

Transcription of GEO/ADD/32/1025-33
'Draft Essay on Government'

Originally ye. European Governments, were compos'd but of a few peope, & tho' we read of many Ks. in Italy, Germany & c. yet they contain such small extent of ground, & so few subjects, yt. they resemble more ye Highland Clans than Monarchies. These all fell a prey to ye. Roman Eagles, & by yt means swell'd yt Emp-e. to so vast a magnitude, yt. it contain'd almost all ye. nations of ye. known World; but vice kept equal pace with its Grandure, yt. inabl'd Casar to become (what Catiline in vain attempted) ye. Tyrant of his Country.

In this almost universal conquest of ye World, Germany (~~was~~ ^under^ which ^name^ by antient Authors most of ye. Northern nations are included) retain'd its Liberty; it was divided into many petty states; whereof but two were absolute monarchies, ye. rest were govern'd by Ps. ye Latin name for which Princep, down to Vespasian's time, convey'd no idea of Power, but like ye Princeps Senatus, ye President of ye Senate, these had perhaps ye disposal of trifles, but things of consequence were decided by ye. voice of ye. people.

ye. Dominions of Each People, were generally divided into parcels, call'd Cantons, from which our Word Counties come, these were under ye. inspection of ye. P. with ye. assistance of 100. men chosen for yt. purpose; Particular portions of land were generally assign'd to each tribe or family for a year & no longer by ye. P. these they gave their slaves to cultivate; reserving to themselves a part of ye. produce.

These cantons during Peace had no Superior, but in War they chose a Capt. who had power of life & death, & who drew out from ye. inhabitants a certain number to attend him according to their Ranks & Tribes.

In this State of Liberty, ye. Northern Nations increas'd immensely in number, while Tyranny, Vice & Corruption thin'd ye. Roman Emp-e; ye. little Territories of these Ps. were not sufficient to maintain these numbers; this forc'd them to frequent migrations, where besides [2] ye Leader of each Canton, ye assembl'd army was generally under ye command of a Gen. Chose by themselves; many of these Wandering Corps, attack'd ye immense, but inveterate Roman Emp-e; of which ye Western parts, being less defended fell soonest under their yoke; so yt. ye. Franks & Normans settl'd in France; ye Longobards, Succeeded by ye Normans in Italy; ye Allans, Vandals, Suevians, & Silingians in Spain, who were again drove out by ye Goths; ye. Saxons fell upon & conquer'd England.

ye. source of all ye European Governments & Feudal Laws arising from ye manner in which these people distributed their conquer'd Lands, it will be necessary to examine ye. progress of yt. attentively.

It must be consider'd yt these waring colonies issuing out from ye Northern Hive, were compos'd of Free Men who serv'd at their own expence, & for their own behalf; therefore whatever conquest was made, ye Land in a solemn assembly of ye People was divided to every man, according to his Tribe & Family; & as these migrations were compos'd of different People, united in ye common cause of conquest; we find yt. those who came from ye. same little country or Principality generally settl'd together, & establish'd ye. Laws & Customs of their Mother Country in their new acquisitions; Hence arose ye. many small states, & various forms of Government yt. after ye. destruction of ye. Roman Emp-e. divided all Europe; few of which exist at present except in Germany & Italy.

In ye. Division of these Lands, they follow'd their own method us'd in ye. Cantons which was before taken notice of yt. is they were given for a year & ye. possessors let them out with a certain reserve of ye produce; hence arose ye ^{^Feudal^} distinction, of *Dominum utile*, & *Dominium directum*.

These Grants for years or for life, were afterwards call'd Beneficia in ye. Reign of Clovis; & some with probability think they acquir'd ye. names feudes in ye. constitutions of Charles ye. Gross an. 884.

Among many opinions relating to ye. derivation of ye. word feude, ye. most probable one is yt. of its coming from ye. ^{^Teutonick^} ~~German~~ words fee, as in our language fee or gift; & of possession. [3]

~~words fee, as in our language fee or gift; & of, possession~~

These people naturally establish'd ye. same government in their new territories they had been us'd to at home. Their gen-s or leaders became ye. temporary administrators of Justice, as their Ps. in Germany. These Officers were distinguish'd by ye. Latin Authors, & by ye. victorious Nations themselves by various names. ye. Ps. nam'd by Tacitus are call'd Greaves, yt. is Judges in ye. German Laws. These were generally Old Men, & were stil'd in ye. beginning of ye. English Saxon government Eldermen; in France, Italy, & Spain they were denominat'd from ye. Latin Word Segnior, which is ye. root of our word us'd since ye. conquest of Seignory, a senonimous term for Lordship; & in ye. subdivisions ~~of many~~ of this country into Tithings, Hundreds, or Towns; these districts had Judges, call'd Ledgraves, Letgraves, Tungraves, & c. & thus in Germany ye. Judges of ye. Boro, & Marches, were call'd Burgraves & Margraves.

