

Of the Legislature of England
in particular.

The Saxons after conquering England divided it into as many Shares, as the General or King had companions, in Latin Cometes; these came latterly to be call'd Shires, which were Societies, like the Cantons in Germany; thus things continu'd till the dissolution of the Heptarchy in Alfred's Reign; for tho' some put that event to Edgar, the time intervening between those two Princes was so full of confusion, that there was no real Settlement till Alfred.

He is said by some to have been the person who divided England, & that may be true, as to the present divisions, or alterations

of

of the Old; but 'tis certain He parcell'd out the Shires into Tythings or Dalks; Hundreds or Wapentakes; & them againe into Tythings, or as some call 'em Old, Boroughs, tho' that word is generally us'd for places that send Members to Parliament.

As by Alfred's Laws all the inhabitants of a Tything were security for the behaviour of one another, people run the risk of death, who did not belong to some one of them.

The people increasing, spread themselves more & more into the uninhabited parts of their Tythings; these new places of abode were call'd Hamlets, from the Saxon words Ham, dwelling, & Let, to a sign.

The Tythings were unequal for they were founded on the number of families, & not on the extent of Ground; the proprietors residing on their Estates, whence they were afterwards call'd Manors, or manors do.

The true meaning of Tything, or ten families is very difficult to explain; were they each of them what we call Housekeepers many Countries would not have had, above three, or four hundred Houses, which is impossible. Let it be observ'd that the proprietors cultivated their Land by Slaves, whom they supply'd with victuals; for the word Lord is agreed by all to come from the Saxon Hlaford, which signifies a giver of bread; now tho' these Labourers might

live in different Houses, as may be supposed from the frequent use of the words cottarii, bordarii &c. in Domesday, yet they certainly were regarded as part of their Lord's family, so that ten such families might make a very populous district; which is all the sense we can give to the word Tything from the Saxon tongue.

We may indeed add, that in all probability, several handicraft, or trading people, associated themselves into companies, call'd by the Saxons Guilds; one of these Companies, was reckon'd for a family; some also of the more eminent Merchants &c. might employ under them, great numbers of Artizans & Slaves; it may therefore have

often happen'd that a Tything here & there consisted of Ten Towns, & Boroughs.

By the Saxon Laws, rank was annex'd to possession, for according to them a Caest, that is a Yeoman having five Hides of Land, a Church & a Hall, was equal to a Thane, again a Merchant crossing the Sea three times on his own substance, was also equal to a Thane.

From hence it follows that Trading Towns, or large Societies, might very well be consider'd as possessors of Manours.

As in the first distribution of Counties, we find no Magistrate but the Caldesman to preside, so in the further division into Tythings, there were proper Magistrates appropriated to them, & chosen by the General

Voile,

voice, such as Borsholders, Headboroughs Tythingmen &c. Many of these Tythings had little Courts in themselves for deciding controversies &c. These are mostly gone, but in London, & some other places, still subsist under the name of Hustings, from the Saxon words Hus & ting, the House of Pleas.

All the Saxon Laity may be divided into Thanes, or Graves of the higher kind, & King Thanes holding of the King, under Thanes holding of the Subjects, & Carleor Yeomen.

After having mention'd the various divisions of the Country, & the different ranks of the people; it will be proper next to consider, who among them were invested with the Legislative power; &

1^o from what has been said already it does not appear to have been solely in the Saxon Kings, & the greatest Sticklers for the prerogative, allow it to have been in the King & Nobility, tho' they exclude the Commons, as D^r. Brady &c. Those again who assert the general right of the people in government, as Tyrel &c. affirm that from the first entrance of the Saxons every Landholder assisted at the Parliaments; thus in Kent where Hengist first settl^d, all the possessors of land met to give their assent, at the making of Laws, this indeed cuts out the Courtier Yeomen from the Witen-Gemot, & even the Thanes, who being only Tenants by Serjeanty, that is possessing lands in lieu of wages for his services, he was only part of the family of some one that was a Member.

