, or great-grandson of Noah, went into a country of his own, at a distance from the rest, and from all human aid: one, for instance, into Scythia, another into Egypt, and so on. If, as Moses relates in his history of the tower of Babylon, Providence, desiring to promote the early improvement of the earth in many places at once, separated the descendants of Noah by an unlooked-for event; the aspect of this matter is very different from what it assumes, if, as is here implied, they were themselves, of choice, the authors of this direful separation, and had, for that purpose, framed a contract that was perfectly useless. Besides, how could these patriarchs, or how could Noah reasonably hope, that by the time their descendants became actually straitened for room in the countries first occupied, the least trace of a credi-

table account of either the treaty, or testament, could be extant? The art of writing does not seem to have been then found out. The different countries were mostly without names, and must have been described either by degrees of longitude and latitude, or by their situation and figure; and how could the remembrance of all this have been so perfectly preserved, as that they could safely appeal to it in future ages? We do not at least anywhere find, that any arrangement was made for the secure preservation of this treaty. Writers, indeed, that lived 2000 years after this period, tell us that such a treaty *was* made; but of its contents they give us no information.—“But,” it will be said, “does not the x. chapter of “Genesis contain it?” It does, indeed, name a multitude of people that sprang from the three sons of Noah; but, for the most part, it says nothing farther of their habitations; only, it unluckily *does* mention where the Canaanites dwelt: so that if this chapter contains the treaty in question, the only people whom Dr. Nonne would judicially deprive of their lands, are, of all mankind, able to bring the best proof of the legitimacy of their possession.

What a high degree of accurate geographical knowledge would such a treaty have required, to be adjusted with a proper regard to equality, and so as that no one should have cause to complain of *Læsis enormis et enormissima!* I cannot persuade myself that Noah or his sons could have known of America, or of the many countries which, although we have accounts of their existence, remain, even to this day, almost totally unknown to us, and concerning which, by rea-

son of their situation and extent, we cannot but readily acknowledge our ignorance*. Yet it certainly was not a trifle to leave out America in this treaty of theirs. But to confine our attention to Asia, Africa, and Europe. Could they have known even the contents of these great divisions of the earth, and, as was necessary to a just and equitable partition, have ascertained their measure in square miles? If any one answers, Yes, I shall be not a little astonished, and swear, that he does not know what is requisite to a mensuration, even but tolerably correct. But besides, all square miles are by no means alike in many important respects; for one here in the vicinity of Gottingen, is perhaps worth more than a hundred in the heart of the African deserts. Had, then, these industrious gentlemen, (who, by the way, must have been better acquainted with the then unpeopled earth, than even my learned friend, Dr. Büsching, is with it now,) had they ascertained the fertility of each particular tract, and included it in their scheme? If not, then they blindly entered into a very objectionable treaty for their posterity. And this reminds me to ask, whether they could have represented to them-

* When this was first written, I alluded here to the *then* imperfectly discovered land in the southern hemisphere, of which we *now* know that it must be about as large as Europe. To have overlooked this land, in the partition-treaty, was not a small omission; and I would now beg leave to ask those who affect to be acquainted with it, whether the Spaniards, French, or English, or the posterity of Shem, or Ham, would have the best claim to Australasia? and whether its present inhabitants possess it with right and reason, or ought, like the Canaanites, to be extirpated?

selves the immense extent of Africa, so perfectly waste and desolate, as it appears in our best modern maps? It has been gradually ascertained, that in the internal parts, it is inhabited by powerful nations, to us but little known; and that even in the heart of its oceans and deserts of sand, there are in the vicinity of mountains and springs, islands of fruitful land, to which our travellers have not been able to penetrate; but more than this we know not, nor can we, of course, estimate the fruitful regions in the centre of Africa, in point of either extent or produce. Ham, therefore, must have been extremely generous, or versed in the geography of Africa beyond our highest conceptions, to have so readily accepted of this quarter of the world for his share; and, methinks, if he would give me some of the gold dust which he afterwards luckily discovered in his deserts, and would only swear that he did not know of such a production previously, nor till long after the birth of Christ, (and an oath to this effect I should certainly require of him,) I could draw up such a representation of the injustice he had suffered, that he could not fail to obtain the land of Palestine for the Canaanites by way of redress in the end.—It is difficult for me to treat this matter seriously any longer. Either the sons of Noah were mad to conclude a treaty, partitioning the world, while yet totally unknown; and so was their father, to indulge the whim of establishing it by a testament: or else the story which records these proceedings must be a nonsensical falsehood.

Indeed, very weighty and ancient evidence would be requisite to authenticate a story so palpably impro-

bable. But the authorities that are produced in proof of it, are most of them rather more than 2000 years too recent, viz. fathers of the church, who lived some centuries within the Christian æra, and could not possibly know more that is true concerning Noah's history than they derived from the Mosaic writings: for what they relate besides must be apocryphal. For Josephus, whom Dr. Nonne brings forward as an evidence, but without quoting his words*, has not only said nothing of this treaty, but, on the contrary, in complete contradiction to it, relates, that every one appropriated to himself the land in which he happened to fix his abode; and his account of the dispersion of Noah's descendants over the whole earth begins with these words: (*Antiq. Lib. I. c. 5.*) *From hence, therefore, they were dispersed, when they had no longer the same language, and they spread themselves in colonies in all countries. Every one took possession of the first land to which he came, or to which Providence conducted him, so that the whole earth was peopled, both the mari-*

* As it appeared to me, and may appear to my readers incredible, that Dr. Nonne should adduce the evidence of Josephus to this story, I shall here quote his words at p. 38. of the Dissertation, *Ex Judæis allegamus principalem Josephum*, and, in the note below, *Antiq. Judaic*, L. I. c. 6. *et ad illum omnino Bernardus in Notis*. Now in this chapter, Josephus no doubt describes the nations that sprang from the sons and grandsons of Noah, and mentions partly their places of habitation; but concerning the partition-treaty, he has not one word. Dr. Nonne can hardly have consulted the chapter at the time he wrote, but must either have taken the citation from some other book, or from some former excerpts of his own, in which he had collected particulars relative to the dispersion of the descendants of Noah over the earth.

time and inland parts. And a little after, in the beginning of chapter vi. he says of the posterity of Japheth, They spread themselves in Asia to the river Tanais, and in Europe as far as Gadira, and took possession every one of the land which chance gave him, and that was not previously occupied.*

Epiphanius, an author of the fourth century of the Christian æra, and therefore at least 1800 years later than Moses, is, properly speaking, the principal evidence of this strange story, after whom others have repeated it, not hesitating to rank among heretics all that disbelieve it. Whence he himself had it, he does not distinctly say; but it will be best to produce his own words, from *Hæres*, 66. § 83. where he is combating the Manichæans, who held the God of the Jews to be an evil being, and appealed, among other proofs of his being so, to the injustice of the war which he authorised against the Canaanites. “*A fine God truly,*” (these he gives as the words of Manes himself,) “*by whose law the Amorites, Girgesenes, and other nations, were driven out, and their lands distributed among the Israelites.*” In answer to which reproach, Epiphanius says, “*The blockhead did not advert to this, that the Israelites did nothing more than re-conquer their own land, and demand what most justly belonged to them. For Noah, after being with his family saved from the deluge, divided the*

* *Γην ην ετυχον καταλαμβανοντις, κη μηδενος προκατοικησαντες.* These last words, Bernard thinks fit to leave out; and so, perhaps, Dr. N. had cited from him in his *Collectanea*, or read him as so cited. But though we should leave them out, still nothing remains in favour of the treaty.

“ whole earth among his three sons, Shem, Ham, and
 “ Japheth, and, as is highly probable, and certainly no
 “ lie or fiction, cast lots for their several shares at Rhi-
 “ nocorura*. For the Hebrew word, Nēel, is (viz. by
 “ the LXX.) rendered Rhinocorura†, and the city is
 “ actually so called in the language of the country‡ ;
 “ and this word Nēel, in Hebrew means lot.”—He then
 goes on to relate what countries fell to the share of
 each ; and in particular, that Shem, the ancestor of
 the Israelites, got Palestine, and Ham, Africa ; and
 proceeds thus : “ After the lots were cast, Noah having
 “ called his three sons together, divided the earth accord-
 “ ingly among them, and exacted an oath from them,
 “ that no one should break in upon his brother’s share,
 “ or attempt to defraud him. But Canaan, the son of
 “ Ham, from his selfish disposition, seized on Palestine,
 “ and kept possession of it ; so that from him it got the
 “ name of the land of Canaan. For the land that fell to
 “ his share did not please him, because it lay in a hot
 “ climate, and therefore he established himself in the
 “ land of Shem, and particularly in that part of it which
 “ is now called Judea.”

* This city lies between Palestina and Egypt, and was sometimes included in the one, sometimes in the other. It lies farther south than Raphia, which the Arabian geographers make the extreme boundary of Syria towards Egypt ; so that according to them, it belongs to the latter.

† In Isa. xxvii 12. the Hebrew נַחַל מִצְרַיִם (Nachal Mizraim), is by the LXX so translated.

‡ For this, I am willing to take the authority of Epiphanius, who was born in Palestine, and had in his youth been in Egypt ; but I hesitate as to the etymological proofs, deduced from it, of a historical fact.

The whole story, therefore, has no other foundation than a mere etymology; the very worst that a matter of history can have. In the Bible, the boundary betwixt Palestine and Egypt, is called *Nachal Mitzraim*, that is, as usually translated, *the river of Egypt*; concerning which there has been a great deal of controversy*. But Epiphanius, who had been in Egypt, remarked that the city Rhinocorura itself, had the name of *Nachal*, or, as he writes it in the Grecian manner, *Næel*. This name, if it be indeed Hebrew, a circumstance which, with regard to an Egyptian city, is very doubtful, it may have obtained from many different causes, perhaps from one quite unknown to us: it may be from the very *river of Egypt*, that flowed at no great distance; or because it lay in a *valley*, which in Hebrew is *Nachal*; or again, as in the same language, נַחֲלָה (*Nachalah*) signifies *an inheritance*, so the first city belonging to Egypt, might have been denominated *the inheritance of the Egyptians*. The word also signifies in Arabic, a *palm tree*, a *bee*, &c. from any of all which, the name of the city might be taken. But because *Nachalah* signifies an inheritance, and *that* was among the Hebrews partly determined by lot, and is, of course, often called (*Goral*, גֹּרָל) *a lot*; therefore Epiphanius, to confute the heretics, artfully pretends, in contradiction to the manifest usage of the Hebrew language, that *Næel* signifies a lot. And so from this name, he thinks it probable, that at this place, which lies betwixt two of

* See my *Third Question* to the Arabian travellers, and Büsching's *Geography of Arabia*, p. 464.; or of the new edition, p. 504, 505.

of the quarters of the globe, the sons of Noah cast lots for their several shares of the world. This is much in the same style as if I should take it into my head to enrich the ancient history of Germany with the following relation, taken from the name *Göttingen*.—
 “ The Goths, after their eruption from the north,
 “ lived for a long time in Germany, where their power
 “ was very great, and their government highly dis-
 “ tinguished by the impartial administration of jus-
 “ tice. Their principal tribunal was established at
 “ the place where Göttingen now stands, which thence
 “ received the name *Goth-ding*, or the *Gothic Tribu-*
 “ *nal*: for it is well known that in the ancient Ger-
 “ man language, *Ding* signified a court of justice.”—
 If I told such a story seriously, I should deserve to be laughed at; and if the Manichæans, who were certainly not an ignorant sect, had read this confutation of their opinions by Epiphanius, they must have laughed heartily at the story he drew from the word *Niel*.

Philastrius, who lived in the same period with Epiphanius, with less knowledge, went a step farther, and declared the disbelief of the said partition to be absolute heresy. It forms, in his catalogue, the 118th article of this description. How old this fable is, and who first invented it, I do not certainly know: and that after the time of Epiphanius it was taken up, and repeated by others, I need not mention. But the still more recent retailers of it, to whom Dr. Nonne refers, as for instance, *Georgius Syncellus*, in the 8th century, or the Arabian historians, could not, however numerous, possibly furnish any satisfactory proof

of so ancient a matter : and, indeed, some of them do not so much as mention the very point for which they are quoted. I should have entirely overlooked this, had not Dr. Nonne quoted *Eutychius* * (of the 10th century) in such a way, that a reader, not sufficiently suspicious to consult him himself, would suppose he gave various Egyptian accounts of the treaty ; and yet he has not one word concerning it, and only mentions the dispersion of Noah's descendants, and the fable of the seventy-two patriarchs, who were the founders of as many several nations.

But it is maintained that an account of it may be found in Moses himself. And where ? Why, in the x. chapter of Genesis, ver. 25. where Peleg is said to have had his name from this circumstance, that *in his time the earth was divided*. Yet here the whole point in dispute is unnoticed. That the posterity of Noah divided the earth among them nobody denies : but there is no proof of their having made a partition-treaty. They divided it when they separated from each other, and one people appropriated to themselves one vacant space, and another, another, as they happened to find it, or like it. This is the whole amount of Moses' expression, and so Josephus understood it : but there is not a word about any contract ; and to attempt a proof of it from Moses, is merely to play upon the ambiguous expression—*the earth was divided*.

Dr. Nonne finds Noah's testament in the blessing pronounced on THEM and Japheth, and the curse of

* P. 38. " Porro Eutychius, qui quæ inter Ægyptios credita fuerunt, ex illorum Chronicis tradit. Annal. Alexandrin. p. 52. seq."

Ham and Canaan, in Gen. ix. 24,—27. He is indeed so fond of considering the prophetic benedictions of the patriarchs as testaments, that, mistaking the words of God in Gen. xvii. 19, 20. for those of Abraham, he immediately converts them into a testament, in which Abraham bequeaths to Ishmael the deserts of Arabia,—a country, by the way, which did not belong to himself; (see his Dissertation, p. 35.) I will not here inquire whether testaments were at all made in Noah's time, while the world was yet in a state closely approaching to that of nature;—whether Noah could bequeath more of the earth than was his own, that is, than he had himself occupied and improved;—whether it was sufficient, perhaps, to constitute a legitimate proprietary, that a person took possession, *in idea*, of lands that he could not use, and probably never saw;—or whether a grandfather had a right to consign his grandson, whose education cost him nothing, with all his descendants, to perpetual servitude? It is sufficient for me that Moses says nothing of any testament of Noah's, and that a parental blessing or curse, even though God, for the honour of the fifth commandment, evidently allow it to light, is not a testament. Indeed, the circumstances that attend the blessing and curse of the patriarch, can never be made to suit a testament. He neither speaks as a dying man, or in the manifest approach of death, nor yet, as far as we are given to understand, with any view to that event; but he had, while insensible through drunkenness, been dishonoured and insulted by his son Ham, which he learnt as soon as he awoke from his wine; and he cursed the unnatural son, who

had behaved to him so rudely. And if the author does not expressly say as much, can a reader, who knows what a testament is, infer, that the father was making his testament, because when he returned to his senses, he fell into a violent passion, and cursed his son !

Both the treaty and the testament are incredible facts, and without a shadow of historical evidence. But allowing them to be both valid, and that of course the Israelites had a right to deprive the Canaanites of their country and their liberties, what would be the consequence? Why, other nations might, in like manner, *found* upon them; and then I should be glad to ask Dr. Nonne himself, if he could regard their law of war in any other light than the grossest injustice? The Carthaginians were, without doubt, Canaanites by descent; the Canaanites were consigned to perpetual slavery; therefore the Romans, even though never injured by the Carthaginians, had a clear right to make war upon them, and to put to death as runaways all who would not become willing slaves.—Africa fell to the share of Ham: the European nations, as the Portuguese, Dutch, French, English, and Danes, are descendants of Japheth; and consequently, they are guilty of injustice when they appropriate to themselves any uninhabited island, coast, or harbour, in that quarter of the world; and Ham's descendants, when the said Europeans have improved such land, or rendered such harbour commodious, have a right to seize it without ceremony, and to expel them.—Some of the Swedish literati have maintained, that the Finns are descended of the ten tribes of Israel, without any

ground, as I believe ; but nevertheless, their own writers affirm it ;—writers, whose authority, quoted in a deduction for proof, would carry great weight with it ; as, for instance, the Swedish senator, Count Gustavus Bonde, in a Dissertation printed in the Transactions of the Swedish Academy of *Belles Lettres*. Suppose now that any other European sovereign professed to believe this ; according to Dr. Nonne's political law, he might lay hold of Finland, and expel, by force of arms, the present inhabitants, who are descendants of Shem, and do not belong to Europe ; particularly if his ancestors had never, by any treaty of peace, ceded to them this country, which, by every right in the world, belongs to the children of Japheth. And even although they had done so, it would still be in his power at any time, to get over this difficulty ; for he would only have to pretend, “ that it was not
“ then known that the Finns were of Shemitic origin,
“ as they had always been reckoned among the ho-
“ nourable descendants of Japheth ; but as they were
“ now confessedly the contrary, and even their own
“ Swedish writers of the first rank had opened the eyes
“ of mankind to the real truth, a cession founded on
“ such a fraud, could be no longer binding.”

If any European nation should commence a war on such a pretext, the world certainly could never sufficiently reprobate such unheard-of injustice, and they would be universally looked upon as a set of robbers. And are these, then, the arguments by which the Israelitish war is to be vindicated !

ART. XXX.

Whether the Canaanites by their injuries to the Israelites, provoked them to the war, and were even themselves the Aggressors.

§ 3. A VERY different representation of the right of the Israelites to Palestine, was made by Professor Stiebritz, in a Dissertation published in 1759, *De Justitia Causæ Israelitarum in bello adversus Canaanitas suscepto*, the principal materials of which belong to himself, but the composition to his respondent, Mr. Oepke, in whose hands the argument has perhaps suffered; for it appears to me, that he has admitted some feeble thoughts, which Mr. Stiebritz would hardly acknowledge as his: but as I cannot with certainty determine what belongs to each, I shall name only one of them, in giving an account of this performance.

According to Mr. Oepke, then, the Israelites certainly had ancient promises from God, that they should one day possess Palestine; but he admits that this gave them no right to make war, and that it was their duty to wait patiently till Providence either gave them this land peaceably and without bloodshed, or threw in their way a legitimate cause of war. The latter took place. For as the Israelites had always gloried in those divine promises, and were now come out of Egypt, the Canaanites, becoming suspicious of their designs, and dreading the sword already drawn, as it were, over their heads, had immediate recourse to hostilities, and were the first aggressors.

Now had this actually happened, they were, methinks, hardly to blame. It was no more than what the penal code of Charles the Fifth allowed to every citizen, when any one held a drawn sword over him, to be on his guard before it was too late, and not let himself be actually cut down. It would certainly be but a lame pretext for making war upon another people, that we understood there were prophecies current among them, relative to their becoming one day masters of our country. But if that people, leaving their present habitation, and publicly declaring that they now expected the fulfilment of these prophecies, should approach our land, and even demand of our neighbours liberty to march through their territories towards it; we could scarcely be blamed, if we lost no time in opposing and preventing their invasion: nor should we, by so doing, become the first aggressors. For without a right thus to act, I do not see how we could ever be in security. Let us, by a fiction, bring the case home to our own times, and we shall more easily form the proper judgment of it. Suppose, that among the Catholics a prophet had arisen, who assured them of the speedy extirpation of the Protestant faith; and that an army of Crusaders had left their own country, assembled in the south of Europe, announced their expectation of fulfilling that prophecy by their arms, and demanded a passage through some countries that wished to remain neutral, into our lands; should we be blameworthy to wait for them on our own frontier, and watch their proceedings? I certainly think Mr. Stiebritz would be very far from condemning us, for taking such precautions.

But we find not the least trace of hostilities on the part of the Canaanites on this side Jordan ; which is the main point, since it was *their* land that the Israelites were to seize, in conformity to the divine promise ; and we cannot, indeed, but wonder at their patience, or their fear, in not marching with their united forces to attack the Israelites in the Arabian deserts, or at least in not sending an army to assist the kings on the other side of Jordan. It is, therefore, nothing to the purpose to inquire, whether the Canaanites had a right to strike the first blow against such an enemy ; but whether they *did* actually commence hostilities. Now this appears by no means to have been the case ; at least Moses, who wished to animate the Israelites to the war, and of course would not have omitted to notice such a striking fact, nowhere mentions that the Canaanites had ever violated the sepulchres of Abraham, Isaac, and Jacob, that lay in the heart of their land ; and, as we have observed above, the Israelites seem to have all along remained in peaceful possession of Sichem, and the circumjacent country. Wherein, then, could the first hostilities of the Canaanites have been said to consist ?

I shall adduce those proofs of them which are insisted upon in this Dissertation ; and after each, endeavour to give a reply in behalf of the Canaanites.

1. The Canaanites *must* have taken some measures to arrest the progress of the Israelites, even while yet at a distance. Probably they stirred up other nations to war against them, or to impede their march, and gave them subsidies with this view. Mr. Oepke's words, (Dissertat. § 65.) *quis sibi persuadebit Canaan-*

itas omnes, interque eos imprimis Transjordanenses, quorum capitibus periculum maxime imminebat, hic nihil omnino egisse? are so favourable to the cause of his opponent, that I cannot leave them unnoticed.

Answer. Is this any thing else than absolutely making game of a nation, and alarming them so seriously, that if they are not fools, they must attack us? and then, forsooth, we have a legitimate cause of war with them! It is the very same case, as if a person approached me in a wood, and told me that by every reason in the world my purse belonged to him, and therefore he would by no means let me proceed alone, but would always keep by me. Now, as my purse is not his, I should, methinks, do nothing wrong in shooting such a person, before he got so near me as to knock me down. But, besides, Moses nowhere mentions *that* to have happened, which Mr. O. suspects; and he would hardly have omitted it, if there had been so legitimate a cause for the war which he authorised. There is much more reason to think, that the Canaanites on this side Jordan were quite passive, either from fear, and lest they should provoke hostilities, or because they were divided into so many little states.

2. The Philistines were so hostilely inclined towards the Israelites, that Moses did not once attempt to take the nearest road to Palestine, through their land; because they certainly would have received him with arms in their hands, *Exod. xiii. 17.* They even trembled for fear of the Israelites, (*Exod. xv. 14.*) because they knew that the tract which they inhabited, belonged to the promised land; and they had formerly

slain some Israelites, who, by the way, had attempted to carry off their cattle, 1 Chron. vii. 20, 21. (Dissert. § 66. n. 1.)

Answer. The Philistines were not Canaanites, but a people altogether different, and of Egyptian origin; and allowing they had done the Israelites any injuries, what could the Canaanites help it? This were a reason for war, of a piece with that in the fable of the wolf and the lamb. But I cannot at all see wherein the injuries of the Philistines towards the Israelites could have consisted, except that 150 years before, they would not allow them to drive away their cattle, but defended their property by arms. Their fears gave the Israelites no just grounds to make war upon them, else Alexander must have had a right to attack the Romans; because, as Livy informs us, *they* were apprehensive that when he was done with the east, he would turn his arms to the west. With such a law of nations as this, a conqueror would never be at a loss to justify his hostile proceedings; for his victories would be sure to arouse the fears of other nations; and the pre-eminent power of any people, however peaceably disposed, very naturally alarms their neighbours. And as little, again, is it any act of hostility to refuse an armed people entrance into our country, more especially if they let us know that it will hereafter become their own.

3. The Amalekites (Exod. xvii. 8.) attacked the Israelites without assigning any reason. (Dissertat. § 66. n. 2.)

Answer. I admit that this entitled the Israelites to begin the war which they carried on against the Ama-

lekites. I go even farther, and tender to Mr. Oepke, of my own accord, an argument of which he may make use, viz. that the Canaanites and Amalekites were of one origin, with this difference only, that the descendants of Canaan dwelling in Arabia, were called Amalekites, and those in Palestine, Canaanites*. But as the Canaanites were divided into several independent kingdoms, I do not see how the Israelites could justly revenge on the Canaanites on the west side of Jordan, any injury which they might have suffered from the Arabian Amalekites. This were just the same as if any sovereign made war upon Germany, because, perhaps, the Swedes, who are of the same original with us, or the Dutch, or the Swiss, had attacked *him*.

4. A Canaanitish prince, viz. the king of Arad, (Numb. xxi. 1,—3.) attacked the Israelites of his own accord, when they were approaching his territories. This he ought not to have done, but to have waited till the Israelites had actually invaded them, and then defended himself. (*Atrocissimum se prorsus et implacabilem hostem demonstravit, quod tum iteratâ vice in eos irrueret, nequaquam lacessitus, tum vero intra fines suos sese non contineret cum exercitu, ut eos forte defenderet.* Dissert. § 66. n. 3.)

Answer. If the king of Arad did wrong, the Israelites requited him by utterly destroying his cities. But what concern with all this had the other kings of Canaan, who did actually behave, as Mr. O. here prescribes, and waited till the Israelites crossed the Jordan into their territories?

* Specilegium Geogr. Hebr. exterae. T. I. p. 170,—174.

5. Og and Sihon, the two Amoritish kings beyond Jordan, not only refused the Israelites a passage into Palestine, but were themselves the first hostile aggressors. (Dissert. § 66. n. 4, 5.)

Answer. I ask again, how does this concern the other Canaanitish kings on *this* side Jordan, whose land was the object in view, and who had never sent any assistance to these kings? The Israelites, if Og and Sihon attacked them merely for asking leave to pass through their land, had certainly a right to take possession of it, if they conquered them. But to the country on this side Jordan, they did not thereby acquire *any* right, if they previously had none. This appears to me much the same, as if one attempted to represent the causes of the last French war with Prussia in these terms: “The French demanded a passage through Hanover, to get to Magdeburg. Hanover refused them a passage into the Prussian territories. Hence France acquired a right to make war on the king of Prussia.” The French would unquestionably disown such an advocate, and give him bad names; and yet there exists this difference in their favour, that in the Hanoverian army there were Prussian auxiliaries.

6. The Moabites were afraid of the Israelites, united with the Midianites against them, and hired Balaam to curse them, (§ 68.)

Answer. Had the Canaanites any concern with this? Both Moabites and Midianites were related not to the Canaanites, but to the Israelites themselves, being descendants of Abraham or Lot. If they acted in a hostile manner, the Israelites had a right to make

war on *them*, but not on the Canaanites: but they did not so much as exercise this right against the Moabites, but spared the territories of that people. How strange then was it to avenge the wrongs they had suffered from the Moabites, not on *them*, but on the Canaanites?

7. The Canaanites are called in the Bible, enemies to the Israelites, and actually carried on war against them, after they passed the Jordan, (§ 69, 70.)

Answer. Was there any thing wonderful in this? They defended themselves when they were attacked, and were then enemies to the Israelites no doubt. And what people would not have done the same? But did this *compelled* resistance justify the attack of the Israelites upon them?

APPENDIX TO ART. XXX.

Whether the Israelites as a people driven from their country, and destitute of any place of abode, had a right to invade the territories of other nations?

I MUST here make a new Section, but without numbering it, that the numbers of the subsequent Articles may not be changed, which might to many readers be disagreeable.

In the interval between the appearance of the first and second editions of this work, Professor Faber, in his *Archæology of the Hebrews**, p. 94,—101. proposed

* In this work, Mr. Faber, who had been my hearer in almost all my lectures on different subjects, takes every possible opportunity of treating me with rudeness and injustice. I thought, and could per-

quite a new right, under which the Israelites might have occupied Palestine, the validity of which I must now investigate.

haps shew, that I had a title to look for very different treatment at his hands. I will, not, however, here enter into a detail of his incivilities, (which, now that he is dead, would be unbecoming, and though he were not, could give little pleasure to my readers,) but I find myself compelled, in my own defence, to make the following declaration once for all.

For a long time, as my syllabus of prelections shews, I lectured on the *Antiquitates Domesticae Hebræorum*, according to a compend of seven sheets, *printed* for the use of my auditors, but never yet published for sale, because unfinished. Copies, however, are in the hands of many of my quondam pupils, who cannot but wonder (indeed many of them *have* wondered) at the close resemblance of the above compend, and still more of my prelections themselves, with Mr. Faber's *Archæology*; the very order of which is almost quite the same: and what is still more singular, in some erroneous opinions which I held until the year 1766, but which I first altered in my MS. and controverted in 1773, when I next read the lectures again, Mr. Faber, who had heard them in 1766, coincides with me. With all this, that gentleman is so far from professing to have any knowledge of any person having attempted to illustrate the *private antiquities of the Hebrews*, that he considers the subject as quite a new field, which he alone has endeavoured to cultivate, and begins the preface to his *Archæology* in these words: "If this work treated of the ecclesiastical or political
"antiquities of the Hebrews, the multitude of books, great and small,
"already published on these subjects, would render a preliminary
"notice requisite of the points wherein it differs from them, and of
"what it contains that is new," (*an acknowledgment whence he took it would have been more suitable*) "in order to obviate the suspicion of
"my having undertaken a superfluous labour. But as those antiqui-
"ties which regard the mode of life, the domestic economy, the food,
"the arts and sciences of the Hebrews, &c. have not hitherto been
"illustrated in any particular work; in publishing this *Archæology*,
"the object of which is to describe the private life of the Hebrews,

According to him, the Israelites only acted in conformity to the right and practice of other nations, who when driven from one country, invaded another; as

“I have so little cause to be apprehensive of any such suspicion, that I have reason, and may venture rather to ask my readers why this branch of the subject has remained, till now, so completely in the back ground? Has the obscurity in which it lay buried, and the difficulty with which such researches are carried on; or, on the other hand, has the general prejudice as to any fuller knowledge of the manners and customs of the ancient world being unnecessary to the illustration of holy writ, been the cause of this neglect?”— (What can have happened to Mr. F. that he cannot, in 1773, recollect having heard, in 1766, those very prelections which, with additions in his own manner, he prints in 1773!) “We cannot believe that both these causes have operated. There has, indeed, been no want of smaller essays on the subject. Fleury’s *Manners of the Israelites*, Christian Benedict Michaelis’ *Latin Treatise concerning the Domestic Economy of the Hebrews*,” (he means here my deceased father’s two Dissertations, *De Œconomia Patriarchali*, not my sheets, of which, notwithstanding his obligations to them, he knows nothing at all!) “the third part of Iken’s *Hebrew Antiquities*, Stosch’s *Œconomical Archeology of the New Testament*, &c. &c.” In this style proceeds Mr. Faber’s preface to a book, with the origin of which he was better acquainted. It contains, sure enough, much matter of his own, which I shall not only not dispute with him, but on the contrary, positively protest against its being ascribed to me: among which, (and this is the way that he takes to evade the suspicion of plagiarism,) there are various objections to my opinions; of which, however, something either mentioned in my own lectures or publications, is frequently the foundation; so that, as Lessing says in the vulgar language of Berlin, *I am basted with my own fat*. But these objections are principally found, where I had noticed the opinions, not in my prelections only, and in the unpublished sheets, (for as to these, Mr. F. takes care not to mention my name, nor to know any thing about them,) but in some of my other writings. All this is managed according to a style of policy, which, for a short time,

for instance, the Huns, whom he expressly specifies. And this, in his opinion, is perfectly justifiable; for an expatriated people must reside somewhere, and, as he wittily observes, it is not such an easy matter to pass to another planet; so that they must have a right to establish themselves by force or favour, in some other land. Now the Israelites found themselves in this precise situation. They had reluctantly left Egypt, but they were forced to do so; for having before been a free people, leading a pastoral life, they could not brook the tyranny to which they were there at last subjected; and it could not be expected that

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proves sufficiently ingenious; and it certainly argues considerable resolution in Mr. F. to have made such an attempt, when so many pupils from different parts of Germany heard my prelections on this subject in 1766, along with himself, as well as before; and among them, several persons who have made themselves as well, and even better known in the literary world than he is. The singular resemblance between his *Archæology* and my *Domestic Antiquities*, must strike all who have ever heard me, or seen the printed syllabus.—The reason, however, will now be evident, why, in the first place, Mr. F. never once mentions my name, where he agrees with me, but only where he has with difficulty contrived objections to my doctrine; not, indeed, as it appears in my unpublished papers, but in my published works: and, in the next place, why he *then* treats me with such unmerited rudeness and enmity. This artifice is not so easily played off on printed works, as on prelections stolen, and surreptitiously published. Richardson has taken notice of a similar trick among school-boys: they spit upon the bread and butter to disgust their mess-mates, that they may get it all to themselves.—A person whose fate it has so *often* been, as it *has* been mine, to reap abuse and ingratitude, after acting with liberality and open-heartedness, will not be blamed for having *once* taken notice of it.

they should take up their residence in the Arabian wilds. The cause which he assigns for their turning directly towards Palestine, agrees partly with that which I have given in the subsequent Article, (XXXI.) viz. their ancestors having formerly dwelt there as herdsmen; but with this difference, that, according to him, the Canaanites had been the original and legitimate possessors, and the Israelites, when expelled from Egypt, had at first only asked permission again to drive their cattle to the open pasturage; which, when the Canaanites refused, and attempted to prevent, the Israelites being determined not to become their subjects, as they had ever been a free people, had no other alternative than to resist, and in their turn attack, and, if possible, drive *them* out, though they were the original and legitimate possessors of the country; more especially considering that from the very great increase of the numbers of the Israelites, it could not contain both nations, and their dwelling together would have occasioned perpetual quarrels.

It will not be expected that I should here object to what Mr. Faber has taken from myself; that is, to the title of the Israelites to reclaim the pasture-grounds of their ancestors. But in his opinion, this was not their *Jus Belli*, and what justified their hostilities; only they were determined to invade Palestine rather than any other country. It is properly upon their want of a home, and their pretended expulsion from Egypt, that he grounds their right; and in opposition to this opinion, I have to offer the following remarks:

1. The example of the Huns is not very favourable to his cause. Of *their* regard to justice, the world

entertains such a strange opinion, that to say of the Israelites, that they began the war on the same principle of right with the Huns, will rather be considered as a condemnation, than as a justification of their conduct.

2. A people driven from their homes had an undoubted right to seek a settlement somewhere. But then, *that* must be either in uncultivated and unoccupied countries (such as we still find in many parts of the earth, and of course they were far more frequent 3000 years ago,) let them be ever so wild; or else, they must subject themselves to the nation in whose territories they ask permission to settle. If I ask, when my house is burnt, to get admittance into my neighbour's, that I may not lie on the open street, I must acknowledge him as the proprietor, and not kill him with all his family, for fear we should not both agree together. And thus must nations act towards each other.

3. We have actually in ancient history, the case of a people, and that a very brave, and at the same time, a very barbarous one, who lost their country, and had to seek for an abode; at least if we may credit the relation of *Florus*. (Lib. III. c. 3.) The Cimbri and Teutones having lost their lands by an inundation*, begged the Romans for a settlement, promising in return to be their servants; *petentes ut Martius populus aliquid sibi terræ daret, quasi stipendium; cæterum, ut vellet, manibus atque armis suis uteretur*. But as the Romans refused their request, probably, as *Florus* re-

* Profugi, cum terras eorum inundasset Oceanus.

marks, because it was really impossible for them to grant it*, they had recourse to force. If the case was as Florus relates it, there is doubtless nothing to say against the petitioners, for somewhere they must be; and they only acted as a person shipwrecked, who tries to take a plank from another, on which to float himself: and yet the resistance of the Romans, in defence of their ancient possessions, was at least equally, if not more justifiable; and as they were victorious, they could not be blamed for exterminating such an enemy. Perhaps herein they acted impolitically and cruelly too, if they could possibly have any where procured a settlement for the two nations; at least, I do not believe that the present king of Prussia, (I do not instance Russia, to avoid the objection of its having so much more waste land than the Romans had,) if a brave people, amounting to some hundred thousand men, had made him the same proposal, would have acted as the Romans did, although his territories are not to be compared in point of extent with the *then* Roman republic. He would have devised means to accommodate such strangers; at least he has, particularly in the late scarcity, without being a loser, given strong proofs of a similar benevolence to many foreigners that took refuge in his kingdom. If, however, the Romans did really find it impossible to admit the Cimbri and Teutones, their procedure cannot be absolutely condemned.—Now to apply this to the Israelites. If they (which, however, was not the case) had actually been in the situation of these nations, they would, like

† Sed quas daret terras Populus Romanus, agrariis Legibus inter se dimicaturus?

them, have been obliged to send an humble embassy, praying the Canaanites to grant them pasture-grounds, or fields, and offering in return to become their subjects and soldiers. In this, they would have acted according to the same law of nature which these two barbarous nations acknowledged and respected, but not at all according to the law of the Huns, or the principles on which they proceeded. If the Canaanites had then refused their offer, recourse to force would not have been unlawful on the part of the Israelites; and yet here would have interfered *this* ambiguous circumstance, which is just as rare and unpleasant in the law of nature—that the Canaanites would have had a still better right to repel force by force, and to send this people, who had no home on earth, and so obtruded themselves upon *them*, to dwell, not as Mr. F. says, in another planet, but in another world, as the Romans did the Cimbri and Teutones: so that here would have been right opposed to right.

4. What Mr. F. says of Arabia, is not happily introduced. If the Israelites could abide 40 years in Arabia, where even a second generation were still so well satisfied, that Moses began to fear they would become averse to the conquest of the promised land*; they could not well urge the want of a home, as the cause of their invasion of Palestine. Arabia not only afforded pasturage for their cattle, but, as we learn from *Niebuhr's Travels*, even in the deserts which the Israelites traversed, there were tracts not entirely un-

fruitful, and unsusceptible of still farther improvement ; as, for instance, the Wilderness of Paran, as it was called, &c. &c. But in short, where a people have lived 40 years, they may live longer ; and if Providence there fed them for so long a period on nothing but manna, which they enjoyed in miraculous abundance, it might still have done so ; and, in fact, the manna did not cease so long as they were beyond Jordan, (Josh. v. 11.) If it be said, Providence chose not to do so any longer, but to command them to conquer Palestine, that brings us back to the point where we commenced this enquiry, in Art. XXVIII.

5. But all that has hitherto been said proceeds on the supposition that the Israelites had actually been driven from their country, and were in like circumstances with the Teutones and Cimbri. But this was manifestly not the case. How then can Mr. F. describe them as an exiled people, and without a country, when they repeatedly requested leave to go out of Egypt, under the promise of returning, after they had offered sacrifice on Mount Sinai ; and had it only at last granted them by the king, after many denials ? If it had been true, as some foreign writers have absurdly enough fancied, that they were driven out on account of the leprosy, (which, in fact, is endemic in Egypt, and perhaps was thence carried with them,) in that case, their situation would, in some measure, have resembled that of the Cimbri and Teutones ; although then, indeed, other nations would have had a still better right to refuse them admittance ; the same reason, at least, for which one will not receive into one's bed, a person infected with *Lues venerea*, who

has no bed of his own. But, unfortunately, Moses relates a very different story, viz. that the Egyptians wanted to detain the Israelites by force, and they were as determined to force their way out. In these circumstances, to have demanded of any nation their land, on the pretence they had none of their own, and to have menaced them with extermination, in the event of their not instantly removing *on* that demand, would have been nothing better than absolute robbery. But, says Mr. F. they were a free people, and having been oppressed by the Egyptians, they were constrained to withdraw from Egypt. That does not follow. They were no longer a free people, after they came down into Egypt, but became subjects to the king, whose invitation thither they accepted: for, from the circumstance of the Bedouins now in Egypt, (whom Mr. F. very improbably, and from accounts that cannot be depended on, makes to amount to two millions of men*,) not acknowledging full subjection to, but rather shewing considerable independence on, the Turkish government, weak as it now is, and at its last gasp, no conclusion can be drawn to the flourishing times of the mighty Pharaohs; invited by whom, whoever came into Egypt, and had a dwelling-place and land allotted him, became unquestionably a subject, though, indeed, a *favoured* subject, and not a slave. The Israelites certainly were not bound to let themselves be oppressed, and to suffer their children

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* See Dissert. p. 96. "The number of the Israelites does not reach to that of the Bedouins, (namely, those in Egypt, who alone are in question) the former being only 600,000; the latter, 2,000,000 men."

to be thrown into the Nile. But all this tyranny gave them no title to invade the territories of a people who had no hand in it; but only to resist and attack the Egyptians, (which, by the way, required no more courage and strength than a forcible exit from Egypt with an army at their heels,) and, of course, if successful, to conquer Egypt itself; and, if they were resolved to push their rights still farther, to massacre its inhabitants, as the Neapolitans did the French, on the occasion of the famous *Sicilian Vespers*.—The Greeks, and, in general, all Christians in the Turkish dominions are severely oppressed: and if the Turks went so far as to throw their children into the water, they would certainly be justified in rebelling, and, if they could, either exterminating or expelling them; but who would ever think of giving them a right to pass into Naples and Sicily, and put to death the people of these countries, lest, at any future period, religious disputes, or ill-will from any other cause, should arise between them? Or again, though we should allow that the Sicilians had a right to make a general massacre of the French, to avenge their cruel oppressions, could we possibly persuade ourselves into the belief, that for the same reason, they had likewise a right to emigrate from Sicily, and to massacre the innocent inhabitants of any other country, in order to take up their abode in it? If such a right were valid, we could not be sure that Englishmen of *Wilkes'* principles, believing themselves oppressed, would not soon return in a body to Germany, the land of their forefathers, and put the people to death, in order to enjoy freedom; only we should receive them, as in duty bound.

6. Add to all this, that the Israelites themselves, so far from thinking that any such absolute necessity was imposed upon them, shewed at first a strong inclination, more than once, to return to Egypt; (see Exod. xvi. 2, 3. Numb. xi. 4, 5, 6. but particularly xiv. 1,—4.) and to serve the Egyptians, who would seemingly have received them again on somewhat better terms; and afterwards, the next generation of them would willingly have remained in Arabia, to which they had been accustomed, and which was better suited to a nation of herdsmen.

Upon the whole, all the right that Mr. F. makes out for the Israelites, amounts to something like this: “*I am in want of something that you have, which I find not at all convenient: and, therefore, I take it from you, and kill you, if I can.*” A very strange demand, no doubt; and a principle, holding which, he could not be blamed for taking any thing belonging to another, were it even his unpublished prelections; and then if he did not absolutely murder the proprietor, at any rate treating him with ingratitude and contempt.

ART. XXXI.

Palestine had from time immemorial been a land of Hebrew herdsmen; and the Israelites who had never abandoned their right to it, claimed it again of the Canaanites as unlawful possessors.

§ 4. My sentiments concerning the pretensions of the Israelites to Palestine, I delivered 13 years ago, in a Dissertation, *De Nomadibus Palestinae*.

From time immemorial, it had been a land occupied by wandering Hebrew herdsmen *, in which even Abra-

* I must beg the reader to observe, that I do not say, in general *wandering* herdsmen, but that I specify *Hebrew herdsmen*, that is, those who, with Abraham, were sprung from Eber, and had their proper country beyond the Euphrates, but had, at a very early period, sent colonies into Palestine, then unoccupied by any other people.

Even before Abraham received a commandment from God to go into Palestine, his father, with his family, and some other persons, had, of their own accord, set out from Mesopotamia, with their numerous herds, on their way to that country. This is clear from Gen. xi. 31. *And Terah took Abram his son, and Lot his grandson, and there went forth with them others from Ur in Chaldaea, to go to the land of Canaan.* The order from God to Abraham came later, chap. xii. 1. after Terah and the rest of the colony had not indeed completed their journey, but only reached Haran, a barren country, which they were continuing to traverse with their herds. The whole colony must have been considerably numerous, as Abraham alone (ch. xiv. 14) was able to arm 318 servants, born in his own house; and as they were going to Palestine, with the intention of pasturing their numerous herds in it, (as we shall see from Abraham's example) independent of the Canaanites, it must be evident that it could not be the peculiar property of that people; who, as I shall shew in the sequel, had a country of their own on the Red Sea. Only suppose that any wandering horde from Tartary, for instance, should think of coming into Germany, and pasturing their cattle through it, without permission, would it be suffered? Yet the Canaanites allowed Abraham to do this very quietly; and Terah does not seem to have suspected the least opposition from them. This shews very clearly to whom the land belonged at that time of day.

Mr. Oepke's objections to this opinion, will be found in § 43. of his Dissertation. I shall not enter into a circumstantial reply to them, but only entreat the reader to consider two passages, viz. Gen. xi. 31. and xii. 5 in connection, and then to judge. That Stephen, in Acts vii. 2, 3. represents the case otherwise, I cannot admit as a valid ar-

ham, Isaac, and Jacob, had exercised the right of proprietorship, traversing it with herds, without being in subjection to any one, or acknowledging the Canaanites as their masters*. The Phœnicians, or Canaan-

gument against me ; for though he was a holy man, and a martyr, yet his *extempore* speech made on that occasion, is not therefore to be held as inspired, or infallibly true. The promise of an inspiration, when before the Jewish and heathen tribunals, (Matth. x. 19. 20) to which Mr. O. appeals, applies only to the apostles ; but Stephen was no apostle. I know not why Mr. O. accuses me of speaking contemptuously of Stephen, (*sine causa adeo contemptim de Stephano loquitur.*) It is certainly no proof of contempt, that, while I mention Stephen as a holy man and a martyr, I refuse, nevertheless, to admit the inspiration of his address, without a proof. The text, Acts vii. 55. to which Mr. O. refers as a proof of its inspiration, relates not to the preceding oration, but to the vision which Stephen saw at its conclusion. When he saw the vision, he was *full of the Holy Ghost*, but not before.—Mr. Faber's objection, that I have concluded *that Terah, from his intending to go into Palestine, certainly had a right to it*, is just exactly what might have been expected from *him*. The reader will judge whether I have come to such a conclusion, and may, with this view, peruse this note once more.

* That Abraham, Isaac, and Jacob, did not live in Palestine, as subjects, is manifest from every glance at their history. Abraham had 318 servants, *born in his house*, who were trained to the use of arms, Gen. xiv. 14. or (to speak so of this point as to be fully understood, now that of ancient manners no vestige remains) he had, no doubt, a far greater number of *other* servants, (bought, for instance, or taken in war,) into whose hands, however, he put no weapons, because their fidelity could not be depended on. But those, on the contrary, born in his house, of whom he had 318, were regularly trained to arms, and he used them with very great effect, as an exercised militia. He actually carried on war with five kings, *petty kings*, I grant ; but it was, not as a citizen defending his country, but as a sovereign, *in miniature*. (For *then*, every thing was on a small scale.) These kings had not at all attacked that part of the country where

ites, were certainly not the original possessors of this land, but had at first dwelt on the Red Sea, as Hero-

he resided ; but, in another quarter of Palestine, had made his nephew, Lot. who, like himself, was a wandering herdsman, a prisoner, with the rest of the inhabitants ; and this was his reason for engaging in the war. But it shews, that he was any thing but a subject. He had, besides, formed alliances with others, and that too for offensive war, as is related in this same xiv. chapter. He, moreover, afterwards made alliances with the kings of Palestine, as with his equals ; and this was repeated by his son, Gen. xxi. 22. xxvi. 26,—31 —Two of Jacob's sons, to avenge the dishonour of their sister Dinah, by the son of the king of Sichem, destroyed the whole people of that city, with circumstances of unparalleled atrocity. Their father disapproved their conduct, which even now would look liker a massacre, than a feat of war, and was fearful of the consequences ; but his fear proceeded not from any risk of his sons being apprehended and punished by the decision of a judge ; but from the danger of a league being formed against him by all his neighbours, (Gen. xxxiv. 25,—30.) and even that was not done. These two sons, Simeon and Levi, were undoubtedly as great miscreants as ever were broken on the wheel ; yet they were neither tried nor punished. —Thamar, the daughter-in law of Judah, and, moreover, by birth a Canaanitess, was found to be pregnant some years after her husband's death, which was then considered as the same crime with adultery, and punishable with death. We see, however, that Judah does not accuse her before any magistrate, but that he himself pronounces the sentence of death upon her, and himself also recalls it, when convinced of her innocence, Gen. xxviii. 24,—26.

I must here remark, that in my Dissertation, *De Nomadibus*, § 3. after a brief detail to the above effect, I have given some farther accounts of the wandering hordes of later times ; though from these, it did not at all fall in my way to deduce the title of the Israelites to Palestine. But this Mr. Oepke conceives I should have done, and objects to me on that account, and even charges me with designedly keeping silence on the subject. He did not consider that what I then wrote concerning the justice of the Israelitish war, was merely

dotus * relates ; with whom Justin † and Abulfeda ‡ in so far coincide, as that the *former* says, that they

a *corollary*, and that all that I related concerning the Nomads, could not have a reference to that corollary. All these objections do not affect me. In like manner, he complains that I wrote without order ; that is, that I did not write in the order I should have done, if the title of the Dissertation had been, *De Justitia Belli Israelitici* ; but that was not my subject, but merely the contents of one single paragraph. My design was to treat of the Nomads in Palestine, and to give an account of certain particulars relative to them, of which, not all, but only a part, could be expected to have any reference to the justice of the Israelitish war.

* B. I. ch. 1. “ The Phœnicians, say the Persian historians, came “ from the Erythrean to the Mediterranean sea, and settled in the “ country which they still inhabit, and, at the same time, began to “ make distant voyages ;” and B. I. ch. 89. “ The Phœnicians, as “ they say themselves, had formerly dwelt on the Red Sea, and from “ thence removed into Syria, where they occupied the sea coast.”— These accounts are of the more weight, because they refer to the Persian writers, and even to the Phœnicians themselves. Yet Mr. O. (p. 56) finds a contradiction between them, and would fain render the veracity of the author suspicious, from his appealing in the one to the Persian ; in the other, to the Phœnician authorities. For my own part, I can perceive no discrepancy at all. The writers of both nations might here certainly agree. He, moreover, blames me very much for naming Herodotus first, and perverting Moses into a conformity with him. I mentioned him first, because his testimony to the point is the most decisive : whether I have perverted Moses, will be best judged by those who shall compare my two Dissertations, *De Troglodytis*, § 3, 4, 5. and *De Nomadibus*, § 4. with his Dissertation. —Mr Faber objects, that Herodotus does not say, “ The Phœnicians “ came at first from the Red Sea into the land which the Jews inhabited in his time.” But I only mean to prove from him, that they originally dwelt on the Red Sea, and *that* he expressly says : but that a writer who lived so long after they were again driven out by Joshua, and who knew not so much as that such a person ever lived,

had another country before they came to dwell on the Lake of Gennezareth, or Dead Sea ; and the *latter*, that they first dwelt in Arabia. Moses is so far from contradicting Herodotus here, as has been commonly believed, that he rather expressly confirms his account, by twice saying in the history of Abraham, *The Canaanites were then in the land*, Gen. xii. 6. and xiii. 7. The word *then*, cannot imply that the contrary was the case in his own time ; for *then* the Canaanites still dwelt in Palestine, and their expulsion only began under his successor, Joshua : so that he gives us clearly to understand, that there had formerly been a time when they dwelt *not in that land*, but somewhere else. But another relation which he gives in Gen. xxxvi. 20,—30. compared with Deut. ii. 12, 22. is still more decisive. He there describes an ancient people, that before the time of Edom, had dwelt in Seir, or as we now call it, Idumæa, and whom, from

should have related every particular step of this people's progress, and all their wanderings and colonizations, is not to be expected.

† Lib. xviii. c. 3. "Tyrionum gens condita a Phœnicibus fuit, qui terræ motû vexati, relicto patriæ solo, Assyrium stagnum, (*that is, either the lake of Gennezareth, or the Dead Sea*) mox mari proximum littus incoluerunt " He does not say where they had previously lived ; but he expressly says that they had lived *elsewhere*, and had another country.

‡ The passage will be found quoted and explained in my *Spicilegium Geog. Hebraicæ*, P. I. p. 170. It asserts, that the Canaanites had emigrated from a southern country, (Arabia) northwards into Syria, and hence Syria was called *Scham*, because it lies to the north of Arabia. *Scham* primarily signifies *the left hand*, and thence, *the north side* ; for as the Orientals in geographising, turn their faces to the east, so the north is on their left hand.

their living in subterraneous caverns, he denominates Horites, or Troglodytes. Of this nation, was that one of Esau's wives, mentioned Gen. xxxvi. 2, 24.; and as Moses elsewhere relates that Esau had *three* wives, two of Canaanitish descent, and the third a grand-daughter of Abraham, (Gen. xxvi. 34, 35. and xxviii. 8, 9.) it evidently follows, that the Horites who of old inhabited Idumea, must have been Canaanites*. Consequently the Canaanites originally dwelt in the region afterwards called Idumea, and on the Red Sea; but when they began to carry on the commerce of the world, for which they became so renowned in history, they migrated into Palestine, the situation of which was peculiarly advantageous for that purpose. It would appear, that at first they only established trading marts and factories, which could not but be very acceptable to the wandering hordes, because they gave them an opportunity of converting their superfluous produce into money, and of purchasing foreign commodities. By degrees, they spread themselves farther into the country, improved the lands, planted vineyards, and at last dispossessed the ancient inhabitants; just exactly as their descendants did at Carthage, who first asked for a hide-breadth of ground

* I have treated more fully of this in my Dissertation, *De Troglodytis, Sciritis et Themudæis*, § 3, 4, 5. to which I must refer, because the *reading* of the Mosaic text has some difficulties. If the names of Edom's wives are different in the xvi. and in the xxxvi. chapters, it is to be remembered, that one of these chapters is a fragment of an Arabian history; and the same persons have very often different names among the Arabians, from those by which they are known among the Hebrews.

whereon to sit, and then by an artful explanation, got a bargain of as much room as was sufficient to build a city on, and in the end made themselves masters of the whole country. As early as Abraham's time, complaints were made of the herds not having sufficient room, from the Canaanites being then in the land, and crowding it. But this always went on farther and farther; and when the Israelites had for a time gone down to Egypt, the Canaanites at last appropriated to themselves the whole country. This land of their forefathers, and their nation, the Israelites had never given up to the Canaanites; and therefore they had a right to re-claim it, and to re-conquer it, by force. If they solicited from other nations a passage into Palestine, it was merely to come at their own property again: and when they passed the Jordan, and found the Canaanites in arms against them, the latter had no longer a legitimate cause to maintain, for they wanted to keep possession of the property of another people by force.

It cannot even be here objected, that the Israelites, by their descent into Egypt, had abandoned their right, or that they lost it by prescription. They went down to Egypt only for a time, on account of a famine; and it was with the hope and determination of returning again, as the divine promise given to Jacob, Gen. xlv. 4. confirms. I do not here inquire into, or draw any conclusion from, the divinity of the promise: it is sufficient for me that, whether true or false, Jacob gave out, that he had in a vision such a promise made him; because it proves the certainty of his having it in view, and making no secret of it, that his posterity

should one day go back to Palestine. Whether prescription holds among nations, the single case excepted, where possession goes back to times of which history gives no certain account, and where, of course, in default of other deductions, prescription does interfere; and again, how long a period may be requisite to prescription in the law of nature and nations, (longer, no doubt, than in civil law) I will not here stop to enquire; for prescription cannot operate at all where a people avow and maintain their rights with sufficient publicity; and this was done by the Israelites. Jacob went down into Egypt with a conviction that his descendants should, under the divine guidance, return to Palestine; nor would he allow himself to be buried anywhere else than in his own hereditary sepulchre in Palestine, exacting from his son Joseph an oath for that purpose, (Gen. xlvii. 29,—31.) And his burial was conducted with such solemnity, (Gen. l. 7,—13.) that the people in Palestine could not possibly entertain a doubt of the intention of the Israelites to return thither at some future period. But were the matter considered still as somewhat doubtful, because Moses does not expressly mention this as the reason of Jacob's desire to be carried thither; on the occasion of the death of Joseph, it is placed in the clearest light. For he testifies to his brethren, his certain hope that God would re-conduct their posterity into Palestine; and therefore he desired not to be buried in Egypt, but begged that his body might, after the ancient Egyptian manner*, remain uninterred, while

* The ancient Egyptians often let their dead remain in their houses

they continued there, and be carried with the people at their general return into the promised land, and laid in the sepulchre of his fathers. Such was his anxiety on these points, that he made his brethren swear that they would carefully attend to them; and accordingly we find, that when he died, they did not bury him, but, as was not unusual among the Egyptians, let him remain embalmed in his coffin, until their descendants, at their departure for Palestine, carried his remains along with them, Gen. l. 24,—36. Exod. xiii. 19. Could a people have given a stronger proof of their *animus revertendi*, and that they had not for ever abandoned their ancient country? Was it necessary (I think not) that they should have sent a notary every thirty-three years, to protest against the forfeiture of their rights? Even the Egyptians well knew the expectations of the Israelites on this head; and that was the principal reason of their oppressions towards a people that were not to remain for ever within their country, and in subjection to them. For although from the first they did not intend to let them go, yet they were afraid, from the rapid increase of their numbers, that if a war took place, they might side with the enemy, and not perhaps conquer the country, but depart from it*; or, as the proper expression is, *go up*: for we must recollect, that to go from Egypt to Palestine, was, in the

for several generations, in an erect posture, in a coffin, and not lying horizontally, as is our fashion: and when in want of money, they would even pledge the bodies of their ancestors. In some such chest were Joseph's unburied bones preserved.

* See Exod. i. 9, 10.

idiom of the Hebrews, *to ascend* ; and, *vice versa*, from Palestine to Egypt, was *to descend**. From the representation we have now given of the origin of the war, it will be easy to perceive (what to a reader of the Mosaic history must otherwise appear at first very strange) why Moses did not attack the Canaanites beyond Jordan ; but from Og, king of Bashan, and Sihon, king of the Amorites, requested nothing more than an unmolested passage, and only had recourse to arms when, instead of granting it, they marched hastily into the wilderness to meet him, and offered him battle. The reason was manifestly this, that the Israelites laid no claim to the country beyond Jordan, but only to the pasture-grounds that from time immemorial had belonged to the Hebrew herdsmen, and which their ancestors, Abraham, Isaac, and Jacob, had actually occupied with their cattle.

“ But might they not at least have left to the Canaanites those trading cities which had been built, “ without opposition from their ancestors?” This question is easily answered. If a foreign people, whom we permit to establish factories and trading cities in our land, shall so abuse our generosity, as to dispossess us, and gradually appropriate to themselves our whole country ; and when we wish to return to our ancient abode, shall meet us with arms in their hands, in order to prevent it ; and shall, finally, have become so extremely wicked, as to render it impossible for us to live with them, without having our morals corrupted—we certainly are under no obliga-

* See my father's (C. B. Michaelis) Dissertation, *De Notione Superi and Inferi apud Hebræos*.

tion to leave to them these factories and trading cities, and thereby expose ourselves anew to the risk of such corruption.

“But” (yet a but) “were not the Israelites in duty bound first to send heralds, and formally demand their lands again from the Canaanites.” This question I must leave completely unanswered, partly because it belongs to the yet much controverted point whether certain solemnities are or are not necessary at the commencement of a war, by way of declaration, and particularly, because we do not know whether Moses and Joshua did so or not.

By way of conclusion, I must still take notice of *two* objections, which Mr. Oepke has made to my opinion, and on which I have not yet touched. But because they are of more weight than those before noticed, I ought, perhaps, rather to ascribe them to Professor Stiebritz himself.

In the *first* place, he is of opinion, § 55. “that the Israelites ought not to have re-appropriated a land possessed by wandering herdsmen, unless *all* the posterity of such herdsmen had transferred *their* rights to them.” But let it be remembered, that the question here is not concerning wandering herdsmen quite unconnected with each other, but only concerning those of Hebrew origin, and of these, more particularly, the ancestors of Abraham, Isaac, and Jacob: and I do not see wherefore such a transfer could have been necessary, since we must here judge not by civil, but by natural law only. If several persons have an equal title to a certain possession, and some of them, either from weakness or cowardice, do not make it good, and relinquish it; another, who has

the courage to act otherwise, does not from their pusillanimity lose a particle of his right: and if he conquers the land which they have abandoned, he holds, *first*, his own quota, by the right of former proprietorship; and *then*, the remaining part, by the right of conquest; which, in the case of a legitimate war, is equally legitimate. The other claimants who did not support him, and had relinquished their rights, can make no pretensions to the fruit of his victories; and the unlawful possessors, who had carried on an unjust war, have *it* to thank for subjecting them to greater loss than they would probably have experienced, if they had yielded with a good grace.

In the *second* place, he objects, “that I ascribe the war to a cause, to which Moses himself has not referred it; and that, as any people that begin a war, are anxious to convince the world of the justice of their cause, a reason never once urged by Moses can hardly be held as the true ground of the war.” But here, I may very confidently reply, that Moses only gives *laws* for the war against the Canaanites, without anywhere mentioning the legal cause of the war: for Mr. O. himself does not account the divine commandment and promise, as its cause. Moses writes histories, and records laws; but the war-manifesto against the Canaanites, from whence we might deduce its justice, has not been furnished us by him. And as he mentions no reasons for the war, we are not entitled from his silence to form conclusions against any particular cause to which it may be ascribed. And of all causes, that to which I ascribe it, has the best foundation in the history recorded by

Moses, through which history he generally paves the way for his laws.