As to ye. word Princeps Writers of ye. middle age, make it in ye. Saxon Language Elderman, after ye. conquest it comprehended Bish-s, Abbots, & Nobles; for Eadmerus in his History make Henry I. summons, his Bish, Abbots & Ps. of ye. K-m. to do Homage to his son William.

Comes we no name of Office or dignity, till Constantine gave it to ye. of Office, & ye. same signification is ye. Teutonick word Grave.

Dux was applied to ye. same people as Comes, with this difference yt. one was in a Military capacity, & ye. latter in a Civil.

ye. followers of these Gen-s. were call'd by ye. Feudal Writers Vassals, deriv'd from ye. name they had in Germany Gesell; these also had a share on ye. govern. of their conquests.

ye. Custom of these Northern Invadors was to divide ye conquer'd Country into three parts, one of which they left to ye. antient Possessors, who they never mixt ^{^them^} ~~them~~ with their people nor suffer'd ^{^them^} ~~them~~ to share in govern. this by ye. antient writers was call'd sors Gothica, for it was practic'd by the Goths in Italy & Spain, & by ye. Franks in Gaul; & ye. Latin contemporary Writers call'd ye. two shares ye. Franks kept to themselves terra Sativa, yt. left to ye. possessors allodium, which word is deriv'd from ye. Teutonick tongue, where a is a negative particle, & Leude signifies persons link'd in Feudal tenures. Allodiaric was therefore ^{^originally^} a name of reproach to distinguish ye. vanquish'd from ye. Conquerors; & tho' at first these peoples possessions were free from service, yet for security of possession [4] they frequently surrender'd their lands, to neighboring L'ds. & so receiv'd them back under feudal tenures & c. sometimes where they kept their ~~lands~~ ^{^possessions^} they put themselves under ye protection of Lds. whence came a frase often met with in doomsday book tenere in allodis.

As for slaves either made so by ye. Conquerors, or found so, they look'd upon them as part of their substance

ye. Principal if not only difference between new Govern-s sette'd by ye Conquerors, & ye. antient one they had liv'd under in Germany, was yt. they Priest or Leader became no longer annual as in ye Mother Country, for being in a continual State of War, it would not have been safe to have been often changing ye Gen.

In process of time these Leaders came to be call'd Ks. but yt. this was an innovation appears plainly from most modern nations ~~taking~~ ^deriving^ ye. name of K. from ye Latin.

In England yt. name is of Saxon origin tho' ye. first Saxon Leaders yt. invaded this Country, were call'd Hertoge, for ye. old Teutonick Word Here, signifying publick & toge, Gen., & this idea of Gen. of ye. Publick, seems to be ye. only one these Nations had of a K. for ye Longobards who gave they name to Lombardy, chang'd their P. into 30 Ds. & yet in time of war elected one Gen. who did not in ye. least infringe ye. rights of any of these Ducal Powers.

After ye assumption of a Regal title their still continued assemblies of ye. people, as in Germany, to consider of ye. common Good; these were in England & France call'd Parl-s. in Spain Cortes, & in Germany & Poland, Diets; in Latin Placitum, Carits, maleum, but more commonly colloquium.

From what has been said of ye. distribution of ye. conquer'd Lands, it must necessarily follow, yt. from ye. Different circumstances of ye. Conquerors, several Changes must have happen'd. time has produc'd two great one's; one in ye. interests of ye feoffees, ye. other in ~~ye~~ ye Vassalage ^services^ since known by ye. name of tenures.

As to ye. first ye. increase of ye. people, ye. cultivation of ye Lands, & ye great elegancy of life, yt. gradually introduc'd itself, made ye. superiors desire to secure ye. possession of their Estates, & ye. Vassals to make their settlements more durable. [5]

These ~~tenures~~ ^Rights^ therefore grew from annual to be given for life, & were enlarg'd afterwards into estates of inheritance.

