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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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Authorities, Controversy, and Remarks. Book I.

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Authorities, Controversy, and Remarks.



B O O K II.

C H A P T E R I.

S E C T I O N I.

(1) **T**HE ordinary form of homage and fealty varied in some little particulars in different nations, and in the same nations, at different times; and fidelity, while the fief was precarious, could only be promised during the connection of the lord and the vassal. The oldest example of these ceremonies which is preserved, and perhaps the most simple, is that of

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*Taffilon*





*Taffilon* Duke of Bavaria, to King Pepin, in the year 757. It is thus described. ‘*Taffilo Dux Bajoariarum cum primoribus gentis suae venit, et more Francorum, in manus regis in vassaticum manibus suis semetipsum commendavit; fidelitatemque, tam ipsi regi Pipino, quam filiis ejus Carolo et Carlomanno, jure jurando supra corpus Sancti Dionysii promisit.*’ *Adelmus, Annal. Franc. ap. Brussel, liv. 1. ch. 1. sect. 7.*

From the words *more Francorum* it is to be inferred, that these usages were of a still higher antiquity; and, indeed, there can be little doubt, that they prevailed from the earliest times. We find them, accordingly, in the Anglo-Saxon period of our history. *Nichol. Praefat. ad LL. Anglo-Saxon. p. 6. 7.* It is true, notwithstanding, that some eminent authors contend, that they were consequences of the perpetuity of the fief. But the homage of *Taffilon*, and the Anglo-Saxon fealty, were prior to the general establishment of this perpetuity. And there does not appear any solid reason to think, that these ceremonies were a result of it.

When the exercise of the prerogative of private war among the nobles had spread its disorders and calamity, it became common, both in France and England, to insert a reservation in the form of homage, which limited the fidelity of the vassals of a lord or a chief, to the acts which were not derogatory to the faith they owed to the king. This was intended as an obstruction

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tion to the prevalence of private war, and discovered an advancement in the ideas of civilization and government. Saint Louis established it in France; and it appears in England, in what is called 'The Statute of Homage,' in the seventeenth year of Edward II. By this form or ordinance, the vassal, after expressing the fidelity he is to bear to his lord for the lands he holds, is made to add, *saving the faith I owe unto our Lord the King.*

Out of these usages, in this state of their restriction, there grew, as fiefs died away, the ligeance, or allegiance, which every subject, whether a proprietor of land or not, was supposed to owe to his sovereign. Thus, the oath of ligeance or fealty was to produce the oath of allegiance.

(2) I have endeavoured to investigate, in another work, the high antiquity of the feudal incidents. *Dissert. on the Antiq. of the Eng. Constitut. part 2.* It is a common mistake, that the feudal fruits or incidents were not known in England till the Norman times. This opinion is to be ascribed to the want of curiosity in some inquirers of great name, who have given a sanction to it without deliberation; and to the narrow prejudices of others, who affect to consider the Norman invasion as the proper aera of our political constitution, from the view of paying a compliment to the prerogative of our kings, by holding out Duke William as a conqueror, and by insulting the consequence

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of





of the people. It is in this manner that errors have been engrafted upon errors.

The Anglo-Saxon laws, however, oppose the conceit of the late rise of the feudal incidents, with a force that is not to be resisted. They make an actual and express mention of them. And, for formal illustrations of the feudal incidents in the Anglo-Saxon times, the reader may consult, *The case of tenures upon the commission of defective titles, argued by the judges of Ireland, Mr Selden, in many parts of his works, and Mr Whitaker, in his history of Manchester.*

One of Canute's laws I cannot forbear to mention, because it illustrates very strongly, in this age, the existence of tenures. It ordains that a vassal who deserts, in an expedition against an enemy, shall forfeit his land to his lord; and that, if he should fall in battle, his heriot shall be remitted, and his land go to his heirs. *LL. Canut. c. 75.* This desertion was, in all feudal countries, one of the causes of the escheat or forfeiture of the fief. *Spelm. Gloss. voc. Feloniā.* We thus learn, that, in the age of Canute, there prevailed the feudal incidents of escheat and heriot, and that lands were not only granted in tenure, but might go to heirs; a circumstance which may lead us to conceive, that advances were then made towards the establishment of the perpetuity of the fief. This important law is misinterpreted by Wilkins, and, -probably, with design. The learned reader will  
not





not require to be informed, that his version of the Anglo-Saxon laws is often defective and unfaithful.

What is worthy of notice, while many writers of England look to Normandy and Duke William for the introduction of the feudal law, and its incidents, into their nation, an author of France, William Renville of Alenzon, in his preface to the grand Coustumier of Normandy, contends, That they were first brought into that duchy from England by Edward the Confessor.

The fact is, that these fruits and this law extended themselves over Europe, from no principle of adoption, but from the peculiarity of manners and situation of the barbaric nations who made conquests. There is no position in history which is clearer than this. And Du Cange, in particular, when we consider the amazing extent of his information, is very much to blame, while he fondly holds out the tenet, that the usages and institutions of the European states proceeded chiefly from the manners and customs of France.

(3) Even in the days of Bracton, after the feudal association had received its most staggering blows, the doctrines of the reciprocal duties of the lord and the vassal, and their perpetual league, are laid down in strong language.

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‘ Nihil facere potest tenens propter obligationem homagii,  
 ‘ quod vertatur domino ad exhaeredationem vel aliam atrocem  
 ‘ injuriam ; nec dominus tenenti, e converso. Quod si fecerint,  
 ‘ dissolvitur et extinguatur homagium omnino, et homagii connec-  
 ‘ tio et obligatio, et erit inde justum judicium cum venerit con-  
 ‘ tra homagium et fidelitatis sacramentum, quod in eo in quo de-  
 ‘ linquunt puniantur, sc. in persona domini, quod amittat domi-  
 ‘ nium, et in persona tenentis, quod amittat tenementum.’ *De*  
*leg. et Consuetud. Angl. p. 81.*

(4) The state, I know, of the people of old, as described by Dr Brady, and Mr Hume, by Dr Robertson, and a multitude of other authors, was uniformly most abject; and yet the power of the nobles is represented as most exorbitant. They dwell on what they term the aristocratical genius of the times, and seem to take a pleasure in painting the abjectness of the people.

It is remarkable, that these notions are contradictory and inconsistent. The nobles had immense influence ; but, in what did this influence consist? Was it not in the numbers and the attachment of their vassals? These were their power; and, did they oppress them? The reverse is the truth. They treated them with the utmost lenity, and it was their interest to do so. The cordiality, accordingly, of the nobles and the vassals, was maintained during a long tract of time, of which the history has been repeatedly written, without the necessary attention to its nature  
 and



and spirit. The decay, indeed, of this cordiality, was to create confusions and oppression; and, what confirms my remark, it was in this situation, that the power of the nobles was to be humbled.

The error I mention was first thrown out by a writer of ability, because it suited the theory he inculcates. It was adopted, for the same reason, by a writer of still greater talents; and nothing more is necessary to give currency to an absurdity. For, the authors who do not think for themselves, but who gain a fashionable and temporary reputation, by giving dress and trappings to other men's notions, will repeat it till it is believed.

(5) Mr Hume has the following very singular passage. 'None of the feudal governments in Europe had such institutions as the *county-courts*, which the great authority of the conqueror still retained from the Saxon customs. All the freeholders of the county, even the greatest barons, were obliged to attend the sheriffs in these courts, and to assist him in the administration of justice.' *Append. 11.*

In every feudal kingdom, notwithstanding this strong affirmation, the *comes* was known, and the *comitatus*. The *comitatus*, or county, was the territory or estate of the *comes*; and the court he held, and in which he presided, was the *county-court*,  
to





to which the freeholders and feudators were called, and acted as assessors or judges. *Du Cange, and Spelman, voc. Comites.*

There might, indeed, be a *comes* who enjoyed not the property of the county, but only a part of it; and, in this case, he was constituted to exercise jurisdiction in it. The sheriff originally was a very subordinate officer. He was sometimes no more than the depute of the *comes*. Hence *vicecomes* was the term by which he was known. Sometimes he was only vested with the care of the king's interest in particular counties. And, in reality, he began only to figure when the jurisdiction of the nobles, in the decline of fiefs, had died away to a shadow.

It is said by Mr Hume, That the great authority of the conqueror retained the county-courts from the Saxon customs. He thus infers, that these courts were favourable to the royal authority. The fact, however, is exactly the reverse. The greater jurisdiction there is in the nobles and the people, the more limited is the prerogative of princes. The county-courts were eminent and formidable supports of the liberty of the subject. And, instead of giving them encouragement, it was the interest of the conqueror to employ his great authority in their suppression.

Mr Hume adds, in the spirit of a writer who had made a discovery, ' Perhaps this institution of county-courts *in England,*  
' has



‘ has had greater effect on the government, than has yet been distinctly pointed out by historians, or traced by antiquaries.’  
*Ibid.*

I have remarked these and other weak places in the works of this illustrious man, that I might show the danger of implicit confidence even in the greatest names. The undue weight of what are called *great authorities*, gives a stab to the spirit of inquiry in all sciences.

(6) The distinguishing freedom of the Germanic tribes was carried with them into their conquests. *Tacitus* said of them, while they were in their woods, ‘ De minoribus rebus principes consultant, de majoribus omnes.’ *De Mor. Germ. c. 11.* This peculiarity of government, and this importance of the people, appear not only in the history of these nations, but in their laws. The prologue to the laws of the Franks has these words. ‘ Hoc decretum est apud regem, et principes ejus, et apud cunctum *populum* Christianum, qui infra regnum Merwungorum consistunt.’ *Lindenbr. p. 399.* The *lex Alamannorum* begins thus. ‘ Incipit *lex Alamannorum*, quae temporibus Chlotarii regis una cum principibus suis, id sunt, xxxiii. episcopis, et xxxiiii. ducibus, et lxxii. comitibus, vel cetero *populo* constituta est.’ *Lindenbr. p. 363.* In the same sense, we read of the *infinita multitudo fidelium* who appeared in the Anglo-Saxon parliaments. *Spelman’s councils.* Originally, as in Germany, in





all the European states, every person who wore a sword had a title to go to the national assembly. The sovereign could enact no new laws, and could repeal no old ones, without the consent of the people.

But, in antient Germany, a representation of the people was even practised on particular occasions; and we are told by *Tacitus*, that, when Civilis declared war against the Romans, ‘*vocavit primores gentis, et promptissimos vulgi.*’ *Tacit. Hist. lib. 4.* See farther *A Dissertation concerning the Antiquity of the English Constitution, part 5.* After the erection of the European states, the inconveniencies arising from great multitudes of armed men in councils of business, discovered fully the advantages of *representation*. And deputies made their appearance in these to consult and defend the privileges and rights of the people. The exact aera of this establishment is not known in any country of Europe. Its antiquity, however, is beyond all doubt. And the *commons* made a figure in the assemblies of France, termed, *les champs de mars, et les champs de mai*, in the cortes of Spain, and in the wittenagemots of England.

It is probable, that in France, the people were represented before the age of Charlemagne. That they were important in the reign of this politic and powerful prince, there are proofs, positive and certain. The instructive work of Archbishop Hincmar, *de ordine Palatii*, places this matter in a strong light; and Abbé Mably, who





who copies and comments upon it, acknowledges the supreme power of the assemblies of those days, selects examples of it, and of the interference and consideration of the people. In fact, nothing of any moment or value, in peace or in war, or in any subject whatever, could be done without their approbation. ‘Lex *consensu populi fit, et constitutione regis.*’ *Capit. Kar. Calv. an. 864. ap. Baluz. tom. 2. p. 177.* This conclusion is supported by express, numerous, and concurring testimonies of antient laws, histories, and ordinances. See *Hotoman, Franco-Gallia, ch. 10. 11. Mably Observat. sur l’Hist. de France, lib. 2. ch. 2. Rymer on the antiquity of parliaments, &c.\** These assemblies were very different from the *Etats Generaux* of after times, when the rights of the people were insulted, and the legislative power came to reside in the sovereign. Yet, it is not uncommon to confound them; and, on the foundation of this error, improper conclusions have been inferred against the *commons* of England.

At what period the deputies of the people appeared in the cortes

\* Mr Hume, notwithstanding a variety of authorities which oppose his assertions, could express himself to the following purpose. ‘The great similarity among all the feudal governments of Europe, is well known to every man that has any acquaintance with antient history; and the antiquarians of all foreign countries, where the question was never embarrassed by party-disputes, have allowed, that the *commons* were very late in being admitted to a share in the legislative power.’ *Append. 11.*





cortes of Spain, is uncertain. But the liberty of the Wisigoths, who founded that kingdom, was ferocious; their love of independence was fostered by the ills of the Moorish domination; and their sovereigns, during a long tract of time, were kept in a surprising degree of subjection. Like all the other barbaric tribes who made establishments, the individuals among the Goths who wore swords, assembled originally in the councils of the nation; and when the disadvantages of crowded and tumultuous assemblies were uniformly felt, it is natural to conclude, that the deputies of the people were called to represent them.