I must yet add, that this farther objection has been made to my opinion, “that a wandering people could hardly be considered as proprietors of a country, in which no individual could specify any particular ground as his own, from his always shifting his abode from one place to another.” I had not, indeed, considered it necessary to notice this objection, because the fact that a community may possess undivided property, is so very notorious; but as a learned person, who, in his writings, often refers to my Mosaic law, has lately repeated it, it becomes my duty to explain myself more fully on this point; and my answer is this:

A community, and even a whole nation, may possess property undivided, and in common. What, indeed, is more frequent among ourselves, than such common properties? Many a village has a common wood; of which, not a tree, nor an inch of the ground, belongs to any individual villager, and yet the whole is their joint property; and whoever, without full right and leave, carries off wood, or even fells a tree, is guilty of theft. Or again; a village or a town has a common meadow, which can never be conveniently portioned out into individual properties; at least no part of it belongs to any private person exclusively; and yet the whole, to the community at large. Did those to whom property in common appears such a strange matter, never hear, that in Germany there are many such commonages, which our modern improvers would fain abolish and reclaim, if they durst? where green

pasture land, for instance, which might be used to much better purpose under tillage, belongs merely as a common to one or more villages. The disadvantage of the present system, is universally understood ; and the allotment of such lands to particular tenants is much to be desired : but then the cry is, that communities are not to be deprived of their ancient rights. Even the corn fields are in the same situation, in so far as they may not be fenced, and must lie fallow at certain times, and after harvest be subjected to the servitude of having the herds driven to pasture upon them, from perhaps a community of many villages, where even those who have not a foot of ground of their own, can assert a right to this privilege, from the mere circumstance of occupying a house. This too is justly considered as extremely prejudicial to the public good, not merely by individual œconomists, but, in some countries, even by the legislative authorities, and the wish to alter it is very general ; but it cannot be done, for, it is said as before, No man is to be deprived of his right.

But even a whole nation may, in like manner, have a common undivided property. Thus whole nations, by particular treaties, enjoy the right of certain fisheries, such as that of Newfoundland, without this property being actually divided, or even possibly divisible among individual fishermen. Thus also the Indians in North America, possess their immense forests undivided, as wandering hunters ; and have justly made great complaints, when at any time the English or French colonists have attempted to clear and cultivate those forests, without previously purchasing them,

which is generally done for a mere trifle. I remember to have read a great many years ago, in an English journal, (either the *London or Gentleman's Magazine*,) the speech of an Indian chief, which he made in a congress of the Indians with the English, and in which he represented the injustice of this in a very rational and affecting manner; observing, that those forests which the Great Spirit had of old given to the Indians, and in which they had always lived, were now by some of the English daily more and more circumscribed, so that in the end they would have no dwelling place left them. I cannot recollect the particular place where I found that speech; but allowing it had been entirely fictitious, (which it by no means seemed to be, as it bore all the marks of truth,) it is very certain that the English governments in America do recognize the rights of the Indians. Indeed, the first colonists, who, for conscience-sake and religion, emigrated from England, took no land without leave of the Indians, and if afterwards, people less conscientious, such as transported criminals, whom the Americans will now no longer receive, were sent out, and, taking forcible possession of the woods, began to clear and improve them, (which actually gave rise to wars,) this was absolutely forbidden by the British government; and those settlers who wished to penetrate into the woods and form plantations, were and are obliged either to purchase the ground from the Indians, or come to terms with them in some other way.

By the same common right, have many great peoples always possessed their lands, and still possess

them ; as, for instance, the present Mongul tribes who live by breeding horses. Their soil is extremely rich, and susceptible of the highest cultivation : the grass grows to an uncommon height in the fields ; but the whole country belongs to the people at large as a common pasturage : and against strangers who should attempt to seize or pasture it, or circumscribe it by cultivation, they would unite to defend their right to it with all their might ; just as our Teutonic ancestors defended their forests as public property, against the Romans. I should, therefore, think, that until a *new* code of natural and civil law shall be devised, and as long as we must, on account of common possessions, abide by the *old*, objections like the present can have no force.

APPENDIX TO ART. XXXI.

Observations on some New Objections of Prof. Faber's.

I MUST still take some notice of those objections which the late Professor Faber, in pages 79,—94. of his *Hebrew Archaeology*, has advanced against my opinion concerning the right of the Israelites to Palestine. To go through the whole of them would indeed be impossible for me without writing a book, and becoming very wearisome to my readers. For instance, if I quote a passage from any author, Mr. F. says it is not rightly translated, and produces another version ; one, perhaps, which he heard in the course of my lectures, along with my reasons for not adopting it ; just exactly as a lawyer from one answer in a cause, will

sometimes elaborate an opposite one, by merely transposing the *rationes dubitandi et decidendi* ; which, however, is, after all, only giving a bare opinion. Now were my answer to such charges to be, *No, my translation is the true one*, a controversy must commence of a very strange description, especially if carried on in Mr. F.'s manner, with nothing but his *ipse dixit* for argument. —Or, were I to enter into all the variety of his objections, I should go beyond the utmost patience of the reader. For example, if Mr. F. with regard to the passage quoted, p. 158. from Justin, observe, that *the Canaanites might, according to Justin, have settled on the lake of Genezareth, and, consequently, not occupied the whole of Palestine*, I must then reply thus : “ I did “ not mean to prove from Justin, that they *had* occu- “ pied the whole of Palestine, (this I know from Mo- “ ses,) but only, what I expressly mention as the fact “ established by Justin, that before they dwelt on the “ lake of Genezareth, or rather on the Dead Sea, (for “ that I take to be his *Lacus Assyrius*,) they had some “ other country. Justin, consistently with his charac- “ ter as an abridger, is but brief, but still not contra- “ dictory to himself on this point ; for the lake of “ Genezareth, on which they settled, lies within Pa- “ lestine. How much farther they spread over the “ country, he does not say ; for he only means to “ speak of the origin of Tyre and Sidon ; indeed he “ may not have at all known, for *Trogus* lived from “ 1300 to 1400 years after the destruction of the Ca- “ naanites of Palestine, by the Israelites, and had of “ these latter received astonishingly bad information. “ I only take from Justin what he relates ; and his

“mere silence, unless he say any thing different from
“what we learn in Gen. x. 18, 19. viz. that that peo-
“ple, whose first colony was Sidon, overspread the
“whole of Palestine, can form no reason for denying
“it.” Now, were I to reply in this style, I should
but waste the reader’s time, who might think he
could himself have known all this without my telling
him, had I only left him to compare Mr. F.’s confuta-
tion of my opinion, with my own statement of it.

1. Omitting, therefore, a number of still more pal-
try objections, (especially where Abulfeda is the sub-
ject,) I shall only notice those that seem most material.
In the *first* place, Mr. F. says I have confounded Ca-
naanites with Phœnicians, and spoken of them as both
the same people, although they were very distinct. I
really had not anticipated this objection, because I had
done nothing more than adopt the opinion which very
generally prevails, and which has been more than suffi-
ciently confirmed by *Bochart*, that *Phœnicians* is the Greek
name of the people who in Hebrew are called *Canaan-
ites*. By Moses himself, those very persons whom the
Greeks unquestionably called Phœnicians, such as the
inhabitants of *Sidon*, *Arka*, and *Arad*, are denominated
Canaanites; and he expressly says at the same time,
that this people having gradually spread themselves
farther and farther, their boundary in his time extend-
ed *from Sidon to Gaza and Sodom*; in other words,
they inhabited Palestine, Gen. x. 16,—20. Could it
then ever have occurred to me, that any one would
have disputed this fact; more especially after I had
in my *Spicilegium Hebræorum extera*, p. 167. esta-
blished it so clearly from a Phœnician coin, in which

even the northern Phœnicians are in Phœnician characters called כנען, Canaan?

Were Mr. F. yet alive, he would be able to explain himself more satisfactorily on this point; for what he has written is somewhat indistinct, probably from his having here blended with his own positions, those of some one of his teachers, whom, as usual, he does not name, and who absolutely denies that the Phœnicians are Canaanites; which is more, of course, than Mr. F. would deny. To write clearly, and accurately to define the *Status Controversiæ*, is at any rate not his talent. But since he can now no farther explain himself, I will here put myself as it were in his place, and say what I think he meant to say. I believe then, he did not mean to deny that the Phœnicians were Canaanites; for that he admits in his remark, p. 81. in respect at least of the Sidonians: he only meant to say, that “the name of Phœnicians did not belong to *all* the Canaanites, but merely to those of them that dwelt on the narrow coast lying along the Mediterranean Sea, which the Greek geographers call *Phœnicia*; and therefore I had erred in applying what the Greek writers say of Phœnicia, to the Canaanites that had dwelt in Palestine.” Here, indeed, he virtually admits that the LXX. interpreters not unfrequently call these Canaanites, Phœnicians; but 2000 years after their day, it was reserved for him to ascertain the sense in which the Greeks used this name, and to declare that it was merely according to the usage of the Jewish language.

Now, allowing that Mr. F. had been right in this, and that the Greeks were so sparing of the term *Phœnician*, as never to waste it upon those of the same

nation, that dwelt beyond the limits of Phœnicia ; still my quotations from them prove the point for which I adduced them, namely, that the most ancient seat of the Canaanites (for Phœnicians are also Canaanites) had been on the Red Sea ; and if Moses moreover says, that that same people, whose earliest colony was Sidon, had afterwards, and in later times, included within their boundaries the whole country from Sidon, as far as Gaza and Sodom, it is proved, whether these Canaanites that dwelt in Palestine, were or were not called Phœnicians in Greek, that the ancestors of the Palestine Canaanites came from the Red Sea.

But was, then, Mr. F. certain, that none but the Canaanites inhabiting the narrow coast of Phœnicia, to the exclusion of all others of them that might have ever lived elsewhere, as in Palestine, are called Phœnicians by the Greeks ; more especially when he says himself, that the Greek version of the Old Testament, which is more than 2000 years more ancient, not unfrequently calls the Canaanites, Phœnicians ? I readily grant that the Greek and Latin writers very seldom indeed speak, or could speak of the Canaanites, who inhabited Palestine before the time of Joshua, for that period is too early for them ; and from being unacquainted with native Asiatic authors, they knew almost nothing of this ancient people. But if they had known any thing of them, how would they have called them ? At any rate, not *Canaanites*, for with that name, they were still less acquainted ; but, undoubtedly, like their brethren, *Phœnicians*, that is, by the very same name which the LXX. interpreters apply to them.

But for all this I see no necessity. The Greeks manifest no such dislike of the term Phœnician, as never to apply it to any thing in Palestine, nor to extend it beyond the limits of Phœnicia, as far as Phœnicians dwelt, or their language was spoken. Herodotus (lib. ii. § 104.) speaks of *the Phœnicians and Syrians in Palestine*, and ascribes circumcision to both, probably by mistake. Here, however, I am not concerned with the truth of his assertion, but with the Greek use of the term Phœnician. The language of the people of Jerusalem is by the poet Chœrilus called Phœnician*. I might here quote these passages, with many more in which this country, even as far as Gaza, is called Phœnicia; but this is not the place to eke out a geographical enquiry with a multitude of citations. Rather would it, at any rate, (were it not superfluous, as nobody since Bochart's time has disputed it,) belong to the second part of my *Spicilegium Geogr. Hebræorum exteræ post Bochartum*. But I cannot refrain from adducing a very decisive passage from Procopius. That author takes the history of the Canaanites from no source less than from the Bible, which he contradicts without knowing it. He takes it, as he himself says, *from those who have written the ancient Phœnician history*†, insomuch that he distinguishes certain names, as *Gergesenes, Jebusites*, taken from the Hebrew history, from the rest. The

* See Joseph. contra Apionem. i. 22.

† Josephus mentions some Greeks who had written concerning the Phœnician history; and some Phœnician historians might have been translated into Greek. Procopius must have read these in Greek, for he could hardly have understood the Phœnician.

book of Joshua he seems not to have read, for it directly contradicts him*, or else he must have given the Phœnician accounts a preference to it. From the whole passage, in which Moses is at the very beginning termed merely *a man of abilities*, every judge must conclude, what indeed is otherwise sufficiently clear, that Procopius was a heathen†. Of the chief point of his relation, viz. that the Canaanites who fled before Joshua, went into Africa, we find nothing in the Bible. It says not a word of their flight and evacuation of the country, which, therefore, he must have had either from the Greek historians, or else from Greek translations of their own writers. Here follows the passage, from his second book, *De Bello Vandalico*‡. “At that time, (viz. when Joshua conquered Palestine) the whole maritime track from “Sidon to Egypt, was called Phœnicia, (Φοινίκη) and “was governed by one single king, as all the ancient “Phœnician historians unanimously relate. Here “dwelt numerous nations, to whom the Hebrew history gives the names of Jebusites, Gergesenes, &c.” He then relates how the Phœnicians fled before the Hebrews into Africa, and spread themselves abroad as far as the pillars of Hercules, (a story concerning which, an Arabian account in my *Oriental. Bibliothek*. may be compared with his; see Part IV. p. 148, 151, 152.) and proceeds thus: “There they still dwell,

* In regard, for instance, to the Phœnicians having had but one king, whereas Joshua mentions a great many.

† See my *Oriental. Biblioth.* Part VII. p. 152,—154.

‡ Of Höscher's edition, § 20. p. 135. Of the Paris edition of 1642, chap. 20.

“and speak the Phœnician language, (τῇ Φοινικῶν Φωνῇ
 “*χρηόμενοι*) ; and in Numidia, where now stands the
 “city *Tigisis*, they have erected two columns, on
 “which, in Phœnician characters, is the following in-
 “scription, “*We are the Phœnicians, who fled before*
 “*Joshua, the robber, the son of Nun.*” With the cor-
 rectness of the account of these columns, I do not at
 present concern myself, but merely with what Proco-
 pius calls Phœnician ; and with regard to that point,
 I merely remark, that if he and Suidas * speak of the
 same story, the latter as a Christian, and a reader of
 the Bible, uses the words *Χανααναιοι* and *Χαναανιτις γῆ*,
 where the former, as a mere Greek, and independent
 of the Bible, has *Φοινικες* and *Φοινικη*. The inscription
 in Procopius is, *Ἡμεῖς ἐσμεν οἱ Φυγοντες ἀπο πρωτοπτερ Ἰησ
 τε ληστ ὕιε Ναυη* ; and in Suidas, *Ἡμεῖς ἐσμεν Χανααναιοι,
 ες ἐδιωξεν Ἰησες ὁ ληστης*. Procopius adds, “At a later
 “period, those who emigrated from Phœnicia along
 “with Dido, repaired to their brethren that lived in
 “Africa, who granted them permission to build Car-
 “thage.”

2. In the *second* place, Mr. F. says, among the
 Greeks *Phœnicia* never means any thing else than
 that inconsiderable track of the coast of the Mediter-
 ranean, of which Tyre and Sidon were the two prin-
 cipal cities. Now, allowing that this account of the
 name of this province, were as correct as Mr. F. could,
bona fide, suppose it, and that of the preceding proofs
 of the more extensive use of the name, there were
none to object against it, still this would be nothing

* Under the word *Χανααν*, p. 653. Part 3.

to the purpose. The names of the people, and their country, have by no means the very same limits. Under the name of the people, we comprehend those who are of the same origin, and speak the same language; as, for instance, the Saxons, whether they passed into England, or dwelt in Siebenbürgen. Prussia, Courland, Livonia, Sleswig, and at present Silesia, do not belong to Germany; nor yet do Poland, Hungary, and Siebenbürgen; but still the Germans that live in these countries we call Germans: and if one, speaking according to what is usually the common opinion, were to say, The Germans, in the earliest times, lived farther eastward on the Black Sea; and another, in the spirit of contradiction, were to object, that the countries there had never been called Germany, he would only be laughed at for his far-fetched chicanery. Franks, Goths, and numerous other peoples, may serve for examples of the same point. We do not refuse them these names, when we meet them on their travels, or in colonies without France, for example, on the Isel, where the Salic laws were made, or without Gothland. Such unreasonable objections are seldom urged so pressingly.

3. In the *third* place, among the many etymologies of the word Phœnicia, Mr. F. adopts *perforce*, one, which I should never have conceived, or if I had, should not at any rate have admitted, because the etymology of the names of nations is not a matter with which I generally give myself much trouble, or rest much upon, unless when very clear. He deduces it from *redness*. Now as *Edom* also means *red*, it must, according to him, be the same with *Edom*, although

the Phœnicians certainly did not spring from Edom. His words at p. 81. are, “*If* Palestine, before the “irruption of the Israelites, had been called Phœnicia, it must also have been called Edom, because “Phœnicia is only the Greek translation of the Hebrew word Edom, and both mean *red*. But, where “do the Scriptures ever say that the Israelites had extirpated the Edomites? or where do they ever call “the then land of Canaan, Edom?”—In consequence of this objection, if it has any force, Phœnicia too must have been called Edom; of which, however, Mr. F. will be as little *able* to bring any proof, as I am *wishful* to bring proof that Palestine had been so denominated. The Phœnicians may have had their name from what they will; but allowing that through mistake they had it from Edom, because they had previously lived in that land, still they are not Edomites; and the Bible as little calls Tyrians and Sidonians by that name, as it does the Canaanites of Palestine. Indeed it could not well do so, considering that it so plainly describes Edom as a grandson of Abraham’s, and all the Canaanites, even those whom alone Mr. F. invests with the name of Phœnicians, as quite a foreign nation sprung from Ham. But, in general, in historical and geographical questions, (as, for instance, if we wished to know what country *Red Russia* meant) we decline proofs from arbitrary etymologies; since, even if true, they never can determine the limits of a people, or of a country. The word *Germani* in Latin, is equivalent to *Wehr-Männer* in German, or *warriors* in English? Now who would ever think of thence determining what belongs to Germany, or who

is or is not a German? Yet of this stamp are not only all the objections levelled at me by the late Mr. Faber, but almost all his ideas, at least as far as they are his own, and not borrowed from unnamed authorities.

CHAPTER IV.

OF THE FIRST OF THE TWO FUNDAMENTAL PRINCIPLES
OF THE MOSAIC LEGISLATION, VIZ. THE MAINTENANCE
OF THE WORSHIP OF ONE GOD, AND THE PROSCRIPTION
OF POLYTHEISM.

ART. XXXII.

Of the prevailing Sentiments of Mankind on these Subjects at this Period.

§ 1. BEFORE I proceed to describe the form of the Israelitish government, I must illustrate those fundamental principles which constitute, as it were, the soul of the Mosaic laws, and which were meant to continue permanently in force, whatever changes might take place in the form of government. Moses by no means prohibited any change therein. He did not indeed himself institute royal authority among the Israelites, but by a special law he permitted the future choice of a king. Certain fundamental principles of state were, however, to remain unalterable, whether the government should be democratical, monarchical, or of a mixed nature.

The first of these principles had a reference to religion, though not to all and every article thereof; for, to give one great proof of this, I find in the Mosaic system nothing that could have been designed to

maintain, in its purity, the doctrine of a Messiah, or even to preserve it at all. A person might have disbelieved in a Messiah, and have publicly professed as much, without being amenable to any of the Mosaic laws which we know, or even being excluded from the rights of citizenship. Moses framed no *symbolic books* for the people to subscribe, nor did he publish any doctrine, of which the belief was enjoined under pain of punishment. For instance, although he describes God as all-wise, almighty, good, &c. yet if any man doubted of this, or of the coming of a Messiah, he did not thereby become liable to any punishment by the law. *The worship of one only God*, in so far as it stands opposed to idolatry, was the sole point which Moses made it the grand object of his polity to establish and maintain to the latest period.

Of this most important part of true religion, compared with the prevailing opinions of the world in that age, we must form just ideas, before we can judge of the means which Moses employed to inculcate and enforce it.

Among all the nations with whom the Israelites had intercourse, Polytheism, or the worship of many gods, then prevailed. This stupid superstition was then the *sensus communis*, that is, the universal sentiment. Of course, it was highly contagious; and true philosophy, which taught the belief of but one God, seemed so ridiculous, that it could hardly have failed to become at length distrustful of its own doctrine. In *our* times, there is little temptation to believe in more than one God; for the greatest and most rational peoples on earth are either Christians or

Mahometans, and they coincide in this belief; which, therefore, (to use the more expressive *English* phrase) is to us *common sense*, and agreeable to right reason, from which we cannot depart, without becoming ridiculous, and objects of suspicion even to ourselves. But, on the other hand, from the days of Moses till the Babylonish captivity, we always find, that the worship of one God, had, even among the people of Israel, to struggle with the superstition of polytheism; and it would seem as if the Israelites had often been turned in their heads, and driven by a sort of phrenzy, to the belief and worship of many gods. Nor need we wonder at this. Certain opinions are at certain times infectious; and we ourselves would now, with equal folly, feel the like propensity to superstition, if we formed but a little nation, surrounded by a whole world of idolaters. We see even that neither the very judicious and rigorous laws of Moses, nor yet all the miracles performed by the power of the only true God, though the people admitted their historical truth, were sufficient to overcome this strange propensity, until a certain revolution took place in the world. Even Solomon, the wisest of the Israelitish monarchs, and who is extolled to us as a learned man and a philosopher, was afflicted with a phrenzy, from which the very silliest of sovereigns can now easily preserve himself; and, incredible as it appears, fell into idolatry. Nor did this mental disease lose aught of its power over mankind, until the period when Cyrus extended his dominion over the whole of Western Asia. The Persians were enemies to idol-worship. They believed in but one invisible God, of whom fire was a

faint image. *That* God, and not fire, was the object of their adoration ; and hence they were attached to the Jews, nor did it cost Cyrus any struggle with his religious principles, to acknowledge by a public manifesto, (2 Chron. xxxvi. 23.) *Jehovah, the God of heaven*, who, by the mouth of his prophet, Isaiah, had foretold *his* coming ; as the God who had helped him to all his victories ; and whose gift alone were the kingdoms he had conquered. Out of gratitude, therefore, and obedience to ancient prophecy, he sent the people of this God back to Palestine ; and his successors, who were perfect *Iconoclasts* in hostility to Greek and Egyptian idol-worship, caused offerings to be made in their names in the temple of Jerusalem. The worship of one God had now no longer to struggle, as before, with the practice and opinion of mankind ; and from this time, we find the Jews such zealous worshippers of Jehovah, that the Greeks could not, even by the fiercest persecutions, cause them to abandon the religion of sound reason ; whereas among their forefathers, even the severest punishments had been scarcely sufficient to preserve it.

If one be only in some degree a philosopher, and an enemy to superstition and priestcraft, it is not necessary to be a friend to revelation, in order to perceive the benefit conferred on mankind by the legislator who interweaves this single principle, *One God only shalt thou revere*, with his whole polity, and studies to enforce it on posterity. Idolatry has something in it extremely unnatural and absurd ; and the superstitions connected with it render a nation quite miserable, and entirely the slaves of priestcraft. But it is *one*

thing to make the single article of the worship of one God, the first *principle* of a polity ; and *another*, and a very different thing indeed, to make the numerous articles that form the creed of any religion, (whether true or false ; whether the Reformed, Lutheran, or Catholic,) and the maintenance of these articles among the people, the object and scope of political arrangements.

ART. XXXIII.

How Moses framed his Laws against Idolatry.

§ 2. BUT the question is, What just and rational means are sufficient to effect the utter exclusion of idolatry ? For the opinions of men are not to be constrained by laws ; and nothing can be more foolish and cruel than to subject a man to capital or corporal punishment for being so silly as to believe in more gods than one. In fact, such tyranny is not only inadequate to the attainment of its object, but even makes martyrs to superstition ; and by watering its roots with their blood, serves only the more to spread its influence. But even superstition itself left Moses at full liberty, and without putting any restraint on conscience, or shewing the least injustice, to introduce into the constitution which he was framing, the worship of one God, as its first principle. Heathenism, which believed in numberless deities, did not thereby call in question the divinity of the Jehovah whom Moses preached. He might be the most high God, the God of heaven, the God that wielded the thunderbolts, with-

out the system of superstition (which in the east mostly paid adoration only to subordinate deities, or, as we would call them, angels,) being in the smallest degree anxious to controvert these doctrines. Nobody could for conscience-sake, make any scruple of adoring the God who made heaven and earth, whether called by the name of Jehovah, or by any other appellation. Besides, no heathen could even have an idea of revering all the gods; for how could he know them all, when every nation had different ones? The subordinate deities too, were worshipped, not with a view to obtain from them the happiness of a future life, but merely temporal benefits and blessings*. A man, therefore, did not wound his conscience, by not worshipping known deities of this class: and he might even, without prejudice to superstition, devote himself entirely to the service of one God, and receive on his body the sign of such devotion; as the Egyptian priests, for example, did, who by circumcision dedicated themselves to that God alone, whose priests they were. Hence, when Moses enjoined the Israel-

* In 2 Chron. xxviii. 23. King Ahaz says, *Because the gods of the Syrians give them victory, therefore to them will I sacrifice.* Much about the same time, the prophet Hosea, speaking of the idolatry of Israel, whom he represents under the figure of an adulteress, puts these words into her mouth, *I will go after my lovers* (the false gods) *that give me my bread and my water, my wool and my flax, my wine and my oil,* Hosea ii 7. And when Jeremiah reprov'd the Jews that fled into Egypt for their idolatry, they answered in words to this effect, "that as long as they had worshipped the queen of heaven, all had gone well with them; and her, therefore, they would worship, and to her sacrifice, in spite of all his admonitions." See Jerem. xlv. 17, 18.

ites to worship no other God, it did not subject them to any sacrifice of conscience, as is wont to be the case with us, when laws relating to religion are enforced. He prohibited nothing that the transgressor could hold necessary to eternal happiness; in which case, indeed, all laws sanctioned by temporal punishments are much too weak; and those punishments, so needlessly wasted, are but cruelties. It was only to the slaves of avarice and selfishness, who expected corn and wine, and oil, and cattle, &c. from the gods whom they worshipped; or dreaded evils from their hands, if not appeased by offerings; that the prohibition of idolatry could give any concern. In fine, every country still had its own deities.

According to these ideas, then, Moses framed his laws, but without the least intermixture of imposture. The Israelites, even from the time of Abraham, had been circumcised, and thus consecrated, as it were, as priests to the one only God, whom Moses named *Jehovah*. He renewed the command relative to circumcision, and he declared Palestine to be the land peculiarly sacred to Jehovah. Probably it had *actually been* the last part of the earth, in which the *God of heaven* was worshipped. At least, he had still a priest (*Melchizedek*) at Salem, in Abraham's time; and I have often thought it probable, that it was in order to extricate him from idolatry, that God guided Abraham from his native country into this land, where the worship of the one true God yet subsisted.

But farther, Jehovah miraculously conducted the Israelites from their bondage in Egypt, into this land of the Canaanites; and it is upon the foot of this

blessing, that Moses peculiarly grounds his commandment that they should serve him alone. This is the direct purport of the first of the ten commandments, *I am Jehovah thy God, who brought thee out of Egyptian bondage. Thou shalt have no other gods with me.* In these terms *our* theologians would not have composed this law, but rather (if they wished to speak the language of sound reason in the best manner,) thus: “*I, Jehovah, am God alone, therefore thou shalt have no gods with me.*” Now this also Moses believed and taught, as, for example, in Deut. iv. 35, 39.; but the belief and understanding of the Israelites could not be constrained and cramped by laws, and yet idolatry was to be prohibited on pain of death; and that could only be done with justice, by God addressing a stupid superstitious people to this effect: “Lest ye should absurdly believe that there are many other gods who can hear your prayers, and recompense your offerings; know, that I alone, who have delivered you from Egyptian bondage, and from being poor slaves, have made you a people, am the author and founder of your state; and, therefore, let no other god, besides me, be worshipped among you.”—After this, it will no longer appear tyrannical and inquisitorial in Moses, to have imposed the punishment of death upon idolatry, and every thing that approached unto it, as we shall see afterwards that he did.

ART. XXXIV.

God assumed the title of King of Israel, for the more solemn and rigorous exclusion of Idolatry.

§ 3. MOSES represented this matter to the Israelites in yet another point of view, which gives it peculiar importance in their polity. By their own free consent, he made God their king; and thus idolatry became a direct crime against the state—became rebellion. God was the founder of their state, having delivered them out of Egypt, and led them by works of wonder into his own sacred land. He thereby acquired all possible right to be their peculiar sovereign, that any *man* could have had. But still, Moses left them freely to chuse whether they would accept him as their king, and subject themselves to the laws which he might give them, Exod. xix. 4, 5. And when they agreed to this, God was actually considered as their king. The whole world, indeed, stood under his dominion. But Israel was his peculiar property, and, as it is expressed in ver. 6, 7. of that chapter, *a kingdom of priests*, that is, a kingdom where every subject was to be regarded not merely as one of the people, but enjoyed the prerogatives of a priest. The passages in Scripture to this effect, are singularly remarkable; thus, Deut. xxxiii. 5. *God was king in Israel, when the heads of the people, and the tribes of Israel were gathered together*; and when the Israelites first desired a king, 1 Sam. viii. 7. *They have not* (said God to Samuel) *rejected thee, but they have rejected*

me, that I should not reign over them ; and soon after, when they received this king, 1 Sam. x. 18, 19. Thus saith Jehovah, God of Israel, I brought up Israel out of Egypt, and delivered you out of the hands of the Egyptians, and out of the hand of other kingdoms that oppressed you ; and yet ye have this day rejected Jehovah your God, who himself saved you out of all your adversities and tribulations, and have said, Let us set a king over us.—See also 1 Sam. xii. 1 Chron. xxix. 23.

Moses, besides, made certain regulations, the object of which was to represent Jehovah to the Israelites, not only as God, but also as king and proprietor of the land which he had bestowed upon them. Thus, as all the land in Egypt belonged to the Pharaohs, so was Palestine, in like manner, the property of Jehovah ; and the Israelites were held as only his vassals, who, of course, could not sell their lands in perpetuity.—See also Gen. xlvii. 19, 20. compared with Lev. xxv. 23.

I will yet add the remarkable passage, Deut. vi. 20, —24. in which Moses deduces God's right to give laws to the Israelites, not from his being the one only God, (for this, on the one hand, the superstitious might question, and, on the other, God is not the ordinary lawgiver of nations,) but from his having, by his miraculous interpositions, laid the foundation of the Israelitish state. “ When thy son asketh thee in
“ time, Whence come all the statutes and laws which
“ Jehovah thy God hath given thee ? thou shalt say to
“ him, We were in Egypt, slaves to the king ; but
“ Jehovah, with a strong hand, brought us out of
“ Egypt, and did before our eyes great miracles,
“ whereby he punished the Egyptians, and Pharaoh

“ and his house ; and he brought us out, to give us
“ the land which he had by an oath promised to our
“ fathers, *Therefore* has he commanded us to keep
“ all these laws.”

In our lands and times, to proceed in this manner, would be useless trifling, because we have neither the same propensity to idolatry, nor, although we were idolaters, would we entertain such superstitious principles ; but considering the temper and opinions of the Israelites, it was in all respects admirably calculated to prevent idolatry, without imposing any restraint on conscience.

ART. XXXV.

What the Theocracy of the Israelites was.

§ 4. THIS directly leads me to the consideration of the Israelitish theocracy, a subject often mentioned, but yet imperfectly understood. I might, perhaps, treat of it as properly afterwards, in describing the form of the Israelitish government ; but as I have once entered upon the illustration of the *first* great principle of the Mosaic system, viz. the exclusion of idolatry, and as the theocracy, viewed as to its main design, was nothing more than a name employed the more effectually to promote that object, I may as well discuss the whole topic at once.

In the time of Moses, the theocracy was unquestionably very conspicuous. God himself gave laws to the Israelites,—decided difficult points of justice by oracles,—was constantly visible in the pillars of cloud and fire,—and inflicted punishments, not ac-

cording to the secret procedure of Providence, but in the most manifest manner. But when I proceed forward from this period, and consider the Israelitish republic as regulated by Moses with a view to after times, I question whether, merely because God bore the name of their king, it will be still necessary for us to suppose the real existence of that new and otherwise unheard-of form of government—a theocracy. It was, as I have just observed, only a title, and not at all an arrangement of the commonwealth, fundamentally different from the monarchical, aristocratical, democratical, and mixt forms of government.

I would only intreat the reader to consider whether the very same things in which the theocracy must have consisted, have not been found among many superstitious nations, whose government, however, we do not therefore denominate a theocracy. I am aware, that among them such a pretence had been but imposture, whereas among the Israelites it was truth; but still, *as* a false theocracy, it would have the same relation to the real one, as the monarchy of an usurper, such as Cromwell, for instance, has to that of the lawful sovereign; or as a government, where a *Major Domus* rules in name of the king, who would act very differently, has to that where he himself is at the head of affairs.

As far as I can perceive, all that we can say concerning the theocracy, may be comprehended under the following particulars.

1. *The laws of the Israelites were given by God.* This was an established point, which the future form of the republic could not alter, after those laws were

once in operation. If a democracy, which had once been a monarchy, still maintained the old monarchical laws, we would not on that account call it a monarchy.

2. *The judges are represented as holy persons, and as sitting in the place of God*, Deut. i. 17. and xix. 17. In any government, this may be a mean employed to sanctify the office, and to influence more strongly the conscience of a judge ; and we may even consider the king himself as God's vicegerent, without thereby having a theocracy. What else have all the assertors of the *jus divinum* of kings done, than considered them as such vicegerents ? and yet the government which they framed on that principle, was not a theocracy, but a monarchy. This notion, however, is remarkably conformable to the manners of the African and Asiatic peoples, among whom the Hebrews lived. The Egyptians, according to Diodorus Siculus*, looked upon their kings in this light, and hence comes it, perhaps, that the Israelites, just on their exit from Egypt, called their rulers not merely in poetry, but in the common language of their laws, *gods* ; see Exod. xxi. 6. Among the Arabians, the place of justice is commonly called God's Tribunal ; and *Arvieux*, in his Travels through Palestine, relates, that the usual form

* Book I. ch. 90 " From this cause, (viz. gratitude to benefactors, among whom they reckoned those animals that were peculiarly useful to the country, and held them sacred) the Egyptians seem so to reverence their kings, and humbly to address them, as if they were in fact gods. They even believe, that it is not without the peculiar care of Providence that they arrive at supreme power ; and that those who have the will and the power to perform deeds of the greatest beneficence, are partakers of the divine nature."

of citation is in these words, *Thou art invited to the tribunal of God.* This idea went so far among the Arabs, that before Mahomet's time, law-suits were carried on before their gods, which he prohibited, enjoining the judgment of the Coran to be adopted in its stead. See the remarkable passages, Sura IV. 61, —64*. and Sura V. 46,—55†. This is precisely in

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* “ God commands you to restore to its owner what is committed to your trust ; and if ye judge between man and man, to do so conformably to justice. O how strongly does God admonish you to act thus ! for God hears and sees you. Ye faithful, listen to God and his messenger, and to the magistrate ; and if you have any dispute, bring it before God and his messenger, if you believe in God and in the last day. This is the best means of clearing up a matter. Seest thou, O Prophet ! that those who affect to believe in the revelations made both to thee, and before thee, nevertheless are inclined to carry their law-suits before the *gods*, although they are commanded not to believe in them ? But the devil thus seeks to lead them far astray. When it is said to them, Come to the revelation of God, and to his messenger, thou seest the hypocrites how they turn away from thee.”——

† “ They (*infidels*) hear lies, and eat unclean meats. But if they come to thee, judge thou between them, or turn from them. If thou dost the latter, they will be unable to do thee any harm : but if thou judgest, do it according to justice ; for God loves them who adhere to justice. But how should they come to chuse thee for a judge, when they (*viz. the Jews*) have a law in which stand God's judgments, and they have nevertheless turned away from it ? Certainly they are not believers. We have given to them the law wherein direction and light is contained ; according thereto did the true prophets judge the people of the Jewish religion, as did also their rabbins and learned men. They judged according to the divine writings committed unto them, and of which they were witnesses. Fear not men, but fear me, and take not for my revelation a little gold, [that is, *falsify not the Mosaic books in transcribing*

the same style as what took place in Moses' time among the Israelites, whose most difficult affairs were by him always brought before God. But do we find it necessary on this account, to say, that, before Mahomet's time, the government of the Arabs was, however illegal and impostural, still a theocracy? We say at most, that the priests of their gods had a great in-

“ *them, if paid for it.*] But whoever judgeth not according to God's
 “ revelation, is an unbeliever. Therein have we prescribed to you
 “ life for life, eye for eye, nose for nose, ear for ear, tooth for tooth,
 “ and wound for wound, according to the law of retaliation. Who-
 “ ever omits aught thereof, may obtain atonement; but he who judges
 “ not according thereto, as has been revealed, is unjust. Thereafter
 “ we sent Jesus, the son of Mary, who declared the law that was be-
 “ fore him to be divine truth; and we gave to him the gospel, in which
 “ is direction and light, and therein the former law is declared to be
 “ divine truth. Judge, therefore, the people of the gospel accord-
 “ ing to what God has revealed to them: but whoever judges not ac-
 “ cording to God's revelation, is unjust.—And to Thee have we given
 “ the Book (*the Koran*), full of truth, which declares all former Scrip-
 “ ture to be truth, and says Amen to it. According to this revela-
 “ tion, judge thou among them, and do not, to gratify their wishes,
 “ deviate from the truth bestowed upon thee, and which we have
 “ destined as a law and a way unto all. God, if he had pleased,
 “ could have made you one people and church; but he has not done
 “ so, in order to put you to the proof, in regard to what he has given
 “ you. Therefore, institute, one with another, a contest in goodness.
 “ Ye must all at last return to God, [that is, *come before him at the last*
 “ *day,*] and then he will tell you in what your opinions have been
 “ divided. Judge, therefore, among them, according to what God
 “ has revealed, and heed their wishes not. Take care that they do
 “ not mislead thee into deviations from any part of revealed truth;
 “ but if they depart from it, mark this, that God intends to punish
 “ them for other sins. For most men are wicked. *They* may prefer
 “ the tribunals of ignorant heathenism. But, for the faithful, who
 “ can be a better judge than God?”

fluence in it, and we let it, as to the rest, be called monarchy, aristocracy, or democracy.

3. *The judges were usually taken from the tribe of Levi, and the chief expounder of the law was the high priest.* This is easily intelligible from what has been said, and the reason of it will be still more fully apprehended, when we see in the sequel, that the Levites were the *literati* among the Israelites. It is, therefore, no more, in fact, than if we were to constitute literary men and lawyers our judges. That these men are priests, does not necessarily give the government of the state a new form: and I have never heard the Turkish government represented as any thing more than a monarchy, limited by the power of the Divan, although its supreme judge, whose duty it is to decide even on the legality of wars, be the Mufti.

4. *In difficult cases of law, relating both to government and war, God was to be consulted by Urim and Thummim.* But neither does this constitute a theocracy, else would the power of the augurs at Rome, have equally converted the Roman government into a theocracy.

5. *In matters which concerned the welfare of the state, God often made his will known by prophets, and the people were, of course, bound in duty to obey their voice.* But would it not be the same in every state, if God were graciously pleased to enlighten the people by his prophets? In the preceding century, were there not some of the greatest generals and statesmen, who let themselves be guided by astrology and divination; but did they believe, withal, that they lived under a theocracy? I am just reading *Harte's Life*

of *Gustavus Adolphus*, where, in the Dissertation prefixed to the second part, p. 33. there appears a curious remark on the taste of that age in this respect, which led me to single out the 17th century, although there are many other periods equally superstitious.

6. The last particular which I have to mention, certainly distinguishes the people of Israel from all other nations under the sun, viz. *That God bound himself by promises and threatenings to reward them with prosperity, victory, and plenty, if they kept the law of Moses, and to punish them with defeat, and other public calamities, if they disregarded it.* Now, although God sometimes inflicts national judgments on other nations, to chastise their public iniquities, yet this is but seldom the case ; and we can seldom discriminate between such peculiar chastisements, and any common calamity permitted by Providence without a special provocation of divine wrath : nor are the vicissitudes of defeat and victory, invariably regulated by transgression and repentance. In this particular providence towards the Israelites, God did indeed manifest himself as really their king : and yet, as this did not at all affect the form of their government, and the management of their affairs, I do not think it necessary, in speaking politically of their constitution, to give it the new name of a theocracy, which is otherwise quite unknown in politics ; as if it were really a fourth form of government here discovered, in addition to the three with which the world is familiar. In short, God took the name of king, as a title which conferred honour on the Israelites, and the great object of it was to supplant idolatry.

ART. XXXVI.

Of the Laws relating to the Prophets.

§ 5. I MUST now make some farther remarks on the character and office of the prophets, of whom I have spoken in the preceding Article. It is certainly to be considered as belonging to (what has been called) the theocracy, and as demonstrative of God's peculiar condescension to the people of Israel, that he did not merely send prophets *occasionally* to foretell the public prosperity or adversity ; but that he gave them an express promise, that he *would* do so from time to time. This promise is recorded in Deut. xviii. 15,—22. In quoting this passage, I cannot at present enter into the dispute whether or not it is to be understood of *one* individual prophet, the Messiah, and whether the apostle Peter, in the iii. chapter of Acts, ver. 22,—24. has explained it of *him*. For my part, I believe neither of these two assertions ; but this is not the place to give my reasons, or to propose a juster exposition of the misunderstood speech of the apostle, as I am here treating of the Mosaic law. Without engaging, therefore, in a discussion foreign to my subject, I will only say how I understand it, viz. that it is as if Moses had said, that “ *the Israelites would the more readily*
“ *refrain from consulting astrologers and wizzards (as*
“ *what was forbidden them on pain of death,) from the*
“ *consideration that God would be so far condescending*
“ *to his people, as to raise up true prophets from time to*
“ *time among them.*” It was at that time the universal

propensity of mankind to pry into future events ; and it was no less universal, to regard religion as a means of gratifying this curiosity. If God, therefore, desired effectually to keep his people from being carried away by the torrent that overflowed other nations, and from seeking insight into futurity from superstition or false religion, it was necessary that *true* religion should really give them what every false religion pretended to give ; although, indeed, it is in other cases past a doubt, that we are commonly less happy when we have any means of enquiring into futurity than when we have none.

This, however, gave occasion to a right remarkably different, indeed, from any of our usual rights, but which the prophets among the Israelites must necessarily have enjoyed ; and it is this : *As long as a pretending prophet was not convicted of being a lying prophet, he was to be tolerated, and go unpunished, although he should have threatened calamity, or even destruction to the state.* No doubt, as soon as he was convicted of being a liar, the law of Moses operated with extreme severity against him, and adjudged him to death : but there were *two marks* whereby it recognized him as such, viz. his either speaking in the name of a strange god, or predicting what did not come to pass ; see Deut. xviii. 20, 21, 22. I will speak of the crime and its punishment in the sequel, when I come to treat of the criminal law. Here, I shall only make this remark, that whoever prophesied in the name of the true God, was necessarily tolerated, until an unfulfilled prediction demonstrated him to be an impostor.

It is quite different in our law, because it presupposes not prophets. When, therefore, any person appears in that character, and begins to utter predictions concerning political matters, the magistrate, without the aid of any statute, exerts a natural right to apprehend and banish him the land. For, in the *first* place, the suspicion that, if not insane, he must be an impostor, is altogether just ; since God is not wont to send *us* prophets, at least political ones ; and it is his business, if he would not be deemed an impostor, to evince the divinity of his mission, not by uttering predictions which are only to be fulfilled in the next generation, but by some miraculous work : and *that*, after all, would be rather a philosophical than a legal proof, because our laws do not concern themselves with the rare and unlooked-for event of God's sending a prophet.—In the *next* place, such a political prophet might prove a very dangerous person, and by no means to be endured till mischief happened from his predictions ; for then it would be too late to convict him of imposture by their issue. How soon might an unfavourable prediction depress the spirit of the nation, and its warriors ; and *that*, perhaps, at the very moment when their utmost courage was necessary to the salvation of the state ? And to what rash and mischievous resolutions might not a nation be inflamed by predictions of success ? Into what wars might not a ruler, otherwise rational, by believing them, involve his subjects, to their dire disgrace, and, perhaps, utter destruction. History, particularly that of battles, abounds with events of both kinds : and, therefore, among us, when a prophet making his ap-

pearance, is received by the public otherwise than with contempt and derision, he ought to be taken out of the way by the civil magistrate. Probably he would deserve still worse treatment; in some cases, to be even punished with death, (which was actually inflicted on *Drabitzius*, whether justly or not I know not, and on others,) if the magistrate were not dissuaded from such severity by the apprehension that his blood might increase the credit of his predictions; or by the compassionate conjecture, that he might be wrong in the head. But among a people to whom God has expressly promised prophets, and who have these promises recorded in their very statute-book, the legal procedure thence arising, will naturally be quite different.

In the xxiv. chapter of Jeremiah, we find a very remarkable passage, illustrative of this subject. Jeremiah had publicly prophesied the destruction of Jerusalem, ver. 5. He was therefore apprehended, and capitally arraigned before the princes of Judah, as they were called, ver. 7,—11. His defence was no other than this, that God had sent him; in proof of which he declared himself ready to die: but he wrought no miracle to confirm his divine mission, ver. 12,—16. Nothing could be more honest than such a declaration, considering the constitution of the Hebrew government. He had done nothing which by the laws deserved death, or any punishment. It might be, that he was a false prophet; but that was not yet proved; and, in general, for him to have given himself out for a prophet, could with the less reason be imputed to him as a crime, considering that of his very accusers, some

were themselves prophets, as is expressly mentioned in ver. 5, 7, 11, 16. But if without crime he could be a prophet, he did not become a criminal by predicting a calamity ; for it was his duty at all hazards to foretel the truth, which cannot be always agreeable, and expressive of good fortune. Accordingly we find in ver. 17, 18, 19. to which the reader is referred, a fact stated, as having been brought forward, by which the judges decided, that according to the law of custom, the prophet merited no punishment ; and here the matter ended.

CHAPTER V.

OF THE SECOND FUNDAMENTAL PRINCIPLE OF THE MO-
SAIC LEGISLATION, VIZ. THE PREVENTION OF INTER-
COURSE BETWEEN THE ISRAELITES AND FOREIGN NA-
TIONS.

ART. XXXVII.

*General Remarks on the Reasons for, and Means of
effecting this Object.*

§ 1. To prevent the intermixture of the Israelites with people of other nations, was the second, and a very distinguishing principle of the Mosaic polity. Foreigners, indeed, if they were not Canaanites, Ammonites, or Moabites, might, by the law of Moses, become partakers of the rights of Israelitish citizenship ; but thus to multiply the number of citizens, was by no means anxiously studied or wished ; it being always the chief object of state polity to render the natural born Israelites happy, and thus powerful and formidable, by their increasing numbers. But if the regulations laid down by Moses, had little tendency to draw strangers into the land, they were admirably calculated to prevent any Israelite from being lost to the state by settling in a foreign country. This he could never do without a certain loss, to submit to which, he must have been tempted by very advantageous offers

abroad; for every Israelite had his hereditary land, which he could not sell in perpetuity, and which, of course, by ceasing to be an Israelitish citizen, he absolutely forfeited. Besides, their whole plan of life was so regulated, that they could not have much intercourse with other nations; and many of their customs, which were converted into laws, (those, for example, relating to clean and unclean meats) were so contrary to the customs of foreign nations, as effectually to prevent any intimate connexion with them.

Moses was likewise no less careful to guard against the danger of the Israelitish state ever becoming dependent on any foreign nation. He had confined it within certain distinct boundaries, as before specified, with a view to prevent any fortunate conqueror from having any pretext to annex it to his conquests; and he had, moreover, expressly interdicted the people from ever chusing a foreigner to be their king.—See Deut. xvii. 14, 15.

This is in some measure contrary to the maxims of our governments; but then they are different in their principles from the Mosaic. They have a certain extent of territory, by the name of which they are distinguished; and if it is not sufficiently peopled, it is consonant to their policy, and for the peculiar advantage of the inhabitants, to induce foreigners to settle among them. The Israelitish state, on the contrary, was at first only a *people* that had no land, but had to acquire a country by their swords, much in the same way as the Cimbri and Teutones, in the Roman history; but still they were a people sufficiently great to make themselves respectable. To what good purpose,

then, could such a people have sought to draw foreigners to a country that they had themselves first to purchase with their blood, and which, the less extensive it was, would cost them the less blood? It will, perhaps, be answered, "that by the establishment of "greater cities, they might give spirit to agriculture." But that was not necessary; for Sidon, the principal trading city in the world, was already in their neighbourhood, and, besides, it was requisite to take precautions lest strangers should become the stronger party, and the Israelites remain their servants. It would, no doubt, have been agreeable to a king, because it increased his power; but the happiness of the people, and not the advantage of the prince, was the object of the state which Moses founded; and in the laws which God prescribed to him for that end, he manifested the sentiments of a true father, and acted as Abraham, Isaac, and Jacob, would have done.

This insulation of the people had, moreover, a close relation to the first great object of the Mosaic æconomy, which was to maintain the worship of one God. Amidst the universal prevalence of idolatry among mankind, it would have been impossible to secure the Israelites from so infectious a madness, if they had not been restrained from intimate friendship, and even from intercourse with other nations. That the multiplication of the Israelites by natural fruitfulness, was one great object of the Mosaic institution, has been acknowledged by almost all who have with any attention considered its laws; and even by those who have not done so, it has been repeated more than a hundred

times. Moses left to the Israelites their paternal *point d'honneur*, according to which, all immortality and posthumous fame consisted in having their names preserved in genealogical tables, by means of having children and descendants: and to die without children was considered as very unfortunate and dishonourable. The divine promises recorded by Moses, in a great measure related to a numerous posterity; so that the Israelites looked on this as a mark of God's regard, whereas sterility was deemed a curse. The genealogical tables in which only the names of those who had issue were eternized, (all others being erased) must have thus materially contributed to the increase of population, and the earliness of marriage; and even now it is an interesting question, whether the same plan might not yet be imitated with the happiest effects? They would, besides, be often useful in deciding litigations concerning matters of heritage, and, indeed, would have been highly expedient in that view alone. Whoever married, was for the year, at least, exempted from military service, and other burdens; which must necessarily have promoted marriages, particularly in the time of war, when, otherwise, they are apt to decrease. These circumstances, too, that all the Israelites were husbandmen; that the wives were not on an equal footing with the men, but rather a sort of servants; and that a man might, without disgrace, take even his own maid, and beget with her *children legitimate*, and capable of inheriting his property, all made marriages less expensive than with us, and, consequently, both earlier and more frequent. The great rights, also, which a father enjoyed over his

son, were likely to make him desirous of his marrying early, because a husbandman may make use of his children and grandchildren to much advantage; always greater than if he employed day-labourers or servants. In fact, by the Hebrews, children were considered as wealth; and among a people who, along with agriculture, practised also the rearing of cattle in the Arabian deserts, a man might actually become rich by a numerous family. That sort of polygamy, in which the greater number of wives in the *haram*, or, as it is called among kings, the *seraglio*, seem to live almost without marriage, while the favourite robs them of their common husband, was not established by Moses, for whoever had a plurality of wives was obliged to cohabit with each of them weekly.

It is true that many of these usages, so favourable to population, were not originally introduced among the people by the laws of Moses, for he found them already in operation. But it is also true, that he first rendered them really useful.

ART. XXXVIII.

Concerning the different Professions, or Modes of Life, on which a State may be founded—The Mosaic Polity not founded on the Mechanic Arts, and, consequently, among the Israelites, there was no Bourgeoisie, or distinct class of Citizens.

§ 2. It is necessary that I here notice the particular mode of life, on which the whole Mosaic polity is founded, and shew, at the same time, how its laws

bore upon *other* modes of life. For neither the form of the Israelitish government, nor what I have already said concerning its fundamental principles, can be fully understood, unless we are acquainted with the *people*, or, in other words, with the materials of which the state was composed.

Our commonwealths are commonly founded on a variety of professions, by which the mere citizens, as distinguished from the *literati*, and soldiers paid by the state, earn their maintenance. We have agriculture carried on by the boor, on a small scale, and under a variety of servitudes ; and by the nobleman, on a larger scale, and with certain liberties and privileges ; and our cities, if they are not mere villages endowed with the title and rights of cities, subsist by handicrafts, manufactures, and arts. To these two principal classes of people, who live by their earnings and industry, must be added a third, namely, that of the merchants, small as well as great. In Germany, we know nothing of the business of the wandering herdsman, which was so prevalent in the Oriental countries. Nor can the business of the *Jager* or hunter scarcely be numbered among our stated occupations, because of itself it now supports so small a number of people ; whereas the reverse might have been the case in the extensive deserts of the east. As to the profession of *freebooter*, we have reason to be thankful that it has long ceased to be tolerated, and accounted honourable among us ; but it *was* so among our ancestors, and it *is* so still among the Arabs.

Of these occupations, we shall in vain seek in the Mosaic state, at least among its free citizens, for that

one, which among us is the most general of all, viz. that of the mechanic or handicraftsman. The law-giver of the Israelites, by apportioning to each of the people an hereditary possession in land, expressly had it in view to divert them from the exercise of mechanic arts; which, to attain any degree of perfection, require each its peculiar professors. But neither in the Mosaic writings, nor in the other ancient historical books of the Bible, can I find the least indication of the freeborn Israelites living by the profession of different trades: the reason of which, no doubt is, that this being accounted ignoble, was entirely left to the slaves, who wrought for the accommodation and benefit of their masters. Hence it followed, that tradesmen could not among them have had such exclusive rights, compared to husbandmen, as among us. But at the same time, as the common peasant in a country where there was but little luxury, easily provided himself with the necessaries of life, without much concern as to fashion or taste, he could not be reasonably interdicted from working in his leisure hours for his neighbours, at any trade in which he happened to have acquired any degree of dexterity beyond the usual standard. It was, however, chiefly in the houses of the rich, that trades were carried on to any great extent. The slaves wrought, and their masters sold their labours. In this way, too, great manufactures were carried on, of which I think I have discovered an example, *as to an extensive linen manufacture*, in 1 Chron. iv. 21.; where I understand *Mischfachoṯh* (משפחות) *familiæ*, in the same sense as the Latin *familia*, which frequently denotes the slaves

in a great house collectively : and the derivation is from *Schifcha*, (שִׁפְחָה) a slave, as *familia* is from *famulus*. This gave to those who were once in the way to wealth, and could keep, or educate slaves, the means of arriving at enormous riches. At the same time, we see from Prov. xxxi. 24. that some part of the manufactures sold, was the work of industrious housewives.

In regard, however, to those arts which require more than common nicety of hand, and which by reason of their rarity would be accounted more noble, I find, on occasion of the building of the tabernacle, that they were practised by free people. But for this very reason of their rarity, the legislator, in laying the foundations of his polity, paid no regard to them ; but after providing every man with a means of livelihood, in securing to him an hereditary farm, he contented himself with letting the arts flourish, where nature, as it were, produced them without assistance.

This circumstance rendered the Israelitish state extremely different from ours. It not only did away the necessity of many civil laws, and many police regulations, which we must have ; but it also created a twofold difference in their polity as a whole, from what we are anywhere acquainted with. For, in the *first* place, there were no citizens who, by the practice of particular trades, became in a manner unfit for military service ; and in the *second* place, there could not, in Israel, with the exception of the principal cities of the land, be any cities entirely dependant for subsistence on the country, unless, perhaps, one or two, that by mere accident happened to become the

resort of a great concourse of foreigners. They did not in their mode of subsistence differ, as our cities do, from country villages: their sole distinction consisting in this, that they were secured by walls against any sudden attack. Thus among the Israelites there was no distinction between citizens and peasants; both forming but one class. The cities, too, in Palestine, seem, in general, to have been but small. The tribe of Levi, which, including children, consisted of 22,000 males, and, of course, with its females, would amount to about 44,000 souls, received 48 cities for its share: and who but must see that all of them must have been inconsiderable?

These observations, however, will not apply to the period posterior to the Babylonish captivity; for *then*, manufactures were very common among the Israelites, and many of the cities were large. But I am not now treating of the circumstances of that age, in which, while the Mosaic precepts were, as to the letter, zealously fulfilled, their spirit, from the complete change that had taken place in the situation of the republic, was become in a great measure altered.

ART. XXXIX.

How Moses, in framing his Laws, conducted himself with respect to Commerce.

§ 3. WHEN we speak of commerce, we must distinguish between the internal commerce of the people with one another, and that which is carried on with other nations, especially by sea. For the former, with

which no state can dispense without great disadvantage, provision was made by the three festivals, to the celebration of which all the Israelites were assembled thrice every year. Conventions of this nature instituted for religious purposes, have generally withal been made instrumental to the purposes of commerce. Our *Messen* (fairs) have their name from the masses (*Missæ*) which were sung at particular seasons, and to which, in Catholic times, people from all corners resorted. As here there were buyers, of course there came also merchants with their commodities, and thus arose yearly fairs. The holy pilgrimages to Mecca gave, in like manner, an impulse to the trade of Arabia. Hence we see, that although in the Mosaic institutions, the interests of internal commerce were indirectly consulted, it was only in such a manner that the carrying it on could not become a distinct employment, but could merely occupy the weeks of leisure from the toils of agriculture: before harvest, at the feast of the Passover; after harvest, at the feast of Pentecost; and on the conclusion of the vintage, at the feast of Tabernacles.

Foreign and maritime commerce, on the other hand, do not seem at all to have been objects of the Mosaic polity; in which I do not find one single regulation calculated to promote, but many regulations tending to obstruct, their progress. Every Israelite had his own land; and the husbandman will rarely become a trader, because the produce of his fields will always support him, not perhaps with overflowing abundance, but still without much risk of any great loss. Commerce cannot dispense with interest for

the use of money ; and *that* Moses strictly prohibited. Without interest, nobody will lend money to the merchant, who, for the sake of great profits, must always run the risk attendant on its outlay ; and there are but few people engaged in trade, who can bring themselves forward with their own capital solely. We remarked above, in describing the limits of Palestine, how little Moses regarded the advantages of commerce. If to the politicians of our days, any thing whatever could appear superlatively strange, it would be the indifference which Moses thus manifested with regard to commerce ; in a country too, which would seem to be, as it were, the natural seat of the trade of the whole world. Yet some erroneous notion may, perhaps, lie at the bottom of their wonder. For because the great wealth which two European nations have attained by commerce, is so extremely striking, some have concluded that commerce is absolutely and unexceptionably the greatest benefit which a legislator can confer upon any people. The mere name, *commerce*, bewitches them ; and they do not reflect, that there may be a very hurtful and destructive sort of it ; as, for instance, when too many articles that are superfluous and dispensable, are imported ; or when raw materials, such as wool, yarn, &c. are exported. They do not consider those objects, by the attainment of which alone trade is ever useful, viz.

1. In its procuring to us foreign commodities, with which we cannot dispense without inconvenience or loss. We need only instance the Peruvian Bark, or suppose a country destitute of iron, to become sensible of this.

2. In giving us opportunities to barter with foreigners our superfluous produce, which otherwise would spoil in our hands, and thus to obtain in return other useful articles, and money.

3. In thus giving a stimulus to the industry of the people, who will raise more of the fruits of the earth, and work with more diligence at manufactures, when they know how to make money of their superfluities.

4. In making us acquainted with foreign productions of nature and art, which people at first long for, and send money out of the country to obtain; but which they gradually introduce, and fabricate within their own borders. Of this, the breeding of silkworms in Europe is the greatest example.

5. In carrying and selling the productions of one foreign country to another, and thus making a sure and permanent profit to our own.

Where none of these objects is attained, foreign commerce is always pernicious. Nor is even a profitable trade always without some disadvantages and evils, which must be taken into the account, and, as it were, deducted, if we would ascertain the real profits accruing to a nation from it. Thus it will, if considerable, in some degree damp the warlike spirit of a people, and therefore render them more defenceless, (which, however, must be said with the exception of England; and yet England cannot raise an army proportioned to its population, and but for its insular situation would thereby be in a dangerous predicament.) It will likewise, by the importation of foreign luxuries, and as long as they are not attempted to be produced and imitated at home, drain the country of

money, or necessary and indispensable articles; of which we have an instance before our eyes in the trade to India, which by the annual exportation of silver, is so highly disadvantageous to Europe; and if, again, it is a maritime commerce, it destroys a great number of men*, and thereby prevents marriages; so that, to such an increase of population as Moses studied by his polity to effect, it is unquestionably prejudicial. If it here occurs as an objection, that we find Holland extremely populous, the cause thereof is to be sought in this, that trade, and the prospect of gain, allures foreigners into that country; and such was not the object of Moses.—Mr. Hume, to whom I owe two-thirds of these observations, has philosophized so finely on the advantages of commerce, that I would intreat the reader to peruse his observations. He is the more worthy of credit, that, though a Briton, he does not at the mere sound of the word *commerce*, break out into political raptures and extravagancies.

Before I proceed to state the more immediate reasons which may have determined Moses not to found his polity on commerce, invited, though he was, by the favourable position of Palestine, I must make this remark in passing, that by his education in Egypt

* Here I do not so much allude to shipwreck, as to disease, which among sailors often makes prodigious havock. In the course of the preceding war, England lost by disease alone no fewer than 130,000 seamen, and only about 5000 in action, and otherwise. And it is to be remembered, that in ships of war, by reason of the superior attention paid to cleanliness and order, diseases are by no means so dangerous as in merchantmen.

he must have learnt, that without maritime commerce, a nation may be extremely flourishing. For it is well known, that the policy of the ancient Egyptians did not favour maritime commerce. The sea, which destroys such multitudes of people, and which formerly, while navigation was so imperfectly understood, must by shipwrecks have proved fatal to still greater numbers, was considered by them as the element of *Typhon*, or the evil deity. And yet with all this, Egypt, whose polity was properly founded on agriculture, was a great and powerful state.