This change in ye. feoffees produc'd, two other considerable alterations in Govern. Ye first it is ye. foundation of ye. Hereditary K. ships & Nobility over Europe; secondly ye. Country being wholly appropriated, people who had not land were oblig'd for a maintenance, to invent various methods, to indulge, & support, ye. case & Luxury of ye. Rich; Hence arose ye. encouragements of Sciences, Arts & Trades, follow'd by innumerable, Towns, Cities, & Boroughs throughout all Europe.

ye. second great alteration we mentiond was in ye. tenures. These were Services annexd to Estates & at first were few, but in after ages were extremly multipli'd, thus as in the 1st devision of ye Lands each private person had his share allotted by ye whole; so the discendants of these 1st conquerors were undoubtedly bound to military services in time of war, for the good of the whole Community, the greater portions, given to the Principal persons, since call'd Countys; was bestow'd by the whole people; this again was parcell'd out by him with the consent of the whole nation, to individuals of his immediate tribe; as therefore the chief of the county held his position, from the people & the Prince who commanded his was call'd Baron service; that of his tribe to him military tenure, & the obligations of all to the nations fealty. It is uncertain how these tenures, were at first fixd. in later ages they were annex'd to the Estates; fealty by oath, was instituted] when first feuds were made hereditary. & were common in 1020.

when once feuds became hereditary many disputes happend betwixt the ~~Lords~~ ^Superiors^ & Vassalls; & betwixt ~~the Superiors~~ ^Vassalls^ themselves, this occasion'd 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 granted ^;^ the history of changes happening in those laws would be in recalling the description of the various changes that have happened in the European countrys; here then wee end this generall history, & after a few observations; come to the antient state of this Country. [6]

the Contract betwixt the Governours, & Govern'd, the powr of the magistrate, & obedience of the people, the measure of power belonging to the great Lordship of the Realm, & the lesser Lordships have all their foundation in the two following observations; 1st as the Conquerors were the masters of the Country, no body could have possession of any peice of Land, without the owners consent, & under the terms he pleas'd to fix; hence arose a territorial Jurisdiction, & a right to control the actions of those who were not of the community, as well as of those who were -----

2dly as these Victorious Nations were Voluntary Societys the majority had the right to regulate the actions of individuals while they continu'd members of the society. this appears to have been the state of the originall contract betwixt Prince and People ~~???~~; Superior & Vassal, ^& of^ individuals with regard to the whole community / afterwards when all judges were regulated by the feudal laws; they were enforced by [[unclear]] oaths; & of 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; call'd King,) and the oath of fealty taken by the Peers; which oath the Peers in Henry 6th's time, did not ~~take~~ ^ consent to ^ till the King. had taken his; from hence is deriv'd in this & most other Kingdoms the oaths of Allegiance, which have of late been extended, to the Successors as well as to the King himself.

ye. Peers of what denomination soever, held originally of ye. Publick as well as of ye. K. & ow'd homage & fealty to ye. community, as ye. German Ps. do at this day to ye. Emp-e, not ye. Emp. this will appear from ye. following reasons;

I. ye. armies of these conquerors were as we have seen made up of different Nations under their respective Leaders, with one Gen. commanding ye. whole: ye. Successors [7] of this Gen. became K. & those of ye. Leaders Nobility or Peers. Now as ye. Gen was only during ye. war; he had no right to ye. peoples allegiance & still less so in time of peace, for then his power terminated.

II. Property was in ye. collective body, & tho they parted with ye. Dominion Utile, they retain'd ye. Dominion Directum, to which only homage & fealty are due.

III. In controverted Rights of Baronies & c. ye. decision was never antiently claim'd by ye. K; which it would have been if given by him

IV. ye. Services annex'd to Feudes, is like homage & fealty in lieu of ye. land; so yt. if ye. tenure had been of ye. K. ye. Service would have been due to his private necessities. There are many instances to prove this; thus no K. could oblige his Peers to serve in wars for his own advantage. for by ye. feudal Law these servies were only due in Rebellions at home, & invasions from abroad; thus it is in Germany at present; & when any Peer refus'd to attend ye. K. ye. neglect was punishable, not by ye. K. alone, but with his Parl.

In cases where ye. B-s. assisted ye. K. either voluntarily or bound by duty, ye. conduct of ye. Army, was not left to his will alone for ye. vassals obey'd to orders but those of their own Chief,

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 ye. German Nations continued till ye. Civil Law long buried was reviv'd, & then mistaken Ps. Made ye. Lex Regia, ye. ground of assuming despotism, & for yt. reason introduc'd yt. law into their K-ms. It prevails but too much over all Europe, but has been here unsuccessfully attempted, & therefore this Govern. comes nearest to ye. old Saxons idea of Liberty. [8]

Of ye Legislature of England in particular

ye Saxons after conquering England divided into as many Shires, as ye Gen. or K. had companions, in Latin Cometes; these came laterly to be call'd shires, which were societies, like ye Cantons in Germany; thus things continued till ye dissolution of ye Heptarchy in Alfred's Reign; for tho' some put yt event to Edgar yet time interveening between those two Ps. was so full of confusion there was no real settlement till Alfred. He is said by some to have been ye person who divided England, & yt may be true as to ye present divisions, or alterations of ye old; but 'tis certain he parcell'd out ye shires into Tythings or Laths, Hundreds or wapentakes, & them again into Tythings, or as some call'd them of old, Boroughs, tho' yt word is generally us'd for places yt send members to Parl.

