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**A View Of Society In Europe, In Its Progress From
Rudeness To Refinement: Or, Inquiries Concerning The
History Of Law, Government, And Manners**

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Section I.

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CHAPTER II.

SECTION I.

(1) **T**HE total change produced in the condition of Europe by the settlements of the barbarous nations, is ascribed by many writers, and by Dr Robertson in particular, to the destructive violence with which they carried on their conquests, and to the havock which they made from one extremity of this quarter of the globe to the other. *History of Charles V. vol. 1. p. 11. 197. 198.*

It is to be remembered, notwithstanding, that the conquerors incorporated themselves, in some provinces, with the vanquished; that much of the havock and violence so pompously described by antient historians, is to be referred to the wars they carried on among themselves; and that, where havock and violence were least known, the change produced was, with the exception of a few circumstances, as general and complete as where they were experienced



experienced in the greatest degree. Thus, chivalry and the feudal institutions prevailed, in every step of their progress, in every country of Europe.

In illustration, indeed, of his opinion, Dr Robertson has said, that where havoock prevailed in no great degree, as in England, on the Norman invasion, the antient inhabitants retained their own manners. It is certainly very true that the Anglo-Saxons retained their own manners. This, however, was no effect of the cause he has mentioned. The Norman revolution was not a conquest*. A victory was obtained by Duke William over Harold and his followers; but no victory was obtained over the people of England. And, even on the hypothesis that the Duke of Normandy had *conquered* England, his illustration is without force. For the manners and policy of the Normans were the same with those of the Anglo-Saxons; with this difference, that the former were, in some measure, a more improved people.

The completeness of the revolution consequent on the settlements of the barbarians, is chiefly to be ascribed, as I observe in the text, to the immense difference of manners in the conquerors and the conquered. The former were in a condition of growing civility; the latter in a state of hopeless corruption. The German was approaching to perfection: The Roman had
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* See a Discourse prefixed to Dr Sullivan's Lectures.



been declining from it. They mutually despised one another, and were urged on in different directions. The former, therefore, yielding to, and governed by the manners to which he had been accustomed, became necessarily the founder of new and peculiar establishments.

(2) ' Agri pro numero cultorum ab *universis* per *vices* occupantur, quos mox inter se secundum dignationem partiuntur. ' Facilitatem partiendi camporum spatia praestant. Arva per annos mutant, et superest ager.' *Tacit. de Mor. Germ. c. 26.*

This interesting information is well illustrated in the following relation from *Caesar*. ' Suevorum gens est longe maxima et bellicosissima Germanorum omnium. Ii centum pagos habere dicuntur; ex quibus quotannis singula millia armatorum, belandi causa, suis ex finibus educunt. Reliqui domi manent: Pro se atque illis colunt. Hi rursus invicem anno post in armis sunt: Illi domi remanent. Sic neque agricultura, neque ratio, neque usus belli intermittitur: Sed privati ac separati agri apud eos nihil est: Neque longius anno remanere uno in loco incolendi causa licet; neque multum frumento, sed maximam partem lacte atque pecore vivunt, multumque sunt in venationibus.' *De Bell. Gall. lib. 4. c. 1.*

(3) From some remarkable passages in *Tacitus*, it is to be gathered, that, even in his age, the Germans were beginning to

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have an idea of a *private* property in land. This improvement would probably take place among the princes or chiefs, and in those districts which joined to the Roman frontiers; and it is to be conceived, that the portions of ground first appropriated, would be those around the cabins or huts of individuals. For each hut was surrounded with an *enclosure*. And it was doubtless out of this enclosure that the German slave, being assigned land by his master, paid, in return, like a tenant, a proportion of corn, cattle, or cloth. ‘*Ceteris servis, non in nostrum morem descriptis per familiam ministeriis utuntur. Suam quisque sedem, suos penates regit. Frumenti modum dominus, aut pecoris, aut vestis, ut colono injungit: Et servus hactenus paret.*’ *Tacit. de Mor. Germ. c. 25.* This appropriation of land, and exertion over it, would spread by degrees, and enlarge the notions of property.