The more immediate reasons, then, which influenced Moses to give no encouragement to commerce, were probably the following :

1. That how useful soever in enriching a people it may be, still it tended to counteract the first and highest principle of his polity. For it obliges a people to have closer intercourse with foreign nations, which, from the prevalence of idolatry, would *then* have been the direct means of corrupting the Israelites.

2. It entices too many citizens to leave their native land, and, for the sake of arriving at wealth, to settle in foreign colonies, and to connect themselves with foreign companies, so as at last entirely to forget their relations and their home. The merchant is a citizen of the world, and neither by affection nor interest so fettered to his own country as the man who lives on his hereditary farm. In the infancy of the Mosaic state, commerce would, in this respect, have been peculiarly hurtful, and have converted the Israelites, hitherto unaccustomed to agriculture, into a nation of traders, and thus scattered them all over the world.

3. It proves fatal, as I have remarked above, to great multitudes, and obstructs that sort of population which Moses wished to encourage.

4. The warlike spirit of the people would by the increase of commerce, have been damped in its infancy ; and,

5. A system of foreign luxury introduced, before they had by other means attained sufficient wealth to support it. In the infancy of a state, commerce is rarely advantageous. Holland is, indeed, an example of the contrary ; but not to mention other peculiar circumstances in her case, which would lead me too deeply into history, it is sufficient to observe, that the extreme simplicity of manners which the Dutch have maintained in the midst of their immense trade, is almost without example among commercial nations.

6. Perhaps too, commerce might have stirred up against the people of Israel, enemies against whom they could not have stood, without, at least, the peculiar assistance of God ; and God could not be supposed to take an interest in protecting an employment prejudicial to religion. A maritime commerce would probably have embroiled them first with the Sidonians, and, in after times, with the Tyrians. Under these circumstances, to have excited a commercial spirit among them, would have been like what the emperor, Charles the Sixth, did, when, by establishing the East India Trading Company, he made England and Holland his irreconcilable enemies. Was it not, then, more prudent in Moses to preserve the friendship of the neighbouring Sidonians, and of the

other Canaanites without the borders of Palestine, particularly when it is considered,

7. That by their vicinity, and by the passage of the Asiatic trading caravans to Egypt, those advantages of trade which I have stated under Nos. 1, 2, 3, 4.; that is, by far its *most important* advantages, were secured to the Israelites; while they only lost the precarious profit which the merchant makes of his wares, and that of sea freight, which is still more precarious, besides being attended with loss of many lives?

With all this, however, it still remains doubtful whether it was the mind of Moses that trade was never to be cultivated, even when the state should have attained its full maturity, and whether, therefore, Solomon acted contrary to his laws (to the spirit of them, at least, allowing that the letter remained untransgressed) when, under his government, he opened this new source of wealth. On this point, holy writ pronounces no judgment; for while it blames many other actions of Solomon, this is recorded without either praise or censure. Thus much, however, is certain, that most of the reasons which I have adduced above, as dissuasive of foreign commerce, were by Solomon's time done away; and besides, I must still remark, that the bustle and temptations of trade are by no means peculiarly favourable to the interests of an infant colony. For while the people are yet unhabituated to agriculture, and have not reduced it into a system of regular industry, the hope of those great profits which trade holds out, will draw off from the service of the fields a great number of hands; who, after all, cannot possibly get all rich by, or be

useful in, mercantile pursuits. To a rising colony, which has not yet attained the opulence requisite for commerce, it is far more beneficial to have its superfluous productions taken off by foreign dealers ; who will, however, most certainly be frightened away, if they perceive encouragement given to trade among the people themselves. The only one of the causes above stated, which remained in full force from the time of Moses to that of Solomon, is the one first mentioned, viz. that resulting from the seduction to idolatry. I must, however, observe, in justification of Solomon's commercial undertakings, that they were carried on not by his subjects, but by the government, which could not but render the intercourse of the people at large with strangers, far less than it would have been, had the reverse been the case ; and besides, the seamen he employed, were not Israelites, but Phœnicians.

ART. XL.

The ancient profession of Freebooter abolished by Agriculture.

§ 4. AMONG the wandering Arabs, the profession of freebooter, or robber, has, from time immemorial, been accounted any thing but dishonourable. At this day, they term what is thus acquired, *Fadl-allah*, a *God-send*, or *gift of God* : And of their progenitor, Ishmael, we find it long ago predicted in the Mosaic writings, (Gen. xvi. 12.) that *his hand should be against every man, and every man's hand against him*. In the

Israelitish history, we also find similar examples.—When the brethren of Jephtha refused him his portion of the inheritance, he became the captain of a band of robbers, which was so far from dishonouring him, that the people of Gilead unanimously chose him for their prince ; and we find him hesitating whether he should do his country the favour of accepting that office, or still abide by his former profession, (Judges xi. 1,—11.) Before his time, Abimelech, a son of Gideon the judge, had made his fortune in the same manner, heading the men of Sichem in their depredations, (Judg. chap. ix.) In like manner, when David fled before Saul, a number of unfortunate persons joined him ; and they lived by committing depredations on those with whom the Israelites were at enmity. How far this was lawful, I do not now enquire ; but if they only retaliated on those who plundered the Israelites, as, for instance, on the Amalekites, their conduct could not be sinful. It is sufficient for my purpose at present to shew that the business itself was deemed highly honourable.

But that Moses sought, nevertheless, to make his people desist from it, is manifest from his decreeing that every man should have a piece of land of his own. He that attends to the cultivation of land, cannot wander about in the wilderness, and lie in wait to plunder caravans ; nor will he attempt any such thing, because he can support himself by his industry. Hence the predatory Arabs refuse to have any settled possessions in land, because it would but fetter them, and as *a restraint upon their liberty*, be a punishment instead of a blessing.

The same holds with respect to the profession of a hunter, which in the historical part of the Mosaic writings, is not represented in a very favourable light. See Gen. x. 9. xxv. 27. Where there are only cultivated fields, and each man has his own farm, hunting ceases to be a distinct profession.

I will not, however, after all maintain, that Moses absolutely discountenanced all partisans, or hunters by profession. On the contrary, we find him in his laws noticing certain eatable or clean animals, that belong to the wild tribes, or game, Deut. xiv. 5.; and he specifies it as one object of the sabbatical year, that the game might be preserved, (Lev. xxv. 7.) But he did not chuse to make this mode of life the foundation of his polity, as is the case among the Arabs and many other uncivilized nations. Nor were his people to establish themselves in Arabia, where hares and jerboas are the common game*. Both of these he prohibited to be eaten, reckoning them among unclean beasts.

In the case of any other state, I would not so much as mention that the laws did not tolerate hunting as a general means of livelihood; but in the case of the Israelites it deserves to be noticed, because their brethren, the Ishmaelites, lived entirely by the chase; and the Israelites, who trembled at the thoughts of a war with the nations of Canaan, might have conceived a passion for it, and settled themselves in Arabia as a wandering people.

* See *L'itineraire de l'Arabie deserte*; a Londres, 1759

ART. XLI.

Agriculture the foundation of the whole Mosaic Polity.

§ 5. It was on agriculture alone, taken in its most extensive sense, so as to include the culture of vineyards, olive-grounds, and gardens, that Moses thought fit to lay the foundation of the Israelitish polity. Every Israelite was to receive a certain extent of land, of which the full property was to be vested in himself, although he durst not sell it; so that it descended to his posterity for ever. By this means there could be no Israelite born, who did not inherit a piece of land from his progenitors.

It may here indeed be objected, that their inheritances would in the end become too small, when families came to be very much multiplied. But such remarkable multiplications are but rarely to be expected. For when a family that subsists by agriculture has become so strong that its land no longer fully maintains it, and cannot employ more hands, its farther increase comes to a stand, because the father does not permit his son to marry in early youth. In cases, however, where such an extraordinary increase occurred in Israel, we learn from the history, that a colony was formed, which either went to settle in Arabia, in some fertile spot where water abounded, or else drove out the Canaanites from the places which they had previously been permitted to occupy.

Now, as the vicinity of the Sidonians, and the passing of the caravans from Asia to Africa, gave the people of Israel sufficient opportunity to dispose of

their commodities, this arrangement was attended with the following beneficial effects. In the *first* place, the people, according to what was the particular object of their legislator, were restrained from intercourse with other nations; and, in the *next* place, their ancient simplicity of manners would be longer preserved than it could possibly have been by any other plan. It will be found, that the maintenance of this simplicity of manners, so suitable to a newly founded state, was generally the point to which the ancient legislators directed their chief attention; and as the founders of new states, they were in the right. On the other hand, some modern legislators who proceed on opposite principles, are not in the wrong, because their object is, by wise and judicious measures, to render long-established and opulent states, still more opulent and flourishing. By this plan too, the valour and independent spirit of the people, could not fail to be improved; for, next to the chase, agriculture is the best nursery for soldiers; but a still better, is the love of our native land. To the tradesman and merchant, every country is pretty much on a footing; but the husbandman fights for his all, when he carries arms in defence of his country; and he conceives a peculiar and increasing affection for the spot which he has known from his infancy as the seat of his forefathers.

It was probably from the Egyptians that Moses borrowed the principle on which his polity was thus founded; though, indeed, we find, that the state of the ancient Romans was accidentally established on a similar plan.

ART. XLII.

All the Israelitish Husbandmen on a footing—neither Peasantry nor Nobility—yet the Levites a sort of Literary Aristocracy.

§ 6. I HAVE already observed, that among us, those who derive their livelihood from the fields, are generally distinguished into the two classes of peasantry and nobility; although I am well aware that all of the latter class have not estates, which, according to the original constitution of the state, they ought to have. But among the Israelites there was no such distinction. With the name of peasant we are apt to connect an idea of meanness, which places the man far below the rest of his fellow subjects; and even in Sweden, where the peasantry have most privileges, they still form only the lowest class of the people. We are apt also, under this designation, to figure to ourselves a state of the greatest servility in all respects, as that to which the man is obliged to submit. But among the Israelites, there were no peasants of this description, nor yet were there any noblesse: all were on a footing of equality, and their circumstances very nearly resembled those of the *land-burghers* in our cities. Offices and riches might distinguish certain individuals from others; but of an high-born nobility, enjoying pre-eminence and privileges beyond the great body of the people, Israel knew as little, as at this day knows that part of Asia to which Palestine belongs. The Levites, it is true, by birth enjoyed certain privileges, but quite of a different nature from

those which belong to nobility, according to our European ideas of it. They were born to devote themselves to learning, and thereby to become qualified for public functionaries ; which gives to the Levitical institution somewhat the look of a civil employment. But our nobility, although they aspire to, and engage in, civil employments, are, properly speaking, born to the sword. It is also a main principle in their institution, that they should each possess a considerable property in land, whereby their interests become more closely connected with the welfare of the state, than those of other citizens ; and on that account, the nobleman justly enjoys considerable influence in deliberations relative to the property and the defence of the country. The Levites, on the contrary, were to have no landed property, but merely a livelihood from the tithes ; and were, if I may so speak, an hereditary literary noblesse, though dependent, in respect to the nature of their revenues, on the landholders. We have nothing at all of this kind in our European governments. Perhaps the Chinese nobility, the Mandarines, will be found in some points to correspond with it.

If the attainment of great riches could have ennobled their owners, an aristocracy, flowing from that principle, and not from birth alone, might naturally enough have been first looked for among a nation of wandering herdsmen ; who, as I shall soon have occasion to observe, considered their own employment as really the noblest of all occupations. Still, however, it would not have been an aristocracy like ours ; for opulent people could only have been among

the Israelites, what a rich merchant with us is in reference to other citizens. A single misfortune, by reducing them from affluence to poverty, might deprive them of all their pre-eminence. They had, indeed they could have, no territorial domains; nor was it peculiarly their province to engage in the profession of arms.

ART. XLIII.

This gave to the Israelitish Government a Democratic tendency.

§ 7. THIS equality of all the citizens, without a class of nobles, properly so called, could not but give the Israelitish state a democratic tendency; and we need not wonder that on such a foundation, Moses should have established a democracy, and not a monarchy. For although he did permit the Israelites to chuse a king, it was neither his advice nor his wish that they should do so; and even when at last it took place, it was rather suffered than approved.

The adoption of a king in a state destitute of nobility, naturally tended to make the government somewhat despotic; and we shall afterwards actually see that, how limited soever the king of Israel was by law, still he shewed on many occasions rather the appearance of an eastern despot, than of an European sovereign. Had there been no priests and Levites, no hereditary learned noblesse, his despotism would have been still stronger. The tribe of Levi, as a political balance, was of great importance; and had it done nothing else than consumed its revenues, it would

have in a great measure answered the purpose of an aristocracy, as a check on the despotism of the monarch.

ART. XLIV.

How far Moses retained the Mode of Life peculiar to the Wandering Hordes.

§ 8. THE ancestors of the Israelites had been wandering herdsmen; an employment which must be carefully distinguished from cattle-breeding as connected with husbandry, and confined within the limits of a farm. Except in Spain, we have in Europe nothing of the kind; and in order to obtain correct ideas concerning it, I would beg the reader to peruse the account I have given of it, in No. 6. of the first part of my *Miscellaneous Essays*. It is manifest that Moses never meant to establish his polity on this mode of life, else might the people have remained in Arabia; or if that country was too narrow, and they required besides the more fertile region of Palestine, it might have been suffered to remain a common, instead of being partitioned, in order to give to every Israelite a portion of land, as his own exclusive and unalienable property. At the same time, he readily indulged the *two and a half tribes* in their choice of a settlement, when they requested to have their portion in the conquered countries beyond Jordan, in order to devote themselves to the breeding of cattle, (Numb. chap. xxxii.) Among the other tribes, this might also have continued as a secondary occupation. We see from Judg. xiii. 1. xviii. 1. that some of them adhered for

a long time to the wandering life ; and it would even seem as if seven of the tribes hesitated about dividing the land when conquered, from the desire they had to abide by it*. Nabal had his herds at Maon, which lay two days journey within the Arabian deserts ; and for those families that had become too numerous, the business of cattle-breeding, for which Arabia afforded every facility at hand, might, without detaching colonies, have been a means of furnishing a subsistence.

It is farther to be observed, that this business is more likely than husbandry to destroy, in a certain degree, the equality of the citizens, and to raise *some* at least of those who carry it on, to a very high degree of opulence. In a country where land cannot be bought, agriculture will never make any individual very rich ; but if cattle-rearing be successful, it is very possible for a man who has free access to the Arabian deserts, to have a herd of many thousands. The richest Israelites of whom mention is made in the Bible, lived by cattle-breeding ; as, for example, Nabal, and those three wealthy and loyal citizens who entertained David's army : at least they lived in the country beyond Jordan, which the two and a half tribes obtained for that purpose. Schochi, Machir, and Barzillai, were the names of these three generous men, who must have had princely fortunes, according to our way of reckoning.

Among the Arabs this mode of life is still accounted more noble than living in cities or villages. They think it, as Arvieux observes, more congenial to li-

* See the remark on Josh. xviii. 3. in my *Germ. Trans.*

berty ; because the man who with his herds ranges the deserts at large, will be far less likely to submit to oppression, than people with houses and lands. This way of thinking is of great antiquity in this part of the world. *Diodorus Siculus* (lib. xix. cap. 92.) relates concerning the Nabathæans of Arabia, that they were by their laws prohibited from sowing, planting, drinking wine, and building houses, and *that on pain of death ; for they think*, says he, *that those who possess such things will be easily brought into subjection by a tyrant ;* and he adds concerning their way of life, *that they traversed the deserts feeding their herds, which consisted partly of camels, and partly of sheep.* This might appear incredible, if we did not read in Jeremiah, (chap. xxxv. 1,—11.) a *native* author, that the Rechabites (the descendants of Moses' father-in-law) who moved from Arabia into Palestine, sacredly observed their paternal command not to build houses, nor sow land, nor plant vineyards, nor drink wine, which might tempt them to do so ; but to dwell in tents.

Here, therefore, as we might have expected to find, so have we actually found, a sort of noblesse, enjoying a pre-eminence among their fellow-citizens, though it did not result from rank, or offices of honour. We shall, however, soon see how different it was from our aristocracy. It was not connected with a hereditary landed estate ; nor was it of a feudal and military nature. The nobleman here derived his pre-eminence not from the laws, but from the national prejudices ; and one single attack of the murrain among his cattle, reduced him to a level with the meanest of his brethren.

CHAPTER VI.

THE FORM OF THE REPUBLIC.

ART. XLV.

What constituted the Congregation in the time of Moses, and the Diet afterwards.

§ 1. THE form of the republic established by Moses was democratical. Its head admitted of change as to the name and nature of his office; and we find that, at certain times, it could subsist without a general head. If, therefore, we would fully understand its constitution, we must begin not from above, but with the lowest description of persons that had a share in the government.

From various passages of the Pentateuch, we find that Moses, at making known any laws, had to convene the whole congregation of Israel, (קהל or עדת); and, in like manner, in the book of Joshua, we see, that when *Diets* were held, the whole congregation were assembled. If on such occasions every individual had had to give his vote, every thing would certainly have been democratic in the highest degree; but it is scarcely conceivable how, without very particular regulations made for the purpose, (which, however, we nowhere find,) order could have been pre-

served in an assembly of 600,000 men, their votes accurately numbered, and acts of violence prevented. If, however, we consider that, while Moses is said to have spoken to *the whole congregation*, he could not possibly be heard by 600,000 people, (for what human voice could be sufficiently strong to be so?) all our fears and difficulties will vanish; for this circumstance alone must convince any one that Moses could only have addressed himself to a certain number of persons deputed to represent the rest of the Israelites. Accordingly in Numb. i. 16. we find mention made of such persons. In contradistinction to the common Israelites, they are there denominated *Kerüe Häeda*, (קרוי העדה) that is, *those wont to be called to the convention*. In the xvi. chapter of the same book, ver. 2. they are styled, *Nesie Eda Kerüe Moöd*, (נשיאי עדה קרוי מועד) that is, *chiefs of the community, that are called to the convention*. I notice this passage particularly, because it appears from it, that 250 persons of this description, who rose up against Moses, became to him objects of extreme terror; which they could not have been, if *their* voices had not been, at the same time, the voices of their families and tribes. Still more explicit, and to the point, is the passage, Deut. xxix. 9. where Moses, in a speech to the whole people, says, *Ye stand this day all of you before the Lord your God, your heads, your tribes*, (that is, chiefs of tribes) *your elders, your scribes, all Israel, infants, wives, strangers that are in your camp, from the hewer of wood to the drawer of water*. Now as Moses could not possibly speak loud enough to be heard by two millions and a half of people, (for to so many did the Israelites

amount, women and children included) it must be manifest that the first-named persons *represented* the people, to whom they again repeated the words of Moses.

Whether these representatives were on every occasion obliged to collect and declare the sense of their constituents, or whether, like the members of the English House of Commons, they acted in the plenitude of their own power for the general good, without taking instructions from their constituents, I find nowhere expressly determined; but methinks, from a perusal of the Bible, I can scarcely doubt that the latter was the case.

Who these representatives were, may in some measure be understood from Josh. xxiii. 2. and xxiv. 1. They would seem to have been of two sorts. To *some*, their office as judges gave a right to appear in the assembly; and these were not necessarily of the same family in which they exercised that office.—*Others* again, had a seat and a voice in the Diet, as the heads of families.

ART. XLVI.

Of the Heads of Tribes and Families.

§ 2. WITH some account of these, I shall begin my detail of the different functionaries of the republic.

All the various branches of Abraham's descendants, like the ancient Germans, or the Scottish clans, kept together in a body, according to their tribes and families; every tribe forming a lesser commonwealth,

with its own peculiar interests, and all of them at last uniting in one great republic. In the very same way were the Ishmaelites governed by twelve princes, according to the number of Ishmael's sons, Gen. xxv. 16.; and the Bedouins, their descendants, have always preserved some traces of this patriarchal government. Their families continue together; and under the name of Emir, one is prince among people, who are all his kindred, within a certain degree of affinity.—According to Genesis, chap. xxxvi. the Edomites had *kings*; but under them, again, stood a multitude of princes, and that according to the order partly of sons, and partly of grandsons of Edom; consequently, not princes who succeeded each other, but who ruled over so many families. Thus the grandsons of Edom, through Eliphaz, are, ver. 10, 11. Theman, Omar, Zepho, Gaatham, and Kenaz; and since in ver. 15. it is said, *These are the descendants of Edom; first, the descendants of Eliphaz, Prince Theman, Prince Omar, Prince Zepho, Prince Kenaz*, it is clear that these were not *persons* who succeeded each other in *the* principality, but that they were the *names* of principalities: just as if I were to say, Mentz, Triers, Cologne, &c. Even the Troglodytes, who lived in the same country before the Edomites, in subterraneous habitations, and who sprung not from Abraham, but were of Canaanitish origin, had had family principalities of the same kind, as we gather from ver. 28, —30. of this chapter. Among the Edomites, these princes of families were called *Allufim*, (אֱלֻפִּים) from *Elef*, (אֵלֶף) as signifying a family.

The same arrangement took place among the Is-

raelites. That they were divided into twelve great tribes, is known to every one; and that, as early as the time of Moses, every tribe had its own chief, appears from Numb. chap. ii. where the names of the chiefs are given. But as we nowhere find that Moses appointed them, this would seem to have been an ancient institution brought with them from Egypt into the wilderness. Indeed, from Exod. iv. 29. we see, that, while in Egypt, this people actually had their *elders*, who probably were nothing else than these same chiefs of families.

The tribes were again subdivided into certain greater and lesser families, which are called *Mischpachoth*, (משפחות) that is, *families*; and *Batte Aboth*, (בתי אבות) *houses of fathers*, Numb. i. 2. Josh. vii. 14.; and these, again, had likewise their heads, which are sometimes called *Rasche Beth Aboth*, that is, *heads of houses of fathers*; and sometimes simply *Raschim*, or *heads*.—These are probably the same persons, who, in two principal passages of Joshua, chaps. xxiii. and xxiv. are comprehended under the general name of *Elders*, and who likewise bear that name in other places, as in Deut. xix. 12. and xxi. 1,—9. But whether this word is to be understood according to its etymology, and whether in filling the office of an elder, regard was had to age or not, I cannot determine. As among the Romans, the *senator* was so denominated from the word that signifies old age, although he was not necessarily advanced in years; or as among the Arabs, the *Scaich*, (that is, the aged) is merely a title of honour; so it may also have been with the Hebrew *Saken*, (שֵׁן) elder. But I cannot find any trace of the

manner in which these heads, or elders of families, were chosen, when any of them died.

The princes of tribes do not seem to have ceased with the commencement, at least, of the monarchy. I find them still subsisting in the time of David, 1 Chron. xvii. 16,—22.; and they must have proved a powerful restraint on the power of the king.

It will now be easily conceivable how the Israelitish state might have subsisted, not only without a king, but even, occasionally, without that magistrate who was denominated a *Judge*, although we read of no supreme council of the nation. Every tribe had always its own chief magistrate; subordinate to whom, again, were the heads of families; and if there was no general ruler of the whole people, there were yet twelve lesser commonwealths, who, in certain cases, united together, and whose general convention would take measures for their common interest. For this reason, it was a matter of but inferior moment, by what title the supreme governor of the nation was distinguished; whether he was called a *general*, as was Joshua, or a *judge*, or a *king*; or finally, whether, in default of all these high personages, the priest was obliged to take certain duties on himself during the Diet. Although the head was gone, there always remained a living body; only its motions were slower in the one case than in the other.

In many cases, particular tribes acted as distinct and independent republics, not only when there was neither king nor judge, but even in the times of the kings. We find that wars were carried on by particular tribes; see Josh. xvii. 15,—11. Judg. iv. 10.

and chaps. xviii. xix. xx. But the most remarkable example, perhaps, is in 1 Chron. v. 18,—23. where the two and a half tribes beyond Jordan, even during the reign of Saul, carried on a very important war entirely by themselves ; in which, indeed, the rest of the people of Israel took so little share, that Samuel has not so much as noticed it in Saul's history, although it was a far more splendid event than all his achievements put together. In 1 Chron. iv. 41,—43. we read, in like manner, of wars carried on by the single tribe of Simeon, in the reign of Hezekiah.

In perusing the book of Judges, it has appeared to me as highly probable, that some of the judges therein mentioned, ruled not over all Israel, but merely over particular tribes. In the ix. chapter, Abimelech is properly king of the city of Sichem. In chap. xi. we see the Gileadites chusing Jephtha as judge and general, without troubling themselves about the concurrence of the other tribes. The Ephraimites, it is true, soon after commenced a war with them, but not on account of this election of Jephtha ; but because they had not called for their aid against the Canaanites : thus treating them with contempt, and depriving them of their share of the plunder, Judg. xii. 1,—3. Whoever reads the history of Samson attentively, will hardly be disposed to acknowledge him as a judge or *consul* of the whole nation of Israel, but only as a brave defender of the western tribes against the attacks of the Philistines. Here, however, I dare not decide with certainty.

The constitution of Israel may, in this respect, be considered as in some measure resembling that of

Switzerland, where thirteen cantons, of which each has a government of its own, and exercises the right of war, are all united into one great republic. All the twelve tribes had at least one common weal. They had general Diets, of which we find examples in the xxiii. and xxiv. chapters of Joshua. They were bound, at least by law and compact, to take the field against a common enemy ; and the tribe of Ephraim, as mentioned above, took it as a serious injury, that, without waiting for their assistance, the tribes beyond Jordan had gone to war with the Ammonites. They frequently had general judges, and afterwards general sovereigns. And even in times when they had no common head, any particular tribe that refused the administration of justice, might be accused before the other tribes, who were authorized to carry on war against it as a punishment. Of this, we find a remarkable instance in the xx. chapter of Judges.

That in a state thus constituted, much confusion may have prevailed, will be easily believed by a German, if he compares it with the German empire ; but that, on the other hand, it may in general have been peaceable and orderly, may be presumed from the example of Switzerland. It is not my business here to inquire, whence it comes, that states which are *similar* in the circumstance of their being composed of other states, exhibit such a difference of conduct.

From what has now been said, I am enabled to illustrate some particulars of the Israelitish history. When David became king, he reigned for some years only over the tribe of Judah, to which by birth he

belonged. Thereafter, the rest of the Israelites gradually came over to him by families and tribes; of which we find a remarkable account given in 1 Chron. chap. xii. In like manner, in consequence of one despotic speech of his grandson, Rehoboam, ten of the twelve tribes revolted at once, 1 Kings xii. 14. All this would appear quite inexplicable, if we did not know that the Israelites were governed *tribe-wise*, and that each tribe or family was a little republic, having its own leading men, according to whose views the rest of the people regulated their conduct.

ART. XLVII.

The Rivalship of the Tribes of Judah and Joseph.

§ 3. I MUST still enlarge a little more on this part of my subject, in order to explain the circumstance which forms the title of the present Article; although, perhaps, some readers will think I ought to assign to it another place.

Among twelve republics connected with each other, jealousies could not but sometimes arise; and lesser interests thereby stand in the way of the general welfare. The examples of Holland and Switzerland authorise us to believe that such would be the case; and I need not appeal in confirmation of it to the constitution of the German empire, which, from the inequality of its constituent parts, is perpetually distracted by divisions, and often the scene of intestine hostilities. It will then be granted, that this jealousy was at any rate politically probable; and we may pre-

suppose *two* cases, in which it would infallibly break out, and display all its mischievous effects: *First*, if any *two* tribes became more powerful than the others, in which event they would regard each other with suspicion and hatred; and, *secondly*, if any *one* tribe acquired considerable ascendancy over the rest, of which the consequence would be, the excitement of their universal envy and opposition.

In the Israelitish republic, both cases *actually* occurred; and it is this which forms, as it were, the key to their whole history. As they entered Palestine 600,000 strong, 50,000 obviously formed the medium or average number of each tribe. Whatever tribe mustered a greater number was to be accounted *strong*; and those tribes that were less numerous would, of course, be deemed *weak*. To shew at once how they actually stood in this respect, I will here, from the xxvi. chapter of the book of Numbers, transcribe the numbers of the different tribes, as taken by Eleazar, the son of Aaron, in obedience to God's command, after the plague of Baal-peor; distinguishing those that *exceeded*, from those that fell short of the above medium.

Strong Tribes.

Joseph.....85,200

Judah.....76,500

Issachar....64,300

Zebulun....60,500

Asher.....53,400

Weak Tribes.

Dan.....46,400

Benjamin 45,600

Naphtali..45,400

Reuben...43,730

Gad.....40,500

Very Weak—Simeon, 22,200.

From this statement it appears, that two of the tribes rose very far above the medium strength, at the time

of this, which was the *second* enumeration ; Judah having upwards of 76,000, and Joseph no less than 85,200 men, above 20 years of age, able to go to war. The latter, indeed, on account of its extraordinary numbers, and other advantages, was split into two half-tribes, of which the one that came afterwards to be the most turbulent, was at this time but weak, in comparison of the other ; mustering no more than 32,500 warriors. Both, however, were still regarded in some measure as one tribe : and Ephraim must have at this time enjoyed some pre-eminences over the other tribes, although we are unacquainted with them. These were probably founded merely on the predictions already uttered, (Gen. xlviii. 19, 20. Deut. xxxiii. 17.) concerning his future extraordinary increase ; or perhaps also, on the pre-eminence of his birth, inasmuch as Joseph was by far the most illustrious among his brethren ; or again, on this circumstance, that the tabernacle was to be set up at Shiloh, in the tribe of Ephraim. Thus much appears from the history, that the pre-eminences which might have belonged to the tribe of Joseph at large, passed, as if by compact, to Joseph's younger son, Ephraim, and his descendants. From this period, between the two tribes of Ephraim and Judah, we find a perpetual emulation subsisting*. In the wilderness, Moses

* On this subject there is a Dissertation by Dr John Henry Verschuir, under the title, "*De Æmulatione Israelitarum mutua, tanquam vera Causa scissæ ac debilitatæ Judæorum Republicæ,*" first published, I know not in what year, but reprinted in 1773, in a collection of his Dissertations. It agrees in the main with what I have here stated, without having then known of it ; but it contains besides

gave Judah the precedence of all the tribes, and assigned it the first place in the camp of Israel. But immediately after his death, the tribe of Ephraim had the good fortune to give the nation a leader in the person of Joshua. In the time of the judges, the tabernacle was mostly at Shiloh, in the tribe of Ephraim ; which gave that tribe considerable advantages, not only in point of honour and respect, but also of wealth and increase of numbers. For wherever the whole people were assembled thrice every year to the high festivals, trade would increase, and, of course, marriages become more frequent. The lxxviii. Psalm represents Ephraim as the chief tribe ; which, however, God is afterwards said to have rejected, when the ark of the covenant, and the kingdom, were transferred to Judah. At the same time, it appears that, even while Ephraim continued powerful, Judah enjoyed a more extensive sway than the other tribes on this side Jordan. At last, Israel received a king from the weakest and youngest of all the tribes, Benjamin. This was in some measure giving no preference to any tribe ; for by its disasters, detailed in the book of Judges, Benjamin had been extremely reduced, and could not boast of its superiority. Only, because Benjamin and Joseph were the sons of one mother, the Benjaminites, (as might be expected among a people whose way of thinking was altogether genealogical) included themselves in the tribe of Joseph. Thus, although Shimei was a Benjaminite, he said (2 Sam.

many particulars well worthy the perusal of the readers of my present work.—See an account of it in my *Oriental. Biblioth.* Part VI. p. 50, —53.

xix. 20.) that he was the first man of the house of Joseph that met David in his return. Thus the tribe of Ephraim, therefore, still maintained a certain degree of pre-eminence, while Saul the Benjaminite was king*. Under his reign, the rivalry of the tribes displayed itself very remarkably. In the tribe of Judah, he could not have had great authority; for he traversed it often in search of David, who, for a long time, found no reason to flee farther than from one end of that tribe to another, and was at last, it would appear, but the victim of a rash resolution, when he fled without the limits of the land altogether. Saul, on the other hand, was, as a king, extremely partial to his own tribe, and could not avoid owning himself to be so; see 1 Sam. xxii. 7. *He said to his servants, Hear, ye Benjamites; will the son of Jesse give all of you fields and vineyards, and make all of you captains of thousands and of hundreds?* thus acknowledging that he did so, and counting upon it as a claim to their gratitude. Saul fell in an unfortunate battle with the Philistines; and David was at first recognized as king only by the tribe of Judah; the other tribes still uniting in attachment to the family of Saul. But David's magnanimity excited their admiration and love so strongly, that they all by degrees voluntarily submitted to his government. The tribe of Judah now became exceedingly powerful; and we have remarked above, that its numbers were incredibly multiplied; most probably by pro-

* Ephraim, Benjamin, and Manasseh, in a Psalm (lxxx.) composed during Saul's reign, seem to be mentioned as the chief tribes.—See my remarks, in my version of the Bible.

selytes. It was about this period that the distinction began to be made between Israel and Judah ; the former name being applied to the eleven tribes, and becoming their distinguishing appellation from the tribe of Judah ; see 2 Sam. xix. 12, 42, 43, 44. xx. 1, 2. Such titles could not but give birth to jealousies among a people whose ideas were always influenced by genealogical considerations.

David had, indeed, most judiciously chosen for his residence a city which properly belonged to Benjamin, but lay close to the confines of the tribe of Judah, and had long been inhabited principally by Judahites, and accounted their chief city, I mean Jerusalem. This measure was well calculated to unite the Benjaminites more closely with his family, and to extinguish, perhaps, the jealousies subsisting between the rival tribes. We find, nevertheless, not only a Benjaminite (Shimei) transported with joy on David's flight from Absalom, but also, when he returned, a strife arising between Judah and the other tribes, as to which should recal him to the throne. This had well nigh occasioned the revolt of the eleven tribes from David ; and here too, the prime mover was a Benjaminite ; 2 Sam. xvi. 5,—8. xix. 10,—16. xx. 1.

All the tribes for at least 73 years, (for I will not enter into the chronological dispute concerning the length of Solomon's reign, which would augment the period) continued in submission, first to David, and then to Solomon, kings of the house of Judah ; yet the fire was all the while glowing under the ashes ; and in consequence of an imprudent, though perhaps not unjust, declaration of Rehoboam, Solomon's son, when the Israelites assembled to place him on the

throne, Jeroboam, an Ephraimite, began a revolt, and in one day, ten whole tribes shook off their allegiance to the kings of Judah, and had thenceforth a king of their own, always of the tribe of Ephraim, though from different families of it. Benjamin alone, by the above-mentioned stroke of David's policy, remained united to Judah; and both tribes, from this time, formed one kingdom.

ART. XLVIII.

A certain number of Individuals seemingly necessary to constitute Tribes and Families.

§ 4. I HAVE yet this farther circumstance to observe respecting the tribes and families, that a certain number of persons was apparently requisite, in order to entitle them to be so called, and, as such, to have chiefs to represent them in the Diets. I will thus illustrate this point. Had nothing more been necessary to tribes and families, than a mere difference in their progenitors, there would then have been as many *tribes* as the progenitor of a people had left sons; as many *greater* families as he had left grandsons; and as many *lesser*, as great-grandsons. I do not, however, conceive that it was so regulated; but that, if, for example, some of the grandsons had not very much multiplied, only so many of them taken together, formed *one* greater family. We find in the small fragment of Edomitish history, which Moses has preserved in the xxxvi. chapter of Genesis, that the grandsons of the two first wives of Esau, gave names to prince-doms; whereas, in the case of the third wife, Aboli-

bama, the princedoms have their names, not after the grandsons, but the sons; and at the end of the chapter, ver. 40,—43. no fewer than eleven princedoms appear, the names of which we do not previously find among either the sons or grandsons of Esau, and which, perhaps, arose in a later period under their kings, when any family became remarkably numerous beyond the generality. It is not, at least, otherwise intelligible, how these are all at once added to the other princedoms, which were all founded in genealogies.—With regard to the Israelites, the passage, 1 Chron. xxiii. 11. is decisive of this point. There it is said of four sons, that they had not a numerous progeny, and were, therefore, reckoned *as only one family*. Hence, also, we can explain why, according to Micah v. 1. Bethlehem may have been too small to be reckoned among the families of Judah.—Once more; we need not now be surprised to find some words in the Oriental tongues used at once as terms of number, and as family titles; thus *Elif*, (אֵלִף) *a thousand*, and also a greater family; and in Arabic, *Asir*, (عَسِير) *ten*, and a smaller family. But how many individuals were requisite to constitute a tribe, or family, I cannot say; and probably the number was not always uniform.

ART. XLIX.

Of the Judges instituted by Moses.

§ 5. AMONG the public functionaries who did not represent their respective tribes, I notice first those judges who were instituted by Moses, and of whom mention is made in the two Diets held under Joshua.

When the Israelites left Egypt, they had not judges ; probably because they had been subject to Egyptian magistrates in that capacity. Hence, for some time at first, Moses himself was the sole judge of the Israelites ; a circumstance not unexampled in the infancy of states ; although in the sequel the attempt proved impracticable, and, from the labour attending it, must have been alike injurious to his own health, and to the people's interest. Jethro, his father-in-law, convinced him of this, and at his suggestion he instituted judges ; but on a very peculiar arithmetical principle, something resembling the military system of mustering, and by which the people could be numbered from the number of the judges. Over every ten men, there was one, called a *judge of ten* ; and of this description, there must have been more than 60,000. What could not be decided by them, or was appealed from their decision, passed to the *judges of hundreds*. After these, came *judges of thousands* ; and the last resource was Moses himself. The history of the institution is related in the xviii. chapter of Exodus. It is by no means probable that, in the public deliberative assemblies, the sixty thousand judges of tens had had seats and voices. Perhaps only those of hundreds, or even those only of thousands, are to be understood, when mention is made of judges in the Israelitish Diets.

When the people came into their own land, this institution could not have remained exactly as it was ; for they dwelt no longer in round numbers together. Moses, therefore, ordained, that judges should be appointed in every city, Deut. xvi. 18. But from

nothing in his writings can it be ascertained whether these judges were to be natives of their respective cities, or at least of the tribes in which they lay, or whether they were to be taken from one particular tribe; or whether the fittest persons were to be chosen, without respect to birth: all this was therefore left to the option of the people. Thus much, however, is certain, that in following ages it generally happened that these judicial offices were filled with Levites; see 1 Chron. xxiii. 4. xxvi. 29,—32. 2 Chron. xix. 8,—11. xxxiv. 13. Probably this was the intention of Moses, and came about naturally of itself without a particular statute. For the law of the Hebrews being contained in the Bible, would, of course, be best understood by the priests and Levites. *This* tribe, as I shall afterwards notice, were bound to devote themselves to learning, and were, on that account, maintained from the tithes of all the land, without being subjected to manual labour; and it is usually required of a judge, that he have his mind enlightened by literature.

The practice of the other nations in this part of the world, was favourable to the union of the judicial office with the priesthood. We have seen above, that the Arabs resorted to the temples and the priests for justice; and that, among the Egyptians, the priests of the gods had been the usual administrators of justice, we may learn from the late Jablonski's *Pantheon*, p. 102. of the prolegomena. In these judges, therefore, we have assessors of the Diet, who, in virtue of their office alone, had a seat and a voice in its deliberations, and were in general not so much as natives of the cities which they represented.

ART. L.

The Sanhedrim of Seventy in the Wilderness only a temporary Institution.

§ 6. MOSES established in the wilderness another institution which has been commonly held to be of a judicial nature; and under the name of *Sanhedrim* or *Synedrium*, much spoken of both by Jews and Christians, although it probably was not of long continuance. We have the account of its establishment in Numb. xi.; and if we read the passage impartially, and without prejudice, we shall probably entertain an opinion of the Synedrium different from that generally received, which exalts it into a supreme college of justice that was to endure for ever.

A rebellion that arose among the Israelites distressed Moses exceedingly. In order to alleviate the weight of the burden that oppressed him, he chose from the twelve tribes collectively, a council of 70 persons to assist him. These, however, could hardly have been judges; for of *them*, the people already had between sixty and seventy thousand*. Besides, of what use could 70 new judges, or a supreme court of appeal,

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* Without including the tribe of Levi, there were,

Judges of tens,	60,355
of hundreds,	6,035
of thousands,	603

all, 66,993

have been in crushing a rebellion. It seems much more likely, that this selection was intended for a supreme senate to take a share with Moses in the government; and as it consisted of persons of respectability, either in point of family or merits, it would serve materially to support his power and influence among the people in general. By a mixture of aristocracy, it would moderate the monarchical appearance which the constitution must have assumed from Moses giving his laws by command of God, and it would unite a number of powerful families together, from their being all associated with Moses in the government.

It is commonly supposed that this Synedrium continued permanent; but this I doubt. For in the whole period from the death of Moses to the Babylonish captivity, we find not the least mention of it in the Bible; and this silence, methinks, is decisive; for in the time of the judges, but particularly on those occasions when, according to the expression of the book of Judges, *there was neither king nor judge in Israel*; and again, during those great political revolutions, when David by degrees became king over all the tribes, and when the ten tribes afterwards revolted from his grandson, Rehoboam; and lastly, under the tyrannical reigns of some of the subsequent kings; such a supreme council of 70 persons, if it had been in existence, must have made a conspicuous figure in the history; and yet ye find not the least trace of it: so that it merely appears to have been a temporary council instituted by Moses for his personal service and security; and as he did not fill up the vacancies occa-

sioned in it by deaths, it must have died out altogether in the wilderness.

No doubt the Jews, after their return from the Babylonish captivity, *did* institute a sanhedrim at Jerusalem, of which frequent mention is made not only in the New Testament, but also in Jewish writings. But this was merely an imitation of the ancient Mosaic Synedrium, with the nature of whose constitution the latter Jews were no longer acquainted ; for they had indeed become ignorant of almost all the customs of their ancestors. The detail of this second sanhedrim established by the latter Jews belongs not to our present work, but to their history after the Babylonish captivity.

ART. LI.

Concerning the Scribes.

§ 7. AMONG the persons that appear in the Israelitish Diet, besides those already mentioned, we find the *Schoterim*, (שׁוֹטְרִים) or *scribes*. They were different from the judges ; for Moses had expressly ordained (Deut. xvi. 18.) that in every city there should be appointed not only judges, but *Schoterim* likewise.

It is very certain that Moses had not originally instituted these officers, but already found them among the people while in Egypt. For when the Israelites did not deliver the required tale of bricks, the *Schoterim* were called to account, and punished ; Exod. v. 6,—14. Now, as *satar* * in Arabic, signifies to

* It must be remembered that the Arabians put a sharp *s*, where the Hebrews have *sch*.

write; and its derivative, *Mastir*, a person whose duty it is to keep accounts, and collect debts, I am almost persuaded that these *Schoterim* must have been the officers who kept the genealogical tables of the Israelites, with a faithful record of births, marriages, and deaths; and, as they kept the rolls of families, had, moreover, the duty of apportioning the public burdens and services on the people individually. An office exactly similar, we have not in our governments, because they are not so genealogically regulated; at least we do not institute enumerations of the people by families. But among a people whose notions were completely clannish, and among whom all hereditary succession, and even all posthumous fame depended on genealogical registers, this must have been an office fully as important as that of a judge.

In Egypt, the Levites had not yet been consecrated and set apart from the rest of the tribes: there, of course, the *Schoterim* must have been chosen either out of every family, or, perhaps, merely according to the opinion entertained of their fitness for the office. In the time of the kings, however, we find them generally taken from the tribe of Levi; 1 Chron. xxiii. 4. 2 Chron. xix. 8,—11. xxxiv. 13. This was a very rational procedure, as the Levites devoted themselves particularly to study; and among husbandmen and unlearned people, few were likely to be so expert at writing, as to be intrusted with the keeping of registers so important. Add to this, that in later times, the genealogical tables were kept in the temple.

We find these *Schoterim* mentioned in many other passages besides those quoted above. In Numb. xi.

16. they are the persons of respectability from among whom the supreme senate of 70 is chosen. In Deut. i. 15. mention is made of *Schoterim* appointed by Moses in the wilderness, although the people had previously had such magistrates in Egypt: most probably he only filled the places of those who were dead. In Deut. xx. 5. we see them charged with orders to those of the people that were selected *to go to war*; which is perfectly suited to my explanation of the nature of their office. In Deut. xxix. 10. xxxi. 28. Josh. viii. 33. xxiii. 2. we find them as representatives of the people in the Diets, or when a covenant with God is entered into. In Josh. i. 10. they appear as the officers who communicated to the people the general's orders respecting military affairs; and this, again, corresponds to the province of muster-masters. In 2 Chron. xxvi. 11. we have the chief *Schoter*, under whose command the whole army stands after the general, if indeed he himself be not so. In 1 Chron. xxvii. 1. the name of the office alone is mentioned.

ART. LII.

The tribe of Levi formed a sort of counterpoise to the Democracy—Its Duties and Revenues.

§ 8. I now proceed to take notice of the priests, and of the tribe of Levi in general, which enjoyed very great rights in the commonwealth of Israel, and whose influence was intended to serve as a means of counteracting the adoption of those hasty measures which were naturally to be expected from the demo-

cratic character of the government. I have already ventured to represent this tribe in the light of a learned noblesse.

If we would duly understand the genius of the Mosaic polity, and be able, without idle wonder, to account for the rich revenues of the priests and Levites, we must learn to entertain of these two descriptions of persons whom I shall frequently class together under the name of the sacerdotal body, ideas completely opposite to those which commonly prevail. For if we look upon them in no other point of view than that of ministers of religion, their revenues cannot but appear exorbitant beyond all bounds. A tribe, including no more than 22,000 males, and, of course, not above 12,000 arrived at man's estate, received the tithes of 600,000 Israelites; consequently each individual Levite, without having to deduct seed, and the charges of husbandry, had as much as five Israelites reaped from their fields, or gained on their cattle. To the priests, moreover, belonged the first fruits, which were, no doubt, more of the nature of a free gift, than a tax; but which, from the xxxvi. chapter of Ezekiel, ver. 11, 13. we must regard as having been established by ancient usage, and which amounted to about the sixtieth part of the crop. Of every sacrifice, of which the blood came not into the holy of holies, the priest had a portion fixed by law; Lev. vi. 9,—12. vii. 6,—10, 31.; and as long as the Israelites continued in the wilderness, this was a very considerable source of revenue, from its being forbidden, as a precaution against idolatry, to kill a sheep, goat, or ox, without presenting it, at the same time, as an

offering, Lev. xvii. 1,—9. ; a law which, by the way, served to create a revenue to the priests, at a time where there were yet no tithes from the land. From every slaughtered beast that came not to the altar, a farther portion was also afterwards appropriated to the priest, Deut. xviii. 3, 4. And finally, to him came every thing devoted, (*cherem*) and all matters of vow, not to mention the ransom of the first-born, concerning which, and other sources of income, Numb. xviii. 5,—32. may be consulted. The half-shekel which was brought to the tabernacle by every individual reckoned in numbering the people, I do not include ; partly because it belonged not to the priests, but to the sanctuary, and partly, because from the words of Moses*, it is at least uncertain whether it was not meant to be brought only on the first enumeration, and whether the Jews, in paying it annually under the second temple, did not more than Moses required of them.

In regard to these revenues, which may with justice be deemed immoderate, if we consider the Levites only as ministers of the altar, and holy persons, various controversies have arisen. *Morgan* wished here to discover a government of priests, who had no other object in view than the exorbitant enrichment of their order, and occupied themselves entirely with religious matters, without being of any farther use to the com-

* Deut. xxx. 11,—16. Thus much is certain from chap. xxxviii. 25,—28. that this half-shekel was applied, when the tabernacle was constructing, to a purpose for which it could not have been required anew in the subsequent years.

munity; and he moreover called falsehood to his aid, with a view to exaggerate the amount of the already too great income of his supposed spirituality. *Loreman*, who, in his *Essay on the Civil Government of the Hebrews*, answered him without sufficient knowledge of that government, makes the income of the Levites less than it really was*. For it cannot be denied, that this tribe, which did not make the *fifteenth* part of the people, enjoyed one *tenth* of the whole produce of the lands, and many other privileges besides. For mere ministers at the altar, mere clergymen, this would undoubtedly have been far too much. Guides to happiness we certainly should have cheaper; nor are they requisite in so great a multitude.

It will, however, probably be granted me, that *for the whole body of literati*, that is, for the ministers of religion, the physicians, the judges, the scribes, and keepers of the genealogical registers, and the mathematicians, employed in the service of the police, (a class of men whose importance is at present too little attended to,) the revenues of the Levites, considerable as they may appear, were by no means too great. Let us only calculate how much of the produce of the land is now paid to those who live by the learned professions, in name of salaries, casualties, fees, &c.; and let us farther consider of how much consequence to the community it is, that judges at least, and those men of law, to whose attention and fidelity the rights and property of all the citizens is intrusted, should, by a liberal public support, be placed beyond all tempta-

* See the *Gotting. Gelehrt. Anzeig.* for 1756. No. 34.

tion of taking bribes, or of becoming, from family cares and concerns, negligent of the duty which they owe to the public.

Now these observations apply closely to the Levites. They were not merely a spirituality, but *literati of all the faculties*, and by birth obliged to devote themselves to the sciences, for the cultivation of which they were so liberally rewarded. Their institution was wholly Egyptian in its origin. The three orders of the priesthood in that country had partitioned literature among themselves, and were particularly engaged in the culture of philosophy, theology, natural history, mathematics, jurisprudence, and history; and the lowest class of them, in medicine. Here too, the priesthood, thus bound to the service of science, was hereditary; whence flowed this advantage, that from their earliest infancy they were introduced to scientific pursuits, and obtained an education suitable to the line in which they were destined to act. I must here refer to Jablonsky's *Pantheon*, prolegom. § 29, 41, 43. because I cannot adduce the proofs of those points of the Egyptian antiquities, without digressing too far from my subject; and shall now proceed to what is more immediately my province,—to apply the preceding observations more closely to the priests and Levites.

We nowhere find that Moses mentions, even *en passant*, any such profession as that of our clergyman, or that he instituted preaching on the sabbath. The circumstance of the priests and Levites having their abode fixed in forty-eight distinct cities of their own, altogether incapacitated them from performing the

duties of the clergy in regard to religious instruction, and what we call *the cure of souls* : for what more absurd could be imagined, than our having cities in which several hundred preachers dwelt together, while not one lived in our other cities, or was dispersed through the country. I think I once heard that in Old Prussia, in the reign of Frederic William, there were 6000 preachers ; at least so said old Prince Leopold of Dessow ; but on an occasion (I must observe) when he might have been tempted to hyperbolize. Now what should we have thought if these preachers had been thus stationed ; 1000 at *Memel* ; another at *Colberg* ; another at *Fehrbellin* ; another at *Ippenbuhren* ; and another at *Lingen*. I might here have named forty-eight cities ; but my paper, for which my readers must pay, is too valuable to be occupied with such a list.

The Levites, therefore, cannot be justly compared with our preachers. This class of men, whose importance in a political point of view alone, must be acknowledged, if they did nothing else than instruct the common people in morality, was wanting in the constitution of the Mosaic state and church ; so likewise, the priests of the gods in other nations, were occupied not in instruction, but in sacrifices and ceremonies. A body of *doctors*, properly so called, did not exist among the Jews, until after the Babylonish captivity, when the pressing emergencies of the church required its establishment ; as the people, from the change of their languages and manners, could no longer understand their ancient law, without the aid of expounders. It was at this period, that teachers

first began to be introduced ; but they were not necessarily taken from any particular tribe.

With all this, however, the Levites were in so far ministers of religion, as they performed holy ceremonies, copied the law, and in doubtful cases explained it. To them the original of the law was committed, (Deut. xxxi. 9.) ; they were to be its guardians, and take care to make correct transcripts of it. Printing was yet for many ages unknown ; and an order of learned clerks, (*Clerici*) that is, of *scribes*, was very necessary for the preservation of books. The king had to take his copy of the law from theirs, Deut. xvii. 18. They were bound, at the end of every seven years to read over the law in the hearing of all the people, Deut. xxxi. 10,—13. ; and even to be so conversant in it, that they could, at least when questioned, give instructions concerning religion. In so far, therefore, were they a Spirituality, and, exactly according to the ideas of the middle ages, *Clerks*, that is, people who could handle the pen, and transcribed books of importance.

It would appear that few of the Israelites could write ; and of their brethren, the ancient Arabs, we know this with still greater certainty. Among a people consisting entirely of husbandmen, this defect is not much to be wondered at. Joab, the sister's son of the poetical king David, seems to have been ignorant of writing ; else would he not, with a great deal of trouble, for the purpose of concealing from the bearer the real object for which he was sent, have put the very suspicious detail of Uriah's death into the mouth of a messenger, to be delivered verbally to

the king, but would rather have written him that Uriah was killed; 2 Sam. xi. 18, 22. Among a people, however, so circumstanced as the Israelites, scribes were of infinite importance; for without them, neither laws nor learning could be preserved; and on their correctness and honesty, rested the authenticity of those genealogical tables, whereon depended all the landed property in Palestine. The accurate transcription of these tables was to every father of a family even more necessary, than to a modern Arab the genealogy of his horse, which he usually has under the magistrates' attestation. That the *Schoterim* who kept these genealogical books, were generally Levites, I have already remarked.

That like the Egyptian *Neocoris*, or priests of the third order, they may also have practised medicine, is to me the more probable, because the priest had to judge concerning the leprosy. Among many nations, the physicians have been, and yet are, the priests.

What I shall have to say afterwards (Art. CCXXVI. and CCXXVII.) concerning the standards of weights, and of measures both of capacity and length, which were kept in the tabernacle, and even within the sanctuary, into which alone the priests durst enter, will also shew, that among the Hebrews, the superintendence of weights and measures was likewise committed to the priests; as we know it was in Egypt to the priests of the second order, called *Hierogrammateis*. But without a knowledge of mathematics, these *Hierogrammateis* could not have discharged the duties of such an office. Here then we have, in the persons of the Israelitish priests, mathematical superintendants of

police, with whom no state can, in regard to matters where calculation is requisite, ever dispense, without great inconvenience.

The priests among the Egyptians were at the same time judges ; just as among many other nations both ancient and modern, we find law and religion united. Among the Hebrews, this was the most important duty of the tribe of Levi, and what required the greatest number of its members to discharge. The declaration of Moses on this point is perfectly clear, (Deut. xxi. 5.) *On the mouth of the priest shall every controversy and every stroke depend ;* and what Ezekiel says, chap. xliv. 24. of their being appointed to judge in cases of dispute according to the law of God, is to the same purpose. I have already mentioned that, in the reign of David and the other kings, the judges in the cities were chosen from among the Levites ; and that in David's time, 6000 Levites were judges and scribes. It was in an especial manner the business of the priests, in all disputes of a more serious nature, to pronounce the final decision, and lay down the law ; much in the same manner as it is of our juridical faculties and tribunals of appeal ; Deut. xvii. 8,—13. In this view, what Moses, in his farewell benediction to Israel, addresses to the tribe of Levi, is peculiarly applicable and impressive. *He who sayeth to his father, I see thee not ; who recognizeth not his brethren ; and of his own children knoweth nothing ;—he who is thus perfectly impartial,—let him teach Israel the laws of God.* This certainly alludes to teaching the laws of God, not in the church, but in the seat of judgment, such as is described in Exod.

xviii. 16,—20. For no reasonable person would have required that the preacher should, in violation of decency, have had to pronounce sentence of punishment on his parents, or to rebuke them publicly for their sins.

Lastly, it appears that in the wilderness the Levites formed a sort of life-guard to Moses, and served to controul the mutinous propensity of the people. Their encampment in the midst of the tribes around the tabernacle, and the watch which they kept thereon, were convenient for this purpose; and before they were set apart as the sacred tribe, they had already avenged with their swords a gross breach of the fundamental laws of the state, and thereby acquired a claim to the sacerdotal office; Exod. xxxii. 26,—29. They maintained also under the kings a certain degree of military order and discipline, which enabled them on one occasion (2 Kings xi.) to dethrone a tyrannical princess, who had unlawfully usurped the government.

All these circumstances taken together rendered the Levites highly authoritative, and useful to the state; and it was not unreasonable that, as a learned noblesse, destined to discharge such important duties, they should have enjoyed considerable revenues.

That the high priest, as the head of this tribe, and as the supreme legal authority, should have possessed very great influence in the state, will already be naturally concluded. In Deut. xvii. 12. we find him placed on a footing with the judge; and in Numb. xxvii. 21. Joshua, the general-in-chief, is in some measure subjected to the priest, whose duty it was to

consult God for him by *Urim and Thummim*. What this *Urim and Thummim* was, has been the subject of great and extensive controversy ; nor can I here enter into the question, which belongs to the sacred antiquities of the Jews. But if, without stating the grounds of it, I might briefly mention my opinion, it was three very ancient stones, which the Israelites before Moses' time used as lots ; one of them marked with an *affirmative* ; a second, with a *negative* ; and the third, *blank*, or *neutral* ; and which Moses commanded to be kept within what was called the *chosch*, or breastplate of the priest ; but which had no connection with the twelve precious stones therein set.

When there was no king nor judge in Israel, the high-priest was absolutely the first person in the state, the president of the Diet, and in effect, almost the judge. Eli, during his priesthood, exercised at the same time, the office of judge ; but from the silence of the history, I am uncertain whether he did so from the right of the priest, or the free choice of the people.

It seems to be beyond a doubt, and we might, indeed, without historical proof, conjecture, *a priore*, from the nature of the human heart, that, in addition to the great rights and revenues assigned them by Moses, the tribe of the priests had laid claim to others. Of this we have an example in 1 Sam. ii. 13,—16. ; where it was already the right of the priest, besides the parts of the sacrifice appointed by Moses, to have a portion of the thank-offering also* ; and it was by

* That it is the thank-offering which is there meant, is evident from its being mentioned that the offerers *boiled the flesh of the victim*.

pushing this right too far, that the sons of Eli so highly disgusted the people. We need not wonder so much at this, or indulge in odious reflections on this particular class of men who served at the altar; for is any class of men perfectly blameless in this respect? Does not one, as well as another, attempt to arrogate rights that do not belong to it?

ART. LIII.

Of the Supreme Magistrate of the Nation; first a Military Leader, in the person of Joshua; afterwards a Judge; lastly a King.

§ 9. MOSES did not by any law unalterably determine, for all future ages, in what description of magistrate the supreme authority among the Israelites should be lodged. He did, indeed, commit it immediately into the hands of Joshua; but Joshua, who had given many previous proofs of courage and mili-

which was not done in either the sin or burnt-offering, but only in the thank-offerings employed for the offering-feasts. That the sacred historian is not speaking of the portion of the sacrifice appointed for the priests in Lev. vii. 34. is clear from the following circumstances; that this was to be given to the priest raw, and before the burning of the fat on the altar. Now it is here charged on the sons of Eli as a *sin*, that they demanded the pieces that were put into the pot, raw, and before the fat was burnt. If I might hazard a conjecture, this new right of the priests arose from this,—that, according to the Mosaic ordinance, they were invited to the offering-feasts, and when they either could not or would not accept the invitation, a dish was out of civility sent home to them; and, in process of time, as has often happened, this courtesy was converted into a right.

tary skill, was only meant to be the leader, who was to put them in possession of Palestine. He was, therefore, merely an occasional and extraordinary magistrate, who in peaceful times would require no successor; nor do we find, upon his death, that the Israelites chose any one in his room; but remained for some time without a head. On such occasions, when there was, as the Bible says, *no king nor judge in Israel*, the high-priest represented those high personages in all their powers, as has been remarked in the preceding Article.

The Israelites were next frequently governed by *judges*; a title of supreme authority, and in Deut. xvii. 12. used by Moses in that sense; although he gave no law imposing an obligation on the people to chuse one such *universal judge* of the whole nation. We must, however, carefully distinguish between that judge, and the judges in particular cities, or those of thousands. The history of the Carthaginians will here assist us in forming more accurate ideas of this chief magistrate of the Israelitish republic, and in comparing his office with a well known European one. In the Hebrew language, a judge is called *Schofet*, (שֹׁפֵט.) The Carthaginians, who were descendants of the Tyrians, and spoke Hebrew, called their chief magistrates by that name. But the Latins, who had no such *sch* as we have, wrote the word with a sharp *s*, and, adding a Latin termination, denominated them *Suffetes*. By the historian, *Livy*, they are compared to the Roman Consuls. I will here quote his own words. In book xxviii. chap. 38. he says, *Ad colloquium Suffetes eorum, qui summus Pænis est magistra-*

tus, cum quæstore elicuit. There, however, he is speaking not of the Suffetes of the city of Carthage itself, but of inferior ones. But in book xxx. chap. 7. he mentions the former in these words, *Senatum Suffetes, quod velut Consulare apud ipsos imperium erat, vocaverunt.* Now such were the judges of Israel, whose history is recorded in the book called by their name. But whoever reads that book with attention, will nevertheless perceive, that these judges were not the ordinary and permanent magistrates of the Israelites, but that in times when they happened to be oppressed by the neighbouring nations, that Israelite, whose valour and influence collected around him a sufficient number of the foes of slavery, became the deliverer of his country, and afterwards ruled it as long as he lived. It was generally some remarkable deed of valour that gained such a man popularity, and led his countrymen to put themselves under his guidance.

But that all of these judges governed all Israel, is by no means clear. Some were only judges over particular tribes, whose liberties they had vindicated and restored. They had, therefore, neither the dignity nor the power of a king, nor had Israel a regular succession of them; and hence it might happen, that at the very time when their neighbours overpowered them, the people had no judge, and only received one, when they were already subjected to a foreign yoke.

