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AN

HISTORICAL VIEW

OF THE

ENGLISH GOVERNMENT,

FROM THE

SETTLEMENT OF THE SAXONS IN BRITAIN

TO THE

ACCESSION OF THE HOUSE OF STEWART.

BY JOHN MILLAR, ESQ.

PROFESSOR of LAW in the UNIVERSITY of GLASGOW.

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M,DCC,LXXXIX.

TO THE

RIGHT HONOURABLE

CHARLES JAMES FOX.

SIR,

I SHALL, perhaps, be thought guilty of preſumption, in wiſhing to draw your attention to the following publication. The truth is, it appears to me ſcarcely poſſible for any man to write a conſtitutional hiſtory of England, without having Mr. Fox almoſt conſtantly in his thoughts.

In delineating the progreſs of the Engliſh government, I have endeavoured to avoid thoſe fond prepoſſeſſions which Engliſhmen are apt to entertain upon the ſubject, as well as the prejudices peculiar to the two great parties, which the nature of our limited monarchy has produced. How far I have ſucceeded in this, muſt be left to the judgment of the public.—But, whatever indulgence may be ſhewn to this Work, the ambition of its author will not be gratified; unleſs he can procure, in ſome degree, the approbation of a mind ſuperior to prejudice; equally capable of ſpeculation, and of active exertion; no leſs converſant in elegant

 literature,

literature, than accuſtomed to animate the great ſcenes of national buſineſs; poſſeſſed of the penetration to diſcover the genuine principles of the conſtitution, and of the virtue to make them an invariable rule of conduct.

Impreſſed with the higheſt eſteem for ſuch a character, permit me to declare the ſatisfaction I feel from your ſteady perſeverance in a ſyſtem, which by tending to ſecure the natural rights of mankind, has led to a reputation the moſt exalted, and the moſt grateful to a generous mind.

I have the honour to be,

SIR,

Your moſt obedient

Humble ſervant,

College, Glaſgow, 4th Dec. 1786.

JOHN MILLAR.

CONTENTS.

CONTENTS.

INTRODUCTION. Page 1

BOOK I.

OF THE ENGLISH GOVERNMENT, FROM THE SETTLEMENT OF THE SAXONS IN BRITAIN TO THE REIGN OF WILLIAM THE CONQUEROR.

CHAP. I.

Preliminary Account of the State of Britain under the Dominion of the Romans. - - 1

CHAP. II.

Character and Manners of the Saxons. - 19

CHAP. III.

Settlement of the Saxons in Britain. - 33

CHAP. IV.

Similarity in the Situation of the Anglo-Saxons, and of the other Barbarians who settled in the Provinces of the Western Empire.—How far the State of all those Nations differed from that of every other People, ancient or modern. - - - 46

CHAP. V.

The State of Property, and the different Ranks and Orders of men, produced by the Settlement of the Saxons in Britain. - - - 73

SECT.

SECT. 1. *Of the chief Regulations attending the Eſtabliſhment of Chriſtianity in the Roman Empire, and in the modern Kingdoms of Europe.* Page 81

SECT. 2. *The Eſtabliſhment of Chriſtianity in Britain, under the Roman Dominion, and in the early Government of the Anglo-Saxons.* - 93

CHAP. VI.

Inſtitution of Tythings, Hundreds, and Counties. 99

CHAP. VII.

Of the Wittenagemote. - - 117

CHAP. VIII.

State of the Sovereign in the primitive Anglo-Saxon Government. - - - 135

CHAP. IX.

Of the principal Events from the Reign of Egbert to the Norman Conqueſt. - - 150

CHAP. X.

Variations in the State of Tythings, hundreds, and Shires. - - - - 170

CHAP. XI.

Changes produced in the Condition of the Vaſſals, and of the Peaſants. - - - 177

CHAP. XII.

The Influence of theſe Changes upon the Juriſdiction and Authority of the feudal Lords. - 192

CHAP.

CONTENTS.

CHAP. XIII.

Of Eccleſiaſtical Courts. - Page 201

CHAP. XIV.

