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AN
ENQUIRY

INTO THE
FOUNDATION
OF THE
ENGLISH CONSTITUTION;

OR,
An **HISTORICAL ESSAY**
UPON THE
Anglo-Saxon Government

BOTH IN
GERMANY and **ENGLAND.**

By **SAMUEL SQUIRE, M. A.**
Archdeacon of **BATH.**

— *antiquam exquirite matrem.*

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TO
HIS GRACE
T H O M A S,
Duke of Newcastle,
His MAJESTY'S Principal
Secretary of State, etc. etc.

May it please your Grace,

I have presumed to wish for the
honour of prefixing so great a
name to this treatise, because it
contains the first elements of that
happy

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happy constitution, which your Grace has ever been maintaining with the most fervent and uniform zeal. It cannot be unacceptable to a Nobleman distinguished for the love of his country, to behold a picture of her polity in its infancy, and to see the first origin of those excellent laws and maxims of government, which, under the present establishment, have grown up to maturity, and are maintained in their utmost vigour and perfection. For tho' the wisdom, the moderation, the constancy and strict justice of our ancestors, the Anglo-Saxons, may well be admired and imitated, yet is it the peculiar felicity of these times, that a
Statesman

D E D I C A T I O N. v

Statesman may be both a Courtier and a Patriot, a Minister of the crown and an Advocate for liberty, a Favourite of the Prince, and yet the Friend of the People.

Your Grace, I flatter myself, will excuse the freedom of this address; for how dazzling soever are the highest advantages of nature, fortune and education, yet wherever Humanity is the leading principle, that alone has power to soften all the rest, and to attract both affection and familiarity: and as your Grace, amongst other your illustrious titles, has admitted that of the High-stewardship of our University, every member of that learned body will be encouraged to look

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look up to you, as his Patron and
Protector--- in which number I beg
leave to subscribe my-self,

MY LORD,

Your Grace's most dutiful,

most faithful,

and most devoted servant,

SAMUEL SQUIRE.

A N
HISTORICAL
E S S A Y
UPON THE
ANGLO-SAXON
GOVERNMENT, etc.

1. **T**HE subject of the following sheets will, I hope, appear both useful and entertaining to the reader. For tho' History of all kind has something in it extremely agreeable to the busy and inquisitive mind of man, yet no part of it strikes the imagination with a more lively pleasure, than that which professes to treat of the affairs of our own country. Other Histories indeed amuse and divert for a time, but this makes a more lasting impression upon us, as it gives us an immediate interest in the events,

A and

and makes us even parties in what we read. We substitute ourselves into the places of our fathers and grandfathers, we blame and we commend, we admire and accuse just as if we had been present at the transactions themselves. Even the most minute customs of our ancestors, so great is our natural fondness for whatever regards our own country, we think worthy to be traced out; we are pleased to be informed of the private oeconomy of their families; their domestic utensils, the very habits they wore, the form of their weapons, every thing engages our attention which has been ennobled by their use. By means of this general knowledge of the private as well as public life of our remote forefathers, we make ourselves a sort of amends for the shortness of our duration, we add as it were a thousand years to our own span of being, and flatter ourselves with the pleasing imagination of actually seeing and conversing with those great and illustrious progenitors, to whose valour and public spirit we are, even at this day, so much obliged. — But if matters of so little consequence in themselves, as those above-mentioned, are thought to merit the research of the antiquarian, and meet with a due encouragement in the pleasure they afford a reader, how much

much more worthy our attention, how much more agreeable as well as useful to be known are those weightier matters, which relate to the form of government they lived under, and to the plan of their civil constitution? This is a part of knowledge in which every Englishman is really interested, and which he cannot be wholly ignorant of without some hazard. Mistakes in these points may be, and actually have been, of the most dangerous consequence to the weal of the whole nation. Those who are well acquainted with the history of this country towards the latter end of Charles the second and his brother's reign (to say nothing of more modern times) will not require a particular proof of what is here asserted. — Other parts therefore of our antiquities may be either known or passed by as matters of curiosity and entertainment rather than of public benefit; but the history of the civil constitution cannot be too carefully studied, or too minutely enquired into, especially in such a country as ours is, divided into parties, and where each party confidently appeals to the antient constitution of the kingdom for the truth of the opinions it maintains, and pretends to make that the measure of its political principles, by which alone it is ready to stand or fall.—Can

it then be deemed an ufelefs and an unnecessary undertaking to describe what this ancient constitution of our kingdom was by the incontestable evidence of history, and to delineate that primitive form of government thro' all its several branches, which our Anglo-Saxon ancestors first established in this island? Such is the honest intention of the following work, nor will its design at least be condemned by any good citizen, however it may be perhaps lightly thought of by such persons as make present interest their only motive of judging as well as acting, and are ready to join any party, or to adopt any political principles, which may happen to be in fashion. — The subject, 'tis true, has already been attempted by several hands; but, as I would always choose to commend rather than censure, especially where the intricacy and obscurity of the argument requires so much indulgence, I shall not offer at a critique upon their works, ready as I am and willing to confess, that if I have been able
in

¹ Or Goths, as they are more commonly called. See *Sheringh. De Anglor. gent. orig.* p. 36. and *Grotii Prolegom. ad Hist. Goth. Vand. etc.*

² *Sheringh. ibid.* p. 27. *Majores nostri ex veterum Saxonum genere fuere, qui, sub Wodeno duce, primi ex Sarmatia Asiatica effusi sunt in Germaniam.* *Id.* p. 28.
Anglo-

in some instances perhaps to see farther than those who have entered this province before me, it has been wholly owing to the advantage I have had of being placed upon their shoulders. In fine, he who pleases himself with the conceit, that he is already enough acquainted with the whole, which can be offered upon this part of our civil history, needs give himself no farther trouble in reading: whilst he who thinks otherwise, will accept this essay in good part, will read the whole seriously, will examine carefully, and judge impartially: this is all the favour the author expects to find at his hands, and this he thinks he has a just title to demand for the pains he has been at in elucidating this curious, entertaining, and most useful subject. But 'tis now time that we enter upon our enquiry.

2. The *Saxons*, as well as those other nations the *Jutes* ¹ and *Angles* that joined with them in the conquest of Britain, came originally from the northern regions of Asia ².

This

Anglorum nomen adoptivum erat, ab Angulo ubi confederint translatum: antiquo enim nomine Suevi appellabantur, et pars Suevorum fuerint, quos Cæsar suo tempore longe maximam et bellicosissimam gentem omnium Germanorum fuisse tradit. — *Id.* p. 45. Illud quoque satis certum et expeditum est tres populos di-

This was the place of their birth, and in this uncultivated land they made their first abode, till encrease of multitude, introducing a scarcity of provision, compelled them in great numbers to leave their native seats, and go in quest of new habitations³. This was that vast hive from whose fruitful bosom were poured forth those mighty swarms of people which not only overspread the neighbouring countries of Scandinavia, or northern Europe,

Etos Saxones, Anglos, Getas, ex genere Cimbrorum fuisse, quos funestissimum bellum Romanis intulisse Romanae historiae scriptores referunt. — Hi sinus Codani insulas omnes, totam Jutiam, quae exinde Cimbrica Chersonesus nominata est, et reliquas Germaniae provincias ad littora maris sitas, Frisiam item et Bataviam in sua ditione tenebant. — As this treatise of Mr. Sheringham is generally esteemed by all proper judges, as the best account we have of the origin of the English nation, I think it sufficient barely to quote his testimony for what I have advanced upon this subject, without having recourse to the authorities themselves upon which our diligent antiquarian founded his opinion.

³ It was not a desire of plunder, or a greediness of booty, as is commonly reputed, which engaged the first mortals in that wandring course of life, which later writers have taken so much notice of, but the hopes rather of a better and more plentiful subsistence in another country, than what their own was able to afford them. As they were entirely ignorant of the art, or at least did not care to be at the pains of cultivating and improving the soil, as they had not yet begun to associate in towns and cities, had not learned to supply one anothers wants by the mutual good offices of trade, as they

rope, but by degrees covered all Germany, overwhelmed Spain and Gaul, and made themselves masters of the whole western empire. It would be matter of curiosity rather than of use to us in the following Essay, to attend our ancestors thro' all their various migrations and frequent change of place — it may not however be improper to observe, that when the Britons in the fifth century, at the instigation of Vortigern, sent to demand

they carried on no commerce or correspondence with the neighbouring nations; this made it even necessary for them to be in possession of an extensive territory, which might at the same time be sufficient to find themselves game to subsist upon, and to maintain their flocks and herds, the only riches they then knew any thing of. This frugal and robust course of life, as it soon overstocked their land with children, so it accordingly brought with it a difficulty of maintaining their still-growing multitude; this introduced the necessity of exonerating the country of its superfluous mouths, by forcing a certain number of them to seek for a better maintenance in the neighbouring countries, or wherever else they might be able to find it. — There is a very elegant passage in *William of Malmesbury* to this very purpose, *De Reg.* l. i. c. 1. Quapropter sicut hi, quibus id muneris est, lascivientes arboris ramos solent succidere, ut reliquorum vitæ succo suo possit sufficere: sic incolæ aliquorum expulsionem matrem alleviant, ne tam numerosæ prolis passu exhausta succumbat; sed ut facti minuant invidiam, sorte ducunt eliminandos. Inde est quod illius terræ homines invenerunt sibi ex necessitate virtutem, ut natali solo ejecti peregrinas sedes armis vendicarent, sicut Vandali, etc.

mand their assistance against the Scots and Picts, we find them in possession of those countries of the German continent, which are at present distinguished by the names of Westphalia, Saxony, East and West Friesland, Holland and Zealand. — The Roman historians, and indeed most other the ancient writers before the North was more accurately known and geographically divided into its several states and provinces, called all its inhabitants in general by the common name of *Germans*; and under this appellation, amongst other the northern nations of Europe, are our Anglo-Saxon ancestors described by Tacitus ⁴, in his most accurate treatise of this people, and comprehended by
other

⁴ As I shall have very frequent occasion to quote the famous piece of *Tacitus De moribus Germanorum*, I must not here omit the character which the inquisitive Cluverius has given us of it: De situ ac populis hujus terrae [Germaniae] deque origine ac moribus universae gentis tam accurate, tamque diligenter conscripsit, uti nullam aliam regionem, nullam gentem aequè descriptam ab ullo veterum auctorum habeamus. Vid. *Cluver. German. Antiq.* p. 3.

⁵ *Sheringh.* p. 77. Germania Taciti, sicut etiam et Ptolemaei, longe majores terminos et limites habuerit quam nunc habet; totam quippe Daniam, insulas plures maris Baltici, peninsulam Scandiam, id est, Norwegiam, Scaniam, Gothlandiam, Suediam, aliasque insuper regiones complexa est. See likewise to the same
pur-

other authors⁵. And, indeed, so great is the conformity, so exact the resemblance which has been remarked between the customs, laws, and modes of governing in use amongst the several nations of these wide-extended regions, however distinguished from each other by different names, that whatever is affirmed by the ancients of Germany in general, may with equal truth be applied to each particular state of it⁶; the same principles throughout both in peace and war seem to have animated the whole multitude of this hardy people.

3. The most daring courage, an extreme fondness for war¹, a steady perseverance in their old traditions, an invincible love of liberty

purpose *Cluver. Ger. antiq.* l. i. p. 94. c. II. et *Gul. Malmesb. De reg.* l. i. c. I.

⁶ Proinde quicquid de Germanorum moribus dicitur in univcrsum omnibus tributum intelligi debet. *Cluverius* as above.

¹ The Germans (as has been hinted c. 2. n. 2. above out of *Sheringham*) were descendants of the antient Cimbri; and each of them, both Cimbri and Germans, seem to have had their names given them from their valour and prowess in war. so *Sheringh.* p. 56. Cimbris hoc nomen ex fortitudine et bellica virtute partum est: *Cimbri* enim Germanice significant, *robusti milites, pugiles et palaestrici viri.* — Hinc etiam, ni fallor, Germanis suum nomen. *Germanus* enim idem valet quod *Kimber*, id est, *homo bellicosus*, a *Guerre*, quod bellum,

et

berty, an ardent zeal for the religion of their forefathers, and a contempt of death grounded upon the persuasion of a happy futurity², were the common characteristics of all these northern nations. — No wonder therefore, that whilst the rest of Europe groaned under the heavy yoke of slavery, harrassed, oppressed, and worn out by those common enemies

et *Man*, quod hominem significat; ipsique nomen hoc primum a Gallis, ut Tacitus narrat, ex timore inditum. See *Cluver. German. antiq.* l. ii. p. 104. who agrees with Sheringham in this derivation of the name of Germans, as do, indeed, most of the learned.

² This principle, in particular, could not but have a mighty effect upon the military operations of all those who firmly believed in it: To dye with their swords in their hands was the only way to be completely happy in another life. With what enthusiasm must this fill the breast of every soldier! — *The author of the Pharsalia* has very elegantly touched upon the consequences of this principle in the following lines:

Populus quos despicit Arctos
 Felices errore suo, quos ille timorum
 Maximus haud urget, Lethi metus, inde ruendi
 In ferrum mens prona viris, animique capaces
 Mortis, et ignavum rediturae parcere vitae.

The immortality of the soul, or, more properly perhaps, the sensual pleasures, which all those, who were slain fighting for their country, were to enjoy in another state with their great ancestors, who had fallen in the same cause, were the general subjects of those songs or hymns which their bards composed and sung, not only just before they were going to engage the enemy (for as *Diodorus Siculus* observes of the Lusitanians,

mies of the freedom and independency of mankind, the Romans³, Germany, at least the greatest part of it, still preserved its native freedom pure and inviolate⁴, still maintained that primitive form of government, and regulated its civil conduct upon the plan of those ancient customs, which had been delivered down to it from its planters and
 pos-

ἐν τοῖς πολέμοις πρὸς ῥυθμὸν ἰμβαίνεισι, καὶ παιάνας ἀδῶσι ὅταν ἐπίωσι τοῖς ἀντιτεταγμένοις. (see *Tacit. de M. G. c. 2.*) but at all their public festivals, to rouse the martial ardour of their countrymen. Some of these warlike songs are still to be seen in the collections of the Swedish and Danish antiquarians.

³ *Epistola Mithridatis ad regem Arsacem, apud Hist. Fragmenta Sallustii*, l. iv. — Neque quicquam a principio nisi raptum habere [Romanos] domum, conjuges, agros, imperium. Convenas, olim sine patria sine parentibus, peste conditos orbis terrarum; quibus non humana ulla neque divina obstant, quin socios, amicos, procul juxta sitos, inopes, potentisque trahant, excidantque; omniaque non serva, et maxime regna, hostilia ducant. This, tho' it be the representation of a professed enemy to the Romans, yet is it nevertheless supported by the whole voice even of their own history. See likewise Galgacus's speech to his countrymen the Caledonians, concerning the Romans, preserved in Tacitus's life of Agricola.

⁴ Give me leave to quote the authority of *Lucan* once more:

Libertas ultra Tanaim Rhenumque recessit,
 Et toties nobis jugulo quaesita negatur,
 Germanum Scythicumque bonum —

L. vii. † 243.

⁵ *Taci-*

possessors; customs which in this country, as the Roman historian observes⁵, carried more force and authority with them, than written laws in other places. Nor can it, I think, be seriously questioned, but that wherever they extended their conquests, at whatever untried lands their numerous swarms arrived, there likewise they regularly established, or continued rather, the same constitution and mode of civil government, which they had been accustomed to live under in their own country, as near it at least as the different circumstances of their situation would conveniently permit. This supposition is so easy and natural, so very agreeable to the genius of this resolute people, and at the same time so well confirmed from ancient history, that no thinking man, I believe, will venture to dispute it with me.

4. Would we therefore form a just and true notion of the Anglo-Saxon government as it was at first settled and administered in this island? Are we willing to trace out the

⁵ *Tacitus De morib. German.* c. 19. Plus ibi boni mores valent, quam alibi bonae leges.

¹ *Brady's Complete History*, vol. i. p. 57. I chose to make use of the very expressions of Dr. Brady upon this occasion, because, as we differ not a little in our con-

the original stamina of our present most happy constitution? — It is a laudable desire, it is an enquiry well worthy an Englishman's pains; but an enquiry which cannot possibly be attended with any tolerable degree of accuracy and conviction, unless we first take a view of our ancestors in their prior settlements, and are able to inform ourselves under what kind of polity they were there governed. “ They are the ancient customs of the
 “ Germans in general, from whence must be
 “ deduced the grounds and rudiments of the
 “ Saxon laws, government, and policy af-
 “ terwards established in this nation ¹. ” —
 But from whence, may it be pertinently ask'd, are we to expect our information upon this first most important and leading point? Not, indeed, from the antient Germans themselves, who, we are truly told, were not very studious in cultivating the knowledge of letters amongst them, and whose only records, like the rest of their Celtic brethren, were the enthusiastic hymns of their bards or poets ²,
 but

conclusions, I was willing to shew at least that we both argue from the same principles.

² *Tacit. De morib. German.* c. 19. *Litterarum secreta viri pariter ac foeminae ignorant: And he had before observed, that they had no other kind of annals*

but from the learned Romans more especially, whose provinces bordered upon them, and whose curiosity could not but prompt them to enquire minutely into the customs and manners of a people who had so frequently shaken their empire, and before whose numerous and well-resolved armies their victorious legions themselves trembled. And tho' the utmost light we can expect to procure may not be sufficient to enable us entirely to dispel the thick gloom with which we have been hitherto involved, and to elucidate all the curious questions which may arise upon so engaging and interesting a subject, yet will it, I hope, be clear enough to assist us in drawing the outlines of their political fabric, and in pointing out the principal and most striking parts of the structure, all such at least as are any ways necessary to our farther design of delineating or describing the Anglo-Saxon government in Britain.

annals or histories than their songs composed in memory of their heroes: Celebrant carminibus antiquis (quod unum apud illos memoriae et annalium genus) Tuistonem, etc. c. 2.

¹ *Caesar De bell. Gall.* l. iv. near the beginning. Suevi centum Pagos habere dicuntur — And he had before observed, in the first book, c. xii. Civitas Helvetia in quatuor Pagos divisa est. Upon the former of these passages of Caesar, *Montanus* adds in his notes, divi-

Britain. In dubious cases, where better evidence cannot be obtained, the best and most candid judges will be always guided by probability.

5. It appears then from the remains of ancient history, that Germany was originally divided into many separate and distinct nations, all of them as to jurisdiction perfectly equal, and entirely independent upon one another. Each of these nations or states was again subdivided into a certain number of *Pagi*, as they are called by the Roman authors, that is of distinct provinces or districts, more or fewer, according to the number of tribes or clans, that, upon its first planting, composed the state, greater or less according to the different extent of their territories; thus the country of the *Suevi* was divided into an hundred of these *Pagi*^r, as that of the *Helvetii*, according to the same author,

was

dividere agros in *Pagos*, omnibus Germaniae gentibus commune fuit. Est autem Pagus integra amplioris regionis portio, cujus apud ipsos Germanos vernaculum vocabulum fuit *Gaw*, et variantibus dialectis *Gaw*, *Gow*. Vid. plura apud *Cluver. Germ. antiq.* p. 113. The French still retain this signification in their word *Pays* or *Pais*, which was derived immediately from it; so Senonicus Pagus, they call le Pais de Normandie, etc.; whilst our English antiquaries (vid. *Spelman* in voce *Pagus*)

was into four. Each of these provinces or districts formed a sort of community or civil society within itself, each of them having its separate court of judicature, its distinct prince, president, or judge, for its direction in civil affairs, and its own general in time of war. But tho' these provinces considered apart, had each of them its own scepter, if I may use that expression, and was in a great measure, independent upon the rest, yet were they all subordinate to the regulation and authority of the supreme legislative power, which was lodged in the general assembly or congregation of the whole state or nation. — Such was the original and general plan of their political building, and upon this or a like model, not only the civil government of

Pagus) always, I think, interpret it by that well-known division of our island into those distinct parts or portions we now call *shires*. — Those, as Grotius and others, who would still subdivide these *Pagi* into their towns or *vici* (understanding *towns* in the sense we do at present for a collection of houses forming a sort of civil society amongst themselves) are certainly mistaken, as appears from the whole tenor of the German history. The ancient *vici* were, 'tis probable, nothing but *οἶκοι*, *distinct houses*, however we may be now apt to join other ideas to the word. For 'tis undoubted, that the Germans like all the rest of the old world, *σπουδαίως ἄνευ*, as Aristotle has justly observed — See however Tacitus *De Mor. Germ.* c. xvi. Nullas Germanorum
populis

of England, but of every other nation of the known world perhaps was at first formed. But 'tis now time, that we proceed to a more explicit and precise examination of the several parts or members of this ancient Gothic constitution.

6. Now to follow the method laid down by Aristotle in his excellent treatise of Politics¹, we must begin with individuals, those first and most minute parts out of which the aggregate of society is formed. With respect to these then, we find each man amongst our ancient German ancestors exercising a patriarchal authority, as lord and governour of his own household². His whole family seems to have been immediately subject to and dependent upon him alone ;

populis urbes habitari satis notum est, ne pati quidem inter se junctas sedes. Colunt discreti ac diversi, etc.

¹ In the beginning of his first book.

² *Tacit. De mor. Germ.* c. 5. Suam quisque sedem, suos penates regit. So *Aristotle, Polit.* p. 3. speaking of the first ages of the world, tells us in general, πᾶσα οἰκία βασιλεύεται ὑπὸ τῷ πρωβύλατῳ — καὶ τῶν ἱερῶν ὁ λόγος Ὀμηρος

— θιμισύει δὲ ἱερατος

Παίδων ἢ δ' ἀλόχων.

σποράδες γὰρ, καὶ ἄτω τὸ ἀρχαῖον ὄκων. *Caesar, Bell. Gall.* l. vi. c. 19. Viri in uxores, sicuti in liberos vitae ne-
cisque habent potestatem. I shall not scruple to illu-
strate

B

strate

alone; his word was their law, he administered justice to them, and by his own authority put an end to their disputes. His slaves, those unfortunate persons, whom either the chance of war or any other accident had thrown into his hands, were so absolutely in his power, that even tho' in the fury of his passion he killed any of them, yet was he under no apprehension of being called to an account for his rash severity³. If his wife at any time violated the honour of his bed, he had a right of inflicting punishment upon her himself immediately, without waiting for any previous trial or condemnation⁴. — Let it however be remarked to the credit of our German patriarchs, that, notwithstanding they were entrusted with

strate this account of the antient German customs and manners by what I find in Caesar, or any other author concerning the Gauls, and other the Celtic nations — For that observation of the learned Cluverius is undoubtedly true (*Germ. antiq.* p. 103.) *uti gentem fuisse unam Celticam, Hispanos, Gallos, Britannos, atque Germanos supra probatur; sic moribus quoque pene iisdem universos vixisse, nisi quatenus Hispani ac Galli nonnullas Graecorum consuetudines admiserint, clare infra patebit.*

³ *Tacit. De morib. Germ.* Occidere solent servum non disciplina et severitate, sed impetu et ira ut inimicum, nisi quod impune.

⁴ *Tacit. ut supra.* Paucissima in tam numerosa gente

with the exercise of so great an authority, they did not in general make a bad use of it. For the treatment they gave their slaves was for the most part mild and gentle ⁵, and their behaviour to their wives, such as would be a credit even to these politer ages, where mode or fashion seems to have disguised the deformity of vice ⁶. For, contrary to that unnatural luxury, which the softer climes of Asia had very early introduced into the world; each man, in imitation of their first parents, lived contented with one wife only, whilst love and dutiful obedience to her own husband, made up the principal part of the woman's character. For, as the curious Roman has well observed ⁷, there was no part of their discipline or general behaviour

gente adulteria, quorum poena praesens et maritis permessa. What this punishment was the same author will inform us, c. 19. *Accisis crinibus nudatam coram propinquis expellit domo maritus, ac per omnem vicum verberare agit.*

⁵ *Tacit. ut sup.* c. 25. *Verberare servum ac vinculis et opere coercere rarum.* If therefore they were sometimes hard and severe to them, it ought rather to be imputed to the starts of a momentary passion, than to their general custom and behaviour.

⁶ *Tacit. ibid.* *Nemo enim illic vitia ridet: nec corrumpere et corrumpi saeculum vocatur.*

⁷ *Tacit. De M. G.* c. 18. *Severa illic matrimonia: Nec ullam morum partem magis laudaveris; nam prope*

haviour more commendable, than that strict severity with which they preserved the honour of the marriage bed inviolate. Adulteries were scarcely heard of in all that numerous multitude, with which these nations abounded. Was not this owing to that custom which prevailed amongst them, of the husband's bringing a fortune to the wife, and not the wife to the husband⁸? In a word, there was no country where the women in general were treated with more complaisance and affection, or had a greater regard paid them

soli barbarorum [I will not be bound to answer for the truth of this general assertion of my author] *singulis uxoribus contenti sunt*; exceptis admodum paucis qui non libidine, sed ob nobilitatem plurimis nuptiis ambiuntur — and he has elsewhere told us, that there were paucissima in tam numerosa gente adulteria.

⁸ *Tacit. ut supra.* Dotem non uxor marito, sed uxori maritus offert. This was perhaps the general custom of the patriarchal ages. See the story of Sichern and Dinah, GEN. xxxiii. There are likewise similar instances to be found in Homer.

⁹ Captivitatem, says *Tacitus, ibid.* c. 8. longe impatientius foeminarum suarum nomine timent; adeo ut efficacius obligentur animi civitatum quibus inter obfides puellae quoque nobiles imperantur; inesse quinetiam sanctum aliquid, et providum putant: nec aut consilia earum aspernantur, aut responsa negligunt. So likewise *Plutarch*, in his treatise *Περὶ γυναικ. ἀρετ.* speaking of the Celtic nations, ἐκ τῆς διατέλειν περὶ το πολέμου καὶ εἰρήνης βουλευόμενοι μετὰ τῶν γυναικῶν, καὶ τὰ πρὸς τὴς συμ-

them as part of the reasonable or human species than in Germany⁹.

7. As to the management of those domestic affairs, which now make so great a part of the employment of each master of a family, these, as matters of a mean and inferior concern, were left to the care and discretion of the women, and of the more ignoble and unactive part of their household¹. War was the only occupation they looked upon as worthy their notice and application, and to excel in this was their great glory and

συμμάχες ἀμφίβολα δι' ἐκείνων βραβεύοντες. The same kind of authority, or even greater, the Sarmatians, the ancestors of our Germans, gave their women: For 'tis observed by Nicholas of Damascus, ταῖς δι' ἑσθλαῖς Σαρματῶν πάντα πείθειν ὡς δεσποίναις. Nor do I question but the same custom might be traced, was there occasion, thro' most other the ancient nations—were they not originally permitted to meet in council with their husbands in Attica? Such mixed assemblies might indeed be attended with some inconveniences, and this would be sufficient to put an end to them.—The Lycians however may be thought perhaps even to outdo the Celts in their complaisance to the ladies; for, according to the same author, Λύκιοι τὰς γυναικῶν μᾶλλον ἢ τοὺς ἀνδρας τιμῶσι καὶ καλεῖνται μετρώβην, κ. τ. λ.

¹ Tacit. *De mor. Germ.* c. Fortissimus quisque ac bellicosissimus nihil agens, delegata domus, et penatium, et agrorum cura foeminis senibusque et infirmissimo cuique ex familia, ipsi hebet: mira diversitate naturae cum iidem homines sic ament inertiam et oderint quietem.

and the utmost bounds of their ambition. When not actually engaged in arms, hunting would indeed sometimes employ their leisure hours, tho' an idle inactivity, consumed in eating and drinking, seemed far more agreeable to the opinion they entertained of liberty and true nobility². Are we ready to condemn them for notions, which to us at least appear so utterly everfive of civil society, we must condemn the whole ancient world with them; Greeks as well as Barbarians looking upon manual labour of every sort as the undoubted mark of a poor, mean, and sordid disposition³; whilst the employment of war was regarded by them all, as the only sure test of true nobility: military skill, and a mighty execution in the day of battle, was with them the highest

² *Id.* c. 15. Quotiens bella non ineunt, non multum venatibus, plus per otium tranfigunt, dediti somno ciboque — as if they had been influenced by that maxim of Socrates, mentioned somewhere in *Aelian's various history*, “That idleness is the sister of liberty:”

Ἡ ἀργία ἀδελφὴ τῆς ἐλευθερίας ἐστίν.

³ *Herodot.* l. ii. Εἰ μὲν οὖν καὶ τῆτο παρ' Αἰγυπτίων μιμαθή-
 κασι οἱ Ἕλληνες, ἃ ἐχὼ ἀτρικέως κείναι ὄρεον καὶ Θρηάκας, καὶ
 Σκυθίας, καὶ Πέρσας, καὶ Λυδῆς, καὶ σχεδὸν πάντας τὰς βαρβάρους,
 ἀποτιμωτέρους τῶν ἄλλων ἠγρομένους ποληπύτων τὰς τὰς τέχνας μαν-
 θάνουσας, καὶ τὰς ἐργόους τῶτων τὰς δὲ ἀπαλλαγμένους τῶν χειρω-
 ναζίων, γυναικῶν νομίζουσας εἶναι, καὶ μάλα τὰς εἰς τὸν πόλεμον
 ἀνεμίνους — So again, the same author, l. v. speaking of
 the Thracians, tells us, that in their opinion, ἀργὸν εἶναι
 κάλλιστον, γῆς δὲ ἐργάτην ἀτιμώτατον. To the same purpose

Taci-

highest excellence the human nature could arrive at, and the sum and perfection of all other virtues ⁴. Read but the institutions of the isle of Minos, or those still more famous of the celebrated Lycurgus, and we shall find both Cretans and Lacedemonians educated in this same way of thinking: the Clarotae or Mnoitae, and Helot-slaves, they learned and practised the mechanic arts, managed the lands, and did all other kind of work for them, “ whilst their masters spent
 “ all their time in dancing and feasting, in
 “ their excercises, hunting matches, and
 “ the public places, where good company
 “ used to meet and converse ⁵.”

8. Contented therefore with that native liberty and independency which they had inherited

Tacitus, ut supra; Pigrum quinimmo et iners videtur sudore acquirere, quod possis sanguine parare.

⁴ *Cluver. Germ. antiq.* p. 123. Ipsa bellicositas virtutis nomen κατ' ἰξοχὴν fortita est. Sic enim apud gentiles auctores τῆ ἀρετῆ, id est, virtute gens gentem praestare dicitur; non ob temperantiam, vel fidem, vel pietatem, vel aliam quampiam moralium virtutum; sed ob animi in certaminibus manuumque fortitudinem. hinc illud *Ciceronis in Oratione pro Muraena*, Rei militaris virtus praestat reliquis omnibus; et paullo post, Summa dignitas est in iis, qui militari laude antecellunt.

⁵ See *Potter's Antiquities of Greece*, vol. i. p. 69. *Nic. Damascen. de mor. Gen.* Λακεδαιμονίους τίχτας μάδάντων ἄλλας ἢ τὰς εἰς πόλεμον αἰσχρόν ἔστιν.

herited from their forefathers, our ancient Germans were but very little solicitous for the superfluities of life. Room for their increasing multitudes, and the mere glory of the conquest were the motives rather of their frequent wars with one another, at least in the early ages wherein we are now considering them, than either cruelty and savageness of disposition, or the avaricious hopes of plunder. Gold and silver they were as yet happily ignorant of: well pleased therefore, and satisfied with the plain riches of nature, their numerous flocks and herds¹, they had no notion of accumulating vast quantities of useless wealth, fit for nothing in reality but the propagation of luxury, and the corruption of the morals of their brethren

¹ *Tacit. de Mor. Germ. c. 5.* Argentum et aurum propitii an irati Dii negaverint, dubito — Est videre apud illos argentea vasa legatis et principibus eorum muneris data, non in alia vilitate quam quae humo finguntur — Permutatione mercium utuntur — Numero gaudent [pecorum] eaque solae et gratissimae opes sunt.

² *Tacit. ut supra.* Frumenti modum dominus, aut pecoris, aut vestis [servo] ut colono injungit. — The affair of cloathing could be no very expensive article in those times, when garments were made use of not for pomp and ostentation, but merely to cover their nakedness and to defend them from the cold of winter and the heat of the summer. There are, I know, who misled by

thren. The lands therefore, which were allotted them in the annual division of their territory, as they were above labour themselves, these they again parcelled out amongst their several slaves and dependents to be by them cultivated and improved, acquainting them at the same time with what they expected from them in return, whether cloathing, cattle, or any thing else they thought they might stand in need of, and reserving likewise such a share or proportion of the yearly produce, as might be sufficient to maintain themselves and their families with credit and in abundance ².

9. Customs such as these, 'tis true, are very different from those of the more civilized ages, as we are pleased to term them; but as they

by Caesar's authority, seem to think that the Britons, the first inhabitants of this island, were used to go naked. But this the very situation of the country, so far towards the north, absolutely forbids us to imagine. The Celts, part of whom the Britons as well as the Germans undoubtedly were, had two or three sorts of clothing in Tacitus's time — 1. The skins of wild and tame beasts dressed and undressed. 2. A robe, spun or made out of the barks of trees. 3. Another sort of clothing made of the wool of their sheep, thick, flagged, etc. and these garments, it appears from very good authority, were common to all the Celtic nations. See *Tacitus de M. G. c.* 17. and *Kirchmaier's notes upon the place.*

they are not for that reason only immediately to be condemned as savage and brutal, so neither ought we too hastily to conclude from thence, that they are not real nor supported by history. The power, which we have here taken notice of as anciently belonging to the masters of families, necessarily arose from that natural state of freedom and mutual independency wherein every man is born, and which he would have no thoughts of ever parting with, till induced thereto by mere necessity; till the ambition, luxury and vices of mankind had encreased their wants, enflamed their passions, and thereby introduced an abuse of these native and original privileges of the species. To prevent therefore the ill consequences of that mischief and confusion, which began to flow from hence, it became necessary by degrees to restrain, and at length totally to abolish an authority, which was grown dangerous to and destructive of the public happiness. However, this despotic power, or the power of every master over his own family or household, was the first and indeed the most natural method, which reason itself could dictate of distributing justice, and maintaining the common peace and tranquillity. For whilst
every

every man took that care, which his own true interest required of him, of the good conduct and government of his own private family, the lowest and most disorderly part of the nation, the general happiness of the whole community must at the same time be preserved and greatly advanced.

10. This method, however, it must be confessed, was not alone sufficient to secure the public peace and quiet, for any length of time; 'tis not enough that the foundation of the building be well laid, unless the superstructure likewise be properly raised, and the materials well cemented together. For as matters of contention and dispute could not but frequently arise between these several masters of families themselves, who should judge or decide the difference between them? Nature had given them no proper authority or power over one another, and as each man would be prejudiced in his own favour, the rules which natural equity might suggest to them would be but little hearkened to, when heard thro' the medium of self-interest. The wisest man would make but a very indifferent judge in his own cause. Here then, unless some method was found out to prevent it, would be laid the
the

the foundation of lasting feuds and animosities between the several independent members of the state, the consequence of which could be no other than the general distraction, confusion, and subversion of all social happiness. In order therefore to prevent the fatal effects of this evil, our German ancestors by common consent or election appointed over each pagus or province a distinct president or judge, by them, most probably, denominated *Forste*, but by the Roman authors

¹ *Tacit. de Mor. Germ.* Eliguntur in iisdem conciliis *Principes*, qui jura per Pagos, vicosque reddunt. So Caesar, speaking likewise of the Germans, tells us, that when they were at peace they had no one common magistrate over the whole state, sed *Principes* regionum atque Pagorum inter suos jus dicunt controversiasque minuunt. *Grot. de rep. Batav. antiquitat.* p. 33. Apud Germanos, praeter eos qui sacra curabant, duorum ordinum homines fuisse reperio, *Principes* et *plebem*. *Principes* cum dico non singulos intelligo qui singulis gentibus imperitabant, ut plerumque ea vox usurpatur — sed eos, qui singuli partem aliquam gentis curabant, quae partes majores quidem *Pagi*, minores autem *vici* vocantur. And again p. 34. Sunt ergo hi principes dignitate generis ac muneris iisdem, qui postea barones atque nobiles, *Cluver. Germ. antiq.* L. I. p. 319. Singulis cujusque civitatis Pagis ac vicis suus erat magistratus, sive, ut Tacitus et Caesar vocant, *Princeps* qui jus reddebat. [I cannot find by either Tacitus or Caesar that each vicus had its own prince, the prefect of the Pagus being ex officio to administer justice to all, house by house, per Pagos vicosque i. e. οἴκῳ; τε — For Tacitus himself

thors sometimes called in their language king, sometimes general, tho' most usually prince, with plenary authority to go round the district committed to his charge, and to hear and determine all causes or matters of contention, which might arise within the limits of his jurisdiction¹. By this wise provision proper care was taken for the regular distribution of justice with the least trouble and inconvenience to individuals, as they were not to go far, nor to wait long

himself tells us, that the houses in Germany were all distinct, there being neither towns nor villages, see above, n. 1. c. 5.] *Nomen Regis* a Romanis, ut ante dictum (Pagg. 315, 316.) parum proprium iis impositum; quum haud dubie e re ipsa sermone patrio dicerentur *Thi Forsten*; antiquo germanico vocabulo *Forste*, quod hodieque apud Danos, Suedos, atque Norvagios primum numero significat; eademque significatione apud Anglos in Britannia est *Firft*. So the prince of Anhalt is called in high Dutch to this day *furst von Anhalt*, and the marquis of Brandenburg, amongst his other titles, *furst zu Rugen*, and there are other instances produced by learned men of the continued use of this word in its primary signification. See *Selden's Titles of Honour* part. 2. c. 1. f. 53.—So likewise in the old Roman language, as has been frequently observed, the word *Princeps* originally signified no more than one who was more eminent than the rest, qui inter suos eminebat: see to this purpose *Livy* l. 2. where he speaks of Appius. In this same sense likewise *Phaedrus*, remarkable for the purity of his style, speaks of the *Principes* of the Athenians, meaning no more by the expression than the *Primores* or chief citizens.

¹ *Ta.*

long for it, nor to be at any expence in procuring it.

11. And that neither dignity might be wanting to his presence on these solemn occasions, nor security to his person, nor proper weight and authority to his decisions, the prince was always attended and assisted in the administration of his province by a choice and select band of the wisest, most robust, and hardy native-freemen of the country. These were a sort of honorary servants, they were his court as we now term it, his *Companions* and attendants, the checks as well as the executioners of his power; they were his standing council in time of peace, his guard and security in the day of battle. They obliged themselves by oath to be faithful to him, and

¹ *Tacit. De mor. Germ.* Centeni singulis principibus ex plebe *Comites* consilium simul et auctoritas adfunt — Gradus quinetiam et ipse *Comitatus* habet, judicio ejus quem sectantur. Magnaque et comitum aemulatio, quibus primus apud principem suum locus: et principum, cui plurimi et acerrimi *Comites*. Haec dignitas, hae vires magno semper electorum juvenum globo circumdari in pace decus, in bello praesidium. Nec solum in sua gente cuique, sed apud finitimas quoque civitates id nomen, ea gloria est, si numero ac virtute *Comitatus* emineat. Expetuntur enim legationibus, et muneribus ornantur, et ipsa plerumque fama bellum profligant. Cum ventum in aciem turpe principi virtute vinci; turpe

and to defend his life at the hazard of their own : nay they went so far as to impute to him the whole merit of their own actions, how great and illustrious soever they might appear. As there were different ranks and orders of these *Companions*, this raised a spirit of continual emulation amongst them, who should be first in his prince's favour, and advanced to the superior degree. Besides their master's esteem and affection the only return they seemed to expect for all their services and fidelity was to be plentifully entertained at his expence, and to be rewarded by him with such other marks of distinction as their valour might be thought to deserve, a horse for the war, or a suit of armour^r. — Thus, as we are informed by *Diodorus Siculus*,

pe comitatu, virtutem principis non adaequare. Jam vero infame in omnem vitam ac probrosum superstitem principi suo ex acie recessisse. [*Marcellinus*, l. xvi. will afford us a very remarkable instance of this strict alliance between the prince and his comites ; for speaking of Chonodomarius, king of the Allmans, that he was obliged to surrender himself to the Romans, he adds, Comitescque ejus ducenti numero, et tres amici junctissimi, flagitium arbitrati post regem vivere, vel pro rege non mori, si ita tulerit casus, tradidere se vinciendos] Illum defendere, tueri, sua quoque fortia facta gloriae ejus assignare, praecipuum sacramentum est. Principes pro victoria pugnant : comites pro principe.