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

ye people increasing spread themselves more & more into ye uninhabited parts of their Tythings; these new places of abode were call'd Hamlets, from ye Saxon words Ham, dwelling, & let, to assign.

ye Tythings were unequal, for they were ~~formed~~ founded on ye number of families & not on ye extent of Ground, ye Proprietors residing on their Estates, whence afterwards they were call Manours a manendo.

ye true meaning of Tything or ten families, is very difficult to explain; were they each of them what we call housekeepers many Counties would not have had above 3, or 400 Houses, which is impossible. Let it be observ'd yt ye Proprietors cultivated their lands by slaves, whom they supply'd with victuals for ye word Ld. is a greed by all to come from ye saxon Hlaford, which signifies a giver of bread; now tho' these labourers might live in different Houses as may be suppos'd from by ye frequent use of ye words cottani, bordaric & c. in domestay, yet they certainly were regarded as part of their Ld. family, so yt ten such families might make a very populace district; which is all ye sense we can give to ye word Tything from ye Saxon Tongue [9]

We may indeed add; yt in all probability, several handicraft, or trading people, associated themselves into companies, call'd by ye Saxons Guils, one of these companies was reckon'd for a family; some also of ye more eminent Merchants &c. might employ under them great numbers of artizans & slaves; it may therefore have often happen'd, yt a tything, here & there consisted, of ten towns or Boroughs.

By ye Saxon Laws, rank was annex'd to Possession, for by according to them a Carl, yt is yeoman having 5 hides of land, a Church & a Hall, was equal to a Thane.

again a Merchant crossing 3 times ye Sea on his own substance, was also equal to a Thane; From hence it follows yt trading Towns, or large societies, might very well be consider'd as possessors of Manours.

as in ye first distribution of Counties, we find no Magistrate but ye Elderman to preside, so in ye further division into Tythings, there were proper Magistrates appropriated to them, & chosen by ye Gen. Voice, such as Borgh holders, Head Boroughs Tything Men & c. Many of these Tythings had little Courts in themselves, for deciding controversies & c. These are mostly gone, but in London & some other places still subsist under ye name of Hustings; from ye Saxon words Hus, & ting, ye House of please.

all ye Saxon laity may be divided into Thanes, or Greaves, of ye Higher kind, & k. Thanes holding of ye k; under Thanes holding of ye; subjects; & Caorls, or yeomen.

after having mention'd ye various divisions of ye country, & ye different ranks of ye People; it will be proper next to consider, who among them were invested with ye Legislative power.

& 1st from what has been said already it does not appear to have been solely in ye Saxon Ks etc; ye Greatest sticklers for ye prerogative allow to have been in ye K. & Nobility tho' they exclude ye Commons, as Dr. Brady & c. those again who assert ye gen. right of ye people in govern. as Tyrrel & c. affirm, yt from ye first enterance of ye saxons every Landholder ^ etc^ assisted at ye Parls. thus in Kent where Henqist 1st settl'd all ye possessors of Land met to give their assent or dissent at ye making of Laws. This indeed cuts out ye Caorls, or yeomen from ye witenagemot & even ye Thanes, who being only tenants by serjdanty yt is possessing Lands in Lieu of wages for his services, he was only part of ye family of some one yt was a member [10]

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

This Witenagemot, is thought by ye. Popular party to have consisted not only of E-s, Bish-s, & Abbots, but also of ye. persons who presided in each community, Tything & c. which opinion seems to make ye. Commons a constituent part of ye. Saxon Legislature.

For ye. proof of this there are several cotations brought from ye. Laws of ye. old Saxon K-s. thus Ina decrees with ye. Council of his Bish-s. Senators, et senioribus sapientibus postuli mei.

again in ye Peace betwixt Alfred & Guthrum it is declar'd to be ye. feudus yt. these k-s. & all ye. Wisemen of England, & every body yt. inhabited ye. Eastern part of England made together.

& in all ye. Saxon Laws ye ks. are said to have consulted with their antient or Wisemen, ~~an~~ which those who write for ye. ~~people~~ commons affirm to have been included ye Representatives of ye. people.

Of Parliaments after ye. Conquest.