From design, however, in the Spanish government, from the ravages of the Moors, or from the waste and havock of time, no direct proofs of this representation, it is said, are to be found of an earlier date than the year 1133. Of the appearance of the deputies of the people, at this time, the evidence is produced by *Dr Geddes*; and this writer has also published the writs of summons, which, in the year 1390, required the city of Abula to send its representatives to the parliament of Spain. *Miscellaneous Tracts, vol. 1.* There is likewise evidence of a Spanish parliament in the year 1179, in which the deputies of the people were assembled; and of another in the 1210, in which they assisted as a branch of the legislature. *Gen. Hist. Spayn. ap. Whitelock, Notes upon the King's Writ, vol. 2. p. 65.*

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While liberty and the deputies of the people made a figure, and while the prerogative of the sovereign was restrained and directed by national councils and assemblies in the other countries of Europe, it seems the height of wildness to conclude, as many have done, that, in England, the inhabitants were in a state of slavery, and that the mandate of the Prince was the law. His condition, so far from being despotic, was every moment exposed to danger and insult. He might be deposed for a slight offence. He was elected to his office. And, his coronation-oath expressed his subjection to the community, and bound him to protect the rights of his subjects.

The Anglo-Saxon laws are proofs, that, instead of governing by his will or caprice, he was under the controul of a national assembly. In the preambles to them, we find, that the *wites* or *sapientes* were a constituent branch of the government. The expression *seniores sapientes populi mei*, is a part of the prologue to the ordinations of King Ina, an. 712. And these *sapientes populi*, or deputies of the people, appear in the laws of other princes of the Anglo-Saxons. *LL. Anglo-Saxon. ap. Wilkins.*

It is very remarkable, that the term *sapientes*, as may be seen in Du Cange, in his explanation of it, expressed, in Italy, in antient times, those who governed the affairs of cities and communities. When men, therefore, of this sort are uniformly mentioned as a part of the Anglo-Saxon wittenagemots, it is impossible,





impossible, but to prejudice, not to see, that they must have acted as the *representatives* of the people, and must have procured this distinction from the opinion entertained of their wisdom or experience.

By a curious testimony, it is even obvious, that the word *sapientes* must have meant the *commons*. In the supplication *del county de Devonshire*, to Edward III. there are these expressions, ‘*que luy please par l’avys des prelates, countees, barons, et auters sages in cest present parliament ordeiner,*’ &c. This supplication is printed in the 4. Inst. p. 232. In the reign of the third Edward, from the *auters sages* expressing the commons, it may surely be decisively inferred, that *sapientes* had the same meaning in older times.

In fact, the expressions which denote the Anglo-Saxon assemblies, allude to their nationality. ‘*Commune concilium, conventus omnium, concilium cleri et populi, omnium principum et omnium sapientum conventus,*’ &c. are appellations which mark forcibly the interference and assistance of the *commons* \*.

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\* Mr Hume has observed, indeed, that ‘None of the expressions of the antient historians, though several hundred passages might be produced, can, *without the utmost violence*, be tortured to a meaning which will admit the *Commons* to be constituent members of the great council.’ Append. 11. It is painful to remark a want of candour so glaring in so great a man.



In the annals of Winchelcomb, an. 811. there is to be seen the term *procuratores*, as expressive of a branch of the wittenagemot. It also occurs in a charter of King Athelstane. And, that the persons denoted by it were the deputies of the people, seems past all doubt, when it is recollected, that, in the Spanish writers, this order of men is expressed by *procuradores de las ciudades y villas*. Nay, in Polydore Virgil, we meet the expression *procuratores civium populiq.* p. 478. ap. *Whitelocke, vol. 1. p. 378.*

To these notices I might add a multitude of authorities, respectable and positive. But I mean not now to enter fully into the dispute concerning the importance of the people. To give completeness to the spirit of my present volume, it is sufficient for me to assert the antiquity of the commons, in opposition to an opinion of their late rise, which a modern historian, of great reputation, has inculcated, with that hardiness which he displays in all his writings, but with little of that power of thought and of reasoning which does honour to his philosophical works.

Mr Hume, struck with the talents of Dr Brady, deceived by his ability, disposed to pay adulation to government, or willing to profit by a system, formed with art, and ready for adoption, has executed his history upon the tenets of this writer. Yet, of Dr Brady it ought to be remembered, that he was the slave of a faction, and that he meanly prostituted an excellent understanding,





ding, and admirable quickness, to vindicate tyranny, and to destroy the rights of his nation. With no less pertinacity, but with an air of greater candour, and with the marks of a more liberal mind, Mr Hume has employed himself to the same purposes; and his history, from its beginning to its conclusion, is chiefly to be regarded as a plausible defence of prerogative. As an elegant and a spirited composition, it merits every commendation. But no friend to humanity, and to the freedom of this kingdom, will consider his constitutional inquiries, with their effect on his narrative, and compare them with the antient and venerable monuments of our story, without feeling a lively surprise, and a patriot indignation.

(7) The general doctrines concerning wardships may be seen in *Craig, lib. 2. Du Cange, voc. Custos, Warda. La Coutume reformée de Normandie, par Basnage, Art. des Gardes.*

In that instructive collection of records, *The history and antiquities of the exchequer of the Kings of England, by Mr Madox*, there are the following examples of the sale of wardships by the crown, in the times which passed from Duke William to King John.

Godfrey de Cramavill gave xxv l. x s. for the custody of the land of Aketon, which was Ralf de Heldebouill's, and of Ralf's heir during his nonage. Hugh de Flammavill profered x l. for



for the custody of his sister, with her land. Ralf de Gernemue gave a fine of lx marks, that he might have the custody and donation of Philipp de Niwebote's daughter, with her inheritance. Earl David gave cc marks to have the custody of Stephen de Cameis, with his whole land, till his full age; saving to the King the service of the said land; and Earl David was to make no *destruction* upon it. And Philip Fitz-Robert gave cc l. and c bacons and c cheeses for the wardship of the land and heir of Ivo de Munby, till the heir came to be of full age. *Vol. 1. p. 323. 324.*

In remarking these sales, the value of money in its variations, is to be attended to. From *Mr Madox*, it appears, that, 'in the reign of Henry III. Simon de Montfort gave ten thousand marks to have the custody of the lands and heir of Gilbert de Unfranville, until the heir's full age, with the heir's marriage, and with advoufons of churches, knight-fees, and other pertinencies and escheats;' and my *Lord Lyttleton* has calculated the amount of this payment, according to the present value of money. 'Ten thousand marks,' he observes, 'containing then as much silver in weight as twenty thousand pounds now; and the value of silver in those days, being unquestionably more than five times the present value, this sum was equivalent to a payment of above a hundred thousand pounds made to the exchequer at this time.' *Hist. of Henry II. vol. 2. p. 297. Madox, vol. 1. p. 326.*

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(8) Of reliefs in England, it is sufficient to give the following examples, as they will fully illustrate the oppressions which must have resulted from the exaction of this feudal incident.

In the 5th year of King Stephen, Walter Hait gave v marks of silver for relief of his father's land. Alice, wife of Roger Bigot, gave c and fourscore and xviii l. for her father's land or manour of Belvoir. Humfrey de Bohun paid xxii l. and x s for relief of his father's land. Waleran Fitz William answered xxxiii l. vi s. and viii d. for relief of his land. In the reign of King Henry II. William Fitz William paid xxv marks for relief of his land; Theobald de Valeines xxx l. for relief of six knight-fees; and Robert de Dudaville x marks for relief. In the reign of K. Richard I. Robert de Odavill's son paid c marks for acceptance of his homage, and for relief and seisin of his land; Walter de Niewenton paid xxviii s. and iiiii d. for seisin of the fourth part of a knight's-fee, which was taken into the King's hands for default of paying relief. William de Novo Mercato gave c marks, *that the King would receive his reasonable relief*, to wit, c l. In the reign of K. John, John de Venecia gave ccc marks for seisin and relief, and did homage to the King, and was to make the King an *acceptable present* every year. Geoffrey Wake gave cc marks for his relief. *Madox, Hist. of the excheq. vol. 1. p. 316. 317.*

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The minute steps in the history of reliefs, and of the other feudal perquisites, are no part of this work. The reader who would investigate English reliefs still farther, may consult *LL. Guliel. LL. Hen. I. Chart. Johan. &c.* and, for their state in foreign countries, he may consider what is said in *Brussel, usage-generel des fiefs, liv. 2. Assises de Jerusalem, and the Glossaries.*

(9) Littleton on tenures, sect. 107. Du Cange, Disparagare. La Coutume reformée de Normandie.

(10) Celestia, wife of Richard son of Colbern, gave xl s. that she might have her children in wardship with their land, and that *she might not be married, except to her own good-liking.* William Bishop of Ely gave ccxx marks, that he might have the custody of Stephen de Beauchamp, *and might marry him to whom he pleased.* William de St Marie-church gave D marks, to have the wardship of Robert, son of Robert Fitzharding, with his whole inheritance, with the knight's-fees, donations of churches, *and marriages of women thereto belonging*; and that he might marry him to one of his [William's] kinswomen; provided, that Robert's land should revert to him, when he came to full age. Bartholomew de Muleton gave c marks, to have the custody of the land and heir of Lambert de Ybetoft, *and that he might marry Lambert's wife to whom he pleased*, but without disparagement. Geoffrey Cross gave xl marks, for the wardship of the lands and heirs of *Sampson De Mules*, who held of





the King *in capite*, by serjeanty, with the *marriage* of the heirs. John Earl of Lincoln, constable of Chester, fined MMM marks, to have the marriage of Richard de Clare, for the behoof of Maud, eldest daughter to the said Earl. Gilbert de Maifnil gave x marks of silver, that the King would give him leave to take a wife. Lucia, Countess of Chester, gave D marks of silver, that she might not be married within five years. Cecilie, wife of Hugh Pevere, gave xii l. x s. that she might marry to whom she pleased. Ralf Fitz William gave c marks fine, that he might marry Margery, late wife of Nicholas Corbet, who held of the King in chief, and that Margery might be married to him. And Alice Bertram gave xx marks, that she might not be compelled to marry. *Madox, hist. of the Exchequer, vol. 1. p. 322—326. 463—466.*

These valuable notices are from records in the reigns of Henry II. Rich. I. King John, Henry III. and Edward I.

(11) Henry II. levied an *aid* of one mark *per fee*, for the *marriage* of his daughter Maud to the Duke of Saxony. Of this aid, the proportion of the Earl of Clare for his own knight-fees, and for those of his lady the Countess, of the old feofment, was 'fourscore and fourteen pounds and odd;' and for his fees of the new feofment, it was ciii s. iiii d. The feofments which had been made either to barons or knights, before the death of Henry I. were called *vetus feffamentum*. Fees of the new feofment





ment were from the accession of Henry II. This appears from the Black Book of the Exchequer.

Henry III. had an *aid* of xl s. of every knight's fee to make his *eldest son* a knight. When King Richard was taken and imprisoned on his return from the holy wars, an *aid* was given for the *ransome* of his person. The barons and knights paid at the rate of xx. s per fee. *Madox, hist. of the Excheq. vol. 1. p. 572. 590. 596.*

In all cases of aids, the inferior vassals might be called to assist the crown vassals. They were even to contribute to extinguish their debts.

(12) Du Cange, voc. Auxilium. Bruffel, Usage-general des Fiefs en France. Coust. Norman. *Madox, hist. of the Excheq. vol. 1. p. 614—618.*

(13) Spelman, voc. Felonia. Lib. Feud. Etabliffemens de S. Louis, liv. 1. Craig, Jus Feudale, lib. 3.

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## S E C T I O N II.

(1) **I**T is to be conceived, that, originally, little ceremony was employed in the duel. *Book I. Chap. 2. Sect. 4. and the Notes.* But, as ranks and manners improved, a thousand peculiarities were to be invented and observed. This institution, accordingly, is one of the most intricate in modern jurisprudence. It would be improper to attempt to exhaust, in a note, a topic which would require a large volume. It is only my province to put together some remarks.

I begin with a distinction which has escaped many inquirers; who have thence wandered in contradiction and obscurity. The duel was, in one view, a precaution of civil polity; in another, an institution of honour. These distinctive characters it bore in its origin. *Book I. Chap. 2. Sect. 4.* And, in these different respects, it was governed by different forms. The common law, and the ordinary judges, directed it in the one condition; the *court of chivalry*, or the constitutions which gave a foundation to this court, governed it in the other. In reading what many authors have amassed on the duel, it is difficult to know what refers to  
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the former state of the matter, and what to the latter. They either knew not the distinction, or possessed an imperfect notion of it. Even in the researches of Montesquieu, concerning the judicial combat, there is thence, perhaps, a faintness and embarrassment; and, in the observations of Dr Robertson, on the same subject, the confusion is evident and palpable. See *Note 22. to Charles V.*

It has been affirmed, indeed, that the court of chivalry was not known till the eleventh century, or till a period still later. And, it is probable, that this court, in all its formalities, and in its condition of greatest splendour, existed not in an early age. But there is evidence, that its duties were exercised in very ancient times. And, from an examination of the oldest laws of the barbarians, it is to be inferred, that the business of it, except perhaps in a few instances, was not determined by the common judges. We know, at least, with certainty, that, in England, in the Saxon aera, before a regular court of chivalry was established, points of honour and of war were under the direction of the *heretochs*, while the duel, as a civil rule, was at the direction of the common judges; and that, in the Norman age, when the court of chivalry was formally in existence, with extensive powers, the *constable* and the *marshal* had succeeded to the jurisdiction of the heretochs. *Spelman, Gloss. p. 400. Sir Edward Coke on the court of chivalry.*

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The determination of a doubt, for which no compleat evidence could be produced, was the end of the duél as a civil precaution. The decision of points of honour, and disputes of arms, or the satisfaction of a proud and a wounded spirit, was the end of the duel, as an institution of chivalry. While the common judges of the land managed the duel in the former instance, as an object of common law ; it was governed in the latter by the judges in the court of chivalry, that is, by the constable and the marshal ; and the forms of procedure in these cases were essentially different.