Si

*culus*², the first kings of Egypt had no mercenary servants, no foreign nor home-born slaves ordinarily to minister about their persons, but were always attended and served by the sons of the priests and of the soldiery, that is, of the chief nobility of the country. Nor would it perhaps be difficult to shew, did the occasion require it, that voluntary combinations of this nature, entered into for service on the one hand, and for entertainment and protection on the other, were common throughout most of the states of the antient world³.

12. As

Si civitas in qua orti sunt, longa pace et otio torpeat ; plerique nobilium adolescentium petunt ultro eas nationes, quae tum bellum aliquod gerunt, quia et ingrata genti quies, et facilius inter ancipitia clarescunt, *magnumque comitatum* non nisi vi belloque tueantur. Exigunt enim principis sui liberalitate illum bellatorem equum, illam cruentam victricemque frameam ; nam epulae, et quanquam incompti, largi tamen apparatus, pro stipendio cedunt.

² L. I. p. 63.

³ Such I take to have been that band of men, who went with, or attended Saul to Gibeah, upon his first election to the kingdom of Israel. See I SAM. c. x. 26.

¹ From the words of *Tacitus*, as quoted above, one would be apt to conclude, that the number of these honorary servants or *Companions* was confined to an hundred — and so perhaps it might be in the original institution of them ; tho' nothing I think is more evident, even

12. As to the number of these *Companions*, this seems to have been arbitrary and uncertain, as it depended chiefly upon the personal character of the prince himself, who, as may be collected from the Roman historian, according to the degree of esteem he was in with his contrymen, was surrounded with a greater or lesser retinue of them ¹. — Nor is it indeed sufficiently clear by whom they were appointed; whether by the general council which elected the prince, or by a particular designation of the province, where they were to reside — tho' perhaps after all, which is I think the most

even from Tacitus's own expressions, than that, in his time at least, their number was vague and uncertain. — For how else can we interpret these expressions of his, *Magna Principum aemulatio cui plurimi et acerrimi Comites: haec dignitas, hae vires magno semper electorum juvenum globo circumdari?* So again, *Ea gloria est, si numero ac virtute Comitatus emineat?* but where would there be room for this emulation were their number confined to just an hundred? I should imagine therefore, that when the learned Roman saies, *Centeni singulis principibus ex plebe Comites adfunt*, his design is rather to point out to us their title or distinguishing name of honour, than to specify their precise number — In like manner the *Centum-viri* at Rome still retained their old appellation even after their number was increased to one hundred and eighty; and that known division of our counties into *hundreds* subsists by this name even to this day, though each of them perhaps, very different from their original institution, consists of many hundred

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most probable opinion, the whole affair was entirely voluntary on both sides ². The freemen of the province offered themselves to his service, and the prince made choice of such amongst them, whose character he liked best. For as it was his valour more especially, which had recommended him to the office where he now presided, this quality alone in those warlike ages would fill his court with multitudes of followers; every one would be ready to put himself under the command and protection of a person, whose great merit had rendered him worthy the most distinguishing honours his country could bestow upon him. — Here then it was that the hardy and ambitious youth might always expect to have before their eyes a glorious example for their imitation, and from their master's skill and experience be
early

families. *Kirchmaier* in his notes upon the above-mentioned passage of Tacitus, has these words — *restituentum vero reor certi singulis ex plebe comites. Ubi enim vel vestigia saltem apud Tacitum aut alios de comitibus centenis?* Could this Gentleman have produced the authority of but one manuscript to confirm his conjecture, I believe he would long since have persuaded the learned to have admitted it as the true reading.

² Thus the *Thetes* of Athens, the *Penestae* of Thessaly, and the *Cientes* amongst the old Romans, might
all

early initiated into the art of war: the consequence of which must necessarily be, what we find in fact it was, that the number of these *Companions* would be indeterminate, always greater or lesser according to the reputation their prince was in with them. — This then, I think, is an indisputable argument against any particular appointment of them by the public. The nobility and honorary princes, for such there were, might unquestionably join themselves to whose court soever they pleased; nor did they look upon it as any disgrace to them, to serve amongst their meaner brethren, and to attend the persons of those whom their country had honoured with a command over its members ³.

13. It is not, I think, sufficiently agreed amongst the learned, what was the original and proper name, in their own country language

all chose what patrons they pleased, tho' it was afterwards looked upon as extremely infamous, unless some very good reason could be assigned for it, to quit the service of those under whose protection they had once thrown themselves.

³ *Tacitus, De mor. Germ.* Insignis nobilitas, aut magna patrum merita, principis dignationem etiam adolescentulis assignant. Ceteris robustioribus, ac jam pridem probatis, adgregantur, nec rubor inter *Comites* adspici.

guage, of these *Companions*, as Tacitus calls them, who so faithfully attended the service of our ancient German princes. Some will have it to have been that of *Graves*, which word, according to the learned *Cluver*, sometimes signi-

¹ *Tacitus*, I think, constantly gives them the name of *Comites*; the reason of which, perhaps, is, because he regarded them as a similar institution to those more honourable servants or friends, who, a little before his time [perhaps their original might be traced up even to the earliest ages of the Roman state] were wont to accompany the Roman generals in all their expeditions, and who were called by this name in the language of his country. Thus *Suetonius*, speaking of Tiberius, tells us, that being *Pecuniae parcus et tenax*, *Comites peregrinationum, expeditionumque nunquam salario, cibariis tantum sustentavit*. [This was the very mode of the German princes] *Una modo liberalitate ex indulgentia vitrici persecutus, cum tribus classibus factis, pro dignitate cujusque primae sexcenta tertertia, secundae quingenta distribuit, ducenta tertiae*. How conformable is this to what we have before observed from *Tacitus*, *Gradus quinetiam et ipse comitatus habet, iudicio ejus quem sectantur?* Instances of this kind of *Companionship* are more common in the middle and lower empire. For, to use the words of our very learned countryman Mr. *Selden* (*Titles of Honour*, Part ii. c. 7.) “The emperors antiently had about
“them, beside their greatest officers of state, select
“attendants of court, known by the name of *Compa-*
“*nions*, or *Companions* and *Friends*. They were usu-
“ally made of such as were Consular or Praetorian se-
“nators, and sometimes out of men of less dignity,
“and are styled the *Roman College* by the emperor Va-
“lerian, in his oration to the senate touching Macria-
“nus

signified a *Companion* or *Follower*².— But this interpretation cannot easily be admitted, as the most usual signification of this term is *Governour*³, in which sense it is by no means applicable to these *Companions* of the Roman historian.

Upon

“ nus. *In contubernium imperatoriae majestatis adsciscere*
 “ is used by *Lampridius* for the making them. They
 “ waited and assisted the emperor in his counsils and
 “ actions, and they were divided also into their several
 “ ranks of dignity. There was a rank of the first
 “ dignity, another of the second, and another of the
 “ third. Testimonies of this division are obvious in
 “ both the Codes, and especially in *Eusebius*, where
 “ he speaks of them under *Constantine*. But whence
 “ the beginning of them, and of this division is to be
 “ derived is not agreed on clear enough among learned
 “ men.” *Cluver. Germ. antiq.* l. i. p. 375. is of opinion, that the Romans borrowed this institution, as they did many others, from the Germans, who about *Constantine*’s time began to crowd into the court and armies of the Roman emperors. — But, as I hinted before, the original of these *Companions* amongst the Romans must in all probability be traced higher than either *Selden* or *Cluver* seem to place it; why may we not suppose that it grew by degrees out of that relation of *Clients* and *Patrons*, which we know to be as old at least as their state itself, and may, probably, conclude to be much older, as *Romulus* rather imitated the institutions of the neighbouring nations, than made new ones out of his own head?

² *Cluver. Germ. antiq.* l. i. p. 374. *Comitis quoque adpellationem, quae est Germanice Grave et Greve, haud novam nec nuper repertam existimo: nihilque aliud significare quam Comitum sive Sectatorem.*

³ *Vid. Spelman. et Du Fresne Glossar. ad vocem.*

C 3

⁴ *Caesar,*

Upon the whole, if I might be indulged a conjecture, I should rather imagine that the *Ambacti* of the Gauls, considering the original affinity beteen the two nations, should bid fairest to be their primitive and true denomination. The office and employment of both was most undoubtedly of a similar nature, they were a kind of honorary servants, encouraged, protected, and advanced by those whom they followed, and in return absolutely devoted to their persons and interests. For, as *Caesar* observes, “ Every
 “ Gaulish nobleman, in proportion as his re-
 “ putation encreased with his countrymen,
 “ was attended by a greater retinue of *Am-*
 “ *bacti*, clients, or dependents; this was the
 “ only

⁴ *Caesar, Bell. Gall. L. 3.* Eorum [equitum] ut quisque est genere copiisque amplissimus, ita plurimos circum se *Ambactos, Clientesque* habet, hanc unam gratiam, potentiamque noverunt. To the like purpose is what *Polybius* tells us of the same nation, lib. 2. Πρὸς δὲ τὰς ΕΤΑΙΡΙΑΣ μεγίστην σπαδὴν ἰποῖοντο, διὰ τὸ καὶ φοβερώτατον καὶ δυνατώτατον εἶναι παρ’ αὐτοῖς τῆτον, ὃς ἂν πλείους ἔχειν δοκεῖ τῶν ΘΕΡΑΠΕΙΟΝΤΑΣ καὶ συμπεριφερομένους αὐτῶ. See farther *Caesar. Comm. 6.* *Comites familiaresque ejus* (*Ambiorigis*) *equitum nostrorum vim* etc. Here ’tis evident, that by *Comites* the author means the same persons, whom he had before styled *Ambacti*.

⁵ *Cluver. Germ. antiq. l. i. p. 68.* *Keronis Monachi ad divi Galli Glossarium* habet: *Minister, Ambabt: ministraverit, ambabtit: et ita Otfridus in Evangelio,*
 l. i.

“ only mark their ambition flew at, and this
 “ the highest instance of their popularity 4.”
 Is not this the very description we have be-
 fore given of our German *Companions* and
 their princes? But what seems, to me at least,
 to put this matter quite out of all doubt is an
 observation which I see made by some of the
 most learned antiquarians, that this kind
 of voluntary dependance, or mutual rela-
 tion between the great men and others of an
 inferior rank, still retains this name both in
 Germany and Flanders; such kind of depen-
 dents being to this day in some places called
*Ambachtmen*⁵ — Tho’ I have been already
 perhaps longer upon this point, than my
 reader may at present think necessary, yet
 cannot

l. i. c. 25. *Ambachten*, pro *operari*. — Hinc recte vo-
 cabulum illud Barbaro-latinum *Ambascia*, quod Ger-
 manis erat *Ambacht*, in Burgundiorum legibus ponitur
 pro *Opera*. — And in this point *Spelman* as well as all
 other antiquarians are agreed, that the word *Ambassa-*
dor was derived from hence. *Du Fresne* in voce *Amb-*
actus observes, Remanet etiamnum in Germania et
 Belgio vocabuli vestigium. Nam in civitatibus passim
 Flandricis, aliisque nonnullis *Ambachten* ejusmodi corpora
 dicuntur, quae unum sibi legunt, cujus auctoritatem
 perinde atque capitis sui venerantur. *Lexicon Germa-*
nicum vetus apud *Lipsium* l. iii. Epistola 44. *Ambacht-*
men, ministri. *Lindenbrogius* etiam *Ambacht, operari*
 interpretatur.

cannot I persuade myself to conclude it, without observing one thing farther of these *Companions* or *Ambachts*, that in the southern parts of Gaul they were known by the particular name of *Soldurii*; these were people, “ who, as the same *Caesar* observes, were “ absolutely devoted to the service of those “ to whose friendship they had once joined “ themselves; they enjoyed their prosperity “ together with them, and if their patron “ fell

⁶ *Caes. De Bell. Gall.* l. iii. Alia ex parte oppidi Adcantuannus, qui summam imperii tenebat, cum 600 devotis, quos illi *soldurios* appellant; (quorum haec est conditio, ut omnibus in vita commodis una cum his fruantur, quorum se amicitiae dediderint, si quid iis per vim accidat, aut eundem casum una ferant, aut sibi mortem consciscant: neque adhuc hominum memoria repertus est quisquam, qui, eo interfecto cujus se amicitiae devovisset mori recusaret :) cum his Adcantuannus etc. — In like manner the antient Spaniards or Iberians (another of the Celtic nations) as *Valerius Maximus* observes, l. ii. c. 3. Nefas esse ducebant praelio superesse, quum is occidisset pro cuius salute spiritum devoverant. Laudanda animi praestantia, quod fidem amicitiae constanter praestandam arbitrantur. To the same purpose *Plutarch* in his *Life of Sertorius*; ἴθως δ' ὅπως Ἰβηρικῶν, τὴς περὶ τὸν ἄρχοντα τίταλμίνης συναποθήσκων αὐτῶν πιστόντι, καὶ τὸτο τῶν ἐκτὴ βαρβάρων ΚΑΣΠΕΙΣΙΝ ὀνομαζόμενων, τοῖς μὲν ἄλλοις ἡγεμόσιν ὀλίγοι τῶν υπασπιστῶν καὶ τῶν ἘΤΑΙΡῶΝ, [here we have our German Comites again] Σιετορίῳ δὲ πολλὰ μυριάδες ἀνθρώπων καίσκιυκόντων ἑαυτὸς ἠκολούθουν. The sacred band amongst the Thebans, and other similar instances might be produced from other nations.

⁷ *Caesar*

“ fell in battle, they were either killed with
 “ him, or else slew themselves; for no in-
 “ stance can be produced of their ever survi-
 “ ving the loss of their friend and master ⁶.”

14. But besides the administration of justice, there was likewise another privilege, or office, which peculiarly belonged to our ancient German princes, I mean that of annually distributing or dividing the land amongst the several families of their territory ¹.

Our

¹ *Caesar. Bell. Gall.* 1. 6. c. 22. *Agriculturae non student Germani; majorque pars victus eorum lacte, et caseo, et carne consistit: neque quisquam agri modum certum, aut fines proprios habet; sed magistratus ac principes in annos singulos gentibus, cognationibusque hominum, qui una coierunt, quantum eis et quo loco visum est, attribuunt agri, atque anno post alio transire cogunt. Ejus rei multas afferunt causas; ne assidua consuetudine capti studium belli gerendi agricultura commutent; ne latos fines parare studeant, potentioresque humiliores possessionibus expellant; ne accuratius ad frigora atque aestus vitandos aedificent; ne qua oriatur pecuniae cupiditas, qua ex re factiones dissensionesque nascuntur; ut animi aequitate plebem contineant, cum suas quisque opes cum potentissimis aequari videat. vid. etiam *Com. Bell. Gall.* 4. 1. *Tacit. de Germania*, c. 28. Agri pro numero cultorum ab universis per vices occupantur, quos mox inter se secundum dignationem partiuntur. Facilitatem partiendi camporum spatia praefant. Arva per annos mutant, et superest ager. Nec enim cum ubertate et amplitudine soli labore contendunt ut pomaria conferant, et prata separent, et hortos rigent. Sola terrae seges imperatur.*

² *Cluver.*

Our ancestors were not as yet become acquainted with the softer blandishments of peace, and luxury, nor had the primitive simplicity of their manners been taught to yield to those splendid vices, which gold and silver have too generally been found to introduce with them. The wealth they rejoiced in was real, and consisted chiefly in the number of their flocks and herds, their dependents and slaves, and had they but sufficient to maintain themselves, their families and their retinue, in such a manner as became the dignity of the character they sustained, they seem to have been very little solicitous about the vain superfluities of life. Their commerce with the imperial city had not as yet taught them to contemn the sober and more frugal dictates of plain and honest nature. They had no notion of accumulating vast quantities of useless land, to be disposed of in magnificent edifices, and to be laid out in sumptuous and wide-extended gardens. As the rank they themselves bore in

¹ *Cluver. Germ. Antiq.* l. i. p. 105. Quamvis frequens bellorum trans Rhenum memoratio est apud *Amnianum Marcellinum*, nulla tamen urbis alicujus, vel oppidi, vel castelli, vel munimenti a Germanis extructi, fit mentio: locorum autem, quoties occasio vel usus postulat

in their country was entirely owing to their own personal merit, it could never once enter into their thoughts, to endeavour to transmit enormous estates of inheritance to their posterity to maintain them in a lazy splendour, riot, and luxury, without any regard at all to their bravery and virtue.

15. As the natural situation of their country, defended by seas, rivers, and vast uninhabited tracts of land, together with the high opinion they entertained of their own valour, sufficiently secured them from any dread of foreign invasions, they generally lived dispersed up and down the country in scattered dwellings; as we are told the ancient Athenians did before their great lawgiver Theseus persuaded them to leave their divided habitations, and live together within the same walls. — Nor does it appear from any evidence I can find, that even in the ages of the lower empire, fear had as yet taught them to build fenced cities, towns, or castles to live in^r. Their dwellings therefore were for the most part

postulat, eadem descriptio, quae vicorum ac villarum apud Caesarem, Tacitum, et alios. Ita *Tacit. Germ. c. 16*. Nullas Germanorum populis urbes habitari fatis notum est, ne pati quidem inter se junctas sedes. Colunt discreti ac diversi ut fons, ut campus, ut nemus placuit.
Vicos

part in caverns under ground, or in a kind of extemporaneous hutts composed of turf only, or of the rough branches of trees plaited and interwoven together, so that at the end of the year they left them without the least difficulty or regret, wandring up and down their territories, as plenty of pasture or fresh forage invited them. For as the national riches consisted in its numerous flocks and herds, they were obliged to seek their conveniency rather than their own in their frequent change of place². — But let us not falsely imagine, that their motions at these times were lawless and tumultuary, and that every man seized upon what spot of ground
he

Vicos locant, non in nostrum morem connexis et cohaerentibus aedificiis; suam quisque domum spatio circumdat, sive adversus casus ignis remedium, sive inscitia aedificandi — materia ad omnia utuntur informi et citra speciem et delectationem — ne caementorum quidem apud illos aut tegularum usus.

² Does not the reading this description of the manner of life of the old Germans call to the learned reader's mind the beginning of the sixth satyr of *Juvenal*?

Credo Pudicitiam, Saturno rege, moratam
In terris, visamque diu; cum frigida parvas
Praeberet spelunca domus, ignemque laremque
Et pecus et dominos communi clauderet umbra.

or, these lines near the beginning of *Ovid's Metam.*

Tum

he liked best; for on the contrary, all was managed in the most regular and orderly method according to the particular designation and appointment of their prince: “ to the more, was given more inheritance; and “ to the fewer, less inheritance; every man’s “ inheritance was to be in the place where “ his lot fell, according to the tribes of “ his fathers, there was he to inherit 3.”

16. What has been observed by a late author upon the wisdom of the Jewish constitution in that equal, or rather proportionable division of the conquered country, which was made by Joshua and the princes of Israel amongst the families of the twelve tribes, may

Tum primum subiere domus; domus antra fuerunt,
Et densi frutices, et junctae cortice virgae.

But what is more to my present purpose, *the Geographer* especially imputes this frequent change of place in these nations to the same causes I have now done.

Strabo, l. vii. Κοινὸν δ' ἐστὶν ἅπασιν τοῖς ταύτη, τὸ περι τὰς μέλαινας ἄσους εὐμαεῖς, διὰ τῆς λιότητος τῆ βίης, καὶ διὰ τὸ μὴ γεωργῶν μηδὲ θησαυρίζειν, ἀλλ' ἐν Καλυβίοις οἰκίῃ ἐφήμερον ἔχουσι πασσασκιυήν. τροφή δ' ἀπὸ τῶν θρυμμάτων ἢ πλιγῆς, καθάπερ τοῖς Νομάσι ὡς ἰκίως μιμνήμενοι, τὰ οἰκίᾳ ταῖς ἀεμάξαις ἐπάραντι, ὅποι ἀν δόξῃ τρίπολοι μετὰ τῶν βοσκημάτων.

Much to the same purpose is what *Aristotle* has observed, *Politic.* l. i. p. 2. where speaking of the condition of the first mortals, he says, ἀναγκαίως δ' ὅστος μέλα-βάλλειν τοῖς κλήσει διὰ τὰς νομάς, καὶ αὐτοὶ ἀναγκάζονται συνακαλυθεῖν, ὥσπερ γεωργίαν ζῶσαν γεωργῶντες.

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may with as much justice and propriety be applied to the instance before us; for by this annual division of their territory, “ our
 “ German ancestors provided against all
 “ ambitious designs of private persons, or
 “ persons in authority against the public
 “ liberty: for no person in any of the
 “ provinces, or throughout the whole Ger-
 “ man nation had such estates and posses-
 “ sions, or were allowed by the constitu-
 “ tion to procure them, that could give any
 “ hopes of success in oppressing their bre-
 “ thren and fellow subjects. They had no
 “ riches to bribe indigent persons to assist
 “ them, nor could there at any time be any
 “ considerable number of indigent persons
 “ to be corrupted. They could have no
 “ power to force their fellow subjects into a
 “ tame submission to any of their ambitious
 “ views. The power in the hands of so
 “ many freeholders in each province, was
 “ so unspeakably superior to any power in
 “ the hands of one or of a few men, that it
 “ is impossible to conceive how any such
 “ ambitious designs should succeed, if any
 “ persons

¹ *Lowman, of the civil government of the Hebrews,* p. 48. See likewise the quotation from *Caesar*, p. 41. above.

“ persons should have been found so weak
 “ as to attempt them. Besides, this *annual*
 “ provision wisely cut off the means of lux-
 “ ury, with the temptations to it from ex-
 “ ample. It almost necessarily put the
 “ whole nation upon frugality, and gave to
 “ every one such a property with such an
 “ easy state of liberty and independence,
 “ that they had sufficient reason to esteem
 “ and value them, and endeavour to preserve
 “ and maintain them¹.”

17. Let us not imagine however, that the prince was left to the sole guidance of his own arbitrary will in these yearly divisions or allotments of their territory, being constantly assisted in this, as well as in all other matters, by his *Companions* and counsellors. He was obliged, we are told, in this distribution to have especial regard to each man's rank or *Nobility*; for so I chuse to interpret the words made use of by the Roman historian upon this occasion¹, however improper the term may appear at first view, in a country where all its native inhabitants were at this time, as they came out of their creator's hands, most
 undoubt-

¹ Secundum dignationem partiuntur.

undoubtedly equal. But I shall easily explain my meaning. — The ancient Germans, (and what nation anciently was not?) were extremely grateful to their benefactors, to all those good and valiant men, who, by their great and noble exploits in the public service, had deserved well of their country. They payed the greatest personal deference and respect to them whilst they were alive, nor were their merits forgotten after their decease; for besides that they revered them as little less than gods, or beings of a superior rank and order²; their posterity were moreover, put upon a level with the princes themselves³, and had the same sort of honour and regard paid them as those real patrons of their country had. Like them they were attended with a numerous retinue, and, where every thing else was equal, we may suppose they were

² So *Tacitus* acquaints us that in *Vespasian's* time *Velleda*, on account of her great merit and service to her country, was looked upon by them as a deity: sed et olim *Aurinium* et complures alias venerati sunt, non adulatione nec tanquam facerent deas — nor can we question but that they were equally regardful of their benefactors as they were of their benefactresses. *Tacitus* would afford us examples enow, could there be any question made of the fact. see however (*Annal.* 2. in fine) what he has said of *Arminius*.

³ *Tacit.*

were preferred, in the general assembly, to all other candidates in the distribution of the public offices. And that they might the better support the dignity of these so peculiar marks of respect, they were enriched by the voluntary gifts and contributions of their grateful countrymen, and had a larger proportion of land assigned them for their support at the annual division. — Their notion of nobility therefore seems in some sort to have been like that of Socrates, that the virtues of the father raised, as it were, and exalted the blood of all his descendants⁴.

18. This grateful and generous manner of proceeding towards the posterity of their deceased benefactors, could not fail of being of the most signal advantage to the commonwealth in general; for by paying these obliging marks of regard to the memory of their defunct

³ *Tacit. de Germ. c. 13.* Insignis nobilitas, aut magna patrum merita principis dignationem etiam adolescentulis assignant.

⁴ Socrates, whilst his wife Xantippe was yet alive, took into house with him and maintained Myrto, daughter of Aristides surnamed the Just: *Οι μὲν γὰρ ἐξ ἀγαθῶν γονέων σύγγενίς εἶναι νομίζουσι, καθάπερ ἔξ Σωκράτους, διὰ τῆν Ἀριστίδου ἀρετὴν καὶ τῆν θυγατέρα αὐτῆ ἡνωμένην εἶναι.* This is preserved as a fragment of *Aristotle's* treatise *Περὶ σύγγενίας*, 'tis said at least to be so, tho' Plutarch and

D

and

defunct heroes, the living were the more strongly encouraged to tread in the same arduous steps of glory, in hopes of obtaining the same illustrious marks of distinction. Let it however be observed to the credit of our brave northern ancestors, that this sort of nobility was no protection, no sanction to laziness and luxury; they revered indeed the children of those great men, who had formerly been at the heads of their tribes, and families, or who had led them on to conquest and dominion, but this reverence continued only whilst they imitated the great examples of their fore-fathers, and marched in the same difficult paths of renown. For however noble the young men might imagine themselves to be, however pure and untainted the line of their genealogy might have been preserved, their rough and unpolished countrymen, who were guided by the mere dictates of nature, despised a nobility, which had no other support than the imaginary basis of ancestral merit¹. They knew no other way to the

and others have questioned the genuineness of it — Plutarch makes Myrto the niece of Aristides, and not his daughter, as the fragment relates.

¹ So *Lucan* in *Panegyrico*, as I find him quoted in *Selden's Pref. to his Titles of Honour*,

perit

the temple of true nobility than thro' that of valour and military skill. Their young nobles therefore were not exempt from the same toils, from the same common labour and hazards, which the meanest of their brethren were obliged to undergo in order to recommend themselves to the favours of their countrymen: like them they entered themselves into the retinue of the provincial princes and other great men, became their voluntary servants and attendants², and, spurred on by their example to a noble emulation, endeavoured by their own personal merit and bravery, to support that dignity and character which had been handed down to them from their ancestors.

— It might not perhaps be improper, whilst we are considering this point of the annual division of the country, to enquire particularly whether the Druids, Bards, and Eubates, the three several orders of their public priests, were, like the rest of their brethren, allotted a particular share or portion of land for their maintenance, or were otherwise supported by

perit omnis in illo
Nobilitas, cujus laus est in origine sola.

² So *Tacitus*, speaking of these young nobility, tells us, caeteris robustioribus ac jam pridem probatis aggregantur: nec rubor inter comites aspici.

D 2

3 Many

by voluntary contributions, and at the public charge; but, I own, I have not sufficient evidence before me at present to determine this curious question. However, I am most inclinable to think from the nature of the office they were employed in, which was in general to take care of the public sacrifices, to instruct the people in their duty, to inspect the auguries, to preside in the general assemblies, and to pronounce the sentence of justice upon criminals, that, like the Levites amongst the children of Israel, they had no portion or inheritance with the rest of their brethren, but were entirely exempt from all secular incumbrances whatever, and maintained at the public charge³.

19. Nor was the power of the prince limited only to the civil administration of his province, but, like that of the Roman consuls under the ancient republic, extended itself equally to its military state likewise¹. The sword and the gown were not reckoned incompatible in those simpler perhaps, tho' not less honest ages of the world, before war became

³ See *Cæsar's Commentaries*, lib. 6. where 'tis expressly observed of the Druids, that they enjoyed omnium rerum immunitatem.

¹ Many instances of this consular-power of the ancient

became a science wherein superior skill and conduct frequently triumphed over strength and courage, and law an art, which was to be learnt distinct from the rules of natural equity. In a word, it was the great business of these princes, or kings as the Romans sometimes affected to call them, to take care of every thing, which might any ways concern the common welfare of the canton over which their country had chosen them to preside. They were its judge in time of peace, and its general in the day of battle. — This conjunction of civil authority with military command might, I believe, be shewn to have been common to almost all nations in the first ages of the world, “ it was so well
 “ known in the Hebrew constitution, that
 “ both were united in their judges, their
 “ kings, and all their chief magistrates². ”
 The heads, or princes of their tribes in particular, an office exactly resembling that of our ancient German princes, were captains in war, judges and magistrates in times of peace and counsellors to the king, after the
 days

ancient German princes are every where to be met with in Caesar, Tacitus, and Marcellinus.

² See *Lowman of the Hebrew Government*, p. 73.

days of Saul, in all affairs as well ecclesiastical as civil. "If Dan was to judge his people as one of the tribes of Israel, he was likewise constituted one of the heads of thousands in Israel."

20. For it may be properly enough remarked, that however numerous the public armies of those times were, and numerous they could not but be where all the free-men were soldiers, the troops of every tribe or province always assembled under the same standard, marched together, and fought in one body under their own officers — an excellent expedient this to encourage them to behave with vigour and resolution in the cause of their country, encouraged as they were by the example, and animated by the mutual exhortations of their nearest friends and relations, whom they saw engaged in the same dangers with themselves¹.

¹ *Tacit. de Germ. c. 7.* Quodque praecipuum fortitudinis incitamentum est, non casus nec fortuita conglobatio turmam aut cuneum facit, sed familiae et propinquitates. So when the Helvetii left their country to plant themselves in some other place, each of the four Pagi marched distinct from the rest of their brethren: this is evident from what Caesar tells us of his attacking and cutting off one of these Pagi, after the other three had crossed the Arar. See *Comm. Gall. l. i. c. 12.*

² *Tacitus ut supra. c. 6.* speaking expressly of their armies,

felves¹.— It would be difficult perhaps, if not impossible, to describe the exact regulation, order, and distribution of the ancient German militia: tho', I believe, I should not much err in my opinion, was I to assert, that the troops of every district or tribe was divided into so many separate bands or corps of a hundred men each, under the command of a distinct officer of its own, who was called the *Leader of the hundred*²; he was generally the oldest man of the troop, and consequently succeeded to this office by virtue of his age. This, we are told by a very judicious author, was the model of the ancient armies of the Franks, and if so, we may very safely venture to conclude, that in this respect, as well as in most others, the different nations of Germany all resembled one another³. Should any man however still

armies, and telling us that their chief strength lay in foot, adds, *definitur et numerus; Centeni ex singulis Pagis sunt; idque ipsum inter suos vocantur; et quod primo numerus fuit, jam nomen et honor est.* after quoting this place *Cluver. Germ. antiq.* l. i. p. 114. adds, *Nempe, thi Hunderter* adpellabantur. Posteriores circa Rhenum Germani Latinum vocabulum in linguam suam adsciscentes, ipsas terras dixere *Centen*, et *Centgerichte*, comites vero illos centenos, *Centgraven*.

³ *Boulainvilliers* in his *Memoires Historiques*, p. 24. La milice Salique, ou Françoise, consistoit toute en infanterie

still insist upon it, that it is more probable, that the distribution of our ancient northern militia was into corps of 1000, 100, 50, and 10 men each with their respective officers, I should not be much displeas'd with his opinion, seeing such in reality, or very nearly like it, was the earliest division of the Roman armies, of the Tartars in the north⁴, and of the children of Israel, "amongst
 " whom Moses took the chief of the tribes
 " wise men and known, and made them
 " captains over thousands, and captains over
 " hundreds, and captains over fifties, and
 " captains over tens, and officers among the
 " tribes⁵." For in this, as well as in many other particulars of the Jewish polity, as has been oft-times remarked by the best and most knowing enquirers, "the wisdom of God
 " seems to have confirm'd ancient cus-
 " toms rather than have made new constitu-
 " tions⁶."

21. But

fanterie [plus penes Peditum roboris says Tacitus] & etoit divisée en centaines, & chacun avoit un officier de centenier, en Latin; Atungin, en langue Franque ou Teutonne; lequel etoit toujours le plus vieux de la troupe; raison pourquoi les noms de centenier & senieur sont employez l'un pour l'autre par les auteurs du tems &

21. But amongst other privileges of the prince, it must not be omitted, that one was to preside in the general assembly of his province; for tho' I cannot find, that either the Greek or Roman authors have taken the least notice of these particular meetings of each Pagus or district, as distinct from that of the whole state, yet is it very probable that such there were; in as much as we know that each canton, like the tribes of Israel, was in many respects independent of all the rest, and under its own proper government, and our conclusion will be still farther strengthened, when we come to take notice of the civil polity settled by them afterwards in Britain. — Another prerogative of the prince, for I would not willingly pass by any of them, was, that he might marry two or more wives if he pleased; tho' this was always looked upon as a matter of favour to the later wives and their relations, rather than the effect of an

& même dans les chartres.

⁴ See Mr. *Petis de la Croix's* *life of Genghizcan*, p. 81. as likewise *the Laws of the Visigoths*, lib. 2. tit. 2. l. 26.

⁵ DEUTERONOM. i. 15.

⁶ *Lowman*, p. 160.

¹ See

an intemperate appetite¹.—As to the prince's revenues, besides that larger share of land which was assigned him in the general allotment of the province, he had likewise a determinate proportion of all the fines appointed him for his support², which in those early ages of the world, being imposed (as among the Romans, and other nations³) for almost all crimes except treason and adultery, which seem to have been

¹ See above, p. 20. in the notes.

² *Tacit. de German.* c. 12. sed et levioribus delictis, pro modo poenarum, equorum, pecorumque numero convicti mulctantur. Pars mulctae regi vel civitati, pars etc. and again c. 21. Luitur homicidium certo armentorum et pecorum numero.

³ That this method of commuting punishments was frequently practised by the ancient Romans, *Festus* will inform us, vide *Oves*; and *Agellius*—as to the Hebrews, when the law says, an eye for an eye, a tooth for a tooth, etc. the best commentators explain it in this manner, the putting out an eye shall be punished with the valuation of an eye, etc. At what rate every limb was valued by our Anglo-Saxons may be seen at large in their laws still extant. much after this manner likewise, I suppose, the *Lex talionis*, or law of retaliation, is to be explained in the twelve tables.—The passage of *Agellius*, which I had my eye upon above, is in l. xx. 1. Quidam Lucius Veratius fuit, egregie homo improbus atque immani vecordia. Is pro delectamento habebat os hominis liberi manus suae palma verberare. Eum servus sequebatur crumenam plenam affium portitans: et quemcunque depal-maverat, numerari statim secundum xii tabulas quinque et viginti asses jubebat. It may not be disagreeable to the reader to have it here observed, that on account of the scarcity

been always punished, the former with the ignominious death of hanging, the latter with the most severe and contemptuous corporal punishment, must have amounted to a very considerable allowance. The voluntary contributions of those over whom he was chosen to preside amply made up whatever else might be deficient in the prince's income † — Our ancestors were not as yet be-
come

scarcity of money in the first ages of the Roman commonwealth, it was provided by the laws, that no greater fine should be ever imposed upon a citizen at one time, than two oxen and thirty sheep; that each ox should be estimated at 100 pounds of signed brass (centussibus) each sheep at 10 pounds of the same, or decussibus. In Greece the value of such an injurious boxing or buffeting, as Veratius was guilty of, seems to have been estimated at a much higher value, i. e. at half a talent, or 300 drachmae, as my very learned friend Dr. Taylor (not. ad Dem. Orat. c. Mid.) has well remarked not only from Demosthenes's compromising the blows he had met with from Meidias at that sum, but more especially for a humorous story told of Diogenes the Cynic and the same Meidias to be seen in *Laertius's* life of that philosopher.

† *Tacit. de German. c. 15.* Mos est civitatibus ultro ac viritim conferre principibus vel armentorum vel frugum, quod pro honore acceptum etiam necessitatibus subvenit: but what pleased them most of all was, as the same author observes, the gifts which were sometimes sent them, as a public acknowledgement as it were of their great merit, from the neighbouring nations — gaudent praecipue gentium finitimarum donis, quae non modo a singulis, sed publice mittuntur; electi equi, magna arma, phalerae, torquesque — Presents well-adapted
to

come politicians enough nicely to distinguish between the public and private interest; they had no interest separate from the public, and therefore were at all times ready to sacrifice their private property as well as their lives to its honour and well-being; it was dividing these two interests, the public and the private, which both God and nature had so firmly united together, that first introduced the necessity of legal taxations and all those other impositions, which are the great burthen as well as clogg of our modern governments. But in the beginning it was not so. — The office of prince seems to have been given for life ⁵.

22. But our political building was not yet complete; nor were our northern ancestors such unskilful architects as to leave their work half-finished. The authority of the master might indeed secure the quiet and subordination

to the military genius both of the Receivers and the Senders.

⁵ *Cluver's* observation upon these ancient German princes, or kings as they were sometimes called, especially by the Romans, is very just, as may appear from what has been already observed of them — Principes Germanorum, says he, sine reges, solo nomine tantum reges fuere: re autem ipsa *αρχη* eorum nihil aliud

GOVERNMENT *in* GERMANY. 61

tion of private families, and the power of the prince provide for the peace and tranquillity of particular provinces, but the public happiness required something farther; there was still wanting, some certain and regular method of putting an end to those various disputes, which would frequently arise between the inhabitants of different provinces, some method whereby to unite the whole state into the same common interest, and to make one uniform body of the several distinct and disjoined members. Now both these wants would be most effectually remedied by the appointment of a stated general meeting, or congregation of the whole nation, superior to all other powers in it — and such an assembly, or general council, we find in fact to have been constituted by them; in which all and every freeman, or native, of every province of the state¹, who was arrived at the proper age,

liud fuit quam *σεαλνυια δια βιω*, sive *σεαλνυια αιδιουα*, ut tradit de Lacedaemoniorum regibus *Aristotel.* l. iii. *Polit. Germ. Antiq.* l. i. p. 318. Exactly to the same purpose is this of *Grotius* (*De rep. Batav. antiq.* p. 27.) Nihil manifestius est quam reges Batavorum et Germanorum fuisse itidem ut Laconicos nomine solo, re vero ipsa nihil nisi optimatum primos

¹ *Tacit. De mor. Germ.* c. 11. De majoribus rebus con-

age, and had not forfeited his right to this great privilege by cowardice^r or other misbehaviour to the public, might, if he pleased, be present. This then was the crown of the building, and that which added strength as well as proportion and ornament to the whole edifice — I have said, that all and every native freeman from every province of the state had a right to be present in this sovereign council; nor indeed was it even possible, that the supreme power should be lodged any where else but in the body of the whole nation assembled together, if we reflect only upon what has been before observed of the annual division of the land amongst all the free-born members of the state: for, as a late author has very justly described it, “ Property is the natural foundation of power, and so of authority; “ hence the natural foundation of every government

consultant omnes coeunt, nisi quid fortuitum, et subitum inciderit, certis diebus cum aut inchoatur Luna aut impletur — Illud ex libertate vitium, quod non simul nec iussi conveniunt, sed alter et tertius dies cunctatione coeuntium absumitur. ut turbæ placuit, confidunt armati. So *Cluver, Germ. Antiq.* l. i. p. 316. speaking of the civil government instituted in the different states of Germany: In his pura puta *Democratia* merito dici debet. quidpe summa imperii potestas, majestasque apud universum erat populum. In quo licet ordines diversi, alius alio

GOVERNMENT *in* GERMANY. 63

“ vernment is laid in the distribution of the
 “ lands or territories belonging to it, to the se-
 “ veral members of it. If the prince is pro-
 “ prietor of the lands, as in some eastern go-
 “ vernments, such prince will be absolute; for
 “ all who hold the lands, holding them
 “ of the prince, and enjoying them at his
 “ will and pleasure, are so subject to his
 “ will, that they are in a condition of slaves,
 “ not of free-subjects. If the property is
 “ divided among a few men, the rest hold-
 “ ing of them, and under them as vassals,
 “ the power and authority of government
 “ will be in the hands of those few men, as
 “ a nobility, whatever authority may be
 “ lodged in the hands of one or more persons
 “ for the sake of unity in counsel and action;
 “ but if the property be generally divided
 “ near equally among all the members of
 “ the

alio superior, principis, sacerdotum, primorum five pro-
 cerum, nobilium et plebis, tamen in conciliis ac conven-
 tibus sine jure aut dignitate *προεδρίας*, ut *Turbæ placuit*,
 armatus quisque confedit; sine jure *προληψίας*, prout *æ-
 tas cuique*, prout *decus bellorum*, prout *facundia erat*, pro se
 quisque sententiam dixit.