In fact, it would seem, that this conduct was observed after the German conquests; and that the German *enclosure*, or the *lands of the house*, and the assignment of them to slaves or servants, were usual. A proprietor or noble retained, to be cultivated by his servants, for domestic use and hospitality, the land which was *inter curtem*, or within view of the house or hall. What was out of the view of the house or hall, was given out in tenancy. Hence, among the Anglo-Saxons, the distinction of *inland* and *outland*. The inland, was the land *inter curtem*, or the *land of the house*: The outland was the land out of the view
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of the house*. Brithic, the rich Anglo-Saxon, had inland and outland, and disposed of them, in his will, to different persons †.

What is worthy of observation, the method of paying *in kind*, practised in Germany, and mentioned by Tacitus, continued also in the settlements of the barbarians, and even after they had become acquainted with coinage. Thus, in estates which had been long in any family, there were payments in poultry, and in necessaries for the house. *Du Cange Gloss. voc. Gallinagium et Henedpeny.* At this hour, both in England and Scotland, there are relics of this usage.

In England, it was not till the age of Henry I. that the rents due to the crown were paid in money. ‘In the early days,’ says *Madox*, ‘next after the Norman conquest, (if we are rightly informed), there was very little money, *in specie*, in the realm. Then the tenants of knights fees answered

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‘to

* ‘*Inland, et Inlandum.* Terra dominicalis, pars manerii dominica. Vox Saxonum, *terram interiorem* significans, nam quae colonis et tenentibus concedatur, *utland* dicta fuit, hoc est *terra exterior*, hodie tenementalis.’ *Spelman, Gloss. p. 316.*

† *Lambard, Perambulation of Kent.* ‘*Lego*,’ says Brithic, ‘*terras dominicales Wulfego, tenementales Ælfego.*’



‘ to their Lords by military services ; and the tenants in socage
 ‘ lands and demeanes (in great measure) by work and provisions.
 ‘ The ingenious authour of the Dialogue concerning the Exche-
 ‘ quer tells us, that, from the time of the Norman conquest, till
 ‘ the reign of King Henry I. the rents or fermes due to the king
 ‘ were wont to be rendered *in provisions and necessaries for his*
 ‘ *household** : And that, in King Henry the First’s time, the
 ‘ same were changed into *money*. Afterwards, in the succeeding
 ‘ times, the revenue of the crown was answered or paid, *chiefly*
 ‘ *in gold and silver* ; sometimes in palfreys, destriers, chascurs, le-
 ‘ veriers, hawks, and falcons, (to wit, in horses, dogs, and birds
 ‘ of game of divers sorts), and in things of other kinds.’ *Hist. of*
the Exchequer, vol. 1. p. 272.

(4) *Allodial* lands were enjoyed in full property, and are there-
 fore opposed to *feudal* or *beneficiary* possessions, which were re-
 ceived with limitations, and under the burden of military service
 to the *grantors*.

The Ripuarians, the Burgundians, and, indeed, all the barba-
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* In the Saxon times of King Ina, the provisions paid for ten hides of land
 were as follows: ‘ Ex decem hydīs, ad nutriendum, decem dolia mellis, tre-
 ‘ centi panes, duodecim amphorae Wallicae cerevisiae, triginta simplices, duo
 ‘ adulti arietes, vel decem verveces, decem anseres, viginti gallinae, decem
 ‘ casei, amphora plena butyro, quinque salmones, viginti librae pondo pa-
 ‘ buli, et centum anguillae solvantur.’ *LL. Inae ap. Wilkins, p. 25.*

ric nations, appear to have had lands of partition or allodial property. *LL. Ripuar. tit. 56. LL. Angl. et Werin. tit. 6. LL. Baiwar. tit. 2. c. 1. l. 3. tit. 11. c. 5. tit. 17. l. 2. Capit. Kar. et Lud. lib. 3. l. 20. Marculph. Form. 16. 18. 51. 62. 67. ap. Lindenbrog.*

