

Originally the European Governments were compos'd but of a few people, & tho' we read of many Kingdoms in Italy, Germany &c. yet they contain'd such small extent of Ground, & so few Subjects, that they resembl'd more the Highland Clans, than Monarchies.

These all fell a prey to the Roman Eagles, & by that means swell'd that Empire to so vast a magnitude, that it contain'd almost all the Nations of the known World, but Vice kept equal pace with its grandeur, that enabl'd Caesar to become (what Catiline in vain attempted) the Tyrant of his Country.

In this almost Universal conquest of the World, Germany (under which name by antient Writers most of the Northern Nations are included) retain'd its Liberty.

It was divided into many Petty States whereof
but two were absolute Monarchies, the rest
were govern'd by Princes, the Latin name for
which Princes, down to Scopasian's time,
convey'd no idea of power, but like the
Principes Senatus, the President of the
Senate; these had perhaps the disposal
of trifles, but things of consequence were
decided by the voice of the People.

The dominions of each people were
generally divided into parcels call'd Cantons, from
which our word Counties come, these were under the
inspection of the Prince, with the assistance of
a hundred men chosen for that purpose.

Particular portions of land were
generally assign'd to each Tribe or family
for a year & no longer by the Prince; these
they gave their Slaves to cultivate, reserving

to themselves a part of the produce.

The Cantons during peace had no Superior, but in war chose a Captain who had power of life & death, & who drew out from the inhabitants a certain number to attend him according to their Ranks & Tribes.

In this state of liberty, the Northern Nations increas'd immensely in number, while Tyranny, Vice, & Corruption thin'd the Roman Empire; the little territories of these Princes were not sufficient to maintain these numbers, this forc'd them to frequent migrations, where besides the Leader of each Canton, the Assembl'd Army was generally under the command of a General, chose by themselves, many of these wandering corps attack'd the immense, but inveterated Roman Empire,

4.
of which the Western parts being less defended, fell soonest under their yoke; so that the Franks & Normans settl'd in France; the Longobards succeeded the Normans in Italy; the Alans, Vandals, Suevians, & Silingians in Spain, who were again drove out by the Goths; & the Saxons fell upon, & Conquer'd England.

The source of all the European Governments, & Feudal Laws, arising from the manner in which these people distributed their conquer'd lands, it will be necessary, to examine the progress of that attentively

It must be consider'd that these Warring Colonies issuing out from the

Northern Hive, were compos'd of free Men, who
terr'd at their own expence, & for their own behalf,
therefore whatever conquest was made, the Land
in a solemn Assembly of the people was divided
to every man according to his Tribe or family;
& as these migrations were compos'd of different
people, united in the common cause of
conquest; we find that those who came
from the same little Country, or Principality,
generally settl'd together, & establish'd the
Laws & Customs of their Mother Country, in
their new acquisitions; hence arose the
many small States, & various forms of
Government, that after the destruction of the
Roman Empire, divided all Europe; few of
which exist at present except in Germany
& Italy.

6.
In the division of these lands,
they follow'd their own method us'd in
the Cantons, which was before taken
notice of, that is, they were given for
a year, & the Possessors let them out with
a certain reserve of the produce; hence
arose the Feudal distinction of
Dominium Utile, & Dominium Directum.

These Grants for years or for life,
were afterwards call'd beneficia
in the Reign of Clovis; & some with
probability think they acquir'd the
name feudales in the Constitution of
Charles the Great in 804.

Among many opinions relating to
the derivation of the word Feude, the
most probable one is, that of its coming

from the Teutonick word Fee, as in our language Fee, or gift, & ot, possession.

These people naturally establish'd the same Government in their new Territories they had been us'd to at home; Their Generals, or Leaders became the Temporary Administrators of Justice, as their Princes in Germany. These Officers were distinguish'd by the Latin Authority, & by the Victorious Nations themselves, by various names, the Princes nam'd by Tacitus are call'd Graves, that is Judges in the German Law, these were generally Old Men, & were stil'd in the beginning of the English Saxon Government Ealdormen, in France, Italy, & Spain they were denominated from the Latin word Segnior, which is the root of our word us'd since the conquest

Segnory,

Segnory, a tenonimous term for lordship, & in the subdivision of this Country into Tyskings, Hundreds, or Towns; these districts had Judges call'd Leodesgraves, Setgraves, Tungraves, &c. & thus in Germany the Judges of the Boro & Marches were call'd Burgraves & Margraves.