¹ Tacit. ut *supra*. c. 16. Scutum reliquisse præci-
 puum flagitium, nec aut sacris adesse, aut concilium ini-
 re ignominioso fas.

² Low-

“ the society, the true power and authority
 “ of such government will naturally be
 “ in all the members of that society, what-
 “ ever form of union they may have for the
 “ better direction of the whole as a political
 “ body.” ¹—— It would be perhaps ventu-
 ring somewhat too far to assert, that all and
 every native free-man was always personally
 present at these general assemblies of his na-
 tion; 'tis sufficient for my purpose, that he
 had a right to be there, and might be present
 at the public deliberations if he pleased.
 The most usual method, 'tis not unlikely, in
 ordinary cases was to send the elders of each
 province, the leaders of their hundreds per-
 haps, as their deputies or representatives to
 them.

¹ Lowman, p. 33.

⁵ Grotius *De rep. Batav. Antiq.* p. 35. Quod omnes
 ait Tacitus, non ita intelligendum est quasi singuli, tan-
 quam ad comitia convenerint, relictis laribus ac focus:
 id enim in gente magna — fieri omnino non poterat.
 sed omnes dicuntur ipsum concilium, quod ex omni regi-
 one omnique ordine idonei homines mittebantur. Ex-
 plicat hoc ipse Tacitus, cum de Semnonibus loquens,
 stato, ait, tempore in sylvam auguriis patrum et prisca
 formidine sacram omnes ejusdem sanguinis populos lega-
 tionibus coire. This might be practised (as I have ob-
 served in the text) in the ordinary and stated assem-
 blies; but that these legations or representations were
 not allowed in extraordinary cases is evident from
Caesar, Com. Bell. Gall. l. i. c. 56. where we are
 told,

them. — I say, this might be sometimes done in ordinary cases; but in all momentous affairs, where the common good was more immediately concerned, the whole nation, all within such an age at least, were obliged to be present under the severest penalty. This is evident from many instances both in Caesar and Tacitus ².

25. In this great assembly therefore, as was most proper it should be, was lodged the supreme legislative power of the whole nation. To this general council belonged the high privilege of reforming the public grievances, of correcting and amending such of the old customs as time and other circumstances had rendered improper to be any longer observed,
and

told, that Indutiomarus being threatned with the Roman army, *armatum concilium indicit. Hoc, more Gallorum, est initium belli, quo, lege communi, omnes puberes armati convenire coguntur; et, qui ex iis novissimus venit, in conspectu multitudinis omnibus cruciatibus affectus necatur.* And that these assemblies in general were extremely numerous is farther evident from the words made use of by the Roman authors upon the occasion, such as *multitudo, pl.bes, turba*, etc. so when the Helvetii, in Caesar, agreed to quit their country, the whole *civitas, or totius regionis incolae* are convened, etc. — As it was the especial business of their wives and slaves to take care of their domestic affairs, what was there which could prevent the husbands from always attending the service of the nation with their presence and advice?

¶

2 Machi-

and of establishing such new orders and laws as might be obligatory to the whole union or community. When assembled in their national congregation, the ancient Germans enjoyed all the privileges and power, which was usually exercised by the people in those most celebrated governments of Greece and Rome. At these solemn meetings of the whole state war was proclaimed, peace confirmed, migrations settled¹, the public General chosen, and the princes of the several provinces elected. And to this same sovereign power do they seem to have been all accountable for the due administration of the trust committed to their charge. If they injured or oppressed any man, by complaining to the general council he might expect to meet with speedy redress. All cases of a public concern, such as treason against the

¹ *Machiavelli Hist. Fiorent.* l. i. p. 1. I popoli i quali nelle parti settentrionali di là dal Fiume del Reno & del Danubio habitano, sendo nati in regione generativa & sana, in tante moltitudine molte volte crescono, che parte di loro sono necessitati abbandonare i terreni patrii, & cercare nuovi paesi per habitare. L'ordine, che tengono quando una di quelle provincie si vuol sgravare di habitatori, è di dividerli in tre parti, compar- tendo in modo ciascuna, che ogni parte sia de' nobili & ignobili, de' ricchi & poveri ugualmente ripiena, dipoi, quella parte alla quale la sorte comanda, va à cercare sua fortuna, & le due parti sgravate dal terzo di loro, si riman-

the state, were tried and determined here, as, 'tis probable, were many other matters of a less general influence, if they related to the members of different provinces, or were brought before them by appeal from the sentence of the provincial princes². For, like as in the Hebrew and most other the ancient states, in a national meeting of the whole people was lodged the dernier resort of justice, and according to “ the sentence of the law which they taught; “ and according to the judgment which they “ gave, all were to do. None were to decline “ from the sentence which they shewed either “ to the right hand or to the left³.” — In one word, every thing of any moment to the good of the public could be here only transacted and ultimately determined⁴. Nor were even their young men permitted to bear arms for the public

rimangono à godere i beni patrii.

² *Tacit. De mor. German.* Licet apud concilium accusare quoque, et discrimen capitis intendere. [we have, among others, a remarkable instance of this in Orgetorix the Helvetian. see *Caesar, Com. l. i. c. 4.*] distinctio poenarum ex delicto : proditores et transfugas arboribus suspendunt — sed et levioribus delictis pro modo poenarum equorum pecorumque numero convicti mulctantur. Eliguntur in iisdem conciliis et principes.

³ DEUTERON. xxvii. 11, 12.

⁴ There are so many instances of the sovereign power of this general assembly of the whole state to be

public, that is, they were not regarded as members of the state, till they had been first openly presented and admitted to this privilege in a general assembly^s. To serve in the national armies, to be esteemed worthy to fight for their country, was an honour which slaves or mere mechanics could not expect to arrive at in those early ages. Where the glory of the nation was concerned, where liberty and property were in danger, none but freemen were thought proper to be employed, none but those, who were sharers in the property of the state, were looked upon as interested enough heartily to defend it. Such were those valiant armies of the Grecian states, made up entirely of citizens, which so bravely withstood the almost-innumerable bands of Persia; such were those ancient Roman legions, which laid open the way to the conquest of the world; and such were those hardy and well-resolved forces of our northern ancestors, which at length made themselves
 masters

met with in every page almost of Caesar and Tacitus, that it would be needless to go about to prove what is so manifest. See however the whole conduct of the Helvetii from their first leaving their country to their being obliged to return to it again. *Com. Bell. Gall.* l. 1. see likewise *Tacit. Histor.* l. iv. where you will meet with the history of Civilis the Batavian in proof of what
 I have

masters of Europe, triumphing over Italian luxury and effeminacy.

26. As experience however could not but soon convince them, that such mixed and tumultuary assemblies, as those we have taken notice of, could not but be very improper for the speedy dispatch of business, or the secret management of the more momentous affairs of state — In order to remedy this inconvenience, and to prevent, as much as might be, all rash and precipitate determinations, the princes of each district seem to have been appointed as a standing council or senate, or, more properly perhaps, as a representative committee of the whole nation, always ready to advise what was to be done upon any sudden emergency, to call the body of the people together, and, as in the Hebrew, Grecian, Roman, and Carthaginian states, to prepare the way for the future deliberations of the general assembly. They undertook the necessary embassies to foreign states¹,

I have asserted in this section.

¹ Arma sumere non ante cuiquam moris, quam civitas suffecturum probaverit. Tum in ipso concilio vel principum aliquis, vel pater, vel propinquus scuto frameaque juvenem ornant. Haec apud illos toga — Ante hoc domus pars videntur, mox reipublicae.

'states', and to them particularly did all foreign embassadors apply for the dispatch of their business. Differences of lesser consequence, or matters of a private nature, they were entrusted to determine by their own authority; the greater, that is, all affairs wherein the community was concerned, they were to prepare in the most proper manner to be laid before the general assembly there to receive their ultimate sanction². "The senate were
 " authors of all councils in the state; and
 " what was by them consulted and agreed,
 " was proposed to the people, by whom it
 " was enacted or commanded, because in
 " them was the power to make it obeyed." But as to any other authority or superiority the senate had it not.

26. For

¹ So *Caesar, Bell. Gall.* l. i. c. 30. Bello Helvetiorum confecto, totius fere Galliae *Legati, principes civitatum*, ad Caesarem gratulatum convenerunt.

² *Tacit. De Germania.* De minoribus rebus *principes* consultant, de majoribus *omnes*. Ita tamen, ut ea quoque quorum penes plebem arbitrium est, apud principes *praetractentur*. [So I read instead of *pertractentur*, as it stands at present in the text: this is the very *προβουλευσθαι* of the Greeks, and the proper business of the ancient senates. *Colerus, Acidalius*, and other commentators have made the same emendation in my author] — *Expetuntur* legationibus et muneribus ornantur. *Caesar, Comm. Bell. Gall.* l. vi. 20. *Magistratus, quae visa sunt*, (with regard to popular reports) *occulant*;

27. For in the great assembly it self as every native freeman had an undoubted right to be present, so his independency placed him upon a level with the noblest of his brethren. All seem to have been then reduced to that primitive state of equality, wherein nature herself had originally placed them: the voice of the private man, was he in other respects his equal either for war or council; was heard with as much attention, and carried as much weight with it in this democracy, as of him who enjoyed any of the public offices. It was the multitude, as as they are frequently called by the Roman historians, that is, the bulk of the nation, which absolutely decided in all affairs of moment ¹. Even the princes themselves seem not to

cultant; quaeque esse ex usu judicaverunt, multitudini produnt. *De republica nisi per concilium loqui non conceditur.* Vid. *ibid.* l. vii. c. 12. et alibi.

¹ *Tacit. Germ.* Rex vel princeps prout actas cuique, prout nobilitas, prout facundia est, audiuntur, auctoritate suadendi magis, quam jubendi potestate. So *Liscus* in his discourse to Caesar, *Bell. Gall. Com.* l. i. c. 17. Esse nonnullos quorum auctoritas apud plebem plurimum valeat, qui *privati plus possint quam ipsi magistratus.* And another of their great men tells us, in the same author; that such was the nature of his command [he was general] *that he had no more power over the multitude, than the multitude had over him.* *Caesar,* l. v.

to have had any other authority, than what their superior endowments of mind might perchance give them; they did not so much as preside here, that province belonging entirely to the Druids, or national priests, whose more especial business it was to preserve order and decency, as far as possible, in these numerous and unwieldy assemblies. They commanded silence, they punished the refractory and disobedient, and, as is most probable, last of all pronounced the will or decree of the assembly, however made known or signified, whether by some particular clash of their arms, which like the ancient Grecians they ever carried with them, or by votes, or by any other means²—It may not be improper to observe here, in order to obviate such reflections as the reader may be apt to make to himself upon this description of the power of the Druids, that 'tis not unlikely, that they were of the chief nobility of their country, and descended from some of the most ancient families in it, in like manner as were the priests of Egypt, the Eupatridae

² *Tacit. ut supra.* Silentium per sacerdotes, quibus tum et coercendi jus est, imperatur. — Si displicuit sententia fremitu adspernantur; si placuit, frameas concutiunt. honoratissimum assensus genus est, armis laudare — nihil autem neque publicae neque privatae rei nisi

patridae of Athens, and the Flamins of Rome ; and such indeed seem to have been the public priests of all other states of the ancient world ³. Their birth therefore entitled them to a seat and voice in the public councils of their nation ; brought up as they were in study and meditation they were best prepared to be judges between their brethren in all the nicer cases of property, and to be counsellors to kings, princes, and the public in all affairs, wherein the community was concerned ; and as by virtue of their high office they were supposed to enjoy a nearer correspondence with the gods than other people, this could not but give them especial weight and influence amongst their superstitious countrymen, whose first regard was always paid to the auguries of the established religion. The calm foresight, and maturer wisdom of the Druids, seems therefore to have been thrown in as a proper ballance to moderate the more furious starts and fallies of passion in their rough and untutored brethren.

28. However, in times of imminent danger

nisi armati agunt. So *Nic. Damascen. De mor. Gent.* Κιλιτοὶ σιδηροφοροῦντες τὰ καλὰ πάλιν πράττῳσι. Vid. Thucyd. l. 1.

³ See *Cluver, Germ. antiq.* Part 1. p. 204.

³ *Caes.*

ger to the public from a foreign force, or indeed whenever the exigences of the state were thought to demand it, our German ancestors knew how to recede from that native and original equality in which their birth had placed them¹. Sensible as they were, that where secrecy, dispatch, and ready obedience are necessary, in such instances, to be subject to the command of many masters could not but be extremely prejudicial to the public interest. Upon such perilous emergencies therefore the whole nation met together in a common council, and appointed themselves a generalissimo or commander in chief of the united forces of the several provinces, whom
all

¹ *Caesar. Comm. Bell. Gall.* l. vi. c. 23. Quum bellum civitas aut illatum defendit, aut infert; magistratus, qui ei bello praesint, ut vitae necisque habeant potestatem, deliguntur. In pace nullus communis est magistratus. So in the war which the Belgae undertook against the Romans, mentioned by the same illustrious author, *Bell. Gall. Comm.* l. ii. c. 4. we learn that Galba was made their general by the common consent — ad hunc propter justitiam prudentiamque summam totius belli omnium voluntate deferri, etc. Such likewise was the case of Cassibelaun in Britain, another Celtic nation — but instances are too frequently to be met with in *Caesar*, *Tacitus*, and *Marcellinus*, to be here particularly insisted upon — it may not be improper however, as it may be thought perhaps more immediately to concern our present enquiry, to quote the testimony of venerable

all of them at the same time, both princes as well as the common people, obliged themselves to obey under the severest penalties of being looked upon and treated as traitors to their country, if they acted otherwise. By this excellent expedient therefore, the several scattered and disjointed forces of the society were all conjoined into one body as it were under one head, were all animated by the same soul, and were able to exert their whole collected strength. — The power of these ancient German stadtholders or dictators (to use the words of the learned Calmet in the similar instance of the Hebrew judge) “reached
 “both to affairs of war and peace. They
 “deter-

ble *Bede* on this occasion, l. v. c. 12. Non habent regem iidem antiqui Saxones, sed satrapas plurimos suae genti praepositos, qui ingruente belli articulo mittunt aequaliter sortes, et quemcunque fors ostenderit hunc tempore belli ducem omnes sequuntur, et huic obtemperant: peracto autem bello rursus aequalis potentiae fiunt omnes satrapae. I cannot find the least remains of this custom of choosing a generalissimo by lot, either in Tacitus, Caesar, or any other ancient writer before Bede: 'tis probable therefore that this method was introduced amongst them in later ages, in order to prevent that confusion which might otherwise arise in the state from the brigues and cabals of the princes, who would all put in for this high post. — Such was the superstition of the people, he upon whom the lot fell was thought to be peculiarly designed by heaven.

^a See

“ determined causes, but had no power to
 “ make new laws, or impose new taxes
 “ on the people. They were protectors of
 “ the laws, defenders of religion, and aven-
 “ gers of crimes; yet still without shew,
 “ without pomp, without followers, with-
 “ out equipage, unless their own estates en-
 “ abled them to have a number of servants
 “ conformable to their dignity. But this
 “ could seldom happen. For the revenues
 “ of their office consisted only in the pre-
 “ sents which were made them: they had
 “ no other settled revenue but this, nor did
 “ they raise any thing from the people².

29. “ Here then was a magistrate¹ of
 “ great service in uniting the counsels and
 “ forces of the several provinces of the an-
 “ cient German states; and, what may de-
 “ serve our particular reflection, a magistrate
 “ of such authority as was sufficient to pre-
 “ vent any ambitious designs of any other
 “ magistrates, how great or powerful soever,
 “ from taking place, whether of the princes
 “ of the provinces, or of the chief of the
 “ Druids, whatever you will suppose their
 “ power

² See *Calmet's Dictionary*, v. J U G E S; but I have here taken it from Lowman's translation, in his book of the civil government of the Hebrews, p. 188.

³ These

“ power to be. For the chief authority
 “ both in affairs of war and peace being lodg-
 “ ed (for a time at least) in his hands, all
 “ other persons were under obligations of o-
 “ bedience to him, and contumacious diso-
 “ bedience to him was a capital crime by
 “ the constitution.” What room then for
 ambitious views in such a government as
 this? The army of the nation was under the
 command of the general, and consequently ve-
 ry little was to be feared from the jarring and
 opposite interests of the several princes of the
 provinces; the stadtholder had nothing to ap-
 prehend from that quarter, unless he attempted
 to invade the national liberty, and to stretch
 his power beyond the legal bounds set to it
 by the constitution. — “ Yet on the other
 “ hand, this constitution has taken the ut-
 “ most care, and with all the marks of po-
 “ litical wisdom, that the public general
 “ should not have it in his power to stretch
 “ his authority beyond its legal bounds;
 “ for his authority was tempered by the ad-
 “ vice and consent of the senate and people;
 “ and to this latter he was most undoubted-
 “ ly

³ These are Mr. *Lowman's* reflections upon the He-
 brew judges, with a very little alteration, p. 188.

¹ I call

ly accountable for the right use of his
 power. He had no authority to alter or
 change any laws, nor to make any new
 one, as occasion might offer, to strength-
 en his interest, or to repeal any old law
 which might stand in his way. The ve-
 ry persons, who had the rank of his con-
 fellows were all commanders of the hosts
 of his nation: and the whole army con-
 sisted of none but the freeholders of his
 country. There was no such thing as a
 soldiery, either of men or officers, who
 were listéd *en solde*, or for pay; nor had
 the general any thing to pay them with,
 if

I call it only the *general plan*, because I am sensible
 there were some particular nations in Germany, which, in
 Tacitus's time at least, lived under an hereditary kingly
 government, but they were only two at most, if I remem-
 ber right, and these, in all probability, arose by degrees
 from encroachments, or other particular accidents not
 taken notice of in our present obscure remains of their
 ancient history. But even here, in those states I mean
 where kings might seem to preside, the generals of the
 army, like the Mayors of the palace in the times of the
 French kings of the first race, as is most probable,
 were chosen by the people. — So *Tacitus*, *Reges ex*
nobilitate, duces ex virtute sumunt. and again, speak-
 ing of the kings of the Frisii, he adds, by way of qua-
 lification, *In quantum Germani regnantur.* — It may not
 be improper to observe farther in this place, that be-
 sides the general assembly of each particular state, there
 were

“ if there had been any to be hired.”
 — He was entrusted indeed with the executive power of the government, but this power was very far from being arbitrary, guided as it was by the advice of his own retinue or *companions*, restrained in many cases by the counsel of an independent senate, awed by the expected approbation of the people, and limited, in general, by the ancient laws and customs of his country.

30. Such then appears in fact to have been the general plan¹ of the civil government of the ancient German nations both in peace and war, and let our modern politicians

some times in extraordinary cases more universal councils held of all the Germanic, Gallic, or Britanic nations, at least of the greatest part of them. So *Caesar*, in more places than one of his commentaries, tells us of a *Concilium totius Galliae*, particularly l. vii. *Re in controversiam deducta totius Galliae concilium Bibracte indicitur* [This council, we have reason to conclude, was first agreed upon amongst the princes of the several independent states] *Eodem convenient undique frequentes multitudines* [Every native freeman had the same right to be there, as he had to be present in his own national council, tho' 'tis probable enough that the more distant states would rather send *legationes* or deputations to represent them, than come themselves; these deputies, if I may be allowed to conjecture, were the princes and the commanders of the hundreds of each nation] *suffragiis res permittitur* [as in the common assemblies of each state]

ticians refine as long as they please upon the different modes of rule, and ring the changes upon the various systems of politics, it will not easily be in their power, I am well persuaded, (the circumstances of the times considered) to invent any one more perfect, than that we have been just now taking a view of; one, I mean, more excellently well adapted in every respect to obtain all the true ends of government, the public peace and safety, the defense of private property, and the preservation of the natural liberty of individuals. “ This therefore is that constitution, which, as Sir W. Temple has observed, “ has been celebrated as the truest and justest temper, that “ has been ever found out, between dominion “ and liberty; and it seems to be a strain “ of what Heraclitus said was the only skill “ or knowledge of any value in politics, which

state] ad unum omnes Vercingetorigem probant imperatorem. [So that the business of this universal council was to choose a general, who was to command the combined forces of the whole Gallic nation.] See likewise *Strab. Geogr.* l. iv. However, that these universal councils were not held so often as the necessity of the times required, especially after their acquaintance with the Roman armies began, may be gathered from what Tacitus has remarked of the British states, and what is indeed equally applicable to all other the Celtic nations, dum pugnant finguli,

“ which was the secret of governing all
 “ by all ².” — The ancient German governments were most undoubtedly founded upon that strongest rock, the principles of native freedom; let us not therefore amuse ourselves with Eutopian constitutions, and raise the foundation of our political happiness upon such systems, as perhaps never actually existed but in the imagination of speculative men. — We have here a plain and natural scheme of free-government, deduced from undoubted historical facts. A plan of government, which the rather demands our notice and regard, as we are therein able most evidently to investigate the outlines of that political liberty, which is the strong basis upon which our present happy constitution stands raised and supported. Our ancestors were born free, lived under a free government

singuli, universi vincuntur. Their most usual method was for two or three, and sometimes perhaps more, of those states, who thought themselves most exposed to the danger, to enter into an alliance, to join their forces together, to elect a common general, etc. This was the method the Britons took to repel J. Caesar; for 'tis very evident, that Cassibelaun was appointed General against the Romans, not by the whole British nation, but by such states only as lay most exposed to the impending danger.

² Sir *William Temple's Miscellanies*, Part ii. 255.

ment in their first settlements, brought freedom with them into Britain, and handed it down to us inviolate, at the expence of all that was near and dear to them, their lives and fortunes. We enjoy it at present in as great perfection as they ever did, and such, I trust, will our posterity continue to rejoice in it to the latest generations. Our present constitution cannot so truly be said to have been changed or altered, as improved and perfected by time. Where then was that hereditary indefeasible right of princes; where that omnipotent and uncontrollable power of kings, which men of slavish principles were wont to talk so much of? Our earliest forefathers knew nothing of it, we feel nothing of it at present; may our piety to God, our love to our country, and our loyalty to our prince save and defend our posterity from it!

31. But the candid reader will, I doubt not, excuse me, if I dwell somewhat longer upon so important and interesting a subject as the origin of civil government, and endeavour to show how naturally, and indeed almost necessarily, the form we have just now been taking notice of, sprang from and grew out of the primitive constitution of things.

The

The first mortals very little concerned themselves with deep reflections, with abstruse and laborious speculations of any kind, but, in proportion as they found their wants encrease, they immediately applied such remedies to them as plain nature herself pointed out without much trouble and research. — What I assert then is this; that if the Scripture account of the origination of mankind from one man and one woman be true; if it be true likewise, that the world was afterwards destroyed by a general deluge in the manner, and about the time, therein supposed, that then we may reasonably expect to find all the ancient forms of government, as far back as they may be traced with any tolerable certainty, just such, or nearly such, as we have seen in fact those of the German nations to have formerly been: they could not indeed, upon the supposition of the truth of that history, very easily have been otherwise — May we not therefore very properly and justly argue backwards, that if, after due examination, the most ancient systems of political government every where appear to have been exactly the same, as they must have been supposing the truth of the Mosaic history; may we not, I say,

in such a case with a good degree of probability conclude, that this history is founded on truth, is supported by fact, and, as such, deserves all our credit and esteem? and can so remarkable and extraordinary a coincidence, so great a correspondence and relation between that history and the original circumstances of all nations, be otherwise accounted for? can it be accounted for upon a supposition of the eternity of the world, or, indeed, of its much greater antiquity than that which the Scripture gives it? it cannot possibly be accounted for upon a supposition, that arts and sciences had been growing to perfection from endless ages. Upon the first dawn of ancient history, about six or seven hundred years after the flood, every thing appears, as might be expected, simple and unrefined, such as plain and artless nature must dictate to a people, who seem to have had nothing else in view, but the mere preservation of their liberty, and the acquisition of an easy and honourable subsistence.

32. But these points require our more minute and precise examination. — The first society then, according to the Mosaic plan, must have been confined within the narrow bounds of husband and wife; these limits, however

however, would regularly extend themselves as the number of their children encreased ; and the first man would always retain a natural superiority, a kind of civil government, if you please, over them all ; such a superiority, I mean, as would invest him with authority sufficient to controul any ill design they might be capable of forming against the common good of the family, and to determine any accidental dispute, which might arise among them. For in a species, such as is the human, continually subject to be hurried away by the violence of passion, or to be misled by whimsy and caprice, there even brethren themselves will sometimes stand in need of an arbitrator. — Upon the decease of the Father, whatever might have been his superiority over them, the children would all of them be in an absolute state of equality, or independency, with regard to one another ; tho' to their elder brother perhaps, as to the more immediate representative of their common parent, as to one whose years had taught him a larger share of experience and wisdom, they might be willing to pay a more than ordinary respect, to hearken to his counsel and advice upon extraordinary occasions, and to submit their few differ-

rences to his decision, especially if such decision met with the approbation and sanction of the rest of their brethren. For nothing, I think, can be more clear and indubitable, than that after their father's death neither the eldest son, nor any one else, with whatever qualities of mind or body he might chance to be endowed, had a right to any more power or command over the other brethren, than those others either by express or tacit consent were of themselves willing, for the sake of the common good, to submit to.

33. For, to go to the bottom of the argument, what should put a difference between them in this respect? were they not all equally sons of the same father? were they not all endowed with same common faculty of reason? had they not all the same liberty to maintain, and the same being to support? wherein then did nature make the difference between them, that one brother should have a right to controul the actions of another? could barely coming into the world before the rest confer this superiority? or give one man a right to command the actions of another his equal at least, superior to him perhaps in all other respects? it is, indeed, impossible that an effect of such mighty importance to the well-being

being and happiness of mankind should flow from so weak and inadequate a cause. Suppose the elder brother had been born an idiot, or imagine him a man destitute of those natural and real supports of authority, goodness, wisdom, and valour, must the rest of the family have hearkened to his voice and obeyed his commands? no one, I think, will be so absurd as to say they ought: 'tis evident then, that merely being born first is not a cause sufficient to found the origin of civil authority upon. But suppose the elder brother should plead the will and designation of his father in maintenance of his claim? all reverence and regard would, I own, be due to the father of mankind from his posterity; but I believe it would be extremely difficult to evince, that even Adam himself had a civil authority over his children after they were once arrived at years of discretion, otherwise than by their own voluntary consent. But granting he had, what right had he to transfer this great power to another at his death? his authority, whatever it might be, was purely personal, and, as such, must of consequence cease with him; there was no other common parent of mankind left to whom it might devolve; no one, who could

now plead the high claim of having begot and educated all his subjects. But farther, could Adam have made over his empire, as some people affect to call it, to a man of weak abilities? nor had he authority sufficient to constitute a wicked and hated man ruler over the rest of his brethren? no one can say he had; the very supposition is absurd; 'tis evident therefore, that in those primitive ages of the world neither birth-right, nor the mere will of any particular person, was the foundation of civil authority. Our conclusion, therefore, is undoubted, that nothing but the free consent of the governed was able to constitute civil governors.

34. Upon their father's decease therefore each brother together with his children would form a distinct independent household or family; which family, according as generations multiplied, would be again branched

¹ Such sort of tribes, as I have here described, were not planted in Judæa only, but in all other nations of the ancient world; such to this day are the *Hords* of Tartary, the *Scepts* of Ireland, the *Clans* of Scotland, etc. vid. *Tacit. Germ.* c. 7.

² This prince is styled by *Moses* in the book of *Numbers*, with great propriety, *the head of the families of the stock of his father*; such an one was *Tsur* the father of *Cosbi*, and he is accordingly styled by the sacred historian

branched out and subdivided into several other families; the whole, taken together, constituting what in the most early ages of the world was called a tribe — A tribe then, agreeably to the primitive notion of the word, was a numerous collection of households or families descended from the same common stock, and living near one another¹; all of them as to any civil superiority or command absolutely free and independent upon the rest, tho' all of them naturally flying for justice and protection, if aggrieved, first to their several fathers or masters, and afterwards to their heads or princes², when the growing vices of mankind had made it necessary to constitute a common arbitrator of their differences, and a common general of their militia; all of them immediately uniting as often as the public interest of the whole tribe or consanguinity came in question; all of them ever ready to advise,

and

rian a prince of Madian, or among the Madianites, chap. xxv. § 8. and again, in another place, a king of the Madianites, chap. xxxi. in like manner as our German heads of tribes, or provinces, were by Roman authors frequently called kings. 'Tis probable enough that the prince, or head of the tribe, was at first the eldest direct descendant of their common father, tho' afterwards, for wise reasons, he was appointed by election,

and willing to assist their brethren of the other neighbouring tribes, where the happiness of the whole nation³ was concerned. Thus was every household a little kingdom as it were, while the whole kingdom was but as one great family. In process of time, when, on account of their encreasing multitudes, or for other providential reasons, it became necessary for some of this first race of mortals to leave their native soil, every thing would still proceed in its wonted manner, and the same kind of civil polity would naturally introduce itself in their new habitation. Each tribe of these voluntary adventurers, as many as had united in the migration, in like manner as they had been accustomed to live in their own country, so would they still continue to remain separate and distinct from the rest of their brethren under the conduct of their own heads or princes, tho' in order to avoid the mischiefs of confusion in command, a temporary General or supreme judge might be set
over

³ A *Nation*, then, according to the primitive meaning of the word, was nothing else but a voluntary combination of a certain number of these tribes, uniting together for their mutual defence, and consulting in common what might be most conducive to the general benefit

over the whole body or association to take more immediate care of the public interest, and to provide for the common safety during the hazard of a long and troublesome march, and the danger which usually attends a new settlement.

35. But this great affair being once finished to their satisfaction, every thing would naturally revert into its old channel, their judge or commander in chief would lose his extraordinary power, and liberty and independency would again flow thro' the whole colony as formerly. The new acquisition would be regularly divided into certain larger districts or provinces, according to the number of the tribes which joined together in the expedition, and these districts would be again distributed amongst the several families, so that each man would of course become master of his own household, and each tribe would have its own head or prince; we should again meet with particular assemblies taking care of the common concerns of its particular province or tribe; we should again meet with

with
 benefit of the whole association. Thus the Jewish nation consisted of twelve such tribes; the Ishmaelitish of the same number; the Suevi of an hundred, and the Helvetii of four of them, etc.

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with more general assemblies or congregations of the whole people superior to all other powers in it, and consulting and advising what might be most expedient for the common good of the whole fraternity. — This is no Eutopian imaginary scheme, but a just and true picture of nature herself drawn from the life, as will be readily acknowledged by every one, who is in the least acquainted with the ancient, or indeed the modern history of the world, in those states, I mean, where the later arts of refinement and politique have not been introduced. “ With such nations, we find in scripture, all the lands “ of Judaea, and the adjacent territories were “ planted

¹ *Sir William Temple's Miscell.* Part I. p. 66. — Even the plan of the ancient Egyptian government, tho' not usually represented in this light, was certainly not unlike that of the old German nations. The whole country, for instance, was divided into so many separate portions, Pagi, or Nomes, as they were more usually called, and over each of these was a prince appointed, (such an one was Potiphera, prince of On, or Heliopolis.) These princes, besides the jurisdiction which they exercised over their own provinces, were in the nature of a senate to the state, they were always counsellors of the king, and their sons, together with those of the rest of the young nobility, were his attendants and guard. Their priests and soldiery, that is, all those who were descendants of the old planters of the country were equally noble, whilst the plowman and mecha-

“ planted of old ; with such the many
 “ several provinces of Greece and Italy,
 “ when they began first to appear upon the
 “ records of ancient story or tradition ; and
 “ with such was the main land of Gaul in-
 “ habited in the time of Caesar ; and Ger-
 “ many in that of Tacitus. Such were the
 “ many branches of the old British nation ;
 “ and the scepts among the Irish ; and such
 “ the infinite variety and numbers of nations
 “ in Africk and America upon the first
 “ discoveries, distinguished by their several
 “ names, and living under their several kings
 “ or princes, till they came to be swallowed
 “ up by greater empires¹.” In a word, in
 this

mechanic were regarded by them in the most low and contemptuous light. The king, or Generalissimo, who was here a standing officer of the state, was elected by the nobility, and out of their own body, i. e. by all the native free-men. The *πρωτεύς*, both general and particular, so frequently mentioned by Herodotus and other authors, answered to the German provincial and national assemblies, being, like them, of a civil as well as religious nature — and, to observe it once for all, such was the Panathenea, or general congregation of the tribes of the Attic state, such the Amphictyonic council, which united the several nations of Greece, and such those other Amphictyonships, as we may call them, mentioned to have been formerly celebrated in Asia Minor, the islands of the Archipelago, Italy, etc.

¹ Here,

this manner, according to Moses, “ were the
 “ isles of the Gentiles divided by the sons of
 “ Japhet in their lands; every one after his
 “ tongue, after their families in their nati-
 “ ons ².” but enough of this — having there-
 fore at length thus fully laid open the way, ’tis
 now time to proceed, which was the chief
 thing I proposed in writing this Essay, to
 take a view of the German or Anglo-Saxon
 form of government, as it was established in
 Britain.

36. THE Britons, upon the Romans
 quitting the sovereignty of their island, about
 the beginning of the fifth century, were im-
 mediately attack’d by their implacable neigh-
 bours the Scots and Picts, with all the fury
 which revenge and a prospect of plunder
 could inspire: they withstood them, howe-
 ver, for some time with courage and reso-
 lution enough; but being at length quite
 exhausted and worn out, as well by their
 own mutual dissensions, as the many battles
 they had lost, and the uncertain peace they
 had

² Here, says Mr. *Mede*, p. 275. we see a twofold
 order in this division. First, they were ranged accord-
 ing to their nations; and then secondly, every nation
 was ranked by his families: so that every nation dwelt
 and

had been forced to purchase, they are persuaded by their king Vortigern to agree to his proposal of calling in a foreign force to their assistance; and in pursuance of this rash resolution, the Saxons are deemed the most proper people to apply to upon this occasion. Ambassadors are accordingly dispatched. The Saxon nation is convened. The conditions are agreed upon, and Hengist and Horfa appointed to command those troops, whose lot it was to undertake this expedition. What was the consequence of the war, and by what means the Saxons together with their confederates the Jutes and Angles made themselves masters of England, is not to our present purpose to enlarge upon; our business being rather to endeavour to investigate the particular form of government they settled in it upon their conquest — and may we not certainly conclude before-hand, even from the genius of the people, and from what has been already observed of them, that it would bear a very near resemblance to that which they had formerly been accustomed to

and had his lot by himself, and in every nation the families also dwelt and had their lots by themselves, etc. which is undoubtedly true in fact.

Pelto's

to live under in their native country ; as near it at least, as the different exigences and circumstances of their affairs would suffer them to approach to?

37. For who amongst them had authority or power sufficient to introduce any alteration in so weighty and important a matter? Not Hengist, nor his brother Horsa; for they, 'tis certain, were elected only as temporary superiors, as mere commanders of the army, their power limited, their revenues small, and their soldiers all their free-born partners and their countrymen. Much less can we with any appearance of reason suppose, that these armies themselves should agree together to make any change in their old constitution. For what could possibly induce them to so unusual a step? Their government had been sanctified to them by the long approbation of their forefathers; they themselves had hitherto lived contented and happy under it, nor could they easily introduce any

¹ *Petyt's Rights of the Commons*, Pref. p. 6. It cannot be doubted but that the Saxons, who made themselves masters of the British nation, brought with them their country laws, and government.— *Dr. Brady, in his full Answer* to this book of Mr. Petyt's, p. 6. grants, that “ the Saxons brought their country laws
“ with

any innovation, which would not be for the worse. An army of free-men, courageous, bold, daring, and bred up in the almost continual exercise of arms, would not very easily be brought to submit their necks to any new yoke, or to suffer any, the least, infringement upon their civil liberty, which the mere necessity of their affairs did not impose upon them. Besides, had either they or their General ever so great an inclination to novelties, the perpetual wars they were engaged in, from their first entrance into this island, would not afford them either leisure or opportunity to put their designs in execution. Our conclusion therefore is most certain, that the same fundamental principles of freedom and independency, which had formerly been the strong basis of their government, whilst they lived upon the continent, would now become in like manner the great strength and support of the Anglo-Saxon constitution in England¹.

38. But

“ with them into Britain, (of which, says he, there can be no doubt,) but not their popular government :” tho’ how they could bring the one with them and not the other, is as difficult to conceive, as tis contradictory to all historical evidence.

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38. But these points will be still more clearly and satisfactorily made out to us by historical evidence, as we descend to a more minute examination of particulars. — Our first enquiry therefore must be, in whom the property of the land was invested upon the conquest of Britain by the Anglo-Saxons? For the determination of this question will at the same time in a great measure point out to us, in what hands the supreme legislative power was lodged. For if ever this maxim be allowed to be true, that power is founded upon and always follows property, much more strongly will its certainty shine forth in those ancient states, where the plain and uncorrupted dictates of nature have not been forced to give way to the over-bearing violence of temporary force, or to the more artful refinement of politic ambition. — I shall not therefore scruple to assert, that the property of the land, as formerly in their own country so now in Britain likewise, was lodged entirely in the people, that is, in the whole collective body of the free-men of the army, whether Saxons, Angles, or Jutes, who had so bravely ventured their lives in the acquisition of it. For let it ever be remembered, nor can it be too often insisted upon

upon in this argument, that those Anglo-Saxon armies, which subdued Britain, were voluntary associates and co-partners in the expedition they undertook, each man his own master, absolutely free and independent of all the rest, excepting only that temporary obedience which he had obliged himself to pay to those officers, who, with his own consent, had been appointed to command over him. They were not mercenary troops, collected from the lowest dregs of the people, bought at a price, fighting for pay, and shedding their blood for other men's advantage, but engaged in their own cause and pursuing their own interest, where the gain or loss of their undertaking must fall equally amongst them all.