Tho'

Tho' these Landholders, ever retain'd
 the right of being govern'd by Laws, to which
 their consent was necessary, yet when the
 people multiply'd & extended themselves
 far in the Country, it became impossible
 for every one of them to attend, so that then
 every Tything, that is Borough, chose
 some person to attend the Witena-Genot,
 & manage the interest of his own Society.

This Witena-Genot is thought by
 the Popular party to have consisted not only
 of Earls, Bishops, & Abbots, but also of the
 persons who presided in each Community,
 Tything &c. which opinion seems to make
 the Commons a constituent part of the
 Saxon Legislature; for the proof of this,

There are several citations brought from the Laws
of the Old Saxon Kings, thus

*Et ad decreta cum Concilio suo Episcoporum,
Senatorum, et Senioribus sapientibus populi mei.*

Again in the peace between Alfred &
Guthrum, it is declar'd to be the foedus that
these Kings, et totius Anglica Nationis
sapientes, et omnis gens quae in Anglia
Orientali habitat, simul fecerunt.

And in all the Saxon Laws, the Kings
are said to have consulted Senioribus, or
sapientibus, which those who write for
the Commons, affirm to have included the
Representatives of the People.

of

of the Legislature of England after the
Norman Invasion, comprehending the history
of tenures; both before & after that period.
& the Constitution of Parliaments.

First of William's Title to the Crown
Of Parliaments after the
Conquest

No subject has been more debated, than
William's (call'd mostly the conqueror's) right
to England, some affirming that having
conquer'd the Country, he superseded the
Old Laws, & had a right to establish arbitrary
power; others deny the conquest, & consequently
his right to despotism; but then they generally
attempt to prove it, by denying that he did
commit arbitrary Acts; but the important
question whether he really had a right to do
them, is seldom touch'd; now if it can be
prov'd that it was no conquest, & that he had
no right to arbitrary power, his actions may

indeed prove him to be a Tyrant, but cannot
invalidate the right of the people, that however
invaded by him might be lawfully recover'd, &
exercis'd when opportunity should offer, for the
recovery of their lawful rights; for there can be no
prescription against liberty, from illegal Acts.

To prove this let us examine two things,
1^o the power the Norman had in his own Country,
& 2^o the causes that brought him to England.

As to the first, Rollo the Dane William's
Ancestor, conquer'd Normia with an army of
Danes, Norwegians, & Swedes, who all went
under the name of Normans, which they gave
to their new conquest; Rollo the Leader of this
confederacy of different Nations, could have
no pretence to power, except what was given

him

him by their own consent; the new Conquest
was divided & government establish'd with
the opinions, & consent of all the Chiefs.
Rollo's legitimate issue failing in our
William's Father, he was elected by the
Barons to succeed him, & consequently had
no right but what was conferr'd on him
voluntarily; to shew that William had no
right over the Army he led into England,
we read in History that the Norman
Barons refus'd at first to attend him,
not being oblig'd by their Allegiance
to serve in foreign Wars, & tho they at
last agreed to it, yet one of the principal
Normans persisted in his refusal, therefore

The Chiefs of his Army were partners, not servants in the expedition, & that this idea remain'd in the Reign of William's Successor, appears by the famous answer Earl Warren made, when question'd about the title to his Estate, for drawing an Old sword he declar'd, that his Ancestors had obtain'd their lands by the sword, & with it he would defend them; from all this it appears plainly that the Normans led by William were a free people.

As to the second thing, the cause of the invasion, we shall observe that the Normans & English had no difference, but liv'd in a friendly intercourse, & William pretended

a right to the Crown, therefore the War was not
 was against Harold the possessor, & not the
 Nation, & so William understood it, offering to
 decide it by single combat; so that when he
 routed Harold, he certainly could have no more
 power over the English, than the person he
 under had; & of what extent that was, we have
 seen before, in treating of the Saxon Government.