It is necessary to attend to this circumstance, lest it should be supposed that when the Israelites besought Samuel for a king, (1 Sam. viii.) it was merely a change of the name of their first magistrate that they wanted, without any change in the circumstances

of his office ; inasmuch as the kings had at first too little power. But however little their power was, it seems at any rate to have been greater than what the judges enjoyed ; and besides, there was at least an uninterrupted succession of kings, so that the nation from this period was never without a common head.

CHAPTER VII.

OF THE LAWS CONCERNING THE KING.

ART. LIV.

Moses allows the People to appoint a King at a future period, and prescribes Laws for him with that view, Deut. xvii. 14,—20.

§ 1. MOSES seems to have been very desirous that the nation of Israel should always preserve the constitution of a free republic. But still, by a particular law, Deut. xvii. 14,—20. he gave them permission to chuse a king, when once they should find a monarchical government more suited to their circumstances. In this, his judicious conduct merits commendation ; since he thus avoided the error into which other legislators, both ancient and modern, have fallen, in wishing to prescribe for their nation a form of government never to be changed. For even the very best constitution of a state may become in a manner antiquated and enfeebled by abuses that are too strong for the laws ; in which case it is expedient to alter it, and to convert, for instance, into a monarchy, a free republic, where the people have become lawless, or certain citizens too powerful and ambitious. History confirms

this observation* ; and the government which has in itself no inherent power of changing its form, as where it is high treason to think even of the establishment of a king, will, sooner or later, experience a revolution notwithstanding ; with this difference only, that it will be effected not peaceably, but by force.

The abovementioned passage in Deut. xvii. 14,—20. which allows the Israelites the choice of a king, and specifies the limitations of his power, deserves our attention as a fundamental law of their government ; and shall now be illustrated in its several particulars.

1. Moses, in the first place, presupposes (ver. 14.) what actually happened in process of time, that, in imitation of the neighbouring nations, the Israelites would conceive the desire of having a king ; and herein he shews his thorough knowledge of the mutability of human affairs, and how well he understood the temper of the Orientals, whose propensity to kingly government was also remarked by the Greeks and Romans, in later times ; whereas in Southern Europe, republican sentiments were most prevalent. The example of all their neighbours ; the idea of a nation

* Two years after this work was first published, history furnished a fresh proof of this, on which I had often reflected while I wrote, but did not feel myself at liberty to specify it.—In Sweden, abuses so numberless had crept into the government, in the form of which any change was absolutely prohibited, that it became impossible to save the country without a revolution that should give more power to the king. The state of Sweden, in this respect, I knew so perfectly from the information of many Swedes with whom I lived in terms of friendship and intimacy, that I could scarcely restrain myself from making it manifest that I had it directly in my view.

being more respectable with a king at its head ; the corruption of morals which gradually crept into the priestly order ; the unjust proceedings of the judges, or the lawlessness of the people ; and lastly, either the desire or the necessity of being always prepared for war ;—these, and other causes, may have led the Hebrews ardently to wish for a king ; a wish, which in the heart of an old Roman, would, on the contrary, have only excited emotions of abhorrence.

2. Moses (ver. 15.) leaves to the people the right of choice, but with this limitation, that they must never elect a foreigner. This was a patriotic law ; but it did not, according to the Pharisaical exposition of it, apply to the case of the nation being at any time subjected by force of arms to a foreign prince. Moses only speaks of the kings whom the Israelites should *themselves* appoint of their own free choice : and their prophets, Jeremiah and Ezekiel, expressly enjoin them, when now a conquered people, to be true and loyal subjects to the Babylonish government. Nay, they even required Zedekiah, who had rebelled against the king of Babylon, to desist, and throw himself on the mercy of Nebuchadnezzar ; declaring his rebellion, whereby he had at the same time violated an oath, an heinous sin, which God would not leave unpunished. But under such an exposition of this law, as many of the Jews admitted in the time of Christ, and to which we must in a great measure ascribe their repugnance to the Roman government, a conquered people could never have subsisted ; for their conquerors, incapable of relying on their allegiance, must have been compelled to annihilate them, either by

cruelly butchering, or by scattering them abroad in the most abject state of slavery.

Some examples related in the Old Testament, seem, no doubt, to stand in contradiction to what I have here advanced. We see the Israelites, under the conduct of their *judges*, rising against the foreign king by whom they had been brought under subjection; and on such occasions it is said, that *God raised up a deliverer to the children of Israel*. But this expression does not necessarily imply, that the act which Providence made subservient to the deliverance of the people, was morally right; for the Orientals ascribe to the Deity even what is evil. I will, therefore, by no means justify the conduct of Ehud, (Judg. iii. 15, —22.) in murdering the king of Moab, while, in token of their subjection, he presented him a gift from the Israelites. Yet with regard to most of the judges, there are *two* considerations which should influence our opinion of their conduct: in the *first* place, that those foreign princes who, in consequence of the strong national prejudices of those times, severely oppressed the Israelites, were tyrants, against whom, even without the authority of the Mosaic law, they might warrantably draw the sword, if they could but hope to succeed: in the *second* place, that the enemies of the Israelites but seldom brought *all* of them under subjection, and still seldomer did they obtain from them any oath, or promise of allegiance; so that what the judges did, was not in the proper sense of the word, *rebellion*; but merely a continuation of the war, and the last effort of a free and independent people, that were suffering the consequences of defeats,

to maintain their liberties, in conformity with their just rights. Some of these foreigners, as for instance, the Midianites, (Judg. vi. and vii.) had never maintained a regular authority over them, as masters; and were, indeed, only robbers, who annually over-ran and plundered them. And the Philistines, against whom Samson arose in their behalf, had never subjected the tribes beyond Jordan.

Another example, which we find in the conduct of Hezekiah, seems at first a little more difficult to reconcile to the principles of justice; because it represents God as justifying, by his manifest protection, an act, which many would be inclined to construe into rebellion. Ahaz, the father of Hezekiah, had made himself subject and tributary to the Assyrian monarchs, in order to obtain their aid against the Syrians, 2 Kings xvi. 7,—9. But Hezekiah refused them both obedience and tribute, chap. xviii. 7,—14.; 2 Chron. xxxii. 1,—8. He was, on this account, involved in a war with Sennacherib; and, according to the sacred historians, who relate the whole story, and represent him as one of the most blameless of the kings, he experienced such evident proofs of the divine protection, that it would seem as if God approved of his rebellion against the Assyrians.

Now I am here under no hesitation in maintaining that Hezekiah was quite justifiable, and did what was perfectly right. A king of Judah was not an unlimited monarch, and, of course, could not, without the concurrence of his subjects, throw his dominions into the hands of a foreign power: and if he did so, neither his people, nor yet his successor, could be bound

by such a *dishonourable* transaction. Without having been conquered, or even attacked by the Assyrians, he had subjected himself to their king, in order to get his assistance against the Syrians; although God, by the prophet Isaiah, whom, however, he would not hear, had in the most express terms assured him, that he would protect him from their attacks, and had warned him against an alliance with Assyria. A connection so imprudent and pernicious, can never be binding upon any nation; nor could even a king of Denmark, absolute as he is, have any right, from mere terror or caprice, and without striking a blow, to surrender the independence of his dominions into foreign hands; or, at any rate, if he should think fit so grossly to abuse the unlimited power wherewith he was intrusted, his successor would certainly be entitled to disown the treaty by which he confirmed the surrender.

3. The Israelites (ver. 15.) were on no account to appoint any one as their king who was not chosen by God. This law admits of a twofold meaning; *either*, that the right of choice was absolutely taken from the people, and that God would either by a prophet, or by the lot, determine their king; *or else*, that in the choice, God retained for himself an excluding vote, which he would in all cases declare by a prophet. In order that we may arrive at that decision which is at least most probably the true one, whether in favour of the former or latter of these two expositions, we must call in the aid of the history, which will instruct us in the following facts.

Their first king, Saul, was given to the Israelites

without an election by themselves, being chosen by lot, according to the command of God, 1 Sam. x. 17, —24. On this occasion, however, the people had not desired to have the choice ; but had prayed Samuel, (1 Sam. viii. 5.) to appoint them a king ; probably because no citizen had so signalized himself as that they could direct their view to *him* in particular, for the office. At the same time, we see, that to this king thus chosen by lot, they paid almost no deference, until, by a victory over the Ammonites, he attracted their attention ; when he was a second time anointed, amidst great and universal rejoicings ; 1 Sam. x. 27. xi. 14, 15.

The family of Saul was by the express command of God (1 Sam. xv. 23,—29.) excluded from the succession ; and David, till then a private individual, anointed as king. Though not known to the people by fame, David by his conduct so much gained their affections and esteem, that, to a man, they in their hearts fixed upon him as Saul's successor. This idea was so universal, that Saul, Jonathan, and the Philistines, were quite apprized of it ; and it was the cause of David's persecution by Saul. In a battle with the Philistines, Saul was slain ; and his crown was by an Amalekite brought to David. David revenged the death of Saul on the Amalekite, who, in hopes of a reward, had declared himself the instrument thereof ; but he did not yet look upon himself as rightful king, notwithstanding the unction he had formerly received as such from Samuel. He returned with his people as a private person into his own native place ; and there, by the choice of his fellow-citizens, he became

first king of the tribe of Judah alone ; and so little was his former unction considered as giving him a sufficient title to the throne, that he was anointed anew (as we find, 2 Sam. ii. 4.) king over the house of Judah. On this occasion he sent an embassy to the city Jabesh in Gilead, to thank the citizens, in his name, for rescuing the body of his predecessor, Saul, from the contemptuous treatment it had experienced from the Philistines. In this he acted as, in fact, the successor of Saul, which he no doubt was, in the kingdom of Judah ; and he virtually invited the Jabeshites to follow the example of the tribe of Judah in their choice. But no farther right did he arrogate over them.' He did not address them as their sovereign ; but only gave them to know that the Judahites had anointed him as king over *their* own tribe. The rest of the tribes had in the meantime anointed Ishbosheth, the son of Saul, as king over them ; and David, notwithstanding his own divine unction, was far from regarding *that* as an illegal act. It is true that he armed and defended himself, (and who would not have done the same?) when Ishbosheth sent a small army against him ; but when it was routed, and besought David's troops to cease pursuit, Joab, their leader, not only consented, but even declared, that if Abner (the enemy's general) had not insisted on fighting, he would have withdrawn, without unsheathing a sword ; 2 Sam. ii. 14, 26,—28. Joab, of course, must have had no orders to attack the troops of the eleven tribes, or to maintain David's claim to their throne, by force of arms. From this time, the eleven tribes gradually, and by families, embraced the inte-

rests of David, but still altogether voluntarily, (1 Chron. xii.) ; and after the death of Ishbosheth, which David found it expedient to revenge, as an example of regicide, all the other tribes at last chose him for their king, proposed a capitulation to him, and anointed him ; 2 Sam. v. 1,—3. 1 Chron. xi. 1,—4.—Several years after, David was, by his son Absalom, driven out of the land, and seemed to be bereft of his crown ; but he recovered himself again, and crushed the rebellion by a decisive battle, in which Absalom was slain, and all his army dispersed. Yet even then he was averse to reduce Israel to subjection by force of arms ; but rather wished to rule over a willing people, after being freely re-elected their king, 2 Sam. xix. 10, 16. ; and when Joab advised him to punish the traitor, Shimei, as he most justly deserved, his answer was to this effect, *That the day of his becoming king was more suited to the exercise of mercy, than the infliction of punishment*, ver. 23. In this he exhibited an instance of the soundest policy ; but it shews at the same time, that, according to the notions of those days, even the unction of a prophet gave of itself alone no sufficient right to the crown, although it previously shewed what was one day to take place. The prophet conducts himself with respect to future, as the historian, to past, events : both relate them ; the one *before*, and the other *after*, they happen ; but, their relations do not make actions lawful, or consonant to morality.

The force of this observation appears from what happened on Jeroboam's elevation to the throne. God had by a prophet announced that he should be king

of the ten tribes; but when these revolted after David's death, and made him king, this event, which was the source of all the misfortunes of the now-divided kingdom of Israel and Judah, was so far from being regarded as pleasing to God, that, on the contrary, the ten tribes were reproached by the prophets *with making kings without Jehovah*, Hos. viii. 4. Now if a prophecy had been sufficient to shew the approbation of God to the choice of a king, this reproach had been unjust.

When the religion and civil constitution of the ten tribes went totally to ruin under Ahab's family, and the excessive tyranny of his Tyrian consort, Jezebel, which continued under his son, gave the people an undoubted right to vindicate their liberties, and to restore the fundamental laws,—Jehu was by a prophet anointed king, and by the help of an army seated himself on the throne. Whether this latter part of his procedure was right, becomes very doubtful, when we take into consideration what has now been said; for we must carefully distinguish a prediction from a divine command.

4. It was certainly not Moses' meaning, that the Israelites should, as is now the case in Poland, elect every individual king; but only, as is done in Sweden, some particular family; for in ver. 20. he exhorts the king to keep the laws, that he and his posterity may long fill the throne. Consequently, while the reigning family did not violate the fundamental laws, they would continue to possess the throne; but if they tyrannized, they would forfeit it. Moses, who gave this injunction, knew certain elective monarchies,

where every individual king was chosen, as in Poland. The kingdom of Edom in his time was undoubtedly of this description; for of eight kings, we find not one who was the son of his predecessor, Gen. xxxvi. 31,—39.

5. The king was not to keep a strong body of cavalry, nor an immoderate number of horses, ver. 16. As Palestine was a mountainous country, and on the more level side bounded by the Arabian deserts, in which an enemy's cavalry could not advance for want of forage, a powerful cavalry was almost unnecessary for its defence; and nothing but the spirit of conquest could prompt any king to violate the prohibition of Moses. But how little such a spirit accorded with the views of their divine lawgiver, we have already seen, in treating of the boundaries of the land. For agricultural purposes, the Israelites made no use of horses; but only (which in an economical point of view is far more profitable) of oxen and asses. The latter were also most commonly employed as beasts of burden in travelling; but the people made most of their journies on foot. A king, therefore, could have no occasion for a great number of horses, unless he had it in view to carry on foreign wars.—On this point, consult, for farther illustration, my essay, *De Legibus Mosis Palæstinam populo charam facturis.* § 3.

6. The fundamental law against re-conquering Goshen, or, as Moses expresses it, bringing the people back into Egypt, has been already illustrated in Art. XXI.—See also the Dissertation just quoted.

7. The king was not to take many wives, ver. 17.

This law stands most in need of illustration; for as Moses did not forbid polygamy to the Israelites in general, it could not be his intention to confine the king within narrower limits, in this respect, than the citizen. Most probably, therefore, Moses had no objection to his having *four* wives, as seems to have been allowed to every Israelite. Even the high-priest, Jehoiada, of whom the Bible always gives a good character, gave *two* wives to King Joash: nor did he think that in this he was trespassing the Mosaic precept, of which he was by his office the authentic expounder; 2 Chron. xxiv. 3.—But the Oriental seraglio now goes far beyond this moderate polygamy. There, more for state than for connubial purposes, great multitudes of women are brought together, and compelled to be miserable. Now it is only this excessive polygamy, this seraglio, as a part of royal state, that Moses appears to have forbidden. The nature of the thing itself shews, that it tends to make kings effeminate; and history confirms this to a much greater extent than could have been presupposed. That it exposes a reigning family to the danger of becoming extinct, we have at present a proof in the Turkish empire; for of the house of Othman there are so few heirs remaining, that now (1774) while I am adding this remark for the second edition, they are apprehensive of losing the very last of them in infancy.—The imitation of the practice too, by people of rank and opulence, carries polygamy to such a pitch, that, as contributing to the depopulation of a country, it is much more destructive than even the pestilence. To the Mosaic polity it was peculiarly

unsuitable, for this special reason, that the most beautiful women of all nations are collected for a seraglio : and Moses, as he expressly mentions, was afraid lest such foreign beauties should win the heart of the king, and make him a proselyte to idolatry ; and that his fears were not groundless, the example of Solomon is a striking proof.

No law of Moses was less observed than this. It would appear that Saul had a seraglio, and *that* too belonging to him as king ; for David (2 Sam. xii. 8.) is said to have succeeded to it. David, before he was king, had, besides Michal, other two wives, Abigail and Ahinoam, 2 Sam. ii. 2. His first wife, Michal, had indeed been taken from him by his father-in-law ; but he received her again, while king of Judah. But after he had reigned some years in Hebron, we find him, besides these, in possession of four new wives, Maacha, Haggith, Abital, and Eglah, 2 Sam. iii. 2,—8. This, however, was but a *moderate superabundance* for the king of a single tribe, considering, that seven years after, when he could less plead youth and passion in excuse, we find him, as king of all Israel, with still more wives and concubines, 2 Sam. v. 13. ; the latter, indeed, in such numbers, that on his flight from Absalom, he left *ten* of them to look after the palace, 2 Sam. xv. 16.—To what excess Solomon, the father of but one son, carried polygamy, is known to every one who has but heard of the Bible. It is difficult to believe that he could have *known* all the inmates of his seraglio : indeed it required a good memory to have been able to call them by their names. After his time we have, in the books of the Chronicles,

accounts of the polygamy of the kings, not indeed on such an immoderate and magnificent scale, but still far exceeding the degree permitted by Moses.

From the polygamy of the Israelitish monarchs, there arose a singular law, which I can only illustrate by examples from the Bible, without finding any thing similar in profane history ; which, however, only makes these examples the clearer. It consisted in this, that the successor to the crown inherited the seraglio of his predecessor ; and it was considered as a step to the throne, even to marry the mistresses of the deceased monarch. In this way, David succeeded to the concubines of Saul, although he was his father-in-law, 2 Sam. xii. 8. And after he had fled from Absalom, Ahitophel, who is described as a man of the greatest abilities, as well as the greatest wickedness, counselled this rebellious son to lie publicly with his father's ten concubines, to annihilate, in hesitating minds, all hope of a reconciliation between them ; 2 Sam. xvi. 21,—23. Now incest is such an abominable crime, and so expressly contrary to the Mosaic law, that such proceedings must have been followed by the most direful consequences, if these concubines had not been considered, not as David's, but as the king's ; and as belonging to the state, not to the individual ; so that sleeping with them formed part of the ceremony of taking possession of the throne.—After David's death, Bathsheba, the mother of his successor, Solomon, was intreated by his brother Adonijah, to obtain the royal permission to marry Abishag, the Shunamite. This young woman, who is described as extremely beautiful, had not in reality been a mis-

tress of David, who was now too much enfeebled for coition; but by the advice of his physicians she had shared his bed; and out of courtesy, and that the infirmities of the aged monarch might not as it were be publicly proclaimed, she enjoyed the rank and title of a mistress, so that, though in fact a virgin, she was regarded as the reverse. But Solomon so fully saw through his brother's designs, and what effect the acceding to his request would have among the people, that he answered his mother, *Rather ask the kingdom for him too*, and immediately caused him to be put to death, 1 Kings ii. 13,—25. Of the origin of this strange law I can find no traces * in the great kingdoms of the east; and yet most certainly these kings of Israel, as yet but novices in royalty, must have derived it, not from Israelitish, but foreign usage. It could scarcely have arisen in an hereditary kingdom, in which such incestuous procedure would have become too notorious and disgusting. Most probably it first arose among the beggarly elective monarchies in the neighbourhood, where it was found too expensive to provide every new king with a new seraglio; perhaps in the kingdom of Edom, whose needy practices the Israelites were wont at first to adopt. After Solomon's time I find no farther traces of it.

8. The king was not to collect great quantities of gold and silver, ver. 17. This, it would appear, was prohibited by Moses from a regard to the liberties of the people, and that the king might not have in his

* One trace of it indeed, (though very uncertain and indistinct) from the Arabian history, will be found noticed in my *Orient. Biblioth.* part vii. p. 145. compared with my *Syrian Christomathy*, p. 25.

hands the means of making himself absolute and despotic. In like manner, the people of England, were the king to amass a treasure from the surplus of the civil list, would not bear it very patiently.

The amassing of public treasures, in which gold and silver are in a manner sunk, and for a time as much buried as if still in the mines, may sometimes perhaps be serviceable to a nation. Every day brings more and more gold and silver out of the earth ; and were it all converted into money, the value of money would fall, and the price of commodities rise. This is a very hurtful circumstance ; because the advantage of money peculiarly consists in its portability, that is, in this, that a small weight of it, and easily transportable, is of very great value. Another evil arises from an exorbitant quantity of gold and silver being in circulation. It is, as *Hume* has remarked, naturally drawn from the country where it is too plentiful, into other poorer countries, and thus lost for ever : for, on the one hand, in poorer countries they can more easily carry on manufactures ; which, where there is too much money, and, of course, every thing dear, come at last to stand at such a high rate from the price of labour, that they cannot be brought to market on the same terms as by the people of foreign nations, more poor, and equally industrious ; nay, from them we shall even be glad to buy what used to be manufactured at home, because they can give it us cheaper. On the other hand, the citizens of a country which has too much cash in circulation, will be led more and more to import from abroad those perishable and superfluous commodities, which we term *luxuries*, and

thus lose their money as before. That in severe and tedious wars, an amassed treasure may be serviceable to a nation, and even save it, I need not at present (1769) observe, when we have before our eyes the great example of the war from 1756 to 1762. It may probably, therefore, not seldom be of advantage to a state, to form a public treasure, and annually to withdraw from circulation a certain sum, proportioned to the gold and silver that is imported into the country. This Moses by no means prohibited. For the sanctuary and the tabernacle a treasure might be collected; and in pressing exigencies it was applied to the benefit of the state. Only the king, for his own use alone, was not to amass great treasures, lest he should employ them as engines of despotism, and for crushing the liberties of the people. The distinction between these two sorts of public treasure is very obvious. *That* collected for the sanctuary, the king, without being guilty of sacrilege, could not otherwise lay hold of, than with consent of the priests; and, of course, could not, on pretence of applying it to the public service, easily pervert to despotic purposes. We see, in fact, that David had collected very considerable treasures for the sanctuary; although I will not here stickle for the accuracy of those immense sums which appear in the detail of them given in 1 Chron. xxii. 29.; and which, indeed, are almost quite incredible, even reckoning the shekel at less than the general opinion of its then value, and as I have done (in my *Commentatio de Siclo ante Exil. Babyl.* § 7*.) at only one-tenth of what others make it.

* In Part II. of the Gottingen Commentaries.

According to the *common* calculation, David's treasures amounted to five thousand millions of rix-dollars ; that is, 50,000 tons of gold. According to *my* calculation, that sum would sink to five *hundred* millions ; and Kennicott (2d Dissert. p. 354. seq.) has remarked, that in the enumeration a cypher too many has been written ; which, if we cut off, there yet remain fifty millions of dollars, which for David's time, is still a very great treasure, and only to be accounted for, from the plunder of so many conquered nations. The history of the kings of Judah, moreover, informs us, that these sacred treasures were, in times of general calamity, laid hold of by the kings ; an act, which in some of them who had recourse to it unnecessarily, is blamed ; but in others, not.

9. The king was not to be ignorant of religion, and of the laws of the Israelites. With this view, he was to have by him a copy of the law carefully taken from the Levitical exemplars, and to read in it daily, (ver. 18, 19.) Those who would infer from the expressions of Moses that the king was obliged to copy the law with his own hand, allow themselves to think too much like Jews, and forget, how frequently among the Hebrews, as well as among ourselves, those actions are ascribed to a man, which he only does by the agency of others.

ART. LV.

The Israelitish Monarchs were by no means unlimited, being restricted by a sworn capitulation.

§ 2. BESIDES this original and fundamental law, a special capitulation was sworn to by the kings of Israel. At the coronation of Saul, we expressly find, that Samuel had prepared a writing, in which the rights of the king were distinctly specified, and that it was carefully deposited in the sanctuary; 1 Sam. x. 25. Of its contents, however, we know nothing; for it is not probable, that it was to the same purport as the speech (in chap. viii.) which he made to divert the people from their desire to be ruled by a king. In that speech, he described the rights of the kings, as they might, no doubt, have been established in some of the neighbouring nations, whom the Israelites were so fain to imitate in this point; but certainly not as they *should* be, according to the nature of things, nor as they *would* be settled, on the choice of a king, by a rational and free people. When they heard that speech, the Israelites would not probably have desired that their king should have it in his power arbitrarily to seize their property, their servants, and their children: and in the capitulation drawn up by Samuel, the limitations of the royal power must, no doubt, have been fixt in opposition to the established rights of the kings in the neighbouring countries. This is the more certain, that we find several of the kings of Israel, whose sway was much less limited than Saul's, yet still subject to great restrictions.

When the eleven tribes submitted to David, we again find express mention of a capitulation, or compact, under the name of a covenant (ברית), though we are not informed of its contents. One particular only may we conjecture, viz. that it gave to the king the right (and I own it was a dangerous one) of declaring for his successor any one of his sons whom he chose, or thought most capable, without being confined to the first-born; for this right David not only exercised, but all Israel conceded it to him; inso-much that as Bathsheba (counselled by Nathan) says, 1 Kings i. 20. *The eyes of all the people were upon him, that he might shew them who was to sit on his throne after him*; and the bare word of the king, in the last extremity of old age, was sufficient to place Solomon on the throne, in opposition to the wishes of the eldest brother, the general, and the high-priest; and to prevent the coronation of Adonijah, though already set about. As this is not usual in hereditary monarchies, David could have acquired such a singular right only by the terms of the capitulation.

The ten tribes proposed to Rehoboam, the grandson of David, some new stipulations, with a view to abolish certain imposts and servitudes introduced in the reign of Solomon; which was, in fact, a new capitulation on the part of a people yet in possession of their liberty. The king despotically refused them; and the consequence was, that the ten tribes revolted from him, and chose a king of their own, who, no doubt, acceded to the wishes of the people, and promised to abide by the stipulations required. It is withal very singular, that Rehoboam and the tribe of Judah were

forbidden by a prophet (1 Kings xii. 22,—24.) to wage war with the ten tribes; and it would therefore appear, that their right to chuse another king, and separate themselves from the tribe of Judah, when Rehoboam would not listen to their grievances, nor accept their capitulation, was recognized by divine authority.

When Joash was anointed king, we again find mention of a covenant which he had to make with the people, as well as with God, 2 Kings xi. 17.; but here also we are left in ignorance of its contents.

Thus much, however, is clear upon the whole, that the king of Israel was not an unlimited monarch, as the defenders of the divine right of kings, and of the passive obedience of subjects, are wont to represent him. How, indeed, could he have been so, when every tribe under its own chief, had its own common weal, and even exercised the right of war? Saul, the first of the kings, had extremely little authority indeed. In the beginning of his reign, he was almost nothing more than a husbandman, 1 Sam. xi. 5.; and even afterwards, his army, even in the field, shared with him many of the rights of the supreme power, 1 Sam. xiv. 44, 45. Even in the reign of David, such was the power of this army, that he found it prudent to allow two murders (1 Kings ii. 32.) perpetrated by its general, Joab, to pass unpunished, though he did so with extreme reluctance: and in the Psalms, we find him repeatedly complaining of the wicked oppressors of the people, who were too powerful for him, and whom he would fain have restrained, had he only been able. In all this, we may perhaps think,

that we perceive the marks of a military government, where the army is omnipotent, and while it renders the king independent of the people, still keeps him in subjection to itself. But this was by no means the case. Both king and army were in their turn so much limited by the liberty of the people, that the king seems not even to have had a right to *demand* of the cities of Israel, the opening of their gates to his troops. The story from which I draw this inference, stands in 2 Sam. xx. 20,—22. A rebel had thrown himself into the city *Abel*. Joab besieged it by David's orders. The citizens declared they had no share in the rebellion: they did not, however, on that account, open their gates to Joab; but they sent him the rebel's head, and he quietly retired with his troops.—Even Solomon, who carried the royal prerogative still farther, and ruled very monarchically, built cities of his own for his cavalry and chariots, (1 Kings ix. 19.) not venturing to quarter them on the Israelites. In the latter times, from the reign of Hezekiah, we find the kings still more circumscribed in their power by their privy council.

ART. LVI.

The Government of the Israelitish Kings had, nevertheless, a tendency to Despotism.

§ 3. WITH all this, we often find these limited monarchs acting the part of despots, whose mere will becomes law, even in the most important matters. Saul, at the time when he was regarded as almost

nothing but a private person, commenced, without consulting the states, a war with the Ammonites—a defensive one, no doubt, but still without any appearance of authority from the states ; and he commanded the whole people to appear in arms, threatening those that should refuse, with the punishment of having their oxen put to death, 1 Sam. xi. 5, 6, 7. This heroic and seasonably exerted despotism had a fortunate issue, for all Israel flocked to his standard ; and after he had by a decisive victory established his character, and won their respect, he then first began to be rightly a king, and was in a manner re-elected. Thus much yet remained of the spirit of the times of the judges, when, for one gallant atchievement, a man was rewarded with the supreme authority.—I will not here notice that most despotic order which he issued, 1 Sam. xiv. and wished to enforce with extreme severity ; for it was done in the field, where summary proceedings are more excusable : I shall only remark, that on this as well as the preceding occasion, he availed himself of the aid and authority of an oath to enforce his orders : and this, it would seem, was considered as exculpatory of the most despotic acts of the kings. But how tyrannically did he behave towards David, and to the eighty priests whom he caused to be put to death without the shadow of a trial, or a crime ? 1 Sam. xxii. 17, 18.

But enough of Saul, who at last did really become a tyrant, in consequence of mental derangement.—In the condemnations and pardons pronounced by David, we also perceive the decisions of absolute authority, and such as never issue from the mouths of our monarchs ;

and his son, Solomon, went still greater lengths in this respect. In 1 Kings, chap. ii. we find him deciding on life and death by his mere will and word; and even his celebrated decision on the case of the child claimed by the two harlots, 1 Kings iii. 16,—28., and which all Israel approved and admired, was the wisdom, not of a monarch, but of a despot, who will at least contrive to save appearances, even when he means, in opposition to law and equity, to be guilty of the grossest injustice. I will here contrast with it an example, taken not from the land in which I live, but from a country where the form of government is more unlimited; and ask, if in *Berlin* there would be a whore so simple as to betray any symptoms of terror, if, in a similar case, the king, in person, should pronounce the same judgment as Solomon did. She would probably break out into the language of violence; or rather, she would not believe that the king could seriously pass such a sentence, and would, of course, conclude it was but a sham.

In all this we perceive, I will not say the nature, but, at any rate, what almost becomes nature, the universal custom of Asia, which exhibited to the Israelites nothing but examples of despotism. States in their infancy have, methinks too, rather a stronger tendency to despotic procedure, than in their maturity. The want of a hereditary and military noblesse, and the notion that the king in person should be the supreme judge, (although it was plainly impossible for him formally and minutely to investigate every dispute) were the circumstances that promoted the despotism of the Israelitish monarchs; of whom it may

be in some measure said, that they were much-limited despots, but without a Grand Vizier. In the course, however, of the eighty years which formed the reigns of David and Solomon, the king was always acquiring additional legitimate rights, and becoming more and more gracious to his subjects.

ART. LVII.

In how far the King was Supreme Judge ?

§ 4. OF the king, as supreme judge, I must speak more circumstantially. It is one of the first ideas of the people respecting the king, and what they naturally expect of him, that he should himself act as judge. According to Herodotus, the Medes obtained a king from the following circumstance. A man who had great reputation for integrity, and to whom almost all were wont to resort as an arbiter in cases of dispute, refused at last, from the neglect it occasioned of his domestic concerns, to decide upon their quarrels, or listen any longer to their applications for that purpose ; and thus forced them to chuse him for their king. The more ancient nations are, and the nearer their origin, the more prevalent among them do we find this notion of a king ; and it is, indeed, most easily realized and acted on, while the number of the people is yet inconsiderable. For the king of a thousand families may do, what to the king of millions is impossible. Yet it will still be found, that those who know nothing of political science, and only judge according to the general views of the people, at this

day approve of the king being himself judge, and condemn his leaving the duties of that office entirely to his courts of law; and their common opinion is, that the great purpose of his being king is to attend to the disputes of his subjects, and to the punishment of petty offences.

I have already remarked, that in a great nation, the king cannot, in his own person, exercise the office of judge, without materially injuring the general interests of the citizens by so doing. He cannot have time to inform himself sufficiently of such a multiplicity of law-suits as he must be called to decide: of course, many a litigant will not obtain a hearing, nor receive his due right; or else causes in general will not be sufficiently investigated, and arbitrary decisions will follow, which are not much better than if the questions were determined by the lot. The mischief is still greater, when the king is very gracious, and gives free access to all his subjects; for then he will be still more overwhelmed with trifles, and put it in the power of knavery to take advantage of his goodness, in order to effect the ruin of the innocent and the simple. If, on the contrary, his subjects have not free access to his person, his servants may be guilty of the grossest injustice and oppression. All this is quite otherwise, where the king is not judge himself, and every subject has, notwithstanding, in cases of necessity, such immediate access to him, that he always knows what is happening in his dominions, and his servants dare not do whatever they please.

In the east, it is no doubt far more possible than with us for the king to be judge in his own person;

because there, justice is, in general, very summary, and independent of form ; but this does not make it by any means less liable to abuse, and to mischievous consequences.

If the first kings of Israel undertook to be judges in their own person, the fault lay in the manners of the east, and the infancy of the government, and not with Moses. He indeed ordained, that the king should every day read in his law ; but he did not thereby burden him with the office of an universal judge. It may be highly useful to a king to be acquainted with civil law, that he may be able to keep an eye on his subordinate ministers, and see whether they decide conformably to it ; and that he may, in extraordinary and doubtful cases that come before himself, where the law is not clear and explicit, be in a capacity so to decide, as that there shall be at any rate no contradiction between his decision, and the analogy of common law. In this view, it would appear, Moses desired that the king should not be ignorant of jurisprudence ; but he did not thereby mean to constitute him the daily judge of his people. Let only the following circumstances be considered. Moses himself had found by experience, that it was beyond his power to determine all the disputes among the people, and, therefore, in matters that could not be decided by written law, known usage, or manifest equity,—in other words, in all obscure cases,—he established an appeal to himself, in order that on such occasions he might consult God, and enact new laws by his command ; *Exod. xviii. Numb. xv. 32,—36.* Could then such a legislator have ever thought of throwing on the shoulders

of the king a burden which he had himself found to be intolerable? He could at most have only meant that obscure cases should be brought before him, and that when there was no king, they should come by appeal before the priests and judges, Deut. xvii. 8,—12. The king was not a prophet, nor could he, like Moses, boast of immediate intercourse with God: of course he had it not in his power to consult God, with a view to pronounce an unerring judgment. The priest was, and continued, the supreme legist: it was, therefore, conformable to this Mosaic regulation, that in cases of appeal the king should consult with him, or with the whole college of priests, in order to decide where the law did not determine. Unquestionably, the legislator, who devoted one whole tribe to the study of jurisprudence, and constituted its head the supreme legal authority, could never intend that the king, occupied as he must be with the cares of government, and the conduct of wars, should be, besides, overwhelmed with the investigation of law-suits; which thereby could hardly have failed to experience decisions too much in the summary style of military procedure.

The Israelitish monarchy, however, did not happen to be thus wisely regulated in this respect. Without sufficient inquiry,—without listening to any impartial judges,—Saul condemned eighty innocent priests, and among them the high-priest himself, with their wives and children, to death; and this most tyrannical and arbitrary sentence was instantly carried into execution, 1 Sam. xxi. 11,—19. Such a piece of cruelty would not now have been perpetrated even by the most despotic

sovereign.—David was not a tyrant; yet he on some occasions had recourse to judicial procedure equally summary, without allowing other judges to interfere, where he thought the cases clear; see 2 Sam. i. 5,—16. iv. 9,—12. xii. 1,—5. xiv. 4,—11. and 1 Kings ii. 5,—9. Even his acts of grace took place without those preliminary and circumstantial inquiries, which, in governments not despotic, are deemed necessary to render them valid, and to prevent artifice and fraud from abusing the royal clemency, to the prejudice of justice and the country.

In the time of this king, the defect which had thus attended the administration of justice broke out into a formidable evil. As long as David was king only of Judah, the office of judge which he had undertaken, it was *not* beyond his power in some measure to execute; but when he became king over all Israel, and his humanity and love of justice probably induced too many of his subjects, all of whom had still free access to his presence, to bring their causes immediately before him, he found himself overpowered with business, and the course of law became tedious to a degree till then unknown in the east. I do not find that unjust decisions were complained of; but that, for want of time for hearing them, even clear cases could not be decided. Probably the course of law was, nevertheless, rapid in comparison to what it is with us; but then Asia is so much accustomed to summary justice, that the very least delay would there seem a great grievance. It was very far from being imputed to negligence in David, that he did no more than one man could do; and the tears with which Jerusalem

(the place where he was far better known than among the other tribes) accompanied him in his flight from Absalom, impress us with a favourable idea of his previous government. Absalom, however, availed himself of the opportunity which the tediousness of justice presented him, to seduce the affections of the people from his father. He placed himself at the entrance to the palace, and questioned the complainants that came from the provinces to the capital, concerning the nature of their suits,—told every one that his case was clear, and that it was only to be regretted, that the king, oppressed as he was with business, would appoint no one to listen to complaints; adding a wish, that the king would but commit that task, difficult though it was, to him; in which event, every man might look for speedy justice, 2 Sam. xv. 2,—6. By this artful contrivance, he excited a general rebellion, which was attended with much bloodshed. Without any battle, the universal discontent of the tribes drove David from the throne; nor did he recover it, till the blood of many citizens was spilt. It is not mentioned in the history, what measures he took after his restoration, to correct those defects in judicial procedure which had almost cost him his crown; but this we know, that in the last years of his life, he appointed some thousands of Levites as judges; 1 Chron. xxiii. 4. xxvi. 29,—32.; and with these were probably filled some of the higher tribunals, which administered justice in the king's name. The passage last quoted merits particular consideration; for it shews us, that these Levites in the provinces had the charge of *all matters pertaining to God and the king*; and, of course,

had to speak and judge in the king's name. In Jerusalem, there might probably be superior courts, wherein David's sons presided. Psalm cxxii. 5. seems to allude to this; but I do not find that one supreme tribunal was erected at Jerusalem earlier than the reign of Jehoshaphat; 2 Chron. xix. 8,—11. It was composed of priests and heads of families, and had two presidents, one in the person of the high priest, and another who sat in the name of the king. Such a tribunal ought, seemingly, to have been established sooner.

With all this, however, the king seems to have reserved the right of pronouncing arbitrary sentence even in cases where life was concerned. The innocent blood which Manasseh and Jehoiakim are said to have shed, (2 Kings xxi. 16. xxiv. 4.) leads me to think this probable. I am indeed aware, that, as in the case of Naboth, blood may be unjustly shed, with all the forms of law; but such instances are very rare: and if a tyrant shed much innocent blood, it is a presumption that he has the power of pronouncing on life and death in himself. At least, our European sovereigns are prohibited, even the most absolute of them, from shedding much innocent blood; unless, indeed, in the case of the hundreds of thousands whom they sacrifice in unjust wars.

ART. LVIII.

*The Rights of the Kings respecting War and Peace,
and Ecclesiastical Affairs.*

§ 5. THAT the king had the power of enacting new laws, and of dispensing with the punishments established by Moses, has already been mentioned, and proved in the Introduction. He granted pardons at his pleasure, without consulting any one; but whether in regard to new laws that were not to be in force but in war, he was obliged to be guided by the advice of others, and who these were, I know not.

Whether also he could, merely of himself, and without consulting with the states, proclaim war, and conclude peace, is a point which must be reckoned among the chasms of our knowledge of Hebrew jurisprudence. It appears that here the *jus publicum* of the Israelites was itself defective, because on the first choice of a king, they had no ancient usage of the people to guide them; and Moses, who did not himself establish, but only gave permission for the future establishment of a monarchy, had said nothing on this point, but left all to the determination of the Israelites. It is certain that before the time of the kings, the judges commonly began their wars at their own hand, and without asking any farther concurrence than that of their own courage. This at least gave the kings a very plausible pretext for going to war without consulting the people: and so Saul ventured to do in the first war with the Ammonites; though, indeed, he was then

forced into hostilities in defence of the threatened liberties of the Gileadites,—a case of very peculiar urgency.

As to the great rights, which we find the kings exercising in ecclesiastical affairs, we cannot but wonder at them, considering that the priests and Levites, as a sort of nobility, were intended to balance the power of the kings. They could condemn even the high-priest himself to death. Not only did Saul do so, like a tyrant, but even Solomon (1 Kings ii. 26, 27.) speaks as if he could have done it, and, out of pure clemency, is satisfied with deposing him.—At other times, they exercised the right of reforming abuses in religion, of which we have examples in the zealous procedure of Hezekiah and Isaiah: and in this, no doubt, they had a better title to take the lead than our princes have, because, among the Israelites, the worship of one only God was a fundamental principle of the constitution. Hence, therefore, and indeed from their *jus publicum* in general, no conclusion can justly be drawn as to the rights of our princes in church affairs. Where a fundamental law of the state prohibits idolatry, the king is authorized, even though the priests should oppose him, to exterminate that madness, and to purify the temple or the land from idols. But where, on the other hand, the state acknowledges no such fundamental law, although the king should hold the prevalent religion to be false, he has as little right to reform it, as he has to alter philosophy by his laws; unless it were happening that the said false religion attacked the constitution of the state; in which case none would deny that the government might not only

warrantably defend itself, but even exterminate so dangerous an enemy.

ART. LIX.

Of the Royal Revenues.

§ 6. CONCERNING the royal revenues, Moses left no ordinance, having appointed no king; but with regard to what later laws and practices introduced on this head, the following particulars and fragments may be collected from the writings of the Old Testament.

1. Long before the time of the kings, and even before the days of Moses, there was introduced in the east a custom, frequently mentioned afterwards in the Persian history, and by Asiatic travellers, that whoever had the good fortune to pay a visit to a person of higher rank, always carried with him a suitable present. As Grand Vizier of Egypt, (for that title I may *justly* apply to him, as it is sufficiently expressive of the nature of his office,) Joseph received such a present from his brethren, Gen. xxiii. 11,—25.; and Saul did not presume to wait upon Samuel the judge without a present, 1 Sam. ix. 27. This was, therefore, the most ancient source of a king's revenue, prior to all tributes and demesnes; and that Saul actually enjoyed such a revenue, appears from 1 Sam. x. 27. compared with xvi. 20. After his time, I find no trace of it: most probably David abolished such an unseemly tax, and admitted every petitioner into his presence, without subjecting him to any expense.

2. In 1 Sam. viii. 15. mention is made of one-tenth

of all the produce of the fields and vineyards, as the right of the future king; and this, on his actual appointment, was the *third* tenth that every Israelite had to pay; for the Levites received the *first*; and the *second* was appropriated to the sacrifice-feasts, to which were invited priests, Levites, friends, widows, orphans, and strangers; (see Art. CXCII.) None but a very fruitful country could have borne the burden of an impost to the extent of *three-tenths* of its produce.

3. In the preceding verse of the same chapter, Samuel mentions a demesne, to which the king would have a right; for that *he would take the best of the fields, vineyards, and olive grounds, and give them to his servants*, instead of salaries. This seems at first not to accord with those of the Mosaic laws which partitioned the whole of Palestine among the Israelites, and prohibited the alienation of their lands; and yet it is certain from Eccl. ii. 4,—8. and 1 Chron. xxvii. 26,—29. that the king had had a demesne. Probably the kings at first only took possession of the spots that were not previously appropriated and improved, of which they might find some beyond Jordan, and about the rills in the Arabian deserts; but still that will not sufficiently explain the passage in question, because it is said that the king would take the *best* parts of every sort of landed property.

Thus much is clear from 2 Sam. xvi. 4. that the kings exercised the right of bestowing the inheritance of state-criminals upon other persons. They may, therefore, have likewise availed themselves of the same right, to increase their own demesnes by confiscations. On the death of Naboth, who was stoned

because he was *said* to have been unfaithful to God and the king, we find a striking instance of this, which must have been conformable to their then acknowledged rights, 1 Kings xxi. 15. It is easy to perceive that this mode of increasing their demesnes, must have formed a strong temptation to wicked or weak kings, to resort frequently to such expedients as we find in the story of Naboth, and to put innocent people to death on account of pretended treasons, in order to seize their property. This may be done, as in his case, with all the formalities of law; and it becomes still easier, where the king himself is judge, and can pronounce arbitrary decrees. Need we then wonder, that in the histories of both Israel and Judah, we find so frequent mention of the shedding of innocent blood?

Hence in the prophet Ezekiel's vision of the *future* reformation both of the church and state, which at least indicates the abuses of *preceding* times, we are told that *then* the prince was to have his own portion, which he must neither alienate nor enlarge; *that the princes*, it is added, *may no longer oppress the people, but leave the rest of the land to the Israelites*, Ezek. xlv. 7, 8. xlv. 16,—18.; where it is farther expressly ordained, that the prince must no longer give lands to his family out of the people's portions, but out of his own.

From 1 Chron. xxvii. 28. I perceive, that the olive and sycamore * grounds, in that part of the tribe of

* *Sycamores* are a sort of trees that bear on the trunk itself a fruit not unlike the fig, and which serves as food to poor people. The wood is very useful for building; and particularly, from its being

Judah which lay nearest the sea, and was called *Scephela*, or the lowlands, belonged to the royal demesnes. How that happened, whether at the time of the first establishment of the monarchy, they were unoccupied, and, consequently, regarded as *common good* ; or whether they were originally woody or waste places, which one of the kings improved and made arable, I know not. It is, however, distinctly stated, that David appointed *one* officer to the charge of the olive and sycamore trees in that district, and *another*, as superintendent of the oil stores.

That the kings assigned a part of their dominions to their servants, in lieu of salary, appears from 1 Sam. viii. 14. and xxii. 7. to be unquestionable. At a time when the sovereign could be possessed of but little money, this was the natural way of maintaining and remunerating his servants.

4. To the cultivation of their demesnes, the kings must have required bond services ; and accordingly we find these mentioned by Samuel among the royal rights established by use among the neighbouring nations, 1 Sam. viii. 12, 16. In process of time, these services seem to have been augmented and altered ; of which we find an account in 1 Kings v. 17, 18. It was probably this that gave occasion first to the complaints, and then to the rebellion, in the reign of Rehoboam. Yet David and Solomon had the most of these services performed by those Canaanites that remained in the land ; and they applied them to the

lighter than most other sorts of wood, for small vessels, such as are in use upon the Nile.

erection of buildings which, *for that age* at least, may be called magnificent. [I am fain thus to qualify the expression; because I most readily grant to M. de Voltaire, that the temple of Solomon was but an extremely indifferent edifice; and I think, that by his remarks upon it, he has most strongly proved the high antiquity of those biblical books in which it is described, and whose writers, according to the manner of their times, represent it as a miracle of architecture*. Indeed we frequently owe him our thanks on similar grounds, when he brings forward any peculiar and well-considered circumstances, with a view to discredit the truth of Christianity; insomuch that I have been inclined to think he may be better-minded towards religion at heart, than in appearance.] For proof of this point, compare the following passages, Judg. i. 28, 30, 35. 1 Kings ix. 20,—22. 2 Chron. ii. 16, 17. This was the usual policy of the Egyptians. The Pharaohs employed foreigners in bond-services and in building, (of which not only Moses, but also Herodotus, has furnished us with examples); and they boasted of it as an honour to their country, that native Egyptians would not be subjected to such servile labours. It would seem as if Solomon had, in regard to these bond-services, attempted an innovation very obnoxious to the Israelites; very probably in his putting them to those kinds of work in which only foreigners had been before employed; because we afterwards find them (and in this their leader was Jeroboam, a man who had been superintendant of So-

* See my Dissertation, *De Judæis Salomonis tempore Architecturæ perum peritis*, 1770,

lomon's buildings, and had left his service in disgust) complaining to Rehoboam of the burdens which his father had imposed upon them; and when they obtained no promise of redress or mitigation, rebelling, and calling this Jeroboam, who had fled from Solomon into Egypt, to be their king; 1 Kings xi. 26,—29, 40. xii. 2,—5.

5. The Arabian deserts were, for the pasturage of cattle, as free to the king as to his subjects; and from 1 Chron. xxvii. 29,—31. it appears that David did not neglect to take advantage of this privilege, and kept large herds of oxen, sheep, goats, asses, and camels, partly in Arabia, and partly at Sharon in Palestine, which must, no doubt, then have been a common. The greater part, however, of these herds was, without doubt, kept in Arabia; and hence, among the persons mentioned in the above passage as principal managers of them, we find two that were Arabians, Obil the Ishmaelite, superintendant of the camels, and Jaziz the Hagarite, superintendant of the sheep.

6. In Amos vii. 1. slight mention is made of a royal right then exercised by the kings of the house of Israel, but which I do not rightly understand. “*The late rain* (for this seems to be a better meaning of *Lekesch* (לִקְשׁ) than *after-math*) *shall fall after the king's cutting.*” This is commonly understood of the *sheep-shearing*; but it suits the connexion better to refer it to the *mowing of the pastures*. And if this is correct, then the kings must have at this time arrogated the right of cutting the first and best grass of the public pastures, and have only left the after-growth to the Israelitish herdsmen.

7. The plunder of the conquered nations partly flowed into the royal treasury; of which we find examples in 2 Sam. viii.—It almost looks as if David had at first supported his little army, by going on predatory expeditions against the neighbouring Arabs, that would not be at peace with him; just as the six hundred who had before joined him in the wilderness, lived upon plunder. At least, in 2 Sam. iii. 22. we see Joab with his soldiers coming home to him at night, probably not from field-duty, but from what in the Hebrew is called *Gedud*, (גִּדּוּד) a term generally applied to a plundering party. These maraudings may have afterwards ceased, when there was more settled peace, and the Arabian nations became tributary, or, as it is said, presented gifts to David and Solomon.—Nor must we forget to reckon among the royal revenues,

8. This same tribute of the conquered nations, which in the reigns of these two princes is so often mentioned under the name of gifts, *Mincha* (מִנְחָה), 1 Kings v. 1. (Eng. Bib. iv. 21.) Psal. lxxii. 10.

9. It is probable from 1 Kings x. 14. that the Israelites likewise paid a tax in money. In later times, I find a poll-tax clear; but only resorted to in most pressing exigencies of state, as when it became necessary to purchase the favour of a foreign potentate, or when he imposed a contribution on the country, as conquered.

10. Solomon discovered a source of revenue entirely new to the Israelitish monarchs, and which must have been very productive. We have already mentioned, that commerce had no encouragement from

the Mosaic laws; but now, as foreign trade was no occupation for the subject, it became an object of attention to the crown.

I cannot here adduce the reasons of my opinion *, but I believe that Africa was circumnavigated by Solomon's fleets, which, during their three years' voyage from the Red Sea, frequently stopt at different ports to exchange commodities, and at last returned to Palestine by the Straits of Gibraltar. At a period when he had the entire monopoly of the trade, and when in Arabia, gold, and in Spain, silver, was extremely plentiful, and, of course, of the less value, the profits arising to the crown must have been astonishingly great. Let us only reflect how much the Dutch gain by the silver which they carry to China and Japan, where its value, compared to gold, is much higher than with us.

This was not the only trade in which Solomon was concerned; for he carried on one equally important, and less hazardous, in Egyptian horses, 1 Kings x. 28, 29. Arabia, it appears, was not at this period famed for the breeding of horses, the best of which came from Egypt; and the Phœnician kings on the north side of Palestine, between the Orontes and the Mediterranean, used a great many horses, partly for state, and partly for cavalry. In fact, we find that Solomon's cotemporary, Hiram, king of Tyre, had established a riding ground; concerning which, Josephus (lib. i. contra Apion. § 18.) quotes a remarkable passage from

* See some observations on this point, in my *Spicil. Geogr. Hebr. Ext.* p. 98,—101

Menander* ; which has probably been the less understood or attended to by the learned, that the expression, *ἐχλωσε τὸν εὐρυχωρὸν*, *he fenced or levelled the Eurychorus*, appeared strange to them, and made them think, not of a riding ground, but of something else. But a riding ground must, in a peculiar sense, be *fenced*, or *levelled*; and when we know this, Menander's words become quite plain. By this passion of the Phœnicians for horses, Solomon took care to profit. Egyptian horses they could not get, but either by sea, or through his territories; and whoever knows how expensive it is to transport horses on ship-board†, will easily perceive that Solomon may here have had a most lucrative monopoly, by merely prohibiting any but his own officers, appointed for the purpose, from carrying horses through Palestine.

The merchants who carried on other branches of trade on their own accounts, appear to have paid a duty to Solomon.

U 2

* POSTSCRIPT.—What I have here said concerning the passage of Josephus, has since appeared to me not well founded, at least questionable. I have, however, allowed it to remain, partly because I cannot with certainty reject it, and partly, although I could, not to conceal from my readers, that I was afraid of having been in a mistake. For farther satisfaction, see my Dissertation, *De Judæis Architecturæ parum peritis*, p. 4, 5,

† In the year 1756, when troops were transported from Germany to England, the English, to be free of the transportation of horses, offered for each horse, *L*.12, (72 rix-dollars) with which money the Germans were to buy themselves horses in England; but the latter would not accept the offer. And yet the English understand the transporting of horses probably better than the ancient Phœnicians. Besides, horses are frequently much hurt on ship-board.

ART. LX.

*Hereditary Succession, and the determination of the
Successor to the Throne.*

§ 7. THAT by the law of Moses the Israelitish monarchy was to be hereditary, we have already seen, and the history shews it from beginning to end. But at the same time it appears from the history of David, that the succession did not necessarily go by the right of primogeniture; for he took the liberty to destine that son to be his successor, to whose mother, Bathsheba, he had, out of peculiar affection, given a promise to that effect, although he was not his eldest son. In this, all Israel yielded to the king's will; and that the subjects really considered the right as inherent in the king, appears the more clearly from this consideration, that David, at the time when he caused Solomon to be anointed, was already half in the grave, and almost but the shadow of a king; while Adonijah, his eldest son, had Joab, the commander-in-chief of the army, on his side. But notwithstanding this, the bare word of the king was sufficient to annihilate all the pretensions of Adonijah, and to fix Solomon on the throne. *The eyes of the whole people (as Bathsheba says, 1 Kings i. 20.) were turned towards David, that he might point out to them who was to fill his throne after his death.*

This right, which David thus exercised in a matter undetermined by the Mosaic laws, and which he probably derived from a capitulation, wherein the Israel-

ites, from their great partiality to him, acceded to his wishes, in order to have rather the *best* than the *eldest* of his sons for their king, seems to have been the great cause of all the commotions which arose during his reign. His first-born son was Amnon, whom Absalom dispatched, probably not so much to revenge the disgrace of his beloved sister, Tamar, as in order to become eldest son himself. As soon as he was so, and had regained his father's favour, he set on foot a rebellion; because he saw that he had otherwise no chance of succeeding his father, from the preference he gave to Solomon. He was slain in battle; and the then eldest son, Adonijah, formed, in his father's old age, a fresh conspiracy, in order to become king.—From all this, it is plain, that such a despotical right as thus allows a king to determine his successor arbitrarily, and not according to an invariable law, is extremely prejudicial to his own security, as well as to the peace of the state. After David's time, I find none of the kings who exercised it; because probably it had been altered, from observation of its unhappy effects*.

U 3

* An extremely interesting discussion on the question, whether it be expedient that a monarch should determine his successor, will be found in Busching's Magazine for Modern History, Part III. p. 185, —187. In a letter there printed, a certain ambassador relates what Peter the Great, with the greatest keenness and confidence, declared to be his opinion, in an argument which they had together on this subject. On this occasion, we see great natural genius opposed to experience gathered from the history of many civilized nations. Peter argued strongly for the monarch having the right of appointing the wor-

thiest successor he could find; and the ambassador maintained the propriety of regular and invariable hereditary succession. The latter was certainly in the right, as even the history of Russia itself proves; for how many sudden revolutions have followed from the doctrine which Peter not only maintained against the ambassador, but also acted upon, and established in his own empire? Among other things urged in support of his opinion, he appealed directly to the example of David; but he was not sufficiently master of his Bible to know the consequences of its adoption by David, or of the subsequent abrogation of a right that had proved so dangerous; nor was his antagonist able to tell him.—I would fain have reprinted the letter here, but that it is too long; and such of my readers as love to take political views of history, will probably be in possession of the Magazine itself.

CHAPTER VIII.

FOREIGN RELATIONS.

ART. LXI.

Alliances with Heathen Nations not forbidden.

§ 1. I now proceed to consider the political laws of the Israelites, with regard to other nations. It is a common mistake, that they durst not form alliances with heathens; which would, in effect, have amounted to a general prohibition of alliance with any nation whatever, because then all the world were heathens. The church of Rome, in which we find more than one imitation, or improper application of the Jewish laws, has, upon this ground, considered alliances with the Turks as unlawful, although they are not idolaters, but zealous worshippers of one God: and in the sixteenth and seventeenth centuries, when the Turks were such dangerous enemies to the house of Austria, which could then make all Germany enter heartily into its ideas, even the Protestant states looked upon it as very unchristian conduct in Francis the First, and Louis the Fifteenth, to form, or even to propose, any alliance with these infidels.

It is really, however, not conceivable, what obstacle religion should make, in concluding an alliance. Why

should not I, if as a sovereign I find it necessary, implore the aid of a heathen nation, as well as of one that worships the true God? My only object is to obtain assistance. And if, again, a mighty conqueror, regardless of justice, attempts to overpower a heathen state, why should not I come timely to its aid, and thus endeavour to prevent him from becoming so powerful as at last to endanger my own safety? The traveller who falls among thieves, will not reject the efforts of another who, happening to pass by, interposes for his deliverance, merely because he is of a different religion; and if I see a heathen overpowered by robbers, and *can* help him, I must be quite inhuman, if out of orthodoxy I leave him without help. In the parable in which Christ teaches us who is our neighbour, the Jew that fell into the hands of the murderous banditti, does not refuse the assistance of the Samaritan, although a heretic, but allows himself very quietly and thankfully to be put upon his ass, suspicious as he might be of its heterodoxy: and the Samaritan, on the other hand, is too humane to leave the Jew unassisted, because of a different faith. But wherefore should a state have different rights from those of an individual, who happens to be destitute of the protection of the magistrate, and in *statu naturæ*?

In the Mosaic law, not one word is to be found that prohibits alliances with heathen nations in general, although against the Canaanites, Amalekites, Moabites, and Ammonites, Moses either commands eternal war to be carried on, or else forbids all friendship with these particular nations. He certainly, however, had not the same opinions with regard to *all* foreign nations,

as of them. This is clear from Deut. xxiii. 4,—9. where the attentive reader will perceive that he carefully distinguishes between the Edomites and Moabites. For to the Israelites, the latter were to be an *abomination*, or, as it might be better expressed, *impure*; the former not so. The history also informs us that David and Solomon lived in alliance with the king of Tyre; and the former, with the king of Hamath, 2 Sam. viii. 9, 10.; and the queen of Sheba cannot be regarded in any other light than as an ally of Solomon's.

The prophets, no doubt, are very jealous of foreign alliances: still, however, not of all indiscriminately, but only of such as were extremely prejudicial to the nation. It is usually only those formed with the Egyptians or Assyrians that they condemn; and these were in fact very imprudent. Ahaz was the first who called the Assyrians, till then at a great distance from his dominions, to assist him against the Syrians of Damascus, and the ten tribes: and they *did* indeed assist him, but rather to a greater extent than was convenient; for in a short time they brought both his adversaries under subjection, and thus became immediate neighbours to the Jews, whom, in the reign of his son, Hezekiah, they had almost undone. An alliance with either of these two kingdoms was, besides, detrimental to a king of Judah, by involving him in continual quarrels with two monarchs far more powerful than himself; the consequence of which was, that his dominions which might otherwise have enjoyed peace, were laid waste, either by one or other of them, and perhaps conquered. It was an alliance

thus formed by Hezekiah with Babylon, and which was at the time condemned by the prophet Isaiah, (chap. xxxix.) that first paved the way to the final destruction of the kingdom of Judah. It seems to have subsisted for a long period, even until the reign of Josiah. At this time, Pharaoh-Necho, king of Egypt, went to war with the Babylonians. He had no intention of molesting the Jewish territory, but went by sea to Ptolemais, and there disembarked his troops, where the king of Judah had no authority*. He warned Josiah not to resort to hostilities, declaring that he came not to injure him, but merely to contend with his hereditary enemy. Josiah, nevertheless, marched an army beyond his frontier, and met the Egyptians at Megiddo, that is, in the marshes of Cendevi, not far from Ptolemais, at the foot of Mount Carmel. A decisive battle was fought, in which Josiah was defeated, and mortally wounded. The king of Egypt who, as conqueror, placed a new king on the throne of Judah, was himself soon after defeated on the Euphrates by Nebuchadnezzar, who deposed *his* king, and appointed another; so that Judah was now completely a conquered kingdom, though still permitted to have a king at its head. Its kings, however, repeatedly violated their oaths of fidelity to Nebuchadnezzar, and endeavoured to shake off his yoke; and in consequence of this, Jerusalem, its rebellious capital, was at last destroyed, and the whole people carried captives into Babylon.