39. In order therefore the more easily to fix and ascertain this vague and indeterminate right of each man to the whole, the conquered land was divided by the General, assisted by the princes and other the chief officers, into as many larger parts or shares as there were corps of different provinces or districts in his army. These shares were again parcelled out and subdivided by the prince and his assistants amongst the several families and individuals of the province, according to each

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man's dignity and necessities, that is, according to the degree of honour and esteem, which either his own merit, or that of his ancestors had procured him. By this means each tribe, and family, and household would still remain, as formerly, distinct, and in some sort independent of all the rest; and the whole army would naturally fall into the self same system of civil government, which it had before been accustomed to live under in Germany. The greater shares would constitute Pagi or Counties, and as the whole army was probably subdivided into so many troops of 1000, 100, and 10 men each, the portions of land assigned to these several corps

¹ *St. Amand's Essay on the legislative power of England*, p. 12. In fact, the land was parted amongst the individuals; and we read expressly that Rollo, our William the Conqueror's ancestor, honestly divided Normandy by measure amongst the people he led. Vid. *Basnage on the first chapter of the customs of Normandy*. — Much to this purpose is what the judicious *Boulainvilliers* (*Mem. Historiques*, p. 24.) tells us, in his remarks upon the conquest of Gaul by the Saliens or Franks: J'ai dit que la partage des terres se fit entre les Franks de la meme maniere que se faisoit celui du boutin; or on sçait qu'à l'égard du boutin portable, on en faisoit autant de lots, que de centaines, & une ou deux de plus pour le general, ou chef de l'entreprise, qui avoit produit le profit. Celui-ci, outre l'avantage de la quantité, avoit encore celui du choix entre les lots; mais apres qu'il avoit pris sa part, il n'avoit aucun

corps would regularly constitute so many trythings, hundreds, and tythings, each under its own Ealdorman, elder, or proper officer¹. As the life of our ancestors was but one continued scene of warfare, very small was the difference between their civil and military establishment. The same persons, who led them on to the slaughter of their enemies, took care likewise to preserve peace and friendship between them in their dealings with one another. All were born soldiers, nor would any one, the priests only excepted, choose to be exempted from the glorious privilege of fighting for their country. As the whole tribe was originally made
up

cun droit sur les autres qui estoient tirez au fort par les differentes centaines, & la subdivision s'en faisoit pareillement au fort entre les soldats, de-là vient que les terres partagées entre les Francs prirent le nom de *Sortes Salicae*, les forts Saliques — I cannot recollect any passage at present, from whence it may be deduced, that the Anglo-Saxons, upon their conquest, divided Britain in this manner, by lot — tho' 'tis not unlikely that, after the several portions of booty and land were made out by the proper officers, some such method might be pitched upon, in order to avoid all suspicion of injustice, partiality, etc. Thus did Joshua divide the land of Canaan amongst the Israelites by lot; and Bede informs us, that our ancestors made use of this very method to decide between the pretensions of their several princes to the vacant Generalship.

up of relations, the same consanguinity, which had persuaded them to live together in time of peace, would not permit them to engage under different standards in the day of battle: their troops were so many combinations of families, which fought together in the field, nor in the conquered land were they separated.

40. But if war, as has been already observed, was the principal business, the great and almost sole occupation of our Anglo-Saxon ancestors before their arrival upon this island, and all other employments, besides the continual exercise of arms, esteemed by them of an inferior concern, and beneath their notice, much more must it be so now, in their present situation, surrounded as they were, on all hands, by an enraged and desperate enemy. Tho' therefore they might be supposed to have had ever so great an inclination, yet in these circumstances must it have been impossible for them to find proper leisure and opportunity, to cultivate and improve their lands themselves; the deceived and plundered Britons would find them too much work, to suffer them to attend

¹ So *Tacit. de Germ.* c. 25. *Frumenti modum, etc.*

tend to those arts, which even in their own country they had always left to the lowest and meanest of the people. That share therefore of the conquered country, which fell to his lot in the general division, each man, from the commander in chief to the lowest free-soldier, again parcelled out, at least the greatest part of it, amongst his slaves and immediate dependents, for a longer, or shorter space of time as he pleased, to be by them managed and improved, only reserving to himself, in consideration of his superior right, a fixed and determinate proportion of the produce of their labour, or, whatever other equivalent he might think proper to impose¹. This manner of proceeding naturally gave occasion to that well-known division of their lands into Boc-land and Folc-land, as it was afterwards termed, which so long obtained amongst the Anglo-Saxons, and which, for that reason, it may not be improper to take a little farther notice of in this place. For tho' the names indeed were of a later origin than the times we are now considering, yet was the thing itself, undoubtedly, as ancient as the Saxon conquest.

as above, vid. p. 24. n. 2.

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¹ It

41. Boc-land therefore may be styled in general all those lands, which fell to the original conquerors in the first allotments, and were possessed by them absolutely free from all manner of service and incumbrance whatever, excepting only that which necessarily arose from the three-fold obligation, which every man was indispensably under to the community it self, of serving it in its wars, of maintaining the public bridges, and of keeping the castles in good repair and well fortified. It was truly and properly Allodial¹, it descended to all the sons (according to the common course of nature and nations) it was devisable by will, or might be granted away, by sale or deed of gift, in the owner's life-time. This original estate or possession, was generally divided by the proprietor into two parts, very properly termed by later writers, the *Inland* and the *Outland*. The inland was that which lay contiguous to

¹ It is render'd by *Allodium* in the Latin version of Canute's laws, cap. 75. The Glosses, at the end of Lindenbrogius's collection of the laws of the ancient Franks, etc. thus explain this word; *Allodium dicitur haereditas, quam vendere vel donare possum ut mea propria. Allodiis opponuntur beneficia, seu feuda, emphyteuses, aliaque bona, quorum usum aut usum-fructum quisquam*

to and most convenient for the service of the dwelling house, or mansion of the proprietor himself, and was for this reason commonly reserved in his own hands, and managed by his own bondmen, and slaves (of whom the wars would furnish him with a sufficient number) for the more immediate use and sustenance of his family and household. These are the lands, which in after times were particularly distinguished by the Norman writers by the name of the *Demesne* or *Lord's-lands*². — *Outland* or *Utland*, was that which lay removed, or at a greater distance from the mansion house; and this likewise, where there was any great quantity of it, seems to have been usually divided by them into two parts, one of which they disposed of amongst their *Companions* or *free-fervitours* as a reward of their fidelity, to be freely enjoyed by them for one or more years, for life or lives, and sometimes in perpetuity³,

quisquam possidet penes alium remanente dominio.

² *Spelman's Glossary*, v. INLAND. Terra dominicalis, pars manerii dominica. — Vox Saxonum terram interiorem significans; nam quae colonis et tenentibus concedebatur *Utland* dicta fuit, hoc est, terra exterior, hodie tenementalis.

³ The

petuity³, whilst the other was lett, or granted out to other persons, to be by them likewise occupied for one or more years, for life or lives, or upon whatever other conditions the proprietor might think proper to impose, and the tenant advisable to accept. This latter sort of tenants or conditional occupiers of land were in general, I believe, such as we find distinguished in the Anglo-Saxon records by the name of Ceorls or Churls; and these as an acknowledgement, besides perhaps some other personal marks of dependence, were annually to pay their lord a certain portion of victuals, or of such other things as were deemed most necessary for the support of hospitality. This rent or acknowledgment was anciently

³ Vid. *infra*, p.

⁴ The quantity of *fearme*, or rent for every ploughland, seemeth in those days to have been certain in every county, and according to the nature of the place. King Ina, in his *Laws*, made it so thro' all the territory of the West-Saxons. See *Spelman's Remains*, p. 15. and *Gloss.* v. FIRMA — Until the time of king Henry I. the kings used not to receive money of their lands, but victuals for the necessary provision of their house. And towards the payment of the soldiers wages, and such like charges, mony was raised out of the cities and castles in the which husbandry and tillage was not exercised. But at the length, whenas the king being in the parts beyond the seas needed ready mony toward the furniture of his wars, and his subjects and farmers

ently called a Feorm, or Farm⁴, a word originally signifying meat or victuals, and in the days of Henry I. not before, was changed into a sum of money, tho' the word farmers is still retained. These Outlands are the same with those which in general were called Folcland⁵, and such as in the Norman times were more peculiarly regarded as Feodal.

42. As another property of Boc-land we must take notice that it was absolutely in the power of the possessor, and, in like manner as his personal estate formerly in Germany, most commonly descended to, and was regularly divided amongst all his children when he died¹; I say most commonly, for it does by no means appear to

farmers complained, that they were grievously troubled by carriage of victuals into sundry parts of the realm, far distant from their dwelling-houses, then the king directed commission to certain discrete persons, which (having regard of the value of those victuals) should reduce them into reasonable summs of money; the levying of which summs they appointed to the sheriff, etc. *Gervasius Tilburiensis*, as I find him quoted in *Lambard's Perambulation of Kent*, p. 214.

⁵ *Spelman's Remains*, p. 12. Folcland was terra vulgi, the land of the vulgar people, who had no estate therein, but held the same under such rents and services as were accustomed and agreed of at the will only of their lord.

¹ *Tacitus mor. Germ.* c. 20. Heredes successoresque sui

to have been a necessary adjunct of it; on the contrary, as he had purchased it with the edge of his sword and at the hazard of his life, he had full liberty to give it away from his family either by grant or will, or even of selling it, if he pleased, as is manifest from the name it self of Boc-land, which is well explained by our learned antiquaries, to signify land held by deed or writing; (for it was absolutely necessary, that the second possessor should have something to show in the support of his claim :) and it was, in all likelihood, the abuse of this privilege to the ruin of the old families, which introduced the necessity of putting some check or restraint upon it, and drew on the famous law of entails, made in the reign of king Alfred². For it must be remembered, as one great and material difference between the ancient situation of our Anglo-Saxons in Germany, and their later settlement in Britain, that in the former of these countries, the property of the land,

fui cuique liberi; et nullum testamentum. Si liberi non sunt, proximus gradus, etc.

² Vid. *LL. Alfred. c. 37. ap. Wilkins LL. Anglo-Saxon.* De eo qui terram haereditariam habet, quam ei parentes sui demiserunt, ponimus ne illam extra cognitionem

land, in the strictest sense, always remained in the community itself, (being every year divided anew amongst the individuals) and consequently was unalienable. An establishment, however, which could not possibly take place in their new conquests, where the scantiness of their territories at first, their long and continued wars with the Britons, and the just dread of that tumult and confusion which might easily arise from such frequent divisions, must necessarily put an effectual stop to them. This difference of circumstances alone must by degrees necessarily introduce with it many other considerable changes in their original system of government, as will be observed in the course of this Essay.

43. Of those who were in possession of Bocland, however they might come by it, whether by descent, or purchase, or donation, and of those only were all the magistrates originally chosen, by whatever titles distinguished, whether they were Ealdor-
men,

nationem suam mittere possit, si scriptum interfit, si testes, quod eorum prohibitio, qui hanc imprimis acquirerint, et ipsorum qui dederint ei, ne hoc possit: et hoc in regis et episcopi testimonio recitetur coram parentela sua.

! See

men, or Graves, or Heretogen; better known, perhaps, by their later names of Governors of counties, of Judges, and of Generals. For as to the Ceorls or husbandmen, however useful or even necessary their occupation might be to the public, 'tis indisputable, I think, that they had no share at all in the administration of the commonwealth, at least in those early ages we are now treating of. Free indeed they were as to their persons, as free as any other members of the community; nor was that small peculium or share of property, which their industry might acquire, subject to the arbitrary will of any one; what they got by their skill and labour was really their own, and they might dispose of it by will, or in what other manner they pleased; they were moreover sometimes

¹ See *the laws of king Ina*, l. 51.

² What *Muratori* in his *Antiq. Itall. mediæ ævi*. diff. 13. p. 113. has observed of the Langobards and Franks, is equally true of our Anglo-Saxons. Quale discrimen Langobardi ac veteres Franci agnoverint inter *Nobiles et Plebem* nondum animadverti, nam appellatio ista longe ferius enata est. Quod tamen a vero minime abhorere mihi videtur, olim quicumque *liber* nascebatur, *nobilitatis* etiam particeps quodammodo videtur — vid. etiam *Calvini Lexicon Jurid.* ad vocem *INGENUUS*. what therefore *Camillus Peregrinius* (quoted by the same *Muratori*, p. 714) says of the Langobards may with the same

sometimes entrusted to bear arms for the society under whose protection they lived¹ — but these seem to have been the sole privileges they were in a capacity of enjoying: for they were obliged to marry within their own order; nor had they as yet any expectation of being admitted members of the great council. — But perhaps it may not be thought improper to this place, nor be displeasing to the curious reader, if we examine a little more particularly who these Ceorls were, and how this subordinate distinction arose at first amongst a people all naturally equal and independent of each other. Thus much therefore we may certainly conclude, that they could not be originally descended from the Anglo-Saxons themselves, every one of whom looked upon himself as noble², from
a nation

same justice be applied to the Anglo-Saxons. *Lan-
gobardi omnes (says this author) fordidis ab artibus semper
abstinuere, dum rebus potiti sunt prosperis ac primaeva
in dignitate permansere: nullusque in tota gente habebatur
qui sublimis et illustris, hoc est, patricius non cense-
retur.* the same has the noble Count of Boulainvilliers
remarked of the ancient Franks in his *historical memoirs*.
The Langobards and Saxons lived very near together in
Germany, and are by *Spelman* (V. FELONIA and GO-
THIA) very properly called *Consanguineos*. I mention
this to show upon what foundation I so often argue from
the customs of one of these nations to those of the other.
When

a nation amongst whom they were regarded as very little superior to the meanest slaves. For in a country, where the land was every year divided amongst all the individuals, there could not properly speaking be any such distinction as rich and poor; seeing every particular person, that is, every native freeman would be amply provided for by the civil magistrate, according to the general esteem he was in, or the expence he was likely to be at in the coming year; and consequently, there could scarcely be such a thing ever heard of amongst them as voluntary servitude, or of one man of the same people and nation submitting to labour for and to do the work of others. And tho' crimes, or
the

When therefore we meet with the *Nobiles Angli, totius regni proceres, optimates*, and such-like expressions, as we frequently do, in the acts of the Anglo-Saxon Synods and Wittena-gemots, we are not to understand the *nobiles* etc. in the sense some people pretend, as if none but the nobility, or people of title, were present at them, but rather of the English in general, of the free-born military Anglo-Saxons, who were all *noble*, all *great* men of the kingdom, in comparison of the remnant of the conquered Britons, of their slaves and freed-men, who made up the bulk of the nation.

¹ *Tacit. de mor. Germ. c. 24.* Aleam, quod mirere, sobrii inter serua exercent, tanta lucrandi perdendive temeritate, ut cum omnia defecerunt, extremo ac novissimo

the chance of gaming, or other accidents of a like nature might occasion the loss of liberty to some of them, yet have we good reason to conclude, that such unfortunate persons were never suffered to live in their own country, but sold immediately to foreign nations¹.

44. Will not our opinion, therefore, be attended with a good degree of probability, if we assert that these *Ceorls* were originally of foreign extraction, of an extraction different from the rest of the nation, wherein they now lived? that they were at first mere slaves, either purchased by way of commerce, or taken captives in war, tho' after some time perhaps in recompence of their faithful obedience, or for other reasons, manumitted
or

mo jactu de libertate ac de corpore contendant. Victus voluntariam servitutem adit. quamvis junior, quamvis robustior alligari se ac venire patitur. Ea est in re prava pervicacia: ipsi fidem vocant. Servos conditionis hujus per commercia tradunt, ut se quoque pudore victoriae exsolvant — The same reason would hold likewise against their retaining, as slaves at home, such of their unfortunate countrymen as might be condemned to lose their liberty for their crimes, or to give up their persons, when they had nothing else left to satisfy the demands of their creditors — however, this latter method of becoming slaves, tho' common enough in other countries, 'tis probable, was not practised or so much as known in Germany, because every free-born native was annually provided for by the state.

H

¹ They

or set at liberty by their masters? The Ceorls therefore seem to have been originally none other than freed-men, and their descendants¹; and in conquered countries, such perhaps of the distressed and plundered natives, as voluntarily submitted themselves to their new masters: but as these unhappy persons were not looked upon by the old Germans as members of the commonwealth, or regarded by them as such in the annual distribution of their territory², in order to support themselves and maintain their families, they were obliged by their continual labour, by their skill and industry, to minister to the necessities, to the luxury and superfluities of other people; they were still compelled, in some sort, to continue as servants to and dependents upon their former masters, or upon such other of the native freemen, under whose protection they might now choose to throw themselves. Such therefore would be their case in Germany; the Ceorls would

¹ They were called in the Anglo-Saxon language, *Frilazin*. vid. *Spelman. ad vocem*.

² *Tacit. de mor. Germ. c. 25.* Liberti non multum supra servos sunt, raro aliquod momentum in domo, nunquam in civitate, exceptis duntaxat in iis gentibus, quae regnantur. Ibi enim et super ingenuos, et super nobiles

Would make a very considerable body of men, but without any farther hopes (unless upon some extraordinary emergency) of being ever admitted to the privileges of the native freemen and landholders³; superior, 'tis true, to mere slaves, the hewers of wood and drawers of water, as they were their own masters, but as to any other advantages, they do not seem to have had any foundation to expect them. In Britain, indeed, their circumstances must in some time admit of a great alteration in this respect. For as the property of the land was now settled in the individuals, and left, in a great measure, at their own disposal; the Ceorls, either by the bounty of their lords, or by their own skill and industry, might at length hope to become proprietors of land themselves, and consequently by that means to have some share in the public administration of affairs: and thus it appears, sometimes at least, to have happened in fact, as may be collected

nobiles ascendunt; apud caeteros impares libertini, libertatis argumentum sunt.

³ For tho' their lords might, without doubt, quit them of their title to them as their slaves, none but the public, the voice of the whole nation, could admit them to the privileges of the native freemen.

H 2

4 As

collected from an old Anglo-Saxon law still extant, where 'tis expressly provided, that
 “ if a Ceorl or husbandman throve so well,
 “ that he had fully five hides of his own
 “ land, a church and a kitchen, a bell-house
 “ and a gate-house, a seat and a several of-
 “ fice in the king's hall, that then was he
 “ from thenceforth worthy of the rights of
 “ a Thane :” that is, he had the privilege
 of sitting in the Wittena-gemot or general
 assembly, he had greater respect and re-
 gard paid to him, and his life in the ge-
 neral estimation was valued at a higher
 price, being raised from 200 to 1200 shil-
 lings⁴.

45. And here having mentioned the dig-
 nity

⁴ As the Ceorls were the only merchants or trades-
 men in those early ages of our constitution, so were they
 likewise the only farmers, as we now stile them. For by
 them chiefly were occupied the outlands of the king and
 others the great landholders. And tho' these lands had
 been first granted them upon certain conditions of rent,
 personal service, etc. and were generally revocable at the
 will of their lords, yet about the time of the conquest,
 or a little after, when the Benefices or Thaneland be-
 came hereditary, the Ceorls likewise, (in which num-
 ber I would now comprehend many of those unhappy
 Anglo-Saxons, who had lost their estates in the long wars
 between them and the Danes) put in for a sort of right
 to those lands which had been, for some time perhaps,
 occupied by them and their families, and their plea
 seems

nity of Thane, it will not be deemed foreign, I trust, to the general design of this Essay to enter into a more minute examination of their original, and to endeavour to throw a little light upon a subject, which the enquiries of the learned hitherto, I think, have rather obscured than illustrated; it being neither agreed upon by them at what time and upon what occasion this title of honour (for such undoubtedly it was) began, nor what were the precise privileges annexed to it. Thus much however they all seem to be clear enough in, that it was not an original name of distinction known and in use amongst the German-Saxons, but introduced by them some time after their settlement in Britain¹; and that the

seems to have been allowed as good — Hence therefore would I date the original of Soccage-Tenure, the liberties of our antient soc-men, (see Domes-day book) and the privileges of our later copy-holders. See *Spelman* in voce *Socmannus* — Much of the nature of these Ceorls and our soc-men were the Langobard *Arimanni*. See in proof of this the charters produced by *Muratori*, *Antiq. Ital. med. Aev.* p. 722. et *Spelman.* in voce.

¹ The earliest express mention, which I find made of these Thanes, is in the latin version of the *Laws of Wihfred king of Kent* made about the year 700. *Advena seipsum purget juramento in altari, uti Regis Thanus.* They are also spoken of in the *laws of Ina king of Wessex*, made likewise in the beginning of the eighth Century. Vid. *Wilkins's collection of Anglo-Saxon laws.*

the meaning of the word, in its primary and native signification, is, "one who ministers to another, a superior kind of servant or attendant" — But will not this very definition, or general description rather, of the office of these Thanes lead us by the hand as it were to their true origin, and point out the source from whence they were immediately derived? Tho' the name be allowed to carry the appearance of novelty with it, yet may the thing itself, the ideas comprehended under it, not be so in fact. It is extremely probable they were not; for I am well persuaded myself, nor do I question but I shall be able to bring my reader into the same opinion, that the Anglo-Saxon Thanes are none other in reality, than those very German *Companions* or *Ambaets*, of whom we have already so largely treated³. For not to insist upon the genius of our Northern ancestors, their obstinate perseverance

² THAINUS. Vox a verbo Saxonico deducta, quod alicui ministrare significat; ei qui servitutem servit e regione contrarius. Is enim a verbo deducitur, quod *servire* significat. *Wilkins's Glossary* in voce. and to the same purpose all the other glossaries. We find them subscribing to the ancient charters under the title of *Ministri Regis*; and in the version of our Saxon Annals they are called *Ministri regii*.

³ See

rance in their old customs and their extreme aversion to all new ones, is there not every mark of resemblance between them, which might be expected in things the most like to each other? does not every feature of the robust offspring carry the strongest testimony of the parent from whom it originally sprang?

46. Our Anglo-Saxon Thanes, like the German *Companions*, were frequently descended from the best and noblest families in their country¹, they were always native freemen at least, nor might any slave, nor indeed any one, whose ancestors had ever born the badge of slavery, be admitted of their number, till it was provided for by a particular law, made on purpose, contrary to ancient custom. They made up their retinue, and were constant attendants about the persons of the princes and other great men; they bound themselves to their interest by an oath of fidelity; they were the chief ornaments of the court,

³ See p. 30. et seqq.

¹ This was likewise the case of the Scots-Thanes, as we are informed by *Lestry* in his book *De orig. moribus, etc. Scotorum* — his words are, Nam in ipsis reip. nostrae rudimentis cum aliqua adhuc Barbaries Scotiam occupasset, quosdam duces (*Thanos* vernacula lingua vocabant) illustri familia ortos delegerunt, quibus se suamque rempublicam regendam committebant.

court, and out of them were all its great officers usually taken; they were counsellors to their lord in time of peace, and his well-resolved defense and guard in the day of battle. They are even honoured with the illustrious stile of princes by the earliest latin writers of our history². Much to this purpose is what our learned antiquary *Lambard* has observed of them in his *Perambulation of Kent*³, where, speaking of one Byrthric a very rich man of this province, he tells us he was a *Thane*, “ which word, says he, signifieth
 “ properly a *Minister* or *Free-serviteur*, to the
 “ king, or to some great personage. But usually
 “ at those times, taken for the very same
 “ that we call now of the Latin word (*genti-*
 “ *lis*) a gentleman, that is, a man well-born,
 “ or of a good stock and family. Neither
 “ doeth it detract any thing from his gentry
 “ at all, that I said he was a *Minister* or
 “ *Serviteur*; for I mean not thereby, that
 “ he was *Servus*, which word (straightly
 “ construed) doth signify a servant or slave,
 “ whom

² *Selden's Titles of honour*, part. ii. pag. 640. vol. 5. of his works. But tho' *Principes* in the singular number were so proper to every of them (the greater Ealdormen) yet the plural *Principes* is often applied comprehensively to others also of less note, yet special eminency,

“ whom they in those days called by a quite
 “ different word : but my mind is, that he
 “ was a servitour of a free condition, either ad-
 “ vanced by his own vertue and merit, or else
 “ descended of such ancestors as were never
 “ degraded; and that name the prince of
 “ Wales, or eldest son of our king of this
 “ realm, doth not, in the life of his father,
 “ disdain to bear : for out of the very same
 “ old word (*Denian* or *Tbenian*) to *serve*, is
 “ framed his poesie or word upon his arms,
 “ (*Ïc dien*, or *tbien*) *I serve*. The like
 “ whereof is upon the arms of the coun-
 “ ties Palatine of Chester and Durham
 “ also.”

47. Is not therefore this strong and exact
 resemblance between them sufficient of itself
 to evince the strictest relation between the
Companions of the ancient Germans, and the
Thanes of the later Anglo-Saxons? But we
 have still other evidence to produce, and are
 even able to point out by what distinct grada-
 tions, this latter title of dignity necessarily arose
 from,

cy, as *Thanes*, and such more as were *viri primarii*.
 The authority our author quotes for this is *Henry Hun-*
ting. Gul. Malmsh. and Ingulph.

3 P. 498.

from, or grew, as it were, out of the former honourable rank of servitude or attendance. For, let it be asked, had not the Anglo-Saxons, upon their arrival into Britain, their General and princes (no matter by what name distinguished, whether by that of Heretoge, Ealdormen, Graves or any other) as they were wont to have in their own country? and were not these places of trust and dignity, these supreme offices of the commonwealth, surrounded with their usual train of attendants, and honoured with the company and guard of those brave youth, whose great ambition it formerly was to be brought up in these schools of civil and military discipline? We cannot, I think, seriously make any question but they were, as there was now a more real occasion of their attendance, than there had ever formerly been in times past; the change of circumstances, which they now began to experience, making it in some sort even necessary for their noble youth to get themselves preferred and admitted into the court or train of those great men, whom their well-known valour, and the especial favour of their countrymen had rendered rich and powerful. — The lands our Anglo-Saxons were as yet in possession of, whether

whether yielded to them by the concession of the British princes, or gotten by their own valour, were but scanty, and scarcely sufficient upon a division to afford an honourable support to all those, who as voluntary and equal sharers in the danger of acquiring, had an equal title to the enjoyment of the profit. All hopes therefore of enlarging their narrow territories must depend entirely upon their farther conquests. But as the greater or lesser share of property in the conquered land, which they might hope to obtain from any future acquisition, however careful they might be to prevent partiality, must in some measure depend upon the favour and good will of their commander in chief (whose power, in those times of perpetual war and confusion, would every day grow greater and greater) this consideration alone must necessarily augment the number of his court, dependants or clients as we may properly enough call them, as the prospect of honour and advantage arising from such dependance would be continually encreasing.

48. The General thro' the necessity of their affairs, or for whatever other reason matters not at present to enquire into,
 now

now advanced to the higher title or dignity of King, would, we may suppose, upon all proper occasions take more especial care of what might any ways concern his own companions and attendants, those whose faithful services he had already experienced, and whose interest he might still hope to make useful to him in any farther views he might entertain of encreasing his influence and power. They alone therefore would of consequence be promoted to all the nearest employments about his person, and be recommended by him to all other public offices both civil and military, as far as his particular interest and authority extended. If any new distribution of land upon some fresh conquest was to be made, their several merits, the honour and dignity of being employed by and immediately serving the supreme magistrate, would, we may easily suppose, be first and principally regarded: and where this was wanting, where there was no other opportunity offered itself of sufficiently providing for his
his

¹ As the different Celtic nations seem anciently to have had very different names for those persons, whom Tacitus, as we have seen, particularly styles *Comites*, some calling them *Ambacti*, others *Soldurii*, and others, we may suppose, giving them other appellations, so we find likewise as
great

his friends and attendants by new acquisitions, he would recompence their fidelity out of that larger share of land, which fell to his property, as General, in the original or any subsequent allotment. A horse, or suit of armour, or some such merely nominal mark of distinction, was formerly looked upon as an adequate reward for the greatest services; but in Britain, where luxury began to break in upon them, where their wants were greater, and their means of satisfying them much less in proportion, some more solid recompence was expected, something which might enable them to maintain the dignity of that character, which their continued attendance upon the person of their prince gave them in the eyes of their countrymen. Hence must it necessarily come to pass, that the quality of King's Thane or servant would by degrees grow into especial honour and esteem, till it at length became a title of power and authority¹.

49. The observations, which I have just
 now

great a difference in the titles, which their descendants bestowed upon them in their different conquests; for whilst the Anglo-Saxons called them *Thanes*, the Franks and Lombards distinguished them by the stile of *Vasses*, *Drudes*, *Leudes*, *Antrustiones*, *Gafindii*, and the Goths
 in

now been making upon the ancient custom observed by our Anglo-Saxon kings, and o-
ther the great men of those days, of reward-
ing

in Spain by the appellation of *Gardingi*. For that all these names signified one and the same office, and originally sprang from the ancient German *Comites*, will be evident from a few observations, which I shall take the liberty to throw together upon each of them. The author, whom I shall chiefly follow, is the learned *Mura-tori* in his late laborious and accurate work of *the Anti-
quities of Italy of the middle Age* — And first of the *Vas-
ses*. P. 548. *Vassi* nomen, uti Du Cangius, Boxhor-
nius, Eccardus, aliique viri docti animadverterunt, non aliunde natum videtur nisi e Cimbrica voce *Gwas*, sig-
nificante *Famulum, Ministrum*. Olim ergo nobiles viri,
seu militari cingulo insigniti, non secus ac nostris tem-
poribus, ad regum famulicium inhiabant; tum ut pa-
trocinio principis, aliisque aulae regiae privilegiis frue-
rentur, tum etiam ut regum liberalitatem in se derivarent (quod plerumque accidebat) atque ab iis *beneficia*, hoc est, usum fructum praediorum regalium, dum vita comes esset, consequerentur. Quicumque nobilis ad fa-
mulicium principis adscisceretur, eidem juramento fide-
litatem suam obligabat, atque exinde *Vassus* appellaba-
tur. *Vassalli* vero (si tamen fuit, quod non credo, in-
ter vassos et vassallos discrimen) ii nuncupati videntur,
qui inferioris ordinis erant, et aequae tamen atque vassi regi famulabantur — ac propterea id genus non igno-
biles famuli, atque ingenui viri episcopis, comitibus, at-
que abbatibus inservientes, etsi interdum *Vassi* quoque dicantur, saepius tamen *Vassalorum* nomine donati visun-
tur. so again, p. 549. Fuerunt ducibus, marchionibus, comitibus, episcopis, et demum abbatibus *Vassalli*, id est, nobiles famuli, *Ministeriales* etiam appellati, qui senioribus hisce (Saxonice *Ealdormen* dictis) obse-
quium ac servitium praestabant; sive ad augendum splen-

ing their Thanes, their faithful servants and followers, out of their own estates if no better occasion offered, are verified by historical

splendorem domesticum, five ad subeundos pro eis militiae labores. Observe what follows; Ceterum necesse minime fuisse videtur ad *Vassos* constituendos, ut beneficii ejusmodi praecederet collatio. Interdum in ipso famulicij seu *Vassatici* exordio se liberalem *senior* praebebat: interdum post probatam *Vassi* diuturnam fidem, praemii loco fundum aliquem largiebatur eis aut e proprio five regali patrimonio, aut ex ecclesiarum spoliis, prout iniquitas eorum temporum ferebat. and again, Olim *Vassus* five vassallus evadebat, quisquis regi aut potentibus *commendare* se poterat: that is, It was not the being put into possession of the benefice, which constituted the Vass, or Thane, but his being accepted of by the Lord; for as our author adds, and indeed demonstrates out of the old charters produced by him; *Vassos* ante creatos esse quam *beneficium* consequerentur, neque seniores ulla obligatione adactos fuisse ad ejusmodi *beneficia Vassis* tribuenda — and farther, the same author observes p. 552. Itaque primum, ni fallor, discrimen perspeximus, quod inter veterum Francorum *Vassos* five *Vassallos*, et eos quos nunc *Vassallos Feudatarios* appellamus, intercedebat. [There was exactly the same difference in every respect, I believe, between the *Thane* before the conquest, and the *Baron* afterwards.] Nunc atque a multis saeculis nemo *Vassallus* constituitur nisi ratione *beneficii*, aut *Feudi* collati, olim vero nihil opus fuit *beneficio*, ut quisquam *Vassi* honore donaretur, quum id munus in eoduntaxat situm foret, ut ad famulicium regis aut ducum — adscisceretur. Quod etiam apertius intelligas e verbis monachi Sangallensis, l. 1. c. 22. de *Gest. Carol. magni*, ubi de quodam episcopo ait, hic habuit unum vassallum non ignobilem civium suorum, valde strenuum et industrium: cui tamen ille ne dicam *beneficium* ali-

quod,

tical facts. For as the quantity of land, which fell to them upon any new conquest, as Generals and chief officers of the armies of

quod, sed ne ullum quidem aliquando blandum ferro-rem impendit — *Muratori* proceeds, verum nullo adhuc certo teste didici, tunc ob beneficia collata *Vassos* seniori fidelitatem jurasse: quum contra certum mihi sit, ob vassaticum sive famulatum seniori praestitum fuisse ejusdem fidelitatis sacramentum — p. 553. *Vassi* conjunguntur cum *Drudibus*, id est *Fidelibus*. Eos etiam *Fideles* appellatos interdum invenias [our old Thanes are frequently to be found under this appellation in the first Latin writers of our history, and in the versions of the Anglo-Saxon Constitutions] uti et saeculis antiquioribus vocabulo *Salicorum*, *Leudes*, hoc est, qui fidem principi obligabant et subjectionem. — Neque a vassis diversi fuere *Antrustiones* in leg. salica memorati. — Nor were these *Vasses* to be found only in the court of the prince, but they were dispersed likewise over the whole kingdom, as is evident from charters and laws produced by *Muratori*, p. 556, etc. in like manner the Anglo-Saxon Thanes were distributed in all the provinces of England; for thus begins a charter of Edward the Confessor, Edw. R. salutem dicit Hermannno episcopo, Haroldo comiti et omnibus suis *Agri Dorsetensis Ministris* — Nor did the Franks bestow benefices upon their faithful followers for life only; but sometimes gave them away in perpetual possession to their *Vasses*; nequaquam, says *Muratori*, in beneficiis unis liberalitatem suam erga *Fideles* et caros suos obstringebant, sed saepissime pleno jure (proprietary aut allodiali) in illos dona sua transferre consueverunt. and I have now before my eyes a charter of the Emperor Lotharius I. to one of his *Vasses* named Ercombent, granting him certain lands, etc. wherein are these words: nos cuidam
fidei

of their country, was more in proportion than was sufficient to maintain themselves, their wives and children honourably ;
the

fideli nostro Ercomberto nomine quandam curtem nostram cum omnibus mancipiis etc. proprietario jure contulimus; hac *de nostro in suo suorumque haeredum Dominio libere transfulimus possidendo.* — abhinc et deinceps per hanc nostram auctoritatem eandem curtem cum omnibus mancipiis, etc. *proprietario jure teneat atque possideat* — seu, *faciat exinde quicquid voluerit tam ipse quamque haeredes ipsius.* This charter bears date A. D. 839. and many such-like grants of Thane-land may be seen also in *Spelman's Remains.* The Italian emperors of this age sometimes converted the benefices, which they had formerly granted for life, into allodial or proprietary estates. See *Muratori* 579. — But I said likewise, that the *Comites* of Tacitus were amongst the Lombards stiled *Gafindii* — the same *Muratori* must be my voucher for the truth of this assertion, p. 124. Interdum quoque occurrunt in veterum monumentis *Gafindii*, quo nomine aio designatos fuisse *familiares*, sive qui de familia regis, comitum, aliorumque procerum fuere: and then, after quoting some of the old Langobard laws in maintenance of this opinion, in the subsequent page, he draws this conclusion from what he had before premised: Itaque deferebatur *Gafindii* titulus liberis hominibus, qui sponte regi, aut regni proceribus famulatum in eorum familia praestabant — Neque inter eos locus fuit *servis*, sive mancipiis, quorum erat servire ex debito Dominis suis; libertos quidem invenias (as amongst our English Thanes, in the times verging towards the conquest) qui nempe libertate acquisita fruebantur, interdum fuisse *Gafindios* ducum aliorumque magistratuum, uti ex legibus constat — sed et ipsi *Vassi regii*, sive quum in comitiva regis forent, sive ii tantum qui aliquo ministerio in ejus aula fungebantur, appellatione *Gafindii*, uti videntur,

the surplufage they ufed to difpofe of in the following manner. Their *Outlands* they generally divided into two parts; one of which they let out to their Ceorls or husbandmen, to be occupied by them at a determinate rent; the other they again parcelled

tur, deprehenduntur insigniti — which point our author demonstrates from ancient charters — So again, p. 128. *Quam eminentem locum Gasindii regales, five aulæ regalis ministri, ea occasione tenuerint* (at a publick meeting before Berengarius I. king of Italy) *nemo non videt, quum præcedant cancellario, iudicibus, notario, et capellano regis, cardinalibus Cremonensibus et vassis Landonis episcopi.* This appears from the instrument itself produced by Muratori, who farther adds, *Verborum autem contextus satis indicare videtur, Vassos Domini regis eosdem fuisse atque Gasindii*: And what puts it out of doubt, I think, that these *Gasindii* were none other than the Anglo-Saxon *Thanes* under a different denomination, is a remark of the famous Jer. Bignonius, quoted by Muratori as above, that in quibusdam veteribus formulis pro *Gasindio* appellari *Ministerialem de intus casa*. Non obfisto ego (inquit Muratorius) sed addendum puto, fuisse olim extra principis aulam complures *Gasindios*, five quod illustri hoc titulo ex privilegio uterentur, five quod a rege ministerii alicujus causa per provincias mitterentur: and a little lower he adds, honorifico autem titulo *Gasindios* insignitos fuisse, didici ex charta, which he quotes at length — As to the title of *Gardingi*, which was established amongst the Wisigoths in Spain, tho' the old writers scarcely know what to make of it, yet am I fully persuaded, that they were in reality none other than the same kind of men, we have just been taking notice of under the very different

appel-

celled out into a certain number of portions, more or fewer according to the bulk of their estate, called *Benefices*, which they regularly distributed amongst their honorary servants or Thanes, to be enjoyed by them in succession as they became vacant¹.

These

appellations of Comites, Thanes, Vasses, Antrustiones, and Gasindii. *Spelman*. GARDINGUS. Apud Hispanos dignitatis classis fuit; vel saltem muneris: quam tamen ipsi Hispani hodie non satis explicant. In LL. Wisigothorum ejus saepe mentio. l. 9. tit. 2. c. 8. *Dux, aut Comes, Thyuphadus aut Vicarius, Gardingus vel 4 iaelibet persona.* ibid. l. 9. si majoris loci persona *Dux, Comes, sive etiam Gardingus.* et in concil. Toletan. 13. c. 2. *De accusatis Sacerdotibus seu etiam optimatibus Palatii et Gardingis,* etc. To the same purpose *Du-Fresne in Gloss.* — They seem to have been the same as the *Ricoshomes* of later times: for as *Geddes, in his view of a Spanish Cortes,* observes (*Miscell.* vol. I. p. 328.) this was the common title of the *Barons* of Spain. But, I think, 'tis very evident from what has been observed both in this note and in the text, that all these different titles of the honorary servants of the kings and other great men of those times were succeeded by the *Barons*, who make so great a noise in the history of Europe from the eleventh to the fifteenth Century

¹ *Spelman's Remains*, p. 12. This Outland they subdivided into two parts; whereof one part they disposed among such as attended on their persons either in war or peace (called Theodens, or lesser Thanes) after the manner of knight's-fees; but much differing from them of our time, as by that which followeth shall appear. The other part they allotted to their husbandmen, etc.

