

Originally the European Governments were  
~~extremely small~~  
~~composed of a few people, & tho we read of~~<sup>indeed</sup>  
 many Kingdoms in Italy, Germany &c. yet they  
 contained such small extent of ground, & so  
 few subjects, that they resembled more the

Highland Clans than Monarchies.  
 Inconsiderable from their force, they were still more so from  
 their mutual hatred of each other. ~~They were all~~<sup>notwithstanding therefore</sup> that they  
 fell an easy prey to the Roman Eagles,  
 & by that means swelled that Empire to so vast

a magnitude, that it contained almost all the  
 Nations of the known World; but Vice kept  
 equal pace with its grandure, that enabled  
 Caesar to become (what Cataline in vain  
 attempted) the Tyrant of his Country.

In this almost Universal conquest of the  
 World, Germany (under which name by Antient  
 Writers most of the Northern Nations are included)

retained its liberty,

It was divided into many Petty States whereof  
 but two ~~were~~ <sup>appear</sup> absolute Monarchies, the rest were  
 govern'd by Princes, (the Latin name for which  
~~Princes~~ <sup>the word Princeps</sup> down to Poppo's time, conveyed  
 no idea of power, but ~~like~~ <sup>resembled</sup> the Princeps  
senatus, the President of the Senate; ~~they~~ <sup>they</sup>  
 had perhaps the disposal of trifles, but things  
 of consequence were decided by the Voice of  
 the People. ~~Each country was~~ <sup>These States were often</sup>  
~~The Romans not far~~ <sup>People were generally</sup>  
 divided into ~~parcels~~ <sup>districts</sup> call'd Cantons, from which  
 our word Counties came; these were under the  
 inspection of the Prince, ~~with the assistance~~ <sup>assisted by</sup>  
 of a hundred Men chosen for that purpose.  
<sup>out of the better sort.</sup>  
 Particular portions of Land were generally

assigned to each Tribe or Family for a Year ~~and~~ no longer by the Prince; these they gave their Slaves to cultivate, reserving to themselves a part of the Produce.

The Cantons during Peace had no Superior, but in War chose a Captain who had power of life ~~and~~ Death, ~~and~~ who drew out from the Inhabitants a certain number to attend him according to their Ranks ~~and~~ Tribes.

In this State of Liberty, the Northern Nations increased immensely in number, while Tyranny, Vice, ~~and~~ Corruption thinned the Roman Empire; the little Territories of these Princes were not sufficient to maintain their numbers; this forced them to frequent migrations, where besides the Leader of each Canton, the Assembled Army was generally under the Command of a General, chose by themselves,

many of these wandering Corps attacked the immense but incroated Roman Empire, of which the Western parts being less defended, fell soonest under their Yoke; so that the Franks <sup>and</sup> Normans settled in France; the Longobards succeeded the Normans in Italy; the Alans, Vandals, Swedians, <sup>and</sup> ~~the~~ ~~Silingians~~ in Spain, who were again drove out by the Goths; <sup>and</sup> the Saxons fell upon, <sup>and</sup> ~~the~~ ~~conquer'd~~ England.

The source of all the European Governments, <sup>and</sup> ~~the~~ Feudal Laws arising from the manner in which these People distributed their conquered Lands, it will be necessary to examine the progress of that attentively.

It must be considered that these Warring Colonys issuing out from the Northern Hive, were composed of Free Men, who served at their own

expence, <sup>and</sup> for their own behalf; therefore whatever conquest was made, the Land in a Solemn Assembly of the People was divided to every Man according to his Tribe or Family; <sup>and</sup> as these migrations were composed of different People united in the Common Cause of Conquest; we find that those who came from the same little Country, or Principality, generally settled together, <sup>and</sup> established the Laws <sup>and</sup> Customs of their Mother Country, in their new acquisitions; hence arose the many small States, <sup>and</sup> various forms of Government that after the destruction of the Roman Empire, divided all Europe; few of which exist at present, except in Germany <sup>and</sup> Italy.