The warnings of the prophets, therefore, against

* See my *Historia vitri apud Hebræos.* § 3.

foreign alliances, are not so much of a moral, as of a political nature; and were given with the very same view as if we were to caution the weaker German princes from going to war with the stronger, or as if Frederic William the Great were to hesitate, if advised, to call the Russians to assist him against Sweden; because, as that consummate politician prophetically enough said, *We must not let loose the bears.*—Never were the admonitions of the prophets more necessary than in the time of Ahaz, who, from mere terror, invited the Assyrians to an alliance; the most disgraceful for himself that it is possible to imagine, for it made both him and his kingdom tributary to them; and when Isaiah promised him the protection of God, and was ready to confirm the divinity of his promise by a miracle, which the king had only to demand; he positively forbade the prophet to put himself to the trouble of performing a miracle, because he would not be compelled to abandon his shameful and cowardly resolution.

ART. LXII.

Severity of the War Law against the Canaanites.

§ 2. WITH certain nations, however, the Israelites were expressly forbidden to form any alliances. Of these, the first were the Canaanites that inhabited Palestine. What right they had to make war on them, has been already shewn, and the causes mentioned wherefore the war was to be carried on with such severity, and wherefore Moses commanded not

the conquest, but the utter extirpation of that people. His laws on this point are quite explicit. To the Canaanites, no terms were to be offered: their cities were not even to be summoned to surrender: no capitulation was to be granted, (for this is the meaning of the Hebrew expression, *כרת ברית*, *to make a covenant*, when construed with the dative) but they were to be destroyed by the sword; so that these illegal possessors of Palestine, to save their lives and moveables, had no alternative left, but to abandon the country before the Israelites approached. This is nearly the way in which when, without magistrates, and in a state of nature, we proceed with robbers, from whom we wish to recover our property, if we are disposed to gain our point by fair means; for if we are prone to retaliation and revenge, we go to work more cruelly, and persecute them, even after they have through fear abandoned their plunder. The laws respecting the Canaanites are to be found in Exod. xxiii. 31,—33. xxxiv. 12, 13. Numb. xxxiii. 51,—56. Deut. vii. 1,—5. and xx. 16,—18. Moses explicitly avows his fears lest the Canaanites should infect his people with their abominable and unnatural vices, and seduce them to idolatry, if they were on any conditions whatever suffered to remain in the land; and he appears, at the same time, to have had the very same confidence in any treaties that might be made with these nations, as had the Romans in what they called the *Punica Fides* of their Carthaginian descendants; and to have foreseen with concern, that if they should any of them ever be spared on certain conditions, they

would soon break faith with the Israelites, and attempt a second time to supplant them, Numb. xxxiii. 55.

At first, the Israelites were so zealous in the observation of these laws, that the Gibeonites, although they were willing to subject themselves to them as servants, were obliged, in order to steal a peace from them, to have recourse to the artifice of pretending that they dwelt not in Palestine, but in a very remote country ; and it was only from the veneration which the Israelites paid to the letter of their oath, that the Gibeonites were secure. The story, which is extremely curious, stands in the ix. chapter of Joshua. Keeping it in view, however, some may think it strange, that in chap. xi. 19, 20. it should be remarked, that it had been for a punishment from heaven on the Canaanites, that not one of their cities besides had made peace with the Israelites, that they might be all utterly destroyed, and meet with no mercy. For, according to the Mosaic laws, although they *had* proposed terms of peace, the Israelites durst not have accepted them : and since they would certainly not have made peace with the Gibeonites, if they had known their real residence, they must have spurned at proposals of peace from the other Canaanitish nations. What to answer here, I do not with certainty know ; but it occurs to me to observe that, by the Mosaic laws, if the Canaanites resolved to evacuate the land which they unlawfully occupied, and with that view to propose peace, while the Israelites were yet at a distance, the latter were not precluded from granting them free egress, along with their property, into other countries, and could never have been so

destitute of humanity as to refuse them that favour, if, without acts of hostility, or waiting till they came to their doors, they had thought fit to abandon Palestine. But here the biographer of Joshua will perhaps say, that the Israelites would have been more merciful than the law, if the Canaanites had begged for peace, and would have granted what Moses had forbidden to *be* granted.

Time gradually evaporated the original zeal of the Israelites to extirpate the ancient inhabitants of the land ; and in the beginning of the book of Judges, we find numerous instances of their only making them tributary, and allowing them to remain among them, which was afterwards the source of much mischief to themselves. God now recalled his promise of destroying the Canaanites, Judg. ii. 3,—21. ; whereby the situation of things was so far altered, that the Israelites were no longer bound to harass them with implacable war. When David at last completed the conquest of Palestine, in which several free Canaanitish cities had all along been suffered to remain, he acted towards the vanquished by no means according to the severity of the Mosaic precepts ; which, by the way, would not have been a political procedure in his case ; for when Jerusalem was taken by storm, the Jebusites that dwelt in it were not all put to death, strongly as they had provoked David's revenge by their contemptuous speeches*. According to the account in Josh. xv. 63. they continued still to live in the city along with the Judahites ; and even one of the royal family

* See *Relationes de Libris Novis*. Fascic. ix. p. 41. seq.

of the Jebusites, Araunah, retained his paternal inheritance, until David purchased it from him, 2 Sam. xxiv. 18,—24. Uriah, a very worthy and respectable servant of David's, was a Hittite, that is, of Canaanitish origin; and Bathsheba, the wife of this distinguished warrior, seems to have been an Israelitess; but whether she was so or not, David, in marrying her, married, if not a Canaanitess, at any rate the widow of a Canaanite. Probably the ancient sanctity of the place where Melchizedek had been the priest of the most high God, was the cause of the remarkable clemency shewn to the Canaanitish inhabitants of Jerusalem, which was greatly beyond what cities taken by storm were in those days wont to experience, particularly considering that the besiegers had been irritated by their insolence and contempt. But even with the remaining descendants of the Canaanites, who amounted to more than 150,000 men, both David and Solomon proceeded in quite a different way from what the Mosaic precepts ordained; satisfying themselves with employing them in servile occupations, as we read in 1 Kings ix. 20, 21. and 2 Chron. ii. 16, 17.

In fact it seems but reasonable that the posterity of the Canaanites, who in the course of four or five centuries may have been much altered for the better, should have experienced more merciful treatment than the laws made against their ancestors had ordained. The Israelites, in sparing the Canaanites in the time of Joshua and the first Judges, when they might have driven them out, acted contrary to the Mosaic injunctions; but when the descendants of these Canaanites, in the course of from ten to twenty

generations, had, by long intercourse with the Israelites, abandoned their national dispositions and their idolatry, and had become like the Israelites, it would have been barbarous, in such a complete change of circumstances, to exercise the severities of the laws of Moses upon them. Besides, if their ancestors had ever concluded a treaty with the ancestors of the Israelites, after several hundred years the question was no longer to be agitated, whether the Israelites *ought to have* entered into any such treaty. It was their duty to think that they were at least as strongly bound by the oath of their ancestors, as *they*, from reverence to their oath to the Gibeonites, had thought themselves bound to implement the promise, which that people had obtained from them by fraud and falsehood.

ART. LXIII.

Hereditary Enmity against certain Nations.

§ 3. WHEN we come in the sequel to the laws of the *Goël*, we shall see, that among the Arabs and Hebrews, hereditary enmities between families were no less violent, and, withal, of longer duration than actual wars. They subsisted for generations, and prevented intercourse as well as marriages; *when*, as the Orientals express it, *there was blood between them*, that is, when an individual of *one* family had shed the blood of one of *another*. Similar enmities we find firmly settled betwixt the Israelites and certain peoples, whose injuries they were not, in Moses' time, in

a situation to chastise ; but were to do so at a future period, as soon as they should be able ; or at any rate, to avoid all intimate friendship with them.

That among us there are no such hereditary animosities, at least avowed ones, is to be ascribed to the superior policy and prudence of the injurious party. For were any injured state now to make it a fundamental law and declared maxim, to retaliate sooner or later on its injurer, the latter would not wait for its convenient season, but anticipate its attack by open hostilities, which would terminate either in the destruction of one of the parties, or in a peace, of which the first article would naturally be, an utter oblivion of old quarrels. Among ancient nations, however, enmities and wars were not so regularly conducted : they made at once a predatory attack, and then withdrew again to their own territories.

The first of those hereditary enmities which the Israelitish history presents, is that against the Amalekites, that is, the Canaanites who dwelt in Arabia. They had attacked the Israelites unawares, and were defeated by Joshua, but he could not continue the pursuit. Moses, therefore, made a law that this aggression should never be forgotten, but that the Israelites should, as soon as they were able, utterly destroy this predatory people, *Exod. xvii. 8,—14.* This law he renewed, *Dent. xxv. 17,—19.* And after several hundred years, Saul was commanded to put it actually in execution, and take vengeance on Amalek, *ad internecionem.* A nation of banditti, that had no cultivated lands whence their enemies could draw re-

paration, and thus force them to make and keep peace, perhaps merited no better treatment; 1 Sam. xv.

The enmity with which they were commanded, Deut. xxiii. 4,—9. to regard the Ammonites and Moabites, was rather of a milder nature. These people were not to be capable of naturalization among the Israelites, not even in the *tenth* generation, nor were the Israelites ever to *seek their peace and prosperity*, that is, to form alliances with them; because, on their march through the wilderness, they refused them bread and water; and because they shewed their hostile disposition still more strongly, when they hired Balaam to curse Israel. With all this, however, the Israelites were not to have any right to take from them one foot-breadth of their lands, Deut. ii. 17,—19. This is what we should term a political indifference towards a state that has injured us; of which, in Europe, we have daily examples before our eyes.

It was not probably the intention of Moses, that enmities of either sort should *never* admit of adjustment by treaty, and, of course, remain for ever in full force; but that they should subsist till the people of Israel should have obtained some kind of satisfaction for former injuries. If the Amalekites, for instance, had sought a reconciliation with them, I know not whether their former aggression must not have been buried in oblivion; and so, likewise, that of the Moabites and Ammonites. But, at any rate, till that took place, the law continued in force.

Against the Edomites, whose injuries to the Israelites had been less material, we find from Deut. xxiii. 8, 9. that no hereditary enmity was enjoined; nor yet

against the Midianites, of whom, some tribes had made common cause with Balak, king of Moab, against the Israelites: for these tribes had already, in Moses' time, been either chastised or annihilated, in a war of revenge which is described in Numb. xxxi.; and the remaining tribes do not seem to have had any share in the injury done to the Israelites.

This same war of revenge against certain Midianitish tribes may at first appear very unjust, when we hear that *the Israelites had committed whoredom with the daughters of Midian*, and that this was the cause of Moses' commanding it. But when we read with attention the xxv. chapter of Numbers, we shall find that the conduct of the Midianites constituted a true injury to the Israelites, and such as justly merited such a retaliation. The whole polity of Israel was founded on the worship of one only God, who, at the same time, was to be considered as king. The Midianitish women were celebrating a very impure festival in honour of one of their deities, to whom their daughters were obliged to make an offering of their virginity; and they invited the Israelites to deflower their daughters: in other words, they invited them to an act of idolatry, which was contrary to the fundamental laws of their state. This alone was, perhaps, sufficient cause for a war; for even now, a nation whose fundamental laws established a certain religion, would think itself justified in making war on a neighbouring nation that was intending to corrupt the principles of its subjects, and to send out apostles for that purpose. But in the present case, there was the additional aggravation, that this was actually done with the most

diabolical intention, at the suggestion of Balaam, Numb. xxxi. 16. on purpose to deprive the Israelites of the protection of God, who had not permitted him to curse them.—No doubt, nations at present do not make attempts of this nature; but if they did, who would hold it unlawful to meet, and to retaliate such hostile intentions by war?—Besides, the Midianites were thus the cause of exciting a very serious commotion in the Israelitish camp, as is clear from Numb. xxv. 6. where a Midianitish woman is said to have been publicly, before the eyes of Moses the chief magistrate, and of the supreme council, brought into the tent of an Israelite, who not only committed whoredom with her, but did so expressly in honour of Baal-peor, a strange god;—an offence, which had they suffered it to pass with impunity, must have proved fatal to their authority among the people.—There is a wide distinction between the private transgression of the law of chastity, and the commission of whoredom with these two aggravations; *first*, that of its becoming idolatry, contrary to the fundamental law of the state; and, *secondly*, that of its being publicly committed, and in defiance, as it were, of the highest authorities in the state. And if in our days, a state might justly retaliate on any of its neighbours that should employ female emissaries to prostitute themselves to the people, on purpose to raise a rebellion; Moses undoubtedly had at that time a right to command retaliation on the Midianites for the same reason.

ART. LXIV.

War Laws against other Nations not of Canaanitish origin.

§ 4. THE war-laws of the Israelites are detailed by Moses in the xx. chapter of Deuteronomy. I shall at present only take notice of those particulars, that relate to the conduct they were to pursue towards foreign nations, and postpone those that regard levies, the division of plunder, &c. until I come to treat of private law.

Of a declaration of war, before proceeding to hostilities, Moses says nothing; and, therefore, seems not to have deemed it so indispensably necessary as the Romans did. The disputes concerning its necessity are so well known, that I shall not trouble my readers with any remarks upon them. At present, we do not consider this solemnity as at all essential to the lawfulness of a war, but commence hostilities without any previous announcement of our intention, whenever we conceive that the injuries offered us require them. Moses appears (Numb. xxxi.) to have done the same; and to have attacked the Midianites without giving them time to arm; and hence (ver. 49.) he did not lose a single man, which would otherwise have been incomprehensible. The word מִצָּד, so often repeated in that chapter, and probably wrong pointed by the Jews, signifies in Arabic, an *inroad*, or attack by surprise.

On the other hand, it was the injunction of Moses, that a hostile city should be summoned before an attack,

and if it surrendered without fighting, that its inhabitants should have their lives granted, upon the condition of becoming tributaries. If, however, a city should make resistance, then all the men in it were to be put to the sword ; and the women and children to become captives to the Israelites.

The former of these particulars, viz. massacring all the men, stamps *their* war-law with a much greater degree of severity than is manifested in ours ; for although we must take into the account, that among ancient nations all the males who *could* bear arms actually did so when it was necessary, and that there was no such distinction between soldier and citizen as among us ; yet even in the case of a city being taken by storm, we are wont to give quarter ; and no Frenchman will have any anxiety to be reminded that *Bois-le-duc* forms a solitary exception to this practice. Still, however, it is not contrary to the law of nature, if we get the upper hand, to kill our enemy, who either himself bears arms in order to kill us, or hires others in his room for that purpose. The Israelites could not regulate their conduct by our more merciful law of nations, which is, by several thousand years, of later date ; but they acted precisely as their vanquished foes would have done, had they been lucky enough to have been the conquerors ; and they therefore merit the praise of magnanimity, if, to lessen the evils of war, we see them refraining in the smallest degree from insisting on requital of like for like to the utmost. The enemies with whom the Israelites had to do, were wont not merely to put the vanquished to death, but at the same time to exercise great

cruelties upon them. The Bible is full of relations to this purport. Sometimes infants and sucklings were massacred, and their bodies collected into heaps ; for which we find in Hebrew a particular term, רֶטֶשׁ ; sometimes pregnant women were ripped up, 2 Kings viii. 12. Amos i. 13*.; sometimes people were laid upon thorns, and put to death with threshing wains, Judg. viii. 7,—16. Amos i. 3. Sometimes even royal princes were burnt alive, 2 Kings iii. 27. I will not relate all the cruelties of those nations with whom the Israelites had to carry on war, and might, according to the law of nature, have repaid like for like. The law of nations, according to which the Israelites had to act, was made by those nations themselves ; for this law is founded on the manners of nations, and on the permission which we have to treat others as they treat us. If we do not chuse to confine our attention to the details given in Scripture, we may resort to profane history, where we shall find the Romans (who behaved to their enemies much more harshly than we do) complaining of the barbarous conduct of the Carthaginians towards their prisoners; and these Carthaginians were the direct descendants of those Canaanites, and had an Asiatic law of nations.

X 4

* An example of this abominable cruelty we find in Schultens' *Monumenta antiquissimæ Historiæ Arabum*, p. 135. as perpetrated by the people of Arabia Felix on the Abyssinians. As this work is rare, I shall quote the passage. "The Arabic historian, *Taberî*, thus relates it : ' Cum Wehrazus ad Cosroem reversus esset, Sciphumque Regem ordinasset, is Habessios infestare ac trucidare cœpit, fisis mulierum ventribus ipsos quoque fœtus extinguens, sic ut eos penitus delevit, exceptis vilibus parvisq. reliquis.' "

We need not, therefore, now wonder that David (2 Sam. viii. 2.) should have made the vanquished Moabites lie down together on the ground, and with a measuring-line have marked off two-thirds of them for death, and spared the remaining third, after being thus subjected to the fear of sharing the fate of their brethren. He acted here with more clemency than the Mosaic law prescribed, by which he would have been justified in putting them all to death. For as to the assertion of some writers, that the severe law of Moses on this point did not extend beyond the Canaanites, it is contrary to the clearest evidence; for Moses expressly says, (Deut. xx. 15, 16. compared with 13.) *Thus shalt thou do unto those cities which are far from thee, and not of the cities of these nations; but of those nations whose land Jehovah giveth thee, thou shalt let nothing that breatheth live.*

David acted with much greater severity (2 Sam. xii. 31.) to the inhabitants of Rabbah, the Ammonitish capital. He put them all to death together, and that with most painful and exquisite tortures; which, however, were not unusual in other countries of the east. But we must consider how very different this war was from other wars. The Ammonites had not only resisted to the last extremity, (which alone by the Mosaic law was sufficient to justify the victors in putting them to death) but they had, moreover, by their gross contempt of the ambassadors whom David had sent with the best intentions, been guilty of a most outrageous breach of the law of nations, and manifested their implacable hatred against the Israelites. They shaved half their beards (an insult which, according to the account of *Arrien*, the Arabs of the

present day reckon as great an evil as death itself,) and then they cut off the lower half of their garments, and in this ignominious plight sent them back into their own country. Nor was this so much the particular act of the Ammonitish king, as of his principal subjects, who had incited him to it, (2 Sam. x. 3.) which so much the more clearly demonstrated their universal enmity against the Israelites; and a violation of the law of nations so very unusual justly provoked them to take severer revenge, than they were wont to exercise in common wars.

If we admit the maxim, that the law both of nature and nations allows me to treat my enemies as they, if victorious, would have treated me, the story in 1 Sam. xi. 2. furnishes a strong vindication of David's conduct. These same Ammonites had, in the beginning of his predecessor's reign, been so extremely cruel as to grant to the Israelitish city, Jabesh, which they had invested, and which was inclined to surrender without resistance, no other terms of capitulation than that, by way of insult to the Israelites in general, all its inhabitants should submit to have their right eyes put out. Now to an enemy of this description, and who at last seized their ambassadors, whose persons the laws both of nations and nature hold sacred, could any punishment in use in the East, have been too cruel?—We find, however, that the character of the Ammonites was the same in every age. The prophet Amos (i. 13.) speaks of them as ripping up the bellies of women with child, not in the fury of a storm, but deliberately, in order to lessen the number of the Israelites, and thus to enlarge their own borders.

If these acts of David, then, appear to us, I will

not say *severe*, (for who will deny that? or who that lives in our days would not wish to have acted differently in *his* place?) but *unjust*, it is owing, either to our confounding the modern with the ancient law of nations, or with the law of nature itself; and thus judging of them by quite a different rule from that which we are wont to apply to similar actions, which we know from our youth.

I may at any rate put this question, “Has a magistrate a right to proceed more severely against a band of robbers than one nation against another, that has behaved with as much hostility and cruelty as robbers can do?”—If it is answered, “Yes, for the robbers are subjects;”—then would robbers, particularly if natives of foreign lands, in order to escape painful deaths, have only to declare, that they wish to be considered not as subjects, but as enemies; since they do not generally desire the protection of the magistrate, but have their abode in the forests. But on such banditti we inflict not merely capital punishment, but that punishment aggravated by torture; as, for instance, breaking on the wheel. Now, if this is not unjust, and if a robber, even though a foreigner, cannot with effect urge against it the plea of wishing to be treated as an enemy; certainly David’s procedure towards the Ammonites, who had in fact been more cruel to the Israelites than most modern banditti are wont to be, should not be condemned as absolutely unjust; although, no doubt, it would have been much more laudable if he had displayed greater clemency and magnanimity.

Farther; as we in our childish years read the Roman authors, who think and write with great partiality

for their countrymen, we are commonly impressed with very favourable ideas of the moderation and equity of the Roman people in war. But these ideas are by no means just; for the Romans, except when their own interest required the contrary, were a severe people; and with so much the worse reason, that their wars, in which they manifested such inexorable severity, were for the most part unjust. This people, of whose war-laws we are apt to think so highly, for a long time, even to the days of Cæsar, massacred their prisoners in cold blood, whenever they survived the disgrace of the triumph; and they very frequently put to death the magistrates and citizens of conquered cities, after making them undergo a flagellation, which, perhaps, in point of physical pain, was not different from the punishments inflicted by David on the Ammonites. *Lacerare corpore virgis* is the phrase in which it is described by Livy, who remarks, that by reason of those inexorable severities, (of which we know nothing in our wars) some cities defended themselves to the last extremity, rather than submit. Thus acted the Romans towards nations that certainly were not Ammonites in cruelty, or in the malice of their injuries. And if, nevertheless, not contented with keeping silence on the subject, we re-echo the Latin writers in their praises of Roman justice and mercy, why should David be called an oppressor and a barbarian, because to the very scum of cruel and inhuman enemies, who from universal national hatred had so grossly and unjustly violated the sacred rights of ambassadors, he acted with rigour, and put them to painful deaths? There seems here to be an unfair-

ness in our way of judging, which David does not deserve, merely because he is an Oriental, and because on other occasions the Bible speaks so much in his praise.

This severity has, nevertheless, always been a stigma on the character of David, with those who do not attend to the arbitrary and variable nature of the law of nations, and judge of it according to the very humane war-laws of modern times. Hence some friends of religion have been at pains to represent his conduct in a more humane point of view than it is described in the Bible itself. The late Professor Dantz of Jena, published a Dissertation, *De mitigata Davidis in Ammonitas Crudelitate*, which experienced the highest approbation both in and out of Germany, because people could not imagine a war-law so extremely different from modern manners, as that which the common interpretation of 2 Sam. xii. 31. implies. Of that passage he gives this explanation; that David merely condemned his Ammonitish captives to severe bodily labours; to hewing and sawing of wood; to burning of bricks, and working in iron mines. But how much soever this exposition may be approved, it has but little foundation: it does great violence to the Hebrew words, of which, as this is not the place to complain philologically, I must be satisfied with observing, that it takes them in a very unusual, and till then unknown, acceptation; and for this no other reason is assigned, than that David had previously repented of his sins of adultery and murder; and being in a state of grace, could not be supposed capable of such cruelties. But a proof like this, taken from the king's being in a state

of regeneration, is quite indecisive. We must previously solve the question, whether, considering the times in which he lived, and the character of the enemy, who had given such proofs, to what atrocities their malignant dispositions towards the Israelites would have carried them, had they been the victors, the punishment he inflicted on them was too severe? or else from the piety of a king, I might in like manner demonstrate, in opposition to facts, that such and such malefactors were not broken on the wheel, but that they must only have gone to the wheel, in order to draw water. But allowing even that David carried severity of punishment too far, it is entirely to be ascribed to the rude manners of his age; as in the case of still more blameless characters, even of Abraham himself, we find that the customs of their times betrayed them into sins of ignorance, although none of their contemporaries questioned the lawfulness of the acts which involved those sins.

It is farther to be remarked, that towards the most cruel foes of the Israelites, and who had besides done himself an injury altogether unparalleled, David would have been acting with more mildness than the Mosaic law authorized, even towards any common enemy, if he had only condemned the Ammonites to servile labours. And besides this, those labours which Dantz alledges, are, some of them at least, not at all suited to the circumstances of either the country or the people. Firewood, for instance, is so scarce in Palestine, that a whole people certainly could not have been converted into hewers and sawyers of wood. For the sanctuary and the altar, the Gibeonites had it already

in charge to provide wood ; while the common people throughout the country principally made use of straw, or dried dung, for fuel. When Solomon, many years after, made the timber required for the temple to be felled, it was by the heads of the remnant of the Canaanites ; and therefore the Ammonites were not employed in it.—In Palestine, again, mines of different sorts were wrought. Now, of all mines, none are more wholesome to work in than those of iron ; because that metal is very friendly to the human constitution, is actually mixt with our blood (as experiments made with blood clearly shew,) is often used in medicine, and is almost never hurtful to us, except when forged into edge-tools and weapons. Hence it has been observed, that in iron-works and forges, we generally find the healthiest and longest-lived people. Other sorts of mines, on the contrary, by reason of the lead and arsenic which they contain, are very often unwholesome, and even fatal to life. Can it then be believed that David would have condemned a people that he wanted to punish, to labour in iron works, wherein they were sure to enjoy a long life of health and activity, while, perhaps, his own native subjects had to labour in unwholesome mines for the more precious metals ? A king who had mines in his dominions, and wished to use them for the purposes of punishment, would probably have heard what sorts of them were favourable, and what hostile to health, and not have gone so preposterously to work.

The applause bestowed on this Dissertation of *Dantz*, from the humanity it displayed, was probably what moved the late *Wöhner* to write a Dissertation

of a similar tendency, which was published at Göttingen in the year 1738, under the following title, *David Moabitarum Victor crudelium numero eximitur*. But it could not obtain equal approbation, because in the conduct of David towards the Moabites, 2 Sam. viii. 2. there is less appearance of cruelty; inasmuch as he merely enforced the war-law as prescribed by Moses, and indeed far less rigorously. *Wähner* gives three different and new explanations of the passage, according to which none of the vanquished Moabites were put to death; but they are all somewhat forced: and there was no necessity, by a different translation of the text, to free David from the charge of cruelty; for in putting but two-thirds of them to death, he acted unquestionably with one-third more clemency than the Mosaic law required.—The war which Saul carried on against the Amalekites, and in which to the utmost of his power he extirpated the whole people, sparing only their king, is yet blamed, not on account of its rigour, but for the conqueror's clemency to the king, 1 Sam. xv. But I will not by any means adduce this for an example; but merely appeal to the precepts of Moses, the rigour of which David so much relaxed, in the case of the Moabites.

In the same xx. chapter of Deuteronomy, towards the end, it is forbidden during the siege of cities to cut down fruit-trees, and, of course, to desolate the country unnecessarily. Such trees would be of service to the conquerors; but if they extirpated them, many years must pass before the country could regain its former state; a misfortune, in those arid regions which, perhaps, are adapted to the growth of fruit-

trees, but not to the raising of corn, far greater than we can imagine. For a corn country laid waste, recovers itself, when cultivated again; but fruit-trees are but of slow growth; so that, as may have actually happened to a great part of Arabia, such a country once desolated, remains a desert for ever. In the 19th Part of the Universal History, p. 264. we find a similar command respecting fruit-trees given by the Caliph Abubcker to his general, *Let no palm-trees be cut down.*

The Israelites, however, did not always heed this merciful injunction of their lawgiver; but on the contrary, in the case of the Moabites, 2 Kings iii. 25. they seem to have done every thing in their power to destroy their country so completely, that to all human conception it should never recover. They not only felled the fruit-trees, but threw all the stones they could on the corn-fields; and the wells * which in so dry a country are invaluable, and indispensable to agriculture, they choked up with sand. Tacitus relates a piece of similar procedure in the Roman general, Corbulot†, only his object was different, namely, to deprive his enemies of water; whereas the inten-

* If we follow not the Keri, or marginal reading, but the Ketib, that is, the consonants of the text, דִּמְעֵינֵינוּ, we shall have a similar instance in 1 Chron. iv. 41. and the interpretation will be, *They destroyed their tents, and the wells that were found there.* In this way, the Syriac translator understood the passage. I have, however, my doubts of its propriety; because, as the conquerors were to inhabit the country themselves, they would hardly have destroyed the wells.

† Taciti Ann. xiv. 3. "Et quia egena aquarum regio, castella fontibus imposita, quosdam rivos congestu arenæ abdidit."

tion of the Israelites was to render the land of Moab, of which they were not to keep possession themselves, desolate as long as possible. The idea of Moses, "*Are the trees men, that thou shouldst war against them, or besiege them?*" was certainly more rational; and their hatred of these enemies here obviously went beyond the limits prescribed by his laws.

That women and children should be carried into captivity, was conformable to the usage of other Oriental nations, and, of course, in the Israelites, only a requital of like for like. We find an instance of this in Numb. xxxi. 35.; and, in like manner, in Judges xxi. 12. compared with ver. 22., it is recognized as one of the common laws of war. This practice rendered the wars of the eastern nations very destructive, and, in general, far more prejudicial to the increase of mankind than ours are; and yet, on the other hand, it might promote population among the conquerors, and it gave some ground for polygamy, as at least not quite intolerable in a political view. For a man who wanted two or three wives, might marry female captives, and so live in polygamy, without depriving any other Israelite of the wife destined for him, as it were, by nature*. This mode of warfare, therefore, had a weighty influence on the marriage-laws of the Israelites. It had, no doubt, this disadvantage, that it exposed their neighbours to the calamity of having their

* See more on this point, in my *Paralipomena contra Polygamiam*, in p. 135,—137. of the second part of the *Syntagma Commentationum*. I beg the reader to consult this passage, as here, perhaps, from brevity, I am indistinct.

young women carried off, when they were the weaker party ; but although the Israelites had never carried off this sort of plunder, their neighbours would, notwithstanding, never have left off doing so ; and, therefore, it was their most prudent plan to requite like for like, and thereby repair the losses occasioned them. It appears, however, that against each other, except in the case of a war of revenge and proscription, the Israelites observed a more humane war-law, and more resembling ours, than against foreigners ; for in 2 Chro. xxviii. 8,—15. it is deemed unlawful in the ten tribes to attempt carrying the wives and children of the Judahites into slavery.

The army, which consisted of unpaid soldiers, generally made a great deal of other sorts of spoil ; of the division of which I shall speak afterwards, under Art. CLXXXI. In some wars of revenge, however, as in that with the Amalekites, 1 Sam. xv. all the plunder was destroyed ; and the same took place at the conquest of Jericho. This was called *Cherem*, (חֵרֶם) that is, any thing so *devoted* or *consecrated to God*, that no mortal might dare to make use of it.

With the enemy's horses, the Israelites had a different procedure from other booty. For their direction, indeed, on this point, they had no general and permanent law prescribed them, but merely the order from God, issued by Joshua (xi. 6.) before the battle at the waters of Merom ; according to which order, they were naturally led to regulate their conduct in after-times. In their wars before the reign of Solomon, they made no use of horses, (see Art. CLXVI.) though

some of their enemies did* ; and this same cavalry of their enemies was wont to be very formidable, and sometimes gave them the superiority of the Israelites in the plains. At the same time, the event has often shewn, that a brave, steady, close infantry, without the support of horse, will stand the shock of hostile cavalry without the smallest disorder ; of which, although *our* cavalry is far more formidable by reason of their close charge, modern history furnishes examples†. Indeed, on one occasion, besides more than 20,000 infantry, David took, I know not whether 1700, or 7000 cavalry, prisoners‡ ; their retreat across

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* In Deut. xx. 1. Moses states it as his expectation, that the Israelites would see in the armies of their enemies, strong bodies of cavalry, and numerous war-chariots. During their wars with the Canaanites in the south part of Palestine, we hear nothing of horses ; but in their first battle with the northern Canaanites, (Josh. xi. 4.) the latter are mentioned as having a number of cavalry and chariots. In Judges, chaps. i. and ii. we find mention of horses among the Canaanites, but not among the Israelites ; and hence the latter generally kept on the mountains, where cavalry cannot act, and were obliged to abandon the plains to the Canaanites. In Judg. iv. and v. we again see the Canaanites with cavalry, and iron chariots. In the book of Psalms, xx. 8. xxxiii. 17. cxlvii. 10. horses and chariots are spoken of, as what the enemies of Israel accounted their chief defence, and most formidable force. And in the history of David, we find several instances of his enemies bringing strong bodies of cavalry into the field against him.

† In the battle of Molwitz, for instance.—I will not produce examples from the Turkish war just concluded, (1774) because the Turkish cavalry is defective in not attacking closely, and therefore can never get the better of good infantry.

‡ See my *Historia Belli Nesibeni*, § 10.

the Euphrates having been probably cut off, or that they were compelled to surrender for want of subsistence. But when the Israelites *did* get a booty of horses, they did not know what use to make of them. Their husbandry was carried on in the ancient way, and to much more advantage, with oxen, which are not so expensive to maintain ; and to this their whole rural economy was directed. In war, they did not employ cavalry, and would have been bad horsemen ; and for travelling, they commonly made use of the ass, to which whoever is accustomed from his youth, will not willingly venture to ride a mettled horse, particularly such a one as is employed in war. Horses, therefore, were to them quite an useless sort of plunder, unless they had sold them, which was not advisable, because their enemies, in a round-about way, might have bought them again. It was far better policy for them to diminish as far as possible this race of animals, by means of which their enemies might, on some occasions, obtain a manifest advantage over them* ; just as the Romans put the elephants

* In our times this would be a vain attempt, considering how numerous horses are, and that all nations employ them in agriculture, as well as for carriages and travelling. But in these ancient times it was otherwise. Arabia and Syria had then no breed of horses. The Phœnician and Syrian kings had their horses from Egypt, and *that* through Palestine ; so that when they sustained any great loss in horses, it was not easily repaired ; especially as Egypt of old had no maritime commerce ; and, at any rate, the transporting of horses by sea is difficult and expensive. The king of Nesibis, in his war with David, probably had his cavalry from Armenia, which, at an early period, was rich in horses, (Ezek. xxvii. 14. ; *Spicilegium Geog. Ext.* p. 76.) ; but while horses were not yet used in husbandry, and not

of their enemies to death, because they had no desire to make use of this foreign and dubious expedient to help them to victory, and yet saw that elephants might sometimes be dangerous to their troops. In the first engagement which the Israelites had with an enemy whose cavalry and war-chariots made him formidable, God commanded them to hough or hamstring, that is, to cut the thigh-sinew of the horses which they took; and they did so, Josh. **xi.** 6,—9. From ignorance of military affairs, most expositors have understood this command, as if it meant, not that the horses should be killed, but merely lamed in the hind-legs, and then let go; and into this mistake, by following *Bochart*, (*Hierozyicon*, p. i. lib. ii. c. 11.) as he had *Kimchi*, I was led in the first edition of this work.—I have never been in war, and know just as little of the veterinary art; nor have I ever seen a ham-strung horse. But a horse so treated, must, instead of running off, fall instantly backwards, and writhe about miserably till he die, which generally happens from loss of blood, by the stroke of the sabre cutting the artery of the thigh. This is still, as

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many of the neighbouring countries had horses, his loss of 7000 of them, with 1000 war-chariots, might be past his power to repair in the course of many years. But at present, in consequence of horse-breeding, and the universal use of cavalry, every thing is quite on a different footing in this respect. Before the late war, the king of Prussia had, in the time of peace, more cavalry than the Romans in time of war; and now his cavalry is still stronger. It is the horse that at present makes scarcities in England. If 7000, or even 20,000 horses are lost in one campaign, they may be replaced, by purchase, before the next; but that was not the case in former times.

military people have since informed me, the plan adopted to make those horses that are taken, but cannot be easily brought away, unserviceable to the enemy again. They hamstring them, which can be done in an instant; and they generally die of the wound, by bleeding to death; but though they should not, the wound never heals; so that if even the enemy recover them alive, he is forced to dispatch them: and every compassionate friend of horses, who has ever seen one in that situation, will do so, in order to terminate his misery. There is, therefore, no foundation for *Kimchi's* opinion, that mere laming was enjoined, because it would be wrong to put an animal unnecessarily to death. For thus to lame a horse that would still live, in my opinion, would rather have been extreme cruelty; because, being then useless, nobody would be likely to give him any food.

According to the command given to Joshua, David proceeded, when he took in war a great number of the enemy's horses and chariots, 2 Sam. viii. 4.; only that he reserved a hundred of them for himself. His son, Solomon, the first king who had a body of cavalry, 1 Kings iv. 26. would not have so acted, but have kept all the horses for himself; and still more Uzziah, under whose reign horses became far more common.—But of this I shall hereafter speak at more length, in an Essay which I intend to write on the most ancient history of horse-breeding, and of which a sketch is given in the sequel, by way of an Appendix to Art. CLXVI.

ART. LXV.

Suspension of Arms during the Festivals.

§ 5. I FIND in Exod. xxxiv. 24. a very remarkable promise of God, which could hardly have been fulfilled in the common course of providence, and without a miracle, unless the Israelites and other neighbours had in their wars observed a certain law of truce, quite strange to us, and which I only know from the customs of the Arabs.

Moses commands all the males of Israel to leave their homes thrice a-year, and celebrate a festival for a week at the place where the tabernacle should be erected; assuring them, withal, that during this period, *no man should desire their land*; and that, therefore, however distant their abodes might be from the sanctuary, they might undertake this journey with perfect safety.

According to the present course of things in the world, this is quite incomprehensible. Were all the males to leave certain parts of the country, and still more, the fortified cities, the greatest of all wonders would be, the enemy with whom the nation happened to be at war, refraining from seizing the opportunity to occupy the fortresses,—to plunder and burn the open country,—and to forage the corn-fields. And it is most obvious, that the danger of all this will be still greater among nations who do not maintain settled peace with each other; of which description were the marauding Arabs; or who carry on war rather by

by incursions than regular campaigns, and have no other object than to make booty in money, produce, women, and children. Shall we then venture so to expound the words of Moses, as if he had promised a periodical miracle from God, which should, for three weeks every year, convert all the enemies of the Israelites into statues?

A promise so incredible, will, perhaps, not appear to be necessary, when, to illustrate this point, we call in the aid of the customs of the Arabs, who are Abraham's descendants, and the immediate brethren of the Israelites. In all their wars, and even amidst their family-feuds, during the holy month, in which they solemnized the festival at Mecca, they had a truce. Mahomet's greatest transgression is, that he is said to have broken this truce. Yet, in the Koran, he has commanded his followers to keep it only when their adversaries keep it; and he permits them to fight against the enemy during the holy month, only when he makes the first attack. Thus we see, in like manner, from 1 Kings xii. 27. that among the Israelites, during the high festivals, a suspension of arms took place; and the ten tribes who had revolted from the family of David, might, without hindrance, have kept the feast at Jerusalem, and would have done so, had not Jeroboam, for political reasons, endeavoured to prevent them. The Judahites, therefore, did not put any obstacle in their way; and they would *then* have been in as perfect security at Jerusalem, as, before Mahomet's time, every Arab during the holy month was at Mecca.

It would appear, then, that the nations related to

the Israelites, paid equal respect to the worship of God, and made a truce during war, whenever the people celebrated a festival. But probably the Canaanites were, both in religion and manners, so different from the Israelites, that they did not observe any such truce; for Moses expressly says on this occasion, that God would destroy the Canaanites; and *then*, no other people would conceive any desire to attack the land of Israel during the seasons of the festivals.

Now, such a law of nations once introduced, God *might* fulfil his promise in the common course of providence, and without the aid of a miracle.

This sacred truce, which is, however, quite unsuitable to the more connected operations of modern warfare, was likewise probably the cause, wherefore the commandment respecting the Sabbath could be given, without any particular limitation. For on that day, all labour was prohibited. Moses does not, indeed, expressly specify fighting, marching, entrenching; but neither does he expressly except them. Now although, in a rational consideration of the matter, the justice of these exceptions, in cases of necessity, is manifest; this silence seems, nevertheless, to be a defect in the law; and a nation who in this point had even the smallest scruple of conscience, would make but a poor figure in war. We see, in fact, that after the Babylonish captivity, when, as St. Paul says (Heb. viii. 7,—13.) the law began to be useless from its antiquity, the observance of the Sabbath became very prejudicial to the Jews in their wars with the Syrians and Romans. For the former on the Sabbath attacked them, and burnt thousands of them in a cave, without

their making any resistance* : and the latter, in their first siege of Jerusalem under Pompey, carried on the works of investment undisturbed, and only guarded against attempting to storm the city, because against a storm the Jews defended themselves even on the Sabbath†. But since, before the captivity, we never find, that in their numerous wars, the Sabbath had been detrimental to the Jews, or that any of their enemies availed himself of the advantage it gave him ; the Israelites must either, from ancient and undoubted usage have known that the commandment concerning the Sabbath did not extend to the operations of war ; or else, betwixt them and all the neighbouring nations there must on this day have been a sacred truce. Among the latter, this day, which the Israelites dedicated to the Creator of the heavens and the earth, was probably sacred to *Saturn*, to whom the Phœnicians paid the highest veneration ; because, before his being raised to divine honours, or numbered among the stars, he is said to have been king of their country‡. According to the testimony of Diodorus Siculus, they accounted him the chief of the planets ; and the Arabians had, in like manner, dedicated to him their national temple, the Caaba at Mecca§.

* Joseph. Antiq. xii. c. 6. § 2. f.

† ————— xiv. c. 4. § 3.

‡ Eusebii. Prop. Evang. lib. i. p. 110.

§ Pocockii Specim. Hist. Arabum, p. 140.

ART. LXVI.

What is related of Moses, as a highly-experienced General, is Modern History without ancient Authority.

§ 6. I MUST here controvert the propriety of that praise which many authors, and some of them even adversaries of religion, have too liberally bestowed on the Hebrew legislator, in regard to his knowledge of military affairs. He has been extolled as a perfect general, whose marches, encampments, order of battle, &c. the greatest masters of the art of war might even now acknowledge as models; and, therefore, some very excellent laws respecting the business of war might naturally be expected from him. Now I certainly will not deny that in his statutes concerning military police, which we shall see in the sequel, under the head of Private Law, there are many good regulations; but the expectations which we may entertain, by taking him for so very great a general, he does not gratify, at least by a set of laws that are pre-eminent master-pieces; for David is rather to be considered as the author of the military system of the Israelites.

What can have led some writers to be so very obliging to Moses, who does not in the smallest degree arrogate to himself the character of a great general, it is not easy to conceive. His encampments and marches are said to be models; but it is most unlucky, that we know so little about them, for he says nothing himself: nor has he described the order of battle in one single instance, so as to allow us to judge of it. He

tells us, it is true, that the Israelitish camp was in four great divisions, in the centre of which was the tabernacle guarded by the Levites; but this was no encampment against an enemy, but merely a prudent arrangement to keep the Israelites themselves orderly and obedient. But we cannot acknowledge his talents as a general, unless we had grounds for concluding them from his own plans of encampments, from his description of the order in which his troops marched out of camp against the enemy, and, above all, from his manœuvres to take advantage of the country,—to gain the heights,—and to establish his quarters. The only encampment of which we know any thing, is the one at the Red Sea; and it is so far from manifesting any military skill, that it is quite in opposition to every principle of tactics, and was intended by God to furnish an occasion for his miraculous interposition in their behalf. For, instead of going towards Asia, Moses turned towards the south side of the Red Sea, where he had only the immense deserts of Africa in his front, and the sea on his left. This appeared to Pharaoh so palpable a blunder, that he conceived a people really under the guidance of a prophet, could never have committed it; and was thus encouraged to violate the word he had given them, and, although he had let them go out of Egypt, to pursue them again, and compel them to return. Moses, with 600,000 men, who had no spirit for fighting, and were destitute of cavalry, chose his encampment in such a manner that he was inclosed between mountains on one flank, and by the Red Sea in front, and must, naturally speaking, have been utterly destroyed the very next

day, had not God, who himself gave the order for this apparently preposterous march, laid open the Red Sea by a wind that caused a very extraordinary ebb, which continued till they passed through.—In the battles with the Amalekites, Midianites, and other nations, it was not Moses himself who commanded, but Joshua. He seems, therefore, not to have reckoned himself the great general which he has been by others represented to be: and what Josephus relates concerning his campaigns against the Ethiopians, becomes, therefore, very suspicious; or rather, it is a manifest fiction, the probable origin of which I have noticed in another work*. Josephus repeats it from conviction of its truth; but in the compliments which some moderns pay to the leader of the Israelites on account of his military experience, and his acuteness of eye, and exquisite judgment in selecting his stations of encampment, some degree of unbelief in his divine mission, may, perhaps, lie at bottom. For probably the only thing which real connoisseurs in the art of war may think worthy of admiration, is the œconomy whereby he managed to maintain so great an army for the space of forty years in the Arabian deserts. But this he does not wish that we should ascribe to his wisdom as a man; for he tells us how God fed the people in an extraordinary and miraculous manner during all that period: And, in fact, after the coolest reflection, influenced by no partiality for religion, when I merely ponder this matter in my own heart, and for my own instruction in the truth or falsehood of religion, it

* *Spicileg. Geog. Hebræorum Ext. t. i. p. 179.*

appears to me that religion cannot possibly be false, if the books of Moses are ancient, and of his own writing. For of the numbers of the Israelites, no man can doubt, or allow himself to fancy that they may have been exaggerated, by the addition of a few cyphers to their real amount; because they are specified circumstantially and fully in two different enumerations, and at the same time more than once under each; besides that they are interwoven with the account of the building of the tabernacle, to which every individual was obliged to contribute half a shekel. But if Moses was actually able to maintain a nation that had 600,000 warriors, and, of course, consisted of two millions and a half of people, women and children included, for the space of forty years, in the Arabian deserts, and that upon Manna alone, which now falls but very sparingly in that region; unless he had contrived to delude them into the belief, that such was the correct amount of their public enumerations, while yet, in fact, their real number was not one-tenth part so great; and that, as their poll-tax for the tabernacle, he had received in all 301,775 shekels, each man paying a half-shekel; and that they really were in the wastes of Arabia, and daily eat the manna, while not a word of all this was true;—unless for 40 years they believed in his word, that they eat every day, and yet eat nothing; the Deity must, on that occasion, have done something altogether extraordinary; and that extraordinary procedure is to me a proof of religion, against which, with all the aid of impartiality and philosophical scepticism, I know not what to object.—This, however, does not properly

belong to our present subject, but merits a farther detail. I shall only add this remark concerning Moses. The mediocre merit of finding out, by the aid of mere human judgment, without divine inspiration, proper ground for encampments, that is, in such situations as that the people could subsist, considering the scanty supply of water which the country afforded, he does not once ascribe to himself; but mentions expressly, that his director, in this point, was his father-in-law, Hobab; whom, to use his own phraseology, he begged to stay with him, *that he might be to him instead of eyes*, from his knowledge of the wilderness, Numb. x. 29,—32. He is on every occasion the great man, but still not the great general, which some have made him in spite of himself, and contrary to all ancient history.

Even Joshua himself, with all his victories, may, perhaps, have been no very great general. The Israelites at Ai (see Josh. vii. and viii.) suffered a loss of 36 men, (I shall write the number in words, as is usually done in discharges, that it may not be thought an error of the press,) *thirty-six men*; and this trifling loss quite dispirited some hundred thousands—a sufficient proof that there had been no right arrangement of military affairs among them; for when all is properly ordered in an army, a panic will not arise from a mere trifle. (Let us only, to contrast the cases properly, recollect the great battle of Hochkirchen.)—Joshua once more attacked the city of Ai (a small place, to reduce which he first thought 3000 men sufficient,) with all his immense army, of which no fewer than 30,000 were thought necessary to form an

ambuscade. The inhabitants of the city were too inexperienced in war to perceive the artifice. They pursued a body of some hundred thousands, that made a feint of flying before them ; and while they thus left the city unprotected, the ambuscade rushed in, and took possession of it. This, at the same time, plainly shews, that the Canaanites were also quite ignorant of the art of war. Even after the time of Joshua, until the days of David, we find so many instances of panics, surprises, routs, (for example, that of the Midianites, *Judg. vii.*) victories gained by inconsiderable numbers, and extraordinary feats of personal prowess, which seldom have much effect against good discipline and order,—that we may very justly conclude the Hebrews, and all their neighbours, to have been, at least until David's time, very defective in real military knowledge.

ART. LXVII.

Law respecting Embassies.

§ 7. ON this subject we know but little. That the Israelites employed ambassadors, we see from the embassies sent by Moses to the kings of Edom and other countries ; but such embassies were rare—and they knew nothing of our modern privileged spies, who constantly reside at foreign courts, and whose persons and characters are sacred. This was so much the case, that David's embassy to the king of the Ammonites, sent to condole with him on occasion of his father's death, only excited the suspicion of the princes

of Ammon, that they were come as spies. From the sequel of the story, however, we see, that ambassadors *ought* to be held as sacred characters, because the indignities here offered to those of David, gave rise to a terrible war, with a view to avenge them.

ART. LXVIII.

Right of Passage through Foreign Territories.

§ 8. THE principles of Moses on this point we find mingled through his history. Although the Israelites could not easily get to Palestine, without passing through other countries, he nevertheless considered them as bound in duty to march through them without doing any harm; and therefore we find him requesting permission for this purpose, and promising not to tread down the corn-fields, and to pay for every thing, not excepting water, (for in warm climates, water costs money.) When the Edomites refused to grant him this request, instead of attempting to force a passage, he turned and took another course. It is true that a war arose in consequence of Sihon, king of the Amorites, refusing him a passage through his territories. It was not, however, properly speaking, because he did so, or even because he marched with an army of observation towards his frontier, (for the Edomites had done the same,) but because he proceeded beyond his frontier with his forces into the wilderness, and probably first attacked the Israelites. (Numb. xx. 14,—21. xxi. 21,—24.—

See also my remark on Deut. ii. 29. in my German version.)

This procedure of Moses is, in my opinion, quite conformable to equity. A nation is scarcely bound by the law of nature to allow another nation a passage through its country, since it may thus be unavoidably involved in the calamities of war.

BOOK III.

P R I V A T E L A W.

CHAPTER I.

INTRODUCTORY PARTICULARS RELATIVE TO THIS PART OF THE MOSAIC LAW.

ART. LXIX.

Of the Conservation of the Book of the Law, and the solemn Adjuration of the Israelites on their entrance into Palestine, to keep it.

§ 1. **I**T has been already observed in the first part of this work, (Art. III. IV.) that the sources of the private law of the Israelites are either to be traced to established usages of higher antiquity, or to be found in the laws of Moses. Concerning the latter, I here find it necessary to advert to the following particulars.

The book of the law, in order to render it the more sacred, was deposited beside the ark of the covenant, Deut. xxxi. 26.; and we find the same procedure likewise observed afterwards with regard to other laws, such as that which was made on the first establishment of regal authority, or, in other words, the compact between the king and the estates, 1 Sam. x:

25.; but I cannot precisely determine whether *that* was kept in the holy of holies beside the ark, or only in the holy place. The guardians of the law, to whom was intrusted the duty of making faithful transcripts of it, were the priests, Deut. xxvii. 19.

But Moses did not account even this precaution sufficient for the due preservation of his law in its original purity; for he commanded that it should besides be engraven on stones, and these stones kept on a mountain near Sichem, in order that a genuine exemplar of it might be transmitted even to latest generations, Deut. xxvii. 1,—8.

In his ordinance for this purpose, there are one or two particulars that require illustration. He commanded that the stones should be coated over with lime; but this command would have been quite absurd, had his meaning only been, that the laws should be cut through this coating; for after this unnecessary trouble, they could by no means have been thus perpetuated with such certainty, nor have nearly so long resisted the effects of wind and weather, as if at once engraven in the stones themselves. Kennicott, in his *Second Dissertation on the printed Hebrew Text*, p. 77. supposes that they might have been cut out in black marble, with the letters raised, and the hollow intervals between the black letters filled up with a body of white lime, to render them more distinct and conspicuous. But even this would not have been a good plan for eternizing them; because lime cannot long withstand the weather, and whenever it began to fall off in any particular place, the raised characters would, by a variety of accidents, to which writing

deeply engraved is not liable, soon be injured, and become illegible. No one that wishes to write any thing in stone, that shall descend to the most remote periods of time, will ever think of giving a preference to characters thus in relief. And besides, Moses, if this was his meaning, has expressed himself very indistinctly; for he says not a word of the colour of the stone, on which, however, the whole idea turns.

I rather suppose, therefore, that Moses acted in this matter with the same view to future ages, as is related of Sostratus, the architect of the Pharos, who, while he cut the name of the then king of Egypt in the outer coat of lime, took care to engrave his own name secretly in the stone below, in order that it might come to light in after times, when the plaster with the king's name, should have fallen off. In like manner, Moses, in my opinion, commanded that his laws should be cut in the stones themselves, and these coated with a thick crust of lime, that the engraving might continue for many ages secure from all the injuries of the weather and atmosphere, and then, when by the decay of its covering it should, after hundreds or thousands of years, first come to light, serve to shew to the latest posterity whether they had suffered any change. And was not the idea of thus preserving an inscription, not merely for hundreds, but for thousands of years, a conception exceedingly sublime? It is by no means impossible that these stones, if again discovered, might be found still to contain the whole engraving perfectly legible. Let us only figure to ourselves what must have happened to them amidst the successive devastations of the country in which

they were erected. The lime would gradually become irregularly covered with moss and earth; and now, perhaps, the stones, by the soil increasing around and over them, may resemble a little mount; and were they accidentally disclosed to our view, and the lime cleared away, all that was inscribed on them 3500 years ago would at once become visible. Probably, however, this discovery, highly desirable though it would be both to literature and religion, being in the present state of things, and particularly of the Mosaic law, now so long abrogated, not indispensably necessary, is reserved for some future age of the world. What Moses commanded, merely out of legislative prudence, and for the sake of his laws, *as* laws, God, who sent him, may have destined to answer likewise another purpose; and may chuse to bring these stones to light at a time when the laws of Moses are no longer of any authority in any community whatever. Thus much is certain, that no where in the Bible, is any mention made of the discovery of these stones, nor indeed any farther notice taken of them, than in Josh. viii. 30,—35. where their erection is described; so that we may hope they will yet be one day discovered. Moses' whole procedure in this matter, is precisely in the style of ancient nations, who generally took the precaution, now rendered unnecessary by the invention of printing, to engrave their laws in stones; only that he studied, by a new contrivance, to give to his stony archives a higher degree of durability than was ever thought of by any other legislator.

The place where these stones were to be deposited, was on one of the two mountains between which Sichem

is situated, in a very narrow vale. The present Hebrew text makes it Mount *Ebal* ; but in the Samaritan Pentateuch, it is the opposite mountain, *Garizim*, which the Samaritans held sacred ; and I think the latter is the true and correct reading, but I cannot here enter into the grounds of my opinion, nor indeed is it necessary, as Kennicott has already stated them in his Second Dissertation above mentioned. I shall only notice the reasons wherefore this district and this mountain was chosen. Sichem had been a sacred spot as early as the time of Abraham. It was at Moreh, which is but another name of Sichem, that God first appeared to Abraham after his entry into Palestine, and there the patriarch built him an altar, Gen. xii. 6, 7. There too, Jacob purchased a field, where he also built an altar, Gen. xxxiii. 18, 19. ; and at last he acquired the city itself by the arms of his sons, Gen. xxxiv. 25,—29. He bequeathed it to Joseph, Gen. xlviii. 22. whose posterity, as I have remarked in Art. XXVIII. continued in possession of it during all the time that the Israelites abode in Egypt. Hence the Israelites accounted it sacred, and the chief seat, as it were, of their new government in Palestine ; more especially, as the tabernacle of testimony continued for a long time stationed in that quarter ; and a city thus distinguished, and its neighbouring mountain, on which, perhaps, Abraham's altar may have still remained standing, was certainly a very suitable situation for the rearing of what was meant to form the everlasting monument or memorial of the law.

What was to be inscribed on the stones, whether

the whole Pentateuch, or only the book of Deuteronomy, or but the blessings and curses pronounced in Deut. chap. xxvii., or merely the ten commandments alone, has been the subject of a controversy, for particulars concerning which, I again refer the reader to Kennicott's Second Dissertation. In my judgment, the expression, *all the words of this law*, implies, at least, that all the *statutory* part of the Mosaic books was to be engraved on the stones, which is far from being impossible, if we make but a distinction between the stones and the altar, which must, no doubt, have been too small for that purpose. It is well known that, in very ancient times, nations were wont to engrave their laws in stone; and the Egyptians had recourse to stone pillars, (στῆλαις) for perpetuating their discoveries in science, and the history of their country. All these circumstances considered, together with this above all, that the Israelites had just come out of Egypt, where writing in stone was employed for so many *farther* purposes, (although, indeed, hieroglyphic characters were used, which Moses prohibited, because when not understood, they might give a handle to idolatry) I do not see why the phrase, *all the words of this law*, should not be left in its full force, nor what should oblige us to limit it, with Dr. Kennicott, merely to the decalogue.

ART. LXX.

Concerning the Altar which Moses ordered to be erected along with the Stones of Memorial on which the Law was inscribed ; and also, concerning the Sacrifices, Curses, and Blessings, by which it was to be ratified.

§ 2. MOSES farther commanded an altar of stone to be built, and sacrifices * to be offered upon it, when the stones of memorial, whereon the law was written, came to be erected. We must not, however, imagine, with the generality of expositors, that the law was engraven on the stones of the altar, for though both are mentioned together, they are by no means to be identified. I think, whoever reads with attention the passage in Deut. xxvii. 1,—9. and that in Josh. viii. 30,—35. will be satisfied of this ; but at any rate, the

* An altar of the same kind he had already caused to be built in the wilderness, on Mount Sinai, when he began to promulgate the law, in order to bind the Israelites to the observance of it by the aid of sacrifices, which were equivalent to oaths. The history of this transaction stands in Exod. xxiv. ; and in Heb. ix. 19. St. Paul enriches it with a circumstance taken from their antiquities. Of the blood of the victim brought to this altar, Moses poured one-half on the altar, and with the other half he sprinkled the Israelites and the book of the law which he held in his hand ; with regard to the observance of which he made a formal covenant with the Israelites, and hence called it the *book of the covenant*, as he called the blood of the sacrifice, the *blood of the covenant*—I state these particulars in this note, because I find them inadmissible into the text, without breaking the thread of the detail.

following circumstance is decisive. The engraving of the law on the stones could not have been effected without iron tools; but on the stones of the altar no iron was to be used, as Moses expressly enjoins, Deut. xxvii. 5, 6.; and Joshua, in his relation of the facts states that this was strictly attended to. The altar was erected for the sole purpose of immolating those victims, between which, when divided, according to the Oriental custom, the Israelites, by passing, solemnly bound themselves to keep the law that was inscribed on the stones. For among the Hebrews, all solemn covenants, and their most sacred oaths, were accompanied by sacrifices, betwixt the pieces of which, when divided, the parties passed, praying that which ever should prove perjured, might be in like manner dismembered*.

To these sacrifices expressly specified by Moses, Deut. xxvii. 6, 7. immediately succeeded the solemn transaction described in the following part of the chapter. From Mounts Ebal and Garizim, curses and blessings were called down on those that should violate or keep the law inscribed on the stones, which the whole people were obliged to confirm by a loud Amen; thus pledging themselves anew to its due observance, if not under the forfeiture of their eternal happiness, at least under the penalty of temporal evils of all kinds, both to themselves and their country. In this manner, then, did Moses employ sacrifices, oaths, curses, and blessings, to render his laws more sacred;

* See my *Illustration of the Epistle to the Hebrews*, chap. ix. 20. Note 209.

and it is observable, in regard to the curses, that those violations of the law are specially selected as the subjects of them, which men are guilty of in secret, or which God alone can avenge ; thus,

Ver. 15. The making an idol, and putting it in a secret place.

Ver. 16. The *striking* of parents, who will seldom complain, but submit to such indignities, rather than deliver up a child to justice ; especially defenceless, weak, and indulgent mothers.

Ver. 17. The removal of land-marks, which is generally done in silence and secrecy.

Ver. 18. The misleading the blind, who cannot know or tell who has been guilty of that base and wanton outrage.

Ver. 19. Unjust decisions against widows, orphans, and strangers, which the judge will certainly not own, and to convince him must always be very difficult.

Ver. 20,—23. Incest and bestiality, which for want of evidence are rarely cognizable by human tribunals.

Ver. 24. Murdering a neighbour secretly ; and,

Ver. 25. Taking a bribe to condemn the innocent to death, which is generally managed with all possible privacy ;—and to the whole, by way of general sanction, is annexed this general imprecation, *Cursed be every one who breaks any commandment of this law.*

Our modern legislators seldom act in this manner, deeming it enough to affix punishments to crimes. But we see that among the ancients, it was a more frequent practice to call in the aid of oaths and curses, and such like sanctions, in order to bind men's consciences to the laws. I know nothing that bears a

closer resemblance to the detail now given, than what Plato relates in his fiction relative to the Atlantic isle, which, according to him, was to form a commonwealth divided into ten kingdoms ; and were it not that other circumstances, such as the veneration of its people for Neptune, are too incompatible with such a supposition, we might be tempted to think that his Atlantians were the Israelites *. Concerning these islanders, Plato, towards the end of his *Critias*, speaks as followst : *This conjunct government of ten kings was prescribed by Neptune, and is contained in a law engraved on a brazen tablet†, kept in his temple. At stated periods, every*

* Mr. Fred. Char. Bar, chaplain to the Swedish embassy at Paris, has actually maintained this ; but on perusing his work, I do not find myself convinced. See his *Essai historique et critique sur les Atlantiques, dans lequel on se propose de faire voir la conformité qu'il y a entre l'histoire de ce peuple, et celle des Hebreux ; a Paris, 1762* ; and compare the Gottingen Literary Notices for 1762, No. 113.