These *Benefices* were in general stiled Thaneland from this custom, we may suppose, of being divided among the Thanes of the proprietor. The most common method of bestowing them, like those of the church at this day, was only for the incumbent's life; tho' sometimes they were granted even for a shorter time than this, and sometimes given in perpetual possession to the Thanes and their heirs for ever². Another resemblance, which we must not pass by, between the lay-benefices of those times and our present ecclesiastical ones, is, that like them, they were bestowed, or given, absolutely free of all service, or incumbrance whatever. They were looked upon and regarded rather as rewards for past fidelity, than conferred under the obligation of future service. The Lay-Thane seems to have been under
no

² Of which see many instances produced from old charters, by that very learned antiquarian Sir *H. Spelman*, in the ninth chap. of his *Remains*; and, not to multiply notes, all that I offer in this section may be proved from authorities adduced in that work, and from the corresponding practice of other northern nations, the *Franks*, *Lombards*, etc. as is evident from the testimonies produced in the long note of the preceding section.

³ Sir *Henry Spelman's* definition of a *Feud* is, " a
" right which the vassal hath in land or some immove-
" able

no other tye or obligation to his lord for collating him to his benefice, than the Mafs-Thane, or ecclesiastical incumbent is at present to his patron; gratitude indeed would make both of them ever ready and willing to promote the interest of their benefactor and his family, but this was the whole which was expected from them. Thane-land, very different, in all respects, from that which in after-ages was held by military Tenure, or Knight's-service, had no more relation to war than it had to peace; and as for that reason it might be, and even sometimes was, held both by women and churchmen; so likewise upon the death of the present incumbent, to use that expression, it ordinarily reverted to the lord or patron; whereas it was of the essence of land held by, what was called, Feudal Tenure to be hereditary³. The Thane indeed regularly

“able thing of his lord's, to use the same and take the profits thereof *hereditarily*; rendering unto his lord such feodal duties and services as belong to military tenure: the meer propriety of the soil always remaining in the lord.” *Rem.* p.2. And with this definition Cujacius, and all other the Feudists, I think, agree. Having thus given the legal notion of a *fee*, I shall now describe, from other authors, what is more particularly meant by a *Benefice*, *Muratori* p. 554. *prima notio veterum beneficiorum haec fuit, videlicet, jus in acquirentem translatum per-*

larly took an oath of obedience and fidelity to his lord, upon his first being admitted into his service or family; but it does by no means appear from any remains, which I have been able to see, of our Anglo-Saxon history, that he was obliged to renew this oath, upon being collated to his benefice; it was the great man's accepting the voluntary offer of his service, and admitting him into the number of his retinue or attendants, which constituted him his Thane, and not merely the being put in possession of the benefice. For 'tis not to be doubted, but the kings of those times, as well as other the great landholders, had many Thanes, who were never provided for by them in the manner abovementioned.

50. Let us not imagine therefore, a mistake too many of our old, as well as some of our more modern authors have been guilty of, that the king's Thanes were originally

fruenti praedio tradito, dum vita comes esset: and this our author demonstrates from the best authorities in these cases, ancient charters. he goes on, atque haec ipsa notio in beneficiis ecclesiasticis clero collatis perdurat etc. That these *benefices* were not held by military tenure in Italy, our author evinces by shewing, that even women might, and actually did sometimes, possess them — after these and some other observations

ly so denominated, because they held their lands of, and from the king as their supreme lord, upon condition of certain services to be performed by them; such arbitrary services as it might please their absolute masters to impose upon them. — They were free-men like all the rest of their brethren; they were some of them of the noblest extraction; their attendance about the person of the prince was entirely voluntary, and regarded by them as a matter of favour and interest, as a mark worthy their highest ambition to fly at; the lands which they enjoyed were, in general, as absolutely free from all kind of service, from all incumbrance whatever, as any other land in the kingdom; for it was not till the times of the conquest, that our English *Benefices*, or Thane-land, began to be clogged with, what in the Feudal Language was after that period called, Knight's service, Homage, Wardship, Marriage, Reliefs, Aid, and

vations to the same purpose he justly concludes, p. 555. *Quae pauca innui ejus mihi videntur roboris, ut continuo antiquorum Beneficia tam facile accipienda non sint pro iisdem ex omni parte Feudis, quae posterior aetas usurpavit; neque Vassi et Vassalli, ante annum a Christo nato millesimum, iisdem judicandi plane sunt, atque Vassalli subsequentis aevi — See likewise Spelman's Remains, p. 5 et 9.*

and Escheat. This we owe, as well as we do some other innovations in our ancient constitution, to our Norman masters, who brought it with them into this country from the continent, where it was just beginning to be universally received. For it was

¹ *Muratori antiq. Ital. med. ævi*, diss. 10. p. 547. E Germaniæ populis *Feudorum* originem arcesso; non tantam tamen antiquitatem Germanæ Feudorum institutioni tribuens, quantam nonnulli sibi persuasere. scilicet, sunt qui e Langobardis, Germaniæ populis, Feudorum usum derivant, quibus assentiri nequeas; quum neque in Langobardorum regum legibus, neque in vetustis gentis illius monumentis quidquam occurrat, unde eluceat, apud eos populos Feuda in usu fuisse — Neque mihi satis persuasum est Feudorum indolem, qualem nunc habemus, reperiri apud veteres *Francos*: quanquam non negem eos posuisse fundamenta ejusdem institutionis. *Id. Diss.* 11. p. 592. Mihi saeculo tantum vulgaris aerae xi. chartae occurrere incipiunt, in quibus expressum *Feudi* nomen legitur: et si quidem scriptores beneficii vocabulo utuntur, per illud non significant, quod nunc *Feudum* appellamus — I believe it is not impossible to point out the very year, when, amongst us, not only Thaneland, but land in general was turned into *Knight's fees* or *military Tenure*. The *Saxon Chronicle* gave me the first hint: for speaking of a general assembly of the whole nation summoned by the Conqueror to meet in the year 1085, it has these words, as they are translated, *Ubi ei obviam venerunt ejus proceres, et omnes praedia tenentes, quotquot essent notae melioris per totam Angliam, hujus viri servi fuerunt, omnesque se illi subdidere, ejusque facti sunt Vasalli, ac ei fidelitatis juramentum praestiterunt, se contra alios quoscunque illi fidos futuros* — This same general assembly or *Wittena-gemot*, as undoubtedly

was not till about the latter end of the tenth century, a time remarkable for the continual wars and confusions in which almost every nation of Europe was engaged, that hereditary feuds were so much as heard of¹. Hitherto upon the de-
cease

doubtedly it was, is taken notice of by all other our old historians, who tells us moreover, that there came to it, *homines totius Angliae cujuscunque feodi vel tenementi essent*, as some of the best of them express it — so that at this time 'tis probable the same kind of tenure was every where established, and both English as well as Normans, by making their fees perpetual, bound themselves by new oaths to their imperious master — Vid. *Wright's Introduction to the law of tenures*, p. 52. I do not say but there may be instances produced of sons succeeding their fathers in the greater Benefices, whether the government of counties, or any other, before the eleventh century, both in England and upon the continent, particularly in France, but this was either by a special grant to the son, on account of his own or his father's great merit, or by connivance, or by force; there was as yet, this is what I especially contend for, no agreement, no pact; nor was the custom at all practised or known in the less considerable Fees, as it was soon after. I shall beg leave to trouble the reader with one quotation more upon this subject taken from Sir *H. Spelman's Glossary* (*V. COMES*) *Erant denique sub his seculis Comites* (that is, the governors of cities, castles, provinces, etc.) *Comitatus iusticiarii — nec perpetui tunc quidem magistratus, sed vel ad certum tempus, vel ad placitum regis locum possidentes*. He then proceeds to show from express instances, that thus it was upon the continent, amongst the Franks, the Langobards, etc. and afterwards he adds, *nec aliter inter Saxones nostros, ut liqueat ex Assere Menevense, ubi Comites perperam judicantes sic alloquitur rex*

cease of the Vass or Thane his Benefice, or Fee as it was afterwards called, regularly reverted to the original proprietor, whether King, or Ealdorman, or Bishop, or Abbot, who had granted it; as the direct or mere propriety had all along continued in him, tho' the usufructuary right had appertained to another.

51. But these things were now beginning to take a very different turn; the lords of provinces, cities, towns or castles (for these governments were looked upon as Benefices, as well as the possession of mere land) grew every day stronger and stronger, and consequently more and more independant, so that they were become almost equal matches to the princes themselves, by whose favour their honours were first conferred upon them. Upon the father's decease therefore, the son taking advantage of the confusion of the times, of his own strength and the forces of his allies, of his lord's distress, or weakness,

or

rex Aluredus: Quapropter aut terrenarum potestatum ministeria, quae habetis, illico dimittatis, aut sapientiae studiis etc. Bene autem se in officio continentes, rarius tandem ejiciuntur, et inferioribus seculis in patrium avitumque munus succedunt saepe filii, sed indulgente hoc gratia principis, non jure: nam et alias alii substituuntur—As appears by instances of such promotions produced by him in Edward the Confessor's time, one of them as late as the year 1053. — Feudales apud sub

or distance from him, or of any other proper circumstance, refuses to resign his father's Benefice, contrary to the intent of the original grant. What could the lord or patron do, surrounded as he was on all sides, his foreign enemies perhaps threatening him on the one hand, and his own vassals conspiring against him on the other; must he therefore tamely yield up his right, and wink at the injustice offered him? so would it frequently happen to some; whilst others, with more policy and better management, endeavoured to convert the power as well as disobedience of the vassal to their own advantage, by coming to terms with him. The son therefore is permitted to enjoy his father's benefice, and for the future it becomes hereditary in the family; upon condition however, that every new possessor should, in his own person, renew the oath of fidelity to himself or his successor, should always acknowledge him

Germanos coeperunt fieri comitiva et illustria munera sub Othonibus, hoc est, sub fine decimi seculi: apud Gallos vero sub excessu Merovinae stirpis. Torpente enim jam splendore regio potentiores quidam haec invadebant haereditarie — Demum Hugo Capetus cum adeptum noviter regnum novis beneficiis stabilire fatageret; ducatus, et comitatus, maximaque regni officia in feudo retinenda magnatibus permisit, homagio ab iisdem suscepto. Quo edoctus exemplo Gulielmus primus etc.

him as his superior lord, should oblige himself to defend his person and estate against all injurious invaders, and that he should moreover aid and assist him in person, properly armed and accompanied with such a number of soldiers, as should be agreed upon between them, in all his just wars. These and such like conditions, sometimes more and sometimes fewer, according to their different circumstances at the time of constituting the Fee, would the lord impose, and Thane or Vassal with pleasure accept of. Both sides, therefore, would be pleased to think, they had found their account in the new bargain. The Vassal would enjoy without farther molestation, what he chiefly aimed at, his father's land and title; and as to that obedience, which he was now bound to yield to his patron, this he looked upon as no other in reality, than what he had been bred up to, than what all his fathers had been accustomed to perform before him. War was the great occupation of the times; nor was it ever looked upon in those days as an hardship or grievance, to be always ready prepared to fight for their country and benefactors: the same acts of duty or Fealty, which they rendered to their lords, would in return, they knew, be repayed them by their own Thanes and Vassals,

ses, by those to whom they likewise had granted the Benefices which were in their power or gift.

52. Nor would their lord himself, upon the whole, find much occasion to be discontented with what he had done; for tho' he had divested himself of the right of patronage over a good part of his estate, and had thereby deprived himself of the opportunity of so well providing for his future friends and dependants, yet had he, in recompence for what he had done, a regular and well disciplined body of Militia always ready at his service, either to protect him from the injuries of other people, or to assist him in any interesting projects of his own, so they were not too unreasonable. Thus by degrees was a new scene opened in Europe, and what at first seems to have been begun out of mere force and necessity, was now continued and propagated from choice. The Vasses and Thanes would every where seize the opportunity which offered itself, of making their Fees hereditary; nor would their patrons be much against it, as it would bind them to a more close and strict obedience to them; as it would render those, whom they had been accustomed to look upon as little inferior to them-

themselves, in a much greater degree their servants and dependants. In new conquests, especially, would this kind of Tenure be founded, as it would more effectually unite the conquerors together, and arm them against any sudden rising or attack of the subdued natives. — Such, I am well persuaded, was, in general, the true origin of hereditary feuds in these Western parts of Europe; the different conditions imposed and exacted by different lords from their Vassals in the several nations of it, making up, what now began to be called, the feudal law, and which soon took place, in a great measure, of those ancient customs and constitutions, which they had hitherto been accustomed to live under. One thing more give me leave to observe, and then I will conclude this head; that as before the origin of these hereditary feuds, the Thanes and Vassals were most undoubtedly freemen to all intents and purposes, so did they continue afterwards; unless

1 Knight's service, or attendance in all his wars, seems to have been the only thing originally intended by the lord, and required from the Thane, Vassal, or Baron upon the first constitution of these hereditary benefices or fees. This indeed was of the essence of them, and never to be dispensed with. But see how necessarily almost all those other services, as they were called, concomitants, or burthens grew out from this single one, and what

less we can suppose, that with this new accession to their former wealth and power, they at the same time resigned their title to their liberty, and for the mere name of princes, became voluntary slaves. Ambitious kings might indeed, and in fact really did, take a handle from hence, to advance their former limited authority into despotic power, and to look upon those persons, who had thus strongly engaged themselves to them, as little different from their bond-slaves; but 'tis as true, that the Vassies never acknowledged this absolute dominion of their lords, but always resolutely stood up in defence of their original liberty and independence, and ever regarded the duty they owed themselves and their country, superior to all other obligations whatever. But to return to the more immediate subject of our essay.

53. Such then were the King's Thanes
amongst

what a wide door was immediately opened, for an abject dependance on the one hand, and for tyranny and oppression on the other. 1. In the first place, an oath of *Homage* or fidelity could not reasonably be denied the lord, this was no more than a proper bond or security, that his Baron would duly perform the service, which was required of him, in return for the favours, which had been conferred upon him. 2. Upon the death of the
Feu.

amongst our ancient Anglo-Saxons; they were such of the bravest and most noble of their youth, as had voluntarily entered themselves into the king's service as it were, who constantly attended in his court as his guard and as his counsellors; they were his friends and

Feudatary, if he had a son, who was of age to succeed him, and capable of performing the service appendant to the lands and honours he was about to enjoy, it surely was highly expedient, that he likewise should oblige his conscience to be faithful to his benefactor; nor was he to think it hard and unreasonable, if his lord should demand, and insist upon being paid; a proper acknowledgement, a proper Fine or *Relief*, before he would once more part with his right, as it were, and grant him the investiture he expected from him. 3. Were all his children under age upon the death of the Feudatary? who so fit to have the management of the fee, and to receive the rents, profits and emoluments of it, as he who still remained lord Paramount of the soil, and who, during the minority of the heir, was deprived of his service? who so proper to have the care and *Wardship* of the children, as well as estate, and to see them suitably educated, as he who had so great an interest in them? 4. For this same reason likewise, if the next heir to the fee was a female, was it not the duty of the lord, to see that she was disposed of in *Marriage* to a man, who should be both able and willing to perform the military service required of him? if a male, how could he excuse himself to his dependant, from not advising, assisting and persuading him in the proper choice of a Wife? 5. Was the lord in any signal distress, taken captive in war, or obnoxious to his creditors, was he to match his eldest daughter

and faithful companions, and according to their several merits, advanced by their royal master to all the honourable offices about his person, to his vacant benefices, to the government of counties, towns and castles, or to any other employment, which they might

ter into some noble house, to make the hopes of his family, his eldest son, a knight, or to be at any other extraordinary expence, to whom should he apply for *Aid* and assistance, but to those who had sworn to serve him, to his own beneficiaries, to those who had so great obligations to him and his family, and were therefore bound, as it were; in honour to support it in all its grandeur? 6. Was the Feudatary opulent, lazy, otherwise employed, or did his function render it improper for him to serve his lord personally in his wars? Nothing could be more just, than that he should either find proper persons to perform the necessary service in his stead, or at least to pay an equitable *Scutage*, or commutation in money. 7. Finally, if the Feudatary became rebellious to his lord, and, without sufficient reason, refused to comply with the conditions upon which his fee was at first granted him; if he had defiled the purer course of his blood, by being found guilty of treason to his country, or, lastly, if his own family was extinct, what law more equitable, than that the fee should *Escheat* or revert to the original donor and his descendants? These seven were the most usual attendants or concomitants of military tenure, and how excessively they were abused, even in the most early ages of their institution, appears as well from the charters of Henry I. and King John, as from the magna charta of Henry III. For all these charters contain in them little else, besides explanations and relaxations of these feudal claims.

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might think it worth their while to accept, as far at least as the power and interest of their lord extended. — But who were those middle and inferior Thanes? For we sometimes meet with a second and third order of them in our ancient records. — It is extremely difficult, or rather utterly impossible, from the few and imperfect monuments of those times which are now extant, to settle with any certainty the precise boundaries of each of these distinct titles: nor indeed, were it possible, would it perhaps be of any great moment to us, in our general design of delineating the Anglo-Saxon government; however, if I might be indulged a conjecture, I would suppose, that the second order of Thanes consisted of such of the native freemen as either actually were, or at least formerly had been attendants about the persons, or employed

¹ *Muratori*, p. 131. Quum duces et comites, iis secularibus, illustre fuit munus, et speciem quandam principatus in regendis populis gererent, erant iis propterea multiplices *ministri*, quales et cura splendidae familiae et regimen populorum exigere videbantur. After which our author farther evinces from charters, that the *Juniores ducum et comitum* mentioned in the Langothard laws were none other than eorum *Ministeriales*, sc. qui in aliquo ministerio ducibus et comitibus interviarent. — In the treaty of peace between Alfred and Guthrun the Dane, we have express mention made of other

employed in the courts of the Bishops, Abbots, and, especially, of the greater Ealdormen or Governors of the counties¹. For as this high trust and important office, in its original institution, seems to have been exactly of the same nature with that of those German princes, whom the Roman authors talk so much of, there can, I think, be no question made, but these great men were surrounded with a free retinue, and had their attendants and *Companions* in this country, as well as formerly in their own, especially if they were men of valour and renown, tho' now perhaps they might be fewer in number. For as the power of the Generalissimo, in these times of continual war and confusion, must be still encreasing, that of the other supreme officers of the state, both in peace and war, must in proportion be diminished

other people's Thanes besides the king's. See *Wilkins LL. Anglo-Saxon.* p. 47. Si quis *Regis ministrum* homicidii incuset, etc. Si quis autem *Ministrum* incuset, qui *minoris cognationis sit quam regis minister* etc. So upon the coming in of the Normans, as the word *Thane* grew into disuse, we find the same distinction in our ancient records of greater and lesser barons. Ex hoc evenit, says *Spelman Gloss.* p. 69. quod reges antiqui, cum in chartis mentionem faciant de baronibus, saepe subjungunt possessivum (meis vel nostris,) id est, regios barones, ut sic distinguant a baronibus episcoporum, comitum, abbatum etc.

minished, and consequently the number of their noble and voluntary attendants be much short of what it formerly used to be, and even those, who still adhered to their fortunes, of less weight and consequence, as the opportunities of rewarding their fidelity would be now very inconsiderable.—As to the third and lowest order of Thanés, this, 'tis probable, was made up of those honorary servants, who attended upon the persons of the king's Thanés², and those of the other great men and considerable officers of the state; for that such attendants there were, is as certain, as that these superior Thanés were oftentimes men of renown, and invested with large estates of their own, sufficient to reward the service and fidelity of those, who were admitted into their family and dependance.—But perhaps, after all, the middle and inferior order of Thanés might be no more than a second and third class of the king's Thanés or attendants. For as there undoubtedly were different ranks of the ancient Celtic Ambacts,

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² That there actually were such Thanés of Thanés, or subordinate Thanés, is evident from a law still extant among the *Judicia civitatis Lundoniae*; tho' the last truly learned Editor of the Anglo-Saxon laws, with good reason, thinks it ought rather to be referred to Athelstan: See p. 71. of *Wilkins* Ed. Attamen si *Thanus* sit, qui serviat regi, et iter equestre ipsius faciat in provinciam illius

or *Companions*, so may it, probably enough, be presumed, that the same, or some such-like distinction, would take place amongst those who succeeded in their room, the Anglo-Saxon Thanes. — However, I rather incline to the former opinion.

54. Having thus settled these great and leading preliminaries, we have now room sufficient to look about us, and to proceed with more certainty in that nearer view, which we propose to take of the several parts or members, which constituted the Anglo-Saxon government in England. — In the first place then, as the internal tranquillity and and happiness of every society must, in the greatest measure, depend upon the honest and peaceable behaviour of the individuals one towards another, it seems to have been the first and principal care of our German ancestors, that justice, that fundamental band of all social union, might every where be impartially administered, and that all differences, which

illius, si tum Thanum habeat qui eum sequitur, qui ad regis egressum quinque hydas habeat, et in regis aula domino suo seruiat, et ter cum epistola ejus proficiscatur ad regem, ille in posterum, cum praejuramento suo, domini vicario munere fungi debet circa varias necessitates, et causam ejus juste vindicare ubicunque debebat.

which might at any time arise between their several members, from the highest to the lowest, might be terminated as expeditiously, and as equitably as possible; that having no uneasiness, no grievance to apprehend or complain of, with regard to their own domestic administration, they might have so much the more leisure to attend to the public interest, and be animated with fresh courage and resolution to withstand the assaults of their common and foreign enemies. Scarcely was the love of liberty a more sure and distinguishing characteristic of our brave Northern conquerors, than was their zeal for the speedy and impartial execution of justice. For as tyranny and injustice on the one hand, so are justice and liberty, on the other, companions almost inseparable, and the mutual supports of each other. — To this purpose therefore, every free-born Anglo-Saxon, every proprietor of land amongst them, as formerly in Germany, so now likewise in Britain, presided as a judge over his own household, over his slaves, his tenants, and his more immediate dependants; he decided all matters of dispute, which might arise amongst them, and by his sole authority punished the offenders as they deserved, even with

with death in some cases; at least this was practised and allowed by them, in the earlier ages of their settlement. For it must be confessed, that as the times grew more settled and peaceable, and as the milder precepts of Christianity began to introduce a reformation in their ancient customs and laws, this exorbitant power of the lord of the family seems to have been, properly enough, reduced within more limited and straiter bounds: the life of a man, however low his condition might be, was deemed of too great a value to be left to the arbitrary will of any single person whatever, subject as he was to be continually misled by the heat and violence of passion. By this means, however, the public peace, in general, was well enough preserved amongst the poorer and meaner sort of people, whose want of a proper education, and instruction in those sounder principles of religion and the public good, renders them ever obnoxious to the sudden starts of a licentious will, and makes them ready to seize every occasion of riot, tumult, and confusion. How this inferior court of justice was originally denominated, is not, I think, sufficiently evident from our ancient history, but in the later ages of

the Anglo-Saxon government, we find it expressly called the Hall-mote, or assembly of the Manour, as we may now term it. Some remains of this jurisdiction still seem to be preserved in the courts-baron, as they were afterwards stiled by the Normans, which in some sort subsist even to this day¹.

55. Thus was the strong foundation of social peace and union laid, in the proper subordination

¹ *Spelman. Gloss.* HALIGEMOT. Conventus aulae, hoc est, curiae dominicalis, manerii, vel baronis in villis et dominiis: seu tribuum, wardarum, et societatum in burgis et urbibus. Vox haecenus non omnino evanuit. Penhurst *Haligemot* enim hodie dicta. But what this very diligent enquirer produces upon this subject in his *Remains* p. 50. will be judged more pertinent to our present purpose. “ the *Theinge* or lord of “ the town (whom the Normans called a baron) had “ of old jurisdiction over them of his own town, (being “ as it were his colony) and, as Cornelius Tacitus “ saith, did *Agricolis suis jus dicere*. For those, whom “ we now call tenants, were, in those ancient times, but “ husbandmen dwelling upon the soil of the lord, etc.” [These reasons, and indeed many others which might be produced, sufficiently evince, that it was not the Thanes only, but every other Landholder, that is, every native Anglo-Saxon, who joined with Hengist in his expedition, had, and exercised this privilege of judging their own households and dependants. As low down as the laws of Henry I, this court is expressly called *curia dominorum*.] Our author, *Spelman*, afterwards adds, “ out of which “ usage, the *Courts-Baron* took their beginning, and “ the Lords of towns and mannours gained the privi-
“ lege

tion of each man's family and dependants to their own master. But this, it must be confessed, was not of itself sufficient to secure the universal happiness, nor indeed did the wisdom of our fore-fathers stop here. For as various matters of difference and controversy must be continually arising between those persons, who were altogether independant of each other, between the several landholders themselves,

as

“ lege of holding plea and jurisdiction, within those
 “ their territories, over their tenants and followers;
 “ who thereupon are to this day called *Señtatores*,
 “ and in French *Suitres*: but the Saxons themselves
 “ called this jurisdiction *Sacha* and *Socha*, signifying
 “ thereby *Causarum Actionem et libertatem judicandi*;
 “ for *Sacha* signifyeth *causa*, in which sense we yet
 “ use it, when we say for *God's sake*; and *Soca* signi-
 “ fyeth liberty or privilege. But by this manner the
 “ Lords of towns, (as *ex consuetudine regni*) came to
 “ have jurisdiction over their tenants and followers,
 “ and to hold plea of all things touching land. But as
 “ touching cognizance in criminal matters, they had
 “ not otherwise to meddle therewith [that is, in later
 times] “ than by the King's charters.” So likewise in
 Edward the confessor's latin laws (as they are called)
Tit. GREVE. we find it provided, *Barones*, (that is, in
 general every master of a large estate in land, tho' more
 peculiarly perhaps the possessors of Thaneland) *qui suas*
consuetudines habent, et qui suam habent curiam, de suis
hominibus videant etc. *BARONES* says *Sr. Hen. Spelman.*
Gloss p. 70. were sometimes taken *pro libere tenentibus in genere.*

as well as between their followers and tenants — in order to put an effectual stop to all that numerous train of evils, which would naturally flow from so fertile a source, and to bring the misdemeanors and crimes of the greatest as well as of the meanest to their condign punishment, and, indeed, to provide as far as possible for the common good of the whole province (county or shire, as it was more generally called) in all other respects, as well military as civil — we find it a constant and established custom amongst all those Northern conquerors, who divided the Roman empire between them, for the landholders of every province regularly to meet together twice year at least, or oftner, if the necessities of the public were thought to demand it — that being by this

¹ *Spelman. voce GEMOT. Sciregemot* (si pluries opus non esset) bis solummodo in anno indicebatur. Aderat provinciae comes, aderat episcopus, aderant magnates omnes comitatenses. — De causis hic cognitum est tam criminalibus quam civilibus, tam ecclesiasticis quam laicis; sed jurisdictiones postea separavit Gul. primus. — Our learned antiquary describes a Folkmote in the following manner. In *Folkmoto*, semel quotannis sub initio calendarum Maii (tanquam in annuo parlamento) convenere regni principes, tam episcopi quam magistratus, liberique homines. Jurantur laici omnes coram episcopis in mutuum foedus, in fidelitatem regis, et in jura regni conservanda. Consulitur de communi

this means all united as it were into one body, and acting together in concert, they might add a greater dignity, as well as authority, to whatever they should think proper to determine. This general meeting of the whole county was commonly called the *Shire-mot* or *Folk-mot*. For as to that difference which some persons pretend to discern between these two assemblies, it does not seem to be well-founded; unless (perhaps) you may be willing to suppose, that it was then more especially called a *Folk-mot*, when it was summoned at an extraordinary time, and upon an extraordinary occasion, which indeed sometimes happened¹.

56. In this general assembly of the county, (at which not only the Ealdorman, Bishop, and magistrates, but every landholder in it was

muni salute, de pace, de bello, et de utilitate publica promovenda. Adhibetur praeterea *Folcmotum* in repentino omni discrimine; exigente etiam necessitate sub aldermanno, hoc est, comite cujuslibet comitatus. — But as all these offices or privileges were really common to the *Shire-mot*, why should we unnecessarily distinguish between them? Our author himself takes no notice of this *Folk-mote* in his *Remains*, which he would certainly have done, had he, at the time he wrote that piece upon *Tenures*, thought it really distinct from the *Shire-mot*.—See likewise Dr. *Brady's Glossary to his full answer to Mr. Petyt V. FOLCMOTE*, where he likewise endeavours to prove, that there was really no difference between the ordinary

was especially required to be present^r; and which, by the laws of Athelstan, was to be proclaimed a week before hand) were decided all causes both ecclesiastical as well as civil, which might any ways concern the several independant members of that particular province; here likewise were heard all appeals from, or complaints of the tenant or dependant against his Lord, as also the accusation of the Lord against his follower, where the crime committed was of so atrocious a nature, as to require a greater punishment, than he had authority to inflict. For as these tenants and dependants were undoubtedly free-men, as free with regard to their persons as their masters themselves, we must

dinary county-courts and these Folk-motes, etc. Dr. Hody in his *history of Convocations*, p. 149. takes notice of a general meeting *A. D.* 1071. which, says he, “was less than a parliament, but bigger than a Shire-mot, or County-court, being made up of the chief men of divers counties.”— But these assemblies seem to have been extraordinary, and therefore if any one should like better to call such meetings as these, *Folk-motes*, he has my free consent. Much like to our county courts were the French and Langobard *Malls*; as might be shewn from many instances. I shall only take notice of one provision concerning these meetings in the *Capitulars of Charles the great*, l. 7. *Ad mallum nemo venire tardet, unum circa aestatem, alterum circa autumnum; ad aliud vero, si necessitas fuerit, vel*
si

must not imagine, that they had no other resource of justice, than the partiality of their sometimes severe and passionate landlords. In this general assembly, the causes of religion and the church were always first heard and determined; the second place was given to the pleas of the crown, and in the last place, the causes of private persons fell under their cognisance: but in all these instances, a select number of the landholders, who all of them regularly attended the meeting, were judges of the fact, and, according as they brought in guilty or not guilty, sentence was given by the presidents. Here likewise were all conveyances of land, as well as mortgages, usually registred, the new laws promulgated, oaths

si denunciatio Regis urgeat, vocatus venire nemo tardet. — In like manner our general county courts were regularly held every Spring and Autumn.

¹ Amongst the laws of Hen. I. (See *Wilkins LL. Anglo-Sax.* p.240.) I find a constitution concerning the persons, who were to be present at these County courts, which constitution was, as is expressly observed, formed upon ancient custom) *Inter sint autem episcopi, comites, vice-domini, vicarii, centenarii, aldermanni, praefecti, praepositi, Barones, vavasores, tungrevii, et caeteri Terrarum domini, diligenter intendentes ne malorum impunitas, aut Graviorum pravitas, vel judicium subversio solita miseris laceratione conficiant; agantur itaque primo debita verae christianitatis jura; secundo regis placita; postremo, causae singulorum dignis satisfactionibus*

of fidelity to the kingdom and king taken, the public officers of the county elected, and, in a word, every thing else transacted, which might any way relate to, or concern the common interest of the whole province. Nor was the public business at these times carried

bus expleantur, et quoscunque *Scyrcsmot* discordantes inveniet vel amore congreget, vel sequestret iudicio.—
 “ Of all which, (says *Spelman* in *his remains* p. 54.) because I find a notable precedent in a synodal edict made by Charles the Bald, Emperor and King of France (in Concil. Cariffiaco An. Dom. 856.) I will here add it, not to shew, that our Saxons took their form of government from the French, but that both the French and they, as brethren descending from one parent, the Germans, kept the rights and laws of their natural country.”—The edict is as follows. “ The Bishops in their dioceses, and the Justices itinerant or Aldermen in their circuits, and the Earls in their counties, shall hold their pleas together: whereunto all ministers and officers of the commonwealth, all the King’s Barons, and all other whatsoever they be, or whose tenants soever they be within the same dioceses and counties, without any respect of persons, excuse or delay, shall assemble together: and the Bishop of that diocese, having briefly noted sentences touching the matter out of the evangelists, apostles, and prophets, shall read them to the people, and also the decrees apostolic, and the canons of the church, and in open and plain terms shall instruct them all, what manner and how great a sin it is to violate or spoil the church, and what and how great penance, and what merciless and severe punishment it requireth,
 “ with

ried on in a licentious and tumultuous manner, but, on the contrary, every thing was transacted with the greatest appearance of decency, order and regularity: the governor of the county himself (Ealdorman, Duke, Earl, or Count as he was sometimes called) being obliged

“ with other accustomed, necessary and profitable
 “ admonishments. The Aldermen also, or Justices,
 “ shall note down such sentences of law as they call to
 “ mind; and shall publish unto them the constitutions
 “ of us and our predeceffors, Kings and Emperors, gathered together touching this matter. And the Bishops
 “ by the authority of God and the Apostles; and the
 “ Aldermen or Justices and Earls, under the penalty
 “ of the Kings laws, shall with all the care they can
 “ prohibit etc. — As to the ecclesiastical causes, which we have remarked to lay before these county meetings, our author observes, “ that in his opinion, they were
 “ such ecclesiastical causes as were grounded upon the ecclesiastical laws, made by the Kings themselves, for the
 “ government of the church (for many such there were
 “ almost in every King’s time) and not for matters rising out of the Roman canons, which haply were
 “ determinable only before the Bishop and his ministers.” — See what Mr. *St. Amand* says of these county courts, in his *Essay on the legislative power of England* p. 15. where he justly, I think, compares them to the French provincial parliaments, and to the old cortes in the numerous kingdoms of Spain.— For, not very improperly might each county amongst us formerly be regarded as a little kingdom, as it were, as its governor in fact was frequently stiled princeps, regulus, and sometimes rex.

• Ibid.

obliged to attend in person and to preside there, as, in like manner, was the bishop of the diocese after the establishment of Christianity; his superior knowledge, the gravity and severity of his character, together with the sanctity of that religion which he professed, all pointing him out as an extremely proper person to be present at the administration of justice. And lest the governor himself, thro' the necessity of the wars or any other lawful avocation, such as must frequently happen, might be prevented from being present, or, when present, thro' want of proper skill, might not be so well acquainted

² Vid. *Spelman. in voce*, ALDERMANNUS CIVITATIS; and LL. *Ed. Conf.* Tit. HERETOCH. Thus likewise the counts, or governors of provinces abroad had their counsellors and assessors to assist and advise them: Muratorii *diff. decima p. 488.* Quum comitis munus fere semper illi tantum gererent, qui sanguinis splendorem fortunis multis adjungerent, atque ii insuper militiae potius quam litteris studerent: facile conjicere possumus, non eam fuisse magnatibus ejusmodi peritiam legum et scientiam, quam exigit ardua criminalium et forensium judiciorum provincia. Male ergo fuerit, inquires, homini causam suam acturo apud Judices adeo imbecilles. Verum et huic discrimini consulere antiqui reges; quippe comitibus, quoties agitandae ac dirimendae lites erant, ad consilium et opem adjungere minores alios judices, juris nempe peritos eorum temporum, quos aequè atque comites, *Graphiones*, Teutonica

quainted with the laws of his country, as his high office required, and by that means a stop, for some time, be put to the regular distribution of justice, there were two other inferior officers constituted, both elected by the voice of the county, as his ordinary counsellors and assessors, whose proper business it was, as his deputies, to supply his place when absent: these were afterwards stiled the *Alderman of the County*, and the *Heretoch*, the office of the former more particularly regarding the civil, as that of the latter did the military concerns of the province ².

57. For

nica voce veteres appellabant: *Salici* vero etiam *Rachimburgios* et *Tunginos* — demum, ubi sententia erat pronuntianda, nihil agebat comes absque consilio et consensu eorundem ut ex placitis, sive judiciis publicis constat. — The emperor Charles the great seems to have given the first occasion of the institution of *itinerant Judges*, at least I find them first taken notice of amongst his constitutions, under the denomination of *Missi Regis*. Edicebant (says *Muratori*, p. 455.) ejusmodi iudices extra ordinem adlecti, se missos a Regibus et Augustis ad singulorum hominum lites ac intentiones, hoc est, contentiones audiendas ac deliberandas: et quandoquidem non uno in loco consistere solebant, sed per provinciam et pagos vagabantur in locis singulis disciplinam ac justitiam restauraturi, ideo *Missi discurrentes* appellabantur. These Justices itinerant sat with the ordinary Judges of the district, not only as a check upon them,

L

but

57. For the Governor, or Earl as he was afterwards called, was the supreme officer of the county. Into his hands was the scale of justice committed, and under his auspices did the troops of the province go forth to battle; he succeeded to all the rights of the ancient German princes, and accordingly, by the early latin writers of our history, we find him usually honoured with the same illustrious title. His power in every respect exactly resembled that of the king himself, excepting only the mere extent of jurisdiction: his revenue, like his, was made up of the produce of his own estate, together with a determinate part of the profits of the county, arising from mulcts and other casualties, that is, he had one third part of them, whilst the other two went to the king and other persons¹. As to the nomination

but likewise as their counsel and assistance, as fully appears from old Lombard charters still extant. Now as our king Egbert had been brought up in the court of Charlemagne, 'tis not improbable that, he first introduced this custom of itinerant judges, or, as they may rather be called, lawyers in England; for that some such sort of *missi regis* there were very early in this kingdom may be concluded from what we are told, in the *mirroir of Justices*, of king Alfred's punishing so many judges in one year.

¹ See *Selden's titles of Honour*, p. 653, and *Spelman's Glossary*.

mination of the Governor, there is little room to question, but that in the later ages of the Anglo-Saxon rule he was appointed by the King, and depended chiefly upon the same good pleasure for his continuance in his office²; but whether this was so from the beginning of their settlement in Britain is at least very dubious, and perhaps the contrary opinion may, upon the whole, be deemed most probable: that is, whoever maturely reflects upon what has been before observed of the natural genius of our Northern ancestors, will be apt to believe, that these Forsten, or rulers of counties, as formerly in Germany, so originally in England likewise, were appointed by, or at least not without the approbation and consent of the general assembly of the whole nation; tho' their long and continual wars with the desperate Britons, and

Glossary, p. 141. COMES.—quod et Caroli magni aevo in usu fuisse apud Gallos, liquet ex capitul. Hludovici Imp. etc.

² See *Saxon Annals Ann.* 694. Now that these governors might be turned out of their places, if they did not discharge their duty as they ought, is evident from what king Alfred says, where he threatens them all with this very punishment, the removal from their office, if they did not immediately apply themselves to the study of the laws, literature, etc.

L 2

Spelman

and an appearance of public utility, might, amongst other alterations introduced in the old constitution, not a little contribute to throw this great branch of power into the hands of the Generalissimo, or King as he now began to be called. The fatigue of intending the business of the state, the trouble and inconvenience which must follow their frequent general meetings, especially as many of them were settled in distant parts of the kingdom, as it tended to render the people, who do not see very far into the latent consequences of things, less regardful of the public administration, so would it naturally open the eyes of those, to whom they had entrusted the whole executive power of the commonwealth, and make them upon the watch, ready to seize every opportunity of extending an authority, which they now began to think not sufficient for the execution of their more enlarged and ambitious views.