There are two reasons asserted for William's
 right of Arbitrary power, one by Solmasius,
 which is the addition of *Dei Gratia*, taken
 to the Regal title. In answer to this let us
 observe, that Father Mabillon tells us that
 Pepin, the first Prince in Europe that took
 that addition to his title, chose it from having
 no other right to the Crown, having acquir'd

it by usurpation; & several of our first Clergy, as Lanfranc Archbishop of Canterbury, & even since the Restoration Juson is still Archbishop of Canterbury Dei Gratia.

The other reason is more specious for the Lovers of Tyranny affirm, that at the conquest the Government was Military, the Military Tenants in effect composing a standing Army.

In answer to this we shall find that not one in fifteen, perhaps not one in thirty were under William's command; again the Military Tenants possess'd the greatest part of the Kingdom & perform'd their services by virtue of their Knights fees, which at the lowest estimation is suppos'd to have been £20. pr. an. this had been [£]proo'd to have been equivalent to 140.200. years ago, & at the time of the conquest may very reasonably be

put

hardly imagin an army compos'd of Men
of such fortunes would be the base instruments
of the Normans Tyranny.

Having thus examin'd what William could
lawfully do, we are next to see the manner
in which he did really exert his power which
will in some measure be the subject of what
follows.

As the Saxons & Normans enter'd England with
different views, so they acted in a very different
manner; the first exterminated the old inhabitants,
& settl'd in their room, the latter only asserting
their Prince's right to the Crown, purpos'd the
reigning, not destroying the people, William
indeed after his Victory, depriv'd all those that
resisted him of their lands, & gave them to
his followers, which supposing his right lawful,

he could do with Justice; as to the rest of the inhabitants that stood neuter, they continu'd in possession of their lands; but then they had Norman Chiefs instead of their Govefay, put over every Tything, & these Superiorities were made hereditary & not elective, as among the Saxons; these Chiefs the Normans call'd Barons, & Seigneur, by contraction Shires, & their Estates Baronies, or Honours, but this must be understood of those Tythings that consisted of trading persons, for the Normans, out of contempt to trade & manual arts, left them almost universally in their original state, retaining in some to this day the Saxon officers, Names, & Courts; & consequently that equality which was formerly the Characteristick of the Saxon Government.

For securing these new acquisitions William introduc'd the Norman Tenures, & by that settl'd

Military

Military Services, in cases of Invasion, or Rebellion, fixing the number of Soldiers each Chief should bring to the field, from which the Ecclesiasticks were not excepted, & the trading Communities were oblig'd instead of them, to furnish money under the name of Tee-farm Rents.

The Tenure of Grand-Serjeanty also took place, which arose from lands given to the Steward, Conotable, Chamberlain, or Marshal of England; but when these names were us'd only to offices in the King's Household, they did not create tenures of the Publick, but tenures of what was call'd Petty-Serjeanty.

As the number of the Victor was much inferior to the English, William. to destroy distinctions, & to unite them & the Normans

into one people, introduc'd Wardships & Marriages, & tho' he left many of the Counties under the Administration of Saxon Lords, yet he destroy'd their power by making the Barons under them, hold immediately from the Crown.

Duke William gave part of the Land he kept to himself amongst his immediate followers, reserving Military Service; his confederates follow'd his example; the Lands so given were call'd Knights fees, & as they amounted to above 60,000; 'tis probable they forc'd many of the English, to hold their Estates by the same tenure, that part of their Inheritance, which they kept in their own power, they like the Saxons gave it to Husbandmen to manure, reserving a proportion of the produce themselves, these were call'd

Tenants

Tenants in socage, a word signifying the service of the Plough; thus they continued till Henry II. time, when money becoming more plenty, the Tenants paid in lieu of part of it a rent, & the residue was left to the Bondmen, or lying neglected was call'd the Waste.