Of the court of chivalry, the jurisdiction regarded matters of war, precedency, and armorial distinctions, as well as points of honour ; and treasons, and deeds of arms committed without the realm, were objects of its cognizance. In a word, where the common law was defective, the powers of the constable and the marshal were competent. 4. *Institut. c. 17.*

Yet, from these officers, there lay an appeal to the sovereign, as the head of arms, and he might stop, by his power, their proceedings. It is thence that we find the Kings of England superseding combats of chivalry. It was as the head of the civil state that they could supersede the combats of right, or at common law. Instances of their jurisdiction, in both cases, are not unusual. An exertion of it, in the duel of chivalry, took place in the intended combat between the Lord Rea and Mr Ramfay.

The





The Lord Rae, a Scots baron, impeached Ramsay and Meldrum for moving him beyond the seas, to join in the treasons of the Marquis of Hamilton. Ramsay denied the fact, and offered to clear himself by combat. A court of chivalry was constituted, by commission under the great seal; and the parties were on the point of engaging, when Charles I. interposing to prevent the duel, sent them prisoners to the Tower. *Kennet, complete history of England, vol. 3. p. 64.* An interposition in the duel at common law, was exercised in an intended combat in a writ of right between the champions of Simon Low and Jo. Kine, petitioners, and of Thomas Paramore, defendant. The battle was discharged by Queen Elizabeth. *Spelm. Gloss. p. 103.*

In the duel by chivalry, champions were not usual; because questions of honour required the engagement of the parties. In the duels of right, the parties might have champions, because the trial was merely an appeal to the Divinity, who was to decide the truth by assisting, miraculously, the cause of the innocent person; and this assistance might be manifested either to himself or to his representative. The fashion, however, of martial times, was an inducement to the parties themselves to engage: And, in general, champions were only proper for the old and infirm, for priests, minors, and women. *Du Cange, voce Campiones.*

U u

Antiently,





Antiently, in the duel of right, there was a discretionary power in the judges to determine in what cases it was necessary; and this was a proper restraint on the violence with which the duel was courted, in preference to other modes of trial. *Bruffel, Usage general des Fiefs, liv. 3. ch. 13.* Express laws were even made to describe the occasions in which alone it was to be expedient. There is, on this head, the following regulation of Henry I. ‘Non fiat bellum sine capitali, ad minus x sol. nisi de furto vel hujusmodi nequitia compellatio sit, vel de pace regis infracta, vel in illis in quibus est capitale mortis, vel diffamationis.’ *LL. Hen. I. c. 59.*

In the reign of Henry II. it was the practice to permit the defendant to take his choice between the assise or jury and the duel. ‘Habebit electionem,’ says *Bracton*, ‘utrum se ponere velit super patriam, utrum culp. sit de crimine ei imposito, vel non: Vel defendendi se per corpus suum.’ *Lib. 3. c. 18.* This marks the decline of the duel, and accordingly, it gradually gave way to the jury. To this alternative of being tried by one’s country, which expresses the form of the jury, or by the duel, which expresses the appeal to the Divinity, there is yet an allusion in the question proposed to a culprit, and in his answer. *Culprit, How wilt thou be tried?* His reply is, *By God and my country.* There is here a rule of law which has survived its cause or necessity. The alternative is suggested in the question, when no alternative exists. And the answer includes both trials, when  
one





one only is in practice. Absurdities of this kind, for they surely deserve this name, must be frequent in the progression of jurisprudence in all nations.

The duel of chivalry lost its legality with the fall of the court of chivalry. It left behind it, however, the modern challenge or duel, which it is dishonourable to refuse, and illegal to accept. The jury, which swallowed up the duel at common law, could here afford no remedy.

A punier, though a more useful relic of the honourable court of chivalry, which was once so high in repute, that it was in danger of incroaching on the jurisdiction of other courts, is yet familiar in the heralds who manage armories, descents, and funerals, and who record admissions to the peerage.

The decay of the manners of chivalry, was the distant cause of the fall of this court; and its immediate one was, perhaps, the jealousy of the great powers of its judges. There has been no regular high constable of England since the 13th year of Henry VIII. And the marshal dwindled down into a personal distinction, or name of dignity.

In France, points of honour were originally under the cognizance of the maire of the palace; and this officer, who was to acquire the greatest powers, appeared in times of a remote anti-





quity. *Du Cange, voc. Major Domus.* After the age of Hugh Capet, this dignity was suppressed; and out of its ruins four courts arose. One of these was the court of chivalry, or the offices of the high constable and marshal. The other courts were those of the high chancellor, the high treasurer, and the great master of France, or the judge of the King's household. For, in the æra of his grandeur, the maire of the palace had engrossed to his jurisdiction whatever related to arms, justice, and finance.

(2) It has been contended, that a knight's fee consisted regularly of a certain number of acres. *Spelman, voc. Feodum. Camden, Introd. to the Britann. p. 246.* But the value of acres must have varied according to their fertility and situation; and it seems the more probable notion, that a proportion of land, of a determined value, no matter for the quantity of the acres, was what in general constituted a knight's fee. The consideration of the revenue that was necessary for the maintenance of a knight, and for the furnishing of his arms, would direct the extent of the land. The will of the grantor, however, and the consent of the receiver, might constitute any portion of land whatever a knight's fee, or subject it to the service of a knight.

This is put past all doubt by the following remarkable paper in the Black Book of the Exchequer, which certifies Henry II. of the state of the knight's fee of one of his vassals.

*Carta*





*Carta Willelmi, filii Roberti.*

Karissimo Domino suo H. regi Anglorum, Willelmus, filius Roberti, salutem. Sciatis, quod de vobis teneo feodum. i. militis *pauperrimum*, nec alium in eo feodavi, qui vix in sufficientia, et sicut tenuit pater meus. Valet. *Liber Niger Scaccari, vol. 1. p. 247. Edit. 1771.*

In the records of England, there is mention also of the *small* fees of the honour of Moreton; and it is supposed that the fees which were granted previous to the death of Henry I. were in general more extensive than those which were posterior to it. *Madox, hist. of the Exch. vol. 1. p. 649.* In England, as well as in France, there are even frequent examples of whole manours which were held by the service of one knight, and accounted as a single knight's fee. *Dugdale's baronage, vol. 2. p. 107. Notes sur les Assises de Jerusalem, par Thaumassiere, p. 252.*

But, there were not only poor fees granted out by the crown. There were even grants *in capite* of the half of a knight's fee, and of other inferior portions of it. Of this the charters which follow are an instructive evidence.

*Carta*





*Carta \* Guidonis Extranei.*

Gwido extraneus tenet de Rege Alvin delegam per servitium dimidii militis.

*Carta Roberti, filii Albrici.*

Domino suo Karissimo H. Regi Anglorum, Robertus, filius Albrici Camerarii, salutem. Sciatis, Domine, quod ego teneo de vobis feodum dimidii militis. Valet.

*Carta Willelmi Martel.*

Ego Willelmus Martel teneo in capite de rege quartam partem feodi. i. militis in Canewic juxta Lincolniam de antiquo feofamento, unde debeo ei facere servitium, et nichil habeo de novo feofamento in comitatu Lincolniae. *Lib. Nig. Scaccarii, vol. 1. p. 147. 217. 269.*

It was chiefly the polity or the natural beneficence of princes and nobles that varied the condition of fees. At times, the fee was scarcely sufficient for the service required; and, on other occasions, it was infinitely plentiful, and beyond all proportion to the  
the

\* Guy Strange.



the military purpose of the grant. Its value, on an average, is, however, to be calculated from records and acts of parliament. From William the Norman till King John, it was in progression, a five, a ten, a fifteen, and a twenty pound land †. In King John's times, it grew to be a forty pound land; and, before the aera of the act of parliament which took away and abolished the military part of the feudal system, the knight's fee was computed at *L. 200 per annum*. These things are very curious, and might lead to political reasonings of importance. *Spelman, voc. Miles, Ashmole on the Order of the Garter.*

(3) Baronies and earldoms could be created or made to consist of any number of fees whatever. Thus, the barony of William de Albeney Brito consisted of thirty-three knight's fees, the barony of Earl Reginald, of two hundred and fifteen knight's fees, and a third part of a fee; and William de Meschines had a barony of eleven knight's fees. *Madox, Baronia Anglica, p. 91.* Thus the earldom of Geoffrey Fitzpeter Earl of Essex consisted of sixty knight's fees; and that of Aubry Earl of Oxford, of thirty knight's fees. *Selden, Tit. hon. part. 2. ch. 5. sect. 26.* Instances to the same purpose might be collected in the greatest profusion.

From

† Sir William Blackstone seems to think, that the knight's fee, in the reign of the Conqueror, was stated at *L. 20 per annum*, which is certainly a mistake. *Book 2. ch. 5.*





From facts so particular, it is, I conceive, to be concluded, that Sir Edward Coke is mistaken, when he lays it down, that a barony consisted, in antient times, of thirteen knight's fees and a third part, and that an earldom consisted of twenty knight's fees. 1. *Institut.* p. 69. 70. According to this way of thinking, some of the barons and earls whose names are now recited, must have possessed many baronies, and many earldoms; an idea which is surely not only strange, but absurd. The supposition that nobility is inherent in a certain and determined number of fees, which this opinion implies, is a notion, that does not correspond with feudal principles. The nobility was given, not by the mere possession of the fees, but by their erection into an honour by the sovereign. Yet Sir Edward Coke had an authority for what he said. It is the old treatise, termed the *Modus tenendi parliamentum*. This treatise, however, is not of so high a date as the Saxon times, to which it pretends; and the circumstance of its assumed antiquity, with the intrinsic proofs it bears of being a fabrication in the times of Edward III. detract very much from its weight. And, in the present case, it is in opposition to indubitable monuments of history.

I am sensible, that Sir William Blackstone has said expressly, 'That a *certain* number of knight-fees were requisite to make 'up a barony.' *Book. 2. ch. 5.* He has not, however, entered into any detail concerning this position. I should, therefore, imagine, that he has relied implicitly on the authority of Sir  
Edward



Edward Coke, which ought not, perhaps, to be esteemed too highly in questions which have a connection with the feudal institutions\*.

Nor is it in England only that examples can be produced to refute this notion about the constitution of baronies and earldoms. In Normandy, five knight's fees might form a barony; and of this the following testimonies are an authentic proof. 1.

X x

Ricardus

\* That Lord Coke had neglected too much the feudal customs, was a matter of lamentation to Sir Henry Spelman. It is with a reference to them, that Sir Henry thus speaks. 'I do marvel many times, that my Lord Coke, adorning our law with so many flowers of antiquity and foreign learning, hath not, (as I suppose), turned aside into this field, from whence so many roots of our law have, of old, been taken and transplanted. I wish some worthy lawyer would read them diligently, and show the several heads from whence those of ours are taken. They beyond the seas are not only diligent, but very curious in this kind; but we are all for profit and *lucrando pane*, taking what we find at market, without inquiring whence it came.' *Reliq. Spelman*, p. 99.

The neglect which produced this complaint, and drew this wish from this learned knight, is still prevalent. The law in Great Britain is no where studied in its history, and as a science. The student is solicitous only to store his memory with cases and reports; and courts of justice pay more regard to authorities than to reasonings. From the moment that the Dictionary of Decisions was published in Scotland, the knowledge of the Scottish law has declined. Yet the respectable author of that compilation did not surely imagine that he was about to do a prejudice to his nation.





‘ Ricardus de Harcourt tenet honorem S. Salvatoris de domino  
 ‘ rege per servitium 4 militum: Sed debebat quinque, quando  
 ‘ baronia erat integra.’ 2. ‘ Guillelmus de Hommet constabula-  
 ‘ rius Normanniae tenet de domino rege honorem de Hommetto  
 ‘ per servitium 5 militum, et habet in eadem baronia 22 feoda  
 ‘ militum ad servitium suum proprium.’ *Regestrum Philip.  
 Aug. Herouvallianum, ap. Du Cange, voc. Baronia.*

(4) The terms *knight* and *chivaler* denoted both the knight of *honour* and the knight of *tenure*; and *chivalry* was used to express both *knighthood* and *knight-service*. Hence, it has proceeded, that these persons and these states have been confounded. Yet the marks of their difference are so strong and pointed, that one must wonder that writers should mistake them. It is not, however, mean and common compilers only who have been deceived. Sir Edward Coke, notwithstanding his distinguishing head, is of this number. When estimating the value of the knight's fee at L. 20 *per annum*, he appeals to the statute *de militibus, an. 1. Ed. II.* and, by the sense of his illustration, he conceives, that the knights alluded to there, were the same with the possessors of knight's fees; and they, no doubt, had knight's fees; but a knight's fee might be enjoyed not only by the tenants *in capite* of the crown, but by the tenants of a vassal, or by the tenants of a sub-vassal. Now, to these the statute makes no allusion. It did not mean to annex knighthood to every land-holder in the kingdom who had a knight's fee; but to encourage



courage arms, by requiring the tenants *in capite* of the crown to take to them the dignity. He thus confounds *knighthood* and the *knight's fee*. *Coke on Littleton, p. 69.*

If I am not deceived, Sir William Blackstone has fallen into the same mistake, and has added to it. Speaking of *the knights of honour*, or the *equites aurati*, from the gilt spurs they wore, he thus expresses himself. 'They are also called, in our law, *milites*, because they formed a part, or, indeed, *the whole of the royal army*, in virtue of their feudal tenures; one condition of which was, that *every one who held a knight's fee* (which, in Henry the Second's time, amounted to L. 20 *per annum*), was obliged to be knighted, and attend the king in his wars, or fine for his non-compliance. The exertion of this prerogative, as an expedient to raise money, in the reign of Charles I. gave great offence, though warranted by law and the recent example of Queen Elizabeth: But it was, at the Restoration, together with all other military branches of the feudal law, abolished; and this kind of knighthood has, since that time, fallen into great disrepute.' *Book. 1. ch. 12.*

After what I have just said, and what is laid down in the text, I need hardly observe, that this learned and able writer has confounded the knight of *honour* and the knight of *tenure*. And, that the requisition to take knighthood, was not made to *every*

X x 2

possessor





possessor of a knight's fee, but to the tenants of knight's fees held *in capite* of the crown, who had merely a sufficiency to maintain the dignity, and were thence disposed not to take it. See farther *the notes to chapter IV.* The idea that the whole force of the royal army consisted of *knights of honour*, or *dubbed knights*, is so extraordinary a circumstance, that it might have shown, of itself, to this eminent writer, the source of his error. Had every soldier in the feudal army received the investiture of arms? Could he wear a seal, surpafs in silk and dress, use ensigns-armorial, and enjoy all the other privileges of knighthood? But, while I hazard these remarks, my reader will observe, that, it is with the greatest deference I dissent from Sir William Blackstone, whose abilities are the object of a most general and deserved admiration.