Some writers affirm, that the Salic lands were lands of *lot* or *partition*, and yet contend that they were *feudal*. This is certainly an absurdity. It is to be confessed, notwithstanding, that Du Cange, and many lawyers of great ability, have adopted this notion. *Dissert. 17. sur l'Histoire de St. Louis, p. 244. Selden, vol. 3. p. 1009**. The authority against them is most express and pointed. It is the text itself of the Salic law which actually treats *de alode*, and refers to no property that was not *allodial*. *LL. Sal. ap. Lindenbrog. p. 342.* What confounded Du Cange, was the following celebrated law of this text. ‘*De terra vero Salica*

* Selden observes, that ‘the best interpretation of *terra Salica*, is by our *knight's fee*, or land holden by *knight's service*.’ I have an infinite veneration for the learning and abilities of this great man. I cannot, however, but differ from him on this occasion. The *knight's fee* and *knight's service*, were late inventions in the history of fiefs, and cannot be carried back to the early aera of the Salic law. Even if they could, they would still be ineffectual to support his conclusion.



‘Salica nulla portio hereditatis *mulieri* veniat; sed ad *virilem* *sexum* tota terrae hereditas perveniat.’ He knew that women could not, in the commencement of fiefs, pretend to lands which were held by a military tenure; and, as they are thus barred from the Salic lands, he thence conceived that these must be *feudal*.

But the circumstance of the exclusion of the women from the Salic lands is, by no means, to be accounted for on *feudal* principles. The women were excluded from property while the Germans were in their forests; and this law or usage they carried into their conquests. It is thence that, in the lands of *lot* or *partition*, the women were not considered; and it is thus, that this difficulty in the Salic text is to be explained, without the necessity of conceiving the feudality of the Salic lands, in contradiction to the Salic law.

Though the barbarians respected highly their women, the admission of them to land was altogether a new idea. For if, leaving the Salic law, we inquire into the allodial property, and the allodial laws of the other tribes, we shall find, that, even in these, the women were not admitted to land while there existed any male. The ideas of the barbarians required to enlarge before this admission had place, and before they could so far violate their antient customs. The innovation, as might be expected, was gradual. In the title, accordingly, *de Alodibus* in the
Ripuarian

Ripuarian text, we read, ‘Dum virilis sexus extiterit, *femina* in hereditatem aviaticam non succedat.’ *Lindenbrog. p. 460.* See also *LL. Anglor. et Werinor. tit. 6.* It is, I conceive, by this and similar ordinances, that the celebrated Salic law, which imposed on Du Cange, and on so many lawyers, is to be interpreted. Among the Salians and Franks, as well as among the other barbarous nations, when there were no males, the women were admitted to the property of the lands of *lot* or *partition*.

After having made these remarks, it is fit I should give some account of the word *Allodium*, or *Alode*; and a learned Judge, who is studious to cultivate literature in the intervals of business, and who has distinguished himself by laborious and instructive compositions in an idle and a dissipated age, has done me the honour to present me with the following communication on this subject.

‘*Al-od*, in the Latin of the lower ages *allodium*; hence the adjective *allodialis*; and hence, from the analogy of language, *allodially*, and *allodality* may be formed. Of *Al-od* the French have made *Aleud*, *aleu*.

‘As to the etymology of the word, there is a variety of opinions; for learned men are apt to reject obvious etymologies, and to prefer those which are more remote. It would seem to
‘ be



‘ be a good rule in such matters, that “ the etymology which is
 “ nearest to the word, is the most probable.”