In the Division of these Lands, they followed their own method used in the Cantons, which was before taken notice of, that is, they were given

for a Year, <sup>and</sup> the Pope soon let them out with a certain reserve of the produce; hence arose the Feudal distinction of Dominium Utile, <sup>and</sup> Dominium Directum.

These Grants for Years or for life, were afterwards called Beneficia in the Reign of Clovis, <sup>and</sup> some with probability think they acquired the name of Feude in the Constitution of Charles the Great in 844.

Among many opinions relating to the derivation of the Word Feude, the most likely one is that of its coming from the Teutonic Word Fee, as in our Language Fee, or Gift, & at, possession.

These People naturally established the same Government in their new Territories they had been used to at home; their Generals, or Leaders

became the temporary Administrators of Justice,  
as their Princes in Germany; these Officers were  
distinguished by the Latin Authors, ~~and~~ by the  
Victorious Nations themselves by various Names,  
the Princes named by Faciter are called  
Graves that is Judges in the German Law,  
these were generally old Men, ~~and~~ were stiled  
in the beginning of the English Saxon  
Government Ealdermen; in France, Italy, ~~and~~  
Spain, they were denominated from the Latin  
word seignior, which is the root of our word  
and since the Conquest seignory, a synonymous  
term for Lordship; ~~and~~ in the subdivision of this  
Country into Tythings, Hundreds, or Towns; these  
districts had Judges called Ledgraves, Setgraves  
Purggraves &c. ~~and~~ thus in Germany the Judges of

The Bors & Marches were called Burgraues and Margraues.

As to the Word Princeps Writers of the Middle age make it in the Saxon language Ealderman; after the Conquest it comprehended Bishops, Abbots, <sup>and</sup> Nobles; for Eadmerus in his History makes Henry 1. summon his Bishops, Abbots, <sup>and</sup> Princes of the Kingdom to do Homage to his son William.

Comes was no name of Office or Dignity till Constantine gave it to that of Officer of the same signification is the Teutonick word grave.

Dux was applied to the same People as Comes, with this difference, that one was in a Military capacity, <sup>and</sup> the latter in a Civil.

The followers of these Generals were called



by the Feudal Writers Vassals, derived from the name they had in Germany Gesell; these also had a share of the Government of their Conquests.

The custom of these Northern invaders was to divide the Conquered Country into three parts, one of which they left to the Antient Populors, who they never mixed with their people, nor suffered to share in Government; this by Antient Writers was called sors Gothica, for it was practiced in Italy, ~~Spain~~, and by the Franks in Gaul; ~~The~~ Latin cotemporary Writers called the two shares the Franks kept themselves Terra Salica, ~~and~~ that left the Populors Allodium, which word is derived from the Teutonic tongue, where a is a negative particle, ~~The~~ leude signifies persons linked in

Feudal Tenures; Alodarii was therefore originally  
a name of reproach to distinguish the vanquished  
from the Conquerors, <sup>and</sup> though at first these People's  
possessions were free from service, yet for security  
of possession, they frequently surrendered their lands  
to Neighbouring Lords, <sup>and</sup> ~~then~~ receiv'd them back  
under Feudal Tenures, <sup>and</sup> sometimes when they kept  
their possessions, they put themselves under the  
protection of Lords, whence came a phrase  
often met with in Doomsday book, tenere in  
alodio.

As for Slaves either made so by the Conquerors, or  
found so, they looked upon them as part of their  
Substance.

The principal if not only difference between new  
Governors settled by the Conquerors, <sup>and</sup> the Antient  
one they had lived under in Germany, was that the

Prince or Leader became no longer annual as in  
the Mother Country, for being in a continual  
State of War, it would not have been safe to  
change often the General.

In process of time these Leaders came to be  
call'd King, but that this was an innovation  
appears plainly from most modern Nations  
deriving the name King from the Latin.

In England that name is of Saxon origin,  
tho' the first Saxon Leaders that invaded their  
Country, were call'd Herzoge, from the old  
Teutonic word Here signifying Public, <sup>and</sup> oge,  
General; <sup>and</sup> this idea of General of the Public  
seems to be the only one these Nations had of a  
King; for the Longobards who gave their name  
to Lombardy changed their Prince into thirty  
Dukes, <sup>and</sup> yet in time of War elected one General

who did not in the least infringe the rights of any of these Ducal powers. . .