Alterations in the State of the Wittenagemote. 209

Concluſion of the Saxon Period. - 219

BOOK II.

OF THE ENGLISH GOVERNMENT FROM THE REIGN OF WILLIAM THE CONQUEROR TO THE ACCESSION OF THE HOUSE OF STEWART.

CHAP. I.

THE Norman Conqueſt.—Progreſs of the feudal ſyſtem.—View of the ſeveral Reigns before that of Edward I. *—The Great Charter, and Charter of the Foreſt.* Page 222

CHAP. II.

In what Manner the Changes produced in the Reign of William the Conqueror, affected the State of the national Council. - - - 269

CHAP.

CHAP. III.

Of the ordinary Courts of Juſtice after the Norman Conqueſt. - - - Page 282

CHAP. IV.

Progreſs of Eccleſiaſtical Juriſdiction and Authority. 295

CHAP. V.

General View of the kingly Power, from the Reign of Edward the I. *to that of Henry* VII. 306

CHAP. VI.

Hiſtory of Parliament in the ſame Period. - 327

SECT. 1. *The Introduction of the Repreſentatives of Counties and Boroughs into Parliament.* 328

SECT. 2. *The Diviſion of Parliament into two Houſes, and the peculiar Privileges acquired by each Houſe.* 348

SECT. 3. *Concerning the manner of electing the national Repreſentatives, and the Forms of Procedure in Parliament.* - - - - 361

CHAP. VII.

Alterations in the State of the ordinary Courts of Juſtice. 375

SECT. 1. *Eſtabliſhment of the Courts of Common Law, at Weſtminſter.* - - ibid.

SECT. 2. *Of the Petty Jury—and the Grand Jury* 389

SECT.

CONTENTS.

SECT. 3. *Circumstances which prevented the Civil Law from being so much incorporated in the System of English Jurisprudence, as in that of other European Countries.* - - - 406

SECT. 4. *The Rise of the Court of Chancery.* 420

CHAP. VIII.

Of the Circumstances which promoted Commerce, Manufactures, and the Arts, in modern Europe, and particularly in England. - - - 434

CHAP. IX.

Of Henry the Seventh.—Circumstances which, in his Reign, contributed to the Exaltation of the Crown.—Review of the Government of this Period. - 450

CHAP. X.

Of Henry the Eighth.—The Reformation.—Its Causes.—The Effects of it upon the influence of the Crown. 471

CHAP. XI.

Of Edward the Sixth—Mary—and Elizabeth.—General Review of the Government.—Conclusion of the Period from the Norman Conquest to the Accession of the House of Stewart. - - - 481

Conclusion of the Period. - - 497

INTRODUCTION.

INTRODUCTION.

THE great ſeries of events in the hiſtory of England may be divided into three parts: the firſt, extending from the ſettlement of the Saxons in Britain to the Norman conqueſt; the ſecond, from the reign of William the Conqueror to the acceſſion of the houſe of Stewart; the third, from the reign of James the Firſt to the preſent time. The important changes exhibited in the ſtate of the country, and in the ſituation of its inhabitants, appear, like a ſort of natural boundaries, to mark out theſe different periods, and to recommend them as objects of diſtinct and ſeparate examination.

The firſt period contains the conqueſt of England by the northern barbarians, the diviſion of the country under the different chiefs by whom that people were conducted, the ſubſequent union of thoſe principalities under one ſovereign, and the courſe of public tranſactions under the Saxon and Daniſh monarchs.

The reign of William the Conqueror, while it put an end to the ancient lines of kings, introduced into England a multitude of foreigners, who obtained extenſive landed poſſeſſions, and ſpread with great rapidity the manners and cuſtoms of a nation more civilized and improved than the Engliſh. The inhabitants were thus excited to a quicker advancement in the common arts of life, at the ſame time that the nation, by acquiring continental connections, was involved in more extenſive military operations.