No subject has been more debated, than William's, call'd mostly ye. Conqueror's right to England; some affirming yt. having conquer'd ye. Country, He superseded ye. Old Laws, & had a just right, to establish arbitrary power; others deny ye. conquest & consequently his right to despotism, but then

they generally attempt to prove it, by denying yt. he did commit arbitrary acts; but ye. important question whether he ^ really^ had a right to do them, is seldom touch'd, now if it can be prov'd yt. it was not conquest, & yt. He had no right to arbitrary power, his actions may in deed prove him to be a Tyrant, but cannot invalidate ye. right of ye. people yt. however invaded by him, might be Lawfully recover'd & exercis'd when oportunity should offer, for ye. recovery of their Lawful rights; for there can be no prescription against liberty from illegal acts! [11]

To prove this let us examine two things, 1st ye power ye Norman had in his own Country, & 2ly ye causes yt brought him to England.

As to ye 1st Rollo ye Dane, William's ancestor, conquer'd Nustria with an army of Danes, Norwegians, & Swedes who all went under ye name of Normans, which they gave to their new conquest. Rollo ye Leader of this confederacy of different Nations, could have no pretence to power except what was given him by their own consent. ye new conquest was divided, & Govern. establish'd with ye opinions, & consent of all ye Chiefs, & Rollo's legitimate Issue failing, in our William's father; he was elected by ye Bs. to succeed him, & consequently had no right, but what was confer'd on him voluntarily; & to shew yt William had no right over ye very army he led into England, we read in Hist. yt ye Norman B-s. refus'd at first to attend him not being oblig'd by their allegiance to serve in foreign Wars, & tho' they at last agreed to it yet one of ye principal Normans persisted in his refusal therefore ye chiefs of his army were partners not servants in ye Expedition; & yt this idea remain'd in ye reign of William's successors' appears by ye famous answer E. Warren made, when question'd ~~of~~ ^ about ^ ye title to his Estate, for he drawing an old sword declar'd yt his Ancestors had obtain'd their Lands by ye sword, & with it he would defend them. From all this it appears planely yt ye Normans led by William were a free People.

As to ye second thing, ye Causes of ye invasion, we shall observe yt ye Normans & English had no difference, but liv'd in a friendly intercourse & William pretended a Right to ye Crown, therefore ye war wag'd was against Harold ye Possesor & not ye Nation; & so William understood it offering to decide it by single combat so yt when he routed Harold He certainly could have no more power over ye English, than ye Person he claim'd under had; & of what extent yt was, we have seen before in treating of ye Saxon Govern.

There are two reasons asserted for William's Right of arbitrary power, one by Salmasius, which is ye addition of Dei gratia taken to ye Regal title. In answer to this let us observe yt Pere Mabillon tell's us yt Pepin ye 1st P. in Europe yt took yt addition to his title ~~????~~ chose it from having no other right to ye Crown, having aquir'd it by usurpation; & several of our 1st Clergy as Langfrank arch b. of Canterbury, & ever since ye Restoration Juxon is stiled arch b. of Canterbury Dei gratia.

ye other reason is more specious, for ye lovers of Tyranny affirm yt at ye conquest ye Govern. was military, ye military tenantry in effect composing a standing army. [12] In answer to this we shall find yt not one in 15 were under William's command, perhaps to one in 30. again ^ ye ^ military tenants possess'd ye greatest part of ye K-m & perform'd their Services, by virtue of their Knights fees, which at ye lowest estimation is suppos'd to have 20£. per an this has been prov'd to have been equivalent to 40£. 200 years ago, & at ye time of ye. conquest may very reasonably be put at 500; if so we can hardly immagin an army compos'd of men of such fortunes would be ye base instruments of ye Normans tyranny.

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

As ye Saxons & Normans enter'd England with different views, so they acted in a very different manner; ye 1st exterminated ye old inhabitants, & settl'd in their Room, ye latter only asserting their P. right to ye throne, purpos'd ye Ruling, not ye destroying ye people William indeed after his Victory depriv'd all those yt resisted him of their Lands, & gave them to his followers which supposing his right Lawful, he could do with justice; as to ye rest of ye inhabitants yt stood neuter, they continued in possession of their lands; but then they had Norman Chiefs instead of their Gerefas put over every tything, & these superiorities were made Hereditary, & not elective as among ye Saxons; these Chiefs ye Normans call'd B-s. & segnieurs, by contraction sires, & their Estates B-ies or Honours but this must not be understood of those tythings yt consisted of trading persons for ye Normans, out of a contempt to Trade & manual arts left them almost universaly in their original state, retaining in some to this day ye Saxon officers, names & Courts, & consequently yt equality which was formerly ye ??? ^ characteristick of ^ ye Saxon Govern.