After the assumption of a Regal title, there still continued Assemblies of the People, as in Germany, to consider of the Common good; these were in England <sup>and</sup> France called Parliaments; in Spain Cortes; <sup>and</sup> in Germany <sup>and</sup> Poland Diet; in Latin Placitum, Curia, Maleum, but more commonly Colloquium.

From what has been said of the distribution of the Conquer'd Lands, it must necessarily follow, that from the different circumstances of the Conquests, several changes must have happened; time has produced two great ones, one in the interests of the Peoples, the other in the Services since known by the name of Tenures.

As to the first, the increase of the People,

The cultivation of the Lands, ~~the~~ <sup>and</sup> the great elegance of life that introduced itself, made the Superiors desire to secure the possession of their Estates, <sup>and</sup> the Vapors to make their settlements more durable.

These rights therefore grew from annual to be given for life, <sup>and</sup> were enlarged afterwards into Estates of inheritance.

This change in the Peoples produced two other considerable alterations in Government; first it is the foundation of the hereditary Kingdoms <sup>and</sup> Nobility over Europe; secondly, the Country being wholly appropriated, people who had not Land, were obliged for a maintenance, to invent various methods to indulge, <sup>and</sup> support the ease <sup>and</sup> luxury of the rich; hence arose the encouragements of Sciences, Arts, <sup>and</sup> Manufactures, followed by innumerable

Towns, Cities, <sup>and</sup> ~~&~~ Boroughs throughout all Europe.

The second great alteration we mentioned, was in the Tenures; these were Services annexed to Estates, <sup>and</sup> ~~&~~ at first few, but in after ages were extremely multiplied, thus as in the first division of the Lands each private person had his share allotted by the whole; so the descendants of these first Conquerors were undoubtedly bound to military services in times of War, for the good of the whole community, the greater portions given to the principal persons, since called Counties, was bestowed by the whole people; this again was parcelled out by him with the consent of individuals of his immediate Tribe; as therefore the Chief of the County held his possession from the people, <sup>and</sup> ~~&~~ the Prince who commanded;

his was called Baron Service, that of his Tribe to  
him Military Tenure, <sup>and</sup> the obligation of all  
to the Nation, Fealty.

It is uncertain how these Tenures were at first  
fixed. In latter ages they were annexed to the  
Estates; Fealty by Oath was instituted when  
first Feudal were made Hereditary, <sup>and</sup> were  
common in 1020.

When one Feudal became Hereditary, many  
disputes happened betwixt the Superiors Lord  
& Vassals themselves; this occasioned many various  
rules & determinations, which collected have  
taken the name of the Feudal Law, by which  
all disputes of that nature were for many ages  
adjusted, the History <sup>and</sup> Changes <sup>happening</sup> in those  
Laws, would be in reality the description of the  
various changes that have happened in the European

Countries, here then we end this general History, <sup>and</sup> after a few observations come to the earliest state of this Country.

The Contract betwixt the Governour, <sup>and</sup> the governed, the power of the Magistrate <sup>and</sup> the obedience of the People; the measure of power belonging to the great Lordship of the Realm, <sup>and</sup> the lesser Lordships have all their foundation in the two following observations.

1. As the Conquerors were sole Masters of the Country, no body could have possession of any piece of Land, without the owners consent, <sup>and</sup> under the terms he plead to see, hence arose a territorial jurisdiction, <sup>and</sup> a right to controul the actions of those who were not of the community, as well as of those who were.

2. As the Victorious Nations were voluntary Societies, the Majority had the right of regulating



the actions of individuals, while they continued  
Members of the Society.