† Those of my readers who are not much acquainted with Greek, must not be surprised if, on having recourse to the Latin version that accompanies the works of Plato, they find in it many things different from the translation here given from the original. The Latin version is somewhat faulty.

‡ Moses made his laws be written in stone, and then crusted over with lime. The brazen tablet would likewise have answered very well for preserving a law ; but in Plato's fiction, it seems an impropriety, of which, perhaps, he was not aware. The victim was to be slain without iron,—a real remnant of very ancient usages, such as we often find in sacrificial ceremonies, and belonging to a period when men were yet unacquainted with iron. But upon the same principle, Plato's table, to have borne the true stamp of antiquity, should not have been a brazen one ; for brass is an invention still more recent than copper, of which it is made : And the acquaintance of mankind with copper, has undoubtedly been later than with iron, which is so often

fifth and every sixth year alternately, in order to do equal honour to both odd and even numbers, these kings meet together, in order to hold deliberations and courts of justice; and their congress opens with mutual assurances that their whole procedure shall be just, and conformable to the law, which assurances are given in the following manner. In the court before the temple, there are oxen going loose. The ten kings, who alone are within the temple, after offering a prayer that God may be pleased to accept their sacrifices which are to be made without iron†, endeavour with sticks and cords to catch*

to be found exposed on the surface of the earth, and may probably have originally been discovered by means of the perpetual fires kept up in ancient times. See my (*Vermischte Schriften*) Miscellaneous Essays, Part I. No. 3. *Concerning the Period when Nations were ignorant of the Art of kindling Fire.*

* Among the Israelites a convention was held every seventh year for the purpose of reading over the law. This seems more rational than Plato's alternation of the fifth and sixth years; because in the seventh year, their lands lying fallow, they had leisure to hear the law read. Besides, this is a fact; and the other, but an instructive fable; and we ought, moreover, to remember, that Moses was a practical statesman, and the actual deliverer and legislator of a great nation; whereas Plato was but a speculative philosopher, who wrote on legislative policy, but without making, or having it in his power to make, the trial of giving laws to a nation. And hence in his procedure, there is a greater display of art and fancy, than of that simple and accurate adherence to nature, which is so conspicuous in the ordinances of Moses.

† In much the same style, Moses commands his altar to be built without iron. In sacred rites, we are fain to abide by original usages; and antiquity gives them as it were a certain stamp of veneration. The non-use of iron is a relique of a period when men performed divine worship, and were still without that metal.

an ox, which they carry to the brazen tablet, and slaughter hard by the inscription. On this tablet, besides the laws, there are inscribed terrible curses against transgressors. Having now dismembered the ox for the sacrifice, they next take a cup, and filling it with the blood, pour out a little on each limb, and then throw the pieces into the fire, and thereby consecrate the tablet; after which, with golden ladles, they take of the blood out of the cup, and casting it into the fire, swear that they will never wittingly violate the laws; and neither themselves govern otherwise than according to them, nor yet hearken to those who do. After this oath, which each of them pronounces for himself and his people, they drink; and having replaced the ladles in the temple of their god, they begin their banquet.*

May I here be permitted to remark, that legislative policy varies with time, or, to speak more properly, has its special dictates to suit each period in the progress of nations, as to suit each particular climate. In our days, it would not be advisable to cause a people swear to the laws, for, in general, it would prove of no avail, because they are, most of them, too inconsiderate to pay any regard to such an oath; while

* I know not whether wine, or of the blood that remained in the cup. This last, indeed, was the custom among many ancient nations, but must, in the case of ox-blood, have been done with extreme moderation, because otherwise it would have proved fatal.—See my (*Critisches Collegium*) *Critical Lecture* on Psalm xvi. 4. and also the book of Wisdom, chap. xii. 8. and Valerius Maximus, i. v. c. 26.—If they drank the blood itself, it is clear that Plato could not have had the Israelites in view in this description of the Atlantic islanders; for nothing was more frequently and strictly prohibited them than the use of blood.

those who affect to be religious, would be apt to have recourse to mental reservations, and such explanations of the oath as best suited them; and besides, to give any inlet to perjury, is very dangerous. The number of our modern laws, which were originally derived from those of the Romans, but to which every succeeding century has made more and more additions, is now so great, that even the most learned jurist can scarcely keep them all in remembrance: how then, could any people swear to them otherwise than *implicitly*, that is, with this strong salvo for perjury, *We twist not that such was the law?* under which evasion, every one would take care to remain as ignorant of the law as he possibly could. But even the man who is *not* ignorant of it, will not be able to keep such a multitude of precepts inviolably; and if every instance of violation, however trivial or unavoidable, is to constitute a breach of his oath, the man who has wittingly committed repeated breaches of the law, must by degrees become hardened against the fear of perjury; and no greater political misfortune, or that tends more to the corruption of a state, and of public justice, can be conceived, than when the contempt of an oath becomes general among a people, and engrafted, as it were, into their manners and habits of thinking. If a person has trespassed against any law, and *that*, amidst the ever-increasing number of our laws, even the best citizen cannot always avoid, it were much better that he should at once be considered as in so far guilty of sin, and liable to punishment, than that he should, by committing the crime of perjury with impunity, become instrumental in loosing the very

last bond of human society, which consists in our calling down divine vengeance on our heads, if we swear falsely.

In the infancy of nations, this point stood entirely on a different footing. An oath was then far more sacred; and it is only after refinement of manners, through a long course of ages, that nations become careless of it, and learn to despise it; and especially, if children, amidst an hundred other branches of education, receive no instructions in religion, or if adults, from fashion, ridicule it. In taking an oath, the ancients thought of nothing beyond what its words plainly expressed, as, for instance, that they would keep the laws as they were written; but in succeeding ages, mankind have devised mental reservations and expositions of oaths, on which I have often reflected with astonishment. We all reprobate the Jesuits on this score; but among both orthodox and heterodox Lutherans, and (who would believe it? I state it with extreme reluctance and regret,) even among the clergy, we meet with examples of the same loose morality. Let us only think of the many clergymen, who while at heart they do not believe the symbolical books of their church, yet swear to them; not to mention circumstances yet more base, which though I know, I may not here put on record. If, then, we would maintain the reverence due to an oath, our appeals to it ought to be unfrequent; and certainly we ought not to make people swear to laws *generally*, but merely in those cases where truth cannot be extorted by human punishments, and where an appeal to an omniscient avenger becomes indispensable.

Besides, there is no possibility of preventing the number and the burden of the laws from becoming greater and greater on a nation, the farther it advances in age and civilization. Time, chicane, new occupations, and new species of fraud, and, above all, refinement of ideas respecting injuries, (which in our day, for instance, makes those things sensibly felt as insults, and expiable only by death, at which our forefathers would have but smiled as trifles,) all conspire to render this unavoidable. To which we may add, the preposterous anxiety of weak legislators in many instances, to prohibit or ascertain by laws what is impossible. The earliest laws, from their simplicity, might have been kept, if men were but willing; but the man who could deliberately and conscientiously have sworn to keep the laws of Moses, would not be able to do so in the case of the Roman laws, or those of our own country, without either mental reservation, or very culpable inconsideration. For although he knew every one of them, yet it were impossible, considering their number and variety, that some accident, or some human weakness or other, should not occasionally tempt him to transgress them.

In regard, however, to the Mosaic laws, it is to be particularly remarked, that the oath of keeping them was administered only to the Israelites while in the wilderness, and to their immediate descendants, on their entrance into Palestine, (Exod. xxiv. Deut. xxvii. Josh. viii.) without being repeated in after times; that the curses of the oath were particularly levelled at those crimes which God alone can avenge;

and that Moses left open a way to liberate their consciences from the oath, namely, by means of offerings. Of this we shall hear more in the sequel. It is a point of great importance to be attended to; and the legislator who prescribes *many* oaths, ought to afford his people an opportunity to exonerate themselves from perjury, when it wounds their consciences, by means of an acknowledgment that shall not be attended with infamy. If he does so, the consciences of most perjured persons will never cease to torment them, until they make that acknowledgment; but if he does not, he hardens his subjects, and habituates them to perjury, and will be sure one day to reap the fruits of his imprudence. Many legislators, however, and more jurists, are unacquainted with the human heart, and seem never to have considered the consequences of multiplying oaths, and irritating conscience.

ART. LXXI.

Later Sources of Israelitish Law.

§ 3. IT may be easily supposed that in process of time, new sources of Israelitish law would necessarily arise, viz. from the decisions of the priests in doubtful cases, and from new statutes made by the kings. But how these decisions and statutes were preserved, I know not. I only find from 2 Chron. xix. 11. that in the supreme tribunal at Jerusalem, there were two presidents, of whom the one took the lead in matters that were to be determined by the divine laws, and the other, in those wherein it belonged to the royal

statutes to decide. It would therefore seem, that the royal law had, in consequence of the multiplication of royal statutes, become in process of time a distinct branch of Israelitish jurisprudence.

ART. LXXII.

Concerning certain Points of Morality inculcated by Moses in his Laws.

§ 4. THERE is one general precept delivered by Moses as a principle of civil law, and from which he deduces a variety of particular rules, that requires a special explanation, viz. that which we find in Lev. xix. 18. *Thou shalt love thy neighbour as thyself.*—However well we may understand the meaning of these words in philosophical and Christian ethics, they will not be found altogether free from obscurity, considered as the dictate of a civil legislator; in which predicament they seem to stand in the passage now quoted, when we take them in connexion with the context. A legislator cannot properly introduce a complete system of morals into his laws, because it is not in his power to appoint punishments for every breach of duty; and although I do not love my neighbour in my heart, that is no crime of which a magistrate can take cognizance. What, then, has this precept to do in the midst of a set of civil laws?

In the first place, let us remember that the civil legislator sometimes finds it expedient to introduce moral exhortations into his laws; nor is this censurable, unless it be done too frequently, and so lead the

citizens to regard the laws themselves as but mere exhortations. In fact, however, the above-quoted words, in a code of civil law, may have the following meaning, even for judicial purposes: "The law does not permit you to hate any man, nor will it excuse the injuries you have done him on this ground, that you are his enemy, and that he had previously injured you." To take an example from the very passage before us: if I hold it unjust that my fellow citizen should out of revenge accuse *me* for any breach of the laws, I should not, out of hatred, become *his* accuser, but shew him that love, which in like circumstances I require at his hand; and if the judge finds that I accuse any man from mere enmity, he has no occasion to enquire first of all into the truth of the charge, but may cut short the process, and at once dismiss me with my whole complaint; reminding me, by way of reprimand, "that he is not the minister of my passions, and that the law requires every man to love another as himself, and has instituted no court to listen to malicious informers in regard to crimes that do not concern them."

It is evident however, that the man who should act contrary to this fundamental principle, could not, by so doing, become an immediate object of punishment, (none being yet threatened by the law); but neither could he, on the other hand, from the law, promise himself any encouragement, nor any assistance towards the attainment of his ends.

Here, by the way, I may remark how strong a coincidence we find between the actual legislator, Moses, and the philosophical speculator on legislation, Cicero,

only that the latter is in some points too refined. In his first book, *De Legibus*, chap. 12. he lays down this principle: *Necessarium est ut nihilo sese plus (sapiens) quam alterum diligat. Quid enim est, quod differat, cum sint cuncta paria? Quod si interesse quidpiam, tantulum modo, potuerit, jam amicitiae nomen occiderit; cujus ea est vis, ut, simulatque sibi aliquid quam alteri maluerit, nulla sit.* What appears to me too refined here, is, 1. That he makes this the principle from whence he would derive the whole of law, and as he terms it, *jus naturæ*; whereas it is properly only a foundation of moral duty. 2. That he requires us to love another in precisely the same degree as ourselves, and even in regard to that blessing which but one of us can enjoy, to wish it him as earnestly as ourselves, and without one grain of bias towards our own side. 3. That while he is treating of laws, he intermingles with them the obligations of friendship.

I must here take the opportunity of offering some remarks relating to the usual acceptation of the word ער, (*Reg*) neighbour, in the Hebrew writings. It may then, in fact, mean either, 1. *a friend*; or, 2. *every one with whom we have to do, whether in regard to good or bad.* This last acceptation, which, however, I cannot here illustrate philologically, is so certain, that the Hebrews term even the man with whom we have otherwise no concern, our (ער) neighbour, at the very time when he is our adversary, and has, for example, a law-suit with us, fights with us, &c.; see *Exod.* xviii. 16. *Deut.* xxii. 26. *2 Sam.* ii. 16. *Prov.* xxv. 8. *Hab.* ii. 15. Now in this sense only, would I understand it in laws; for they do not prescribe the

duties of friendship, because we owe *them* to no one, and can pay them but to a few, and because it depends not on the determination of the law, who shall be our friend, but upon our own pleasure ; and indeed not altogether even on that, but on a reciprocal affection which we cannot ourselves controul. Besides, it would sound strangely, were a law to prohibit our giving false witness against our friend, or committing adultery with his wife ; for it would be equivalent to a permission of these crimes, in all cases where our particular friends were not concerned. In the passage before us, the connection expressly shews that *עַרְוָה* means not a friend ; for it is said immediately before, that we *should not bear spite against those who have injured us, nor become their accusers*, but love them as ourselves ; and certainly those, against whom we entertain any grudge, are not our friends. Let it be farther observed, that in ver. 34. of this same chapter, Moses extends this law of loving our neighbour as ourselves even to strangers ; of which more afterwards.

Among these universal and moral principles of the Mosaic law, we ought probably likewise to reckon the concluding prohibition of the decalogue, relative to covetousness of our neighbour's property. For reasons stated in another place, I must consider the ten commandments not as *moral* but *civil* laws*. There is, however, this apparent objection, " How, then, do

* Those to whom this assertion may appear strange, and perhaps not theological, I refer to a Program by Mr. Consistorial-Counsellor Ribov, on occasion of Mr. Plitt's taking his Doctor's degree, entitled, *Nonnulla de Decalogo Mosis*.

“ they prohibit wicked lust, that cannot be punished
“ by a court of justice ; for though God was king of
“ Israel, yet he judged by men, who could not see
“ the heart, and of course were unqualified to pro-
“ nounce judgment on its wicked lusts.” The solu-
tion of this difficulty appears to me to be this : The
prohibition in question is not a law attended with a
civil penalty, but a fresh exhortation, a moral axiom
of the legislator with regard to right and wrong ;
which whoever transgresseth, and is by outward acts
convicted of so doing, merits censure even in a civil
court ; and if God himself, the searcher of hearts,
pronounced this law, it is plain that without the aid of
worldly judges, he can and will punish the transgres-
sors of it.

CHAPTER II.

LAWS RESPECTING PROPERTY

ART. LXXIII.

*Concerning the Prohibition of the Alienation of Land,
and the Year of Jubilee.*

§ 1. I now proceed to collect those particulars which I find in the Mosaic writings relative to property. Concerning the nature of the thing itself, Moses gives no instruction, but pre-supposes the common ideas on the subject familiar; as indeed every legislator will do, who does not draw up an institute of law, but only delivers special statutes on points where the law of custom is either silent or unsatisfactory, and where new regulations become necessary.

Moses gave laws to a people that were yet without lands, and had them to acquire by force of arms. In respect, therefore, to landed property, there was no law of custom, nor ancient hereditary possession, to prevent him from proceeding upon the principle which he might think most expedient; and that principle was, that the conquered lands should first be divided by lot, and in equal portions, among the Israelites, and then become absolutely inalienable; continuing for ever the property of the descendants of the original

possessor. The statute on this point, stands in the xxv. chapter of Leviticus, and occupies the greatest part of that chapter.

In order to render this perpetual inalienability of lands more secure, and in a manner sacred, Moses adopted the principle of an Egyptian law, to which the Israelites had been already accustomed from their youth. In Egypt, the lands all belonged to the king; and the husbandmen were not the proprietors of the fields which they cultivated, but only farmers or tenants, who had to pay the king one-fifth of their produce, Gen. xlvii. 20,—25. In like manner, Moses declared God, who honoured the Israelites by calling himself their king, the sole lord-proprietary of all the land of promise, in which he was about to settle them by his most special providence; while the people were to be merely his tenants, and without any right to alienate their possessions in perpetuity, Lev. xxv. 23. They were, indeed, like the Egyptians to Pharaoh, obliged to give unto God two tenths of their produce; but in a way that must have rendered one of them not a very heavy burden; for the Levites only received one-tenth, as a compensation for their having themselves no lands, and as a remuneration for their services, (see Art. LII.); the other was destined for the purpose of enabling those who did not pay it in kind to provide entertainments to its amount during the high festivals.

From the want of Egyptian documents, I cannot with certainty maintain, but it appears to me highly probable, that the law relative to the inalienability of lands is altogether an imitation of the Egyptian plan,

and that in the time of Moses the Egyptians may likewise have had a year of jubilee. Were we *sure* of this, many things in the Mosaic law would become clearer to us ; but the period is so remote that records fail us.

It was, indeed, allowable for a proprietor to sell his land for a certain period ; but every fiftieth year, which Moses denominated the year of jubilee*, it returned without any redemption to its ancient owner, or his heirs. Hence Moses very justly observes, that this was a sale not of the land, but only of its crops, between the period of sale, and the year of jubilee. It was reasonable that the value of a field should be estimated higher or lower, according as it came to sale at a longer or shorter period preceding that year ; and Moses therefore admonished the Israelites, (Lev. xxv. 14,—16.) against taking unjust advantage of the ignorant and simple in this particular on such occasions.

This purchase of crops, however, must have been a very profitable speculation, because no man would lay out his money for such a length of time, and encounter all risks, (that of war not excepted) as he was obliged to do, unless he purchased at a very cheap rate. It was not in his power to rid himself of those risks, by abandoning the bargain, as a lessee may his lease, and

* From יובל, (*jobel*) a musical instrument, by the sounding of which on the 10th of October, the return of this year was announced ; or from *jabal*, which in Syriac means *to succeed*, (and hence *jubal*, *succession*) because then every one succeeded to the lands of his forefathers. The *derivation* of the word is doubtful, as is that of most terms of Hebrew law ; but its juridical meaning is certain.

re-demanding the money expended, because at the year of jubilee all debts became instantly extinguished. He would, therefore, always take care to purchase on such terms, as, allowing for the very worst that could happen, might secure him from loss, and even yield him some profit—at least the interest of his money, prohibited as all usury was by the law.

Hence, and as a consequence of the principle, that *the lands were to feed those to whose families they belonged*, there was established a law of redemption, or right of re-purchase, which put it in the power of a seller, if before the return of the year of jubilee his circumstances permitted him, to buy back the yet-remaining crops, after deducting the amount of those already reaped by the purchaser, at the same price for which they were originally sold : and of this right, even the nearest relation of the seller, or, as the Hebrews termed him, his *Goël*, might likewise avail himself, if he had the means, Lev. xxv. 24,—28.

The advantages of this law, if sacredly observed, would have been very great. It served, in the *first* place, to perpetuate that equality among citizens, which Moses at first established, and which was suitable to the spirit of the democracy, by putting it out of the power of any flourishing citizen to become, by the acquisition of exorbitant wealth, and the accumulation of extensive landed property, too formidable to the state, or, in other words, a little prince, whose influence could carry every thing before it.—In the *second* place, it rendered it impossible that any Israelite could be born to absolute poverty, for every one had his hereditary land ; and if that was sold, or he

himself from poverty compelled to become a servant, at the coming of the year of jubilee, he recovered his property. And hence, perhaps Moses might have been able with some justice to say, what we read in most of the versions of Deut. xv. 4. *There will not be a poor man among you.* I doubt, however, whether that be the true meaning of the original words*. For in the 11th verse of this same chapter, he assures them that *they should never be without poor*; to prevent which, indeed, is impossible for any legislator, because, in spite of every precaution that laws can take, some people will become poor, either by misfortunes or misconduct. But here, if a man happened to be reduced to poverty, before the expiry of fifty years, either he himself, or his descendants, had their circumstances repaired by the legal recovery of their landed property, which though indeed small, then became perfectly free and unincumbered.—In the *third* place, it served to prevent the strength of the country from being impaired, by cutting off one, and perhaps the greatest cause of emigration, viz. poverty. No Israelite needed to leave his home on that ground. Here, to be sure, the extraordinary case of any public calamity that might make the lands lose their value, must be excepted. But it was enough that in ordinary cases the law took away the chief inducement to emigration, by such a judicious provision as made it the interest of the people to remain contented at

* I would rather connect them with the preceding clause, and render, *Thou mayest not of thy brother, during the sabbatical year, rigorously demand payment, unless it were so with him, that he would not thereby become as a poor man among you, (but be well able to pay).*

home.—In the *fourth* place, as every man had his hereditary land, this law, by its manifest tendency to encourage marriage, rather served to promote the population of the country, than to impair it.—In the *fifth* place, the land being divided into numerous small portions, each cultivated by the father of a family, acquainted with it from his infancy, and naturally attached to it as the unalienable property of his family, could not fail, in consequence of this law, to be better managed, and more productive, than large estates in the hands of tenants and day-labourers could ever have been *.—And, *lastly*, this institution served to

* This is (and so I pre-suppose it) the well-known remark so often made on the policy of the ancient Romans, (whose laws were hostile to *latifundia*) and on the great fertility and population of Italy, at the time when a Roman could possess but a few acres of land, and even the greatest general held the plough with his own hands. I am aware that our rural æconomists will maintain in opposition to it, that the little patches of land in the hands of our peasantry, are worse dressed than the larger fields of our nobility and gentry. That, however, is not surprising; for in most places, the peasant is too much humbled and depressed by feudal and manorial services, to have either inclination or spirit to pay due attention to his own business, more especially considering that these services often deprive him of the very season, when he could dress his field to most advantage. But a peasant of this description the Hebrew husbandman was not: he was a free man, much like the Roman peasant, and not sunk to sloth and stupidity by oppression and contempt.—Our æconomists, however, at the same time admit, that many plans for the best culture of land will only answer on a small scale; and hence it is, that when a farmer, unwilling to stick servilely to the common routine, proposes having recourse to such plans, he meets so often with this answer, *The scheme is indeed good, but impracticable on a large farm.* In return for this concession, I am ready to own, that

attach every Israelite to his country in the strongest manner, by suggesting to him that, if he had to fight in its defence, he would at the same time be defending his own property, which it was, moreover, out of his power to convert into money, wherewith he might betake himself to a more peaceful habitation elsewhere.

The houses that were on the lands, and also in the Levitical cities, were by this Mosaic law placed upon the very same footing with the lands themselves; the *latter*, because they formed the sole inheritance of the Levites; and the *former*, because they belonged to the lands, and probably had a garden or vineyard around them. On the other hand, houses in *other* cities might be sold in perpetuity; and the seller enjoyed the right of re-purchase but for one year; of which if he did not avail himself within that period, it then ceased, Lev. xxv. 29,—34.

The law prohibiting alienation of lands admitted, however, of two or three exceptions:

1. If a man had by vow consecrated a field to God, he had it in his power to redeem it, on paying the value of the crops until the year of jubilee, and one-fifth more to the priests. If he did not this, the field fell to the priest at the year of jubilee, Lev. xxvii. 16,—21.

The legislator would seem to have represented it to himself as a case hardly to be expected, that from hatred of his children or heirs, a man would consecrate his field, and leave it unredeemed for any longer

on a large farm some things are practicable, which on a small scale it is in vain to attempt.

period ; or else he would have made some provision to meet such a case. There was actually, however, in his law, an enactment already made, which would have had the effect of frustrating such a base attempt ; for as according to Lev. xxv. 25. the *Goël*, or nearest relation, had a right to redeem the crops for his own behoof, he could not in such a case have been likely to leave that right unexercised. The fifth that he had to pay over and above the price of the crops could not frighten him, because, as we have seen above, the crops were generally purchased very cheap, so that even after paying the additional fifth, he might still, perhaps, be a gainer. On the whole it appears, that after the law, wherein Moses warned every man under a vow to redeem the crops of the land he had vowed before the year of jubilee, a case could hardly have arisen, where the carelessness of the owner and his whole family could have been so great, as to allow it to devolve to the sanctuary for ever. To prevent this, indeed, seems to have been the object of Moses, in appropriating to every family its own field in perpetuity, and in withholding from the tribe of the priesthood all possession of landed property whatever. But why he did not rather prohibit such vows altogether, or at any rate declare them at an end with the year of jubilee, even without any redemption, I cannot say. The cause, perhaps, lay in the people's way of thinking.

2. In the above-quoted passage, Moses presupposes something concerning which he had nowhere given any previous command, to be well understood, as a relique of more ancient consuetudinary law, viz. that a devoted

field (*Cherem*) remained for ever sacred to the Deity ; for he says, a field vowed and unredeemed, *if it be again adjudged in the year of jubilee, shall be sacred to God, even as the devoted field*, ver. 21. But whether this devoted field fell to the priest, as Moses ordained in the case of that offered by vow, or whether it remained untilled, and became a common, I cannot determine. The latter, however, at present appears to me the more probable supposition, particularly when I reflect on the passage where David, in language manifestly alluding to the devotement of fields, execrates with all the fervour of poetry the place where the Israelites were discomfited, and Saul and Jonathan slain, 2 Sam. i. 21. *Ye mountains of Gilboa, on you fall neither dew nor rain, and be ye consecrated fields. Consecrated* seems here to be, *what no man cultivates*.—*Cherem*, that is, *consecration*, or *devotement*, meant, besides, what consequences ensued, when for any heinous and common crime, a family or a city was utterly destroyed. Their inheritance was consecrated to God, and none of those that might have escaped, nor any of their posterity, could ever assert any claim to it, or indulge any hope of having it restored. When I come in the sequel to treat of punishments, I shall have more to say on this subject.

3. The kings seem to have imitated this in their confiscation of the estates of state-criminals, (see Art. LIX.) As, however, they were themselves several centuries posterior to Moses, the consideration of that dangerous practice does not properly belong to the Mosaic law.

I do not find any statute that prohibited an Israelite

from exchanging his inheritance; nor was there, indeed, in such exchange, unless when it transferred a person to a different tribe, any thing contrary to the intention of the law, which was to prevent his latest posterity from ever being altogether denuded of their land. Perhaps, therefore, it was a piece of mere crossness in Naboth to refuse, in such uncourtly terms, not only to sell, but even to exchange his vineyard with King Ahab, 1 Kings xxi. 7. At the same time, it is impossible to vindicate the despotic measure, to which the barbarous wife of this too obsequious monarch had recourse in order to obtain it; for certainly Naboth was not *obliged* to exchange his vineyard, unless he chose.

In the xxxvi. chapter of Deuteronomy, ver. 4. we find a passage which does not admit of satisfactory explanation from the *written* law of Moses concerning the jubilee. The tribe of Manasseh express their fear lest, if the daughters of Zelophehad should marry into another tribe, and carry thither the inheritance of their father who had died without sons, that inheritance would pass away from the tribe of Manasseh, (all this I understand, but now comes the difficulty,) *and at the next jubilee be annexed to the inheritance of another tribe.* It is not clear from the Mosaic records, how the coming of the jubilee could have any effect in bringing an inheritance to a tribe, which had so long before obtained it by marriage. For if the daughters of Zelophehad married without their tribe, they, *ipso facto*, bestowed their inheritance upon a stranger; and how then could the jubilee effect anew the dreaded change? Probably there were then *new*

tables framed, in which every one's land was marked ; but as the written laws of Moses do not mention this, and yet the Manassites presuppose it as understood, there must have existed besides the Mosaic statutes, a consuetudinary law relative to the jubilee, of which, indeed, in this very article, we have found a trace, under the *second* exception. In the wilderness, where the Israelites had no land, that law could not have had its origin, nor can it have been derived from their progenitors, Abraham, Isaac, and Jacob, for they were wandering herdsmen ; and hence I am led to the conjecture already stated, that the Egyptians may have had a year of jubilee. It is much to be regretted, that we know no more of their laws.

I have still to advert to two *minutiae* on this subject. The *one* is, that the law of the jubilee to sell any thing in perpetuity, is termed *selling it*, לצמיתות, (*Lazemethuth*, that is, *to silence* * ; the meaning of which phrase is, that in future the sale could never be spoken of, with a view to redemption, the seller having subjected himself to perpetual silence on that subject. The *other* relates to a point of controversy yet undecided, viz. Whether the forty-ninth or fiftieth year was the year of jubilee ? This, however, rather belongs to the Hebrew antiquities than to the questions that are of importance to their jurisprudence ; for the *spirit* of the law remains the same, whichever of the two opinions be adopted ; and we may safely allow the *letter* to continue here unascertained, because we do not learn the Mosaic laws in order to obey them, or even to celebrate a jubilee.

* I here refer to the original sense of the Arabic *Zamit*, (צמית.)

ART. LXXIV.

Concerning the Sabbatical Year.

§ 2. THE law concerning the year of jubilee could scarcely have failed to prove a source of endless confusion and controversy, if the fields had been under culture during the seventh year. For either on account of seed sown, or of the necessary preparation for that purpose, or of produce still remaining on the land, claims of abatement must always have taken place, which no general law could in every case have satisfactorily adjusted. The object of the jubilee was to put an end to all disputes relative to money and property, by the extinction of all claims of debt, or by what the Romans termed *tabulæ novæ*; but how imperfectly could that object have been attained, if it gave birth to new claims and lawsuits? It is needless, however, to expatiate or refine on these difficulties, and say, that the jubilee commenced on the 10th of October, when most of the fields would be clear, and but few of them dressed; for Moses has guarded against them all by a much more effectual provision. For the law concerning the year of jubilee is closely connected with *another* law, which, for that reason, I will here take an opportunity to illustrate; though I might otherwise have referred it to another place. By that law which is recorded in Lev. xxv. 1,—8. during every seventh year, and during the jubilee-year besides, that is, if we make *it* the fiftieth year, and not the (7×7) forty-ninth, the whole land remained untilled, and lay fallow. The corn-fields

were neither sown nor reaped. The vines were unpruned, and there were no grapes gathered. Whatever grew spontaneously, belonged alike to all, instead of being the property of any individual; and the poor, the bondman, the day-labourer, the stranger, the cattle that ranged the fields, and the very game (which no man durst then scare from his fields,) could assert an equal right to it. In short, during this year, the whole of Palestine continued a perfect common, Lev. xxv. 1,—8. In order to render this law the more sacred, Moses termed this year, *the year of the Sabbath*, declared the rest of the land consecrated to God, and the vines (as if under a vow) *Nazarites*, to which a knife must not be applied. (Compare ver. 5. of the above passage with Numb. vi. 5. which contains the law of Nazaritism.)

If those are right who place the jubilee in the fiftieth year, there must every half-century have been two years of rest in immediate succession. For the forty-ninth year was a seventh year, and, of course, a year of rest; and in the fiftieth year, the land was in like manner *to keep holiday*. And however paradoxical this may seem, it does appear to be the meaning of the Mosaic statute. In this case, then, nothing certainly could have been easier than to terminate all disputes relative to the restitution of land, when it was for two years unsown. But then, again, other difficulties will (to us at least) become greater.

To no one can it appear surprising that the law should have enjoined the resting of the land at certain periods. Without entering into the œconomical question whether such rest be necessary or useful, I shall

merely observe, that our laws in like manner enjoin it, with this great difference, however, that with us only a *part* of the land lies fallow at a time; whereas by the Mosaic statute, the *whole* country did so at once; the natural consequence of which would seem to be, that during the seventh year a great scarcity must have arisen, and at last absolute famine have followed. A writer, whose essay on this subject I read several years ago in a French journal, though I cannot at present recollect the place, acknowledges this so very triumphantly, as to deduce from it, in the Warburtonian style, a proof of the divine mission of Moses; for he is of opinion that a country so circumstanced could not absolutely have subsisted, had not God regularly fulfilled the promise given in Lev. xxv. 19,—21. and sent every sixth year a crop so abundant as to serve the people until the ninth*.

B b 3

* This proof of the divine mission of Moses, is, like most of those of Warburton, very equivocal, and would in plain English amount to this: "This law is so extremely absurd that he who gave it must necessarily have been sent from God, because none but God is capable of counteracting the destructive effects of such a law." But here the unbeliever in the divine mission of Moses will reply to its *subtile* defender, "I certainly do think that no country could subsist under such a law, and I readily grant you, that in its own nature it must have been most pernicious. But from that very circumstance I infer that God could *not* have sent Moses. For here it happened to Moses as it has often happened to other legislators: he did not advert to consequences. and enacted an impracticable law. This mistake he fell into the more easily, that it was in the wilderness, where the Israelites had no cultivated fields, that he gave his laws —laws concerning things he did not understand; and of which the

But this does not satisfy my mind. In the common course of Providence, the superabundant harvest will not always return so periodically; and if, in the land of Israel alone, every sixth year turned out so extremely fruitful, I could scarcely regard such an event in any other light than miraculous. But would God have bound himself to perform this periodical miracle, which was quite unnecessary, unless Moses had given a law under which the people could not have otherwise existed? In other cases, the miracles of which we read in the Bible, are not so periodical; and this one appears to me so improbable, that I cannot divest myself of the suspicion that, in ver. 21. of the chapter in question, Moses originally wrote, not *in the sixth year*, but, *in six years*; and merely promised that in the course of six years God would send such good crops, as that, during the seventh and eighth years, they would still have a supply from them remaining. But allowing this conjecture of mine to be false, the

“direful consequences, or rather the impossibility, could not be manifest to himself during his whole life-time, because he died in “the wilderness.” Should the Warburtonian defender of Moses think fit to proceed in his gratuitous demonstration of his mission, from the incomprehensible absurdity of his laws, and say, that “the “Israelitish nation had *actually* subsisted under the law for many “centuries, and that therefore God must have fulfilled the promise “of Moses;”—his opponent might rejoin, “It did, no doubt, so “subsist; but then it was just because this law was not observed: “for indeed it repealed itself by its own impracticability.” For that this law concerning the sabbatical year was very frequently transgressed, and for even some centuries not kept at all, we shall see in the sequel—Advocates of this stamp ought to beg Religion’s pardon—they are too unnatural;

divine promise of extraordinary fruitfulness during the sixth year, would still be insufficient to prevent all the destructive effects of the law. For, according to ver. 18. it is hypothetic and conditional, and presupposes obedience to the divine commandments on the part of the Israelites. But what if the people proved disobedient, and the extraordinary blessing of the sixth year of course failed? The law of the sabbatical year, in such a case, must have overwhelmed them with the extremity of famine, and that would have been equivalent to a compulsion upon them to trespass God's commandment afresh, and to till their land in the seventh year, that they might not die of hunger.

The consideration of these difficulties led me at last into the opinion (which I originally submitted, eight years ago, to the Royal Society of Gottingen, whereof I was then a member*) that this law might have had for its object the accumulation of corn in stores, and, of course, the direct prevention of famine, and thus ought to be regarded as a dictate of the

B b 4

* See my *Commentatio de lege Mosaica paradoxa, septimo quovis anno omnium agrorum ferias indicente, in solenni Soc. Reg. Conventu, die 13 Nov. 1762. recitata.* It is the ninth of those Essays, which, because the publications of the society were then interrupted, I printed together in a collection, entitled, *Commentationes Societati Regiæ Scientiarum Gottingensi, per Annos 1758-1768, oblatae.*

I observe that a German translation of it appeared at Bern in 1765, in which the translator, whom I know not, has very often misrepresented my meaning, from his ignorance of certain Latin expressions, which are not at present fashionable, and occur only in ancient authors. I may add, that in his hurry he has changed my very name, and rebaptised me John Jacob Michaelis.

greatest wisdom. The great importance of storing up corn, Moses must have known, from the history and practice of Egypt, where Joseph had given such a remarkable example of it, as was probably imitated by the Egyptians for many ages afterwards. It is, therefore, likely, that he might wish to introduce the same salutary measure of œconomy among the Israelites, although he did not chuse to enforce it by a direct law, because laws which directly impose œconomical restraints are seldom kept.

If during the seventh year all the land is to be waste, and without being cropped, the *natural* consequence will be, that every one that has land, and likewise every opulent corn-dealer, will during the preceding years collect a large stock of grain against that year. The legislator has no occasion to suggest this; whether he speak or be silent, it will be done. For as every one must know beforehand that he cannot then have any crop, he will, of course, take care to make provision accordingly. However solemnly God may promise him that the harvest shall in the sixth year be peculiarly plentiful, he will not at a time when the dread of famine is dealing with him, have so strong faith as to rely altogether on this, but think it prudent to save or collect a little during the previous years. And this anxiety to accumulate corn will be sure to be heightened by the desire of gain; because, during a year when there is no crop, the price of grain must inevitably rise, particularly in the vicinity of trading places, such as were Sidon, and other ports of Phœnicia, which, though they had ships to victual, did not practise agriculture; so that a

money-making man could not do better than monopolize corn, considering what great profit it might yield him in the seventh year. The very same motive, therefore, that impels our corn-dealers to monopolize grain, much to the advantage of the country, although the people curse them for doing so, would prompt every Israelitish husbandman to accumulate the produce of his own farm, and as much besides as he could, fearless of being accursed. And to this he would have this additional incitement, that he could make no profit by lending out his money, because taking of interest was prohibited, so that the corn he turned into money brought him no advantage, whereas what he preserved in his granary might bring him a great deal; and to him even a small profit was greater than to us, because he had not to allow the interest which the capital in money would have borne.

A good œconomist commonly saves something; and this law would lead to the saving, not of money, but what is of much more consequence to a country, of the fruits of the earth; and in this respect, at least, force every one to be a good œconomist. The advantages of such procedure are many.

In the first place, by this saving of produce, the people were placed beyond the reach of famine, in the event of a failure of the crop. In the present age, Europe does not soon experience the pressure of extreme scarcity, because commerce is universal, internal police improved, and every country at least rich enough to be able to purchase foreign grain. But if we look back only a few centuries, we shall find that famines were very frequent in Europe. It is now only,

at most, dearth that we feel, which indeed may bear hard on the poor, and drain a country of money, but differs from real famine in this material respect, that people can always have bread for money.

The means commonly proposed by our political œconomists to prevent famine or dearth are good, but at the same time too weak. They advise the establishment of magazines by the sovereign; and the advice is no doubt extremely rational; but then it is not sufficient to relieve the distress occasioned, I will not say, by the want of a *whole year's growth*, but even by any general deficiency in the crop of an extensive country. *Süssmilch* makes this remark*, even with regard to Prussia, in which the public magazines are far more excellently regulated than in any other country of Europe. If we do not believe him, we may thus make a calculation for ourselves. In Prussia, before the war (for of its present population I have no account) there were 4,700,000 souls, women and children included. For every grown person, I will allow only twelve of our Gottingen *himbtenst*†, which amount to about eight Berlin *scheffels*, and, at the medium price of corn, may be worth eight rix-dollars. Now this allowance will not be too great, if we reckon nothing for children, and all under 18 years of age. Supposing then one-half of the inhabitants of Prussia adults, corn will be required for the country to the amount of 18,800,000 rix-dollars (2,350,000×8.)

* In his "*Gütliche Ordnung der Veränderungen des menschlichen Geschlechtes im Leben und Tode.*"

† See the tables of measures, &c. in vol. i.

and this, as every good œconomist must admit, is a very moderate calculation. Yet it forms a very large sum for a king to lay out in corn alone ; and what would be the additional expense of building magazines to hold it ? Before the last war, the Prussian treasury might perhaps have borne the outlay of such a sum, if it but returned—does the reader suppose I am going to say, the interest ? No ; that was not to be thought of where the sum was so great, unless the king chose, when a crop failed, to let his people be ruined, and to bring their hatred on him for his seeming avarice ; but if it only occasioned a loss of a few per cents. yearly. Now, superintendants are necessary ; labourers must be paid for turning the corn ; the magazines will require occasional repairs ; vermin must have their allowance, and even without that waste, the bulk diminishes every year ; so that when the stock is so large, a loss of a million of rix-dollars in expense and waste may be calculated upon. I am no œconomist myself, and cannot depend fully on any calculation of my own ; but from the *Transactions of the Society of Naturalists at Zurich*, I find, that there is a loss on corn, the first year, of from five to seven per cent. ; the second year, from two to two and a half ; and so on, diminishing yearly ; and that in the course of twenty years, notwithstanding the greatest possible care, it loses, by mere shrinking, to the amount of twenty-five per cent. Now, suppose the king of France, who has twenty-two millions of subjects, and whose magazines would cost at least eighty-eight millions of rix-dollars, to lose every year, as would be the case at the above rate, no less than from four to five millions ; whence

could so great a sum be taken? If borrowed by the government, its annual interest to be provided for, would amount to 4,400,000 rix-dollars; in addition to which, for keeping up the stock and magazines, an yearly impost to the extent of 9,000,000 more would be requisite; and perhaps a greater sum, if the management were bad, and the persons intrusted with it dishonest.

From the want of magazines we should, instead of that scarcity and dearth, of which we at present complain, often experience absolute famine, were we not secured against so great a calamity by the exertions of that most obnoxious, yet most useful, class of men, whom we contemptuously denominate Corn-Jews*. But for them, either from the want of purchasers in good years, less corn would be raised, and thus agriculture neglected or abandoned; or else the corn that is raised, from being too cheap, would be badly kept, or extravagantly wasted, particularly in feeding cattle, or converted into brandy, (or as the English not improperly term it, *poison*,) or sold out of the country. Now these people who, in the hope of gain, buy up corn in cheap seasons, still keep up its price in some degree, and so give the farmer encouragement to raise it by taking it off his hands, without which he would, to his utter ruin, be obliged to sell one-half of his produce at a very low price, and keep the other half as unprofitable lumber in his barns, without being able to turn it into the money which is indispensably necessary for his improvements. They keep in the country a great part of the corn that is raised, and would other-

* See Appendix to the present Article, p. 400.

wise be exported, and probably sold back to us at double price in the event of scarcity. They prevent the superabundant stock of it from being through inattention neglected and wasted as of no value, or converted into brandy, or applied to the feeding of swine ; of which the consequence would be a famine, whenever the crop failed, from their being no corn in store. Sometimes, it is true, they sell their stored corn in a time of scarcity, at a most exorbitant profit ; but sometimes, on the other hand, when a scarcity is too long in coming, they sustain a great loss, because the capital that lies on the corn bears no interest, and the corn must be attended to, and will, notwithstanding, shrink in bulk.

I look, therefore, upon these Corn-Jews as useful, in so far as they guard us against the greater evil of famine ; but then this security against that evil is connected with another great evil. For as the stock of grain is thus in the hands of a few individuals, who have accumulated it in the prospect of great gain, there often arises, after the least degree of failure in the crop, and while there is yet a real superabundance in the country, an artificial scarcity, highly oppressive to the poor, and detrimental to manufactures, which could never take place if the stock were in small parcels, in the private granaries of numerous farmers. Hence these few monopolists become odious, and where the people are formidable, they are in danger, especially in despotic, and in very free countries, of being attacked and plundered, whenever the prices rise in consequence of a bad crop, and when they are *not* to blame.—The corn-mobs in England a few years ago shew this.

We should have the best of all securities against scarcity, if, instead of laying by money, every farmer could be prevailed upon to store up a quantity of grain. Were this universally done, there would soon be a stock sufficient to supply the country, not for one year, but for two or three. For it is a much easier matter for a farmer to save corn to the value of fifty or a hundred rix-dollars, than for a king to buy and store it up to the amount of some hundred millions. If there happens to be a remarkably abundant harvest, he will not so much as need to deduct his usual allowance of reserve, but only to store up the overplus of the average crop; and if numbers do this, it will prevent the fall of corn below the fair price, which to farmers makes a singularly good season a more formidable evil than even the miscarriage of a crop. There is, besides, this advantage attending this mode of storing corn, that at times when no other operations can be carried on, the farmer and his people can themselves perform the necessary work of turning and dressing it, &c. for which both the prince and the Corn-Jew must keep hired servants in their magazines. All these things, on the contrary, he does at no expense: his magazine costs him neither salaries to managers, nor wages to day-labourers; nor does it require any particular building, his own barn being sufficient. And the corn being his own, every requisite operation about it will be done much more faithfully and carefully by his own family, than where strangers must be employed for hire.

Now it was to the storing up of corn in this way, that Moses, by his law concerning the sabbatical year, in a manner constrained every householder that was

not a slave to extravagance and idleness ; and he thus provided against any future famine, even better than could be done by Joseph's establishments. And if in the seventh year, the corn became scarce through the negligence of some who had made no store, or by its having been bought by the Phœnicians, who, with a great trade extending over half the globe, had little agriculture of their own, the profit was not confined to a few Corn-Jews, but was shared by every prudent farmer, who now reaped the reward of his œconomy, and added to his wealth.

How wisely this plan was contrived, we shall perceive still more clearly when we consider the situation of Palestine. That country had on one of its frontiers the great commercial city of Sidon, and other trading towns belonging to the Phœnicians. And had not every Israelite foreseen with certainty the want of a crop every seventh year, and thus had the prospect of then selling his saved stock to great account, the overplus of every crop would have been bought up for a trifle by the Sidonians, and other Phœnician merchants, just as those of Holland now buy up the corn of Poland, Livonia, and Germany, and store it for sale. These merchants would have become Corn-Jews, have accumulated grain in their magazines, and, on the failure of a crop, have re-sold the Israelites their own corn, at perhaps four times the price it cost them. Against the Corn-Jews of our own country, we may, if they become too unreasonable, enact laws to compel them to sell their grain at a moderate profit ; but against those of another country, our laws can be of no avail.

APPENDIX TO ART. LXXIV.

Concerning Corn-Jews, and the Monopoly of Grain.

IF I might be indulged in an *excursus*, I would fain explain my opinion concerning these people, and the name here given them; which, unjust as I think it, I adopt in conformity to its use in common life, and also to that of its equivalent term, *Dardanarii*, in the Roman laws. But to prevent all ambiguity, we must distinguish between *two* very different classes of people, each of them again divisible into several species, yet all indiscriminately branded with the opprobrious names of *Dardanarii* and Corn-Jews; and we shall then form a very different judgment concerning them.

1. In the first place, we denominate those people Corn-Jews, who, when a scarcity has actually taken place, buy up corn, in order by increasing the scarcity to enhance the price, and to bring it to the rate at which, from their lust of gain, they would fain see it arrive.

For example, in the country where I live, the medium price of rye, and that under which both townsmen and countrymen best subsist, is a *gulden* per *himbten*. If the price is lower, the farmer is a sufferer, and receives, perhaps, less for his grain than it costs himself; and if, again, it rises to a dollar, there is then, indeed, no scarcity, but still a high price, such as keeps our servants orderly and obedient, because they begin to set a value on their master's bread. But when it comes to two *guldens*, then scarcity, pro-

perly so called, *has* taken place. Now suppose that any gentleman or farmer, who has a great quantity of corn in store, (say 100,000 himbtens, by way of example) begins, in consequence of the failure of a crop, when the corn is coming but scantily to market, and is already worth *two* guildens, to buy it up at that price, and perhaps two groschens more, in order to give the signal for a fresh advance, and to augment the scarcity so far as that he may sell his stock at a still higher rate, perhaps at two dollars, (as was the case for some weeks in the year 1698); suppose, in a word, that by thus monopolizing the grain, he creates a scarcity where there should have been none, and a great scarcity too, and that he deludes buyers into the belief that there is no more corn to be had, and sellers *in* that belief to ask a price which they would never have thought of;—such a person is a Corn Jew, in the worst sense of the term: I regard *him* as a pest of society, and certainly have no desire to stand forth as his apologist. Against him, laws are reasonable and necessary; and were there none such in being, it would be natural to abandon to the rapacious fury of the hungry populace, the author of such universal distress, as to the poor may terminate in absolute famine. Corn-Jews; however, of this description are not easily to be found, since commerce became so extensive in Europe. No man has it now in his power to make such attempts, (unless in countries where the importation of foreign grain is prohibited, such as England,) for by forestallment he would but deceive himself, because the price of corn, if tripled, would soon bring abundance of it from all other quarters;

the failure of a crop never being universal throughout the world ; and the speculations of the importers, misled by his roguery, being thus blasted, would, at the same time, totally frustrate his views. In the course of *my* life, at least, (and I was born in 1717) I have never seen any Corn-Jew of this description in Germany, and I suppose if such a one did make his appearance, he would come badly off. Petty forestallers in this way, there may, perhaps, often be ; and, fortunately, there are laws to keep them in order ; but in the present state of commercial intercourse that connects the world, they can never do much mischief, if the introduction of foreign grain be not forbidden.

2. The farmer, or proprietor of land, who in good seasons accumulates corn, and keeps it until it reach a certain price, is likewise commonly called a Corn-Jew ; and the Pandects expressly declare such a person a *Dardanarius* ; lib. xlvii. tit. 11. *De Criminibus, extraordinariis*, leg. 6. *de Dardanariis* ; “ *Præterea*
“ *debebis custodire, ne Dardanarii ullius mercis sint, ne*
“ *aut ab his, qui cõemtas merces supprimunt, aut a locu-*
“ *pletioribus, qui fructus suos æquis pretiis vendere nol-*
“ *lent, dum minus uberes proventus expectant, annona*
“ *oneretur.*”

(1.) Now this practice may be carried on to different degrees of extent. For instance, if the farmer or proprietor does not chuse to sell his rye when the price has fallen to half a gulden, or even, as in 1769, to half a dollar ; or again, as in some ruinously good years, so low as half a gulden ; it would be quite absurd in that case to call him a Corn-Jew. For at such a price he cannot go on, because it is less than the

raising of it costs him ; and if he is to be so denominated, there is then no medium between the Corn-Jew and the bad œconomist, who foolishly throws away his property ; but a man *must* be one of the two.

(2.) But if again corn has reached its usual medium price, or advanced somewhat beyond it, and still continues to rise, every groschen of advance in some measure alters the case. If, for instance, our himbten, instead of sixteen groschens, which is the medium price, is worth twenty, or twenty-two, and the person who has a stock in hand waits till it reach a dollar, it is quite a fair profit that he thus expects to make on his hard-earned property, and every justly-thinking man will grant it him the more willingly, because, much to the benefit of the public, he has kept the corn which prevents famine ; and as, in so doing, he has incurred both expense and risk, he has a right to calculate both upon interest of capital, and the loss he would have sustained had the price sunk, and consequently, to look for a very considerable advantage, as is but reasonable in hazardous speculations. In the meantime, he will become more and more obnoxious to his fellow-citizens every day, and for every gröschen of advance in the price of corn, as long as he refuses to sell, he will bring down a shower of fresh execrations on his head. And should corn suddenly fall, they will exult over him with malicious satisfaction, and consider him as now visibly punished by God, especially if the corn-worm begin to appear in his stores. And all this, perhaps, his heart deserves, and that avarice whence his proceedings flow ; but still his proceedings themselves by no means deserve such

requital; and whatever *Ulpian* may have said on the subject, no wise legislator ought to censure them; for were there no such storers of corn, there could never be any stock in hand when a scarcity occurs, and a famine would be the consequence. If, on the other hand, the price rises still higher, as with us, for example, from a dollar to two guldens, or twice the medium price, the withholding of corn from the market then becomes really a piece of cruelty; but still the legislator has no business to take notice of it, but to wait patiently, as there are always some people who, with great risk to themselves, reserve a treasure for the country, against such a time of its greatest need.

(3.) The case alters anew, if this same person buys up other people's grain, to store it up. If he does so, when it is under our medium price, of a guilder, he is then, and most probably much to his own private advantage, a great and wise benefactor of mankind. For if he did not thus in some measure keep up the value of corn, it would, by reason of the disproportion betwixt the fulness of the market, and the smallness of the demand, sink still lower. The farmer would, of course, suffer; and if things were to continue in the same state for some years, he would be under the necessity of either running off, or (what would be more prudent) applying his farm to a different purpose: at any rate, he would, for certain, neglect the raising of corn from the poor encouragement he had experienced, and the consequence would be a famine whenever the failure of a crop happened. Allowing, therefore, our dealer to be actuated by

mere self-interest, still he is a real blessing and support to the country, a benefactor to all concerned in agriculture, and our guarantee against future famine.

(4.) If corn is at the medium price, and from that to one-half more, he is still the same useful character, by keeping a stock in the country; nor ought the laws to impede his operations. Indeed, I know not whether they ought to interfere with him before the price become double. His moral character is then, no doubt, very different from that of the man who only keeps up his own produce from the market; and he deserves still better the curses of the poor, and the odious name of Corn-Jew; but with his moral character I have here no concern.

But whether he be called Corn-Jew or not, the person whose proceedings I have now described, under this second head, is the man whom I must defend; not indeed in point of his moral character, for that may be most detestable, but of his usefulness to the state, on which account the laws ought to leave him undisturbed.

How it has happened that the Roman laws judge as harshly of such characters as the ignorant and unthinking multitude among us; and that *Ulpian*, in the above passage of the *Pandects*, reckons among *Dardanarii* those who store up their corn in the expectation of a bad crop, may to many appear unaccountable. May I, therefore, venture to submit my ideas on this point for examination? The imperial laws of Germany do not condemn such proceedings. Those only *who seek to aggravate existing scarcity by forestallment*, are pointed at in the imperial decrees made to counteract

the practices of Corn-Jews ; so at least am I informed by civilians ; and so far is our consuetudinary law from accounting what the Pandects forbid, as at all censurable, that this very year, (1770) at the beginning of which the hmbten of rye cost half a dollar, and was sold even under that price, I saw, in the month of June, a rescript, in which the Royal Chamber of Finance prohibited the bailiffs from selling the tythe-corn, which is generally the worst, at a gulden, because people were speculating on an advance in the price of rye. On the principles of the Pandects, rescripts such as this could be drawn up only by *Dardanarii* ; but on those of sound reason, they must be considered as the provident commands of true fathers of their country, desirous to keep a supply of food in the land, and to guard against the danger of famine. —But to return ; whence proceeds the gross error in this matter that we find in the Roman laws, in other respects so excellent ?

In as far as it investigates, and it *does* investigate with unexampled zeal, the first principles of equity, the Roman system of jurisprudence is admirable : and its composers have well remembered the advice of the poet ;

*Tu regere imperio populos, Romane, memento,
Hæ tibi erunt artes ;*

but in matters relating to corn, by reason of the peculiar circumstances of Rome, and from the rulers allowing themselves to be guided by the popular notions, for fear of disturbances, it is no less exceptionable.

From the time that the Romans became masters of

Sicily, their corn-system was not good, and under the emperors it grew always worse. Whenever we hear that a nation has a foreign corn magazine, we may safely conclude that the people do not raise enough of corn, and depend for supply upon a variety of accidental occurrences. Still more is it sunk, when that magazine is situated on the farther side of a broad sea ; so that its enemies, whenever they have the command of the ocean, can starve it. Since Sicily, and latterly Egypt, became her magazine, the policy of Rome has, in this main point, had the same defect as that of the Turkish empire ; the metropolis of which is also supplied from Egypt, and, while I now write, is feeling the consequences of this political error, from the Russian fleet, to such an extent that no human understanding can conjecture the ultimate issue.—Now, in corn-matters, the Romans, under the emperors, were Turks ; and is it then surprising that their laws concerning them should be erroneous ? If this seem strange to the man who merely *remembers* laws, let him ask an Englishman what he would think of the time when England should be reduced to the necessity of having a corn-magazine abroad ? “ England “ is then undone,” he would reply, “ or at least, from “ her neglect of agriculture, she totters to her fall.”—The people in Rome, just like the Turks of Constantinople, became obstreperous, when the price of corn rose ; it therefore became necessary, especially when other causes of discontent were perceived, to endeavour to keep it at an even price. This is impossible without great expense on the part of the state, which must ultimately land on the people ; and whenever it

happens, few will have any inclination to accumulate corn, in the hope of a scarcity. It is, therefore, in the *first* place, but a palliative remedy, thus to extort money by imposts, in order to give corn the appearance of being cheaper; and, in the *next* place, it deters avarice from hoarding that store of it which would serve to keep famine at a distance: and then, should the Alexandrian corn-fleet be detained in its voyage, there arises not scarcity, but famine, and, as at Constantinople, rebellion. The mob, whose power is dreaded, is not a good legislative counsellor; and the lawgiver guided by its opinions will, in guarding against scarcity, occasion famine. In general, the mob, when dreaded, is despotic; and at Rome, the emperors were also despots; and as one despot is always afraid of another, they enacted those despotic laws which prohibited the owners of corn from storing up the hard-earned fruits of their labour, till the season of a good sale. For it is certainly despotism, when the subject cannot do with his property what he pleases, and when either the mob or the laws compel him to sell corn before the actual existence of that public distress, which limits the rights of individuals in regard to their property.

Even the *Congiaria* which the emperors gave to the people, and which, because we read of them in the classics, when school-boys, we are apt to admire so highly, were attended with pernicious effects. “But
“were they not then,” I shall be asked, “the *acmé* of
“imperial benignity? How does Pliny, in his *Panegyric*, deify the philanthropic Trajan, on account of
“his acts of beneficence in this way?” I have read

the *Panegyric* ; but for acts of benignity, I cannot hold these *Congiaria* ; and I doubt whether Pliny himself thought them so at heart. Trajan was obliged to raise the money for them by imposts on the rest of his subjects ; and could it be called benignity in him, to impose on the industrious provinces a tax which might otherwise have been spared, merely to give bread to the idle rabble of Rome ? He was, however, under the necessity of giving *Congiaria*, and found it expedient to put a good face upon them, and to make it appear that he acted from benevolence ; but it was, in my opinion, but making a virtue of necessity, and had nothing meritorious or generous in its composition. And to what a feeble and wretched condition did it shew that the state was now reduced, by the neglect of agriculture in Italy, from improper policy, and by the consequent dread of an idle, tumultuous populace ? For those people who received the *Congiaria*, were certainly, most of them, idlers ; else might they, and at Rome where there was so much luxury, even widows, and children of five years old, have earned their bread by their labour, though indeed there was no necessity for all of them to remain within Rome. Yet *congiaria* were deemed necessary by the government, so defective had their political system now become.—If we heard that the kings of Great Britain and Prussia, and the emperor of Germany, made distributions of bread to thousands of the people of London, Berlin, and Vienna, not during any particular year remarkable for scarcity, (for then it would be true beneficence) but regularly every year, we should certainly think we were hearing some-

thing altogether novel. These monarchs are without doubt, all three of them, as good men as Trajan ; but, thank God ! they have no need to maintain all the idlers in their capitals, either from fear of their people, or to encourage the procreation of children. Their own territories, by the industry of their subjects, produce corn enough, and to spare ; even Berlin, situated as it is in the sandy *Middle-march*, feels no want. For the truly poor, money is necessary ; and to such they give alms, but not so lavishly as to tempt to idleness ; and not from fear, but from humanity and beneficence, and often so secretly that the public never know of it. Even when tumults arose some years ago in England on account of the high price of provisions, the government had not recourse to the dangerous measure of giving *Congiararia* ; for had this been once done, tumults would never have ceased.—Considering then the political blunders which have been committed in the Roman laws, on the subject of provisions, and which arose partly from the neglect of agriculture at home, and partly from the dread of tumultuous proceedings among an idle populace, it is not surprising that they should, in this point, be found exceptionable, and that, in regard to corn-dealers, who are always obnoxious to the populace, they should have been more severe than they ought ; in a word, that our German laws are here better than the Roman.

ART. LXXV.

Some farther Purposes and Advantages of the Sabbatical Year, with a Notice of one seeming Evil that might arise from it.

§ 3. It was another great use of the sabbatical year, that the Hebrew bond-servants, then restored to freedom, could everywhere find a maintenance, and so could make preparation for a new family-establishment of their own. At their manumission, their masters were, by the injunction of Moses (Deut. xv. 14.) to present them, among other things, with *one or two sheep*. For these, during this year of release, they found free pasturage over all the land; so that they could not only support themselves, but also by feeding *them*, lay the foundation of a little flock. In like manner, those Israelites whom poverty had driven from their native land, could now return again, and be sure to find subsistence on the fields, whose produce belonged alike to all. Whether Moses by this law intended likewise to invite strangers from other countries to settle in the land, I cannot tell. Poor foreigners are no advantage to a country, unless *it* stand in need of day-labourers, and *they* bring industry along with them, and introduce new and useful arts. His other laws, in regard to strangers, relate only to their due protection, and present no enticements to their settlement among the Israelites; and as, besides, their difference in point of manners and religion tended to keep them at a distance, I am not inclined to

reckon their invitation an object, or even a use, of the law before us.

But, on the other hand, Moses, in Lev. xxv. 7. expressly mentions that he had destined the spontaneous produce of the fields during the sabbatical year, for food to the herds, and to the game. In respect to the former, therefore, the whole of Palestine was *then* one vast common, and might be pastured freely throughout. It then looked like a land of wandering herdsmen, as it had formerly been. This must necessarily have invited into it many herds that previously fed in the Arabian deserts, as it presented them with a rich pasture in the corn-fields, on the herbage growing from dropt grains of wheat and barley. But the particular result of the law in this respect I am unable to determine, from the want of similar oeconomic experiments.—As to the game, his object might perhaps be, to prevent its utter extirpation, in consequence of the unceasing operations of agriculture. As it seeks those places where there is the best and most abundant food, it probably would often pass into Palestine, from the contiguous countries and the forests of Lebanon; and if, but during the seventh year, it experienced the benefit of a truce, and could traverse the fields secure from molestation, (as it *always* is in Arabia, in the sacred districts,) a fresh breed would thus overspread the land in abundance.