By

By the union of the crowns of England and Scotland, upon the acceſſion of the houſe of Stewart, the animoſities and diſſenſions, with all their troubleſome conſequences, which had ſo long ſubſiſted between the two countries, were effectually ſuppreſſed. By the improvement of manufactures, and the introduction of a conſiderable foreign trade, England began, in a ſhort time, to eſtabliſh her maritime power, and to aſſume a higher rank in the ſcale of Europe.

The ſame periods are alſo diſtinguiſhed by remarkable variations in the form of government.

Upon the ſettlement of the Saxons in Britain, we behold a number of rude families or tribes feebly united together, and little accuſtomed either to ſubordination among themſelves, or to the authority of a monarch. During the reigns of the Anglo-Saxon princes, we diſcover the effects produced by the gradual acquiſition of property; in conſequence of which ſome individuals were advanced to the poſſeſſion of great eſtates, and others, who had been leſs fortunate, were obliged to ſhelter themſelves under the protection of their more opulent neighbours. Political power, the uſual attendant of property, was thus gradually accumulated in the hands of a few great leaders, or nobles; and the government became more and more ariſtocratical.

When the advances of the country in improvement had opened a wider intercourſe, and produced a more intimate union between the different parts of the kingdom, the accumulated property in the hands of the king became the ſource of greater influence than the divided property poſſeſſed by the nobles. The prerogatives of the former, in a courſe of time, were therefore gradually augmented; and the privileges of the latter ſuffered a proportionable diminution. From the reign of William the Conqueror in England, we may date the firſt exaltation of the crown, which, under his ſucceſſors of the Plantaganet

Plantagenet and Tudor families, continued to riſe in ſplendor and authority.

About the commencement of the reign of James the Firſt, great alterations began to appear in the political ſtate of the nation. Commerce and manufactures, by diffuſing a ſpirit of liberty among the great body of the people, by changing the ſyſtem of national defence, and by encreaſing the neceſſary expences of government, gave riſe to thoſe diſputes, which, after various turns of fortune, were at laſt happily terminated by the eſtabliſhment of a popular government.

With reference to that diſtribution of property, in the early part of our hiſtory, which goes under the name of the feudal ſyſtem, the conſtitution eſtabliſhed in the firſt of theſe periods, may be called the *feudal ariſtocracy*; that in the ſecond, the *feudal monarchy*; and that which took place in the third, may be called the *commercial government*.

Similar periods to thoſe which have now been pointed out in the Engliſh hiſtory, may alſo be diſtinguiſhed in the hiſtory of all thoſe kingdoms on the continent of Europe, which were eſtabliſhed upon the ruins of the Roman Empire, and in which the people have ſince become opulent and poliſhed.

Thus the reign of Hugh Capet in France, and of Otho the Great in Germany, correſpond to that of William the Conqueror in England; as thoſe of Lewis XIII. and Ferdinand II. in the two former countries, were analagous to that of James the Firſt, in the latter.

In the following treatiſe, it is propoſed to take a ſeparate view of theſe periods of the Engliſh hiſtory, and to examine the chief differences of the political ſyſtem in each of them. As the government which we enjoy at preſent has not been formed at once, but has grown to maturity in a courſe of ages, it is neceſſary, in order to have a full view of the circumſtances from which it has proceeded, that we ſhould

ſurvey

ſurvey with attention the ſucceſſive changes through which it has paſſed. In a diſquiſition of this nature, it is hoped that, by conſidering events in the order in which they happened, the cauſes of every change will be more eaſily unfolded, and may be pointed out with greater ſimplicity. As the ſubject, however, is of great extent, I ſhall endeavour to avoid prolixity, either from quoting authorities and adducing proofs in matters ſufficiently evident, or from intermixing any detail of facts not intimately connected with the hiſtory of our conſtitution.