This appears to have been the state of the  
original contract betwixt Prince <sup>and</sup> People,  
Superior <sup>and</sup> Inferior, <sup>and</sup> of individuals with regard  
to the whole community; Afterward, when all  
Duties were regulated by the Feudal Laws, they  
were enforced by reciprocal Oaths, <sup>of</sup> which  
the most sacred was that taken by the Prince  
at His Coronation, (before which He was not  
even after the demise of his Predecessor, called  
King,) <sup>and</sup> the Oath of Fealty taken by the Peers to him,  
which Oath the Peers in Henry VI. Time did  
not consent to, till the King had taken his, from  
hence is derived in this <sup>and</sup> most other Kingdoms

The Oaths of Allegiance, that have of late been  
extended to the Successors as well as to the  
King himself.

The Peers of what denomination soever held  
originally of the Public as well as of the King,  
& owe Homage & Fealty to the Community, as  
the German Princes do at this day to the  
Empire not to the Emperor; this will appear  
from the following reasons.

1. The Armies of these Conquerors were as  
we have seen made up of different Nations  
under their respective Leaders, with one  
General commanding the whole; the Successors  
of this General became Kings, & those of the  
Leaders, Nobility, or Peers; now as the General was  
only during the War, he had no right to the  
People's Allegiance, & still less in time of

Peace, for then his power terminated.

2. Property was in the collective body, & tho' they parted with the *Dominium Utile*, they retained the *Dominium Directum*, to which only Homage & Fealty are due.

3. In controverted Rights of Barons &c. the decision was never anxiously claim'd by the King, which it would have been if given by him.

4. The services annex'd to Feudal, is like Homage & Fealty in lieu of the Land, so that if the Fief had been of the King, the service would have been due to his private necessity; thus no King could oblige his Peers to serve in Wars for his own advantage, for by the Feudal Law, these services were only due in rebellions at home, & invasions from abroad; thus it is in Germany at present; & when any Peer refus'd to attend the King

the neglect was punishable, not by the King alone,  
but with his Parliament.

In cases where the Baron assisted the King,  
either voluntarily, or bound by Duty, the Conduct  
of the Army was not left to His Will alone, for  
the Vassals obey'd no orders, but those of their own  
Chiefs, who were not oblig'd to go unless he went.

Lastly these military services were solely due in  
time of Invasion or Rebellion.

In this free State the German Nations continued,  
till the Civil Law long bury'd was revived, & then  
mistaken Princes made the *Lex Regia*, the ground  
for assuming Despotism; & for that reason  
introduc'd that Law into their Kingdoms. It prevail'd  
but too much over all Europe, but had been here  
unsuccessfully attempted, & therefore this Government  
comes the nearest to the Old Saxons idea of Liberty.

Of the Legislature of England  
in particular  
before the Saxon Conquest.

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We have very little to say about this Country, before the Saxon Government; the Antient Britons liv'd like the Nomades in Tents, without Towns, or Cities; their Diet was Milk & Proofs, their employment keeping of Cattle; they were divided into many small Sovereignties amongst who notwithstanding their generous spirit & love of Liberty, hatreds & jealousys prevail'd to such a degree, that they could never thoroughly unite even in the cause of Freedom, against their Common Enemy.

The Southern parts of the Island was possess'd by the Gauls; when the Romans first

invaded this Country; these receiv'd at first as Friends, became the most inveterate Enemies; the Gauls brought the form of Government subsisting in their own Country with them into Britain; they were also extremely divided amongst themselves, compos'd of about sixty four distinct Nations, whose different interests produc'd eternal factions; the form of Government was the same in all; a Senate of the principal Nobility over which presided an annual Magistrate with power of life & death, & for maintaining a Union amongst these different Nations, a General Council like that of the Amphictions was annually held at Treves in Gaul, the Chief seat of the Druids, whether Deputies from every State repair'd, & here proper regulations were made

for the Common Safety of the whole.

They also held extraordinary Councils of this nature in time of public danger, or approaching War, when they chose a General in Chief, who sometimes had the name of King, whose power continued during the occasion only for which he was elected.

On certain emergencies each particular Nation, made choice of one, & sometimes of two Leaders not unlike the Roman Dictator, but with less power.