I have now to notice one difficulty that remains in my mind concerning the sabbatical year, and that is, how the pernicious effects of idleness could be prevented, among a people composed solely of husbandmen, during the whole year, when they had no til-

lage? They were, perhaps, occupied in selling their stored-up corn, in feeding their cattle throughout the land, and, as far as was allowed, in hunting, not game indeed, but wild beasts. All that, however, was not labour enough; and here I am left in the dark as to the manner in which the rest of their time could be filled up usefully to themselves, their families, and the public.

ART. LXXVI.

The Law of the Sabbatical and Jubilee Year was not long observed by the Israelites.

§ 4. MOSES himself seems to have apprehended that the law of the jubilee and sabbatical year would not be inviolably observed. For when, in Lev. xxvi. he threatens the Israelites, among other judgments for disobedience, with the desolation of their land, he says, ver. 34. *Then shall the land hold the Sabbaths, which it had not held before.* He therefore presupposes that they would, whenever it was fully peopled, deprive it of the sabbatical rest.

For want of a fuller history, I am unable to say how far this law came into general use, and was carried into effect; but, for the most part, I read only of transgressions of it. Thus, 1 Kings xxi. 2. the king wishes to *buy* or to exchange Naboth's land; which shews that *then*, at least, the sale of land was not considered as an impossibility. Isaiah (chap. v. 8.) complains of those who buy up numerous possessions successively, (forming what we call great estates, and the Latins more emphatically, *latifundia*,) until at length there

is no room remaining for others. The transgression of the law had consequently been carried so far, that of these *latifundia*, so notoriously obnoxious at Rome, there actually were now examples in Israel; although to the spirit of the Mosaic laws they were equally, if not more contrary, than to the original law and policy of the Romans. That statute, likewise, which restored freedom to bond-servants in the seventh year, seems to have gone into desuetude. For in the last war with Nebuchadnezzar, Zedekiah, probably in order to get soldiers, (for they commonly gave freedom to their bondmen when national affairs looked very ill, and there were not enough of free men to bear arms) wished to introduce it again, and to set the Hebrew bond-servants at liberty; but his command to that effect, and even the oath of obedience sworn to him by his nobles, proved far weaker than the established abuse of the law; insomuch that after actually liberating them, they brought them again into subjection. See Jer. xxxiv. 8,—16. &c.

No where in the history do I find the celebration of one of these years either mentioned or insinuated. No where does the Bible reckon by years of jubilee, which would have been a much more convenient chronology than to date by the reigns of the kings. The only trace that I can find of the year of jubilee not having become quite unknown, is in the lxi. chapter of Isaiah, ver. 1, 2. where forms of expression seem to be borrowed from it. But how slight satisfaction does this afford us? We may borrow figures from antiquities!

When I read 2 Chron. xxxvi. 21. I am almost

tempted to think that the celebration of the sabbatical year was intermitted for seventy times in succession, that is, during the period of 500, or 490, or 436 years*. For, after it is there said, that for seventy years, *the land had*, during the Babylonish captivity, *kept Sabbath*, that is, had lain fallow, it is added, *even until she could comfort herself for her disturbed Sabbaths, and be, as it were, satisfied*; or, as I would rather render it, *until she had numbered her unkept Sabbaths*†. The writer manifestly refers here to what Moses had said in Lev. xxvi. 34. above-cited; for in Jeremiah, whom he also quotes, the clause, *until she had numbered her Sabbaths*, is not found, but merely the seventy years duration of the captivity stated. (See Jer. xxv. 11. xxix. 10.) But if these seventy years of captivity were to be determined by the number of unkept sabbatical years, it is clear that no less than seventy of *them* had remained unregarded. Now the Babylonish captivity commenced with the carrying away of Jehoiakim, from which, following Usher's chronology,

1. The 500th year preceding falls in the period immediately before Saul's reign.

2. The 490th——in the beginning of it; and,

* If, as some will have it, the year of jubilee fell on the forty-ninth year, that is, on the seventh sabbatical year, in 490 years, there were 70 sabbatical years. On the other hand, if the year of jubilee followed the seventh sabbatical year, and was itself the fiftieth year, then to make out 70 sabbatical years, there are required either,

(1.) 436 years, reckoning the years of jubilee also as sabbatical; or,

(2.) 500 years, reckoning them otherwise.

† רצד in Arabic and Chaldee signifies *to number*. See more in § 9. of my Dissertation, *De Paradoxa lege Mosaica septimo quoris anno agrorum ferias indicente*, already quoted.

3. The 436th——during the reign of David ;
But the chronology of the years of Solomon and Saul is to me so uncertain, that I would not here depend upon Usher, and, of course, cannot ascertain when the Israelites began entirely to set aside this law.

ART. LXXVII.

Of the groundless Opinion advanced by some, concerning the existence of a Law which empowered a Proprietor to grant Hereditary Leases of Land for a Quit-Rent.

§ 5. THERE are some who think they can discover among the agricultural laws of the Hebrews, one somewhat resembling that of our modern fee-farms, which authorized the owner of extensive estates to grant hereditary leases upon them to whole families from father to son, on condition of their cultivating the land, and paying to him a certain proportion of its produce. This opinion is wholly founded on a story related in 2 Samuel, concerning the land of Mephibosheth, the grandson of Saul, which Ziba, his servant, cultivated by the hands of his own family, consisting of fifteen sons and twenty servants, chap. ix. 9,—13. Of this land, David, on his flight from Absalom, made a gift to Ziba, in return for his discovering to him that Mephibosheth had remained behind in Jerusalem, in hopes that the Israelites would *then* place him on the throne of his grandfather, chap. xvi. 1,—4. On David's restoration to his kingdom, Mephibosheth, who, during the whole time of his absence, had neither pared his nails, nor trimmed his

beard, nor washed himself, went out to meet him, and asserted his innocence, declaring Ziba a slanderer. David, however, did not chuse to enquire farther into the matter, and commanded that they should divide the land between them, chap. xix. 25,—30. Now this decision is condemned as grossly unjust; and in order to vindicate it, it has been pretended that David meant to say nothing more than that Ziba and his heirs should continue to cultivate his master's land, and to divide its produce with him, much in the same way as our fee-farmers do; so that on this principle we should here find a law of hereditary leasehold; a tenure, not indeed of Mosaic origin, (for the Mosaic statutes were very far from sanctioning the acquirement of such great estates,) but that had arisen in subsequent times, and was now quite common.

But the uncertainty of this conclusion it is very easy to perceive. David says not a word of the division of the produce of the land, but of the land itself. It would seem almost as if he had not considered Mephibosheth quite so innocent as he represented himself to be; although from the remembrance of his own affection for Jonathan, whose son Mephibosheth was, he did not wish to make a full investigation of his conduct. For my own part, I am not without my doubts of his innocence; for although Ziba had left him, he might still have found somebody in Jerusalem to saddle his ass for him, especially considering how *all* Jerusalem lamented David's departure, and sympathized with him in his misfortunes. The length of his beard and his nails have little weight with me; for not to mention the possibility of aspiring to a throne.

amidst hypocritical expressions of sorrow, the hopes of Mephibosheth must have entirely vanished as soon as Absalom came to the capital, and took possession of the throne; so that now he had real reason to mourn, in having lost the friendship of his benefactor, David, without mounting his throne. But allowing that David did him injustice*, it is not the only instance of injustice that occurs in David's history, and it would

* A rash and arbitrary decision pronounced by a victorious prince returning to his capital after the suppression of a great rebellion, would not indeed be a thing unexampled or incredible. I must, however, yet advert to one circumstance that makes a great alteration on the case. The land in question is generally represented as the old family estate that Saul had inherited from his ancestors, in which case it certainly was an act of great oppression to deprive his descendant of the half of his hereditary property, on a bare suspicion, and unconfirmed by any investigation. But an inheritance so great, as that to its cultivation Ziba required twenty servants, besides his own fifteen sons, could scarcely, by the Mosaic regulation, have descended to Saul, or to his father Kish; and bought it could not have been, by reason of the law prohibitory of the alienation of land. It would seem as if Saul had greatly increased his inheritance by confiscations, (see Art. LIX. No. 3.); and these too illegal perhaps, as it is said in 2 Sam. xxi. 2,—5. that he had sought to extirpate the Gibeonites; but the confiscated estates he had not annexed to the crown, but had assigned to his own family. Now, lands in this predicament, if the ancient possessors no longer existed, or were really guilty of rebellion, David might have recalled, and annexed to the crown. This, however, he did not do; for he gave to Mephibosheth all the lands belonging to Saul's family, 2 Sam. ix. 9, 10.

If then he suspected Mephibosheth guilty of perfidy, or a breach of allegiance, which he was averse to investigate to the bottom, he might by an arbitrary decree, have recalled half his gift; but that was a very different thing indeed from depriving him of the half of a property which had belonged to his ancestors from time immemorial.

not be lessened by the explanation of the passage which some have proposed. For to force upon a man a hereditary tenant against his will, and one too so justly obnoxious as the very person who had before accused him of high-treason, is just as bad, if not worse, than to take from him half his estate.

I therefore consider what has been asserted concerning the hereditary leasing of land, as entirely unfounded, and destitute of proof.

CHAPTER III.

OF REVOLUTIONS IN PROPERTY, BY INHERITANCE, EX-
CHANGE, BEQUEST, DONATION, AND SALE.

ART. LXXVIII.

*Sons inherited all—Daughters nothing.—Exceptions to
this Rule.*

§ 1. I HAVE no occasion to remind the reader, that every thing belonging to an Israelite, except his land, might be alienated, given away, or sold; and therefore, without farther preface, I proceed to specify the different ways in which property among the Hebrews, might be transferred from one person to another, viz. by inheritance, donation, cession, exchange, and purchase. Of the first I have much,—of the second, but little,—and of the third, nothing at all—to say, worthy of attention.

By the law of Moses, sons only inherited; daughters being, by immemorial custom, excluded from inheritance. Thus, Laban's daughters knew that they had *no portion in their father's house, and were counted as strangers*, Gen. xxxi. 14, 15.; and in the petition which the daughters of Zelophehad preferred to Moses and the council, Numb. xxvii. 2, 3, 4. it is presupposed that daughters did not usually inherit.

There is here a chasm in the Mosaic statute, inasmuch as it contains no answer to a question necessarily arising from the circumstances of the case ; but there is not therefore any chasm in the Mosaic jurisprudence, because that question must have been determined by consuetudinary law. It is, “ Whence
 “ was a daughter to be supported, if she remained
 “ unmarried, or her father died ? Or if her husband
 “ died without issue, and she herself was past the age
 “ in which his nearest relation could marry her, and
 “ raise up seed to the deceased ? ” It is very probable, from the rules of natural justice, that in the former case she was supported by her father’s heirs, and in the latter, by her husband’s ; but how liberally she was so, or how much she had a right to demand, Moses nowhere mentions, but leaves these cases which, from the nature of his laws and the manners of the Israelites, were no doubt very rare, to the decision of established usage. What usage *had* established, we know not ; for as to the assertion of the rabbins, that in such cases the tenth part of the inheritance belonged to the daughter, it is a law of their own making, and not of Moses’.

According to the Mosaic law, a daughter could inherit only when the father left no sons. We find this regulation, which Moses made in consequence of the request of Zelophehad’s daughters, in Numb. xxvii. These daughters certainly considered their claim as new, and as too repugnant to previous usage. They did not, however, even so much as found it on the principle of natural justice, that a child ought to be a father’s heir, but only on this ground, that their

father's name would be extinct, if no land was appor-
tioned to them, and possessed in his name by their
posterity ; which, among the Israelites, was accounted
a very great reproach. Moses, however, with respect
to such heiresses, made this farther law, that they were
not to marry *without their tribe* ; whereas to all other
daughters of Israelites, it was lawful to marry into
any tribe ; upon which the daughters of Zelophehad
did more than even this new law required of them, for
they married their very nearest relations, viz. their first
cousins, *their father's brother's sons*, Numb. xxvi. 11.

We find a very remarkable similarity between this
law, and that of the Athenians on the same subject.
At Athens, daughters, in like manner, inherited no-
thing, when there was a son alive ; and a daughter
who had no brother, and, consequently, was herself
heiress (in the Attic laws she is termed *επικληρος*) was
bound to marry her nearest relation. This was still a
closer limitation than Moses enjoined, in giving heir-
esses freedom of choice within their tribe, although I
believe they *did*, like Zelophehad's daughters, gener-
ally marry their nearest relations.—See *Jacobi Perez-*
onii Dissert. de Lege Voconia, the second of his Seven
Dissertations, p. 137, &c.

I may here remark, by the way, that Mary, the
mother of Jesus, must have been an heiress, or a
daughter without a brother, because she found it ne-
cessary, contrary to the custom of women, to travel
to Bethlehem to be registered. She must, therefore,
have had an inheritance at Bethlehem, although it
may have been mortgaged till the year of jubilee ;
and consequently, her husband Joseph, must have

belonged to the same tribe with herself, and probably been, besides, of the very same family, that is, a descendant of David's; points, upon which, the doubts that have often been started, have as often been most unfortunately solved; and to solve which, recourse has been had, among other falsehoods, to the positive, but unfounded, assertion, that no Israelite was allowed to marry without his tribe. This is one of those untruths which one ignorant person has repeated after another, from the notion of its being necessary for the defence of religion; but the real truth here is, that *an heiress only durst not marry without her tribe, and seldom did marry out of her family.*

It appears, however, that, exclusive of what was found their right in such cases as that of the daughters of Zelophehad, a father sometimes had appropriated a certain inheritance to his daughters, which, after mature deliberation, I distinguish from the rich gifts he presented them in his lifetime. At the same time, however, I suspect that it only came from substance of his own acquisition, or, at most, from land which he himself had first occupied, subdued, or made arable, over and above his paternal inheritance, and never from the proper family estate; and, moreover, that none but a very opulent father had had this liberty. Thus, in the book of Job, which is somewhat more ancient than the laws of Moses, it is said, (chap. xlii. 15.) that *Job gave his daughters an inheritance among his sons*, which I cannot, with Perizonius, explain of rich presents, without doing violence to the expression. He is, besides, described as a man of exceeding great substance, who did more than was

usually done, in leaving his daughters an inheritance, as well as his sons, contrary to the custom of his country.—Among the sons of Asher, in the genealogy both in Gen. lvi. and in Numb. xxvi. we find the name of *Sherah their sister*, introduced; for what reason I know not, unless she shared their inheritance.—The opulent Barzillai, who was able to maintain David's army for some time, certainly had a son, of whom mention is made in 2 Sam. xix. 35,—41.; yet we see that he, nevertheless, constituted his daughter an heir-ess; and that she, moreover, married into a strange tribe. For in Nehem. vii. 62. the genealogy of a sacerdotal family descended from this *Barzillai of Gilead**, is introduced, which otherwise is only done in the case of a man inheriting from ancestors; and it is expressly added, that a man of the sacerdotal tribe called Barzillai, had married one of the daughters of Barzillai the Gileadite, and taken his family name. This means nothing else than that he passed into that family, and was reckoned as a son of old Barzillai, whose name he took, which plainly implies that he was his heir.

I wish to adduce some more facts of this kind, in order to illustrate the singular law of daughters becoming heirs. Machir had certainly a son, who is called Gilead, 1 Chron. ii. 21.; but he had also a daughter, who married Hezron, of the tribe of Judah.

* *Of Gilead.* Let this circumstance be particularly attended to. There might be more people of the name of Barzillai; but when the designation, *Gileadite*, is added, we clearly see that it is the person who was well known in the history, that is intended, and not another of the same name.

Of this marriage sprang Segub, whose son was Jair, ver. 22. This Jair, however, was not, as his paternal descent required, reckoned in the tribe of Judah, but, by the mother's side, in the tribe of Manasseh; for he is called by Moses, in Numb. xxxii. 41. Jair, the son of Manasseh. He must, therefore, by his mother, have inherited in the tribe of Manasseh, and he actually did so; for his family received the villages beyond Jordan, called from him *Havoth-Jair*, or Jair's villages. This passage into a strange tribe took place, however, *before* Moses' law was made.

In 1 Chron. ii. 34, 35. we are told that Sheshan had no sons, but only daughters. One of them he gave to his servant Jarha, who was not so much as an Israelite, but an Egyptian; and this Jarha carries on the family, and, of course, was his heir. This, too, happened *prior* to the Mosaic statute, and was so very far repugnant to it, that the heiress married not only out of her *tribe*, but out of her people. We have here, therefore, an example of a thing permitted by previous usage, which Moses altered by his law.

Caleb not only gave to his daughter on her marriage a piece of land, and that too very considerable, but he added to it, at her well-timed request, the *upper and nether springs*, as they were called, Josh. xv. 16,—20. Judg. i. 12,—15.; and yet we know for certain from 1 Chron. ii. 42. that Caleb had sons. This happened *after* the giving of Moses' law; but then, there is this particular circumstance to be taken into consideration, that Caleb, besides his regular inheritance, received the whole land around Hebron, as an extraordinary allotment, in recompense of his meritorious conduct;

he and Joshua having, of all the spies, been the only persons who inspired the people with courage to invade Palestine; and that, moreover, he conquered Hebron itself, and took it from the Canaanites, Numb. xiv. 6,—10, 24. Deut. i. 36. (compared with Numb. xiii. 23.) Josh. xiv. 6,—15. xv. 13, 14. This extraordinary inheritance, it would appear, that he could dispose of as he pleased, and that it was not subject to the operation of the law relative to the lands partitioned by lot, and according to the number of individuals.

In 1 Chron. xxiii. 22. Eleazar is mentioned as having no sons, but only daughters. Now these could receive no inheritance in land, except, perhaps, their father's house, for Eleazar was a Levite; but, nevertheless, they inherited what property he had, and the writer does not omit to notice that they married their first cousins. This was strictly in terms of the law established by Moses, on occasion of the case of Zelophead's daughters; and it shews that it had, by custom, been extended to those daughters who had no land to inherit, but only other sorts of property.

Those who married heiresses were obliged to pass into the family of their fathers-in-law, and let themselves be reckoned their sons. The principle of inheritance among the Israelites implied as much; for the inheritance was given to daughters, in order that the name of their father might not become extinct in the tables of succession; and, consequently, the sons of such marriages were necessarily recorded by the name of their maternal grandfather.

ART. LXXIX.

Of the Division of the Inheritance among the Sons.

§ 2. THE first-born son, as we learn with certainty from Deut. xxi. 17. and 1 Chron. v. 2. received a double share of the inheritance. This *favor primogenituræ*, so widely different from some of our European laws, arose from that patriarchal principle which we find inherent in the form of government among the Hebrews, from their very origin. That people had of old consisted only of independent families, whose head was the patriarch; and, when afterwards divided into tribes and kindreds, they still retained a great deal of the patriarchal system; just as is yet the case in Arabia, where the *Emir* is commonly nothing more than the head of his own numerous family, that is, the *patriarch**; if I may use one Greek word instead of that circumlocution. Among such a people, the first-born is presumably the head of the family after the death of the common parent, and, consequently, to be distinguished from his brethren in the distribution of the inheritance.

Before the time of Moses, fathers who lived in polygamy, exercised the right of declaring the first son of the beloved wife as the first-born, although he was

* I know not if it be necessary, for the sake of those readers who understand not Greek, to mention still more explicitly, that *patriarch*, in its original sense, does not mean an aged worthy, a century old, nor yet the ecclesiastical officer now so called, but the prince or chief of the family; ἀρχὸν τῆς πατρίας.

not so in point of age. I will not here appeal to the instance of Abraham, who preferred Isaac as his heir to Ishmael, though 13 years older; for perhaps he did not make Isaac his first-born, but rather regarded him as the only issue of a marriage altogether valid, and with a woman of equal rank with himself, although indeed, Ishmael was no extra-nuptial child, but only the son of the handmaid, that is, of a legitimate concubine. But the instance of Jacob is unexceptionable. He had two wives and two handmaids in marriage; but in the division of the inheritance, he passed by the first-born sons of Leah, and of both the handmaids, who were all older than Joseph, and gave the double portion to *him*, the first-born of his favourite Rachel; for he commanded that Joseph's two sons should, in the said division, be considered as his own immediate sons, Gen. xlviii. 5,—7. which the author of the books of Chronicles calls *giving the birth-right to Joseph*, 1 Chron. v. 2.

Of this right, which could not fail to occasion much secret ill-will, jealousy, and hatred, in families, from the first-born having always reason to fear lest the son of another wife should be preferred to him, and *that*, the latter, with his mother, would no doubt be continually endeavouring to bring about; of this vexatious and tormenting right, Moses deprived fathers by an express statute; commanding them, without any deference to their peculiar affection for any one of their wives, to recognize him as the first-born, and assign to him the double portion of inheritance, who should first make his appearance in the world, Deut. xxi. 15.

Whether the sons of handmaids were to share with the other sons or not, Moses has not declared by any express statute. Ancient usage was in this point contradictory. Abraham constituted Isaac his sole heir, and gave to the sons of his handmaids nothing more than presents, Gen. xxi. 10,—14. xxiv. 36. xxv. 5, 6. Jacob, on the contrary, made the sons of his handmaids heirs, as well as the others. Amidst this indecision of usage, and the silence of the law, it seems to have remained optional to fathers to follow, in their families, whichever of the two plans they pleased. I think, however, that after the Israelites were settled in Palestine, (for in the wilderness they had not much inheritance about which strife could arise,) this point could not have remained long uncertain by a law; for if a father died without declaring his will, it must have been uncertain whether the handmaids' sons were to inherit or not. But what the law had decreed, I know not from any original record, and I have no inclination to frame one in the style of a rabbinical fiction.

From the book of Judges, chap. xi. 1, 2. we see that Jephtha's brethren had excluded him from the inheritance, because he was the son of a harlot; and from ver. 7. of the same chapter, it appears, that this was done by a legal decision; for Jephtha not only upbraids his brethren with it as an act of violence, but imputes it to the elders of Gilead likewise, as their deed. His case, however, is not the same as that of a handmaid, for his mother was a harlot; and in the Hebrew law a handmaid was not so called, when her master took her as a concubine. Nevertheless, from

Jephtha's considering *his* treatment as oppressive, we may almost conclude that it was not the common practice; in which case, the sons of handmaids must, *a fortiori*, have inherited, in terms of the established rule, and when their fathers died, without a declaration of his will.

ART. LXXX.

Of Testaments.

§ 3. It seems unquestionable that fathers had it in their power to make a settlement similar to a will, with regard to what they left behind them, although they were limited by the laws relative to land, and by the privilege given to the first-born. The declarations made by Abraham and Jacob, as stated in the preceding Article, are precisely destinations of their property after their deaths; and in Gen. xlviii. 22. we find a similar instance; where Jacob, as I understand him, in the event of his death, which he had just before expressly mentioned, ver. 21. gives the country around Sichem to his son Joseph: and that Joseph's posterity possessed it, we see from 1 Chron. vii. 24. and John iv. 5.

As Moses no where abolishes the right of testament, but only limits it in regard to hereditary land and primogeniture, it appears that the Israelites still retained this right. We likewise find a pretty plain instance of a testament in the history of Ahitophel, 2 Sam. xvii. 23. When he saw that Absalom was following advices that must ruin his cause, and that he himself, as

an instigator of his rebellion, would be called to account on David's restoration, he went home to the city of his fathers, *gave orders to his house*, as the Hebrew expresses it, and then hanged himself. Here is manifestly a destination of his property, as it was to take effect after his death, and which he had previously determined on, although probably he kept his intentions secret. The expression, *he gave his commands to his house*, (צוה לביתו) we have the more reason to explain in reference to a testament, because the very same word, though with the letters transposed (צוה) signifies in Arabic, 1. *to command*, as in Hebrew; and, 2. *to make a will*. We might, at the same time, from this story almost infer, that a traitor's property was not confiscated, and that neither he, nor yet a suicide, forfeited the right of making a destination of it after their deaths.

Besides this, I find nothing farther relative to testaments in the whole Hebrew Scriptures, except what Isaiah says to the dying Hezekiah, *Give thy commands to thy house*, that is, *make thy will, for thou shalt die*, 1 Kings xx. 1. Isa. xxxviii. 1. This single passage is, therefore, the more important, as it shews that even kings, in matters relating to the succession, and where the welfare of the whole nation was concerned, could make a will; for when Hezekiah received this message from the Lord, he had no heir to his throne, and the enemy was encamped before the city. It was fifteen years before his death; and his son Manasseh was but nine years old when that event took place. We may easily conceive, considering the circumstances in which he was now placed, to what points

the will would relate, which the prophet counselled him to make.

Concerning the solemnities, or even the rule and manner of making a will known, we know nothing, except that it seems to have been most commonly declared in the presence of the heirs.

To fill up this chasm in some measure, I will here quote what Mahomet directs the Arabs to do, but without meaning to impute any such thing to Moses. It would indeed be an injury to Moses to ascribe to him a law so rude and barbarous, as that which the illiterate Mahomet gave to his savage countrymen; at the same time, abstracting from those parts of it which are absurd, such as the oath and counter-oath, it may perhaps throw some light on the ancient custom of making testaments, orally, and without much formality, which may have been common to both the Arabs and Hebrews. “Ye faithful (says he, Sura V. “106. of the Koran,) let testimony be valid among “you. When the hour of a man’s death draws nigh, “and he wishes to make a testament (*Vasijah*) take “two honest men of your brethren for witnesses, or “even strangers, if death comes upon you travelling. “Keep them with you till after prayers have been “offered*; and if you have any mistrust, let them “both swear that they will say nothing for gain’s sake,

* This is not in the Oriental style. It savours not of either the Hebrew, or ancient Arabic fashion; but is altogether in the Mahometan manner. No religion ever enjoined prayer so much as that of Mahomet, which indeed has carried that duty to excess. He himself maintained that it was one of the chief pre-eminences of his religion, that it urged the duty of prayer more than other religions.

“ although it were even for a relation, and that they
 “ will not conceal the testimony of God. If we did
 “ so, they shall say, it were a great sin. In case, how-
 “ ever, any doubt shall arise, whether they may not
 “ have falsely declared the will of the deceased, two
 “ of his nearer kinsmen may come forward and swear
 “ by God, that *their* testimony is more correct, and
 “ that they have not transgressed the truth. If we
 “ did so, they shall say, it were a great sin. Yet it is
 “ better that they declare their testimony only in pre-
 “ sence of the former persons, and that these should
 “ only fear lest another oath should be sworn in op-
 “ position to their oath.” We see here a specimen of
 very imperfect jurisprudence: it shews us, however,
 thus much, that oral testaments were common in the
 East,—that only two witnesses were necessary,—and
 that kinsmen were considered as more valid witnesses
 than strangers. I suppose a father often made his will
 by calling his sons together, and intimating to each
 his share of the inheritance, as Jacob did, Gen. xlviii.;
 and this seems to be what is called in Deut. xxi. 16.
giving the inheritance to his sons, הנחיל בנו.

ART. LXXXI.

Of Sale, Exchange, Cession, and Donation of Property.

§ 4. AMONG the Hebrews, and, before them, among
 the Canaanites, the purchase of any thing of conse-
 quence was concluded, and the price paid, publicly,
 at the gate of the city, as the place of judgment, be-
 fore all that went out and in, Gen. xxiii. Ruth iv.—

As those who wanted amusement, and to pass away the time, were wont to sit in the gates, purchases there made, could always be testified by numerous witnesses. Their care to have them so attested, might, perhaps, be a relique of the custom of the times preceding the invention of the art of writing ; (which, by the way, took place probably not very long before the days of Abraham ;) and it did not even after that period cease to be useful, because among the Hebrews writing not being very common, the memory of witnesses had often to supply the place of a document of purchase. At the same time, it would seem that such documents were not altogether unusual. For the xxiii. chapter of Genesis is in its style so different from that of Moses on other occasions, and has so much of the appearance of the record of a solemn juridical procedure, that it almost seems to be a *deed of purchase*.—See the last note on this chapter in my German Bible.

From Ruth iv. 7. we learn another singular usage on occasions of purchase, cession, and exchange, viz. that the transference of alienable property had, in earlier times, been confirmed by the proprietor plucking off his shoe, and handing it over to the new owner. We see at the same time, that in the age of David this usage had become antiquated ; for the writer introduces it as an unknown custom of former times, in the days of David's great-grandfather. I have not been able to find any farther trace of it in the East ; nor yet has the Danish travelling mission to Arabia, as Captain Niebuhr himself informs me. Bynæus, in his book, *De Calceis Hebræorum*, i. 6, 7. treats of it

at great length ; but, excepting the mere conjectures of modern literati, he gives no account of the origin of this strange symbol of the transfer of property. In the time of Moses it was so familiar, that *barefooted* was a term of reproach, and probably signified a man that had sold every thing, a spendthrift, and a bankrupt ; and we see from Deut. xxv. 9, 10. that Moses allowed it to be applied to the person who would not marry his brother's widow. Could it have been an Egyptian custom, as we do not find it again in the East ? The Egyptians, when they adored the Deity, had no shoes on ; and of this the Pythagoreans gave the following explanation : “ The philosopher who “ came naked from his mother's womb should appear “ naked before his Creator ; for God hears those alone “ who are not burdened with any thing extrinsic.”— See *Demophili Sententiæ Pythagoreæ*. Among the Egyptians too, *barefooted* was equivalent to *naked*, and *naked* synonymous with *having no property* but one's self.

This same custom of pulling off the shoe, and that at the gate before all who went out and in, was also usual in important cases of the exchange or resignation of property ; as for instance (to take the example just quoted from Ruth iv. 7, 8.) when the nearest kinsman abandoned his right of redemption to a distant relation ; and we may, perhaps, thence conclude, that a similar form took place in cases of great donations, when not made on a sick bed, but by persons in health.

With regard to donations, I have nothing farther to remark, than that most of the instances of them

mentioned in the Bible relate to natural sons, who received no share of inheritance,—to brides,—to parents,—and to brothers ; although we find, at the same time, examples of them among strangers. Thus Ephron wished to give to Abraham the field that he wanted for a sepulchre, as a gift, in the presence of all who went out and in at the gate, though Abraham would not accept it on these terms, but insisted on knowing and paying the price of it, Gen. xxiii. 13.

ART. LXXXII.

Of the Money of the Israelites.

§ 5. CONCERNING the money which the Hebrews used in commerce, I have treated at great length in my *Dissertatio de Siclo antiquo ante exilium Babylonium*, in the 2d Part of the *Commentaria* of the Gottingen Society of Sciences ; where the proofs of some points which I here only state briefly, may be consulted.

In their mercantile transactions, the Hebrews made use of a noble metal as a medium of exchange, and not (as we find was the case among many ancient nations), of cattle*, which form a very inconvenient sort of money, because the worth of each individual can be neither so easily nor accurately ascertained as would be desirable in a general standard for buying

* Those who wish to read what has been collected on this point, will find abundant satisfaction from *Christ. Crusii Commentarium de Originibus pecuniæ a Pecore ante nummum signatum, Petropoli, 1748.*

and selling. For this early use of metallic money, the Hebrews were probably indebted to the Phœnicians, among whom their ancestors had dwelt, and who are said to have been the first inventors of silver money*. Hence we need not wonder that the Israelites and their ancestors, even Abraham himself, when he bought a sepulchre, Gen. xxiii. made use of silver for money, while other nations were for so long after ignorant of this use of it, and continued to make oxen and sheep the standards of value. It is very easy to conceive that the extensive commerce which the Phœnicians carried on so early, required a more perfect and transportable medium of interchange than

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* See the *Rhetores Græciæ XIII.* edited by Aldus Manutius, p. 80. Ulysses is there introduced as saying, in his accusation of Palamides, "Did not the Phœnicians, who are the wisest of the barbarians, invent coins? They *first* divided a mass into equal parts, and impressed a mark upon each of them." Herodotus indeed *seems* to contradict this account in chap. 94. of the 1st Book of his History, where he says, "As far as we know, the Lydians were the first who struck gold and silver coins;" and if the contradiction were *real*, Herodotus was certainly in a mistake; because an author and legislator about a thousand years earlier, not only mentions silver as money, in his laws, but even relates that 200 years before his time, corn was bought for silver, and that 400 years before, his ancestor, in the seventh generation, purchased a field for silver. But in fact there is here no real contradiction; for the one passage relates to silver cut into equal, and, as it would seem, square, pieces, and then marked for money; and the other, of metals actually struck into coin, or *minted*. This invention it is which Herodotus ascribes to the Lydians; and I have already remarked that the Hebrews had no coins, properly so called, but only silver marked or stampd by the merchant.

cattle, and that when their merchants were settling their accounts with each other, they would very soon light upon the idea of making a metal, precious for its beauty, utility, and rarity, and capable of division into a number of equal parts, every one as valuable as another, the standard of value, and of commerce, or, in other words, money.

From the time of Abraham, and in the Mosaic history and laws, we find silver only in use as money. Gold, indeed, is often mentioned, but then it is always as a piece of ornament, or a jewel only. The first mention of gold money is in 1 Chron. xxi. 25. in David's time, when he buys the threshing-floor of Araunah.

In the time of Moses, and long after, silver was not counted, but weighed. Abraham (Gen. xxiii. 16.) weighed the purchase-money of the field he bought; and we no where read of the *tale* of money, but always of its weight; even so late as a little before the conquest of Jerusalem by Nebuchadnezzar, we find the prophet Jeremiah buying a field, and weighing out the price to the person who sold it, (xxxii. 10.) The *shekel*, so often mentioned in the Old Testament, is no coin, but, as its name in Hebrew imports, *a weight*. It was long after the Babylonish captivity, or rather after the time of Alexander the Great, that the Jews began to coin money under this denomination, to which they allowed as much silver as made the Greek *stater*; because *stater* etymologically meant the same thing as *shekel*, and they were now accustomed to Greek money. The most ancient shekels which we know, are those of Prince Simeon, struck after the

Jews had shaken off the yoke of the Syro-Macedonian kings. Of course they fall not to be considered here. Moses knew of no coins, but merely of silver weighed by the person who paid it away.

That the weighing of silver is in some respects preferable to our mode of paying in minted money by tale, no one will deny, who recollects that our coins lose much of their value by long friction in the pocket, and still more by the iniquitous practices of clipping and filing, &c. resorted to by our Money-Jews. I will not here mention our *ducats*, which by these arts were at last so much reduced in weight, that the people would no longer take them, so gross and palpable had the fraud become ; and it was found necessary to melt down all the old ones : I will satisfy myself with specifying what is patiently submitted to,—the loss sustained by the circulation of worn coin, and the fraudulent devices practised upon it. The *louis-d'ors* of Louis XIV. have, by mere wear, lost so much weight, that what we now count one of them to all intents and purposes, is too light by two *Aesschens* ; and consequently, the person who at the beginning of this century had lent 1000 *louis-d'ors*, would, if now re-paid in coin of the same denomination, receive 2000 *Aesschens* less gold than he lent. He would, to be sure, be recompensed for this loss, by the interest he had so long drawn ; but of that I here say nothing, for the Hebrews had no interest.—What is called clipping the coin, is attended with still worse consequences ; for in the course of a few years, no money remains in circulation, but what is under weight, all pieces of the standard weight being melted down ; and by friction

and wear, the coins already clipt, soon become extremely light indeed. Now the weighing of money had, in these respects, its advantages ; but still we must not overlook the inconveniences that attended it. It was an easy matter to cheat a simple man, unacquainted with the artifices that may be used in weighing, and with false weights ; and hence it is that we find so many complaints of a *false balance*, and *unjust weight*. How Moses endeavoured to counteract that evil, and to preserve an invariable weight, we shall see hereafter, when we come to treat of the police-laws ; for coin-laws he could not establish, as there was no coin. Statutes relative to weight supplied their place.

The most important consideration *then* was the fineness of the silver, which our mints now determine, and certify to us by the image of the sovereign impressed on the coin ; although, indeed, we sometimes, alas ! see that princes give themselves very little concern, though their image be on such coin as should make them blush. But among the Hebrews, the fineness of the metal was not ascertained by the assay of the mint, and the stamp of the superintendant. The Phœnician merchants usually tried the silver themselves, and then, after dividing a bar into smaller pieces, put the mark upon them. Thus Abraham (Gen. xxiii. 16.) paid his sepulchre with silver, tried and marked by the merchant, (עֵיבֶר לְסֹחֵר) and weighed it out to the seller of the field ; and the very same sort of silver we find mentioned in 2 Kings xii. 5. in the time of King Joash, who ordered that none but marked silver should be taken in the temple. The

credit of great merchants might be as good a security for the fineness of silver, as the names of kings and princes ; and perhaps a better, because a merchant's all depends on his credit, which the least fraud will ruin ; and because, if he marks falsely, he can be charged with it. Even now-a-days people trust the goldsmith's marks, and find them more to be depended on than those of many princes that exercise the prerogative of coining.—Here, therefore, the established practice was much the same as we find it in China, where whole masses of gold and silver are marked* ; (only that the Chinese are a nation of cheats, and no confidence can be put in their honesty in commercial transactions,) or as took place at the Leipsic fair in 1757, about the time of the first appearance of bad money, and the scarcity of good ; when some great merchants from the Siebenbürgen, produced bars of gold which they had first assayed at the town-house, and then marked. These bars were in much greater request than any other gold, and carried some per centage above the best gold coin, because they had their full weight, of which all the coin that was now quite new, had lost a part by wear, and there was, besides, no alloy in them to require a deduction.

Moses did not find it necessary to give himself any concern about the fineness of silver : he merely took care that its weight should be just and invariable. Were the merchants of those days still so honourable

* See *Dictionnaire de Commerce* par M.M. Savary, under the words *Golt-Schut* and *Tuel*, tom. ii. p. 681. iii. 1003.

that full confidence could be reposed in their stamps? Or were the fraudulent devices of any of them so refined, as that from the general ignorance of the art of assay, they could not be detected? I can give no answer to either of these questions, because I have seen no silver of that period.

CHAPTER IV.

LAWS RELATIVE TO PERSONS.

ART. LXXXIII.

Rights of Fathers.

§ 1. I now proceed to treat of the rights of persons, and in the first place, of their relation towards each other, as members of a family. In the form of government among the Hebrews, we recognize much of the patriarchal spirit; in other words, we find them governed by tribes and families, (see Art. XLVI.) which proceeded from this cause, that before their going into Egypt, they were but one family, which governed itself. One consequence of this plan was, that fathers enjoyed very great rights over their families. The more heinous transgressions of their children against them were punished with death, Exod. xxi. 17. Lev. xx. 9. Deut. xxi. 18,—21. Of this we shall treat afterwards under the head of Penal Law: here only remarking, that the rights of fathers among the Hebrews did not, after all, as among the ancient Romans, extend so far as to the infliction of capital punishment on their sons, of which *Livy* records a memorable instance; and that too, in the case of a son who had just been consul, and whom, after laying down his

office, his father is said to have caused be beaten to death, because he had not conducted himself properly in the discharge of his duty.

Nor do we anywhere find the slightest trace of its having been the will of Moses, that paternal authority and the subjection of *sons* should cease after a certain age. In the case of daughters, it is true, it could not subsist after their marriage; but then the reason was, that with respect to them, the father had already actually exercised the highest stretch of paternal authority in having *sold* them to their husbands, and, of course, could not still claim them as his property.

Even for the sons, the father, or even the mother, chose wives; as is indeed still the case in the East, where the young pair are, for the most part, unacquainted with each other before marriage, and come together merely in obedience to the will of their parents; Gen. xxi. 21. xxiv. throughout; Exod. xxi. 9,—11. Judg. xiv. 2,—4. Samson himself, who had fallen in love with a Philistine woman, and whose character was certainly more marked by manliness than modesty—even the fierce Samson bowed to paternal authority in this point with such submission, that his father yielded to his wishes, and took for him as a wife the person whom he desired.

This power of fathers in respect to the marriage of their daughters, had there been nothing to limit its exercise, must, considering the prevalence of polygamy, have proved extremely prejudicial to their interest; because a wicked stepmother, if become more acceptable to the husband, than the mother of his daughters; or, to borrow a term from the manners

of the Turkish seraglio, if, become the *favourite*, might have led their father to very strange and improper choices of husbands for them, from motives either of self-interest or of hatred. But it appears that when the father lived in polygamy, the uterine brothers had a good deal to say in regard to the marriage of their sisters, sometimes, perhaps, more than the father himself. At least, in Gen. xxiv. 50. we find Laban *first* answering for his sister, and put before his father Bethuel; and in Gen. xxxiv. 13. the sons of Jacob are represented as rejecting the honourable offer of reparation made by the man who had seduced their sister Dinah, although the match was probably one that her father would have approved. But Jacob leaves the matter entirely in the hands of her brothers, and does not so much as know the true object of the terms on which they at last accede to the proposal.

I find here again a remarkable resemblance to the Athenian law, which, to legalize a marriage, required that the bride's father, or her brother by the father's side, or her father's brother, should give her away. (*Petiti Leges Atticæ*, vi. 1. 4.) There is only this difference, that among the Athenians, the principal person was the brother by the father's side, and among the Hebrews, the uterine brother. The cause of this difference lies in the polygamy of the Hebrews, and in that law of the Athenians, which permitted the brother by the father's side to marry his sister himself.

In giving a *theological* answer to the question, what right Christian parents have in regard to the marriage of their children, some appeal to Biblical examples,

and thence endeavour to shew, that children ought not to marry without the approbation of their parents; nay, I remember to have met with the same *ratio decidendi*, even in *juridical* responses, where an appeal was made to *laws divine as well as human*. But the law of the Hebrews is not our rule, and their example would prove more than they, who quote it, desire, viz. that parents have a right to marry their children to persons whom they know not, without their consent, and even to sell their daughters.

As the son was never set free from paternal authority, and could not have any land of his own while the father lived, unless *he* chose to retire, and voluntarily resigned his property to him, he thus continued to reside in his father's house as head servant, and if he married, his family still eat his father's bread. This, at least, was the natural effect of the Mosaic agricultural laws among a people composed entirely of husbandmen. The ancestors of the Israelites being wandering herdsmen, might indeed live with their families out of their father's house, and among them paternal authority of course was not so rigorous. This we see in the instances of Jacob and Esau, who set on foot households of their own, distinct from that of Isaac; but it could scarcely answer with the son of a husbandman, if he was himself bred a husbandman also, and not a herdsman.

From these considerations we now clearly see why, among the Hebrews, a multitude of sons was regarded as a great blessing, and even as riches, Psalm cxxvii. 3, 4, 5. and cxxviii. 3. We too love our children, and how numerous soever they are, we are not willing

to lose even one by death ; but we do not thus, as it were, pre-desire to have a great number of children, whose maintenance may fall hard upon us, nor do we count a man fortunate, merely because he *has* a large family. But that, where children are wealth, the multiplication of mankind will be much promoted, I need not seek to demonstrate.

Over their daughters, while they remained at home, the parents seem to have exercised still more authority than over sons. The father, for example, had a right to revoke a daughter's vow, but not a son's, Numb. xxx. 4, 5, 6. In the East, indeed, and in every country where polygamy prevails, it is generally the case that the female sex are in a state of great degradation, compared to what takes place in Europe.

When Moses, in his laws, speaks of obedience or of resistance to the commands of a father and a mother, we must never by the word *mother*, understand a *step-mother* ; for that personage the Hebrews denominate not mother, but *father's wife*. In a land of polygamy it would never do to enjoin sons to obey step-mothers, who are the rivals of their own mothers ; and it would be very hard that the son of the wife should stand in subjection to the handmaid, because she happened to share his father's bed with his mother.

It is the natural consequence of polygamy, that every family is split into as many lesser families as there are wives that have children ; and as every one of these lesser families has an interest of its own, opposed to that of the rest, it would be preposterous to make the son of one of them dependant on the female head of another.

ART. LXXXIV.

Rights of the First-born over his Brothers and Sisters.

§ 2. NEXT to the father, the first-born of a family - possessed the greatest rights. There were not, however, in a family as many first-born as mothers ; in other words, to be so called, it was not enough that a man should be the first fruit of the mother, or, as the Hebrews term it, *Pheter Rechem* (פֶּטֶר רֶחֶם), but that he should, at the same time, be the first son of his father, who was called *Becor* (בְּכוֹר), and *the beginning of his strength*. The law of Deut. xxi. 15,—17. places this beyond doubt, and the family-history of Jacob confirms it. For though Jacob had four wives, and children by them all, yet he gave the birthright to one son only, 1 Chron. v. 1, 2. That right Reuben had forfeited by a great crime ; but if he had not done so, *he* would certainly have been considered as the only first-born, as he alone is indeed called so in the history, Gen. xlix. 3. If, instead of this, the first son of every mother had been denominated the first-born, it would have been impossible that, among a people consisting of 600,000 adult males, and where there must have been at least 300,000 males above 20 years of age, there could be numbered no more than 22,000 first-born of a month old, and above it ; because this would have required that every mother, one with another, had brought 40 (but because it is so incredible I will write the word at length, *forty*) children into the world. In my Dissertation, *De Censibus Hebræorum*,

to which I here refer the reader, I have illustrated this point at greater length*.

How the matter was settled when a father had his first-born son by a widow, that had had children by her former marriage, I do not *historically* know; but this much is certain, that such a son could not be called *Pheter Rechem*, the first-fruit of the mother; and, therefore, could be none of the first-born who, by the Levitical law (Exod. xiii. 12. Numb. iii. 40,—51.) were consecrated to the Lord; but still he probably enjoyed the rights of a first-born in relation to his brothers. This, however, was a case that could rarely occur, because it appears that the Hebrews seldom married widows who had been mothers; although I do find one example of such a marriage.

Besides his double share of the inheritance, the first-born in patriarchal families had great privileges, and a sort of authority over his brethren; just as at present an Arab *Emir* is, for the most part, only the *first-born of the first-born* of his family, and, as such, rules a horde, composed merely of his kinsmen. This was also the case under the Mosaic polity, though with some limitation in point of authority; and hence we find in the genealogies of the first book of Chronicles, that the first-born is often likewise termed *the head* (ראש) of the family; and in chap. xxvi. 10. it is stated as a circumstance somewhat singular and unusual, that a father constituted one, who was *not* a

* This Dissertation is the second in my *Commentationes Soc. Reg. Gotting. per Annos 1759-1762, oblatae*.

first-born, *the head*. How much farther these rights extended, I know not, excepting only in this particular, that the first-born was only the head of the lesser family.

ART. LXXXV.

Of Marriage, and the Purchase of Wives.

§ 3. AMONG the Hebrews, wives were commonly bought, according to the practice of the East, Gen. xxix. 15,—29. xxxiv. 12. Hos. iii. 1, 2. The case was the same among the Arabs and Syrians. In the language of the latter, *Mechiro*, or the *Sold*, is equivalent to the *Espoused*; just as in the German Chronicles of the middle ages; we find it stated, that A. B. *bought* C. D. that is, married her. The Arabs have, along with their religion, carried this practice far into Asia, and established it in countries where before their conquests it had no footing; and *Arvieux*, in his *Travels* (Part I. p. 65. of 4to. edit. 1711), says, that among the Mahometans there are three sorts of wives, *married, bought, and hired*.

We are no doubt acquainted with various peoples among whom wives are bought; but they do not, therefore, directly coincide with the Orientals in their marriage-laws. Among them, we have manifestly to look for the origin of the purchase of wives, in the established polygamy; for wherever that practice prevails, there can never be so many maidens as there are wooers, and, of course, every man that wants a wife, must lay his account with having to buy her.—

When, on the other hand, polygamy ceases, the sale of daughters will gradually cease of course; for the father who is desirous to see his daughters provided for, will first ask an inferior price for them, and then come at last not only to give them for nothing, but even to give something along with them. Hence it comes, that among the Jews at present, there is no real sale of daughters, nor purchase of wives, although they have a sham-purchase among their marriage ceremonies, which is called *marrying by the penny*; but it is nothing more than a ceremony.

It will be readily supposed, without my noticing it, that the value set on wives, while actually purchasable, was not in all cases the same. Indeed we see this from Gen. xxxiv. 11, 12. where *Sichem* is so deeply in love, that he offers to give for *Dinah* a very great price, indeed whatever should be asked. Jacob bought each of Laban's daughters by seven year's service; and as by the Mosaic statutes, a servant, at the medium rate, was worth 30 shekels, (Exod. xxi. 32.) and we find Hosea (chap. iii. 1, 2.) paying for his wife 15 shekels of silver, and 15 ephahs of barley, that is, half the price in money, and half in grain, it would seem from this that the price of seven year's service, and the price of a wife were equivalent*.

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* I believe it may be necessary to remark, that 15 pieces of silver, and 15 ephahs of barley, was not, as has from ignorance of Hebrew prices and customs been supposed, the hire of a harlot; for which certainly the same sum could never be paid, for one night, as for the purchase of a wife of equal rank with one's self. Nor do the words of this passage bear (although expositors have fastened that

Justice required that the lawgiver should fix a certain medium price for a wife, that might hold valid, and be exigible when a young woman could no longer be considered as an object of general desire, and her marriage with a particular person became necessary from a particular cause. When, therefore, a man had lain with a virgin, Moses compelled him to buy and marry her, Exod. xxii. 16, 17. But how much was he to pay for her? Moses decided this question likewise by a second statute, in Deut. xxii. 29. rating her at 50 shekels of silver, that is, according to the common computation at 50 guldens, but by *mine*, at 11 guldens of good money, of which four guldens make a ducat. This was, according to Lev. xxvii. 3. the highest rate of a servant; and hence we may admit it as an established maxim, that *a bond-servant and a wife were of much the same value.*

The purchase of wives came by degrees to give occasion to very strange demands for them; of which none can be more remote from our notions of things, or appear more indelicate, than that which Saul made for Michal, when he asked of David the prepuces of an hundred slain Philistines; instead of which, the valiant knight, in the true spirit of the Jewish gallantry of those days, brought him twice as many for the price of his beloved, 1 Sam. xviii. 19,—27.

The sale of daughters for wives has a very strong influence on the whole body of marriage-laws. Bought

(impertinence upon them,) that Hosea was to commit whoredom by the command of God; but merely that he was to *marry* a harlot; and so he says of her, *I bought her for fifteen shekels, and an homer and zeteck* (that is, for fifteen ephabs) of barley.

wives can scarcely be altogether free, or indeed, much better than a superior sort of slaves ; and they can scarcely, when become widows, have a right to marry again, contrary to the will of the family that first bought them. I find, it is true, no particular statute of Moses that interdicted them from a second marriage ; but then the examples of such marriages were rare. David's mother had had by a former husband, named *Nahash*, two daughters, of whom *Zeruiah*, the mother of *Joab*, is best known, 2 Sam. xvii. 25. But other instances, where a widowed mother proceeded to a second marriage, are not easily to be found.—What influence the purchase of wives had on levirate-marriages, we shall see by and by.

ART. LXXXVI.

Of Wives that were not bought.

§ 4. ALL wives were not bought ; and it would appear that those who were given in marriage without a price, enjoyed more rights in the family than others. We find, at least, *Laban's* daughters complaining that their father had sold them, Gen. xxxi. 15, 16. ; and yet it does not appear from their history in the married state, that they would have had any desire to remain unmarried. Their complaint, therefore, presupposes that there was another sort of marriage besides that by sale.

I find that *Sarah* and *Rebecca* were wives of quite a different description from the wives of *Jacob*. When *Abraham*, at *Sarah's* desire, accepts her handmaid as

his concubine, the old lady still takes the liberty, whenever she pleases, of treating this young and beautiful damsel, even when pregnant by her master, exactly as a servant ; and at last turns her out of doors, along with her son of sixteen years of age, because *he* unthinkingly mocked at *hers*, a child of but three, Gen. xvi. xxi. None of Jacob's wives would have ventured on such an attempt, meek and indulgent though he was, and in his character very unlike to Abraham, who possessed both courage and pride.—Isaac, during his whole life, had no partner of his bed beside Rebecca. We see, however, that she was not bought, but voluntarily became his wife, without any price, and that her relations, on the very first proposal made by Abraham's servant, signified their concurrence without any negociation, Gen. xxiv. I do not deny that the presents which Abraham's servant brought with him, might be a thousand times more valuable than the thirty or fifty shekels, for which a wife might have been bought : but then these were still but presents, and not purchase-money.

Eastern travellers generally remark, that the daughters of kings are given in marriage to the royal ministers in this honourable manner, by way of presents ; but still on such a footing that the right of polygamy must cease. For as in the East, equality of rank in matrimonial connexions is not studied, and a person of the highest rank may take the meanest woman for his wife, the consequence is, that the daughters of kings can seldom expect to be sought in marriage by other kings, and must, of course, rest satisfied with subjects. Michal may be considered as having been

in some measure *given* to David in this way as a present ; as her father did not want money for her, but only the prepuces of an hundred Philistines, as a proof of David's valour ; at the same time, she *was* purchased by David at this hazardous price, as we have remarked in the preceding Article.

ART. LXXXVII.

Of the Slave appropriated to the Son as a Concubine, before his Marriage.

§ 5. I MUST now notice a practice to which the warmth of the Oriental climates gave occasion, viz. that of giving to a son wives, or rather concubines, only for a certain period. I shall then illustrate the law of Exod. xxi. 9,—11. which has a reference to this practice.

In those hot climates, where boys arrive so early at puberty, and feel the most violent propensity to pleasure at an age little beyond that of childhood, and when reason is far too weak to controul their passions, it becomes advisable to yield to a lesser evil, in order to prevent the consequences of a greater, that would otherwise prove almost inevitable. The habit of self-pollution, which is more injurious to health than whoredom itself, and the practice of unnatural lusts, to which those climates would seem to present peculiar incitements, would usurp the place of more natural, and less pernicious excesses, did not parents who have the means within their power, take care to prevent these evils, by giving a slave as mistress to a son,

whom, though arrived at puberty, they cannot well settle in a matrimonial connection, unless they were to let him, while yet a boy, take a wife who would be too old for him when a man.

Chardin, in his *Travels into Persia*, part ii. p. 293. speaking on this subject, says, that when an opulent Persian suspects that his son begins to feel the impulses of manhood, he sends him to a priest, who, in order to come at the truth, asks him a variety of questions, such as, "Whether the devil has ever yet danced upon his naked belly?" and if the boy seem to understand the object of his examination, a slave is given him for his use. A similar practice prevails in Portugal, which is to be ascribed to the climate, and to the quondam prevalence of Oriental manners, while the Saracens were in possession of that country. The nobility give mistresses to their sons, until they marry; and then these mistresses are sent into a convent. The children of these concubines, after the expulsion of their mothers, not only remain in their father's house, and are brought up by their noble stepmother, but they are even capable of inheriting the paternal estate, if no children are born to their father in wedlock; in other words, they are, in such a case, regarded as legitimate children*.

The very same practice prevailed among the Israelites; and although by the rules of morality it is certainly reprehensible, Moses tolerated it as a civil legislator; taking care, however, that no wrong should be

* See *P. G. v. K. Nachrichten fur ein Reisenden*, translated from the French, part i. p. 223.

done to the slave appropriated as concubine to the son. That the helpless damsel, who is compelled by her master's command to become the mistress of his son, should after a certain number of years be rewarded by perpetual confinement, in Portugal in a convent, and in Asia in a seraglio, to be racked by desire, from the gratification of which, natural as it is, she must be precluded all her life long, is a piece of such barbarous cruelty as no legislator ought to tolerate. For it is, at least it ought to be, the object of all laws to take care that no one should be liable to oppression, without having relief within his reach. Moses, therefore, ordained, that if a father assigned a slave to his son as his concubine, until he should be duly married, (Exod. xxi. 9,—11.) then,

1. The damsel should from that time be considered not as a slave, but as a daughter in the family. He did not mean a *daughter-in-law*, for in Hebrew such a person is not called *daughter*; but the expression he uses is equivalent to what we would express by saying, *she shall be counted as a child in the family*.

2. That when the father gave his son a wife, properly so called, the marriage with the maid was still to continue; and it was expressly enjoined, that in point of food and raiment suitable to her station, and of that matrimonial duty to which she was entitled by the laws, she should lack nothing; and if from want of either inclination or means, the son failed in these respects, she was then to go free, without paying any redemption-money.

ART. LXXXVIII.

Wives of different Ranks—Concubines.

§ 6. FROM what has been already said, it appears that among the Hebrews, wives were of different ranks; but in general, in the East, they have fewer rights than among us. For where polygamy prevails, the fair sex stand in the estimation of mankind several degrees lower than elsewhere; and in Asia this is carried so far, that among the Mahometans it has actually been a piece of curious controversy whether women will have any place in Paradise; and *that*, even although one of Mahomet's wives is called *the mother of the faithful*.

With regard to these distinctions in point of rank, I would observe, that those unbought, (such as Sarah and Rebecca,) had certainly the precedence of bought ones; and yet some of the latter, such as Leah and Rachel, were still, to all intents and purposes, mistresses of the family, in contradistinction to those called handmaids, אמה, (*Ama*) and concubines, פלגש (Pi-legesch). That both these words have the same meaning, is evident from comparing Judg. viii. 31. with ix. 18.; and in 1 Kings xi. 3. the noble or *princely consorts* of the king, נשים שרות, (*Naschim Sarot*) stand in express contradistinction to his concubines. With all this, however, their concubines were not unchaste persons, nor are they to be considered in the same light as *our* concubines; for the children whom they bare were legitimate.

The Hebrew, at his wife's desire, might use her slave as a wife ; but he could also, without waiting for her consent, use his own handmaid in the same way. In the law of Exod. xxi. 7, 8. the latter is almost presupposed as the usual practice ; and when the handmaid thus came to share her master's bed, without becoming his wife by the usual matrimonial solemnity, she was called a *Pilegesch*, or concubine, and *he*, with respect to her, retained the title of *master*, Judg. xix. 26.

In reference to these concubines, we have certain Mosaic statutes to illustrate. One of them occurs in Exod. xxi. 7, 8, 9. as just quoted. It treats not of damsels taken in war, but of handmaids of Israelitish descent ; and Moses ordains that a person of this description should not, like the Hebrew servant, be dismissed in the seventh year. As her master had it in his power to use her as a concubine, it was certainly reasonable, at least when he had actually done so, that she should not be treated as if she wished for her freedom ; for in her case, freedom, according to Israelitish manners, was a state of danger, and would have been nothing less than a forced divorce. But Moses, although he permitted divorce, never had it in view to promote it, or render it necessary by his laws. To return, however, to the statute in question, the contents of which I wish to illustrate : it includes two clauses in favour of slaves of this description ; but both the text and exposition of these clauses, may admit of some controversy. This is not the place to carry on a philological disputation ; as probably half my readers are ignorant of Hebrew, and the work not being printed

under my own eye, I dare not venture to introduce many foreign words, lest by errors of the press they should be unintelligible; but my sentiments on this subject are the following.—Moses says, ver. 8.

1. *If her master have no desire for her, so that he does not* destine † her for himself, then shall he, if any man wish to redeem her, agree to it, and thereto offer his hand.* The master, therefore, who did not chuse himself to marry his Israelitish handmaid, had it not in his power to exercise the unnatural cruelty of insisting that she should remain in his house for ever as

* This word *not* gives rise to the first and most difficult point in dispute here; for there is a various reading in the Hebrew itself, the text having לֹא, *not*, as I have translated, but the margin, by the change of a single letter, לוֹ, *to himself*, which makes the sense directly the reverse, *after he has destined her for himself, or betrothed her*. If the reader chuses rather to judge for himself concerning this variation, than to believe me, I will give him all the help in my power. The printed Hebrew Bibles have both readings, the one in the text, which the Jews term *Ctib*; the other in the margin, called *Keri*.—With the *Ctib*, or text, which has the negative particle, agree not only the most numerous authorities, but those also, which, in a critical question, are of most weight. For, 1. the Samaritan text; 2. the Septuagint; 3. Aquila; 4. Symmachus; 5. Theodotion; 6. the Syriac; and 7, 8. both the Arabic versions, have read in the same manner. — With the *Keri*, which, instead of *not*, has *to himself*, none of the ancient testimonies accord, except the Chaldee versions and the Vulgate.

† *Destine*. Thus I render the Hebrew יְדָוָה (*Jedah*) out of deference to the text; yet I cannot refrain from suspecting that Moses may have written יְדָוָה (*Jedah*) the letters of which are the same, though the places of two are changed. This would make the translation, *and has not yet known her*. The sense of the law is in the main the same, but the expression clearer.

a maid and unmarried, but was obliged when any one, such, for instance, as a near relation, or an intending husband, expressed a wish of redeeming her, to let her go at a reasonable ransom.

This, again, is one of those equitable laws by which Moses studied to prevent a great and clamant wrong. The female slave had, in common with other women, those natural desires which it is torture not to have the power of gratifying; and to know for certain, that while she lives she never *can* gratify them, but must for ever remain in a state of celibacy, is absolute despair. If the master, therefore, neither chose to make the Israelitish damsel whom he had purchased, his wife nor his concubine, the law informed him that she was not born without feelings, and it also fixed the rate of ransom by which the road to matrimony lay open to her. In such a case it is quite obvious that he could have no title to demand as much as avarice or caprice might dictate, but was bound to let her go for a *fair* ransom; and if it be asked what is here *fair*, as Moses has not fixed it, I should suppose the master might be allowed to reckon how much he had given for her originally,—how long she might from that time have served him according to the laws of the probability of life,—and how many years she had actually done so; and then be satisfied with the sum that should remain, after deducting the years of past service from the purchase-money. This, I admit, is a difficult calculation, speaking theoretically, and one for which it is easier to find an Algebraic formula, than actual numbers. This difficulty it has in common with all such calculations of probabilities, which

do not perfectly quadrate with any individual example, but are merely the average or mean of the particular cases that recede to either side. But what to us, who only speak theoretically, and may overlook many circumstances of importance to the question, proves so difficult to determine, must, in a country where female slaves were daily bought and sold, have, by long experience, been ascertained with tolerable accuracy; and, of course, a rate and mode of calculation established, which a court of justice could recognize with as much propriety as it does market prices. And it was manifestly the intention of Moses, that by this common and equitable rule the rate of redemption of an Israelitish female slave should be regulated, when any man had a right to redeem her.