With reſpect to the Saxon period, which comes firſt in order, many writers appear to have looked upon it as too remote, and as affording a proſpect too barren and rude, to deſerve any particular examination. But it ought to be conſidered, that the foundations of our preſent conſtitution were laid in that early period: and that, without examining the principles upon which it is founded, we cannot form a juſt opinion concerning the nature of the ſuperſtructure. To trace the origin of a ſyſtem ſo ſingular in its nature may, at the ſame time, be regarded as an object of rational curioſity. The Britiſh government is the only one in the annals of mankind that has aimed at the diffuſion of liberty through a multitude of people, ſpread over a wide extent of territory. The ancient republics of Greece and Rome comprehended little more than the police of a ſingle city, and in theſe a great proportion of the people, ſo far from being admitted to a ſhare in the government, were, by the inſtitution of domeſtic ſlavery, excluded from the common rights of men. The modern republics of Italy, not to mention the very unequal privileges which they beſtow upon different individuals, are inconſiderable in their extent. The ſame obſervation is applicable to the government of the Swiſs cantons. In the Seven United Provinces of the Netherlands, the government can hardly be conſidered as more extenſive; for, notwithſtanding the

the confederacy by which they are connected, every particular province, and even every ſingle town of any conſequence, belonging to each, having the excluſive power of making or conſenting to its own regulations, forms in reality an independent political ſyſtem. By what fortunate concurrence of events has a more extenſive plan of civil freedom been eſtabliſhed in this iſland? Was it by accident, or by deſign, or from the influence of peculiar ſituation, that our Saxon forefathers, originally diſtinguiſhed as the moſt ferocious of all thoſe barbarians who invaded the Roman provinces, have been enabled to embrace more comprehenſive notions of liberty, and to ſow the ſeeds of thoſe political inſtitutions which have been productive of ſuch proſperity and happineſs to a great and populous empire? To theſe queſtions it is hoped that, in the ſequel, a ſatisfactory anſwer will be given.

AN

HISTORICAL VIEW

OF THE

ENGLISH GOVERNMENT.

BOOK I.

OF THE ENGLISH GOVERNMENT, FROM THE SETTLEMENT OF THE SAXONS IN BRITAIN TO THE REIGN OF WILLIAM THE CONQUEROR.

CHAP. I.

Preliminary Account of the State of Britain under the Dominion of the Romans.

THE downfal of the Roman ſtate, and the formation of thoſe kingdoms which were built upon the ruins of it, may be regarded as one of the greateſt revolutions in the hiſtory of mankind. A vaſt unwieldy empire, which had for ages languiſhed under a gloomy deſpotiſm, was then broken into a number of independent ſtates, animated with all the vigour, but ſubjected to all the violence and diſorder, natural to a riſing and unſettled conſtitution. The arts and literature which had grown up in the ancient world were, in a great meaſure, overthrown; and a new ſyſtem of political inſtitutions, together with a total change of manners, cuſtoms, and ways of thinking, ſpread itſelf over the greateſt part of Europe.

The plan of government which the Romans adopted throughout the greateſt part of their dominions, was uniform and ſimple. After that people had enlarged their city as far as was convenient by incorporating ſome of the neighbouring tribes, and had joined to it the poſſeſſion of a conſiderable adjacent territory, they divided their future acquiſitions into diſtinct provinces; in each of which they placed a governor, inveſted with almoſt unlimited authority. It cannot eſcape obſervation, that the Roman patriotiſm, even in the boaſted times of the commonwealth, was far from being directed by a liberal ſpirit; it proceeded from narrow and partial conſiderations: and the ſame people who diſcovered ſo much fortitude and zeal in eſtabliſhing and maintaining the freedom of their capital, made no ſcruple in ſubjecting the reſt of their dominions to an arbitrary and deſpotical government. The governor of every province had uſually the command of the forces, and was inveſted with the ſupreme executive and judicial powers, together with the privilege of appointing the greateſt part of the inferior officers, to whom the diſtribution of juſtice, or the care of the police, was intruſted. The oppreſſive taxes to which the inhabitants of the provinces were ſubjected, and the ſtill greater oppreſſion which they ſuffered from the arbitrary and illegal exactions of their different magiſtrates, are ſufficiently known. The tribunals of Rome were at too great a diſtance to take a ſtrict account of her provincial officers; and the leading men in the Republic, who expected, in their turns, to enrich themſelves by the plunder of the provinces, were ſeldom diſpoſed to enter very heartily into meaſures for reſtraining ſuch enormities. The riches amaſſed by the offender afforded him, at the ſame time, the means of preventing any troubleſome enquiry into his behaviour; and in proportion to the extent of his guilt, was commonly the degree of

ſecurity

ſecurity which he afterwards enjoyed. Cicero affirms, that in the ſmall government of Cilicia, after ſaving to the public the amount of a full million ſterling, which the former governors had applied to their private uſe, he had, at the end of the year, about twenty thouſand pounds of clear gain.