The Belgi notwithstanding their hatred to the Britons, resembled them much in Customs, Temper, & Language, but above all in Religion both People being under the Direction of the Druids, who were absolute in Religious Matters, &

had great influence in civil affairs.

This was the State of the Country when Caesar first landed; as they push'd their Conquests, they introduc'd their own Laws & Customs, which were however (upon their being forc'd to abandon the Island) totally eradicated by the Saxons, who establish'd instead of them a form of Government existing in great measure to this day.

### Of the Legislature of England under the Saxons

We have already taken a View of the Saxon Laws & Customs that prevail'd in their own Country; it remains to show how & in what manner they introduc'd them here.

The Saxons after conquering England



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

He is said by some to have been the person who divid'd England, & that may be true, as to the present divisions, or alterations of the old, but 'tis certain he parcell'd out the Shires into Tythings, & Laths, Hundreds & Wapentakes, & these again into Tythings

or as some call'd them of old, Boroughs, tho' that word is generally us'd for places that send Members of Parliament.

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

The People increasing, spread themselves more & more into the uninhabited parts of their Tythings; these new places of abode were call'd Hamblets, from the Saxon word Ham, dwelling, & let, to a sign.

The Tythings were unequal, for they were founded on the number of Families, & not on the extent of Ground; the Proprietors residing on their Estates, whence they were afterwards call'd Manors a manerds.

The true meaning of Tithing, or ten families is very difficult to explain; were they each of them what we call House keepers many Counties would not have had above three or four hundred Houses, which is impossible. Let it be observed that the Proprietors cultivated their Lands by Slaves, whom they supply with Victuals; for the word Lord is agreed by all to come from the Saxon Alford, which signifies a giver of bread; now tho' these Labourers might live in different Houses, as may be supposed from the frequent use of the words Cottarii, bordarii, &c. in Domesday; yet they certainly were regarded as part of their Lord's Family, so that ten such Families might make a very populous district; which is all the sense we can give to the Word

Tything, from the Saxon Tongue.

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

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

From hence it follows that Trading Towns, or large Societys, might very well be consider'd as Possessors of Manors.

As in the first distribution of Country, we find no Magistrate but the Ealderman to preside; so in the further division into Tythings, there were proper Magistrates appropriated to them, & chosen by the General Voice, such as Borsholders, Headboroughs, Tythingmen, &c.

Many of these Tythings had little Courts in themselves for deciding Controversys, &c. these are mostly gone, but in London & some other places, still subsist under the name of Hastings; from the Saxon Words An & ting, the House of Please.

All the Saxon Laity may be divided into Thanes, or greces of the higher kind, & King Thanes holding

of the King, Under Thanes holding of the Subjects,  
& Caorls or Yeomen.

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

1. From what has been said already, it does  
not appear to have been solely in the Saxon Kings,  
& the greatest sticklers for the Prerogative, allow it  
to have been in the King & Nobility, tho' they exclude  
the Commons, as T.<sup>r</sup> Brady & c.; those again  
who assert the general right of the People in  
Government, as Fyvel & c. affirm that from the  
first entrance of the Saxons, every Landholder  
assist'd at the Parliaments; thus in Kent where  
Gengist first settl'd, all the Possessors of Land

met to give their Assent at the making of Laws;  
this indeed cutt out the Counts or Yeomen from  
the Witena-Gemot, & even the Thanes, who being  
only Tenants by Serjeanty, that is possessing  
Lands in lieu of Wages for his Services, he was only  
part of the Family of some one that was a Member.

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

This Witena Gemot is thought by the Popular  
Party to have consisted not only of Earls, Bishops

& Abbots, but also of the persons who presided in each Community, Tything &c. which opinion seems to make the Commons a Constituent part of the Saxon Legislature; for the proof of this there are several citations brought from the Laws of the old Saxon Kings, thus

Ina Decrees with the Council of his Bishops, Senators, et Senioribus Sapientibus Populi mei; Again in the Peace between Alfred & Guthrum, it is declar'd to be the Foedus that these Kings et totius Anglice Nationis Sapienter, et omnis gens que in Anglia Orientali habitat, simul fecerunt.

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