In this note, and, perhaps, in other places of this volume, I use the expression 'tenant *in capite* of the crown,' which may seem a tautology to many. The phrase, 'a tenant *in capite*,' may, indeed, express sufficiently the royal vassal. It may, however, express a tenant *in capite* of a subject. And this distinction was not unknown in the law of England. *Madox, Bar. Angl. p. 166. Spelm. Gloss. voc. Caput.*

(5) It is natural to think, that the number of tenants *in capite* who gave no infeudations, could not be great. The following curious records of the age of Henry II. are proofs, however, that  
 tenants





tenants *in capite*, who gave no infeudations, did actually exist; and, perhaps, they show, by implication, their uncommonness.

*Carta Albani de Hairun.*

Domino suo excellentissimo H. Regi Anglorum, Albanus de Hairun. Vestrae excellentiae notifico, quod ego in Hertfordshire feodum. 1. militis de veteri sefamento de vobis principaliter teneo, et quod de novo sefamento nichil habeo, nec militem sefatum aliquem habeo. Valete.

*Carta Mathaei de Gerardi Villa.*

Mathaeus de Gerardi Villa tenet in capite de Domino Rege feodum. 1. militis de veteri sefamento, et nullum habet militem sefatum, nec habet aliquid de novo. *Liber Niger Scaccarii*, p. 246. 247.

In the same instructive monument, there are other examples of grants *in capite* of single fees; and, in general, it is to be inferred, that, of such grants, there were sub-infeudations. p. 129. 130. 179.

CHAP-









## C H A P T E R II.

(1) **L** I B. Feud. lib. 1. tit. 1. Craig, Jus feudale, lib. 1.  
Spelman. voc. Feodum.

(2) An instance of the sovereign selecting the son the most agreeable to him, for enjoying the estate, occurs in England so late as the reign of Henry II. This prince gave seifine to Ralf de Mandevill of the barony of Merfwude, because he was a *better knight* than his elder brother Robert de Mandevill. *Madox, Baron. Angl. p. 97.*

It is remarkable, that, among the German nations, similar principles, even in the days of *Tacitus*, had an influence on the rights of succession. ‘Inter familiam, et penates, et jura successio-  
num, equi traduntur, excipit filius, non ut cetera maximus na-  
tu, sed prout *ferox bello et melior.*’ *De Mor. Germ. c. 32.*

A singular consequence of these usages made its appearance in the law of England. On the devolution of a peerage to  
heirs





heirs female, the King might select the fortunate daughter on whom to bestow it. This privilege, beautiful and interesting, was to grow out of martial customs.

(3) *Beneficium*, and *beneficia*, are frequently mentioned in the laws of the barbarians, and, from the description given of them, it is evident, that they were subject to *military* service. A law of the Longobards has this passage. ‘ Per multas interpellationes factas ad nos didicimus, *militēs beneficia sua* passim distrahere.’ *LL. Longob. lib. 3. tit. 9. l. 9. ap. Lindenbrog.* Ancient charters allude to their service, by calling them ‘ *beneficia militaria.*’ *Du Cange, voc. Beneficium.* See also a capitulary, an. 807. It is likewise to be observed, that *vassalli*, a feudal term, denoted, in early times, the possessors of benefices. Of this there are proofs in the years 757, and 807. *Du Cange, voc. Vassalli.*

It is commonly thought, that the word *feudum* was not known till about the year 884, when there is certain evidence of its use. Now, this period was, in some countries, posterior to the perpetuity of the fief, and thus *beneficium* and *feudum* were to express the same thing. In fact, in a constitution of the Emperor Charles III. who died in the 888, *beneficium* and *feudum* are employed alternately in expressing a hereditary grant. In the year 1162, there is a charter by the Emperor Frederic I. to Raimond his nephew, giving him the perpetual grant of a county; and, in this charter,





charter, the words *beneficium* and *feudum* are also used alike to express the donation. *Brussel, Usage general des fiefs, p. 72. 78.* Even in the books of the fiefs, these terms are employed promiscuously in the same sense.

(4) *Chantereau le Fevre* contends, that, under the Kings of France of the first and second race, there were only two kinds of landed property, the *domains* of the Prince, and *allodality*. This notion, which is the foundation of his system, obliges him to assert, that *benefices* were *allodium*. Inferior writers have followed his fancy. For all ingenious men draw after them a train of book-makers, who are more solicitous to defend their opinions, than to understand them.

That *benefices* were not *propriety* or *allodium*, has been just now said. But it may not be improper to produce express proofs of their distinction. The following laws will serve this purpose.

‘ Auditum habemus qualiter et comites et alii homines, qui  
 ‘ *nostra beneficia* habere videntur, comparant sibi *proprietates* de  
 ‘ ipso *nostro beneficio*, et faciunt servire ad ipsas *proprietates* ser-  
 ‘ vientes nostros de eorum *beneficio*, et curtes nostrae remanent  
 ‘ desertae, et in aliquibus locis ipsi vicinantes multa mala pati-  
 ‘ untur.’ *Capit. Kar. et Lud. lib. 3. tit. 19.*





‘ Audivimus, quod aliqui reddant *beneficium nostrum* ad alios homines in *proprietas*, et in ipso placito dato pretio comparant ipsas res iterum sibi in *alodem*; quod omnino cavendum est; quia qui hoc faciunt, non bene custodiunt *fidem*, quam *nobis promissam habent*. Et ne forte in aliqua *infidelitate* inveniatur, qui hoc faciunt, deinceps caveant se omnino a talibus, ne a propriis *honoribus*, a proprio solo, a Dei gratia et nostra, extorres fiant.’ *Capit. Kar. et Lud. lib. 3. tit. 20. ap. Lindenbrog. p. 877.*

The reader may also consult and compare what is collected in *Du Cange*, under *Alodis* and *Beneficium*.

(5) See Chapter 1. and the Notes to it.

(6) Spelman, Littleton, Coke, Houard, Madox, Dalrymple, Blackstone, the Judges of Ireland in the case of Tenures upon the commission of defective titles, &c.

In the elaborate treatise on feuds and tenures by Sir Henry Spelman, his whole argument to show that hereditary fiefs were unknown to the Anglo-Saxons, or at least the great weight of it, rests on the idea, that the feudal incidents were consequences of the *perpetuity* of the fief. Yet it is observable, that this position is constantly supposed, and never proved. He nowhere evinces, that wardship, marriage, relief, aid, and escheat, were  
necessary





necessary and certain results of the fief, in its condition of perpetuity; and, in the course of this work, if I do not flatter myself, I have produced evidence, from which it is to be concluded, in the clearest manner, that the feudal incidents were the attendants of the fief in all the steps of its progress.

On a foundation of mere froth, this distinguished antiquary has erected a superstructure that is without solidity, and which the slightest effort may overthrow. Yet it is resorted to as an impregnable castle; and here, vainly secure, many a combatant has thrown down the gauntlet of defiance. If authors were not generally the unthinking copists of each other, it might provoke laughter to consider the gravity with which an opinion is held out as irrefragable, that is in a high degree gross with absurdity, and feeble with weakness.

(7) Capitul. Reg. Franc. an. 877. ap. Baluz. tom. 2. p. 269. Abbé Mably, Observat. sur l'histoire de France, liv. 2.

(8) Du Cange, voc. Militia.

(9) Madox, Bar. Angl. p. 28. 277. 278. Houard, Anciennes loix des François, conservées dans les coutumes Angloises, recueillies par Littleton, discours preliminaire. Craig, Jus feud. Somner, Treatise of Gavelkind. Spelm. Gloss. Hume, Hist. of England, vol. 1. Hale, Hist. of the com. law.





(10) Sir Ed. Coke. The Judges of Ireland in the case of tenures. Selden, in his titles of honour. Bacon, Discourse on the laws and government of England, &c.

(11) The use of entails, which was not unknown in the Anglo-Saxon times, and the succession which obtained in allodial estates, must have contributed very much to the establishment of the perpetuity of the fief. *LL. Ælfredi, ap. Wilkins.* The general tendency of the fief to this ultimate step, and the immense power of many of the Anglo-Saxon nobles, seem also to confirm the idea, that the existence of its perpetuity might, in some cases, be known in the Anglo-Saxon times. But presumptive arguments, though of great weight, are not to be entirely relied upon in questions of this sort.

There is actual evidence, that Ethelred possessed, as an hereditary fief and earldom, the territory which had constituted the kingdom of Mercland. He had this grant from King Alfred, when he married his daughter Ethelfleda. *Selden, Tit. hon. part 2. ch. 5.* It is testified out of records, that the earldom of Leicester was an inheritance in the days of Æthelbald; and the regular succession of its earls, for a long period, is to be pointed out. *Camden, Britannia by Gibson, vol. 1. p. 542.* It is known from old historians of credit, that Deireland and Bernicia were Saxon earldoms, which were not only feudal, but inheritable. *Tit. hon. part 2. ch. 5.*

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The grant of Cumberland by King Edmund to Malcolm King of Scotland, was also feudal and inheritable; and this appears from the Saxon chronicle, and from the following version of the terms employed in it. ‘Eadmundus Rex totam Cumberland  
 ‘praedavit et contrivit, et *commendavit* eam Malcolmo Regi Sco-  
 ‘tiae, hoc pacto quod *in auxilio* sibi foret terra et mari.’ *H. Huntindon, ap. Praefat. Episc. Derrens. ad LL. Anglo-Sax. p. 7.*  
 The expression *commendare*, indeed, is said by Spelman not to mean a feudal homage. *Feuds and tenures, p. 35.* But the original Saxon evinces this sense; and, in fact, the word *commendare*, notwithstanding the authority of this learned glossographer, is used with the utmost propriety to express a feudal homage. *Commendare se alicui*, was even the marked expression for *faire l’hommage à un suzerain*. See *Du Cange, voc. Commendare et Brussel, Usage-general des fiefs, p. 35. 276.*

(12) ‘Volumus etiam, ac firmiter praecipimus et concedimus,  
 ‘ut omnes liberi homines totius monarchiae regni nostri praedicti,  
 ‘habeant et teneant terras suas, et possessiones suas bene, et in  
 ‘pace, libere ab omni *exactione injusta*, et ab *omni tallagio*, ita  
 ‘quod nihil ab eis exigatur vel capiatur, nisi servitium suum li-  
 ‘berum, quod de jure nobis facere debent, et facere tenentur;  
 ‘et prout statutum est eis, et illis a nobis datum et concessum,  
 ‘jure haereditario in perpetuum per commune consilium totius  
 ‘regni nostri praedicti.’ *LL. Guliel. c. 55.*





It is to be mentioned here as somewhat remarkable, that the laws of Duke William, and especially those of them which relate to the feudal institutions, are represented by many foreign writers, and by our domestic advocates for tyranny, as the mandates or ordinances of a prince who governed by the sword. Yet they were parliamentary acts, and bear this honourable testimony in their bosom.

(13) LL. Edward. Reg. ap. Wilkins, p. 197. Chart. Guil. de leg. Edw. Regis ap. Spelm. Cod. Leg. vet. p. 290.

(14) Spelm. Cod. Leg. vet. ap. Wilkins, p. 295. 296.

(15) LL. Henry I. ap. Wilkins, p. 233. et seq.

(16) Chart. Steph. Reg. de libertatibus, ap. Spelm. Cod. Leg. vet.

‘ Sciatis me concessisse, et praesenti charta mea confirmasse,  
 ‘ omnibus baronibus et hominibus meis de Anglia omnes *liber-*  
 ‘ *tates et bonas leges* quas Henricus Rex Angliae avunculus meus  
 ‘ eis dedit et concessit, et omnes *bonas leges et bonas consuetudines*  
 ‘ eis concedo quas habuerunt tempore Regis *Edwardi.*’ p. 310.

(17)





(17) Charta libertatum Angliae Regis Henrici II. ap. Spelm. Cod. p. 318.

(18) Magna Charta Regis Johannis de libertatibus Angliae, ap Spelm. Cod. p. 367. et seq.

Many important clauses of the great charter relate to the feudal severities. And, it is worthy of notice, that, from the slight consideration of these severities, it has proceeded, that so many writers have described the feudal institutions as a system intended and formed for oppression. Yet I have clearly shown, that these severities grew out of these institutions from the change of manners; and that the scheme of benefices or fiefs was not only consistent with liberty, but founded in it.