58. Nor did our Anglo-Saxons yet think their political building complete: for besides these more particular provisions respecting the peace and happiness of private families and distinct counties; agreeably to the same manner of thinking, and to the same method

thod of acting, we find another and still superior assembly established amongst them, a general meeting of the whole nation, wherein all such disputes or matters of contention as might arise between the several independant members of the different provinces were to be finally adjusted and decided, and, in short, all the more momentous matters of government, both with regard to war as well as peace, maturely examined, debated, and determined. In a word, in this great assembly of the whole nation, or *Wittena-Gemot* as it was usually termed, was lodged the whole legislative power of the community, here was the supreme authority over all persons, and in all causes both ecclesiastical as well as civil. — By such uniform gradations did this beautiful and lasting Gothic structure rise, so compleat was every part of it in itself, and so aptly did each of them, in its several place, contribute to the strength and ornament of the whole building. — But here let us stand still a while, and take a more near and intimate survey of this sovereign assembly, the great basis of the Anglo-Saxon constitution; the foundation as well as preservation of public liberty amongst them, and the fruitful source from whence the same in-

valuable blessing hath been so copiously derived to their happy posterity: let us view it in all its parts, in its constituent members, in its peculiar privileges and prerogatives, as likewise in the extent of power and authority, which originally belonged to its president or king. — I am not ignorant indeed, that our best writers are very much divided upon each of these heads; but I propose to take no notice at all of their disagreements with each other, or to endeavour to reconcile their several differences. If thro' the dark labyrinths of antiquity, I may haply be able to feel out my own way with any tolerable degree of certainty, I shall be very little solicitous about the wandrings and errors of the many, who have attempted the same road before me; and as I have no hypothesis to serve, no party to flatter, and no other end in this research than the desire of finding out and vindicating truth, 'tis possible I may hit the right path easier than those, whose greater abilities have been led aside by some wrong biases. But the success of my attempt must be submitted to the judgement of the candid and intelligent reader.

59. *The*

¹ *Spelman V.* SCIREGEMOT. Videtur hoc idem fuisse quod jam dicimus turnum vicecomitis: nam et turnus olim

59. The first point then to be enquired into is, who were the constituent members of the Anglo-Saxon *Wittena-gemots*, or parliaments? — Now to this question I shall venture to return this ready and direct answer, that every *Landholder* of the kingdom, whether of the clergy or laity, who was of an approved age, and had not forfeited this privilege by some previous misdemeanor, had originally a right to be present there in person, whenever he pleased to make use of it. This position, however strange or novel it may appear at first view, will, I am persuaded, after due examination be found agreeable to the truth of ancient history, and conformable in every respect to the fundamental politics of all these Northern conquerors. For let it be asked, was not every proprietor of land even obliged to be present at the public meeting of his county, to take care, as far as lay in his power, of its interest and the common concerns? This is a truth acknowledged on all hands¹. But what other difference was there between these assemblies of the county and kingdom unless between a greater and lesser; between

a ge-

olim bis in anno tenebatur, aderantque omnes unamagnates comitatus, et tenentes liberi — sed statuto

L. 4.

Marbur-

a general meeting and one more particular ? The *Wittena-Gemot* could be nothing else but a collection of the several *Shire-Gemots* of that particular state or kingdom, where the assembly was held; this was the grand center, wherein all the separate lines of judicature were united. They were each of them most manifestly built upon one uniform and consistent plan; and the very same reason, which gave the *Landholder* a right to be present at the one, must give him an equal right to assist at the other; both these privileges were undoubtedly built upon the same common foundation,

60. For the *Landholders* amongst the ancient Anglo-Saxons (as they had no hereditary nobility, in the sense we now understand the word, a nobility distinguished by special rights, privi-

Marburgensi archiepiscopis, episcopis, abbatibus, prioribus, comitibus, baronibus, virisque omnibus religiosi indultum est, ut non appareant in turnis nisi pluri exacti necessitate.—From whence 'tis evident, that till the making of that statute, which was not till long after the Norman invasion, they were all obliged to be present (see LL. Athelst. apud *Wilkins* cap. 20.) And we have before seen from the constitutions of Henry I. that all the *Terrarum Domini* were to be present; which is sufficient to explain the *liberi tenentes* above. That the clergy had a right, and did actually come to these assemblies in great numbers, is too evident from the preambles to the laws of the times to need particular quotations. See however *Chron. Saxon. Ann.* 656. It was not only their superior

privileges and exemptions) were originally all of them undoubtedly equal, and however honoured with the titles of Ealdormen, Greves, or Heretoges, yet were they not upon this account, (excepting only in the execution of their several offices) superior in authority to the other untitled proprietors of land¹. For, indeed, how was it even possible they should? and what was there, which could put any difference between them in this respect upon their settlement in Britain, when most indisputably there neither was, nor could be any at all in Germany, where the land was annually divided between every member of the community. They all held their estates alike, by the acquisition of their swords; they were all alike obliged to appear in arms,

whenever

rior character for sanctity of life, and skill in letters, which entitled them to this privilege, but more particularly their being proprietors of land.

¹ *Spelm. V. Domesdei.* Eo seculo (that is, when domesdei was made, and the assertion may with equal truth be applied to the times preceding the conquest) non distrahebantur praedia in vulgus proprietariorum (ut hodie passim) sed villa integra penes dominum unum plerumque, vel alterum permanebat, plebe (*i. e.* the slaves, Britons, and Ceorls) agriculturam sub eodem exercente. In tota Norfolcia, quae ad quinquaginta milliaria (vel eo supra) extenditur, ad triginta plus minus dilatatur, Sexaginta & sex tantummodo numerantur foli (seu fundi) domini.

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whenever the public should call for their assistance; and were all alike (for any thing which now appears to the contrary) capable of being promoted or elected into the public offices of the state; nor can I find, but that the suffrage of the poorest was equally valid with that of richest or mightiest: whence then that peculiar privilege or right of being members of the Wittena-gemot, which is supposed to belong to some of them, exclusive of the rest of their brethren? There cannot possibly

* The whole polity of the old Franks and of our Anglo-Saxons is in every respect, as well regarding peace as war, so exactly similar, that what the *Count of Boulainwilliers*, in his *Memoires historiques*, lays down as the advantages accruing to the former, from their conquest of Gaul, may with equal justice be applied to our ancestors upon their acquisition of Britain: p. 19. *Après avoir établi l'indépendance & la Noblesse Française* (by the *French Noblesse*, this author always means the posterity of those Franks, who had been actually engaged in the conquest of Gaul, all of them in general without exception; which point I think he has unexceptionably made good, and in this same sense the conquerors of Britain may be all stiled the Saxon Noblesse; for noble they all were in respect to the poor Britons. — But to proceed with our author) “ *Après avoir établi l'indépendance & la noblesse Française, Je me crois obligé de montrer en détail quels en étoient les avantages réels; que je rends à quatre: 1. l'exemption de toutes charges, à l'exception du service militaire. 2. le partage de tout ce qui étoit acquis en commun, butin ou terres. 3. le droit de juger ses pareils, & de ne pouvoir être jugé* ”

possibly be any real foundation for such a notion; for whoever was a proprietor of land, was at the same time, in the eye of their constitution, a member of the community, and as such, in those early ages we are now more especially concerned in, must of consequence be entitled to all the privileges of the rest of the landholders ².

61. The true political distinction, therefore, of our old Anglo-Saxons ought to be into the proprietors of land, and non-proprietors: (for

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“ jugé que par eux en matiere criminelle, avec celui de
 “ délibérer sur toutes les causes, & matieres qui étoient
 “ portées à l’assemblée générale du champ de Mars. 4.
 “ enfin, le droit de défendre sa personne, ses biens, ses
 “ amis, son intérêt, & de les revendiquer lors qu’ils
 “ étoient attaquez par qui que ce put être.” Our au-
 thor makes good each of these points at large, and the same, ’tis most evident from all remains of their history, were the privileges of our old Anglo-Saxons, as might be shewn at length, if what has already been observed was not sufficient to establish their dignity and mutual independance. As to the third of these privileges, the right which every Frank had of being present at their fields of March (or May, as they began to be called in king Pepin’s time) I must not omit what the same noble author has observed upon this point elsewhere: *Mem. hist. p. 47.* l’on voit aussi qu’il étoit impossible que cette form de deliberation pût subsister, du moins après le partage des terres, qui divisa les François les uns des autres, & les éloigna d’une distance considerable; l’eloignement des lieux, la difficulté des voyages, la dépense qu’ils auroient exigé, étoient autant de
 raisons

as yet our ancestors contemned trade, as an occupation beneath their warlike genius, and consequently had very little regard to the interest of those who might endeavour to support them-

raisons qui dispensoient la plus grande partie de la nation de se trouver aux assemblées, & c'est aussi pourquoi on ne les tenoit jamais consecutivement dans un même lieu, & qu'on les transportoit d'un bout de Royaume à l'autre — afin que chaque contrée pût jouir à son tour des avantages de l'assemblée, savoir, le François du droit d'y assister, & d'y deliberer, & le sujet du profit résultant de la grand consommation que pouvoit faire une si nombreuse compagnie. There was not so great need to have recourse to this expedient in Britain, where the conquered country was of so much less extent than that of Gaul, as well as the number of the conquerors much fewer, especially if we consider that the Wittenagemot for near three hundred years, unless upon extraordinary occasions, was confined to each of the seven kingdoms. After the union, tho' frequently it was held at London, yet it appears from Dr. Hody's *Convocation Book*, where all these Wittenagemots are accurately set down, that it was convened in many other parts of the kingdom, for the same reason, 'tis most likely, that the champs of Mars were in France. It may not be improper to observe in this place, that we shall make very wrong conclusions of the number of those, who had a right to be present at these Wittenagemots, if we have the least eye upon our present number of landholders. — Perhaps there never were, during the whole Anglo-Saxon government, from the arrival of Hengist to the time of the conquest, 50000 freeborn Saxons etc. in the kingdom at a time, who had a right to be present at these meetings; this I could make very probable was there any need of it. — But, I believe, I shall rather be told, that even this was much too great a number,

themselves that way) the proprietors were all equal in every respect, and enjoyed in common the right of being present both at the assembly of their county, as well as at the general meeting

ber to be all of them legislators. — But let him, who makes this objection, turn his eye upon the popular governments of Athens, Lacedemon etc. in Greece; or upon that of Rome, whose multitude of citizens all had, as our Anglo-Saxons, an equal right to be present in the legislative assemblies. — That great multitudes actually were present in the Anglo-Saxon Wittena-gemots, is evident not only from the expressions made use of upon these occasions, such as, *Populi copiosa multitudo, innumera, infinita cleri et populi multitudo*, and many other of the like tenor too frequent to be particularly enumerated; but likewise from the place itself where the assembly was held, which was generally, as in France, in a large open field, capacious of so great a company, and most commonly by the side of a river for the conveniency of water. This custom was observed amongst us as low down as King John's time: witness the famous parliament held, in the seventeenth year of that prince's reign, in Runningmead near Windsor. So *Matt. Westm. An. 1215*. — In *prato quod dicitur Rune-Mead, quod interpretatur Pratum consilii*, eo quod ab antiquis temporibus ibi de pace regni saepius consilia tractabantur. See *Hody of Convocations*, p. 34. In the second of *Ethelbert's laws* still extant, it is said, si rex *populum* suum ad se vocaverit, that is, all his landholders; not his officers of state only, for these could not be very many in the little kingdom of Kent, but his whole people or nation: and much to the same purpose is what we meet with in *Ina's laws*, and in other the old Saxon constitutions, where the *people* in general are mentioned without any other distinction.

! The'

meeting of their whole state¹; tho', according to the quantity of land they might happen to be in possession of, or the greatness of their riches and number of their dependants, or their superior valour and wisdom, or the renowned actions of their forefathers, some of them must necessarily have a more extensive influence and authority there than others, who were not blessed with these extraordinary qualifications. The non-proprietors, such as were the Ceorls and slaves, tho' the former of them were absolutely free as to their persons, yet as they were not possessors of land in their own right, were scarcely looked upon as members of the community, and consequently had no share in the administration of the public affairs, but were supposed to be present, and to give their consent to the laws and ordinances of the government, in their Lords,
or

¹ Tho' merely to be a native free-born Saxon, and engaged in the expedition into Britain, entitled him who was so to a share in the conquered land, and consequently to all the privileges annexed thereto, without any regard had to the quantity, yet am I not certain, that thus it was in the Ceorls or *New-men*, that is, in those who by their own industry, or the liberality of their benefactors, were become masters of land, which by birth they were not entitled to; I am not certain, I say, but in these instances a fixed or determinate quantity might be necessary to entitle them to the privileges

or in those whose lands they occupied. — But here, perhaps, it may be asked, whether upon the plan now suggested, there be not some difference between the persons who composed the great assembly in England, and those in whose hands the sovereign power had been formerly lodged in Germany? For does not the Roman historian, whose authority in this case no one disputes, expressly tell us, that nothing in that country had the force of a law, till it had been confirmed by the sanction of the common people, *Plebem*, as he calls them, whom you notwithstanding in this discourse seem to have entirely excluded from all concern in the affairs of the public?

62. The Roman author, I must confess, does make use of the word *Plebem*, upon the occasion abovementioned; tho' I am by no means of opinion, that it ought in this place to be translated

leges of the original land-holders. For we find it established by one of their laws, that the Ceorl was to be master of five hides of land, etc. before he could enjoy the privilege of a King's-Thane. — This indeed might be so, and yet might he be capable, perhaps, of enjoying all the lesser privileges of the landholders, he might be even forced to undergo all the burdens of the state, as they were then thought, such as attendance in the public assemblies, tho' his possessions might not amount to quite five hydes of land. But this is a point which I must not venture peremptorily to decide.

¹ See

translated the *Commonalty*, or *Common People*, in the sense we usually understand this expression to comprehend artificers, mechanics, and, in general, the vulgar and lowest order of the people. 'Tis indeed impossible, that this should be the historian's meaning. For let us reflect a little with our selves, and we shall soon perceive, that in a political sense there could be no more than three ranks or orders of men amongst the German-Saxons, that is, the slaves, the freed-men, and the free-born natives or proprietors of land, those I mean, amongst whom their territories were annually divided. Now nothing is more certain, than that neither of the two former orders had any thing at all to do in the civil administration ; they are especially excluded by Tacitus himself¹; and as to the last, these in the eye of the government must have been all of them most undoubtedly equal, there could not possibly be any real difference between them, except such as they had made themselves, or such as the superior qualifications of mind or body might give them, as long as the lands were annually distributed amongst them all according to each man's character and necessities. By *Plebem* therefore,

¹ See above, p. 114. N. 2.

fore, in the place here alluded to, our justly celebrated historian must mean the bulk of the nation, the collected body of the native free-men, the *populus Helveticus, Suevicus*, etc. inferior indeed to their public officers, their princes and their generals, taken separately, but superior to them all in their collective capacity. — I have been the more particular in laying open this point, because from hence we may be able to give a reason to those people, who, according to the plan they had formed to themselves of the ancient German constitution, have much wondered how it comes to pass, that we never meet with the least mention of the vulgar or common people, amongst those who are described as being present at our old Anglo-Saxon Witten-Gemots² — They had no right to be there, they never enjoyed this privilege whilst they continued in Germany, if by *Common People* are understood those persons, whose chief business it was to cultivate the land, and to be employed in those very few mechanic arts, which at this time subsisted amongst them. I must not omit to observe one thing farther in this place, that it was particularly provided by the laws, that no man should be molested in his way

* *Vid. Spelman's Gloss: PARLIAMENTUM.*

way to the Wittena-Gemot, or whilst he attended the business of the public, and that whoever broke the peace at that time by his unruly behaviour should be severely punished with a heavier fine than ordinary ³.

63. But here, may it reasonably be enquired, how were the public debates managed, how carried on with proper order and decency in the midst of so great and tumultuous an assembly? was every man left at large to his own discretion, to propose what points he pleased to the public consideration, and to insist upon their examination? nothing but disorder and confusion could flow from so extravagant a liberty, or licence rather, as this! A people totally occupied in the exercise of arms, and living, many of them, in distant and remote corners of the nation, as they could not be very well acquainted, with the true interest of the kingdom, so were they but indifferently qualified for the important office of drawing up, and preparing new constitutions, whatever they might be of judging of their general expediency, after they were once layed before them, and well explained. In ancient Germany

³ See the second law of King Ethelbert, in *Wilkins'*

many therefore, as well as in Athens, Lacedæmon, Carthage, Rome, and indeed in all other popular states, as far as we know any thing of their history, we always find, what they call, a Senate appointed, that is, a certain number of the gravest and wisest men selected, whose great and especial business it was continually to watch over and superintend the interests of the public both at home and abroad, to examine every thing wherein the community might be any ways concerned, and to prepare such laws and ordinances, as might in due season be proposed to the rest of their brethren, to the collected body of the the people, for their sanction and authority : These were as eyes to the huge body-politic, without whose cautious foresight, the strength and vigour of the other members must, in many instances, be destructive rather than beneficial to their own true interest. But in England where shall we find such a senate, distinct from the Wittenagemot or sovereign legislative assembly? was every thing then left to the wild and unsteady management of an ignorant and ungoverned multitude? This seems to have been an essential defect in the old Anglo-Saxon constitution !

64. Our ancient historians, 'tis true, make

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not the least mention, give us not the least hint of any such-like Senate in England, as that which formerly subsisted amongst our fore-fathers in Germany; nor have our more recent antiquaries ever pretended to collect any such preparatory council, either from tradition, or from their scattered laws and fragments; they are quite silent, as far as ever I have observed, upon this head. But let not their omission mislead our research; if we hope to come at the truth in this, as well as in most other instances, we must think and examine for our selves. Do we then find nothing like a senate in the old English form of government? no previous council, whose especial business and concern it was to watch over the community, to examine and distinguish between the true and apparent interest of the public, to draw up questions, and to prepare laws for the general sanction? or in this point only, a point of such mighty consequence to the ready dispatch of business, and to the universal welfare, did our Anglo-Saxons, contrary to their usual wont, depart from the original system of their polity? I can by no means think so! On the contrary, as we may most manifestly trace the old German constitution thro' all the other

other branches of their civil government, so am I well persuaded, that if we find not the remains of their ancient Senate likewise in this kingdom, it must be owing rather to the defective and imperfect account left behind of these matters, than to a total inobservation or abolition of the constitution itself. But this is not the present case: we have an Anglo-Saxon Senate to all intents and purposes, in what the writings of those times more particularly call the King's Court or council, as distinct from the *Wittena-gemot*. For as aforetime, in their native country, it was the solemn office of the princes, together with the *Generalissimo* after his appointment, to be as a standing council to the community, to adjust and prepare matters for the public deliberation, and to judge and determine causes of a more private nature upon their own authority: so was the King's Court in all respects exactly similar to it, being ordinarily made up of his *Companions* or *Thanes*, of the governors of the several counties, and, after the establishment of Christianity, of the Bishops and other considerable Clergymen, whose superior wisdom as well as sanctity pointed them out, as the most proper counsellors the state could at that time employ.

Here then is the very council we are enquiring after; an assembly of the greatest and wisest men of the nation appointed and stationed as a continual watch over the interests of their country, without whose previous approbation nothing, I believe, could regularly come before the multitude. As they were best acquainted with the exigences of the public, it was their duty to propose what they thought most expedient for the good of the whole; the new laws, especially, seem all to have been drawn up and prepared by them, tho' nothing which they did of this nature was obligatory to the society, till the whole society had itself confirmed it. They were moreover entrusted with the determination

¹ About the middle and lower ages of that state, the Roman emperors usually held in their palaces a senate or privy council, (*Cassiodorus* expressly terms it *senatum minorem*) much of the nature of this which we have been describing, called by the writers of those time *Comitatus*, a word more particularly applicable to the ancient curiae regum, or lesser senates of our German and Anglo-Saxon Generals and Kings. (see above p. 30, etc.) Dicitur etiam *Comitatus* (says *Spelman, Gloss.* p. 138.) *senatus imperatoris domesticus, et iudicium, quo lites ad palatium ductas decernebat: recentioribus Barona-gium. Cassiodor. lib. 4. c. 46. — causa legibus audiatur. Quod si illic finis negotii nequierit inveniri — nostro Comitatus concurrenti licentiam non negamus. Et l. 5. c. 15. cunctis laborantibus comitatus noster concedat justifi-*

tion of many cases of private property, especially appeals from inferior courts, partly by their own authority, and partly, perhaps, by the delegation of the general council, when the dispute was of so perplexed and intricate a nature, as not to admit of a sudden decision. They seem likewise to have had the sole right of judging one another in all cases, both criminal and civil: the King was always supposed to be at their head, and present at all their deliberations. Would not the wisdom of Greece or Rome have called this council a Senate? surely it differs very little from the ideas we usually form of such an assembly, tho' later ages have agreed to affix this term to the *Witena-Gemot* itself^r. I shall only observe one thing

Justitiam. — Now that our Anglo-Saxon kings had likewise such a domestic senate, or curia in their palaces, in which they always presided in person, heard and determined the causes of their subjects both in the first and second instance, provided laws for the sanction of the great assembly, etc. is manifest as well from the whole tenor of their history, as from the particular constitutions of Edgar and Knute, in which it is especially provided, *that no appeal should be made to the King's court, unless justice could not be first obtained in the inferior courts.* It was part, likewise, of the oath, which our Anglo-Saxon kings were wont to take upon their accession to the crown, *se judicium rectum in regno facturos, et justitiam per consilium procerum regni sui tenturos.* (vid. *L.L. Ed. Conf.*) nor would it indeed be difficult to

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prove,

thing farther on this head, that upon the supposition of the truth of this account, we shall find an easy explication of the preambles of those old Anglo-Saxon laws, which have given so much trouble and sollicitude to the learned for these two last centuries, and afforded so much matter of strife and contention to our several party writers. The Witan, or lesser Senate as we may call

prove, that such lesser or palatine senates (if we may so call them) were common to all the kingdoms of the Gothic establishment. Now as the business, which was continually coming before this court, was great, the members thereof must of consequence be much better skilled in the laws and customs of their country, than the common provincial judges could be supposed to be; our kings therefore were wont to send some of them over the country as assistants, or assessors to the Earls, etc. vid. supra p. 160. N. 2. From this court, likewise, as so many distinct branches from one common root, were by degrees derived all the several great courts of Westminster-hall, unless, perhaps, you will except the Exchequer. But let us hear what *Britton*, in the person of king Edward I. says of it. En primes en droit de nous mesmes & de nostre court nous avons issint ordyne, que pour ceo, que nous ne suffisons mye en nostre propre persone, à oyer & terminer toutes que-reles del people avaunt dit, avons party nostre charge es plusieurs parties sicome icy est ordine. There is likewise mention made of this court in the *Black book of the Exchequer*, wrote in the time of Henry II. — Habet enim hoc commune, (*i. e.* the Exchequer) cum ipsa domini regis curia, in qua ipse in propria persona sua jura discernit, quod nec recordationis, nec sententiae

call it, that is, the King, together with his Thanes, Ealdormen and Bishops, etc. drew up the law and set their names to it, as to their act and deed; but it was the voice of the people which gave this deed all its force and authority: the Witan consulted and contrived what was most expedient for the public good; but it was the multitude, which confirmed and ratified their counsils: the former

tiae in eo latae licet alicui contradicere. — Of the same court, likewise, 'tis that *Bracton* says, Habet rex unam propriam curiam, sicut aulam regiam & justiciarios capitales, qui proprias causas regis terminant et aliorum omnium per querelam vel per privilegium sive libertatem, ut si sit aliquis, qui implacitari non debeat nisi coram ipso domino rege. 'Tis probable that the privilege here mentioned by *Bracton* of being impleaded in no other place than before the king himself, belonged especially to the members of this *Magna Curia*, as our lawyer elsewhere calls it, and to no others. *Fleta*, likewise, another ancient lawyer, yet more fully, Habet etiam rex curiam suam, & justiciarios suos tam milites quam clericos locum suum tenentes in Anglia, coram quibus & non alibi nisi coram semetipso & concilio suo, vel auditoribus specialibus falsa judicia & errores justiciariorum evertantur & corrigantur, ibidem etiam terminantur Brevia de Apellis & alia Brevia super actionibus criminalibus etc. vid. *Brady's Animadversions*, p. 27. — What connection or relation there may be between the power, and jurisdiction of the members of these ancient curiae of our kings, and the privileges of the peers of the realm, or house of lords, as 'tis now called; I leave to be farther considered and examined by such as have more leisure.

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mer proposed, the latter commanded what should be done ².

65. 'Tis unquestionable therefore, that the Wittena-Gemot was the sovereign legislative power of the whole kingdom. By its authority alone were the ancient customs reformed, the old laws amended or repealed, and new statutes enacted. Here likewise was the dernier resort of justice; to this supreme court lay appeals from the determinations of the county, if they were thought unjust, and before this high assembly were such suits regularly commenced, as respected the independant landholders of different shires. No Tax might be levied upon any member of the community without the previous approbation and consent of this great council, by which authority, likewise, the proportion of the assessment, as well as the manner of the collection was determined:
witness

² Thus, when the payment of tythes to the clergy was made general all over England, we are told that there were present in the council, *Fidelium infinita multitudo, qui omnes regium chirographum laudaverunt* (who all approved or consented to the decree, which had been previously drawn up by the king and his wife-men, whilst all those who were distinguished by titles, such as the governors of counties, Bishops, Abbots, Thaners, etc. subscribed their names
to

witness the four general, and indeed the only general taxes of those times, Churchets, Tythes, Romefcot, and Danegilt, all of which were most undoubtedly imposed by the authority of the general assembly¹. Was the nation insulted by a foreign enemy? it was the business of the Wittenā-Gemot to consider the provocation, and, if it thought proper, to proclaim war with their injurious neighbour; were the public quarrels sufficiently revenged, and proper reparation made to the injured nation? the same authority that denounced war, established peace likewise. Nor was the power of our ancient parliaments confined to the civil administration only, but equally extended itself likewise to all other matters, wherein the public happiness might be any ways concerned. But was the public happiness any where more interested than in the establishment of the public

to it) Dignitates vero sua nomina subscripserunt. I would observe one thing farther of our ancient law-givers, that upon the making any new constitutions, the king, as well as all his subjects, immediately sware to the observance of them.

¹ See *Prynne's legal and historical vindication of the fundamental liberties, rights, and laws of England*, p. 65, etc. as likewise the *Translator's notes upon Rapin*, vol. 1. Fol. p. 120.

²The

public religion? Our ancestors thought not; and accordingly in these general assemblies it was, that the idolatry of their forefathers was first abolished, and Christianity received and established in each kingdom of the Heph-tarchy². Here frequently were the Bishops appointed, or at least approved, and, like the Ealdormen and other great officers of the nation, upon a notorious breach of duty censured and even sometimes deposed³. In short,

² The instance I have now before me of this is in Edwin king of Northumberland, who is expressly said, *habito cum sapientibus consilio*, to have renounced his Paganism, and embraced Christianity, together with a great multitude of his subjects. *Bede, Huntingdon*, etc. but examples of this nature are too common to be particularly insisted upon.

³ *Washington's Observations on the ecclesiastical jurisdiction of the kings of England*. That Bishoprics and other ecclesiastical dignities were in the Saxon times (commonly) confirmed in Parliament, we have the testimony of Ingulphus, abbot of Crowland, in William the Conqueror's time, who expressly says, *A multis annis retro-actis nulla erat electio praelatorum mere libera et canonica; sed omnes dignitates tam Episcoporum quam Abbatum, Regis curia pro sua complacentia conferebat.*" The *Regis curia* of Ingulph in this place, 'tis most probable, means *the lesser Senate* as just now described, which, 'tis easy to suppose, would be ready enough to take every opportunity of encroaching upon the privileges of the *Wittena-gemot*. However as to the fact itself, that Bishops, Abbots, etc. were frequently elected, approved, confirmed, and sometimes even deposed by the general

short, the Wittena-Gemot was not only the great council of the nation in all the weightier affairs of state, but its best guard and security likewise against all internal and domestic grievances and oppressions, one considerable branch of its duty being, as the *Mirroir of Justices* expresses it, "to take care that the people had no wrong done them by the king himself, his queen or their children:" For to this great council were

general assembly of the kingdom, is evident from a multitude of other instances; to this purpose is what we meet with in *Rapin's History*, vol. 1. Fol. p. 107. King Edgar being desirous of having Dunstan Archbishop, called a general council, [at Bradford in Wiltshire says the Author of the life of Dunstan] where he represented Brihtelm, who had been newly elected into that See, as unqualified for so great a post; whereupon he was ordered to return to his old diocese, [Bath] and Dunstan was chosen in his room. See *Spelman's Councils*, p. 386. 387. So *Sim. Dunelm.* Ann. 959. Beatus Dunstanus — ex respectu divino et sapientum consilio primae Metropolis Anglorum Primas et Patriarcha instituitur. See many more instances of this sort in Dr. *Hody's History of Convocations*, p. 27. 79. 147. 195. 202. Nor had the Wittena-gemot totally lost this power even after the Norman invasion. See Preface to *Petyt's Rights of the Commons*, p. 45. Let me only observe one thing farther in this place, that if the general assembly had so great a hand in the making of Bishops, we cannot easily suppose that, originally, it had less power in the constituting the great secular officers of the Nation, the Ealdormen or Governors of the counties, etc.

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were they likewise, as well as all the rest of the nation in some sort responsible for their conduct ⁴.

66. Nor

⁴ As there is the greatest resemblance between the old *Fields of March* in France, and an Anglo-Saxon *Wittena-gemot*, the curious reader will excuse me, if I farther illustrate my subject, by giving him a description of the business of the former of these assemblies in the words of the judicious Count of Boulainvilliers: *Mem. Historiques*, p. 46. L'on faisoit dans ces assemblées toutes sortes de Réglemens pour la police publique, lesquels par le consentement general de la nation y acquerioient force de loi; l'on y traitoit de toutes les affaires de l'état, de la paix, & de la guerre, & l'on y faisoit les departmens des troupes; il est remarquable à ce sujet, qu'à l'égard de la paix, les rois étoient toujours les maîtres, mais que pour la guerre il faloit le consentement de la nation, & en particulier celui des troupes que l'on y vouloit employer: Maxime bien équitable dans son principe, puisque la guerre se faisoit toujours aux dépens de la vie & des biens du Peuple, & que, si elle produit ou du profit ou de la gloire, l'avantage en est toujours entier pour les chefs du gouvernement — enfin c' étoit dans ces assemblées que se faisoient les promotions aux dignitez & charges vacantes, les unes de la pure autorité des rois, comme à tous les emplois de la cour; les autres par élection, soit des soldats, soit des Provinces; car on peut assurer qu'à l'égard des charges militaires, elles étoient toujours déferés à l'âge & à l'élection des soldats, & qu'à l'égard des provinces, il y en avoit plusieurs à qui les rois promettoient (i. permettoient) de l'élire leur comptes, ou vicaires, sous la condition de la confirmation qu'ils étoient obligez de demander; mais aussi, que les rois dispoient de plusieurs autres arbitrairement — There is another place, in his letters concerning the ancient parliaments of France, where this excellent author has again described the business of these

66. Nor can we, I think, make any, the least, doubt, but that as in the several general assemblies of the shires their proper officers

these general assemblies — which I shall likewise beg leave to lay before the reader, as 'tis more full than that we have just now quoted. I shall give it him in the English translation of these letters by Mr. *Forman*, Letter ii. p. 40. We see then, that during and after the reign of Charlemagne, the parliaments judged sovereignly the major causes, infractions of faith, revolts, felonies, attempts against the Government, conspiracies, troubles in the state: and that they judged them with regard to all ranks and conditions, without excepting the sovereign, no not even the imperial dignity itself, according to the fundamental principle that all Frenchmen were equal, and to be tried by their peers, accidental dignities not changing in the least the first character formed of being a Frenchman — We see in the second place, that those assemblies settled and determined the interior government of the Monarchy, whether in regard to imposts and duties, their rate, repartition, nature, and manner of raising them; whether in regard to the distribution of employments, giving commissions, and filling the courts of judicature. In the third place, we see that those assemblies or Parliaments were admitted to all the deliberations of war, in order to settle the operations, the distributions and marches of the troops, the execution of martial law, and the observance of military discipline. Fourthly, we find that the power of making alliances, whether treaties of mutual assistance and guaranty, was left to the Parliament, with that likewise of judging of the sufficiency of the satisfaction exigible from the people against whom they had declared war; that is to say, that the right of making peace, and settling the conditions of it [I hardly know how this is to be reconciled with what I have observed from our author in the preceding French quotation] was likewise

cers, so likewise in this great assembly of the whole state, its supreme magistrates, by whatever title distinguished, were originally elected and approved^r. This was unquestionably the case of the old princes in Germany, as likewise of the Heretoge or Generalissimo of the public, who, 'tis agreed on all hands, was no standing officer of the commonwealth, but appointed only upon extraordinary emergencies, and accountable for what he did to the Wittena-Gemot. In England, 'tis true, a country not yet thoroughly subdued, and to which our Anglo-Saxons had no other title than the sharpness of their swords, we soon find a very considerable alteration made in their ancient confi-

likewise granted to it. *Fifthly*, we see that Charlemagne would have the parliament, according to ancient custom, sovereign judge of all the differences and disputes that might happen between the Lords and the Prelates, or between the Church and the body of the Nobility, following the primitive law. And *sixthly*, that he would have those assemblies the public tribunal, where every injured subject, suffering injustice or oppression, might find an effectual remedy against violence. — Such were the rights which Charlemagne gave up to the assemblies of the nation, not as a new gratification, proceeding purely from his generosity, or the acknowledgment which he thought himself obliged to make for so many services as he had received from them, but as the restitution of an incontestible right, which had been vic-

constitution in this latter respect. For as they were obliged to be in an almost perpetual state of war with the exasperated natives, it was deemed more expedient for the public good to continue their General for life, than by frequent changes and new elections to make way for distraction and confusion to enter into their councils, and thereby to lay themselves more open and exposed to the attacks of a watchful and desperate enemy. — However, the new title of king, which their general Hengist, in imitation of the neighbouring nations, began to assume to himself a few years after his arrival into Britain ², tho' it might seem, perhaps, to add somewhat to his former power

over

violently usurped by his predecessors:

¹ See *Mirroir of Justices*, c. 1. f. 2.

² Hengist is not called King in the *Saxon Annals* till the year 455. before that time both he and his brother are only stiled Heretogan, see *Annals* 449. The leaders of our Saxon ancestors (says Mr. St. Amand, in his *Essay on the legislative power*, p. 29.) were only stiled *Heretoge*, from the old Teutonic words; *Here*, which signifies *public*, and *Toge*, that signifies *General*; as if we should now say, the *General of the Public*: and indeed that seems to have been the notion these German nations [he might have added, and all other nations anciently] had of a king; for we find the writers of those ages dignifying the leaders of these invading nations, even before their conquests, with this title; tho' at the

N same

over the conquered people and his own slaves, yet could it not possibly give him any new superiority over his own countrymen, his friends and associates in their common expedition. King or Heretoge, by whatever accidental name distinguished, they could look upon him in no other view, than in that wherein their own free consent had placed him, they

same time their dominions extended no farther than their camps: and the Langobards retained so much of their old way of thinking, that after they had lived in peace for some time in that part of Italy, since, from them denominated Lombardy, they laid aside the kingship, and lived under the administration of thirty dukes; yet on the approach of war they created a general, whom the writers of those ages, according to custom, call a king &c."—Tho' we know at what time, and upon what occasion, Hengist was first called king of Kent, viz. after the battle of Aylesford, fought about five years after his entrance into England, yet how his countrymen and fellow-soldiers came so easily to assent to it, whether they did not first propose it themselves, or whether there were any contests about it, we are left entirely in the dark. I am inclined to think, that the motion came originally from the people themselves, especially as their General assumed it immediately upon the loss of a battle (at least after a battle, wherein he did not get the victory) that they might be like the rest of the neighbouring nations, imagining perhaps (for great was their superstition) that there was some peculiar inherent vertue in the word itself. What is certain, this was the very reason, according to their own historian *Paul Warnefrid*, why the Lombards made themselves a king to reign over them. — *Nolentes jam ultra Langobardi*

they could regard him in no other light than as the general of an army of free-men: and however great, thro' the fluctuating circumstances of the times, his present authority might be, yet was he still accountable for any tyrannous or unlawful use of his power to those, who at first conferred it upon him³.

67. His

gobardi esse sub ducibus, regem sibi ad caeterarum instar gentium statuerunt. — This was likewise the very case of the Jews, who had hitherto been governed, as the nations above-mentioned were, by their judges, [Duces or Heretoges] “ Nevertheless the people refused to obey “ the voice of Samuel; and they said, Nay, but there “ shall be a king over us, that we also may be like all “ the nations, and that our king may judge us, and “ go out before us, and fight our battles.” 1 SAM. viii. 19. see likewise † 5. Surely neither the Lango-bards, nor the Jews, nor any of the other nations, who were so desirous of conferring this title of *King* upon their Generals, had any, the least, notion of conveying away their liberties and properties with it, or indeed of conferring a grain more of power upon their first magistrate, than what their customs had before given him; this would be to suppose them much more weak and foolish than they appear to have been from all the remains of their history.

³ Give me leave once more to quote the honest count *Boulainvil.* on this occasion. *Memoires Historiques*, p. 15. J'ai toujours été choqué de ce mécompte de nos historiens, qui, sans en excepter aucun, ont manqué à cet égard d'exactitude & de fidélité dès le principe; en effet, c'est à ce titre le plus abusif qui puisse être imaginé, qu'il faut rapporter l'idée commune, qui fait regarder la

67. His son, 'tis true, succeeded him in what now first began to be called his kingdom, as did likewise the sons of the other generals in the several respective states of the Heptarchy. But this (consistently with the natural genius of our ancestors, and the form of government they had to that moment lived under) we must suppose to have been, either by the immediate election, or at least with the approbation of the Wittena-Gemot of each kingdom. Gratitude towards the great merits of the deceased father, the dread of approaching confusion, the son already, perhaps, being master of the army, and having the whole power of the state in his hands, and their enemies continually pressing them on every side; these, or such-like prudential reasons might the more easily induce them, tho' somewhat contrary to their inclinations, to acquiesce in the son's government, and patiently submit to an innovation, which they knew not well how to remedy, without manifest hazard to the public weal: more ready to execute, than politic to contrive, it seems

Gaule, & à présent la France, comme le patrimoine de Clovis & de ses successeurs: on ne se souvient plus que, dans l'origine, Clovis n'étoit que le Général d'une armée

seems to have been one of the common characteristics of all these Northern conquerors, ever to seize upon the first remedy, which offered to free themselves from a present inconvenience, without ever regarding the distant consequences of it. — Not but that we find this common order of succession, as some people love to term it, frequently broke thro', and interrupted in each of the seven kingdoms; and the Wittena-gemot, upon extraordinary occasions, exerting their ancient privilege of setting aside their old, and electing new kings or generals. Instances of this sort are common enough throughout the whole Heptarchy; not in Northumberland only, that kingdom of continual tumult and confusion, but even in Wessex the most orderly and regular, as well as the most powerful state of them all; where 'tis evident from what still remains of their history, that the authority of the general assembly was so great, as to depose their queen *Saxburga*, and by an express law to enact, that no woman for the future should reign over them.

méc libre, qui l'avoit élu pour la conduire dans des entreprises dont la gloire & le profit devoient être communs.

them. We find likewise the same sovereign power displaying itself in the deposition of *Sigebert* another of their princes, and in the election of *Adelard* and *Kenulph* to the throne : and even *Egbert* himself, in whose person all the seven kingdoms were at last united, most undoubtedly had no other right or title to the kingdom he enjoyed, than

‘ Tho’ the crown of England was undoubtedly elective after the union of the seven kingdoms, yet must it be owned at the same time, that the kings were always taken from the royal family. What therefore *Mezeray* observes concerning the old Kings of France of the first race, is equally applicable to our own Anglo-Saxon kings, especially after the union — There seem to have been three previous qualifications required to entitle a man to be elected, either King of France, or England in those times. 1. Royal birth, (tho’ whether he was born in wedlock, or not, seems not to have been so much regarded.) 2. The last will of the father or antecessor. 3. The consent of the states of the kingdom. — In proof of what I have asserted in other parts of this section, see *Prynne’s legal and historical Vindication*, p. 54—57. *Tyrel’s introduction* to his history, p. 40, see likewise *Geddes’s introduction to his view of two Castilian Cortes*, *Miscellan.* vol. 1. p. 322. “ These accounts, says he, “ tho’ short and imperfect, yet are sufficient to satisfy “ any person, of the ancient Spanish *Cortes* having “ been the same with the English parliament, and “ with the assembly of the states in France: the Northern nations, which pulled down the Roman empire, having all had the same form of government, “ which was a mixt monarchy, as well after as before their

than what the free suffrages of the general assembly of Wessex gave him; and many other examples of this nature might be produced, even after the union, was there any necessity of it; when it seems to be agreed on all hands, that the crown was in a sort elective †.