But while Rome was thus extending conqueſt and ſlavery over the world, ſhe communicated to the conquered nations her knowledge, and her refinement in the arts of life. The great military eſtabliſhment maintained in every province, in order to keep the inhabitants in ſubjection; the large body of civil officers neceſſary in the various departments of public adminiſtration; the numerous colonies, compoſed of Roman citizens, who ſettled in every part of the empire, and carried along with them the Roman inſtitutions and cuſtoms; and, above all, the frequent reſort of the chief provincial inhabitants to the capital of the empire, a natural conſequence of their dependence; theſe circumſtances produced an univerſal imitation of Roman manners, and throughout the dominions of Rome contributed to ſpread her language, arts, and literature. Theſe advantages compenſated in ſome meaſure, and were ſometimes more than ſufficient to counterbalance, the loſs of independence. Wherever the Roman dominion was eſtabliſhed, the ruder parts of the world were civilized.

Among all the countries ſubdued by the Romans, none was in a more uncultivated ſtate than Britain; and it is probable that no country derived greater advantages from her ſubjection. A great part of the inhabitants, before they were incorporated in the empire, ſeem to have been ſtrangers to agriculture, and to have been maintained chiefly by their herds of cattle. They were divided into ſmall independent tribes, under their ſeveral chiefs, as commonly happens in that early ſtate of mankind; and theſe little ſocieties being much addicted to

plunder, and for that reaſon frequently engaged in hoſtilities, a regard to mutual defence had occaſionally produced alliances among ſome of them, from which a variety of petty princes, or kings, had ariſen in different parts of the country.

The Roman adminiſtration of Britain does not appear to have been diſtinguiſhed from that of the other provinces at a diſtance from the ſeat of government. After the reduction of all that part of the iſland accounted worth the trouble of acquiring, the firſt great object was, to aſcertain and preſerve the conqueſt by a permanent military force. For this purpoſe the inhabitants were completely diſarmed; and a ſtanding army, compoſed, according to the loweſt account, of three legions, amounting to upwards of thirty-ſix thouſand foot and ſix thouſand horſe, was introduced, and regularly maintained*. Theſe troops were diſtributed over the province, and placed in ſtations where their ſervice could be moſt uſeful, either by over-awing the natives, or by repelling the invaſions of the unconquered tribes in the North. When not engaged in war, they were employed, according to the uſual practice of the Romans, in public works; in building and repairing theſe two northern walls, which at different times were intended as the boundary of the province; in conſtructing forts; in clearing the country of its foreſts and marſhes; and in opening a communication between the different parts of it, by an uninterrupted chain of high roads.

There are ſaid to have been, in the whole province, about a hundred and fifty Roman ſtations; which were connected with inferior fortreſſes, erected at convenient diſtances, and garriſoned with regular troops†. Each of theſe garriſons occaſioned

* Horſely Brit. Rom.—Whitaker Hiſt. Mancheſter, v. I. b. i. ch. 6.
† Whitaker Hiſt. Mancheſter, v. I. b. i. ch. 8.

a reſort

a reſort of the neighbouring inhabitants, and probably gave riſe to a ſort of village or town, in which a promiſcuous ſettlement was formed by Roman families, and thoſe of the natives: the effect of ſuch an intercourſe, in the communication of manners and cuſtoms, may eaſily be conceived. In particular, as the military people were often rewarded by the public with landed poſſeſſions, their example could not fail to ſpread the knowledge and practice of agriculture, while their induſtry in the management of their eſtates contributed to beautify and improve the face of the country.