For securing these new acquisitions, William introduc'd ye Norman tenures, & by yt settl'd military service in cases of invasion or rebellion fixing ye number of soldiers each Chief should bring to ye field, from which ye Ecclesiasticks were not excepted; & ye trading communities were oblig'd instead of men to furnish money, under ye name of fee-Farm Rents.

ye Tenure of Grand Serjeanty also took place, which arose from Lands given to ye Steward, Constable, Chamberlain or Marshal of England; but whence these names ??? ^ were us'd ^ only to offices in ye K. Houshold, they did not creat tenures of ye Publick, but tenures of what was call Petty-Serjeanty. [13]

As ye number of ye victors were much inferior to ye English, William to destroy distinctions, & to unite them & ye Normans into one People, introduce'd Wardships & Marriages, & tho' he left ^ many of ^ ye counties, under ye administration of Saxons E-s, yet He destroy'd their power, by making ye B-s. under them, hold immediatly from ye Crown.

D. William gave part of ye Land he kept to himself, amongst his immediate followers, reserving Military service; His Confederates follow'd his example; ye lands given were call'd knights fees, & as they then amounted to above 60000. 'tis probable they forc'd many of ye English to hold their estates by ye same tenure, yt part of their inheritance, which they kept in their own power, they like ye Saxons gave it to Husbandmen to manure, reserving a proportion of ye produce themselves, these were call'd Tenants in Soccage, a word signifying ye service of ye Plough; thus they continued till H. II. time when money becoming more plenty, ye tenants, paid in lieu of part of it a Rent, & ye residue was left to ye bondmen, or lying neglected was call'd ye waste.

All these Tenures subsisted till ye 12 of Ch. II. when ye military tenures were entirely abolish'd, soccage still subsists, & so does ye bondmen's whose successors are ye Copy Holders; these retaining to this day, marks of their original servitude, for as bondmen were formerly excluded from any share in ye Legislature neither do ye Copy Holds give any right to vote at Elections.

From this account of tenures, it appears yt there were two sorts of tenants, those yt held of ye K. as chief of some manner, whose services he could transfer, to any subject, & those who held of him as chief of ye great Ld-p of ye K-m. these were call'd tenants in chief, or tenants of ye Crown, & were not transferable.

Thus far We have seen, how every body consented from their different situations to assist & support Govern. but as nothing more could be demanded ~~from~~ but ye services before mention'd from ye people, ye exegencies of state, requir'd other methods of support, as taxes & c. which only ye free will of ye People could give, & all authors agree yt this was settl'd in assemblies or conventions

of ye B-s. tho' various are ye opinions ^ who ^ of these B- ^were ^ at this epoch [14] some affirming yt they were all ye 1st Nobility, with ye Bish-s & Miter'd abbots; others yt it ^rightly ^ included every tenant in chief of ye Crown, by whatever tenure he held. We shall at present consider ye various alegations, for & against there interpretations.

ye differnce in tenures, is created by ye differences of ye services ye tenant is bound to perform, so yt if a B-ny was a different tenure from others, they were oblig'd to perform different services which we have no account ^ of ^ it.

ye differnce of ye great Ld-p. of ye K. m, was only in extent & greatness, not in constitution. from ye lesser Ld-ps. Now we know ye immediate tenants of lesser Ld-ps were stil'd B-s & ow'd attendance as part of yt. service they held their Land by; these consisted of Military Persons, Officers of ye segneury & tenants yielding profit instead of Military service; from hence it seems to follow, yt ye Parl. consisted of ye like orders of men, whose attendance was equally necessary at ye High Court of ye Great Segneury of ye K-m.

Again ye tenants by Grand serjeanty are said by ye advocates of ye People to have been B-s & yt because Richard I. in directing ye Levying a tax on ye B-s. except ye tenants by serjianty, as also yt all lands hitherto known to be held by grand serjearty was in ye Hands of ye B-s.

ye Popular Writers also observe, yt all ye immediate tenants of ye Crown were call'd B-s. till after wich these have been divided into 3 classes, E-s B-s & Tenants by Knights service, but this distinction seems but ill founded;

1st as to E-s & B-s they are by many good authors affirm'd to be ye same

We have already observ'd yt E-s & B-s ^in Europe^ antiently held of ye K-m. not of ye K. only. We must now prove it was so in this K-m at ye Norman invasion. 1st many of ye persons who came over with William, had no dependence on him. Ye Norman B-s yt held of ye Community in their own country, would hardly have submitted to be on ye same footing with His Vassals; not one of ye Norman Ks tho' with high notions of prerogative, ever assum'd ye power [15] of depriving a B. of his B-y without Parl; many disclaim'd it even, & Some have in such cases demanded ye judgement of ye Peers; add to this yt in all old tracts, as in ye Register & c. they call'd ye B-s, Barones Regni, not Regis.

yt ye Power of ye Bs over their Vassals may be prov'd several ways, to be equal to what ye K. had over His

1°. by their origin which has been already mention'd

2°. by their names, which in Old writers are Pricepses Reguli & Reges.