(19) Hume, Hist. of England, vol. 1. p. 185.

(20) There are laws which bear the name of Edward; but it is acknowledged, on every hand, that their authority is not to be fully trusted. And, in the question treated, they are not of any use, unless it be, perhaps, that they illustrate the existence of fiefs among the Anglo-Saxons. This compilation, however, though posterior to the age of the Confessor, deserves to be examined with more attention than has hitherto been bestowed upon it. M. Houard, a foreign lawyer, whose acquaintance with  
Norman:





Norman customs is more intimate than with those of the Anglo-Saxons, is the latest writer who seems to have made a study of it.

(21) The following very curious law of William the Norman makes express mention of the *knight's fee* and *knight-service*. It does more. It alludes to a prior law which actually established this tenure, and which was the act of William and his parliament. It is, of consequence, a decisive proof of the introduction of the *knight's fee*, or of *knight-service*, by this prince, and of this only.

‘Statuimus etiam et firmiter praecipimus, ut omnes comites,  
 ‘et barones, et militès, et servientes, et universi liberi homines  
 ‘totius regni nostri praediçti, habeant et teneant se semper bene  
 ‘in *armis*, et in *equis*, ut decet et oportet, et quod sint semper  
 ‘prompti et bene parati ad *servitium suum integrum* nobis ex-  
 ‘plendum, et peragendum, cum semper opus adfuerit, secun-  
 ‘dum quod NOBIS debent de *feodis et tenementis suis* de jure fa-  
 ‘cere, et sicut illis statuimus per *commune consilium* totius regni  
 ‘nostri praediçti, et illis dedimus et concessimus in feodo jure  
 ‘haereditario.’ *LL. Guill. c. 58.*

(22) ‘Terras militibus ita distribuit, et eorum ordines ita dis-  
 ‘posuit, ut Angliae regnum lx millia militum indefinenter ha-  
 ‘beret,





'beret, ac ad imperium regis, prout ratio poposcerit, celeriter exhiberet.' *Ord. Vit. lib. 4.*

Sprott, the monk of Canterbury, makes the knight-fees to amount to 60,215, and of these he relates, that 28,115 were in the hands of the clergy. Some writers have made Domesday-book agree with Ordericus Vitalis, as to the number of knight's fees. But they produce not, so far as I have observed, the passage or passages of that monument, which illustrate this opinion. And, it is difficult to conceive, that it can give a complete satisfaction on this head or topic.

(23) Selden, Tit. hon. part 2. ch. 5. sect. 17. Madox, Baron. Anglica, p. 30.

(24) Coke, 1. Institute, sect. 1.

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CHAP-









C H A P T E R III.

S E C T I O N I.

(1) **T**HE military plan of the feudal institutions, or an idea of the militia created by fiefs, may be seen to the greatest advantage in that curious monument, 'the Black Book of the Exchequer;' of which it was the object to exhibit, not only a list of the feudal tenants, but of the fees and knights held and provided by them. An article from it, therefore, while it may employ the reflections of the reader, will illustrate the general notion inculcated in the text.

*Carta Gervasii Paganelli.*

Domino suo dilectissimo Henrico, Regi Angliae et Duci Normanniae et Aquitaniae, et Comiti Andegaviae, Gervasius Paganellus salutem.





Isti sunt milites, de quibus vobis debeo servitium.

Petrus de Bremingeham tenet feod. IX. militum.

Giffardus di Tiringeham feod. trium militum.

Henricus de Mohun feodum. I. militis.

Ricardus Engaine feodum. I. militis.

Robertus de Castreton feodum. I. militis.

Paganus de Embreton feodum. I. militis.

Manifelinus de Ovunges feod. duorum militum.

Petrus de Stamford feodum. I. militis.

Willelmus de Jetingeden feodum. I. militis.

Elias de Englefeld feod. III. militum.

Ricardus de Ditton feod. IIII. militum.

Philippus de Hamton feod. II. militum.

Willelmus de Abbenwrthe feodum. I. militis.

Willelmus, filius Widonis, feod. III. militum.

Bernardus de Frankelege feod. IIII. militum.

Gervasius de Berneke feod. IIII. militum.

Willelmus de Bello campo feod. II. militum.

Willelmus de Haggaleg feod. I. m.

Milo de Ringeston feodum. I. militis et dimid.

Willelmus Buffare feod. II. militum et dim.

Robertus de Estingeton feod. I. militis.

Henricus de Oilli tenebat feodum. I. militis.

Haec



Haec est summa militum, de quibus Antecessores mei Antecessoribus vestris fecerunt servitium, et ego, vestri gratia, vobis, scilicet. L.

Et isti sunt milites, quibus pater meus et ego dedimus terram de dominio nostro post mortem Henrici, avi vestri, scilicet,

Henricus de Erdinton feodum. I. militis.

Radulfus Mansel feodum. I. militis.

Willelmus Paganellus feodum. I. militis.

Michael filius Osberti et Willelmus de Lovent. feodum dimidii militis.

Godwinus Dapifer tertiam partem. I. militis.

Walterus Mansel feodum. I. militis.

Petrus de Surcomunt feodum dimidii militis.

Galfridus de Rivilli tertiam partem. I. militis.

*Liber Niger Scaccarii, vol. 1. p. 139. 140.*

It is in this form that other vassals of the crown certify, in this work, the services and the knights they were to furnish.

(2) It was enacted by a law of Henry II. ' Ut quicumque habet feodum unius militis, habeat loriam, et cassidem, et clypeum, et lanceam.' *Hoveden, an. 1181.* The variations in the nature of the arms to be provided, at different periods, by vassals





vassals and soldiers, are learnedly explained in an author whom the adorers of tyranny affect to despise, in the manly and spirited work of Nathaniel Bacon, on the laws and government of England.

(3) 'In universum aestimanti plus penes peditem roboris.'  
*Tacit. de Mor. Germ. c. 6.*

(4) Many writers have observed, that it was William the Norman who introduced archers into England. But they were known in the Anglo-Saxon armies. A law of Alfred has these words, 'Si quis alteri digitum unde sagittatur absciderit, xv sol. comp.' See *LL. Alfr. c. 40.* as interpreted by *Lindenbrogius*, in his *Glossary*, p. 1389. Archery was also of high antiquity in the other states of Europe. See *LL. Sal. tit. 31. l. 6. LL. Ripuar. tit. 5. l. 7.* The English were to excel all nations in the use of the bow, and for far shooting. It was the archers who gained the battles of Cressy, Poitiers, and Agincourt.

'King Edwarde the third,' says *Ascham*, 'at the battaile of Cressie, against Philip the French King, as Gaguinus the French historiographer plainlye doth tell, flewe that day all the nobilitye of Fraunce onlye with his archers.'

'Such like battaile also fought the noble Prince Edwarde beside Poitiers, where Johne the French Kinge, with his sonne, and  
' in



‘ in a manner all the peres of Fraunce, were taken, besides thirty  
 ‘ thousand which that daye were slaine, and very few English  
 ‘ men, by reason of theyr bowes.

‘ Kinge Henrye the Fifte, a prince perelesse, and most victori-  
 ‘ ous conquerour of all that ever dyed yet in this parte of the  
 ‘ worlde, at the battle of Agincourt, with seven thousand fight-  
 ‘ inge men, and yet many of them sicke, being suche archers,  
 ‘ as the chronicle sayth, that most parte of them drewe a yarde,  
 ‘ slewe all the chivalrye of Fraunce, to the number of forty thou-  
 ‘ sand and mo, and lost not past twenty-six Englishmen.’ *Toxop-  
 philus, or the Schole of Shootinge, p. 112.*

(5) ‘ He,’ says *Littleton*, ‘ which holdeth by the service of  
 ‘ one knight’s fee, ought to be with the King forety dayes, well  
 ‘ and conveniently arrayed for the warre.’ *Tenures, book 2.  
 ch. 3.* See farther *Du Cange, voc. Feudum militare. Spelman,  
 voc. Feudum Hauberticum, et Assises de Jerusalem, avec des  
 notes, par Thaumassiere, p. 266.*

(6) *Bruffel, Usage-general des fiefs, vol. 1. p. 164. 168. Da-  
 niel, hist. de la milice Françoise, liv. 3.*

In England, in the time of Edward III. his army in France,  
 Normandy, and before Calais, besides the Lords, consisted of  
 31294 combatants and attendants; and their pay for one year  
 and





and 131 days amounted to 127201 l. 2 s. 9 d. The following specification of particulars will furnish an idea of the military pay and service of those times.

‘ To Edward Prince of Wales, being in the King’s service in  
 ‘ Normandy, France, and before Calais, with his retinue, for  
 ‘ his wages of war, 20 s. a day. Eleven banerets, every one  
 ‘ taking 4 s. a day. 102 knights, each 2 s. a day. 264 escuires,  
 ‘ each 12 d. a day. 384 archers on horseback, each 6 d. a day.  
 ‘ 69 foot archers, each 3 d. a day. 513 Welshmen, whereof  
 ‘ one chaplain at 6 d. a day. One physician, one herald or cryer,  
 ‘ 5 ensignes, 25 serjeants or officers over 20 men, each 4 d. a  
 ‘ day. 480 footmen, each 2 d. a day.

‘ To Henry Earle of Lancaster, being in the King’s service  
 ‘ before Calais, with his retinue, for his wages of war, and one  
 ‘ other Earle, each 6 s. 8 d. a day. Eleven banerets, each 4 s  
 ‘ a day. 193 knights, each 2 s. a day. 512 escuires, each 12 d.  
 ‘ a day. 46 men at armes, and 612 archers on horseback, each  
 ‘ 6 d. a day.

‘ To William Bohun, Earle of Northampton, being in the  
 ‘ King’s service in Normandy, France, and before Calais, 2 ba-  
 ‘ nerets, 46 knights, 112 escuires, 141 archers on horseback.  
 ‘ For their wages as above.

‘ To





' To Thomas Hatfield bishop of Durham, 6 s. 8 d. a day. 3  
' banerets, 48 knights, 164 escuires, 81 archers on horseback,  
' every one taking as above.

' To Ralf Baron of Stafford, being in the King's service in  
' the places aforesaid, with 2 banerets, 20 knights, 92 escuires,  
' 90 archers on horseback. Every one taking as above.'

These things appear in a contemporary record, published by  
*Dr Brady* in his history of England. See *vol. 2. Appendix,*  
*p. 88.*

A a a

S E C-





## SECTION II.

(1) **I**N rolls of the militia of France in the year 1236, and preceding that period, which were observed by *Pere Daniel*, there were entered military tenants who were marked down for the service of 5 days, and for other proportions of the ordinary service of forty days. And these are proofs, not only of fees in France, but of the fractions of fees. *Milice Françoise*, p. 55.

This learned author, indeed, not attending to the regulations which made the fractions of a fee give their proportion of the ordinary service, has endeavoured to account for the limited number of days which many tenants were bound to serve, by refined reasonings and conjectures; which show how acutely, and yet how absurdly, a man of ability may employ himself in searching out the truth\*.

*Littleton,*

\* \* Pour ce qui est de ceux que l'on voit dans les roles n'être obligez qu'à cinq, qu'à quinze, ou vingt-cinq jours, ce furent des concessions particulieres, dont il est difficile de conjecturer la cause; ce fut pour quelque service signalé rendu a l'etat,



*Littleton*, having remarked that the ordinary service of the knight's fee was forty days, is careful to add, 'that he, which holdeth his land by the moitie of a knight's fee, ought to be

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' l'etat, ou peut-être que leurs ancêtres durant les guerres civiles fournirent au Roi leurs châteaux, ou leurs terres à cette condition, ou qu'ils avoient quelque autre obligation qui supléoit au service ordinaire; comme, par exemple, de faire la garde en certains lieux lorsque l'ennemi approchoit. On voit en effet dans ces roles quelques gentilshommes fieffez, obligez seulement à faire le guet en certaines occasions dans quelques forteresses.

' Une autre raison peut avoir contribué à la réduction du service à un terme plus court qu'il n'étoit autrefois: C'est que sous la première race, et fort avant sous la seconde, l'empire François étoit beaucoup plus étendu que sous la troisième. Il falloit aller chercher les ennemis et les rebelles dans la Germanie, et au delà; il falloit passer les Alpes, ou les Pyrénées, et entrer bien avant en Italie et en Espagne: Par conséquent les expéditions duroient beaucoup plus long-tems que sous la troisième race, sous la quelle le royaume avoit des bornes beaucoup plus étroites.' *Liv. 3. ch. 2.*

The wildness of these conjectures does not require to be pointed out minutely; as it will appear from a comparison of the text with this note. Yet I censure not the abilities of this historian. If we could reach the truth in all sciences, we should find, that it is the greatest men who have wandered ofteneft. The philosopher, who states sentiments of his own, must necessarily be mistaken at times, and is often to reason hypothetically. The author who would catch the general sense and opinions of the world, has no title to travel out of the right path; and, if his errors are frequent, he deserves to be contemptible. It is not so with the wanderings of the inventive and reflecting mind. Though they merit not approbation, they call for respect. The absurdities of the profound are the results of thought and of courage; those of the shallow are the fruits of mere weakness.





‘with the King twenty days; and that he which holdeth his  
 ‘land by the fourth part of a knight’s fee, ought to be with the  
 ‘King ten days; and so he that hath more, more; and he  
 ‘that hath lesse, lesse.’ *Tenures, p. 69.*

In a roll, *de l’ost de Foix*, in the year 1272, there are the following explicit proofs of the fractions of fees, and of the limited service that was to be given for them.