All these tenures subsisted till the 12th of Charles II. when the military tenures were entirely abolish'd; socage still subsists, & so does the Bondmen, whose successors are the Copyholders; these retaining to this day marks of their original seritude, for foras Bondmen were formerly excluded from any share in the Legislature, neither do the Copyholds give any right to vote at

Election.

From the account of tenures, it appears that there were two sorts of Tenants, those that held of the King as Chief of some Manour, whose services he could transfer, to any Subject, & those who held of Him as Chief of the Great Lordships of the Kingdom, these were call'd Tenants in Chief, or Tenants of the Crown, & were not transferable.

Thus we have seen, how every body consented from their different situations, to assist & support Government, but as nothing more could be demanded but the services before mention'd from the people, the exigencies of State requir'd other methods of support, as taxes &c.

Authors

Authors agree, that this was settl'd in
 assemblies, or Conventions of the Barons, tho'
 various are the opinions who these Barons
 were at this epoch; some affirming that
 they were all the first Nobility, with the
 Bishops, & Miter'd Abbots, others, that
 that name included every Tenant in chief
 of the Crown, by whatever tenure he held.
 We shall at present consider the various
 obligations, for & against these interpretations.

The difference in tenures, is created by
 the differences of the services the Tenant is
 bound to perform, so that if a Barony was a
 different tenure from others, they were oblig'd
 to perform different services, which we

have no account of.

The difference of the Great Lordship of the Kingdom, from the Lesser Lordships, was only in extent & greatness, not in constitution; now we know the immediate Tenants of Lesser Lordships were still'd Barons, & ow'd attendance as part of the service they held their land by; these consisted of Military persons, Officers of the Regniory, & Tenants yielding profit instead of Military service; from hence it seems to follow, that the Parliament consisted of the like orders of men, whose attendance was equally necessary at the High Court of the Great Regniory of the Kingdom.

Again

Again the Tenants by Grand Serjeanty are said by the Advocates of the people to have been Barons, & that because Richard I. in directing the levying of a tax on the Barons excepted the Tenants by Serjeanty, as also that all lands hitherto known to be held by Grand Serjeanty was in the hands of the Princes.

The popular Writers also observe, that all the immediate Tenants of the Crown were call'd Barons till after Magna Charta, these have been divided into three Classes, Earls, Barons, & Tenants by Knights Service; but this distinction seems but ill founded.
 So as to Earls & Barons they are by many good authors affirm'd to be the same.

We have already observed that Lands & Barons in Europe were held of the King, not of the King only, we must now prove it was so in this Kingdom, at the Norman Invasion; many of the persons who came over with William had no dependence on him. The Norman Barons that held of the Community in their Country, would hardly have submitted to be on the same footing with his Vassals; not one of the Norman Kings, tho' with high notions of prerogative, ever assumed the power of depriving a Baron of his Barony without Parliament; many disclaim it ever, & some have in such cases demanded the judgement of the Peers;

add

add to this that in all old tracts, & in the Register &c. they call'd the Barons, *Barones Regni*, not *Regis*.

The power of the Barons over their Vassals, may be prov'd several ways to be equal to what the King had over his.

- 1^o By their origin, which has been already mention'd.
- 2^o By their names, which in old Writers are *Principes Reguli & Reges*.
- 3^o By the form of making them, which in that of Hugh Lupus Earl of Chester, we find these words, *tenebunt ita libere et gladium, sicut ipse Rex tenebat Regnum Anglie*.
- 4^o By the power they exercis'd, for they receiv'd homage & fealty, made Laws in their Courts, & judg'd there; & by a Law of Henry 1. 'tis expressly

provided that the Barons Vassals, shall not be
bound to abide by the determinations of the King's
Courts; they gave Boroughs a right to send Members
to Parliament, coin'd money to Steven's time, &
their Vassals yielded them the same Aids,
Tallages, & services, the King had of this, nor were
these Vassals taxable to the King. In the famous
Act of the 25th of Edward III. killing King, or Lord,
goes under the common name of Treason, the
attendance of Vassals at Court & Sects, is in old
Books call'd *Suit Real*, from the French
word *Royal*.