3°. by ye form of making them, which in yt of Hugh Laysus E. of Chester, we find these words, tenendum ita libere at gladium, sicut ipse Rex tenebat Regnum Angliae

4°. by ye Power they exercis'd, for they receiv'd homage in fealty, they made Laws in their courts, & Judge'd there & by a Law of H. II 'tis expressly provided yt ye Bs Vassals, shall not be forc'd to abide by ye determination of ye K. court; they gave Boroughs a Right to send members to Parl. they coin'd money to Steven's time, & their vassals yielded them ye same aids tallages, & services, ye K. had of His, nor were these Vassals falliable to ye k. In ye famous act of ye 25th of Ed. III. killing K or Ld. goes under ye Common name of treason; ye attendance of Vassals at Court leets is in old books cal'd suit real, from ye French ^ word ^ Royal.

II. As to tenants by Knights service

This subdivision arose from ignorance of antiquity; if by Knights service; or military Tenant, we are to understand one who held immediately of ye Crown, for leading a number of men they were then no doubt E-s or B-s yt if it ment nothing but a Persons own service without followers, there was no such holding ^ of ye Crown ^ till some time after William.

But tis certain, yt all who held then of ye Crown were B-s. for all tenants of ye Crown paid relief to him; & yt all these B-s had some military tenants, call'd vavassors, who paid relief to them.

ye word B. also comprehended Burghers who held their Boroughs from ye Crown.

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

ye manner of making a Borough, seems to have been ye selecting a place in any manour, either belonging to K. or Peer, inhabited by Tradesmen, this was let by Ld. or K. to ye inhabitants in fee farm ^ or Serjeanty ^ [16]

All other duties & services releas'd & so seperated from ye Seignours yt ye inhabitants had no superiors but k. & Parl. & so without any particular grant in their Charter, in consequence of their enfranchisement, came to have a right in ye Legislature, just as a copyholder now a days enfranchis'd has a right of voting.

Writers for absolute Monarch, assert on ye contrary yt this right is ye pure grace of ye superior, this is attempted to be prov'd by producing charters, where ye confirmation of this Right is found.

But ye Popular Writers affirm yt ye oldest Charter with such a clause is in Ed. IV. time, therefore, if Boroughs have yt right only by Charter, all those who have charters before it having no such clause, cannot send Representatives, which is absurd.

In these Boroughs, ye community exercis'd ye same powers, yt E-s. or B-s. did, but many falling into decay, these powers are lost; in many they still subsist as in London; tho' numbers of them are not exerted.

In William's time we meet with several instances of ye Burghers in Towns being call'd B-s. in Doomsday ye Burghers of London & Warwick are call'd B-s.

ye Inhabitants of ye Cinque Ports, keep ye old appellation of B-s. to this day, & they like ye City of London, hold from ye crown by grand serjeantry, & in consequence carry ye Canopy at a Coronation, as ye Mayor of London does ye Cap

ye Popular Writers affirm from all yt has been said, yt ye word B. denotes all ye immediate Tenants of ye Crown, yt is besides ye Ecclesiasticks, Es, B-s & Burghers; & yt as ye Parl in William was compos'd of B-s. under yt word was comprehended ye three above mention'd ranks of Laymen.

Most of our best Writers allow yt Citizens, & Burgesses sate long in Parl. before Knights of ye shire; & yt both Hs sate originally together. We have seen yt Boroughs were vested with this right in ye Saxons time, a thing most agreable to their notions & to common sense for according to them, Freedom consisted in ^a persons^ being subject to no Laws but those to which he himself consents, so yt ye Boroughs could not have been call'd free without a share in ye Legislature, consequently

a Representative in Parl. XXXXX

XXXXX [on reverse fo. 15]

We have seen yt ye Parl. consisted of E-s, who presid'd in ye County Courts; B-s yt were chief in ye Court B; & representatives of ye Buroughs, where ye community judg'd; Here then appears ye reason, why writs of error lay from these lesser Courts to Parl; & why therefore Parl was ye supreme Court of judicature; since it was most just, for an appeal to be made from an inferior Court, to one yt contain'd ye Representatives of the whole Nation; but ye short time of ye sitting of Parl. being insufficient from ye number of controversies cognizable there, this occasion'd the appointing 3. Com^{ees} one for state affairs, from whence came ye Privy Council; another for criminal matters, which produc'd ye K. Bench, & third to regulate ye receipts & perhaps disbursements of ye Publick money, which we now call ye Exchequer,

Govern. remain'd in this situation till Stephen's time; who to preserve his unjust possession, alter'd ye Constitution in two considerable branches, E-s, & Military B-s. of ye 1st he made several without Counties appropriated to them.