Gaufridus de Baudreville, praesentavit servitium suum per xx dies pro dimidio feodo.

Johannes Morant dicit, quod debet servitium quarti unius militis.

Johannes de Falesia Scutifer dicit, quod tenet dimidium feodum loricae, pro quo debet, sicut dicit, auxilium exercitus et calvacatae quando per Normanniam levatur, aut servitium per xx dies eundo et redeundo; et si servitium dictorum xx dierum captum fuerit, auxilium praedictum non debet capi nec levari. *See Brussel, Usage-general des fiefs, p. 174.*

In England, the fractions of fiefs are to be proved by almost every article in the *Black Book of the Exchequer*, and by a multitude of records in *Madox*; and to these authorities I refer the inquisitive reader:

(2) Du





(2) Du Cange, voc. Membrum Loricae. Craig Jus Feudale, lib. 1. Affises de Jerusalem, avec des Notes, par Thaumassiere, p. 104.

(3) Cowel, Interpreter, voc. Fee Ferm. Spelman, voc. Feodi Firma. Du Cange, voc. Feudi Firma.

(4) See what is said by *Mr Baron Dalrymple*, in the masterly sketch he has given of the history of the alienation of land, in his comprehensive and learned treatise concerning feudal property in Great Britain.

(5) Littleton, Tenures, sect. 96. Daniel, Hist. de la milice Françoise, liv. 3.

(6) In the strictness of the feudal regulations, the estate of the vassal might be forfeited for his neglect of service. But, in general, it seemed equitable, that a fine only should punish his disobedience. *Brussel, tome 1. Affises de Jerusalem, avec des notes par Thaumassiere, p. 267. Etablissements de S. Louis, liv. 1.*

In England, in the Anglo-Saxon times, the forfeiture of the benefice or a fine, as in the other countries of Europe, was the punishment of the refractory vassal. The case was the same in the Norman period of our history. When the King's summons

*ad*





*ad habendum servitium*, was issued, it was expected that it would be complied with. The following fines and forfeitures for neglect of service are from records.

‘ The Abbot of Pershore was amerced, for not sending his  
 ‘ knights to serve in the army of Camarun, as he was warned to  
 ‘ do. William de Hastings fined in c marks, that he might  
 ‘ have the king’s favour, because he did not march at the king’s  
 ‘ summonce in the army of Normandy. William, bishop of  
 ‘ Winchester, fined, or was amerced, in c marks, because he was  
 ‘ not in the army of Gannok, nor had his service there. Mat-  
 ‘ thew Turpin was disseised of his land and serjeanty in Winter-  
 ‘ law, because he was not in the king’s service beyond sea. Dun-  
 ‘ can de Lafcels was disseised of three knight’s fees and a half,  
 ‘ because he was not with the king in his army of Scotland,  
 ‘ with horses and arms. Roger de Cramavill was disseised of  
 ‘ his land, because he did not go with the king in his voyage to  
 ‘ Ireland. Malgar de Vavafur was disseised of his land, because  
 ‘ he neither went with the king into Ireland, nor made fine for  
 ‘ the voyage.’ *Madox, Hist. of the Exchequer, vol. 1. p. 662.*  
 663. See farther *Baron. Anglic. book. 1. ch. 5.*

(7) Littleton, tenures, sect. 95. Du Cange, Gloss. voc. Scutagium.

(8)





(8) Daniel, Milice Françoise, liv. 3. Du Cange, voc. Cotrelli, Brabanciones, Brabantini. Hume, Hist. vol. 1. p. 308.

In France, it is said, that mercenaries were not employed in considerable numbers, till the reign of Philip the August. In England, it is thought, they were first known under Henry II. From the causes I mention, it is probable, that their use must have been familiar, and even extensive, in both countries, in earlier times.

(9) Baronia Anglica, book 1. ch. 6. Daniel, Milice Françoise, liv. 3.

(10) 'The *religious*,' says *Madox*, 'insisted that they held all their lands and tenements in frankalmoigne, and not by knight service. This allegation was used with success by the abbot of Leycester, the priour of Novel-lieu without Staunford, and the abbot of Pippewell.' He cites the records which prove these frauds; and, in another place, appealing also to records, he has these words. 'The abbot of St Austin had a great success in defrauding the king of his services. The abbot, it seems, had been feoffed to hold by the service of fifteen knights. Of these fifteen, he found means to conceal twelve, and answered to the king with three only.' *Baron. Angl. p. 109. 114.*

(11)





(11) A record of Henry III. says of Richard Crockel, 'Faciet servitium tricesimae partis feodi j militis.' A record of the same prince, says of John Hereberd, 'Faciet servitium sexagesimae partis unius feodi.' *Hist. of the Exchequer, vol. 1. p. 650. 651.* A variety of instances, to the same purpose, are to be collected.

On the supposition that the fractions of a fee beyond the eight parts, were not properly its members, the demands of service for the thirtieth and the sixtieth parts of a fee, must have been encroachments and severities, against the usual practice and usages of fiefs. If *service*, however, was required for such fractions, the assessment of a *scutage* on the tenants of knight-service would necessarily subject them in their proportion of payments. And the difficulties attending either the exaction of these services, or these payments, must have been infinite.

It is to be confessed, that the giving the thirtieth or the sixtieth part of the service of forty days, which was the usual term of the service of the military tenants, has a strange aspect. Perhaps the grants I mention were not regulated by the usual rules which directed fees. It is well known, that there were tenants in knight-service who were bound to give, not the usual service of forty days, but the attendance of themselves and their knights, both at home and abroad, at all times, and wherever it should



should be demanded. Even in this view, however, it is difficult to comprehend the regulations which must have governed the fractions of such fees.

But there were also vassals in knight-service whose stipulated time in the field and in expeditions was sixty days. See *Etablissemens de S. Louis*, p. 23. There might thus, by the agreement of superiors and tenants, be stipulated services for one hundred, two hundred, or any definite number of days whatever. On this principle, it is easy to account for the fractions of fees which gave service for the thirtieth, the sixtieth, or any such proportions of a fee. In this state of the matter, however, the fractions I speak of in the text, though out of the common usage of fiefs, must have been *members* of the fee.

In the courtly and agreeable introduction to the History of Charles the Fifth, in the *View of the Progress of Society in Europe, from the subversion of the Roman Empire, to the beginning of the sixteenth century*, of which the scheme is so comprehensive, it is remarkable, that, amidst a wide variety of other omissions, there is not even the slightest consideration of knight-service, and the knight's fee. Yet these circumstances were of a most powerful operation, both with respect to government and manners. I make not this remark to detract from the diligence of an author whose laboriousness is acknowledged, and whose total abstinence from all ideas and inventions of his own, permitted him to carry an undivided attention to other

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men's thoughts and speculations; but that, resting on these peculiarities, I may draw from them this general and humiliating, yet, I hope, not unuseful conclusion, that the study and knowledge of the dark ages are still in their infancy. Are we forever to revel in the sweets of antient lore? And are we never to dig up the riches of the middle times?

CHAP-





CHAPTER IV.

(1) **A**MONG the disbursements from the Exchequer of the kings of England, there seems to have been much for the behoof of the knights of honour, whom they retained. This appears from a variety of records in *Madox*, and accounts for the high charges of the sherifs for palfreys, saddles, gilt-spurs, peacocks-crests, silk toifes, robes, gloves, steel-caps, swords, and lances. *Hist. of the Exchequer, ch. 10.*

A pension of L. 40 *per annum* was given by Edward III. to John Atte Lee, who had been invested with knighthood *in auxilium status sui manutenendi*; and that Sir Nele Loring might better maintain the honour of knighthood, he granted to him, and his heirs male, L. 20 *per annum*. An annuity of forty marks was given to Sir John Walth, by Richard II. to enable him to support this dignity. And other examples to this purpose are to be collected. *Ashmole on the Garter, p. 34.* See farther *Du Cange, voc. Milites Regis, et Dissert. 5. sur l'Histoire de St. Louis.*





(2) Information concerning the knights retained by the nobles, is not to be found in that abundance which might be expected. In an account of the household expence of Thomas Earl of Leicester an. 1313, there are charged 70 pieces of blue cloth for his knights, and 28 for the esquires; 7 furs of powdered ermin, 7 hoods of purple, 395 furs of budge for the liveries of barons, knights, and clerks; 65 saffron-coloured cloths for the barons and knights; and 100 pieces of green silk for the knights. In this account, there is also a charge of L. 623 : 15 : 5, as fees to earls, barons, knights, and esquires. *Stow, Survey of London, in Strype's edition, vol. 1. p. 243.* The total expenditure of the Earl of Leicester for one year, which was 7309, is valued by Mr Anderson, at L. 21,927 of our money; and from the difference of living, or of the efficacy of money, his expence is made to be equal to L. 103,633. *Anderson, Hist. of Commerce, vol. 1. p. 153.* A board for the knights was one of the establishments of the fifth Earl of Northumberland. *Household-book, p. 310.* See farther, *St Palaye, tome 1. p. 312. 364.*

(3) 'In the nineteenth year of King Henry III.' says *Madox*,  
 'all the sherifs of England were commanded, by close writs of  
 'the great seal, to make proclamation in their respective coun-  
 'ties, that all they who held of the king in chief, one knight's  
 'fee or more, and were not yet knighted, should take arms and  
 'get themselves knighted, before the next Christmas, as they  
 'loved



'loved the tenements or fees which they held of the king.'  
*Baron. Angl. p. 130.* Proclamations of this kind were frequent.

(4) The writs to take knighthood expressed often, in their bostoms, the single knight's fee, as the estate entitling to knighthood; and they are valuable as ascertaining, at different times, the value of the knight's fee. Thus, there are rolls of different dates which state the knight's fee at fifteen, twenty, thirty, forty, and fifty pounds of yearly valuation. A specification of such records may be seen in *Ashmole, p. 33.* and *Coke, 11. Institute, p. 597.* And, it is to be wished, that some intelligent person, who has access to the public offices, would publish a series of them. From such a work ingenious men might derive many advantages.

It is not to be conceived, that the knight's fee which was held of a subject, could entitle to knighthood; and yet many learned writers have expressed themselves to this purpose. It was the knight's fee *in capite*, or of the crown. This is illustrated by the writs of summons to take knighthood. And, of this writ, the record which follows, is an example, in the usual or regular form.

Rex Vicecomiti Norf. et Suff. salutem. Praecipimus tibi, quod, visis literis istis, per totam balivam clamari facias, quod  
 omnes





omnes illi qui de nobis tenent in CAPITE feudum unius militis, vel plus, et milites non sunt, citra festum natalis Domini anno regni nostri decimo nono, arma capiant et se milites fieri faciant, sicut tenementa sua quae de nobis tenent diligunt. *Claus. 19. H. 3. m. 25. dorso. ap. Madox, Hist. of the Exchequer, vol. 1. p. 510.*

(5) In the reign of Henry III. the honour of Dudley, and other lands of Roger de Sumery, were taken into the king's possession, with all the chatels found on them; because Roger did not come to be girt with the belt of knighthood. *Bar. Angl. p. 131.* For the same reason, the same prince seized the estates of Gilbert de Sampford and William de Montagu. And, in the twentieth year of Edward I. the sheriff of Kent was commissioned to seize the lands of such persons as did not appear to take knighthood, and to answer at the exchequer for the issues of them. *Hist. of the Exchequer, vol. 1. p. 510.*

The neglect of the sherifs to distrain the lands of those who were entitled to knighthood, and refused it, was often to subject them in amerciaments and punishments. And, what is remarkable, it appears that the command of the King's writ to his officers was at times accompanied with much severity, in case they should be negligent of their duty, or be tempted to connivance by bribes. This is illustrated by the evidence of the following writ to the sheriff of Northamptonshire.

Rex





Rex Vicecom. North. salutem. Praecipimus tibi quod, sicut teipsum et omnia tua diligis, omnes illos in baliva tua, qui habeant viginti libratas terrae, distringas, quod se milites faciendos curent, citra nativitatem Sancti Johannis Baptistae proxime futur. Sciturus pro certo, quod si, pro munere, vel aliqua occasione, aliquam relaxationem eis feceris, vel aliquem respectum dederis, nos ita graviter ad te capiemus, quod omnibus diebus vitae suae te senties esse gravatum. T. R. apud Wyndesfor decimo quarto die Aprilis. *Claus. 28. H. 3. m. 12. dorso. ap. Ashmole, p. 33.* See also *Coke, 11. Inst. p. 596.*

Thus, by a strange fate, chivalry was to grow into an imposition and a tax. It is a wild circumstance, and shows the unfortunate counsels, and the perverse humour of Charles I. that this unamiable method of raising money was revived in his reign. An act of tyrannical insolence was thus founded upon the pretext of an antient custom. Charles lived to abolish the oppression he had revived, and to ordain, that no person whatever should be compelled to take the order of knighthood, or to undergo any fine or trouble for not having taken it. *Stat. Car. I. an. 1640, cap. 20.*

(6) In the reign of Henry III. Bartholomew Fitz-William gave v marks to have respite for taking knighthood; and Thomas de Moleton, and several others, gave fines on the same account. *Hist. of the Exch. vol. 1. p. 509.* In the same reign,

Robert





Robert de Menevil paid v marks for a respite of knighthood for two years; and Peter Fouden 48 shillings and 8 pence for the respite of three years. And, for a suspension from knighthood for the same period, John de Drokensford, in the days of Edward III. paid ten pounds. *Ashmole, p. 33.*

The refusing to take knighthood, when not punished by the seizure of the land, was subjected to fines and amerciaments, which seem to have been arbitrary. In the time of Edward III. William, the son of Gilbert de Alton, paid twenty shillings for not appearing and receiving knighthood, according to the command of the King's proclamation; and the fine of forty shillings was set upon Simon de Bradeney, Thomas Trivet, and John de Neirvote. In the days of Henry IV. Thomas Pauncefoot paid four nobles for this neglect or contempt. *Ashmole, p. 34.* See farther *Baron. Angl. p. 131. 132.* *Camden, Introd. to the Britan. p. 246. 247.*

CHAP-





## C H A P T E R V.

### S E C T I O N I.

(1) 'FIT interdum,' says the old dialogue concerning the exchequer, 'ut imminente vel insurgente in regnum hostium machinatione, decernat rex de singulis feodis militum summam aliquam solvi, marcam scilicet, vel libram unam; unde militibus stipendia vel donativa succedant. Mavult enim princeps stipendiarios, quam domesticos bellicis apponere casibus. Haec itaque summa, quia nomine scutorum solvitur, *scutagium* nuncupatur.' *Dial. de Scaccar. lib. 1. sect. 9.*

It was according to the number of their fees that the barons and tenants *in capite* were charged with *scutage*. Each knight's fee paid a determined sum to the King. And, as the vassals of the crown were charged with the full payments for their fees, they had recourse for compensation to their knights, from whom they claimed a scutage in proportion to the fees held and pos-

C c c

essed





assessed by each. The king applied to his vassals, and his vassals applied to their tenants.