‘ *Al* is *totus, integer, et absolutus*. There is no occasion for
 ‘ proving this : The sense is in daily use among the northern
 ‘ nations of Europe. *Od* is *status*, or, *possessio*. The Scottish word
 ‘ *had*, and the English *bold*, are derived from this source, and
 ‘ the word itself is still visible in the English compounds, *man-*
 ‘ *hood, sister-hood, maiden-hood, &c.* The Anglo-Saxon word,
 ‘ corresponding to this, is *Hod, status* or *possessio*. Thus, *Al-od*,
 ‘ is *totus integer et absolutus status*, or *tota integra et absoluta pos-*
 ‘ *sessio*.

‘ The etymology of *Al-od* confirms the opinion of Selden and
 ‘ others as to the etymology of *Feod*, in the Latin of the lower
 ‘ ages *Feodum, Feudum*. *Fe* is *beneficium* or *stipendium* ; *Od* or
 ‘ *Hod*, is *status* ; therefore, *Feod* is *status stipendiarius*, or *possessio*
 ‘ *stipendiaria*. *Odal* is *Alod* inverted, *status integer*, or *possessio*
 ‘ *tota et absoluta*.

‘ There is no difference between *odal* and *udal*. The Scots
 ‘ turned the Norwegian *ore*, a denomination of weight, into *ure*,
 ‘ and, in like manner, they turned *odal* into *udal*. If the Norve-
 ‘ gian *o* was pronounced as *oe*, the change is scarcely perceptible.
 ‘ After the same manner the French have turned *alod* into *aleud*.

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‘ It may be objected, that there are two syllables more in
 ‘ *allodial* than in *odal* or *udal*; and that, although etymologists
 ‘ often drop an embarrassing syllable or two, yet that such liber-
 ‘ ties are not allowable. The answer is obvious. *Allodial* is
 ‘ an adjective; and the word *subject*, or *land*, or something simi-
 ‘ lar, is understood. But *odal* or *udal* is a substantive; and it is
 ‘ only from ignorance or misapprehension, that the word is used
 ‘ as an adjective. Thus, in propriety of speech, we say, ‘ The
 ‘ lands in Orkney are to be considered as *udal* ;’ although, in
 ‘ common speech, we say, ‘ The *udal lands* of Orkney,’ and the
 ‘ *udal possession* in Orkney.’”

(5) Dr Robertson has affirmed, that the barbarians, while in
 their original seats, were not, in consequence of the condition of
 the landed property, brought under any positive or formal obli-
 gation to serve the community. *Hist. of Charles V. vol. 1.*
p. 213.

It is obvious, however, that the partition of land received by
 the individual from the tribe, subjected him to serve the commu-
 nity. The person who did not serve it had no claim to any par-
 tition. Persons under the military age had no partitions, because
 they could give no service. Persons, who had attained this
 age, could give service, and entitle themselves to partitions. The
 former were parts of the *family*, the latter were members of the
republic. See Note 2. and compare it with *Tacit. de Mor. Germ.*



c. 13. Of this law of partition, it was even a consequence, that the coward was a criminal, because he could give no service, and was unable to entitle himself to a subsistence or partition. He was therefore deemed unworthy of existence, and put to death, or expelled beyond the frontiers of his nation. *Tacit. de Mor. Germ. c. 12.*

I have said, that the lands of lot or partition, of which the grant or use was the distinction of the freeman and the citizen in the days of Tacitus, were also given after the conquests of the barbarians, under the general obligation of serving the community. And here is my evidence.

‘*Quicumque liber homo a comite suo fuerit ammonitus, aut ministris ejus, ad patriam defendendam, et ire neglexerit, et exercitus supervenerit ad istius regni vastationem vel contrarietatem, fidelium nostrorum capitali subjaceat sententiae.*’ *Capitularia apud Baluz. tom. 2. p. 325.*

‘*Si aliquis in alode suo quiete vivere voluerit, nullus ei aliud quod impedimentum facere praesumat, neque aliud aliquid ab eo requiratur, nisi solummodo ut ad patriae defensionem pergat.*’ *Capit. Car. Calv. Ibid. p. 264.*

‘*Et qui ad defensionem patriae non occurrerint, secundum anti-*
‘*quam*

'*quam consuetudinem et capitulorum constitutionem judicentur.*'
Capit. Car. Cal. tit. 36. c. 27. Ibid. p. 187.