As to the word Princeps Writers of the middle age, make it in the Saxon Language Calderman; after the conquest it comprehended Bishops, Abbots & Nobles for Cadmerus in his History makes Henry I. summon his Bishops, Abbots & Princes of the Kingdom to do homage to his son William.

Comes was no name of Office or dignity, till Constantine gave it to that of Office,

& of the same signification is the Teutonic word Grave.

Dux was applied to the same people as Comes, with this difference, that one was in a Military capacity, & the latter in a Civil.

The followers of these Generals were call'd by the Feudal Writers Vassals, deriv'd from the name they had in Germany Gessell; these also had a share of the Government of their conquests.

The custom of these Northern Invaders, was to divide the conquer'd country into three parts, one of which they left to the Antient possessors, who they never mix'd with their people, nor suffer'd to share in Government, this by the Antient Writers was call'd *Terro Gothica*,

for

for it was practic'd in Italy, & Spain, &
 by the Franks in Gaul; & the Latin
 cotemporary Writers call'd the two
 shares the Franks kept themselves
 Terra Salica, & that left to the possessors
 Allodium, which word is deriv'd from
 the Teutonick tongue, where a, is a
 negative particle, & leude signifies
 persons link'd in Feudal Tenures. Allodarii
 was therefore originally a name of
 reproach to distinguish the vanquish'd
 from the conquerors; & tho' at first these
 people's possessions were free from service,
 yet for security of possession they frequently
 surrender'd their lands to neighbouring
 Lords, & so receiv'd them back under
 feudal Tenures, & sometimes when

they kept their possessions, they put themselves under the protection of lords, whence came a phrase often met with in Doomeday book, *tene in allodis*.

As for Slaves either made so by the Conquerors, or found so, they look'd upon them as part of their substance.

The principal if not only difference between new Governours settl'd by the Conquerors, & the antient one they had liv'd under in Germany, was that the Prince or Leader became no longer annual as in the Mother Country, for being in a continual state of War, it would not have been safe to have been often changing the General.

In process of time these Leaders came to be call'd Kings, but that this was an innovation appears plainly from most modern Nations

Herwin

deriving the name of King from the Latin.
 In England that name is of Saxon
 origin, tho' the first Saxon Leaders that
 invaded this Country, were call'd Hertoge,
 from the old Teutonick word Here signifying
 Publick, & Toge, General; & this idea of
 General of the publick, seems to be the
 only one these Nations had of a King, for
 the Longobards who gave their name to
 Lombardy, chang'd their Prince into thirty
 Dukes, & yet in time of war elected one
 General who did not in the least
 infringe the rights of any of these
 Ducal powers.

After the assumption of a Regal
 title, there still continued assemblies of

the people, as in Germany, to consider of the common good; these were in England & France call'd Parliaments; in Spain Cortes; & in Germany & Poland Diets; in Latin, *Placitum*, *Curia*, *Maleum*, but more commonly *Colloquium*.

From what has been said of the distribution of the conquer'd lands, it must necessarily follow, that from the different circumstances of the conquerors, several changes must have happen'd; time has produc'd two great ones, one in the interests of the feoffees, the other in the services since known by the name of tenures.

As to the first, the increase of the people, the cultivation of the lands, & the great elegance of life, that introduc'd itself, made the superiors desire to secure the possession of

their

their Estates, & the Vassals to make their settlements more durable.

These rights therefore grew from annual to be given for life, & were enlarg'd afterwards into Estates of inheritance.