(2) It is commonly conceived, on the authority of Alexander de Swereford, an accurate observer of records, that, in England, there was no *scutage* or tax on knight-fees before the reign of Henry II. There is great probability, however, that the *scutage* preceded the age of this prince. It is to be thought that it was coeval with the use of *mercenaries*; but the period of the introduction of these is not, I believe, to be ascertained with precision.

In the second year of the reign of Henry II. there was a *scutage* for the army of Wales. It was assessed only on the prelates who held their lands in knight-service. They paid at the rate of xx s. for each knight's fee. There was, in the fifth year of the same reign, a second *scutage* for the army of Wales; and it was assessed not only on the prelates, but on all the tenants by knight-service indiscriminately. They paid two marks for each knight's fee. In the thirty-third year of the same prince, there was a *scutage* for the army of Galway. It was xx s. *per fee*. Under Richard I. a *scutage* for Wales was assessed at c s. *per fee*. *Madox, hist of the Excheq. vol. 1. p. 620. et seq.*

I know that the first mode of taxation in England was not the tax on knight's fees, of which I now speak. In the Anglo-Saxon times,





times, Danegeld was an imposition on the landed property of England ; and it was established with the consent of the people in the wittenagemot or national council. The earlier Norman princes appear also to have levied this tribute ; but, in doing so, they probably exercised an illegal stretch of prerogative.

It was as mercenaries came to be employed, and as the spirit of the feudal institutions declined, that the scutage, or the tax on knight-fees, was to prevail. To this tax the *Magna Charta* gave a blow, which, in time, was to be decisive. The grant of money by the people succeeded to it. Subsidies, tenths, and fifteenths, were adopted, and continued long. The tax of Danegeld was only intended as a temporary expedient. The scutage led the way to a regular, a constant, and a formal method of taxation.

(3) Kennet, Collection of English Historians. Madox, Hist. of the Exchequer. Hume, History of England.

(4) It is an important circumstance, that the free gifts of cities and towns should have grown into taxes. In France, in the year 1231, the burgeses of S. Omer paid to S. Louis the sum of 1500 livres ; and this payment was called a *donum* ; a proof that it was not exigible as a duty. It is likewise evident, that, in France, such presents had been common, and had grown into taxes. *Brussel, Usage-general des Fiefs, liv. 2. ch. 32.*





In England, it is clear, from a variety of records produced or appealed to in *Madox*, that the word *donum* must also have been used to express gifts that were free. *Hist. of the Excheq. ch. 17.* After mercenaries were known, these gifts ceased to be free, and were termed *tallages*. And of tallages, both in England and France, there are frequent examples in the books I have just cited. See farther *Du Cange, voc. Donum.*

As Kings received gifts which they were to convert into tallages, so the lords and superiors, who were honoured with similar presents, did not fail to change them also into taxes or customs. *Du Cange, voc. Talliare.*

What is curious in a peculiar degree, the distant source of these usages, and the spirit of them too, while manners retained their simplicity, may be seen in the following words of *Tacitus*, of which this note may serve as an illustration. ‘*Mos est civitibus ultro et vitim conferre principibus vel armentorum vel frugum, quod pro honore acceptum, etiam necessitatibus subvenit.*’ *De Mor. Germ. c. 15.*

A distinction of great moment, as to civil liberty, deserves here to be remarked. During the pure times of the Gothic manners, the towns and boroughs made gifts at their own pleasure. When these manners were altered, they were tallaged at the pleasure



pleasure of the crown and the barons. The former times were times of liberty; the latter of oppression.

When Dr Brady, therefore, Mr Hume, and a multitude of writers, enlarge on the low and insignificant state of the towns, and, treating their inhabitants as little better than slaves, infer thence, the original despotism of our government, they are only active to betray their inattention. It is strange, that men of genius and talents, should take so lame a survey of this subject. Of the two states or conditions of society which prevailed, they have no conception. They knew only the history of towns in their last situation, and could not perceive that the oppressions they saw had only a reference to the change of manners, and the breaking down of the feudal system, which affected, indeed, the administrations of princes, and the conduct of the nobles to their vassals, but did not alter the established form of our government.

From the *Magna Charta*, these authors presume to date the commencement of our liberty; while that monument is a proof, the most indubitable, of the encroachments which had been made upon liberty, since it was its great purpose to destroy them.

(5) *Nullum scutagium vel auxilium ponatur in regno nostro, nisi per commune consilium regni nostri, nisi ad corpus nostrum redimendum, et ad primogenitum filium nostrum militem faciendum, et ad filiam nostram primogenitam semel maritandam; et ad*  
*hoc*





‘hoc non fiet nisi rationabile auxilium.’ *Magna Charta, Reg. Joan. ap. Spelm. Cod. vet. p. 369.*

The *scutagium* was the tax on lands held in knight-service. The *auxilium* was any tax whatever. I am sensible, that, after the *Magna Charta*, there are instances of taxes which were levied without the concurrence of the great council of the nation; but these were violations of the constitution, and of liberty. For, from that period, the legal method of assisting government was by a parliamentary subsidy or assessment. The violent exactions of several princes, posterior to the *Magna Charta*, are, indeed, held out, by many authors, as descriptive of the despotism of our government. But of such authors, it is to be said, that they cannot distinguish our constitution from the administrations of our princes. The madness or the folly of a King may disfigure our government by wild, encroaching, and unhappy exertions; but from these we must infer nothing against those principles of liberty upon which it is founded.

(6) ‘Simili modo fiat de *auxiliis* de civitate Londinensi. Et civitas Londinensis habeat omnes ANTIQUAS *libertates, et liberas consuetudines suas*, tam per terras quam per aquas. Praeterea volumus et concedimus, quod omnes aliae civitates, et burgi, et villae et barones de quinque portibus, et omnes portus habeant omnes *libertates et omnes liberas consuetudines suas*, et ad habendum

‘dum





'dum commune consilium regni de auxiliis affidendis.' *Mag. Chart.*  
*ap. Spelm. Cod. vet. p. 369.*

The *Magna Charta* was explanatory of the *antient* law and custom, as well as correctory of abuses and tyranny. It is to be regretted, that, notwithstanding all which has been written concerning this invaluable record, there should yet, at this late hour, be desiderated a complete illustration of it. Much, I know, has already been executed towards this end ; but, if I am not greatly deceived, there remains still more to be done. And this, I imagine, will appear clearly to the philosophical reader, who will attend to it, in its connection with history, law, and manners.

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 volumus et concedimus quod omnes aliae civitates, et burgi, et  
 villae et barones de quibus portus habent, et omnes portus habent  
 libertate et omni libera consuetudine sua, et ad haben-  
 dum





## SECTION II.

(1) **B**RUSSEL, *Usage-general des Fiefs*, liv. 2. ch. 6. Bacon, *Discourse on the Government of England*, part 1. p. 141. 264.

(2) Daniel, *Milice Française*, liv. 4. Hume, *History of England*, vol. 2. p. 85. Barrington, *Observations on the more ancient statutes*, p. 379.

(3) Bacon, *Discourse on the Government of England*, part 1. ch. 63. 71. Lord Lyttelton, *Hist. of Henry II.* vol. 3. p. 354.

(4) *Pere Daniel* mentions an array in France in the 1302, which called out ‘*tous les François nobles, et non nobles, de quelque condition qu’ils soient, qui auront âge de 18 ans et plus, juiqu’ à l’âge de 60 ans.*’ He adds, ‘*Ce n’est pas à dire pour cela que tous marchassent en effet: Mais ceux que le roi com- mettoit pour faire ces levées, prenoient de chaque ville, et de*  
‘*chaque*’



‘chaque bourg et village le nombre d’hommes, et telles hommes  
 ‘qu’ils jugeoient á propos en ces occasions.’ *Hist. de la Milice  
 Françoise, vol. 1. p. 57.*

In England, ‘in the sixteenth year of King Edward II. a  
 ‘commission issued out of the exchequer to Geoffrey de St Quyn-  
 ‘tyn and John de Kaffthorp, ordering them to raise speedily, in  
 ‘every town and place in the wapentake of Dykeryng, as well  
 ‘within the franchises as without, all the defensible men that  
 ‘were between the age of sixteen and sixty, as well of gentz  
 ‘d’armes as of foot, each man being duly arrayed, according to  
 ‘his estate, and to put the said men in *array* by hundreds and  
 ‘twenties, and being so arrayed, to lead them to the King at York,  
 ‘by such a day, to act against the Scots. The like commissions  
 ‘issued out of the exchequer, to John de Belkthorp and Geof-  
 ‘frey Stull, for the wapentake of Buckros, and to other persons,  
 ‘for other wapentakes.’ *Madox, Hist. of the Exchequer, vol. 2.  
 p. 111.*

An example of an array, in the reign of Edward I. is also re-  
 marked by *Mr Madox*, and it proceeded on writs from that  
 prince to all the sheriffs of England \*. It has been thought, that

D d d

King

\* In his writ to each sheriff, after having ordered the *array*, and expressed  
 his meaning, he subjoins these words. ‘Et hoc, sicut indignationem nostram  
 ‘vitare et te indempnem servare volueris, nullatenus omittas.’ *Hist. of the  
 Exchequer, vol. 2. p. 104.*





King John's reign afforded the first instance of an array. But I think it highly probable, that arrays were prior to his age. Mr Hume had met with no commission of array till the reign of Henry V. and this circumstance could not fail of leading him into mistakes. *Hist. of England, vol. 2. p. 321.*

Arrays for sailors were practised after the same method as for soldiers. The custom is still retained in *the pressing of seamen*. It is somewhat remarkable, that this illegal power is yet suffered to remain with the crown. If exerted as to soldiers, it would seem the highest tyranny. In apology for it, authors have said, that it is difficult to discover an expedient to answer its purposes, without greater danger to liberty.

(5) Daniel, *Hist. de la Milice Françoise*, liv. 3. ch. 8. Hume, *Hist. of England*, vol. 2. p. 224. Barrington, *Observations on the more ancient Statutes*, p. 378. 380.

I am disposed to believe, that it was chiefly the enormous dissoluteness and irregularity of manners introduced by the mercenaries, which deformed England so much in the reign of Edward I. that the ordinary judges were thought unable to execute the laws. This, it would seem, made Edward invent a new tribunal of justice, which had power to traverse the kingdom, and to inflict discretionary punishments on offenders. *Spelman. Gloss. voc. Trailbaston*. Yet a court so inquisitorial was a daring insult to a free nation, and infinitely a greater calamity, than all the disorders





ders which prevailed. That country is miserable where the discretion of a judge is the law.

(6) Daniel, Hist. de la Milice Françoise, liv. 4. The archers were called *frank*, because they were free from taxes.

(7) 3. InSTITUTE, p. 85. 87. Barrington on the more antient Statutes, p. 379. 380.

(8) Bacon, Discourse on the Government of England, part. 1. p. 187. part 2. p. 60.

(9) 2. InSTITUTE, p. 3.

(10) Parl. an. 1. Hen. IV. de Deposit. Reg. Ricardi II. ap. Dec. Script. p. 2748.

(11) *Sir John Fortescue*, who resided some time in France with Prince Edward, the son of Henry VI. and who wrote there his excellent treatise, 'De Laudibus Legum Angliae,' describes, from actual knowledge, the exorbitant insolence of the French soldiery, and the miserable condition of the people. The picture he draws is too long for insertion in this place. But, though the features are strong, there is no reason to suspect the likeness. A native of Great Britain, in attending to it, must feel, in a lively degree, the happy advantages of our free constitution.

(12) 12. Charles II. cap. 24.

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C H A P-





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(1) The... is... which... were...

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## CHAPTER VI.

(1) **T**ACITUS alludes to the historic songs of the old Germans, of which it was doubtless the purpose to record the migrations of tribes, and the exploits of chieftains. Of such songs, there were many in the eight century; and Charlemagne was fond of committing them to his memory. *Eginbart, Vit. Car. Magn. c. 29.* Of the celebrated Attila, it is said, that he had constantly his poets in waiting, and that their verses in honour of his exploits, were a part of the entertainment of his court. *Priscus, p. 67. 68.* In all rude times, the character of the bard is in repute, and attended with distinctions. This character was not peculiar to our ancestors, as some writers have fancied; for we find it among the Greeks, and in other nations. It is peculiar to the early state of society, when the passions are warm, and language imperfect.