II^o As to Tenants by Knights Service.

This subdivision arose from ignorance of
Antiquity; if by Knights Service, or Military
Tenant, we are to understand one who held

immediately

immediately of the Crown; for leading a number of men they were no doubt Lords or Barons; if it meant nothing but a person's own service without followers, there was no such holding of the Crown till some time after William.

But 'tis certain that all who held their of the Crown were Barons, for all Tenants of the Crown paid relief to him; & that all these Barons had some Military Tenants call'd Vassals, who paid relief to them.

The word Baron also comprehended Burgesses who held their Boroughs from the Crown.

All Boroughs may be divided into those originally so, & those that in time became so.

The manner of making a Borough seems

to have been the selecting a place, in any manor either belonging to King, or Peer, inhabited by Tradesmen, this was let by hood or King to the Inhabitants in Fee farm, or Serjeanty.

All other duties & services releas'd, & so seperated from the Regnory, that the Inhabitants had no superiors but the King & Parliament, & so without any particular grant in their Charter, in consequence of their enfranchisement, came to have a right in the Legislature, just as a Copy holder now a days enfranchis'd, has a right of voting.

Writers for absolute Monarchy assert on the contrary, that this right is the pure grace of the Superior, this is attempted to be prov'd by producing Charters, where the confirmation of

this

This right is found.

But the Popular Writers affirm that the oldest Charter with such a clause was in Edward IV. time, therefore if the Boroughs have that right only by Charter, all those who have Charters before it having no such clause, cannot send Representatives, which is absurd.

In these Boroughs, the community exercised the same powers that the Earls or Barons did; but many falling into decay, these powers are lost; in many they still subsist as in London, tho' numbers of them are not exerted.

In William's time we meet with several instances of the Burghers in Towns being call'd Barons, in Doomsday the Burghers of London & Warwick are call'd Barons.

The Inhabitants of the cinque Ports keep the old appellation of Barons to this day, they like the City of London held from the Crown by Grand-jeoffery, & in consequence carry the Canopy at a Coronation, as the Mayor of London does the Cap.

The popular Writers affirm from all that has been said, that the word Baron denotes all the immediate Tenants of the Crown, that is besides the Ecclesiasticks, Bishops, Parsons, & Burghers, & that as the Parliament in William's time was compos'd of Barons, under that word was comprehended the three above mention'd ranks of Laymen.

Most of our best Writers allow that Citizens & Burghers sit long in Parliament before Knights

of

of the Shire, & that both Houses, were originally together. We have seen that Boroughs were vested with this right in the ~~to~~ constitution, a thing most agreeable to their notions, & to common sense, for according to them Freedom consisted in a person's being subject to no laws, but those to which he himself consents, so that the Boroughs could not have been call'd Free without a share in the Legislature, consequently a Representative in Parliament.

We have seen that the Parliament consisted of Bishops, who presided in the County Courts, Barons that were Chiefs in the Court Baron; & Representatives of the Boroughs, where the Community judg'd; here then appears the

reason why Writs of error lay from these lesser Courts to Parliament, & why therefore Parliament was the Supreme Court of Judicature; since it was most just, for an appeal to be made from an inferior Court, to one that contain'd the Representatives of the whole Nation; but the short time of the sitting of Parliament, being insufficient from the number of controversies cognizable there, this occasion'd the appointing three Committees, one for state affairs, from whence came the Privy Council; another for criminal matters, which produc'd the Kings Bench; & a third to regulate the receipts & perhaps disbursements of the Publick money, which we now call the Exchequer.

Government

Government remain'd in this Situation till Stephen's time, who to preserve his unjust possessions, alter'd the constitution in two considerable branches, viz. Earls & Military Baron, of the first he made several without Counties appropriated to them.