Hence it is to be concluded, that the stipulation of serving the community was very *antient*; and thus too, the opinion I maintain, that this obligation was known to the old Germans, receives a confirmation. In reality, the sense of the obligation must have been stronger *before* than *after* their conquests. The citizen of a small community enters with ease into its views, and is zealous to promote them. The arrangements, on the contrary, of a great kingdom, are not easily perceived. A plain individual does not know the motives and the agents which put every thing into motion. His attention is more turned from the public, and penal regulations are necessary to preserve him in his duty. History confirms this remark. For, early after the barbaric conquests, regulations of this kind were made; and *allodial* proprietors, to avoid serving the community, devised the fraud of assigning their lands to the church, and of holding them under its exemptions and immunities.

Those, it is observable, who held possessions merely *allodial*, could only be called out in foreign wars, and against the enemies of the state. As they held of no superior or lord, they had no concern in private quarrels, and made no part in the feudal association. This circumstance, if judged by modern ideas,



was advantageous. It was, in fact, however, the reverse, and operated as a cause of the conversion of *allodium* into *tenure*.

(6) *Monfr. Bignon*, in his notes to *Marculphus*, expresses, with a delicate precision, the distinction between *allodial* lands, or the lands of *partition*, and the lands of the *fisc*. ‘*Omnia*
‘*namque praedia, aut propria erant, aut fiscalia. Propria seu*
‘*proprietates dicebantur quae nullius juri obnoxia erant, sed op-*
‘*timo maximo jure possidebantur, ideoque ad heredes transibant.*
‘*Fiscalia vero, beneficia sive fisci vocabantur, quae a rege ut plu-*
‘*rimum, posteaque ab aliis, ita concedebantur, ut certis legibus*
‘*servitiisque obnoxia, cum vita accipientis finirentur.’* *Not. ad*
Marculph. ap. Baluz. tom. 2. p. 875.

It is even from *fiscus* that the term *fief* was formed; and, though the lands of the *fisc* meant originally only the benefices granted out by the sovereign, they came to express the subinfeudations of the crown-vassals. *Du Cange, voce Fiscus, Munus Regium. Assises et bons usages du Royaume de Jerusalem, avec des notes par Gaspard Thaumais de la Thaumassiere, p. 103. 245.*

(7) ‘*Principes jura per pagos vicosque reddunt. . . . Insignis*
‘*nobilitas aut magna patrum merita, principis dignationem eti-*
‘*am adolescentulis assignant. Ceteris robustioribus ac jampri-*
‘*dem probatis aggregantur. . . . Magna comitum aemulatio,*
‘*quibus*



‘ 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. . . . Cum ventum in aciem, turpe princi-
 ‘ pi virtute vinci, turpe comitatu virtutem principis non adae-
 ‘ quare. . . . Illum defendere, tueri, sua quoque fortia facta glo-
 ‘ riae ejus assignare, praecipuum sacramentum est. Principes pro
 ‘ victoria pugnant ; comites pro principe.’ *Tacit. de Mor. Germ.*
 c. 12. 13. 14.

(8) Of the notion that tribes were the *vassals* of tribes, I have exhibited the most convincing proofs in another treatise. *Hist. Dissert. concerning the Antiq. of the Eng. Constit. part 2.* As the subject, however, is highly curious and important, I shall here offer some additional observations concerning it.