(2) It is a common notion, that the poets and Troubadours were only to be found in France and Italy. They were frequent, however, in all the countries of Europe; and they hastened, by their rivalship, the progress of literature.

Henry





Henry III. had a poet or Troubadour in his service, on whom he bestowed a regular pension. This circumstance is to be gathered from the following record. ‘Rex thesaurario et camerariis suis salutem. Liberate de thesauro nostro, dilecto nobis Magistro Henrico versificatori centum solidos, qui ei debentur de arreragiis stipendiorum suorum. Et hoc sine dilatione et difficultate faciatis, licet scaccarium sit clausum. T. R. apud Wodstoke xiiij die Julii.’ 35. H. 3. ap. *Madox, Hist. of the Excheq. vol. 1. p. 391.*

There is a commission of Henry VI. *De Ministrallis propter solatium regis providendis*, from which it is to be gathered, that the recitation or chaunting of songs, was an amusement in repute and fashion. *Rymer, 34. Henry VI.* The fifth Earl of Northumberland had his minstrels and players; and it was a qualification of his almoner, that he was ‘a maker of interludes.’ *Household-book, p. 44. 85. 93. 331. 339.* The reader may consult farther on this subject, an author, who is not more distinguished by the soundness of his knowledge, than by the classical simplicity of his language, Mr *Warton*, in his history of English poetry.

(3) *Histoire Litteraire des Troubadours*, par M. l’Abbé Milot.

(4) It





(4) It is to be observed, that it was the married women chiefly who vied in the merits of their poets and Troubadours. An interesting figure, as well as the talent of rhyming, was necessary to the Troubadour ; and it was his constant aim to gain the heart or the person of his patroness. Perhaps it would be to refine too much, if one should consider the present infidelity of the married women in France, as a relict of this usage, and the corruptions of chivalry.

Of the Duke of Orleans, the brother of Charles VI. there is a pleasant notice in Brantome, which illustrates very aptly the profligate manners introduced by fiefs and chivalry. ‘ C’etoit  
‘ un grand debaucheur de dames de la cour, et des plus grandes :  
‘ Un matin en ayant une couchée avec lui dont le mari vint par  
‘ hazard pour lui donner le bon jour, il cacha la tête de cette  
‘ dame, et lui découvrit tout le corps, la faissant voir et toucher  
‘ nue à ce mari à son bel aise, avec defense sous peine de la vie  
‘ d’oter le linge du visage . . . Et le bon fut que le mari etant  
‘ la nuit d’après couché avec sa femme, lui dit que M. d’Orleans  
‘ lui avoit fait voir la plus belle femme nue qu’il eut jamais  
‘ vue ; mais, quant au visage, qu’il n’en sçavoit que dire, ayant  
‘ toujours été caché sous le linge.’ It is added, ‘ De ce petit  
‘ commerce, sortit ce brave et vaillant bâtard d’Orleans, Comte  
‘ de Dunois, le soutien de la France et le fleau des Anglois.’  
*Brantome, ap. St. Foix, Ess. histor. vol. 1. 319.*

(5) See,





(5) See, in Ste Palaye, le voeu du Paon ou du Faifan, et les Honneurs de la Cour.

(6) Histoire des Troubadours, tom. 1. p. 11.

(7) This invention is ascribed to William the ninth Earl of Poitou. 'Ce fut un valeureux et courtois chevalier, mais grand ' trompeur de dames.' *Hist. des Troub. tom. 1. p. 4. 7.*

(8) Le Moine de Foffan, a Troubadour, composed a song, in which he thus speaks of the *Virgin*. 'Je fuis devant elle à ' genoux, les mains jointes, comme son tres humble esclave, ' plein d'ardeur dans l'attente de ses regards amoureux, et d'ad- ' miration dans la contemplation de son beau corps et de ses ' agreables manieres.' *Hist. des Troub. tom. 2. p. 225.*

(9) Deudes de Prades, a troubadour, has this sentiment: 'Je ' ne voudrois pas être en Paradis, à condition de ne point aimer ' celle que j'adore.' *Hist. de Troub. tom. 1. p. 321.*

(10) It was said wittily, but not without reason, by the Trou- badour Raimond de Castelnau: 'Si Dieu fauve pour bien man- ' ger et avoir des femmes, les moines noirs, les moines blancs, ' les Templiers, les Hospitalieres, et les Chanoines auront le Pa- ' radis; et Saint Pierre et Saint André font bien dupes d'avoir ' tant



‘tant souffert de tourmens, pour un paradis qui coute si peu aux  
‘autres.’ *Hist. des Troub. tome 3. p. 78.*

It was in consequence of the depraved manners of the clergy, that, in England, the personage who, in the season of Christmas festivity, was to preside in the houses of the nobility over riotous mirth and indecent indulgencies, was termed ‘the abbot of misrule.’ This character appears in the establishment of the fifth Earl of Northumberland, an. 1512. *Household-book, p. 344.* See also *Dr Percy’s* notes to this record.

In Scotland, the same character or personage seems to have been still more common, and even so familiar in the lowest ranks of civil life, that he grew to be a nuisance in towns and boroughs. His appellation there was, ‘the abbot of unreason;’ and, when the severity and starchness of the reformation soured and deformed this country with the hypocritical preciseness, and the dismal formality which have not yet left it, an act of parliament was thought expedient to suppress and abolish an office so highly licentious and profane. *6. Parl. Mary 1555.*

(11) Giannone, History of Naples, vol. 1. p. 283. 446. Mezeray, Moeurs de l’Eglise du xi. siecle. Du Cange and Spelman, voc. Focaria. Ste Palaye sur l’anc. cheval. partie 5.

(12) Joinville, Histoire de S. Louis, p. 32.

E e e

(13) ‘Sii





(13) ' Si quis dixerit *conjugi*, malam licentiam dando, *vade*  
 ' *et concumbe cum tali homine* ; aut si dixerit alicui homini, *veni et*  
 ' *fac cum muliere mea carnis commixtionem* ; et tale malum fac-  
 ' tum fuerit, et caussa probata fuerit, quod per ipsum maritum  
 ' factum sit, ita statuimus, ut illa mulier, quae hoc malum fece-  
 ' rit et consenserit, moriatur, secundum antierius edictum ; quia  
 ' nec talem caussam facere, nec celare debuit.' *Leg. Longobard.*  
*p. 1096. ap. Georgisch, Corp. Jur. Germ. Antiq.*

This law evinces the antiquity and the heinousness of the prac-  
 tice alluded to ; but, in posterior times, the fashion was thought  
 of more lightly, and too prevalent to be punished with severity.  
 See some curious information in *Du Cange, voc. Cugus, Cucucia,*  
*Licentia Mala, Uxorare.*

(14) The *Gynaecium*, by which the apartment was ex-  
 pressed where the women were kept to work at the needle, and  
 other domestic employments, came to signify a brothel, or place  
 of debauch, from the use that was made of it. *Du Cange, voc.*  
*Gynaecium.* Over the doors of a palace which belonged to Car-  
 dinal Woolsey, there was written, *Domus Meretricum Domini*  
*Cardinalis.* It has been said, indeed, that *Meretrices* stood of  
 old for *Lotrices* ; and the advocates for the chastity of the Car-  
 dinal contend, of consequence, that this inscription only served  
 to direct to his *laundry*. But, I am afraid, that this plea will not  
 hold. For the terms were convertible ; and the women who  
 acted





acted in the laundry, and who were employed in working in linen and tapestry, were in general the convenient mistresses, to whom their lords paid a temporary worship. It was from some mistakes of this sort, that, in the reign of Elizabeth, there was an order, that no *laundresses*, nor women called victuallers, should come into the gentlemens chambers of Gray's Inn, 'unless they were full *forty* years of age.' *Dugdale, Orig. Jurid. p. 286.*

(15) Ranulph. de Hengham, *Summa Magna*, cap. 2. and Selden's notes to it.

(16) In the *Britannia*, in the description of Surrey, there is this notice. 'Hamo de Catton held Catleshull-manour by being *Marshal of the whores* when the King should come into these parts.' *Camden, vol. 1. p. 181.* In the reign of Edward II. Thomas de Warblynton held the manor of Shirefeld in Hampshire, of the King in chief, by the serjeanty of being *Marshal of the whores* in the King's household, and of dismembering malefactors condemned, and of measuring the galons and bushels in the King's household. The words of the record are, 'Tenuit in capite, die quo obiit de Domino E. nuper rege Angliae patre regis nunc, per fargantiam effendi *Mareschallus de meretricibus in hospitio regis*, et dismembrare malefactores adjudicatos, et mensurare galones et bushellos in hospitio regis.' *Paj. Fines 1. Edw. III. Rot. 8. a. ap. Bar. Angl. p. 242.*





(17) The vassal forfeited his estate in the following cases:  
 ‘Si dominum cucurbitaverit (id est, uxorem ejus stupraverit),  
 ‘vel turpiter cum ea iuserit. Si cum filia domini concubuerit,  
 ‘vel nepte ex filio, vel cum nupta filio, vel cum sorore domini  
 ‘sui *in capillo*, id est, in domo sua manente.’ *Lib. Feud. ap.*  
*Spelman Gloss. voc. Felonia.*

The words *in capillo*, allude to a peculiarity in the Germanic and Gothic manners, which deserves to be explained. All virgins wore their hair uncovered, and with ornaments. Married women concealed their hair, and covered their heads. The ornaments for the hair were many. And, in the progress of time, it was not the hair of their heads only, that the women were curious to deck out. The mother of the fair Gabrielle being assassinated, her body lay, for many hours, exposed, in a public manner, to the spectator, and in a posture so exceedingly *indecent*, that it discovered a strange mode or affectation. In this last fashion, which was probably introduced in the decline of chivalry, the ornaments were ribands of different colours; and, it seems to have been peculiar to women of rank and condition. *St Foix, Ess. Hist. vol. 4. p. 82.*

In general, it merits remark, that the veneration for their hair entertained by the Germans and their posterity, was very great, and gave rise to a multitude of customs. It was a mark of refined attention in a person to present a lock of his hair to a friend

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on saluting him; it was to say, that he was as much devoted to him as his slave. To take away the hair of a conspirator, was one of the most afflicting parts of his punishment. To give a slave the permission of allowing his hair to grow, was to offer him his freedom. *Du Cange and Spelman, voc. Capilli.* William Earl of Warrenne, in the age of Henry III. granted and confirmed to the church of St Pancrace of Lewes, certain land, rent, and tithe, and gave seifine of them ‘per capillos capitis sui, et fratris sui Radulfi de Warr. quos abscidit de capitibus suis cum cultello ante altare.’ *Mag. rot. 24. Henry III. ap. Madox. Hist. of the Excheq. Prefatory Epist. p. 30.* This must have been a compliment in the highest style of flattery; and the clergy of St Pancrace must have been enchanted with the politeness of this nobleman.

There seems something wild and romantic in such usages; yet they produced the locket and the hair-ring of modern times; and we smile not, nor are surpris'd, that these should teach us to employ our moments of softness in melancholy recollections of absent beauty, or departed friendship. What is distant and remote, affects us with its ridicule. What is present and in practice, escapes our censure. In the one instance, we act with the impartiality of philosophers; in the other, we are carried away by our passions and our habitudes.





(18) St Foix, *Ess. Histor.* vol. 1. p. 102. Stow, *Survey of London*, in the Edition of Strype, vol. 2. p. 7.

(19) There is evidence of public or licensed stews in England in *Stat. 2. Henry VI. cap. 1. in Cowel, voc. Stews, Spelman, voc. Stuba, and in Coke, 3. Institute, ch. 98.* Henry II. gave his privilege to the stew-houses of Southwark, according to the 'old customs which had been used there time out of mind.' And patents confirming their liberties were granted by other princes. *Stow, in Strype's edit. vol. 2. p. 7.* In Normandy, there was a *custos meretricum*; and this officer seems to have been known in the different countries of Europe. *Du Cange, voc. Custos meretricum, et Panagator.*

It has frequently been a subject of inquiry among politicians, whether public stews, under proper regulations, with a view to the health of individuals, and the peace of society, be not an advantageous institution. In some states of Europe, a tolerated or authorized prostitution is known at this day. And, by the Code of Gentoo laws, this institution was acknowledged as salutary; and prostitutes forming a community were, in Hindostan, an object of care to the government. I avoid, however, to enter into a question of such infinite delicacy. It is dangerous in a state to give the slightest stab to morality. Yet, I cannot but observe, that, in the most cultivated nations, there are laws and regulations which  
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wound morality more severely than could be done by an authorized prostitution, and with less of utility to mankind.

(20) The licensed stew-houses in the reign of Henry VII. were the Boar's-head, the Cross-keys, the Gun, the Castle, the Crane, the Cardinal's-hat, the Bell, the Swan, &c. *Sir Edward Coke* has preserved this information, 3. *Institute*, p. 205. In the time of Edward VI. Bishop Latimer complained and preached to the following tenor. 'There is more open whoredom, more *stud* whoredom, than ever was before. For God's sake, let it be lookt to.' *Stow*, in *Strype's edit.* vol. 2. p. 8.

(21) 3. *Institute*, p. 206.

(22) *Spelman voc. Stuba*, 3. *Institute*, p. 205.

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