2. In the second clause of ver. 8. Moses says, *If her master despise * her, he is not entitled to sell her into*

* In the original, the word is בִּבְגָדוֹ, *Bebigdo*, which admits of different explanations, and may here grammatically be either a noun or a verb.—If considered as a verb, it may be rendered either,

1. *After he hath acted unfaithfully towards her*; in which case it would seem as if it was to be regarded as unfaithfulness in the master, not to have used his maid as a concubine. But as a master could not possibly be *bound* to make that use of all his slaves, this cannot, in my opinion, be the proper translation of the words.

2. The verb בָּגַד, *Bagad*, means likewise *to despise*, and is by the LXX. and other ancient translators, frequently understood in that sense.—See Hos. vi. 7. Habak. i. 5, 13. Zeph. iii. 5. Prov. xiii. 16. Job vi. 15.—In my opinion, this meaning is best suited to the passage before us; and so I render it, *if he despises her*, that is, will not have her for a concubine.

But, as we have just said, the word may belong to the noun בִּגְדוֹ, *Beged*, which signifies *a cloth or sheet*; in which case the meaning

a strange nation. This law, no doubt, became partly unnecessary, when Moses, forty years afterwards, and a short time before his death, ameliorated the condition of the Hebrew female slaves, and ordained by a new statute, that they, as well as the Hebrew servants, should have their liberty at the coming of the *seventh* year. Of this alteration of the law, which we find in Deut. xv. 7. we shall treat more fully, when we come to consider the subject of Slavery.

Another statute that occurs in Deut. xxi. 10,—14. and was in like manner given about forty years after the present one, relates to damsels made captives in war, (see Art. LXIV.) and destined by their Israelitish masters not only to servitude, but to concubinage. This Moses does not prohibit; and they are mistaken who imagine that he interdicted the Israelites from marrying foreigners. He only prescribed certain easy ceremonies, by which the captive was to pass from her own people to that of Israel; and that clause which allowed her a month to mourn the loss of those friends to whom she was to bid adieu for ever, may be regarded as an act of clemency, and well calculated to alleviate the great misfortune to which the fate of war had subjected her.

would be this, *after his sheet has been over her*, that is, after he has once taken her to his bed. In the book of Ruth, chap. iii. 9. we actually find the same idea, although the words be different. I do not think, however, that this can be the right translation here; because the preceding verse seems to presuppose that her master would not have her, and, of course, had *not* taken her under his sheet; and I can scarcely believe that Moses would have permitted a master who had never taken his Israelitish slave to his bed, to sell her to the heathen, which would follow from admitting this translation.

These ceremonies were the following. She was to have her hair and her nails cut off,—to lay aside the clothes in which she was made prisoner, and receive others,—and, before ascending her master's bed, she was, as we have said, to have a month to lament her father and mother, and thus, as it were, to die unto her people. This indulgence of a month of mourning appears to me a regulation in the highest degree humane, and alleviative of the then rude practices of war. For it is certainly an act of the grossest barbarity and cruelty, to make the captive maid, whose parents have perhaps perished in war, and to whom they are at any rate lost by her captivity, immediately after such a misfortune, in the most indelicate manner, ascend the bed of her conqueror,—a man, perhaps, far her inferior in birth, and it may be, of the very lowest rank and manners. In such a case, love becomes injury and contempt, or, to include all in one word, insult. How much then is the legislator to be praised, of whom we can say, that his ideas are dictated by humanity!

Of a change of religion on such occasions, not a word is said by Moses. No doubt the woman durst no longer adore her gods, or offer sacrifice unto them, as we shall shew when we treat of the statutes prohibitory of idolatry; but *that* she could not have done even as a slave; and therefore, on her new state—of marriage (shall I call it? or concubinage?) it had no influence. No confession of faith was at any rate required of her.

For the benefit of every such female slave, the law ordained, that the master, when tired of her, should

dismiss her without recompense, and might neither sell her, nor yet treat her any longer as a slave*. This clemency of the legislator may perhaps appear strange, because it extends farther than he had, by the previous law of Exod. xxi., carried it even in favour of an Israelitess. But for this very reason, I have remarked that the statute in favour of the foreign, was given 40 years later than the one in favour of the Israelitish, maid. Moses seems by no means to have approved of slavery, or of severity exercised towards concubine slaves; nor indeed can any good legislator do so: but in the first years of his administration he was obliged to tolerate many things in common use, just because they had been of long standing, and, as Christ expresses it, *because of the hardness of the people's hearts*. But after 40 years, when the first generation were completely extinct, we sometimes find him proceeding a step farther in the clemency of his laws. In this second statute of the 40th year, the Israelitish maid became free, without a ransom, after six years service; and the Heathen damsel also received her liberty, if her master had cohabited with her, and had no longer an inclination to let their union continue.

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* Here the word תתעמר (*Tutammer*) is doubtful, and may be variously rendered. I think it means *to use as a slave*, from chap. xxiv. 7. of this same book, where it, in like manner, stands in connection with *selling a slave*. In Arabic, the same word means either *to cultivate a field*, or *to abide in the house*. Now in reference to both these occupations, slavery might be aptly enough mentioned; and in fact the word עבד, (*Abad*) which the Hebrews most frequently use for *serve*, and from which they denominate a servant, *Obed*, signifies both to *cultivate the ground* and to *serve as a slave*.

Indeed the introduction of this second law was the more easy, that the Israelites had not been long accustomed to see captive female slaves. It was only a short time before it was made, that they, in a war with certain Midianitish tribes, made captives of 32,000 damsels, Numb. xxxi. 35; and it was probably this capture which gave occasion to the law.

That the crime of adultery in a concubine was punished less severely than in a wife, the former with stripes, the latter with death, we shall afterwards see from Levit. xix. 20, 21, 22, when treating of Penal law. She was not bound to equal fidelity with a wife, and therefore her crime was less, and its punishment different.

ART. LXXXIX.

The Questions relative to Dowries and Morning-gifts can receive no answer from the Mosaic Law.

§ 7. THAT daughters, among the Hebrews, were not in ordinary cases, heirs to their fathers, I have already mentioned; nor did they usually receive any portion; and hence the question which lawyers have sometimes proposed to me, as to what, in certain cases, such as that of adultery, had been the law, with respect to the bride's dowry, has here no place. Daughters in most cases, were so far from bringing any portion to their husbands, that they were themselves rather sold to them.

Perhaps if the father was rich, he gave his daughter something along with her, but it bore no resemblance

to a portion, but rather to what we term an *Ausstattung*, (outset or establishment) and it absolutely belonged to herself as her own property. It was besides, for the most part, of so singular a nature, that few readers would have been likely to think of it, if I had not already been obliged, *en passant*, to hint something concerning it. One or two female slaves intended to serve as companions to the daughter, were given her on her marriage; and the gift could not but be always acceptable, considering how desirable it was for a wife subjected to the confinement in which women pass their lives in the East, to have an acquaintance with her. The nature of the gift precluded the husband from having any concern with it, at least his interference must have been very prejudicial and vexatious to his wife. No doubt their horror at the shame of sterility operated so strongly with the Hebrew wives, that we often find them, when they had no children, or but few, urging their husbands to cohabit with these their slaves, that *they* might, as it were, bear children in their stead. This, however, depended entirely on their own good pleasure.

Some examples may serve to illustrate this subject. Sarah had a handmaid, Hagar, belonging to herself, whom she gave to Abraham, that she might, as it is expressed, *obtain children by her*, which she would regard as her own, Gen. xvi. 2, 3.—Rebecca, whose marriage was altogether noble and free from any thing like sale, or traffic, had several companions given her; Gen. xxiv. 61. so that her establishment was on a liberal scale; but we do not find that *she* ever harboured the strange inclination of recommending them to

her husband, as concubines, although she was long married without having children. Even the selfish Laban, who sold his daughters, gave to each of them a maid on her marriage, (Gen. xxix. 24. 29.) and that was all they carried from their father's house. To these maids Jacob could not claim the smallest right, for he had not served for *them*, and Laban was not accustomed to deal *gratis*; but their whimsical notions of the honour of a numerous offspring, led both Rachel and Leah almost to insist on their husband cohabiting with these maids. We shall now be no longer troubled with the question, what became at last of what the daughter brought along with her? It was dust, and to dust it returned!—The daughters of people in the middling and poorer classes, instead of taking any thing along with them, were articles of sale and profit to their fathers. If among the Jews of the present day, every thing relating to marriage is quite different; and if, when a match is proposed (the brokerage of which, by the way, is a very profitable concern, and generally brings in *one per cent.* of the portion) the first question asked relates to the gift that is to accompany the bride; this, it should be remembered, is the result of European manners; and what is *now* the law respecting that subject, it is not the province of this work to detail. It belongs not to the Mosaic law, and can only be decided by the Rabbins and modern usage.

As little do I find in Moses, any trace of what in the German law is, according to the proper sense of the word, termed *Morgengabe*, (morning-gift) and of which Tacitus says, *Dotem non uxor marito, sed uxori maritus*

*offert**. Among the Arabs we certainly find that husbands give a bond to their wives for a specific sum, which they denominate *Mahar*, and concerning which Mahomet prescribes a variety of regulations in the case of a divorce. The Hebrews have the same word מוהר, (*Mohar*) but not the thing; for the *Mahar* of Arabs is an obligation given to the bride, and the *Mohar* of the Hebrews, is given to her father or brethren. Hence it comes, that Moses in his law relating to divorce, says not a word of the morning-gift, nor of the bride's bond; for these were things unknown to the Hebrews of those early ages.

ART. XC.

How far the Mosaic Laws served to promote Marriage.

§ 8. It is a very common observation, that the Israelitish laws were calculated to promote marriages, and had for their object, the increase of population. I should therefore hardly be forgiven, were nothing concerning that subject to be found here; and yet I

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* De Morib. Germ. c. 18. In some parts of Germany there is still a remnant of this custom. *Ludovicus* in his *Doctrina Pandectarum*, lib x iii. tit 3 § 15, has these words, “*Mor engaba pro ipso dotatio interdum accipitur, alias vero est donatio facta a marito altero nuptiarum die novellæ suæ uxori, in præmium delibatæ virginitatis, quæ est meræ voluntatis. et hodie non adeo frequens*” The last clause, *quæ est*, &c. must refer not to *vir intas*, but to *Morgengaba*; but the author has, know not whether intentionally, placed the words in such an equivocal order that I should dread a prosecution for calumny, if I did not fix their construction.

shall scarcely be able to say all that prejudice may thus expect. For perhaps we here figure to ourselves, laws, expressly given for the benefit of the married, with peculiar privileges enjoyed by *them*; and hardships, on the other hand, and at last, a sort of infamy attached to unmarried men; with other conceits in the same style. But we find, in *fact*, nothing at all of this kind: and he who looks for such things in any statute book, is guilty of a mistake in philosophising on the spirit of laws. For whenever things have come to that pass, that a legislator is obliged, by rewards and punishments, to invite or compel his people to marry, the nation is in a very bad predicament, and the laws will prove too weak to counteract the prevailing and increasing aversion to marriage; and the consequence will be, the depopulation of the country, with a train of other evils in endless succession. The Roman laws, under the emperors, furnish an example quite in point. The decrease of marriages gave rise to privilege after privilege, with a view to their encouragement; but it was all in vain, every one proved more fruitless than that which preceded it. In such a case the evil is too great to be removed by immunities or impositions. It has its seat in another place, to which such laws pay no attention, viz. in the deep corruption of national manners.

In fact, Moses does not appear to have so much given *new* laws for the encouragement of marriage, as to have very happily left things as he found them; and only to have taken care, by none of his decrees, to offend any prevailing sentiment, or point of honour among the Israelites, that was favourable to the mar-

ried state. And indeed, in this respect, he found every thing entirely to his wish ; for the increase of the people in Egypt is the strongest possible proof that marriages had been frequent and early, and that a life of celibacy was, in a manner, unknown among them. Moses almost takes it for granted, that no Israelite would chuse to remain unmarried : and that he left them in the undisturbed exercise of their usual habits in this respect, and never enjoined any species of Monachism or Nunnism, it is unnecessary for me to observe. To an antient Israelite it would indeed have appeared very strange, to have seen, though but in a vision, a period in the future history of the world, when it would be counted sanctity and religion to live unmarried ; considering that *his* priests could only be the offspring of marriages of priests ; that one of the greatest blessings promised him by Moses, in the name of God, was a numerous progeny ; and that he looked on the want of children as his greatest curse. Among the Israelitish women too, there was a point of honour of very long standing ; according to which, they deemed sterility a very great reproach, and a multitude of children as highly honourable ; and it was carried so far as to get the better even of their natural jealousy : for, as we have already seen, (Art. LXXXVIII.) married women, merely to have the name of having children, presented their female slaves to their husbands as concubines. There were also kept Genealogical Registers, in which were inserted the names of those men *only* who had descendants ; and consequently all immortality of name depended on a man's leaving children behind him, and *their* having children in their

turn. What the man of Learning now hopes to effect by his writings—the Poet by his immortal verses—and the Hero by his noble deeds, the Israelite of those days expected, with much less trouble, from children : so that here was a certain means of prompting every man, not only to marry himself, but also to take care that his son did not remain too long unmarried.

All this, however, was not the work of Moses : he fortunately found it already established, and he took special care not to overthrow it. For example, he found Levirate-marriages, of which we shall hear in the sequel, already in use : but the footing on which they stood did not altogether please him, and therefore he mitigated much of the severity of the compulsion respecting them in certain cases, but still left the law itself in force, because it was interwoven with the established principle, *that immortality of name consisted in having posterity, and that therefore a man was bound to raise up seed to his deceased childless brother, that is, to beget children by his widow, who might be inrolled in the registers in his name.* In like manner the statute already explained, which regulated procedure, in the case of a father giving his son a slave for a concubine, presupposes the custom of early marriage : and the two successive laws, requiring the master who refused to treat such a slave as a wife, to accept a ransom for her, and even to dismiss her without a ransom in the seventh year, rest on the principle, that from the hope of marriage, to which we are so strongly prompted by nature, no person ought to be excluded, or have it made impossible during life. We shall afterwards see what laws he established relative to the marriages of

slaves one with another. The regulations respecting agriculture, and the extent of paternal authority, I have already considered as promotive of marriage. But almost all these things Moses found already established.

There is still one law, properly indeed of a Levitical or Ecclesiastical nature, concerning impurities, that, from its influence in promoting marriage, here merits our particular notice. Moses, in Lev. xv. 16, 17. *pollutionem nocturnam impuritibus leviticis annumerat*; that is, those persons to whom such a thing happened during sleep, durst neither come into the sanctuary, nor partake of a sacrifice-feast next day, and were compelled to wash themselves in the evening. Every person, also, whom they touched, was subjected to the same inconveniences. They were, therefore, in fact prohibited from touching any one, and compelled to withdraw from the society of other people, or at least to tell them that they were unclean. Now this was really a great inconvenience, and would make it necessary for many a young man to marry; and if he was under paternal authority, it would remind his father of the propriety of hastening his marriage. It was impossible, without a violation of conscience, to escape this inconvenience, or to conceal the impurity altogether; and besides, the wilful transgression of any part of the Levitical law was among the number of penal crimes. All these circumstances considered, I cannot but think that this law must have served very strongly to promote early marriages.

That the great increase of population is an effect of such marriages I need not say. It is, however, at the

same time probable, that they have an influence on the *stature* of a people, and render it smaller. Among the Jews of the present day, who still marry early, we seldom find any but little or middle-sized men. Of the ancient Germans, on the contrary, who were almost all large, and appeared to the Romans like half-giants, we know from *Tacitus*, that they married late. It would seem that the Israelites had, in the time of Moses, been, for the most part, of a small stature, for the Canaanites were objects of terror to them by reason of their size ; but where mention is made of giants, and even whole families of giants, among the Canaanites, we may presume they were not always giants in the proper sense of the word, but only people of extraordinary stature, perhaps like our ancient Germans.

ART. XCI.

Moses prescribed no Marriage Ceremonies, but was satisfied with those already in use, or that might be afterwards adopted.

§ 9. It is manifest that among every people, there must be certain forms by which marriage is consecrated, and distinguished from cohabitation without marriage, or, in other words, by which it receives the sanction and guarantee of the laws*. A legislator may, in most cases, presuppose those solemnities as well known, and, in general, he really does so ; for

* See my Dissertation on the Influence of Opinions on Language, and of Language on Opinions, p. 15,—18. Eng. Trans. 4to.

they are quite arbitrary, and may be altered in course of time, but still the laws remain the same. We seldom find in a law-book a complete detail of every particular that belongs to the solemnization of a marriage; and, indeed, to give too complete a description of the process would be dangerous. For if the law interfere in the matter, chicanery will, in the very first deviation from the form, though so trifling that no one, and, least of all, the party in danger of suffering, attends to it, find a reason for declaring the marriage invalid, and the cohabitation that has taken place unmatrimonial, to the great injury of the innocent wife. Of this I can mention no stronger example than the excessive punctiliousness of the English law; according to which, it is no marriage, but mere cohabitation, if one iota of the marriage-forms be omitted, or even but the name of one of the parties wrongly mentioned. Those who have read English romances well know how many tricks of this kind may be played, and how easy a matter it becomes, in consequence of the overnicety of the laws, to render a person of the strictest virtue infamous and miserable during life. Now, therefore, since, besides all this, the customs of a people are always changing with time, and one marriage-ceremony comes into use, and another grows obsolete, and all of them are alike arbitrary, the most prudent plan that a legislator can adopt in regard to them, is to fix nothing, but leave every age to follow its own customs, and regard *that* as marriage, which, according to the existing custom of the time, has, *bona fide*, been considered as marriage.

And thus acted Moses. He nowhere says one word

as to the manner in which marriage was to be concluded, but either presupposes this as fully known, or leaves it to future times to change what they might think fit in the forms. No danger could, by his law, hence arise to the woman; for allowing that a man had betrayed her into the belief that she might become his wife without the legal ceremonies, and that in this belief she had granted him the rights of a husband, he would find in the end, that he had deceived himself and not her. For whoever seduced a virgin was obliged to marry her, and not only so, but to purchase her from her father at the advanced price of 50 pieces of silver; and forfeited, after all, the right enjoyed in cases of regular marriage, of giving her a bill of divorce, Exod. xxii. 15, 16.—Deut. xxii. 28, 29. Thus, by the very artifice to which seducers in England often recur but too successfully, she would become his wife by a tie utterly indissoluble; and were the English law to make the seduction of a woman, by a pretended marriage, felony, like rape, unless when she herself should intercede for the seducer, and at the same time, resolve to be legally remarried to him, we should soon cease to hear of any more such villainous practices in that country.

As Moses himself prescribed no marriage-formalities, it must be a matter of perfect indifference to the reader of my Mosaic law, what those in use in his time were. Thus much is certain, that *he* instituted none; and that the priest had nothing to do with what we call the *wedding*: or to speak more generally, with the consecration of the marriage; and consequently, our priestly benediction is no relic of the Mosaic law.

Yet it is not therefore to be censured as improper; because every people and every legislator has a right to fix the manner in which marriage is to receive the sanction and guarantee of the laws. This only, I would observe, that as it is altogether a matter of human compact, and uninfluenced by divine authority, whether the laws of any country shall ordain that married persons be united by a priest (in our church we have no such character) or a minister, or a burgo-master, or a bailiff, or a writer, or even by the father of the bride;—we have no ground whatever to consider our present usages, on such occasions, as even an imitation of any model prescribed by Moses. How they have arisen, it belongs not to me here to inquire, but to the Ecclesiastical History of the New Testament. The only thing which I would request, by the way, is, that those who write the History and Antiquities of the Church, and even the Illustrators of the New Testament, would never take it for granted, that the priestly nuptial benediction was an antient Jewish rite: or when speaking of the Apostolic Church, ignorantly represent our present marriage ceremonies, as handed down from the æra of the creation, if not from eternity.

Should however, any reader be curious to know what I have been able to gather from Moses, and the other writers of the Hebrew Scriptures, previous to the Babylonish captivity, concerning the nuptial rites of those times, he may peruse the following paragraph.

“ The father, or some relation, sold, or gave away
“ the bride; between the espousals and the marriage
“ there usually intervened the space of ten months,
“ or a full year; (as is still the practice of the Jews;)

“ the marriage was then celebrated, and among the
 “ more opulent, there was a feast that lasted for a week.
 “ *Nocte prima sponsam vel pater vel cognati in Thalamum duxerunt, præ foribus expectantes, donec linteum*
 “ *virginitatis spoliatae signis inquinatum sanguineis pro-*
 “ *ferretur. Hoc sponsæ virginæ asservabant indicium,*
 “ *senioribus urbis postmodo, marito reclamante, exhibendum, ut pœnas calumniæ lueret.*”

These, however, are all matters which belong not to the Mosaic law, but to Hebrew antiquities, and which I am the less anxious here to illustrate by proofs, because I treat of them in my lectures on that subject; a compendium of which, that has been for many years past in the hands of my hearers, I mean soon to publish, in consequence of the sollicitations of my friends.

The only circumstance that I would distinguish among them all, as properly belonging to the Mosaic law, is this, that when the bridegroom did *not* find the *signa virginitatis*, he did not keep his young wife, but sent her home, and probably also demanded back the money he had paid for her. But the statute relative to this point, merits a particular inquiry.

ART. XCII.

The Bridegroom was held as deceived, and the Bride as not a Virgin, quum Signa Virginitatis primo congressu deessent.

§ 10. THE law relative to this point, which we find in Deut. xxii. 13.—21., has been cruelly tortured by the Jews: either because in those brides who should

have been virgins, they often found no *signa virginitatis*, and were yet fain to persuade themselves, that this did not proceed from the cause to which it was likely to be attributed, or else, because they thought it too hard that a new married woman should be condemned to be stoned, merely because they happened to be wanting.

If the *latter* was their reason, their scruples, though certainly entitled to no unqualified assent, in contradiction to the clear words of Moses, may yet merit some degree of consideration ; because it may be possible, that the *signa virginitatis* might be lost without whoredom, or that they might never have existed. As there are persons imperfectly formed in other respects, and destitute of some bodily organ from their mother's womb, so there certainly may be girls born without a *hymen* ; and the law must not subject any one to the danger of being adjudged to suffer a violent death, as a criminal, for an innocent bodily defect.—If, on the other hand, the *former* reason influenced their comments, they deserved to be what they were ; and indeed their distortion of the law is so strange, that we should almost be tempted to wish that each of their commentators, had been rewarded with a bride full 13 years old, and circumstanced altogether conformably to their own system.

For they maintain, that the law only refers to girls under twelve and a half years old, and that *they*, to be held virgins, ought always to have the *signa virginitatis* ; but that *at*, and above that age, these ought not to be required, and that the law does not extend to such cases. Now I will most readily believe the Rab- bins, that many brides who are past the suspicious

period which they have thus fixed, have not the *signa virginitatis*; but that Moses says nothing of this period, is obvious to every reader. Besides, the Hebrew word נַעֲרָה, (*Naara*), a girl, is nowhere by use, but merely by some conceit of the commentators, limited to that age; and finally, it would be a very preposterous law, which should, on pain of death, require *signa virginitatis* in girls, at an age, at which they do not usually marry, and when, of course, no man is at all interested about the matter; and at the same time, from their thirteenth year, that is at the very age when suspicions are most likely to arise, declare them all good virgins, be their bodily circumstances what they may. If the inventor of this subterfuge was influenced by this consideration, *quod frictionibus absque coitu hymenem lacerare interdum solent et ipsæ puellæ*, he ought not to have fixed the age of twelve and a half years: for this happens, in many instances, much sooner, (perhaps, as physicians say, sometimes as early as eleven,) and in the warm climate of the promised land, it was to be looked for still earlier, considering that in France, anatomists have so rarely detected the *hymen*, that some of them absolutely deny its existence, and look upon it only as a pious fiction.

The only weighty objection against the tenor of this law, and that furnishes any apology for its manifest distortion by the Jews, does not fall to be considered here, but belongs to the head of Penal law, under which I mean to discuss it. At present, I merely view the law, as requiring that the bride should have the *signa virginitatis*, and giving the bridegroom, when she had them not, a right to look upon her as no virgin. It is only in reference to this point, which

has, in fact, an important influence on the Christian marriage-law, that I now proceed to its illustration.

However confidently the fact may be denied by lawyers, who commonly found their opinion on the *Quæstiones Medico-legales* of *Paulus Zacchias**, it is nevertheless very certain, that every virgin naturally has the hymen; *cujus primo concubitu perruptio Thalamum sanguine inquinat; huic vero inditur nomen, signa virginitatis. Ne autem lector hæc verba secus ac velim intelligat, hymenem absque coitu, operibus variis lascivis, silentio hic prætereundis, sæpissime posse dilacerari, omnino concedam. Nunquam vero saltatione, ut quidam volunt, vel saltu, vel casu, vel crurum divaricatione læditur hymen, quin corpus hoc ipso facto aliis injuriis gravioribus afficiatur, rationem defectus mechanicam præbituris. Quum enim ex læsione aliqua violentiore extiterit pudendi vel laceratio vel ruptio, hymen tum frustra queritur; causam vero defectus satis compertam habemus.*

The authors whom we should consult on this subject, if we wish to come at the truth, are certainly not lawyers; for how should they, who dissect no bodies, know any thing about it?—nor yet mere practical physicians, however conversant in female diseases, and however well qualified to write *recipes* for them; no, not even although they were, like *Paulus Zacchias*, Polyhistor, and physicians-in-ordinary to a Pope: for neither their theory, nor their practice, can enable them to give any sure decision on a question like this, that depends entirely on experience.

* Lib. iv. tit. 2. *De Virginitate et Stupro.*

And, least of all, should we listen to the advocates of a person accused on this score, or to those who draw up defences for her, at so much a-piece. What experience can such people have, whereon to found a judgment in relation to a question, which is merely a *questio facti*?—*Stupratori citius crediderim perito, qui in Germania saltem et Anglia, signum esse, ex quo virgo sit certissime dignoscenda, affirmare solet.* And yet such a person, after all, is not an evidence that can be depended on, because he will often boast of his crimes, and just as often be deceived; but still I would look upon him as at least as well entitled to credit, as a doctor or a lawyer, who but drew his answer to this question out of some compendium of his art.

The only persons from whom I have looked for true and certain information here, are skilful anatomists, who have dissected a great many female bodies, and *that* too, I must add, in countries where corruption of morals among young women has not arrived at its highest pitch. For since it has somehow happened, that the German anatomists maintain the existence of the hymen, and those of France, on the contrary, deny it, or at least reckon it among the greatest rarities in nature, I could not be so unpolite as to question either the veracity or experience of the latter; *hoc tamen scire vellem, annon mulieres Gallicæ, eo nequitiae pervenissent, ut perpaucæ virgines inter illas reperiri possent.* (*In Satyra quadam, sermone Latino conscripta, cujus Auctor mihi e memoria jam excidit, olim mihi videor legisse, feminas Romanas nobili stirpe ortas, virginitatis ætate scilicet ita præcoce perditæ, æram prorsus fuisse oblitæ.*) *Hoc saltem percontatu dignum ducerem, annon luxuria, ni-*

miaque, de rebus eroticis et lectio et auditio, libidines adeo præmaturas excitassent, ut plurimæ in ea regione mulieres virginitatem, adhuc impuberes, frictionibus lascivis perdidissent.—I should, for my own part at least, hold it incredible, that nature, without any alteration occasioned by accidental circumstances, could, in the same, or very nearly the same climate, be so unlike herself, merely from a difference of longitude, as in Germany and Switzerland to give women a hymen, and a little farther west to omit it. But it would, at the same time, occur to my mind, that, for each of the three last centuries, the number of the inhabitants of France has been said to be always a million fewer, and that such a periodical decrease of population is commonly connected with the state of national morals.

I shall now state what I have learned from the anatomists of our university on this subject.—Dr. *Haller*, informs me, that the only thing like an exception to the rule, that virgins ought to have a hymen, which he ever remarked, was the case of a female subject; *cujus hymen adhuc irruptus sed ita conformatus videretur, ut post unum alterumque concubitum irruptus mansisset; ex quo vero hoc tantum, rarissimoque exemplo, sequeretur, mulierem revera incastam signa castitatis ipsas inter nuptias exhibere posse.* But I have no occasion to refer to any oral communication from my colleague, because his writings present us with testimony still more express; and, considering the importance of this subject to the philosophy of jurisprudence, I here take the liberty of quoting his own words, from the *Elementa Physiologiæ*, tom. vii. par. ii. lib. xxviii. § 26. p. 92, 93, 94. After noticing

the contrary opinion of some physicians and anatomists, he thus proceeds: "*Qui vero incisores frequentioribus usi sunt occasionibus, nostro potissimum sæculo, post constituta rectius theatra, et nosodochiorum cadavera incisionibus destinata, ii facillime particulam neque parvam, neque obscuram, neque unquam deficientem, viderunt; ut nemo in illa hymeni contraria opinione supersit, præter unicum clarissimum nostrum collegam (Buffonum) quem necessitas hy-potheseos eo adegit, ut hymenem nolit admittere.*"—He then mentions medical evidences for the hymen, and its necessity, which I omit; and at page 95. continues thus: "*Ego quidem in omnibus virginibus reperi, quarum aliquæ adultæ erant ætatis, neque unquam desideravi, neque puto a pura virgine abesse.*"

Now, whether after such evidence as this, the opinion of a *Zacchias*, on a point, that, without anatomy, cannot be determined, even though he give it from numberless other authorities, should at present be held of authority in *our* law, I do not enquire; for it may be said for it, that, in law, a doctrine once established, and acted upon as law, ought not to be easily altered; but thus much is certain, that after *Haller* has thus contradicted him, there is no philosophical tribunal sitting in judgment on the law of *other* nations, in which he would not be deprived of a seat and a vote.

The late electoral physician, Dr. *Röderer*, who succeeded *Haller* in our anatomical theatre, confirmed, in the course of our conversations, what I had understood from his predecessor; and the following paragraphs of his *Elementa artis obstetriciæ*, viz. 117, 118,

119, and 120. express the same opinion, but not so strongly and determinately as he declared it himself.— Dr. *Wrisberg*, our present anatomical professor, who has added the experience of many years to the instructions of his master, assured me of the fact, in terms still stronger than Röderer had represented it; and his testimony is with me of the more weight, because at first he was inclined to contradict me, from not fully understanding my question. *Respondit enim, fieri quidem posse, ut puellula decem vel etiam novem annorum, viri adhuc prorsus inscia, hymenis nullum haberet vestigium. Mihi vero, ipsa an innocua, res ita sese habere posset, percontanti, hæc verba fecit; “Sententiam tuam nunc penitus habeo compertam. Ipsius nisi culpa, ex lasciva scilicet frictione, nil tale fieri potest.”* When I added, that I would be inclined to except the rare case of violent laceration by a jump or a fall, he did not at all require *any* such exception; deeming that misfortune not perhaps absolutely impossible, but still much more rare than I had conceived it, and almost unexampled.

If it be here objected, that the rule must admit of *many* exceptions, because in *some* countries, anatomists so seldom find the hymen in grown girls; *aut quia sponsæ pro castis habitæ, suamque (et ipsis certissima fides est habenda!) puritatem virgineam prædicantes, nulla tamen virginitatis signa interdum præbere solent*; I reply, that as to the former supposition, the blame is to be attributed to the great depravity of morals in those countries, and that, besides, young women of good education are seldom subjected to dissection. As to the latter, it is difficult to hear it stated, without laughing.

No doubt, as nature exhibits monstrous appearances in other respects, as in cases where a member of the body is wanting from birth, we cannot insist that the birth of a girl without a hymen is an impossibility, or deny that it has ever happened; and it is also possible that it may be injured, *absque concubitu, operibus scilicet lascivis*; and perhaps too, even innocently, by some violent exertion. But still as the first and last of these are cases so extraordinarily rare, that the greatest anatomists know nothing of them, it certainly seems very natural and reasonable, that the bridegroom, who finds his bride destitute of the *signa virginitatis*, should have a right to send her back to her parents; and if he has bought her, to demand back the purchase-money paid for so suspicious an article. For, allowing that she either belonged to the class of monsters, or had met with a misfortune, he had no intention of marrying a monster, nor yet a woman whose corporeal defects had been concealed from him; for such a defect as this, whether it arise from a natural deformity, or be the very rare consequence of a hurt, interferes so materially with the essential purpose of marriage, and with a man's peace of mind during his whole life, that he cannot possibly be supposed to consider it as an insignificant trifle. For as no man, who is not a mere simpleton, will, in a matter of this kind, credit the testimony of the woman herself, it becomes absolutely impossible for him to persuade himself that she had been previously chaste; and, of course, he can never afterwards be even but indifferent, whether she be faithful, and whether the children she brings him, be his own. For it is an

hundred thousand to one, that she was not before a virgin, though neither a monster, nor the victim of accidental injury ; but had been connected with some other man ; *ni hymenis defectum causis adhuc turpioribus tribuere volumus*. Who may have preceded him, he can never know, so long as she affirms that she *was* a virgin ; and therefore, he is in a worse situation than in the case of her manifest adultery ; because *then* he would know his rival, and could guard against him ; or if he died, or removed to a distance, have nothing to fear from him ; whereas in the present case, he can never be sure, whether her former paramour may not still be with her every day. *Sin autem, absque coitu, ipsa hymenem moliminibus lascivis lacerasset, (id enim in partem mitissimam accipere volo, quod, in eadem trutina qua meretricium, recta conscientia pensat,) sibimet soli vitio vertere potest, quod a marito ad suos remittatur*. And, all these circumstances considered, we may rather wonder that our European laws should not admit the charge of the want of virginity in a bride, and should insist on a husband's believing what he cannot possibly believe, than that the laws of Oriental nations should have held a marriage under such circumstances as invalid, and have declared the bride a cheat.

A law like this must have had a very strong influence both on the morals of the female sex, and on the careful education of daughters. For if it was previously known, that the bridegroom would return his bride to her parents, if the *signa virginitatis* were found wanting, not only would the dread of such a disgrace and misfortune, operate on the fears of girls them-

selves ; but parents would also be extremely watchful, not merely of the intercourse of their daughters with the other sex, but likewise to warn them of the dangerous consequence of indulging impure desires. Besides, the penal sanction annexed to this law by Moses, must also have very strongly inculcated both prudence on the part of daughters, and vigilance on the part of their parents ; and thus have contributed in a very high degree to preserve the purity of female morals.—But of this penal sanction I do not at present speak ; and perhaps it may have been rather threatened, than ever put in execution.

Here the question may be with great propriety proposed, what parents under such a law could best do, to rid themselves of the torture of living, till the awful night of a daughter's marriage, in the fear of her being disgracefully sent back to them ? Undoubtedly, nothing could be more effectual than early and earnest admonitions from the mother, together with the strictest vigilance on the part of both parents ; and they were bound to make their daughters not only acquainted with the law, but with the risk they ran, of rendering themselves miserable, by the indulgence of corrupt passions, independent of actual guilt. Nor could they safely make secrets of those things which we commonly conceal from our children, because they were thus left in hazard of sinning through ignorance. An honest intimation of their danger, together with early marriage, would here be productive of the happiest effects.

In Asia, however, and in Africa, they have, besides, invented a variety of mechanical contrivances to pre-

vent the danger in question. One gentle method, of which opulent parents availed themselves, consisted in a piece of ornament still very commonly worn by young women of rank in Arabia, and of which we find notice taken in the Bible, by the prophet *Isaiah*, ch. iii. 16, 18, 20. They put fetters of gold, silver, or some other costly material, on their legs, immediately above the ancles, and connected them by a golden chain; in order, as they pretended, to make them measure their steps, and move with elegance and regularity. It is obvious that the key of these fetters was not entrusted to themselves. Now, that this ornament was meant as an artificial preservative of chastity, will be the more readily believed, when I notice the very strange circumstance related in the Talmud, that there were some families who found it indispensably necessary to their daughters, to prevent them from lacerating the hymen by incautious steps, and thus losing the *signa virginitatis* before marriage.—That it was indispensable, I readily grant; but then, if the hymen was ruptured, something else than carelessness must have been the cause. After all, this contrivance could never wholly prevent the loss of the *signa virginitatis*. *Molimina enim lasciva nequaquam, coitumque ipsum vix ac ne vix impedire possent compedes isti. Est enim modus coeundi possibilis ac in Asia hodie revera usitatus, quem nihil morantur, quanquam ipsi disruptionis periculum subeant. Gentes quaedam Africanæ castitatis præsidium multo securius excogitarunt; quod vero, non est quod hic describam, quoniam inter illos quorum leges nunc commentor, nil tale reperitur. De Clavibus quæ dicuntur Italis, mihi nomine*

tantum notis, ad eundem vero usum fortasse inventis ; an parentum orientalium priscis temporibus suspiciones ut ecquid tale fabricarent, illos movissent, prorsus ignoro.

It is a certain fact, that among some Asiatic nations, every woman before her marriage was obliged to expose herself in the temple of a certain deity, and surrender her virtue, for the benefit of the temple, to the first person who asked her ; and this shameful custom seems to have been connected with the apprehensions of parents, lest their daughters might not prove virgins on the wedding night. There could be no better method, of preventing all inquiries after what increasing depravity would always render more and more rare, than that no bride *durst* be a virgin, but every young woman should be obliged to offer her virginity to a god. It is believed, and not without probability, that some Midianitish tribes had established this custom, and at an annual festival in honour of *Baal-Peor*, resigned the virginity of their daughters to the first comer. The story related in Numb. xxv. 1,—8. seems to insinuate as much ; and the prevalence of a similar custom among the Babylonians, is supported on the authority of Herodotus. That historian, however, does not directly speak of the loss of virginity, but only says, that every woman in Babylon was obliged, once in her life, to expose herself in the temple of Melytta, and receive the embraces of the first man that asked her*. Thus much is manifest from this example, provided the fact is correct, that one and the same law may have very opposite

* See Book I. ch. 187. of Mr. Goldhagen's German version.

effects, according as a nation is virtuous, or in a middle state between virtue and vice, or again, in a high degree vicious.

Quasdam inter gentes de sponsarum virginitate sollicitas, solebant convivæ nuptiales præ foribus cubiculi expectare, donec, signo dato, illis indicaretur, opus illud cujus causa solum cum sola reliquissent, feliciter fuisse perfectum. Matrōna tunc ingressa linteum e lecto subductum apud convivas exposuit, qui signis virginitatis visis magnopere lætabantur. Arabibus itidem hæc fuit olim consuetudo ; hodie vero nusquam, vel raro saltem inter illos reperitur. Inter Hebræos sub æram Novi etiam Testamenti vestigia ejus extiterunt ; Mosisque tempore certissime invaluit. Patri enim sponsæ a marito accusatæ, præcipit ut castitatis signa, linteo explicito, coram judicibus exhiberet.—Perditæ virginitatis se nulli fuissent testes, aliquodque linteum sanguine conspersum pro certo indicio esset habendum, probatu facillima parentibus semper evassisset filiarum castitas. Illi enim linteum quodlibet sanguine quovis tempore inquinatum, nunquam non proferre potuerunt. I suspect, however, that the one admitted in evidence, on the testimony of the marriage-guests, must have been impressed with some particular seal ; and that this may be the better understood, I have to observe, that the seals of the Hebrews were their names cut in a stone, which having dipped in bistre, or some other kind of ink, they then, by way of their subscription, printed at the bottom of what they meant to testify.

What measures were recurred to by parents, when the impending trial of a daughter's virtue wrung their hearts with grief, and they yet wished her to escape

the severity of the Oriental law, without directly acknowledging any thing to her shame, may easily be conceived. At present, in those parts of Asia, where attention is paid to the *signa virginitatis*, it is their common practice, in cases where they are suspicious of the result of the trial, to take the earliest opportunity of telling the bridegroom, that they cannot promise for the *signa* being found, as the whole family have a natural defect, and sometimes want the hymen. If the bridegroom is satisfied with this account, and concludes the marriage on such terms, he naturally loses the right of returning the bride on account of a defect, entirely proceeding from a cause over which she has no controul. That this procedure takes place not unfrequently in Asia at this day, I know from the accounts of travellers. The evasion, however, is a very ancient one; for the Talmud, as I have already remarked, speaks of whole families who had some extraordinary conformation in this part of the body, and were very liable to the misfortune of lacerating the hymen. How the present Jews evade the law, by limiting its operation within the age of $12\frac{1}{2}$ years, has been mentioned above: even in Asia they now pay less regard to the *signa virginitatis* than other Orientals; nor is it any wonder that a people so long in a state of dispersion, and under the yoke of so many foreign masters, should have undergone many revolutions in their manners, and have had periods in their history, when the *signa virginitatis* would be rarely found, and a law for enquiring about them have been imprudent and inconvenient.

Restat hæc porro legis Mosaicæ consequentia, quam

silentio præterire nolo, quamque ejus usum valde limitaturam esse fateamur oportet. Illis in locis ubi non solum ipse sponsus, sed et sponsæ parentes una cum convivis nuptialibus, signa castitatis observant, sæpissime fieri potest, ut virgo purissima signa nulla hanc ob causam exhibuerit, quod sponsus impotens virginitatem spoliare nequisset. Operibus in venereis satis constat virilitatem præmeditatione minime augeri, illumque, qui, rebus aliter se habentibus, heroa sese præstitisset, hominem cheu se nihili esse præbiturum, si tempus congressus erotici paucas per horas anticipaverit. Hujus rei rationem, hic loci non sine turpitudine proferrendum, physiologiæ est reddere: quamnam vero ob causam sponsæ virginitatem nuptiarum nocte non raro non perdant, satis explicat.—Hoc autem sponsi famæ est adhuc periculosius; quod operam aggredi quodammodo cogatur, quæ prorsus voluntaria esse debet, quæque pro vetitâ habita, vel etiam prohibita, felicissime semper perficiatur; in munus vero conversa, sola frustrationis timore, sæpissime infecta restet.—This is a case which occurs very frequently at marriages in Arabia, to the great regret of all concerned, and much, in a particular manner, to the shame of the bridegroom. What I have learned on this point from the late travellers, I will not mention, that I may not rob them; for I have now before me the work of a friend, who has been in Arabia, which he means immediately to publish. Thus much, however, I shall state, that we find in Arabian books much notice taken of the misfortune of bridegrooms in this respect. The Arabs commonly throw the blame on witchcraft; against which, amulets, and abuse cast on the parties, are said to be the best antidotes. Arvieux has something to this pur-

pose in his Travels. Even in their *Lexicons*, the names of these things are inserted; and that all this takes place in the present day, or is at least so supposed, I know from the late accounts of our travellers.

It will be obvious, that a bridegroom, in these circumstances, would always be glad not to be teased with questions, to which he could only answer, that he had been bewitched. Nor can I help thinking, that the fear of being thus put to shame, may have had the effect of making even the Israelitish bridegrooms, in ancient times, often dispense with the ceremony in question, to the bride's parents, or, to speak more properly, decline or elude it on various pretences, and of course voluntarily renounce all those rights which belonged to the husband by law, in the case of not finding his bride a virgin; for without such a renunciation, her parents would have been arrant fools, if they had not, for their daughter's security, always insisted on the fulfilment of the ceremony.

One remark more.—It is singular that the Roman laws, highly elaborate as they are, know nothing of the *signa virginitatis*; and that those of Greece are likewise commonly silent on the subject; while yet the laws of Moses, given more than 3000 years ago, are observed perfectly to correspond with nature, as anatomy still finds her. We easily see, that these laws must have been given to a people, among whom vice, in the female sex, had not reached its *acmé*; whereas the Roman laws, as far as we know them, (which is chiefly under the emperors,) and the Grecian too, presuppose a state of morals, in which virginity must have been accounted a rarity. Our Ger-

man law, however, in conformity to ancient usage, still recognises the *signa virginitatis*; at least if it be true that the *Morgengabe* (morning gift) is, properly speaking, a present made to the bride for the loss of her virginity.

ART. XCIII.

Application of the preceding particulars to the Doctrine of Christ concerning Divorce.—A Mistake noticed, in regard to the transfer of that Doctrine into the Marriage Law of Christians.

§ 11. THE law relative to the *signa virginitatis*, should have been duly compared with the words of Christ, (Matth. v. 31, 32.) which declare divorces sinful, *except in the case of whoredom*, when Christians transferred this, which is, properly speaking, a point of doctrine, into their ecclesiastical law. There was, indeed, no necessity whatever for the prohibition of divorce in the civil or ecclesiastical law of Christians, because Christ, in his sermon on the mount, declared it sinful; for our legislators are far from having it in view to prevent *all* that is morally evil; and their laws might, properly enough, permit married persons of incompatible tempers to separate, on the score of *the hardness of their hearts*, when we find that even Moses, who was sent by God himself, allowed divorce among the Israelites, for that very reason: although, even *then*, it was, both in the sight of God and conscience, sinful. However, I do not, in thus speaking, mean to controvert the propriety of our permitting divorce, in no other case than that

wherein Christ has declared it morally right, and allowable, *in foro conscientie* ; because I am sensible, that facility of divorce is a very formidable evil, and fraught with the most pernicious consequences to the morals of a nation. I would only remark, that our marriage-law, founded on the doctrine of Christ, in this instance, certainly should not have been more rigorous than that doctrine.

According to Christ's decision, that man who gave his wife a bill of divorcement for whoredom, committed no sin. It is allowed, that here whoredom is to be understood, not only of infidelity in the married state, but also of previous incontinence. The word in the original shews this ; for Christ does not mention adultery, but makes use of the general term *πορνεία*, which signifies *want of chastity, or fornication*.—Now, as by the law of Moses, the man who found his bride destitute of the *signa virginitatis* had a right to account her a whore, and, if he chose to be severe, might bring a criminal accusation against her, which inferred the punishment of stoning, it is clear that a Jew (and Christ had none *but* Jews on this occasion for his hearers,) could only have understood him, in the sense of the following paraphrase, viz. “ If a man
 “ think that his wife has either been unchaste before
 “ marriage, and deceived him in regard to the con-
 “ summation of the marriage, or that she has violated
 “ nuptial fidelity ; and if, nevertheless, he is unwilling
 “ to impeach her before the magistrate, and subject
 “ her to capital punishment, but rather wishes to dis-
 “ miss her quietly ; it is lawful for him, not only as
 “ a civil right, but also in the sight of God and con-

“ science, to dissolve the marriage, and give his wife
“ a bill of divorce. This is, of course, also lawful
“ and right, before the tribunal of God and con-
“ science, in the case of the bridegroom finding no
“ *signa virginitatis*, on consummating the marriage ;
“ because then, by the dictate both of nature and of
“ the Mosaic law, he must hold his bride to be an
“ unchaste person, and can never, during his whole
“ life, be ascertained of the contrary.”

Now, had the framers of the Christian marriage-law thought fit to legislate according to the strict doctrine of Christ in this instance, they ought to have allowed the man, who did *not* find his bride a virgin, instantly to separate from her : and if, for civil reasons, they did not chuse to permit a divorce quietly, and without the cognizance of the magistrate ; and had wished, as much as possible, to guard against the frauds of profligate men, and also, to render the situation of the unfortunate woman as tolerable as equity would at all permit, they might have ordained,

1. That the man who meant, on this ground, to separate from his wife, should be obliged to give notice thereof, in the most explicit terms, within a limited time ; for instance, within a week, at farthest, after the marriage ; and moreover, to have no farther connection with her.

2. That he should then bring his complaint before the magistrate, and, instead of producing the proof, (which with us would not be admitted, in the Hebrew fashion,) be obliged to swear, 1. *Se coitum non tantum tentasse sed revera perfecisse.* 2. *Virginitatis signa dein*

frustra quæsiisse. 3. Sponsam nec antea cognovisse, nec vel ita têtigisse, ut hymen dilacerari potuisset.

3. That this oath should be available only to *his* getting the divorce, but not in the smallest degree to the stigmatising of the woman's reputation, or to a declaration of *her* guilt. The husband was not to be forced to keep her; but all the rest of the world, quite unconcerned in that matter, were to regard her in such a light, as if the doctrine concerning the *signa virginitatis* were altogether uncertain.

Instead, however, of proceeding in this manner, they have attempted an unjust intermixture of two very different things,—the moral doctrine of Christ on the subject, which was pronounced only among Jews, and is to be understood only according to the principles of the Mosaic law;—and the Roman law, which knows nothing of *signa virginitatis*; and so have prohibited divorce, even though the bridegroom find his bride no virgin; yea, although, on their first intercourse, he find besides, strong physical tokens, not only of her not being so, but even of her having previously had very frequent commerce with other men. In this way, the rational and just doctrine of Christ, has given rise to a very unjust marriage-law, which compels a husband, altogether in opposition both to Christ's intention, and to the essential design of marriage, to keep the wife, of whose fidelity he can never be even probably certain, while he lives, and to educate children, to whom, perhaps, he can never shew true paternal affection. Besides this, deduced as it has been from a doctrine but half understood, this law cannot but have a very pernicious in-

fluence on morals; which the Christian religion was meant and is fitted to improve, but must, in this instance, contrary to its nature, only serve to deteriorate. For it is easy to see, that the morals of the other sex must gradually become more corrupt, when the bridegroom no longer has the right of making serious reflections on the *signa virginitatis*, when deficient; whereas, while a bride not found a virgin, can be sent back to her parents, a mother will watch carefully over the chastity of her daughters, and they themselves will also be duly on their guard. I grant, indeed, that even *this* law may at last yield to a corruption of morals; and that the *signa virginitatis* may, by previous compact of parties, be, in process of time, more and more frequently dispensed with, till at last it become absolutely ridiculous; but still it will for centuries prove a preventive of vice, and, much to their advantage even in a political point of view, preserve the people in some degree virtuous.

EXTRACT OF THE LETTER
OF
PROFESSOR RABENIUS TO MICHAELIS,
REFERRED TO IN THE PREFACE.

“ Hoc jus (Mosaicum) et meæ patriæ, per seculum et quod excurrit, magnam partem fuisse forense, cum nondum Juris Consultis nostris observatum sit, et ad fata ejus pertineat, venia tua dicam.

“ Sacramento se obstringunt judices Suecani, secundum *Dei* Sueciæque *leges* statutaque, jus semet dicturos. Formulam sacramenti habes in Codice legum Suecicarum, qui ex Versione Kœnigii prodiit, Holmiæ, 1743. Tit. de Actionibus, cap. i. § 7: Quasnam *Dei* leges hic innuat legislator, diversa est interpretum opinio. Ad jus naturæ, quod et divinum est, respexisse, plurimis placuit: de jure Mosaico, civili, forensi, vel ut alias dicitur, privato, nemo cogitavit. Jam vero ut quid ista sibi velint verba, *Dei Leges*, pateat, res paulo altius repetenda.

“ Sub Hierarchia Papali, paucissima apud nos erant delicta, quæ non expiari possent pecunia vel amenda, eademque vel civili, regi, provinciæ, et læso, vel ecclesiastica, clero tribuenda; quæ posterior mire arbitraria fuit, pro ratione facultatum rei, exigua satis, vel in immensum exasperata. Hoc ævo conditus fuit codex legum Suecicarum provincialium, cui a rege

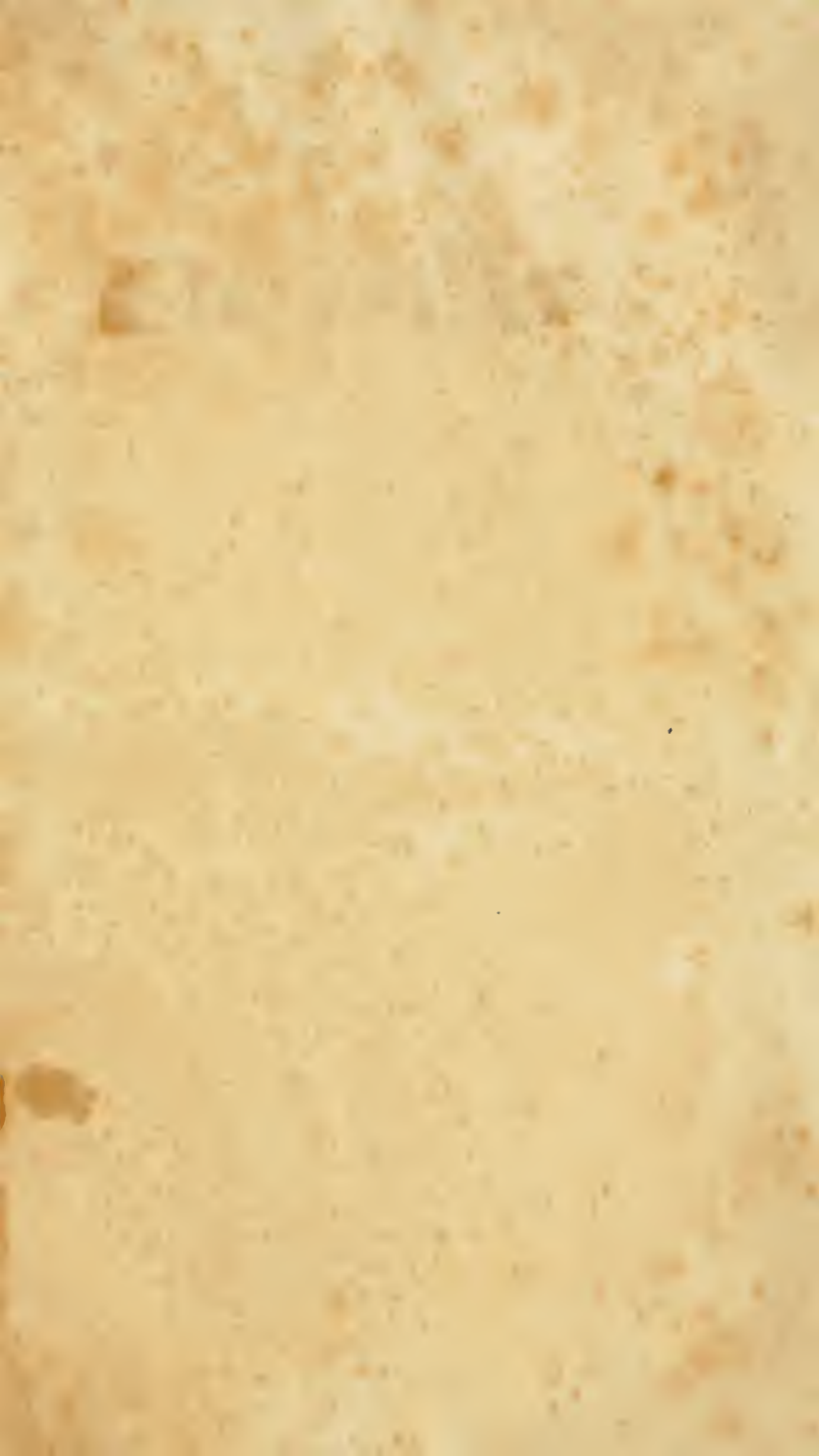
Christophoro nomen, quemque post curas Ragualti, Archiepiscopi Upsaliensis, latine prodire jussit Jo. Loccenius, Holmiæ 1672, in forma maxima. Repurgata religione, ævo Gustavi I., de novo codice cogitatum fuit, tum alias ob causas, tum quod in criminalibus, pœnæ legibus Mosaicis et divinis haud satis convenienter definitæ essent; at cum indies diesque mora huic sese objiceret proposito, Carolus IX. necessum tandem habuit, codicem istum antiquum typis publicare et confirmare, hac tamen addita cautione, quod judices in enormibus et aliis hujuscemodi delictis gravioribus, perjuriis, blasphemiiis, execrationibus, homicidiis, adulteriis, incestu, usuris, falsis testimoniis et aliis talibus, sequerentur leges divinas in sacra Scriptura expressas, quæ deinceps suo loco introducerentur. Vide confirmationem regiam dicto codici præmissam, d. 20. Dec. 1608. Hinc adpendix codicibus istis, quotquot lingua vernacula prodierunt, subnexa fuit, ex Mosaicis legibus desumpta, quæ tamen ni fallor, in editione Loccenii deest. Ex hoc tempore, in tribunalibus nostris invaluit usus legum Mosaicarum forensis, ita ut in disceptationibus forensibus et sententiis, ipsissima verba ex legibus Mosaicis capite et commate citatis, ex stilo curiæ adferrentur. Nec in capitibus dicta adpendice comprehensis substituit usus fori. Memini feminam circa initia hujus sæculi (annus non succurrit, siquidem hæc Holmiæ extra Musæum constitutus scribo) sexum mentitam, in curia suprema ex eodem principio ad mortem condemnatam, quæ tamen pœna ex gratia regis in capitali proximam fuit commutata. Hoc sæculo consignata est formula sacramenti judicum supra commemorata,

integra deinceps in codicem novissimum anno 1734 receptum migravit. Et quamvis jam casus isti ex legibus Mosaicis ad id tempus decidendi huic codici non insererentur, nec mos sit, istas in foro amplius et sententiis allegare, remansit tamen in juramento judicum observantiæ antiquæ vestigium."

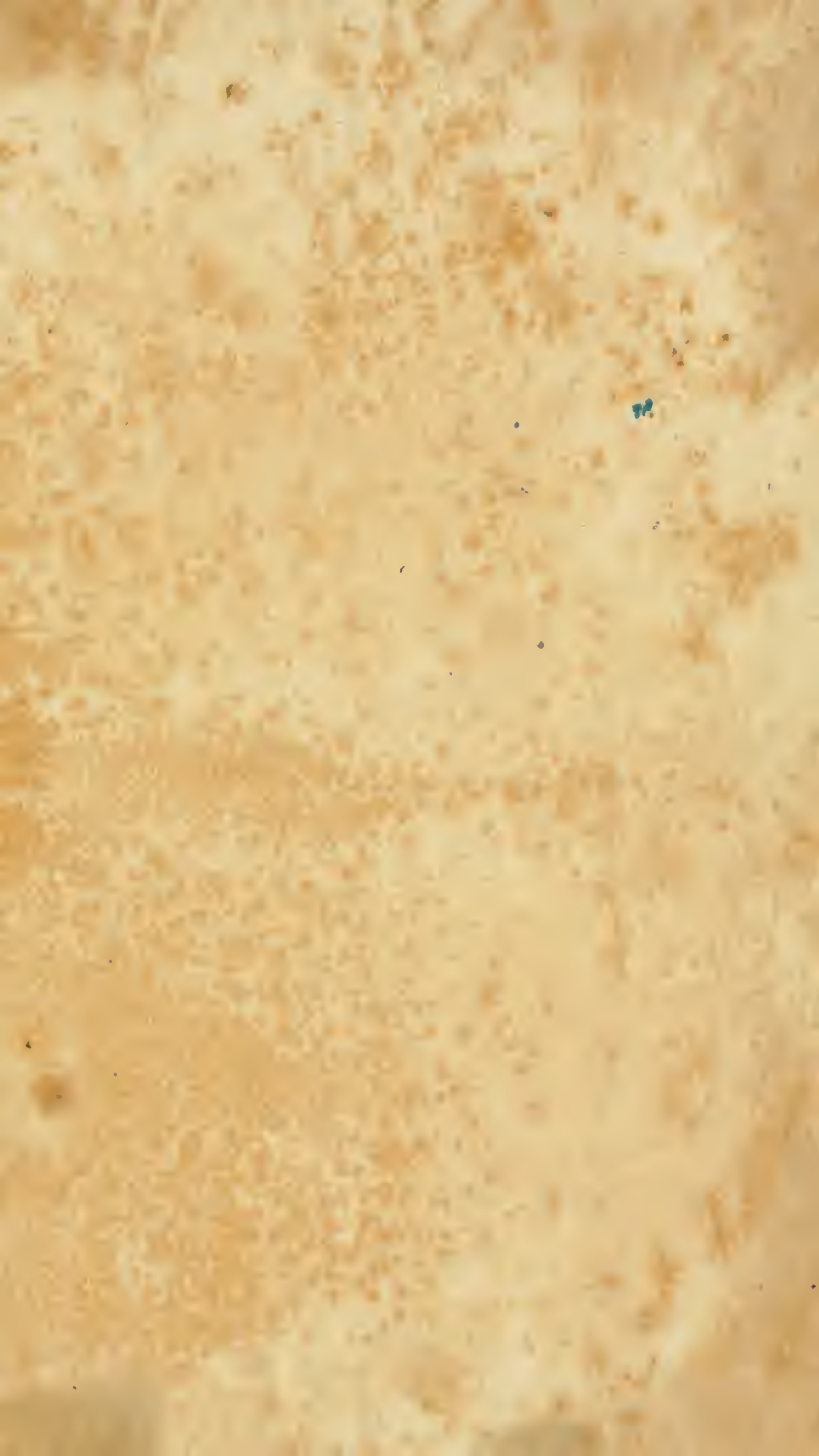
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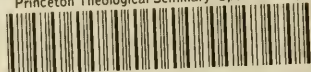


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