The great bond of the confederacies, and the attachments of the states of the Gauls and Germans, was the *land* assigned by a *superior* community to an *inferior* one. In consequence of this assignment, the latter owed service in war to the former, and was entitled to its protection. In the language of *Caesar*, it was the *client* tribe. While land was yet the property of nations, and unconnected with individuals, the idea was natural, and almost unavoidable. Arroviltus, a prince of a German community, having, with his chiefs and retainers, made a conquest in Gaul, the territory of the vanquished people became the proper-
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ty of his nation ; and, it was about to bestow a large tract of the acquisition on the Harudes, under the burden of their military aid or assistance, when Caesar interfered in the Gaulic affairs. *Caesar, de Bell. Gall. lib. 1. c. 35—46.*

The idea of tribes in union, without their mutually furnishing *protection* and *assistance*, and without the medium of a grant of *land*, could not be conceived by the German and Gaulic nations. The *client* or *vassal* tribes of Ariovistus, were the Marcomani, Tribocci, Vangiones, Harudes, Nemetes, and Sedusii. *Caesar, de Bell. Gall. lib. 1. c. 51.* The Ubii, at one period, were the *vassal* tribe of the Suevi. *Ib. lib. 4. c. 3.* In an after period, when the Romans imitated the manners of the Gauls and Germans, they were assigned *land* on the banks of the Rhine, under the obligation of *military* service. ‘Super ipsam ‘Rheni ripam collocati, ut arcerent, non ut custodirentur.’ *Tacit. de Mor. Germ. c. 28.* Caesar, at the request of the Ædui, permitted the Boii to remain in Gaul ; and they became the clients or confederates of that people, who assigned them *land* on their confines. ‘Boios, petentibus Æduis, quod egregia virtute ‘erant, ut in finibus suis collocarent, concessit ; quibus illi *agros* ‘dederunt.’ *De Bell. Gall. lib. 1. c. 28.* The extent of land allotted by a superior community to an inferior one, was proportioned to the numbers and the valour of the latter. And, it was this way of thinking which actuated the Helvetii, when they said, that their territories were not suited to their populousness and
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and military glory. 'Pro multitudine autem hominum, et pro gloria belli atque fortitudinis, angustos se fines habere arbitrabantur.' *Id. lib. 1. c. 2.*

Thus, the state of land among the Gaulic and German nations directed their *political* condition. This circumstance escaped not the Romans; and the use made of its knowledge by the Emperors, though little attended to, is worthy of remark. To a body of the Vandals, Constantine, with a view to the aid of their arms, assigned a portion of Pannonia. The assignment of land by the Romans to the Burgundians, that they might assist them in opposing the Wisigoths, gave rise to the Burgundian empire in Gaul. And Justinian granted the lands and possessions of the Ostrogoths in Pannonia to the Longobards, under the burden of their defending that country against the Gepidae, the Heruli, and other barbarous nations. *Jornand. de Reb. Get. c. 22. Cassiodor. Chron. Procop. lib. 3.*

Amidst a multitude of examples, to the same purpose, which might be produced, it is proper to take notice of the monarchy of the Franks. Different nations, overpowered by the Franks, became parts of their monarchy, by receiving possessions from them, and acknowledging their superiority. For the lands and protection afforded them, they gave allegiance and service. In other respects they acted under their own dukes or princes, and under their own institutions. I speak of the principalities or duchies



duchies of Bavaria, Aquitain, and Suabia. The Bojoarii, Bojarii, or Boii, for so the Bavarians are called in writers of the middle ages, were conquered by the Franks, and, accepting lands from them, acknowledged their superiority. An old historian, recording this transaction, has these words: 'In bellis auxilio Francis sunt Boii; eosdem pro amicis et hostibus habeant; ceterum suis institutis ac moribus liberi vivant.' *Aventinus, Annal. Boior. lib. 3.* This connection or vassalage is even expressed in their laws. *LL. Baiuvar. tit. 2. c. 1. ap. Lindenbrog. p. 404.* Such also was the case of the Dukes of Aquitain and Suabia. Under the Franconian kings of the first race, they owed fidelity and military service in war, for the lands they enjoyed, and yet governed in their own dominions. These things mark the attachment of nations to their antient usages, and illustrate the idea that communities were first the vassals of communities.