68. So that, tho' each particular state of the

“ their crowns became hereditary; which the Gothic
 “ Spanish crown was not for some hundreds of years
 “ after the Goths had settled in Spain. Quando il regno
 (says *Birago* speaking of the power of a Portuguese
 Cortes, in his history of the separation of the kingdom of
 Portugal from that of Castile in *Phil. IV* time p. 127.)
 Quando il regno si unisce nelle corti l'auttorità di esso
 è tremenda, potendo ogni stato, anzi ogni intervenien-
 te, dire liberamente la sua ragione per nome del regno,
 dependendo l'istessa regia auttorità dalle determinatione
 delle corti. — And agreeably hereto we have an arret of
 the Cortes themselves published in the year 1640-41, in
 which are these words, (*Birago*, p. 286.) E supponendo
 per cosa chiara *in jure*, ch' al regno, & alli trè stati d' esso
 compete il giudicare & dichiarare la legitima successio-
 ne del medesimo regno, ogni volta che nasce qualche
 difficoltà & dubbio trà i pretendenti per difetto di di-
 scendenza dell' ultimo Rè possessore, & anco per effi-
 merfi, quando occorra, dalla sogettione & dominio delli
 Rè, che per occasione di loro mal governo si rendono in-
 capaci di regnare. *Ritenendo questo potere il regno sin
 dal tempo, che li popoli lo trasferirono al primo Rè, che
 li governasse.* — See likewise the twelfth cannon of the
 Synod or council of Northumberland held in the time
 of *Offa*; and the acts of the council of *Calcuith*.

the Heptarchy before the union, and the whole kingdom after it, might be, and frequently was stiled an *Inheritance* by the latin writers of our earliest history, yet was it an *Inheritance*, not of absolute right descending to the eldest son or the next successor, but, as Alfred the great very justly as well as properly expresses it, whom we must suppose to understand the Anglo-Saxon constitution, at least, as well as any modern, it was an *inheritance* which he owed to the grace of God, to the kindness and compassion of his
great

¹ See the *Testament of Alfred* in the appendix to *Spelman's* life of that prince; the words I particularly allude to, are, in the original, *Haereditas quam Deus ac principes cum senioribus populi benigne ac misericorditer dederunt*. The beginning of the will runs thus: Ego Aelfredus divino munere, labore ac studio Athelredi archiepiscopi, necnon totius West-Saxoniae nobilitatis consensu pariter & assensu, occidentalium Saxonum rex, etc. That Alfred had no hereditary-title to the throne, must be allowed on all hands, as there were many sons of his elder brothers alive at the time of his accession — and yet we see he calls the kingdom an *Inheritance*. *Sim. Dunelm.* therefore *An. 871*, speaking of this great prince's coming to the throne, says, substracto ab hoc saeculo rege praedicto [Ethelredo scil.] mox *Elfredus* a ducibus et praesulibus totius gentis *eligitur*, et non solum ab ipsis, verum etiam ab omni populo adoratur — ut eis praeesset, that is, he was elected by the senate, and afterwards approved and confirmed by the Wittena-gemot, or general assembly of the whole people. Almost in the same terms king John, in the Anglo-Norman times, tells us in one of his *characters*,

great men, and to the consent and assent of the elders of the people'.—Tho' therefore, in answer to what has been here advanced, it has been, and may be again pretended, that some of these Anglo-Saxon princes disposed of their kingdoms by their last will and testament, and that from this fact alone there is sufficient evidence to conclude, that they were looked upon as lords and absolute masters of it, yet am I of opinion that this argument, however plausible an appearance it may seem to carry with it, will not bear the great weight, which has
 been

ters, that he possessed the crown *Jure haereditario, mediante tam cleri quam populi unanimi consensu*. It is therefore very well observed by Tyrrel, (*Introd.* p. 53.) that it is a manifest error in some of our modern writers of the succession, who will needs understand these words, *Jus hereditarium*, to have been used in the same sense in those, as they have been taken in later ages, since the crown came to be claimed by a lineal descent of blood. But indeed Eadmerus's sense of these words is most agreeable to the civil law, wherein he is called *Haeres ex asse*, who comes in as heir by testament to the whole inheritance, tho' no way related to the testator: for that law describes an heir thus, *Haereditis significacione, omnes significari successores etsi verbis non expressi*: and therefore our Bracton derives the word *Haeres*, ab haereditamento; for, says he, *Inheritance* is a *succession* to all the right, which the predecessor (he does not say ancestor) enjoyed: from whence you may observe, that, in Bracton's time, this word *Haeres* was not even by our law limited only to an heir by blood or descent.

² So

been laid upon it. When indeed the king had behaved himself well in the execution of his important office, and had thereby engaged the love and veneration of his subjects, in such a case, his good subjects in return would be always ready and willing enough to pay all due deference and regard, to what they looked upon as the last and dying requests of their great benefactor. But thus much, I think, I may venture safely to affirm, as sufficiently attested by our ancient history, that such last will was never regarded as valid, or of any binding authority to the kingdom, unless it had been farther confirmed and corroborated by the sanction of the Wittenagemot : and accordingly we are expressly told by King Alfred himself, that both he, as well as his father before him, had read their last testa-

* So likewise in France, even Charlemagne himself, the greatest of all their princes, most clearly acknowledged the sovereign right of parliaments with regard to the disposal of the crown, in that he would not venture to declare his son Lewis his heir, or to associate him as his partner in the kingdom, without the concurrence or approbation of his parliament. On account of this transaction the judicious author I have so often quoted on these occasions, in his third letter (p. 73. of the translation) breaks out into these exclamations: " Behold another

testaments to a general assembly of their people, knowing well enough, that however they might dispose of the kingdom, their wills could never be duly executed, without the general assent and consent first obtained².

69. I am not ignorant, that it has been frequently asserted by those, whose slavish principles force them to catch hold of every, the least, appearance of an argument in support of a cause, which they have too hastily engaged in, that there could not be any free-men, properly so called, amongst our old Anglo-Saxons; in as much as they all held their estates of, and from the King alone, the fountain of liberty and property as well as of honour, who originally parcelled out and divided the conquered land amongst his followers in what portions, and upon what conditions

ther parliament, which, as to right, was acknowledged arbiter of the crown even by Charlemagne himself! It is certain nevertheless, that the right of Lewis was not without its difficulties, because there was a son of his elder brother living, a prince of great hopes, who was then in possession of Italy, in which throne he had succeeded his father; and, I believe, I may advance, that nothing less than the unanimous consent of a general parliament could strip him of the right of eldership."

² See

ditions he himself thought fit. — But this objection, give me leave to say, proceeds entirely upon wrong principles, and has no other foundation for its support, than a partial knowledge, or utter ignorance rather, of our history and the ancient constitution of our government. It was, indeed, one considerable part of the General or King's office, to divide the spoil taken in war amongst those soldiers, who had bravely ventured their lives for it, but let us remember at the same time, that this division was always to be made with the advice and assistance of the other officers, and the heads of thousands and of hundreds; that the supreme commander was not left at his liberty to proceed in this matter as he himself pleased, but that the inviolable customs of his country obliged him to pay a proper regard to each man's claim from his necessities, from merit and from family; instances of this sort are very numerous, throughout all the histories of these Northern invaders: the mighty conqueror of Gaul, even Clovis himself, could not so much as dispose of a silver cup, which had
not

¹ See frequent instances of this produced in *Spelman's Remains. Boulainvill. Mem. Historiques*, p. 24. Si le François [so if the Anglo-Saxon] étoit essentiellement un homme libre, maître de sa personne, & de ses biens

not fallen within his share of the booty, by his own authority, without the consent of every soldier in his army.

70. If the King therefore had the chief hand in apportioning the conquered land, as the great power he was accidentally in possession of makes it not improbable that he had, it was not as this land was his own estate or property, for most unquestionably it was not, but as vested in and belonging to the public in general, of which he at that time happened to be the head. The meanest native Anglo-Saxon freeman, who hazarded his all with Hengist in his expedition into Britain, had as good and just a right to his proportion of what he had helped to conquer, as Hengist himself had; and whatever might be the portion assigned him upon a division, whether greater or lesser, he enjoyed as absolutely free from all servile incumbrance whatever, as the General himself, and had a power moreover of doing with it what he pleased, as is evident from many of our old Anglo-Saxon charters still extant¹.—But, as this is

a point

ens — le partage des terres ne devoit pas détruire cette liberté, puisque au contraire il en rehaussoit l'éclat, en soumettant un certain nombre d'hommes [meaning the conquered Gauls] à chaque particulier François.

¹ En

a point of the utmost consequence, let us examine it more particularly; from whence then, from what fountain could these old Anglo-Saxon Heretoges derive an authority to impose new conditions upon those, who had voluntarily put themselves under their conduct, and but the moment before were, to all intents and purposes, their equals? can we imagine that these rough and free-born conquerors, when they appointed them a General to lead the public armies, at the same time blindly resigned their liberties and properties to his arbitrary disposal? or would our brave ancestors choose to leave their native country, where 'tis agreed on all hands they enjoyed their political freedom in perfection, that after they had undergone all the dangers and fatigues of a long and bloody war, they should immediately tamely submit to become
 hewers

* En effet (says *Boulainvill. Mem. Historiques*, p. 16.) pourroit on croire que le François, [or the Anglo-Saxon] né libre, & souverainement jaloux de cette qualité, n'auroit employé son sang & ses travaux pour faire un conquête, qu'afin de se donner un maître au lieu d'un roi, & n'auroit pensé à faire des esclaves que pour le devenir lui-même. So again, much to the same purpose, p. 179. Dans le premier état [upon the conquest of Gaul, under the first race of their kings] J'ai fait voir qu'une nation entiere, qui s'est déterminée
 à changer

hewers of wood and drawers of water to their countrymen, to those very persons whom their own hands had raised, and who had neither army to support their pretensions, but what consisted of those very people, whom they are supposed to attempt to enslave, nor revenue sufficient to maintain themselves, much less a body of mercenaries, but what the free consent of their subjects had allotted them? the very supposition, upon a little reflection, will be found as utterly subversive of common sense and reason, as 'tis entirely contradictory to all ancient history. For as to all that tedious and irksome train of feudal services, as they were afterwards called, which are so much insisted upon in the present question, these, as has been fully shewn above, were absolutely unknown in those early times we are now treating of^s.

71 " A

à changer le pais de sa naissance, & à faire une conquête au risque de se perdre elle-même, n'a jamais pû considerer l'établissement personnel de son Roi, comme son objet principal ; il est vrai néanmoins, que le succès d'une telle entreprise n'a pû lui devenir favorable, sans que le Roi en ait le profit principal, outre la gloire de la conduite ; mais que la nation ait renoncé, ou même qu'elle pû renoncer à son droit sur les terres qu'elle s'est acquise, & qu'elle à partagées, dans la seule idée de donner à ce Roi, ou à ses successeurs, un pouvoir illimité,
dont

71. " A Conqueror, even in a lawful
 " war," as an excellent author has very
 justly observed¹, " gets no power by
 " conquest over those that conquered with
 " him. They that fought on his side can-
 " not suffer by the conquest, but must at
 " least be as much freemen as they were be-
 " fore. — And most commonly they serve
 " upon terms, and on condition to share
 " with their leader, and enjoy a part of the
 " spoil, and other advantages that attend the
 " conquering sword; or at least, to have a
 " part of the subdued country bestowed up-
 " on them. And the conquering people are
 " not, I hope, to become slaves by conquest,
 " and wear their laurels only to show they
 " are sacrifices to their leaders triumph."

Let us not mistake therefore, 'tis even
 impossible to suppose that the old Anglo-Sax-
 ons, upon their conquest of Britain, should
 possess their estates, subject to such arbitrary
 terms or conditions, as their Generals or
 Kings might think fit to impose upon them;
 but, to make use of a very proper and in-
 telligent distinction upon this occasion, they
 held

dont il ne lui reviendroit d'autre avantage que la gloire
 d'obéir, c'est non seulement ce qui n'a pas été fait,
 mais qu'il étoit impossible de faire, ou d'imaginer &c.

¹ Mr.

held them of the kingdom, in the same manner as the German princes, to this day, hold theirs not of the Emperor, but of the Empire. The only service or incumbrance to which their lands were at this time liable, if indeed what was absolutely necessary to the public safety can properly be stiled an incumbrance, was the *trinodis necessitas*, as it was termed by the later writers of their history, or the necessity of attending personally in all wars wherein the good of the whole community was concerned, and of contributing towards building, repairing and defending the public bridges and castles, as often as occasion required. But if this must be looked upon as a mark of the Anglo-Saxon vassalage or servitude, let it be allowed at the same time to be such an one, as was common to all the land in the kingdom in general. Neither the crown-lands, nor even those of the church were exempted from these necessary services; they were due to the public for that protection which each person was supposed to receive from it; they were due to their common convenience, safety, and defense, and not to the king as such ².

72. Nor

¹ Mr. Locke in his *Essay upon Government*.

² In old charters the *trinodis necessitas* is sometimes spoken of under the general terms of being *omnibus hominibus*

72. Nor ought this distinction, which has been just now taken notice of, between the kingdom and the king to be looked upon and treated as a mere modern invention, made use of only to serve a favourite hypothesis¹: For we find it most clearly pointed out to us in the ancient Anglo-Saxon laws themselves still extant; where we may observe, not to mention many other instances of the same kind, a manifest difference made between treason against the king, and treason against the kingdom, the latter in England, as well as heretofore in Germany, being always punished with death and a forfeiture of the whole

minibus communis; the Saxons therefore did not call these necessary duties *services*, or look upon them as regarding the person of the owner; but they called them *Landirecta*, rights that charged the very land itself, whoever possessed it, churchman or layman. And these duties were ordinarily excepted in every charter, not for that they should be otherwise extinguished, but *per superabundantem cautelam*, lest the general words preceding should be mistaken to involve them, and to release that which the king could not release. For tho' Ethelbald, in his charter to the monks of Croyland, did give the site of that monastery, with the appendancies etc. *libera et soluta ab omni onere seculari in perpetuam eleemosynam*, yet in his charter of privileges granted to all the churches and monasteries of his kingdom, speaking of the repairing castles and bridges etc. he confesseth and sayeth, that *nulli unquam relaxari*

whole estate to the community, the former only with the large pecuniary mulct. Nay, whoever in those early ages of freedom, independance and mutual equality, dared even to lay in wait for and to kill the king, was under very little apprehension of suffering death for his boldness, if so be he was able to pay his Weregild, or that valuation in money or cattle, which the laws had put upon every man's life, from the highest to the lowest². The King's head, as low down as Athelstan's time, was estimated at 7,200 shillings, 48 of which go to the pound weight of silver³. But farther, the very oath of fidelity which
our

relaxari possunt. Spelman's Remains, p. 22.

¹ In France this distinction is as ancient as any charters which are extant — where the kings, in their laws and ordonnances directed to their subjects, always address them in this manner, *Regni fidelibus* — c'est à dire (as *Boulainvill.* observes, *M. H.* p. 16 et 17.) Fielles à l'état, & au gouvernement François: où ils n'appliquent pas la fidelité des Leudes [that is, of their countrymen, of the men of the same society and free like themselves) à leur person, mais à l'état. so likewise in the explication of the famous *Julia lex*, which we meet with in the Institutes, the same distinction is taken notice of: *Lex Julia majestatis, quae in eos, qui contra Imperatorem vel Rempublicam aliquid moliti sunt, suum vigorem extendit.*

² See *LL. Alfredi* 4. tit. *De proditione Domini.*

³ See *Fleetwood's Chronicon preciosum*, p. 28.

our Anglo-Saxons took to their princes, was manifestly subservient to that prior and superior service and duty, which they were all supposed to owe to the kingdom or community. The words of it in English, as they are still preserved in the common copy of Edward the Confessor's laws, run thus, "all the people in their Folc-mote shall con-
 " federate themselves as sworn brethren, to
 " defend the kingdom against strangers and
 " enemies, together with their lord the King ;
 " and to preserve his lands and honours toge-
 " ther with him with all faithfulness 4."

73. What then, may it here be pertinently asked,

4 See these laws in Dr. *Wilkins's* collection. — I am not much concerned about the genuineness of these Laws of Edward the Confessor. For tho' there be good reason to conclude that the translator of them lived some years after the time of this prince, and tho' it must be allowed that he has inserted some things, which could not have been enacted by the Anglo-Saxon princes, yet can there be no doubt made but he followed the original exact enough in the main, and especially in this oath ; which he could never have invented under a Norman Prince, had he not had a copy of it before him. As the Norman Barons, like the English, were ever calling for Edward's laws, there is no doubt but there must have been so many transcripts of them extant in those days ; that it would have been impossible for any man to forge entirely new ones, had there been a temptation.

1 To this purpose *Adam Bremensis*, as I find him quoted

asked, were the King's peculiar prerogatives, and wherein did his power chiefly consist? It is very difficult, or rather altogether impossible, at this great distance of time, especially as there are so few authentic monuments of those ages remaining, to be very accurate and precise as to this point. We may, however, venture to assert in general terms, that he was commander in chief of the troops of the whole nation in time of war, upon which occasion therefore, 'tis not to be questioned, his authority and power was very great¹. It was part of his high office likewise, to divide the spoils, and to portion

ted by *Muratori*, observes concerning the ancient Swedes, Reges habent ex genere antiquos. Quorum tamen vis pendet in populi sententia. Quod in commune laudaverint omnes, illum confirmare oportet: nisi ejus decretum potius videatur, quod aliquando sequuntur inviti. Itaque domi pares esse gaudent; in praelium euntes omnem praebeant obedientiam regi, vel ei, qui ductor ceteris a rege praeficitur. — Our Anglo-Saxons likewise seem to have had just such a ductor, or deputy generalissimo of the King's appointment, as this author here alludes to; they called him, in their own language, *Cynings-hold*, and he is stiled by Alfred in his testament, *Princeps meae militiae*. *Cluver. Germ. antiq.* p. 318. Principes Germanorum, sive reges, solo nomine tantum reges fuere: re autem ipsa ἀρχὴ eorum nihil aliud fuit, quam βασιλεία διὰ βίους, sive βασιλεία αἰδίου, ut tradit de Lacedaemoniorum regibus *Aristoteles*, *Pol.* L. iii. c. 13.

tion out the conquered lands amongst his army, not indeed according to his own arbitrary will and fancy, but, as we have already seen, agreeably to the strictest rules of justice, and the ancient customs of his country. In recompence for his superior cares and trouble undergone in the public service, he was rewarded with a larger share of their new acquisition, and his whole army was sworn to defend his person against the attacks of the common enemy. As the great pilot of the community, his chief business consisted in conveying the commonwealth safely thro' the midst of storms and tempests; for in those calmer and more quiet seasons of peace and serenity, it does not appear that there was a much greater power lodged in him, than in the common governors of the counties. He moreover convened the Wittena-gemot upon all extraordinary

* The office of an English King is thus described in general forms in the laws which go under the name of Edward the confessor; (p. 200 *Ed. Wilkins*) Rex, qui est vicarius summi regis, ad haec est constitutus, ut regnum terrenum et populum domini, et super omnia sanctam veneretur ecclesiam ejus, et regat, et ab injuriis defendat, et maleficos ab ea evellat et destruat, et penitus disperdat. Quod nisi fecerit, nec nomen regis in eo constabit, verum, testante Papa Iohanne, nomen regis perdit. — Tho' monarchical government was unque-

ordinary occasions; for usually it met of itself, at certain fixed periods of time; he presided likewise in this great assembly, and proposed perhaps, (what had already been agreed upon between him and his domestic council) the subject of their future debate, he maintained order and decency amongst them, gathered the votes, pronounced the public determination, and was afterwards entrusted with the due execution of it. He had the honour likewise of setting his name first to all acts of state, and enjoyed, perhaps, some few other prerogatives besides these, but we may safely enough conclude, that they could not have been very considerable in this first period of our constitution, and therefore 'tis hardly worth our pains to endeavour to be more accurate in describing them ².

74. The

unquestionably the most ancient of any, yet was the power of the prince very small in those early ages, in comparison with what it is at present; I think it would not be very difficult to trace its encrease and progress with the course of the vices, as well as of the knowledge of mankind. The wickedness and disorders of the subject necessarily threw more power into the hands of the governor. For government was invented not as a check or restraint upon the liberty, but upon the licentiousness or viciousness of mankind — but

74. The King's prerogatives, I say, could not be very great during the Anglo-Saxon ages of our government, inasmuch as we are certain, "that he had no sovereign
" power at all to make, alter, [suspend] or
" repeal

this speculation would carry me too far in this place. One method, however, of evincing, that I have not too much curtailed the power of our ancient Kings, is not only to compare it carefully with our own history, but likewise with the kingly power, as formerly exercised, in almost all other nations of the ancient world.—We shall find nearly the same limitations, every where taking place over all the kingdoms of, at least, the Northern, Western and Southern parts of the world. Hear what *Grotius* has, very justly, observed of the Lacedemonian kingdom, and see how exactly it corresponds with this of the Anglo-Saxons, as well as well as with that of his own country; *Quod si et externum exemplum quaeritur, nusquam similis quam in Laconum republica invenio; quae et Platonis, Polybii, et sapientum multorum, ipsius quoque Apollinis, ut creditur, testimonio prae ceteris laudata est. In hac enim, reges quidem succedebant alter alteri sanguinis ordine, ita ut pro pueris regibus tutores, quos Prodicos vocabant, fiduciario imperio fungerentur. Sed Reges ad imperium non admittebantur nisi prius ex patriis legibus se imperaturos jurassent. Eratque regibus potestas in singulos; in reges Ephoris et senatui.* *Grotius de Rep. Batav. Antiq. p. 82.* Nor must I omit what the famous Bishop of Meaux has observed of the ancient kingly state of Rome, in the book he wrote for the instruction of the Dauphin, *Au reste, quoique Rome fût née sous un gouvernement royal, elle avoit même sous ses rois une liberté qui ne convient guères à une monarchie réglée.*
Car

“ repeal laws, impose taxes, or alien his
 “ crown lands but only by common consent
 “ in general parliamentary councils, much
 “ less to imprison, condemn, exile, outlaw
 “ any man’s person, or to deprive him of his
 “ life,

Car outre que les rois étoient électifs, et que l’élection s’en faisoit par tout le peuple, c’étoit encore au peuple assemblé à confirmer les lois, & à résoudre la paix, ou la guerre. — Ainsy les rois n’avoient proprement que le commandement des armées, & l’autorité de convoquer les assemblées legitimes, d’y proposer les affaires, de maintenir les loix, & d’exécuter les decrets publics. So *Machiavel in his discourses upon Livy* l. 1. c. 9. Et chi considera bene l’autorità che Romulo si riserbò, vedrà non se ne essere riserbata alcuna altra che comandare alli eserciti quando si era deliberata la guerra, & di ragunare il senato. — Our author indeed brings this an instance of the political modesty of the founder of the Roman state, but I rather think it owing to the models, which all the neighbouring states yielded him. He could not think of assuming greater power than other princes enjoyed, nor would his voluntary associates or subjects have suffered such an insolent attempt in their new monarch. For that Romulus was in his own nature ambitious enough, is evident, notwithstanding all that the Florentine says in his defence, both from the murder of his brother and of his Sabine partner Tatius. See, moreover, the *Leges Imperii* mentioned by *Grotius* in his treatise of the antiquity of the Batavian government, p. 71. For it cannot be doubted but that the same restraints, or very nearly like them, were imposed upon all other, the kings descended from our German nations, as were upon the old counts of Holland: the mere name of King making but very little difference in these matters.

¹ See

“ life, lands, goods, franchises, against law, “ and without any legal trial ¹.” He could neither enhance nor debase the coin of the land without the consent of the Wittena-gemot, and as to the power of pardoning offenders against the laws of his country, I cannot recollect any one instance of it: nor, indeed, could our Kings at this time even think of exercising this power, as the mulcts imposed for murder and other offences were, a certain portion of them at least, appropriated to the injured person, or his relations. The most considerable branch of the royal office was appointing the great officers of the kingdom and church, the governors of counties ², the Arch-bishops, Bishops, and Abbots; but how far the Wittena-gemot, or his own domestic council, ordinarily shared this power with

¹ See *Prynne's legal and historical Vindication* etc. p. 49. etc. Where he has attempted to make out each of these particulars from our ancient history, and I think with success. See likewise *Tyrrel's Introduction*, etc.

² See *Saxon Annals*, 693.

³ *Tyrrel's Introduction*, p. 69. Nor can I here omit, that the English Saxon Kings wanted one great prerogative which ours exercise at this day, viz. the power of granting away the Demesnes of the crown, even to pious uses, without the consent of the great council of their kingdoms: and of this we find a remarkable instance in Sir Henry Spelman's first vol. of councils, where

with him, has been before observed. As to his revenues, these, like the revenues of the other great men, consisted chiefly of the produce of his own estate, of that share of the conquered land, which at the first division fell to him, amongst the rest of his brethren, as a private member of the community: But besides this, towards the better support of that high dignity which his country had conferred upon him, a certain proportion of the public fines, imposed in those days for almost all crimes which could be committed, was allotted to his use: add to all this those rents, which were annually paid him by the tenants of the crown-lands, consisting altogether in hay, corn and other provision for the use of his household ³. — These seem to have been the great branches of

where Baldred king of Kent had given the Mannor of Mallings to Christ-Church in Canterbury; but because the chief men of his kingdom had not consented to it, it was revoked; until King Egbert afterwards, by consent of his Wittenagemot, made a new grant thereof—*Prynne*, as above p. 51. will furnish us with other instances of this sort. — It was upon the strength of this evidence, that in the account of the King's revenue, I have given him an estate of private inheritance distinct from the lands annexed to the crown, that is, from those lands which usually went with the generalship or kingdom itself: otherwise, the king would in some respects be worse off

of the King's revenue, the only means he had of supporting the dignity of his character ; for as to the payment of the army he commanded, this did not at all belong to him ; every man then served his country without hire, or the expectation of any other reward, than his just share of the booty which might be acquired. If therefore it be an undoubted maxim that power results from, and always follows property, we have the most convincing argument before us, that the power of our old Anglo-Saxon Kings could not possibly

off than the rest of the people ; for they certainly might alienate their estates as they pleased ; whereas, on supposition that the King had only the crown-lands, as we now call them, he could not. Besides, when Hengist first divided Kent upon the cession of Vortigern, he could not then have any very great expectation of devolving his power to his son ; there is no question therefore, but he had a certain portion of land set apart for himself and family ; tho' the tumults which followed gave him an opportunity of settling the kingdom itself upon his descendants. 'Tis probable therefore that, in all their subsequent conquests upon the poor Britains, there were two parts set aside for their supreme officer, one as he was King, another as he was a member of the community, and like the rest of his brethren, had a family and posterity to provide for. — As to the power of giving or conferring titles upon the members of the state, this likewise was unknown in the early ages of the Saxon empire. Ealdorman seems to have been the first, and indeed the common title of all officers whatever, both high and low.

A title

bly have been very great, as their income was so inconsiderable.

75. With so much skill and wisdom was the good government and happiness of each particular kingdom of the Heptarchy provided for by our brave ancestors; with so just a temperature was the power of the prince balanced by the constitutional rights, the fundamental privileges of the subject. But this was not all; their polity was still more extensive, and their care for their common weal more universal. For as the whole Anglo-Saxon

A title very agreeable, and accordingly first assumed from that age and experience, which alone could recommend to places of trust and command in those days. See *Spelm. Gloss.* ALDERMANNUS. To divide the title from the office was an invention of later times, to create dependancies, and seems to have been first practised about the latter end of the Anglo-Saxon period. For we have reason to think, that about that time there were some merely titular Thanes, as well as Ealdormen.—As to the term *Lord* this came in with the Danes and was common at first to every master of a family, to every one who gave bread and other provisions to his servants and dependants, for that is the true import of the word.— There are instances indeed of the making of knights in the Anglo-Saxon times, but this was not the particular privilege or office of the King, but of the clergy. Even as low down as the Norman times, we read of William Rufus being made a knight by the archbishop according to the ancient custom. See *Hody's History of Convocations.* p. 162.

• Vid.

Saxon nation, however dispersed up and down thro' different states, were all countrymen and brethren, all embarked in the same common cause, the conquest of Britain, and consequently all equally concerned to withstand the common enemy, and to support each other in their new acquisitions: hence they conceived it necessary, according to that primitive plan of government handed down to them from their forefathers, to establish a constant and mutual correspondence, to assist and act in concert with each other, upon every great and pressing occasion, upon all such occasions as might any ways concern the good of the whole nation in general. — To this end therefore, as the particular members of each kingdom were wont to meet together in their Wittenagemots, to consult and provide for the welfare of their respective states: so, in like manner, does our ancient history furnish us with numerous instances of a still larger and superior assembly, a *Pananglicum* as we may call it, or general assembly of all the seven kingdoms

¹ Vid. *Seldeni analect. Anglo-Britan.* p. 918. Ed. Wilkins. Conspicuum in isto septenario plerumque fuit unitatis dominium.—Quorum unusquisque, prerogativae

kingdoms meeting together, and advising with each other upon all great and extraordinary emergencies. In this grand assembly, therefore, wherein the whole nation was united into one society, and rendered as it were one state and one uniform body, the common and general concerns of the whole Anglo-Saxon people were debated and transacted; all matters of variance between particular states determined and reconciled, and such laws enacted, as might be obligatory to the whole union or confederacy; here likewise was war proclaimed, or peace made with the common enemy, each particular kingdom's quota or contribution of men and money, towards promoting any public expedition, settled; here likewise, according to ancient custom was the monarch, as he is usually called, or commander in chief of all the united armies of his country elected; for that such a supreme officer there now was in England, as well as formerly there had been in Germany, almost every page of our old history evinces¹.

76. Now as to the constituent members of this

tivae quasi nota, titulo regis gentis Anglorum insigniebatur. I shall here present the reader with a series of these Anglo-Saxon monarchs, according to the time of

this general council of the whole Anglo-Saxon nation, there is very little room to question, but that they were, in the main, the same with those who composed the Wittena-gemots of each particular kingdom of the Heptarchy, tho' perhaps, for the sake of private conveniency, deputies might be sometimes allowed, or representatives chosen and appointed by the landholders themselves for this purpose. For what probable reason can be assigned, why we should suppose any difference between these councils in this respect, when we find them, in fact, so much alike in all others? What therefore the county-meetings were to the Wittena-gemots of each particular kingdom, the same relation did these latter bear to this universal assembly of the whole

of their election, as near as it can be fixed with any tolerable degree of certainty. See *Rapin's History*, Vol. 1. Fol.

A. D.

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|----|------|------------|--|
| 1. | 449. | Hengist, | King of Kent. |
| 2. | 492. | Ella, | King of Suffex. |
| 3. | 508. | Cerdic, | King of Wessex: he was elected monarch some years before he assumed the title of King of Wessex. |
| 4. | | Cenric, | King of Wessex. |
| 5. | 560. | Ceaulin, | King of Wessex. |
| 6. | 593. | Ethelbert, | King of Kent. |

whole nation: like different stories of the same edifice, however they might vary from each other in their height, or in some other smaller circumstances, yet were they all built upon the same common foundation, the mutual independance and equality of every native freeman of the nation. The supreme power was ever lodged in the collective body of the free proprietors of land, and however they might sometimes please to part with it for a time, where their common interests so required, yet did it ever devolve to them again in the dernier resort. — As to the Monarch himself therefore, we cannot reasonably imagine that his authority, or peculiar privileges were originally greater with regard to the whole nation, than those of each particular prince

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|-----|------|------------|--|
| 7. | 599. | Redowald, | King of East-Anglia. |
| 8. | 624. | Edwin, | King of Northumberland. |
| 9. | 634. | Oswald, | King of Northumberland. |
| 10. | 656. | Ofway, | King of Northumberland; after
it had been vacant ten years. |
| 11. | 670. | Egfrid, | King of Northumberland. |
| 12. | 686. | Cedwalla, | King of Westex. |
| 13. | | Ina, | King of Westex. |
| 14. | | Ethelbald, | King of Mercia. |
| 15. | 757. | Offa | King of Mercia. |
| 16. | 796. | Egfrid, | King of Mercia. |
| 17. | 796. | Cenulph, | King of Mercia. |
| 18. | 819. | Egbert, | King of Westex. |

P

prince were with respect to that state, over which he was appointed to preside. He was Generalissimo, or commander in chief of the united armies of the whole nation, and president of that great and universal assembly, we have just now been taking notice of. It was the still-growing ambition of these monarchs, and their labouring to assume more power than they were warranted by the ancient customs and laws of their country, which became the fundamental occasion of those almost-continual civil wars which raged between the several kingdoms of the Heptarchy. There is something so strangely intoxicating in the possession of large power, that even the wisest men are hardly sufficient so to exercise it, as that it may neither injure themselves, nor be prejudicial to the due rights of other people.

77. I had no intention, when I first sat down to write this Essay, to take the least notice of our ancient ecclesiastical constitution, but finding it ready drawn up to my hands with great accuracy and judgment, as well as conciseness, by that very learned Knight, whose works I have so often had occasion to mention, I don't at all doubt but but the reader will easily excuse me, if I here

here transcribe it for his perusal. “ The
 “ *Estate ecclesiastical* was first divided into
 “ provinces; every province into many
 “ Bishopricks; every Bishoprick into many
 “ Arch-deaconries; every Arch-deaconry
 “ into divers Deanries; every Deanry in-
 “ to many Parishes. And all these com-
 “ mitted to their several Governours, Parsons,
 “ Deans, Arch-deacons, Bishops and Arch-
 “ bishops, who, as subordinate one to an-
 “ other, did not only execute the charge of
 “ these their several portions, but were ac-
 “ comptant also for the same to their supe-
 “ riors. — The *Parson*, as *ima species*,
 “ was to hear and determine the breaches of
 “ God’s peace, of love and charity within
 “ his parish; to reprove the inordinate
 “ life of his Parishioners; and tho’ he could
 “ not strike with the ecclesiastical sword,
 “ yet might he shake it against them, by
 “ enjoining notorious offenders to contrition,
 “ repentance, satisfaction; and sometime, by
 “ removing them from the blessed Sacra-
 “ ment. — The [rural] *Dean* was to take
 “ cognizance of the life and conversation of
 “ the Parsons and Clergymen of every parish
 “ within his Deanry; to censure breach
 “ of church-peace; and to punish inconti-

“ nent and infamous livers by excommuni-
 “ cation, penance, etc. And because there
 “ could be no breach of the King’s peace,
 “ but it must also break the peace and uni-
 “ ty of the church; the *Bishop’s Dean*, in
 “ whose Deanry the peace was broken, had,
 “ in some cases, ten shillings for his part of
 “ the mulct, or fine thereof, as appeareth
 “ LL. Ed. Conf. cap. 31. — The *Arch-*
 “ *deacon*, drawing nearer to the Bishop,
 “ drew the more preeminence from him,
 “ and was his coadjutor in the ordination of
 “ clerks, having a superintendant power over
 “ all parochial Parsons within every Deanry
 “ of his precinct. — The *Bishop*, as the
 “ greatest orb of the diocess, had jurisdiction
 “ and coercion thro’ the same, in all ecclesi-
 “ astical causes, and on all persons, except
 “ Monasteries exempted, [which were very
 “ few before the conquest; the greatest part
 “ of the charters produced in proof of these
 “ exemptions during the Anglo-Saxon rule,
 “ being very justly suspected of forgery.] “ and
 “ for this purpose had two general sy-
 “ nods in the year, wherein all the cler-
 “ gy of his diocess assembled for determi-
 “ ning

“ ning matters touching the church as well in
 “ faith, as in government. [These synods
 were regularly kept up in the diocess of
 Norfolk, ’till the civil wars brake out in
 Charles I. time.] “ But the *Archbishop* (to
 “ bind up this golden faggot in the band of
 “ union and conformity) comprehended all
 “ the Bishops of his province *sub pallio suae*
 “ *plenitudinis*, or *sub plenitudine potestatis*;
 “ having supreme jurisdiction to visit and re-
 “ form in all their diocesses whatsoever was
 “ defective or omitted — This was the mo-
 “ del of the church policy: according to
 “ the steps whereof the *State temporal* did.
 “ likewise take her lineament †.”

78. So regular and uniform, so perfect-
 ly consistant in all its parts was the system of
 the ancient Anglo-Saxon government: each
 family, each province, each state, the univer-
 sal good of the whole nation was studi-
 ously and fully provided for, was most strong-
 ly fenced and secured against all attacks, ei-
 ther from foreign, or, those no less dangerous,
 domestic foes. And, if we may credit the voice
 of our oldest history, very punctual and exact
 were our ancestors in the impartial distribu-
 tion

† *Spelman's Remains*, p. 50.

tion of justice, and equally solicitous in promoting every thing else, which might any way tend to advance the public happiness; ambition, luxury, covetousness, and an unwarranted love of ease and pleasure, had not yet triumphed over their zeal for the common freedom, had not corrupted their minds, and debased that generous affection for their laws and constitution, which had hitherto influenced and governed all their actions. And however, after the entire conquest of Britain, full of courage and enflam'd with mutual jealousies they might quarrel one amongst another for the preheminance, however their monarchs might endeavour to enlarge their power, and extend their prerogatives, yet do we not find, that they ever so far succeeded in their illegal attempts, as to be able to introduce any considerable and lasting innovation in the fundamentals of the constitution. —Nor is there, indeed, the least appearance, that the case was any ways altered after the union of the Heptarchy under one head; the very same plan of government now took place, and subsisted in the whole state, as had been formerly established and observed in each particular kingdom. Egbert indeed, after this revolution, might command

mand more numerous armies than he was wont, his revenue, and consequently his influence, might be somewhat larger than before, but I believe it would be very difficult to prove, that he enjoyed any more real power, or was in any respect more exempt from the observation of the customs and laws of his country after his conquests, than he was whilst he remained only King of Wesssex.