As to ye B-s. many of their B-ies being forfeited by ye civil wars, betwixt Stephen Maud, & H. II these Ps. to reduce ye B-s. power, split ye esheats into several small tenancies in Chief yt held immediately of ye Crown, & from hence probably arose [17] ye distinction of greater & lesser B-s. H. II. annull'd all ye E-doms made without Counties. But with regard to ye B-s he continued dividing them into small fees ye service reserv'd by this K. being only 5 knights as these numerous Crown Tenants, could only be judges in Parl & yt yt sate seldom long enough to decide all controverscies, they were oblig'd in these times, to institute itinerant justices, which is remarkable, as 'tis ye 1st or 2d instance, of ye Legislative & judicial Powers being seperated, & was then thought a grievance.

Things continued in ye same way under Richd. but K. John in creating E-s. instead of allowing them ye profit of ye County which was gen-ly a third, he gave them a small pension, & reserv'd ye rest for himself.

ye Profits of ye E-doms being thus taken away, they gave themselves little trouble about ye County Courts, & these declining, occasion'd ye erection of ye Common Pleas; by this means they also lost ye influence in their Counties, which pav'd ye for Lds. Lieuts who were 1st appointed in Ed. II. time.

About this time we first hear of E-s. appointed by Patent, at 1st they were Elective, & how they were made afterwards does not appear; till this Æra. There is however a great dispute, whether these Patents, were acts of Royal power or of Parl.

But we shall not touch upon yt at present, as it is a dubious case, & more speculative than practical. This increase of Tenants in chief produc'd a very unequal Representation of ye k-m. & became so great a grievance, yt it is remedied by a particular clause in ye M Ch. by this there is a distinction made, between ye greater & lesser B-s. ye 1st were to be severally summon'd to Parl. as to this day. ye lesser B-s. were summon'd in gen. & being excluded from sitting singly in Parl. they were to send Representatives for their body, & they now begun to cease being call'd B-s. but reciev'd ye name of military tenants; & ye Representative was call'd Knights ^ which ^ was borrow'd from ye Saxon yt signifies military tenants, & as they Represented whole ^ shires or ^ Counties, were call'd knights of ye shires; & as ye persons title of E. Bish. & c. us'd to be incerted in Deeds now ye great B-s began to write B-s of their chief Castles.

This clause in M. h. directs a summons for these lesser B-s. to be in 40. days as there is always one County Court held in yt time, to this none but these tenants of ye Crown came, & had a right of voting, till by ye 9th. of H. VI. this right was extended to 40s. freehold. [18]

ye number of these Representatives don't seem to have been at first settl'd; but it was not long, before it was fix'd in ye manner it now stands.

We have no Records of ~~them~~ ye. Members ^ receiving Wages till Ed. I. time.

ye success of ye Bs. against K. John restor'd ye. antient constitution, yt of H. III. over ye E. of Leicester, a great deviation from it, for tis said yt he obtain'd an act of Parl. empowering him to summon whom he pleas'd out of ye B-s. to Parl. without which summons none were to attend. 'Tis however uncertain whether this act had ever ye Sanction of a Legal Parl. & it is much to be doubted whether ye Representatives of ye People, have it in their power to give away their Liberties & properties; according to a wise maxim of Tacitus yt apud sapientes cassa habebantur que neque dari, neque accipi salva Republica potetant; some have said yt. this clause introduc'd a new species of B-s.viz by Writ, but yt seems a mistake, for ye Writs were certainly directed, to those who were Bs. before.

In times of Confusion ye Crown under Colour of this Law sent writs sometimes to some Bs. & sometimes to others, according as ye [[unclear]] party prevail'd. But as tranquility was restor'd this [[unclear]] pratice was disus'd, & ye method first us'd in R. II. time has been since adopted, of making B-s. with a right to set in Parl. by Patent.

From all which it appears plainly yt ye freedom yt our Saxon ancestors brought with them from Germany, of assenting, or dissenting to all laws has been preserv'd under ye Norman Line, & continues so in its full vigour unto this day.

Finis.