What is not incurious, one of the greatest difficulties in developing the history of the barbaric tribes, has its source in these connections I have mentioned. The inferior, or vassal tribes, are often meant and recorded under the names of the superior ones. Thus, under the general appellation of *Gothi*, there are included the Thuringi, Gepidae, Pucini, Scirri, and other tribes. The historical confusions that were necessarily to arise from this practice are many, and often not to be disentangled.

(9) It



(9) It is observable, that the old German states affected, from grandeur, to have around them a vast extent of *waste* territory. 'Una ex parte a Suevis circiter millia passuum DC agri *vacare* dicuntur.' *Caesar, de Bell. Gall. lib. 4. c. 2.* 'Civitatibus maxima laus est quam latissimas circum se vastatis finibus *solitudines* habere.' *Id. lib. 6. c. 22.* 'Bella cum finitimis gerunt, ut quae circa ipsos jacent *vasta* sint.' *Mela, lib. 3.*

What is remarkable, after land was connected with individuals, and when chiefs distributed portions of their possessions to their followers, they affected also *wastes* of this kind. The Lord of a manor, after having assigned to his servants a tract of ground for the maintenance of his house and hospitality, gave out other divisions to his vassals and tenants, for the support of his political greatness; and these purposes being answered, a large proportion of territory remained often unemployed by him. This *waste* dominion gave an idea of his power, and served to excite, in the stranger, a sentiment of terror. On this tract of land, the inhabitants of the hamlet, connected with his castle, were tempted to feed their cattle. In the course of time, he lost all connection with it. Their connection was recent and in use. Hence *common pasture* and *commons*.

I will venture another conjecture. It was, perhaps, from the idea of magnificence attending the possession of a vast portion of uncultivated territory, more than for the purposes of hunting,

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that



that the kings of Europe affected, of old, to have extensive forests. A deer-park is still flattering to the *magnificence* of the rich, in proportion to its extensiveness; though hunting be no amusement of the proprietor.

(10) It has puzzled the learned to discover the nation of the barbarians which first gave a beginning to fiefs. No inquiry could be more frivolous. In all of them they must have appeared about the same period. And they prevailed in all of them in consequence of the similarity of their situation on their conquests, and in consequence of their being governed by the same customs. It is not, therefore, to the principle of imitation that their universality is to be ascribed.

The annals of France make mention of fiefs in the age of Childebert. The Longobards, at an early period, introduced them into Italy; and the customs and laws which relate to them seem to have advanced rapidly among this people. *Giannone, Hist. of Naples, book 4. sect. 3.* In England, there is little doubt that the feudal law was known in the Saxon times; and on this subject I refer, with pleasure, to what has been lately advanced by Mr Whitaker, in his History of Manchester; a book valuable for deep learning, original thought, and uncommon ingenuity.

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In Spain, the introduction of the feudal tenures preceded the devastations of the Saracens or Moors, which began in the year 710. Among the Goths, who established the monarchy of Spain, lands were granted for service and attachment; and the receiver was the retainer of the grantor. He was said to be *in patrocinio*; and, if he refused his service, he forfeited his grant. It also appears, that the retainer, or vassal, swore fealty to his patron or lord. And it was on this scheme that their militia was regulated. *LL. Wisigoth. lib. 5. tit. 3. l. 4. tit. 7. l. 20.*

The Wisigothic laws were first published by the celebrated Pithoeus, and are chiefly to be valued on account of their high antiquity. But how they came to survive the Moorish conquests, is an incident which I cannot explain. They served as the mine, and gave materials for the code of Spanish jurisprudence, termed the *forum judicum*, or the *fuero juzgo*; a circumstance which seems to prove their authenticity, and which the learned Mr Barrington must have forgot, when he conceived the latter to be the most antient collection of laws in Europe. *Observations on the Statutes, 3d edit. p. 9.*