79. But at length the perpetual invasions of the Danes broke thro', and for a time overturned this regular and beautiful order of government. Amidst the hurry and distraction of a defensive war, and the continual ravages of a merciless and cruel enemy, how was it possible for the laws to be duly executed, justice impartially administered, and the milder arts of peace and social life to be encouraged and flourish? no wonder therefore, that during the perpetual noise and confusion of war, the still voice of the constitution was no longer heard, that disorder and licentiousness every where reigned, and that, as an addition to all its other miseries, the whole nation was overrun with robbers, and vagabonds; so that those who had the good fortune to escape the sword of the Danes, had a no less frightful prospect

of danger still to go thro', from their own lawless and vagrant countrymen: wretches who, taking advantage of the public troubles, committed all manner of crimes with impunity, their poor and mean condition of life, and the difficulty of knowing where to meet with them after the commission of any offence, sufficiently screening and protecting them from the avenging hand of justice. Whilst the commonwealth was in this languishing and desperate condition, the great Alfred arose, and by a surprising turn of affairs, and an amazing series of success, which nothing but the most consummate valour joined with the most wise and prudent conduct could possibly have brought about, not only to put a stop to the ravages and the invasions of the Danes, but restored likewise the broken constitution to its primitive integrity, and, as far as was possible, provided an effectual remedy for the future against those internal disorders, which had

¹ Vid. not. ad *Spelman vit. Alfred.* p 77. Rex Alfredus, inquit Ingulphus, totius Angliae pagos & provincias in comitatus primus omnium commutavit. — Hujus testimonio, adds our annotator, omnino credendum arbitror — non quod ante ipsum Alfredum comitatus omnino non fuerint; fuisse enim satis manifestum est; sed non quales ipse instituit. Non enim erant regionis portiones certis limitibus terminatae, sed comitatus

had so mightily prevailed during the late Danish wars.

80. To this purpose therefore, by the advice and consent of his great council, he divided the whole kingdom into so many distinct shires or counties, or, more properly perhaps, determined and fixed, the precise boundaries of those counties, which the confusion of former times had rendered, in some sort, arbitrary and uncertain¹. These counties, the largest of them, he again subdivided into Trythings or Laths as they are sometimes called, these into hundreds, and these again into Tythings — so that all the inhabitants of the kingdom in general, those of the highest quality only excepted², were obliged to belong to some one or other of this last and lowest division; and such persons as could not show to what Tything they belonged, were looked upon as vagabonds, and, as such, denied the protection of the laws. And that nothing for the future might be wanting to the effectual preservation as well

as

tum jurisdictiones, five territoria iis pro arbitrio Regis subjecta, & nunc quidem majora, nunc minora, pro Regis favore, vel ipsius comitis merito. sic in comitatu hodierno Lincolnensi legimus comitem Lincolnensem, Lindiffensem, Gainorum. — Ab Alfredo Comitatus non ambulatorii, & pro Regis arbitrio mutabiles, sed tum numero, tum limitibus certi.

² *Tyrrel's Introduction*, p. 81. "All the privilege that

as restoration of that peace and quiet, which had been so long banished the realm, every particular householder was moreover obliged to answer to the community for his wife, and children under fifteen years of age, as also for his servants and more immediate dependants. So that the several householders being in this manner responsible for the good behaviour of their families; the Tything for its householders; the Hundred for the Tythings; the Trything for its hundreds; and the whole county for the Trythings, every one was under a sort of necessity to keep a watchful eye over his neighbour's conduct, every one was obliged to consult the public good, by taking all possible care, that the speediest punishment

“ that noblemen and gentlemen had above the common
 “ men, was, that they were not bound one for another,
 “ so as to be part of any Deanery or Tything; but
 “ each of them was head of his own Friburgh, and his
 “ family was, as it were, a distinct Tything of itself.”
 See to this purpose *LL. Canuti*, cap. 50. *LL. Edwardi Confess.* apud Wilkins, p. 202, 203, etc. and *Britton*, cap. 29. They were not the nobility in general, I suspect, who were exempted from the necessity of being enrolled in one of the Tythings, but such of them only, who were members of the King's Curia, or lesser Senate, and consequently could only be called to an account, and tried before their Pares or equals, their brethren of the same assembly.

! In the early Norman times [and consequently before

ment should be inflicted for every breach of the laws: it was hardly possible for a malefactor to hope to escape with impunity, whilst it was made the interest, as well as the business of so many different people to bring him to justice.

81. For let it be remembered, that each of these more minute divisions of the kingdom had its separate court of justice, to which its respective members were all accountable as often as they were called upon in a legal manner¹, together with a governor or president at their head, chosen by and from among themselves. In the tything-court all such lesser matters of dispute as might arise between the several masters of families of the same tything were heard and decided, and every thing else, which concerned

fore them] the trials for lands and goods in the County, Hundred, [Tything,] and Lord's courts were very considerable, and for good quantities of land, and the suitors to the Hundred and County courts were as considerable. All men, especially of the laity, of what quality soever within the Hundred, owed their attendance there, as appears by old writs. *Brady's Preface to his History*, p. 51. So that tho' the nobility, as they were called, or members of the domestic senate, were not obliged to be enrolled in any of the tythings (their families themselves being looked upon, in the eye of the law, as so many distinct Tythings) yet did not this excuse them from their personal attendance in the Hundred and County courts. In this respect they were still regarded by the law, in the same light as the other common Freeholders.

² *Tyrrel's*

cerned their common interest, consulted and provided for. But where the point in question was of a higher nature, or lay between persons of different divisions, in such a case the matter was carried into the hundred, trything, or county-courts. Let it however be observed, that appeals lay from each of these inferior to its superior court, if either of the parties thought himself aggrieved by the determination: and from them all, in certain cases at least, sometimes to the King's court, and sometimes to the great council or Witte-na-gemot². This subdivision of the kingdom by Alfred into so many minute republics

² *Tyrrels Introduction*. p. 85. "The subject must needs find great ease in having justice administered to him, in smaller actions, in the court of Decenary or Tything, even at their own doors; or else in appeals or greater actions at the court of the [hundred or] Trything or Lath; from whence they might remove it to the county court; and, if they thought themselves aggrieved there, then might they bring it before the King himself." See likewise *Not. ad vit. Alfred p. Spelman*. 76. Appellationes etiam ab hisce comitiis (comitativis sc.) sicut et controversiæ majores, et quæ vias quatuor publicas, alveos fluviorum majorum, vel diversos comitatus spectabant regi in magnis suis consiliis dijudicanda proponebantur.

³ *Lambard's Perambulation of Kent* p. 27. It is to be noted, that that which in the West-country was at that time (and yet is) called a tything, is in Kent termed a Borow, of a Saxon word which signifieth a pledge

lics, or Tythings, or Burrows, as they were sometimes called³, with each its Alderman Prefident or Judge at its head, seems to have yielded the first occasion to a very easy and natural innovation in the ancient constitution, an innovation however, which has been since attended with many great and notable consequences—it seems to have given the first hint of that method, which has now prevailed amongst us for so many ages, of sending representatives to the Wittenagemot; but this is a point which will demand our more precise discussion⁴.

82. Hitherto every Anglo-Saxon landholder;

or surety: and the chief of these pledges, which the Western-men call a Tything man, they of Kent a *Borfholder*, that is to say the most *ancient* or *elder of the Pledges*. See many other notations of this word in *Brady's Treatise of Burroughs*, at the beginning: where, after having quoted sundry authors, he concludes thus, “*Burghs* may truly be called places of safety, protection and privilege.”

⁴ See *Mr. St. Amand's Essay on the legislative power of England*—It may not be improper to observe in this place, that tho' in conformity to the general opinion of our historians and antiquarians, I have considered Alfred as the first author of this division of the kingdom into Tythings and Hundreds, yet am I really of opinion, that this truly great prince did very little more in this matter, than what he did likewise by the counties, i. e. restore the ancient constitution, rather than introduce a regulation quite new and unheard of by his subjects before.

Had

holder; every one who had either been an original sharer, or by donation, or industry had acquired a property in the land of the kingdom, (at least to a certain quantity) had
an

Had the original polity of these Northern people been more accurately preserved, I don't doubt but we should have found likewise that they brought this with them, together with their other customs, from Germany. It seems indeed naturally, yea necessarily, to have resulted from the manner in which they were wont to model their army. For in their military expeditions, as the forces of every province or tribe always marched and fought by itself, so were these forces, 'tis not improbable, regularly divided into so many distinct corps of ten, a hundred, and a thousand men, each division having its own proper officer at its head. — Upon their settlement therefore in any new country the land would regularly be apportioned into its distinct provinces or shares, first, that for the whole tribe, which would regularly become what we call, a shire or county with its prince at its head; again, out of this larger portion, each thousand would have its lot by its self, and of course its leader in war would become its governor in peace; the land assigned for the thousand, would next be divided into hundreds, and these again into portions for ten. — Thus would every thing be soon resettled without disorder and confusion; the colony would be equally prepared for peace or war, every man would know his own station, the president in peace would become their leader in war; and as he was generally the eldest man amongst them, we find him accordingly distinguished by the title of the Ealdorman (the old man) of the county, the trything, the hundred, and the tything. — Now had this constitution been first invented by the wisdom of Alfred, we should have found it subsisting only in this kingdom; but if it is one of the primitive Germanic constitutions, as I believe it was, then may we expect to trace the foot-
steps

an undoubted right, and seems, indeed, to have been obliged under some penalty, to attend the service of the public in its Wittenagemots; as 'tis certain he was obliged to be present

steps of it likewise in other the conquests of that nation. — and accordingly so we find it to be in fact: For tythings and hundreds, both name and thing, were undoubtedly known in Italy, long before the days of Alfred, as appears from the old charters produced by *Muratori, Antiq. Ital. med. aevi Diff.* 10. p. 519. — Sed quid de *Decanis* supra non semel memoratis dicendum? Iis addo etiam *Centenarios*, quorum munus itidem familiare olim fuit. Du Cangius, in glossario latino, *Decanos* a Graecis appellatos esse ostendit, *qui decem militibus praessent*. Decuriones apud Latinos ii dicebantur; centenarios vero, qui centuriae militum praefecti erant. Tum addit apposite ad rem nostram, utrumque hominum genus sub *Langobardis* et *Francis* fuisse *Judices minores*. Hoc est, *Decani* per per decanias, sive 10 familiis jus dicebant; centenarii vero, per centurias, sive centum familiis. Our author then goes on to quote passages out of *Walafridus Strabo* and other authors to the same purpose, afterwards he thus proceeds— *Quibus ex verbis inferri posse videtur populum in agro, sive in castellis ac pagis habitantem, divisum olim fuisse in centenas sive centurias familiarum; has autem rursus divisas in Decenas, sive Decanias; illis centenarii, istis decani praerant; utriusque jus populo suo in minoribus causis dicebant. Haec quoque sententia est Wendelini in notis ad legem Salicam, imo et Johannis Jacobi Chiffletii in in glossario salico, qui haec fusius illustravit. Quod certum puto, a Decanis ad Centenarios appellatur: ab his ad comitem sive judicem civitati praefectum. Primus autem qui regionem civitati subjectam in centenas et decanias divisisse creditur, fuit Chlotarius 2. Rex Francorum circiter annum Christi 595. Tho' this be suffi-*

present in the hundred and county-courts. This could not but be looked upon in those early days of simplicity, before avarice and ambition had got the better of the plainer dictates of nature, as a great hardship and inconvenience, as a burthen scarcely to be born, especially by those whose habitations were situated in the more remote parts of the kingdom, or whose original possessions either thro' the misfortunes of war, the numerousness of their families, or by other accidents, such as must frequently happen, had been much diminished. Our ancestors, indeed, whilst they lived in their native country, and had every year a certain portion of the public territory assigned them, a portion sufficient to support them in a manner suitable to the character they were likely to sustain, were of course very little solicitous about the management of their more private and merely domestic concerns. Above all sorts of business themselves, they had then little else to do

sufficient to answer Alfred's claim of being the first inventor of this division, yet, as I have said before, 'tis far more probable, that all these nations, Franks and English and Lombards, brought it with them from their common mother Germany. *Muratori* p. 522. *Ceterum adhuc in agro Mutinensi, Ferrariensi, et Mantuano*

do but to indulge their natural inclination for war, and to attend the general assembly of the whole nation together with the rest of their brethren, as often as either custom, or any particular emergency might demand their presence; their private interests were then, in the most literal sense of the words, inseparably united with those of the nation. But in England the case was very much altered in this respect; the property of the land, now no longer temporary and vague, was become fixed and settled, and consequently, what was once lost or parted with, was not very easily to be recovered again.

83. Tired therefore and worn out by their long and ruinous wars with one another, as well as obliged to give place to the continual attacks of their fiercer enemy the Dane, and by these means many of them deprived of a great part of their ancient possessions, it became absolutely necessary for them all, if I may say so, to turn better oeconomists for the future, and to be
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no superest multis in locis vocabulum *Degagna*, quod nonnulli in *Tegagna* immutarunt; this term has not only the same import, but comes very nearly in sound to our word *Tything*. We have frequent mention made in the Capitulars, and other the old laws of the Germans, of the *Centenarius*, the *Placitum Centenarii* etc.

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more careful and diligent, in the skilful management of what yet remained to them, than they had formerly been. But how much was the course of their industry lett and interrupted, by their being called upon to attend the Wittena-gemots twice in a year at least? this they could not but soon experience to be extremely prejudicial to their domestic affairs. There is no question therefore but the generality of the nation, the more minute landholders especially, would very gladly come into any measures, consistent with that state of liberty they were born in, and which they had hitherto inviolably preserved, to free themselves from what they could not but regard as a very heavy and sore burthen upon them. The late division, or restoration rather (as I think it) of the ancient division, of the kingdom by Alfred into tythings would easily suggest to them

¹ But if Tythings etc. were known before Alfred's time, might not this method of deputation likewise be in use before his days? — I cannot say that it was never practised, till the period where I have now placed it; but there really seems to have been no occasion for it till that time, or even opportunity of practising it. The kingdoms of the Heptarchy were each of them so small, that all the landholders might easily be present in person at the Wittena-gemot: there was likewise land enough for the original conquerors to live at their ease, without the necessity of perpetually attending their private busi-

them a most commodious method of relief in this respect. For since 'tis manifest from history, that each of these smaller bodies or societies annually elected one of their own members as a judge or head to preside over them, what more easy or natural than to depute this same person, to whom they had already by their voluntary choice given the precedency amongst themselves, what more natural, I say, than to depute this person in their stead, to represent them in the Wittena-gemot, and to take care of their common concerns in the public debates and resolutions? Nor can we, I think, make the least question of the King's readiness to acquiesce in such a delegation, as these meetings would hereby become less numerous, and consequently more manageable¹.

84. Were the Wittena-gemots then, may it be asked, after this practise once began to take

business. Very soon after the union the Danish invasions began, and consequently the whole Anglo-Saxon polity continued much unsettled till the reign of Alfred; so that, all the circumstances of the times thoroughly considered, it will be thought, I believe, that I have not much erred in placing the beginning of our sending representatives to the Wittena-gemot towards the latter end of king Alfred's reign — I must once more refer my reader to Mr. *St. Amand's Essay on the legislative power*, who has particularly considered this matter.

take place, made up only of these deputies from the several tythings? This I would by no means be thought to insinuate; for as the original design of these delegations could be only to ease the remoter landholders, the bulk or meaner part of them from an attendance, which was now experienced to be detrimental to their private affairs; the great officers of the kingdom, the Earls, the Bishops, the Abbots, and, in a word, all those the affluence of whose circumstances gave them more leisure, and the nature of whose employments in the state continually exercised them in the knowledge and practice of the customs and laws of the realm, all these, I say, as formerly, so did they still continue undoubted members of the great council; they had no plea to offer for their absence; for as they were not enrolled in any of the tythings, they had not, properly speaking, any one to represent them. Nor, indeed, had the other landholders, as yet, so entirely parted with their ancient privilege, but that they might all, and did all frequently appear in person in the Wittenagemot as formerly, if the occasion was of such a nature as to seem to require their presence, notwithstanding the method which now began to prevail of sending
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ing one or more of their tything to be their deputies ; as may be concluded from the great numbers, which we read of as being present at some of these meetings. But so defective are the annals of those times, that 'tis impossible to say with any certainty, how far this method of appointing their representatives was regularly observed by our ancient freeholders, or what limitations were applied to it.

85. But, what is of the greatest importance towards well understanding the history of our civil constitution in general, may we not go one step farther still, and by a parity of reason conclude, when tradesmen began to coalesce and form trading communities, societies, or burrows, that, as these were by the bounty of the King and other great men endowed with land, and governed exactly in the same manner as the landed-burrows or tythings were, that is, by their own proper officers chosen from among themselves, may we not, I say, with a good degree of probability conclude from hence, that these trading magistrates likewise, whether Greves or Aldermen or by whatever other title distinguished, were permitted to appear for their burrows, and, together with the rest of the

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kingdom,

kingdom, to take care not only of the general, but likewise of their more particular concerns in the Wittena-gemot, or parliament as it was afterwards called by the Normans ¹? That such burrows there are at present, which enjoy this high privilege as it may now be well called, is certain; the great question therefore is, upon what occasion, and about what time these trading Burrows, thus privileged, first began to be formed? Our most learned antiquarians, I am sensible, are as much divided upon this point, as upon any other in all our English history. For my own part, however, upon the most careful perusal of the arguments which have been alledged both for and against their antiquity, upon diligently reflecting upon the nature of the old English constitution, and upon a serious consideration of the circumstances of the times, I cannot but persuade myself upon the whole, that there is sufficient evidence to conclude, that the original of these trading socie-

¹ *Grotius*, in his treatise of the antiquity of the Batavian commonwealth, observes it as one great difference between the Batavi, and other the ancient Germans: Quod Germani sine ullis urbibus vicos tantum habitabant; Batavis vero urbes conditas, statim ex quo insulam occuparunt, credibile est. — Quod si ita est, illud quoque consequitur, cum oppida sine magistratibus esse non

societies can be found only in the days of Alfred, and that from that period they began to enjoy the abovementioned privilege.—But this is a matter of too great importance to be so lightly dispatched all at once, let us therefore proceed to examine it with more accuracy.

86. The Anglo-Saxons, as has been already frequently observed, were formerly extremely averse to trade; they looked upon it as beneath the dignity of a soldier to condescend to practise the mechanic arts; none but a slave, agreeably to their notions of things, would submit to do the work of other people. Necessity however, which makes even the harshest things palatable, at length got the better of their natural inclinations, and forced them into a very different way of thinking and acting. For as lands were now appropriated to private persons, and consequently become estates of inheritance, it must needs happen in a long tract of time, thro' a variety

non possint, eos magistratus in publicis conciliis, juxta proceres, maximam habuisse auctoritatem, & plebem (the commonalty of the town) agro colendo, pascendo pecori, piscationi quoque et mercaturae, & hinc cohaerentibus opificiis intentam libenter curam reip. his, quos diximus, magistratibus reliquisse.

! Spelman's

riety of unavoidable accidents, that many even of the best and noblest families, the descendants of the original conquerors themselves, would be reduced to great want and distress, unless they betook themselves to some business for their support; for beg they could not, without throwing themselves out of the protection of the laws, and being treated accordingly as vagabonds. Such in particular was most manifestly the case of those great numbers of our brave ancestors, who, having first settled themselves in the north and middle of England, had the misfortune to be entirely deprived of their houses and possessions in the Danish wars. These all naturally fled for refuge and protection into Wessex, the only kingdom where those merciless plunderers had not yet been able to fix a firm footing. But how were these poor creatures, thus deprived as they were of their own homes and estates, to maintain themselves in their asylum? Protection, indeed, they had reason to expect from their generous countrymen, but no hopes could they entertain, that a new division of the land would be made in their

¹ *Spelman's Life of Alfred*, p. 114. Postremo Rex secum reputans, quantum regno detrimentum contigerit inopia artificum et fabrorum, aequè ac eorum qui magis ingenuas artes professi sunt; homines ejusmodi unde-

their favour. Nor was there any standing army wherein they might be admitted to serve; for as a treaty of peace had been concluded between Alfred and the Danes, the public forces were immediately dismissed to their own homes. Trade therefore was the only means left, from whence the greatest part of these unhappy wretches might hope to draw a comfortable subsistence in this now well-regulated kingdom; and to betake themselves to this, our history assures us, they were especially encouraged by that truly great prince, under whose more immediate care and protection they had now thrown themselves. For this wise King knew too well the immense advantages of trade to any kingdom, not to do every thing which lay in his power in order to promote its progress and advancement amongst his subjects. To this purpose therefore he invited over foreigners from all parts of the continent, that they might instruct his people in those arts and sciences, with which they had hitherto been but little acquainted: he encouraged them to
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undequaque ad se arcessivit. Adeo ut cum per alias gentes publicaretur quid requireret, qualique munificentia usus esset versus eos qui quavis facultate pollerent, ad aulam ejus cito convolarunt omnium studiorum advenae,

come to him by large rewards, he gave them extensive privileges, he endowed them with land to carry on their designs, and, that no motive might be wanting to call forth and excite all their diligence and application, he caused a law to be made, which conferred the honour of King's-Thane upon those merchants, who should cross the sea three times at their own expence. Here then must we lay the first foundation of our English trade, at this time were sown the seeds of that commerce, which however small in its beginning has since grown up, and extended its branches far and wide, overshadowing the whole kingdom with its benign influence.

87. But there is another argument, which will not only induce us to place the beginning of our British trade about this time, but will lead us likewise to fix the origin of those trading-burrows or societies, which are the more particular subject of our present enquiry, to the same period. For 'tis, I think, universally

venae, Galli, Franci, Aremorici, Britanni, Germani, Frisones, Scoti, Cambro-Britanni, aliique quam plurimi, quos dum regia benignitate, pro suis quemque meritis excepit, eadem opera patriam civibus in omni artium genere peritis instruxit: illiusque, eorum ope instructae,

versally agreed, that Alfred divided the whole kingdom into so many landed-burrows or tythings, (no matter whether he was the first who did so, or whether he only renewed an ancient constitution, which, thro' the confusion of past times, had never been properly executed) and that all the land-holders in the nation were obliged to belong to some one or other of these little communities, some few only excepted, whose numerous families were regarded in the eye of the government as distinct tythings of themselves. By this means, therefore, every landholder became a security to the state for the good and orderly behaviour of his children, servants, and tenants, as each tything was of its respective members. But let it be observed, that if we stop here, we shall soon perceive a manifest defect in the constitution itself. For this division would by no means comprehend all the members of the commonwealth. What then was to be done with those unhappy persons, whom misfortunes, or other accidents in life had reduced

instructae, defectus ac squallores plenius atque maturius deterfit ac supplevit, quam tantulam unius hominis vitae portionem unquam fuisse effecturam quivis arbitratur.

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duced to the necessity of having recourse to trade for their support? For as they had no estates in land, the greatest part of them at least, they could have no pretensions for being included in the landed-tythings. Nor could they be looked upon as part of the families of the great men; this their natural independance and equality one among another exempted them from; for this there could be no pretense; they had not lost their native liberty, tho' their misfortunes had deprived them of their ancient possessions. Were the tradesmen alone then to be left at their own discretion under no legal restraint, and was the public to have no security for their good behaviour, as it had for that of all its other members? or, perhaps, more properly may it be urged, were they alone, in the eye of the law, set upon the same footing with vagabonds and vagrants; for as such, we are told, were all those regarded who were not enrolled within one of the tythings? the very supposition is weak and absurd.

88. May we not therefore venture to conclude,

† *N. Bacon's Discourse of the laws, etc.* p. 50. 'Tis certain they had a court of Justice among them under one magistrate or head, whom they called Alderman; this

clude, that when the great prince, whom we have so often had occasion to mention, divided the landed part of the kingdom into its tythings, he at the same time likewise took an equal care of the commercial part, of that part more especially, which had grown up, and now began to flourish under his own immediate nurture, inspection, and good management? may we not by a parity of reason conclude, that he would endeavour to unite the dispersed merchants and tradesmen together, and form them into regular bodies, societies, or burrows as he had done the landed men? This would not only be an especial furtherance, to what he had so much at heart, the cultivation of trade and the mechanic arts amongst his people, but by this means likewise the administration of the whole nation would become similar and uniform, and the same kind of government run thro' the whole; each trading-burrow under its respective officers becoming responsible to the law for the orderly and peaceable behaviour of its several members: — The only question therefore
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this court was at the first holden twice a year, and was in the nature of a Leet with a view of Frank-pledge, [exactly as the landed Burrows or Tythings] as may appear

now remains to be examined, is by what means these little societies first obtained the privilege of sending their representatives to the Wittena-gemot? For tho trade, from its first introduction into this island, was immediately perceived to be of the utmost consequence to its well being, yet does not this alone seem to be a sufficient foundation to entitle its professors to the privilege we are now speaking

appear in the Cases of Dorchester, Circester, and Doncaster, in Alfred's time. *LL. Canut.* c. 44. *Mirroit*, cap. 5. sect. 1.

¹ *Brady, in his treatise of Boroughs*, p. 55. Even after the reign of Henry III. it appears from the sheriff's return of the writs, that the same burrow did not constantly send members to every parliament. 1. For that many times there were no able fit persons for that service to be found in the boroughs at the time of the return, (the choice being always made in those days out of their own body, and not of foreigners and country-gentlemen) and 2. for that boroughs were so poor as they were not able to pay the burgessees their wages or expences.—No wonder, therefore, that in those ancient times we find the lesser boroughs so full of excuses, and so unwilling to send their representatives to the Parliaments. For they could not, in those days, look upon this privilege, as we now term it, in any other light, than as a heavy burthen, than as a fore lett and interruption to their ordinary business, which they should be glad to get rid of at any rate. But would not this reluctance in these burrows, this unwillingness to send their representatives introduce with it great delays in parliamentary proceedings? would it not be attended with much confusion in the administration of public affairs

speaking of. It could therefore be built upon no other foundation, it could be owing to no other cause, I think, than to their being endowed with possessions of land; this alone, agreeably to the genius of our ancient constitution, would qualify them for the enjoyment of this privilege, (if perhaps it might be not more proper to say, it would of consequence throw this burthen upon them¹)
 when

fairs? would it not be the occasion of frequent lets and impediments in the execution of the laws, as it would afford a sort of plea or excuse to such burrows as were not present, for not furnishing their quota of aids, scutage, etc. towards the public service, under the pretense, that, as they had not given their consent to the law, so they were not included in it? And might not this very circumstance, the neglect, I mean, of their proper attendance, yield the first occasion to those writs, which, we are told, began to be issued out in Henry III's time, directed to the sheriffs of each county, commanding them to summon the several burrows within their precincts to send their deputies with full powers to act in their names at the next Parliament, acquainting them likewise with the particular time, place, and occasion of their meeting, that so they might have no excuse at all for their non-appearance? But be this as it will, at whatever time we date the origin of these trading corporations, thus much, I think, is indisputable, that there is very little appearance of reason to conclude, that they were never represented in the supreme council of the nation till the latter end of the reign of Henry III. For how can it possibly be imagined, that the King would have directed his writs to have been issued out to these poor
 Burrows

when nothing else could, no not the concession

Burrows to send their representatives, (for poor many of them undoubtedly were even at that time) unless they had been accustomed to do so in the preceding reigns? The Burrows themselves, 'tis most evident, sought not this honour; on the contrary, they endeavoured to avoid it as a heavy burthen, and would much rather have made an interest to get themselves excused from it; nor would forty or fifty poor members brought up to London, or to any other place where the Parliament was to be held, against their own will and the inclination of their constituents, be of any service to the royal cause: so that it can by no means be construed as a fetch of policy in the King or his council. Had, indeed, all the Corporations or Burrows in England in general been summoned at this time, there might have been some reason to conclude, that it was a novel constitution made to serve a present purpose; but this was not the case; for there are sundry instances to be seen in Domes-day of considerable Burrows in those times, as well as in our own, which never sent their deputies to the Parliaments. Why then are these passed by, and the whole burthen and expence thrown upon many such mean inconsiderable Burrows, as were not able to support the charge? There cannot, I think, be any other reason assigned for this material difference between them, than because these more minute Burrows had of old time been accustomed to send such representatives (by vertue perhaps of the land they had been originally endowed with) and the others not. This is farther evident from the complaint exhibited by the Burrow of St. Alban's against the sheriff of Hertfordshire, that tho' they, *sicut caeteri Burgenses regni ad Parliamenta regis cum ea summoniri contigerit, per duos comburgenses suos venire debeant, prout totis retroactis temporibus venire consueverunt*; nevertheless, that the sheriff of the county *penitus recusavit Burgenses praedictos praemunire*

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much less of any of his subjects³. It was in vain for the King to expect that trade should flourish, unless he furnished those, who applied themselves to this way of life, with all the necessary means of carrying it on, unless he put it in their power to procure themselves proper utensils, assistants, servants, etc. But this could not possibly be any otherways done in those days, when
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probable, was owing to the ballance of property, and consequently of power, so much inclining, as it did, on the side of the members of the Curiae regis, the Pares regni, or lesser senate, as we have above termed it (see p. 182. n. 1.) during the civil commotions in the times of our first Anglo-Norman princes. This greater share of property made the members of this august assembly look upon themselves as of a class superior to the ordinary provincial Barons or Freeholders, and the representatives of the Cities and Burrows, and by degrees to separate themselves from them, and to sit in another room when they were to act together in Parliament. — I would observe one thing farther, before I put an end to this long Note, that there does not appear to have been any formal summons even to the Lords, or Pares regni, before the 49 Henry III. and that for the very same reason which we have already assigned in the case of the Burrows, because they were to come to the Parliament *suo jure*, by prescription, and consequently there was no occasion for any summons. These writs of summons to the Lords, the Freehold- and the several Burrows acquainting them with the time, place, and occasion of their meeting, did not proceed originally from the free motion of the crown, but
 seems

money was so extremely scarce, than by settling upon them estates in land; there is no doubt therefore but this was the very means which the King, as well as the other great men upon whose lands these trading-burrows were first formed, took to encourage the growth of trade amongst their distressed countrymen ⁴. Here then must we place the rise and origin of this privilege; it was

seems to have been forced from it, during the turbulent times above-mentioned.

³ *Temple's Miscellanies*, vol. 2. 254. I am apt to think that the possession of land, was the original right of election or representative among the commons, and that cities and burroughs were entitled to it, as they were possessed of certain tracts of land, that belonged or were annexed to them. And so it is still in Friezeland, the seat from whence our Gothic or Saxon ancestors came [immediately] into these kingdoms.

⁴ Our ancient burrows, 'tis true, most of them, in recompence for the land that was bestowed upon them, used to pay an yearly acknowledgment to their patrons, or a fee-farm-rent, as it was termed, but this does not prove that the land they were endowed with was not properly their own, any more than the acknowledgment, sometimes paid by the Thanes to their lords, prevented their Thaneland from being looked upon as free-land, which we are certain it did not. I believe, indeed, there may possibly be instances produced (as the profit upon trade and commerce was soon found to be very great) of some of our Kings and greater landholders setting up trading towns and societies of their own servants and vassals, and in such a case they

was their being proprietors of land, which gave them an especial right of being present at the Wittena-gemot, which restored them to their ancient privilege of being respected as proper members of the commonwealth, which interested them in the general laws which were to be made, the taxes which were to be levied, and the counsils which were to be entered upon. But as the land with which they were endowed was vested in the whole Burrow or community, and not in any particular person or persons, this very circumstance, together, perhaps, with the similar practise of the landed-tythings at this time, must suggest to them the very method, which
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themselves had all the tolls, customs etc. in their own right; but these are not the Burrows we are concerned with. Again, the Burgeses of our towns, it has been observed, are called in Doomsday the *homines* of the King, or of some other great man; but this only shews whose protection they were under, and is no infringing at all of their civil liberty. For so the Thanes themselves were frequently stiled in those times the *homines* of their lord, but 'tis agreed on all hands that they were nevertheless freemen to all intents and purposes, and as such had a voice allowed them in the Wittena-gemot. — There are some towns in Doomsday, where the Burgeses are remarked to belong, or to be under the patronage of many different Lords. This might arise from two causes, 1. If the land, the Burrow was endowed with, belonged originally to different persons: or, 2. It might be customary for the
great

is still practised at this day, of sending one or more of their body as their representatives or procurators, to appear in their stead and act for them. As the tradesmen were now become a distinct body of men in the commonwealth, distinct both from the proprietors of land as well as the Ceorls, had it not been for this method, they alone had been excluded from the high privilege of giving their consent to laws, which nevertheless they would have been obliged to observe as well as the rest of their brethren ^s.

89. In support of what I have hitherto offered upon this head, in support at least of the great antiquity of these trading societies, and

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great men of those times, upon their manumitting their slaves, to get them admitted into some of these trading Gilds or Burrows for the easier maintenance of them and their families; and consequently these persons would be still stiled the *homines*, or clients of their proper patrons and benefactors.

^s *Petyt's Rights of the Commons*, p. 45. So just and excellent was the ballance of the constitution of our legal government, in preventing any order or rank of the subjects to impose upon or bind the rest without their common consent, and in conserving as it were an universal liberty and property to every individual degree of men, from being taken from them without their consent, as the County Palatine of Chester, ab antiquo, were not subject to such laws, to which they did not consent; for as well before the conquest of England, as after, they had their *Commune Concilium*, or court

of their constant exercise of this privilege of sending deputies to the Anglo-Saxon Witenagemots, may be, and frequently have been alledged the many mean and inconsiderable Burrows, which still send members to our present parliaments: Burrows, however, which have made no figure at all since the conquest, and consequently must have been in possession of this privilege long before that memorable Era. But this argument is set in so full a light by Mr. Lambard¹, that I don't in the least doubt but it will give the reader much satisfaction upon so interesting a point if I transcribe it for his perusal.

“ Now as these written authorities do undoubtedly confirm our assertion, of the continuance of this manner of parliament: so is there also unwritten law or prescription, that doth no less infallibly uphold the same. For it is well known, that in every quarter of the realm a great many Burroughs do now send Burgeses to the parliament, which are nevertheless so ancient and so long since decayed and

of parliament, by authority of which — the Abbots, Priors, Clergy, Barons, Knights, Esquires, and Commonalty, did with the consent of the Earl make or admit

“ and gone to nought, that it cannot be shew-
 “ ed, that they have been of any reputation
 “ at any time since the conquest: and much
 “ less, that they have obtained this privilege
 “ by the grant of any King since the same.
 “ So that the interest they have in parlia-
 “ ment groweth by an ancient usage before
 “ the conquest, whereof they cannot shew
 “ any beginning. — Which thing is also con-
 “ firmed by a contrary usage in the self
 “ same thing. For it is likewise known,
 “ that they of ancient Demesne do prescribe
 “ in not sending to the parliament: For
 “ which reason also, they are neither con-
 “ tributors to the wages of the knights there,
 “ neither are they bound by sundry acts
 “ of parliament, tho’ the same be generally
 “ penned, and doe make no exception of
 “ them. But there is no ancient demesne,
 “ saving that only which is described in the
 “ book of Domesday under the title of *Ter-*
 “ *ra Regis*, which of necessity must be such
 “ as either was in the hands of the conque-
 “ ror himself, who made the book, or of
 “ Edward

mit laws within the same etc. See likewise *King's Vale Royal of England*, p. 9, 10, 11.

¹ *Archaion*. p. 257.

“ Edward the Confessor who was before
 “ him. — And so again, if they of ancient
 “ Demefnes have ever since the conquest,
 “ prescribed not to send Burgeffes to the parlia-
 “ ment, then no doubt there was a parlia-
 “ ment (in effect) before the conquest, to
 “ which they of other places did send their
 “ Burgeffes ².”

90. Thus far this curious and diligent en-
 quirer; and with this so ample a testimo-
 ny, in favour of the opinion I am endea-
 vouring to maintain, might I now put an
 end to this discourse, had I not still some-
 thing farther to offer to the considering reader's
 examination upon the point before us; but I
 will endeavour to be as short as possible. — It
 has

² To these arguments of our excellent antiquarian,
 I beg leave to add another of a similar nature, which,
 I think, does little less than demonstrate, that this
 custom of sending representatives from some of our
 trading-burrows to Parliament was at least more an-
 cient than 49 Henry III. There is still extant, a-
 mongst our old records, a writ dated 28 Edw. I. di-
 rected to the Bailiffs of Beverley, that they should
 pay the two persons, who by vertue of the King's
 summons had attended the Parliament at Westmin-
 ster, *rationabiles expensas suas in veniendo ad ipsum,*
ibidem morando, & inde ad propria redeundo, prout
alias in casu consimili fieri consuevit. They are these
 last words which I chiefly insist upon; for can it possibly
 be

has long puzzled our British antiquaries to account for it, how it comes to pass that the Western counties of the nation, Cornwall, Devonshire, Somersetshire, Wiltshire and Hampshire, for instance, should send so many more of these Burrow-Representatives to parliament than the other, no less rich, populous and fertile, parts of the kingdom, the North and middle more especially? — But may we not, from what has been just now remarked concerning the first rise of these trading-Burrows, return a very easy and ready answer to this hitherto, I think, insoluble question? Nay, supposing our account of the origin of them to be true, it must necessarily have happened, as we find in fact it has happened,

imagined, that the writ would call a practise of little more than thirty years standing (the time between 49 Hen. III. and 28 Edw. I.) by the solemn name of a *Custom*? surely nothing can be more contradictory than this to all our legal notions of this term (in which sense only it can be here understood.) Nothing but continual and immemorial practise can establish a custom, so as to make it the foundation of a legal plea. 'Tis not unlikely, that there were other writs of this kind antecedent to this of 28 of Edward I. tho' they are now lost with multitudes of other of our ancient records. — 'Tis probable, they were of the same date with the first writs of summons, of which we have already taken sufficient notice.

ed, nor could the event easily have been otherwise; these Burrows must be found in the greatest plenty in the kingdom of Wesssex, in those parts of it more especially, such as Cornwall, which were farthest removed from the all-consuming depredations of the Danes, who had now gotten firm possession of more than half the kingdom, and had particularly planted themselves in the Northern and middle parts of it. But how should commerce be able to rear its head and flourish in the midst of fire and sword? In Wesssex it was, where the great Alfred chiefly kept his court; here it was, that his wise regulations first began to take place; to this kingdom the distressed from all parts, all those who had lost their estates, and were deprived of their former habitations by the merciless Danes, naturally fled for refuge and protection; here were they first encouraged to settle, and to apply themselves to trade for their support; here then, we cannot but conclude, would be formed the greatest number, as well as the most ancient of these trading Burrows; and here they are found in fact; for the single kingdom of Wesssex (including the county of Suffex, which had been united to it more than two hundred

hundred years before the reign of Alfred) sends more than one third of the Burgeſſes to our preſent parliaments. — What better evidence than this can be demanded for the truth of the hiſtorical account we have above given of their original? However, as peace and tranquillity were by degrees eſtabliſhed throughout the whole country, as the court removed into other parts of the kingdom, and the Danes were brought to acknowledge and obey Alfred and his ſucceſſors as their lawful princes, and to ſubmit to ſuch new laws and conſtitutions as ſhould be impoſed upon them in the general aſſembly of the nation; Trade likewiſe advanced out of that obſcure corner of the realm, where it had hitherto lain hid as it were, and gradually diffuſed itſelf throughout the whole kingdom; the mighty advantages of commerce not only to the trader himſelf, but to all other intereſts of the nation, were ſoon perceived, and new Burrows every where, for this reaſon, formed upon the ſame plan; whiſt the old ones, many of them at leaſt, partly on account of their great diſtance from the uſual reſidence of our princes, and partly on account of the more commodious ſituation of the others for trade, neceſſarily ran to decay, tho' in virtue

tue of the lands they were endowed with at their first institution, they were still obliged, as formerly, to send their deputies to the general council of the nation.

I have now gone thro' what I at first proposed in writing this Essay; I have given the Reader a general historical view of the ancient Anglo-Saxon system of government both in Germany and England — an imperfect one, indeed, in too many respects, the best however I was able to collect from those few scattered hints, which are left us of this polity in the more ancient authors, or from those confused and jarring accounts, which are to be found of it amongst our modern antiquaries and historians. What breaches, what innovations were afterwards made in this constitution, especially upon the Norman invasion, what changes it has since underwent, and by what steps it gradually arrived at that high pitch of perfection which it enjoys under the present happy establishment, may be perhaps the subject of our future enquiry.

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