As to the Barons many of their Baronies being forfeited by the Civil Wars betwixt Stephen, Matilda, & Henry II. these Barons to reduce the Barony, were split the escheats into several small Tenancies in Chief that held immediately of the Crown, & from hence probably arose the distinction of greater & lesser Barons.

Henry II. annull'd all the Earl doms made without Counties; but with regard to the Barons, he continu'd dividing them into small fees, the service reserv'd by this King being only five Knights.

As these numerous Crown Tenants could only

be judg'd in Parliament, & that that gate seldom
long enough to decide all Controversies, they were
oblig'd in these times, to institute iteuerant Justice,
which is remarkable, as tis the first or second
instance of the legislative & Judicial powers being
seperated, & was then thought a grievance.

Things continu'd in the same way untl. Richard II.
but King John in creating Barons, instead of allowing
them the profit of the County, which was generally
a third, gave them a small pension, & reser'd the
rest for himself.

The profits of the Barons being thus taken away,
they gave themselves little trouble about the County
Courts, & these declining, occasion'd the creation of
the Common Pleas, by this means they also lost the
influence in their Counties, which pav'd the way
for Lord Lieutenants, who were first appointed in
Edward II. times.

About

About this time we first hear of Castles appointed by patent; at first they were elective & how they were made afterwards, does not appear till this Era. There is however a great dispute whether these Patents were Acts of Royal power, or of Parliament, but we shall not touch upon that at present, as it is a dubious case, & more speculative than practical.

This increase of Tenants in Chief produced a very unequal representation of the Kingdom, & became so great a grievance, that it was remedied by a particular clause in Magna Charta; by it there is a distinction made between the greater & lesser Barons; the first were to be severally summoned to Parliament, as to this day; the lesser Barons were summoned in general, & being excluded from sitting singly in Parliament, they were to send Representatives for their body, & they now began

to cease being call'd Barons, but receiv'd the name
of Military Tenants; & the Representatives were call'd
Knights, which was borrow'd from the Saxon, that
signifies Military Tenants; & as they represented the
whole Shires or Counties, were call'd Knights of
the Shires; & as the persons title of Earl, Bishop &c.
us'd to be inserted in Deeds, now the Great Barons
begin to write Barons of their Chief Castles.

This clause in Magna Charta directs a
summons for these lesser Barons to be 40. days
as there is always one County Court held in
that time, to this none but these Tenants of
the Crown came, & had a right of voting, till
by the 8th of Henry VI. this right was extended
to 40^s freehold.

The

The number of these Representatives do not seem to have been at first settle'd; but it was not long before it was fix'd in the manner it now stands; till Edward the first. we have no Records of the Members receiving Wages.

The success of the Barons against King John, restor'd the antient constitution; that of Henry III. over the Earl of Leicester made a great deviation from it; for 'tis said that He obtain'd an Act of Parliament empowering him to summon whom he pleas'd out of the Barons to Parliament without which summons none were to attend. 'Tis however uncertain whether this Act had ever the sanction of a legal Parliament, & it is much to be doubted whether the Representatives of the people have it in their power to give

away their Liberties & properties, according to a
wise maxim of Tacitus, *apud sapientes causa
habebantur, quae neque dari, neque accipi
salva Republica poterant*, some have said that
this clause introduc'd a new species of Barons,
viz. by Writ, but that seems a mistake, for the
Writs were certainly directed to those who were Barons
before.

In times of confusion the Crown under colour of
this Law, sent Writs sometimes to some Barons &
sometimes to others according as the rage of party
prevail'd; but as tranquility was restor'd this
practice was disus'd, & the method first us'd in
Richard III. time has been since adopt'd, of making
Barons with a right to sit in Parliament by Patent.

From

From all which, it appears plainly that
the freedom that our Saxon Ancestors brought
with them from Germany, of dissenting &
dissenting to all Laws, has been preserved under
the Norman Line, & continues so in its full
vigour unto this day.

Finis.