This change in the fees produc'd two other considerable alterations in Government; first it is the foundation of the Hereditary Kingships & Nobility over Europe; secondly the Country being wholly appropriated, people who had not land were oblig'd for a maintenance, to invent various methods to indulge, & support, the Ease & Luxury of the Rich; hence arose the encouragements of Sciences, Arts, & Trades, follow'd by innumerable

Towns, Cities, & Boroughs throughout all Europe.
The second great alteration we mention'd,
was in the Tenures; these were Services
annex'd to Estates, & at first few, but in after
ages were extremely multiply'd, thus as in
the first division of the lands each private
person had his share allotted by the whole; so
the descendants of these first conquerors, were
undoubtedly bound to military services in
time of war, for the good of the whole
Community, the greater portions given to the
Principal persons, since call'd Counties, was
bestow'd by the whole people; this again
was parcell'd out by him with the consent
of individuals of his immediate Tribe; as
therefore the Chief of the County held his

possession

possession from the people, & the Prince
who commanded; his was call'd Baron
Service, that of his Tribe to him Military
Tenure, & the obligation of all to the
Nation, Fealty.

It is uncertain how these Tenures were
at first fix'd. In latter Ages they were
annex'd to the Estates, fealty by Oath
was instituted when first feodes were made
Hereditary, & were common in 1020.

When once feodes became Hereditary,
many disputes happen'd betwixt the
Superiors & Vassals themselves; this occasion'd
many various rules & determinations,
which collected have taken the name
of the Feudal Law, by which all
disputes of that nature, were for many

ages adjusted, the History & changes happening in those Laws, would be in reality the description of the various changes that have happen'd in the European Countries; here then we end this general History, & after a few observations come to the earliest State of this Country.

The Contract betwixt the Governours, & Govern'd, the power of the Magistrate & obedience of the People; the measure of power belonging to the great Lordship of the Realm, & the lesser Lordships have all their foundation in the two following observations.

1^o. As the Conquerors were sole Masters of the Country, nobody could have possession of any piece of land, without the owners consent,

& under the terms he pleas'd to fix, hence arose a territorial Jurisdiction, & a right to control the actions of those who were not of the community, as well as of those who were.

11^o. As the victorious Nations were voluntarily Societies, the Majority had the right to regulate the actions of individuals, while they continu'd Members of the Society.

This appears to have been the State of the original contracts betwixt Prince & people; Superior & Vassal, & of individuals with regard to the whole community; afterwards when all duties were regulated by the Feudal Laws, they were enforc'd by

reciprocal oaths; & of which the most sacred was that taken by the Prince at his Coronation; (before which He was not even after the demise of his Predecessor, call'd King;) & the oath of Fealty taken by the Peers; which oath the Peers in Henry VI. time, did not consent to, till the King had taken his; from hence is deriv'd in this & most other Kingdoms the oaths of Allegiance, which have of late been extended to the Successors as well as to the King himself.

The Peers of what denomination, soever held originally of the Publick as well as of the King, & ow'd homage & fealty to the community, as the German Princes do at this day to the Empire not to the Emperor; this will appear from the following reasons.

- 1^o The Armies of these conquerors were as we have seen made up of different Nations under their respective Leaders, with one General commanding the whole; the Successors of this General, became Kings, & those of the Leaders, Nobility or Peers; now as the General was only during the war, he had had no right to the people's Allegiance, & still left in time of Peace, for then his power terminated.
- 2^o Property was in the collective body, & tho' they parted with the Dominium Utile, they retain'd the Dominium Directum to which only homage & fealty are due.
- 3^o In controverted Rights of Baronies &c. the decision was never antiently claim'd by the King, which it would have been if given by him.

4^o The services annex'd to Feudal, is like homage & fealty, in lieu of the Land, so that if the Tenure had been due to his private necessities; there are many instances to prove this; thus no King could oblige his Peers to serve in wars for his own advantage; for by the Feudal Law these services were only due, in rebellions at home, & invasions from abroad, thus it is in Germany at present; & when any Peer refus'd to attend the King, the neglect was punishable, not by the King alone, but with his Parliament.

In cases where the Barons assisted the King, either voluntarily, or bound by duty, the conduct of the army, was not left to his will alone, for the Vassals obey'd no orders, but

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those of their own Chief, who were not oblig'd to go unless He went.

Lastly these military Services were solely due in time of invasion, or rebellion.

In this free State, the German Nations continu'd, till the Civil Law long buried was reviv'd, & then mistaken Princes made the *Lex Regia*, the ground for a presuming despotism, & for that reason introduc'd that Law into their Kingdoms. It prevails but too much over all Europe, but has been here unsuccessfully attempted, & therefore this Government, comes the nearest to the Old Saxons idea of Liberty.