The connexion with Britain which the ſoldiers of the Britiſh army acquired by living in the country, was even ſeldom broke off when they were diſmiſſed from the ſervice. Though drawn originally from different parts of the empire, yet, having formed an attachment to the place in which they had ſo long reſided, they were commonly diſpoſed, in their old age, and when they had merited their diſmiſſion, to paſs the remainder of their days in the province. The offſpring of theſe people became natural inhabitants; and Britain, in this manner, was continually receiving freſh ſupplies of Romans, who compenſated for ſuch of the natives as, in the courſe of recruiting the armies, were naturalized into other provinces.

After eſtabliſhing a ſufficient military force to maintain her authority, the attention of Rome was directed to the ſuppreſſion of internal diſorder among her ſubjects, by the regular diſtribution of juſtice. The jealouſy entertained by the firſt emperors had ſuggeſted an important regulation for limiting the dangerous power of their provincial governors. From the time of Auguſtus, the provinces near the ſeat of the empire, as they enjoyed the proſpect of tranquillity, were diſtinguiſhed from ſuch as were ſituated at a diſtance, and on that account more expoſed to diſturbance. In the former,

former, the governor was merely a civil officer, and had no direction of the forces; but in the latter it was thought neceſſary that his authority ſhould be rendered more effectual, by raiſing him to the head of the military, as well as the civil department*.

The preſident or governor of Britain was in the latter ſituation; having the command of the army, together with the ſupreme juriſdiction, and the appointment of inferior magiſtrates. In the courts held by all theſe officers, the laws of Rome were conſidered as the ſtandard of every deciſion. Wherever the Romans extended dominion, it was their conſtant aim to introduce their own juriſprudence; a ſyſtem which was calculated to eſtabliſh good order and tranquillity among the conquered people, as well as to promote the intereſt of the conquerors. The introduction of that ſyſtem into Britain was more immediately neceſſary, to prevent thoſe private wars, and to reſtrain thoſe acts of violence and injuſtice, to which the inhabitants were ſo much addicted: it is not likely, however, that an innovation of ſuch importance was accompliſhed all at once. In the public adminiſtration of the province, the Roman magiſtrates aſſumed an abſolute authority; but, in matters of private property, the Britiſh chiefs and petty princes appear, for ſome time after the conqueſt, to have retained their ancient juriſdiction, and to have determined the differences of their own tenants and dependants. But this juriſdiction became gradually more circumſcribed, and ſeems at laſt to have been entirely annihilated. The continual migration of foreigners into the province, brought along with them the faſhions acquired in other parts of the empire; while the multiplication and enlargement of the Britiſh towns, which, for the moſt part, were governed accord-

* Dio. Caſſ. 53.—Hein. ad lib. i. dig. tit. 16. 18.

ing

ing to the policy of Rome, extended the influence of the Roman judges. The province of Britain is ſaid to have contained about an hundred and forty towns, nine of which were of the rank of colonies; and the cuſtoms, as well as the notions of order and juſtice, which prevailed in thoſe places of common reſort, were eaſily propagated over the ſurrounding country. The long continuance of the provincial government, and the progreſs of the natives in civilization, diſpoſed them more and more to neglect their original magiſtrates, and to court the favour of the ruling powers, by an immediate appeal to their protection.

To procure a revenue not only ſufficient for defraying the expences of the civil and military eſtabliſhments, but alſo capable of affording annual remittances to the emperor, was a third, and perhaps the principal object of his adminiſtration. The Britons were ſubjected to taxes of the ſame nature with thoſe which were levied from the other provinces*; the proprietors of arable land paid an annual quit-rent, ſuppoſed to be equal to a tenth part of the fruits; and the poſſeſſors of paſture ground were alſo loaded with a duty, proportioned to the number of their cattle†. The cuſtoms and exciſe, in this part of the Roman dominions, are ſaid to have been remarkably heavy‡; but the impoſitions which excited moſt complaint were, a poll-tax, and a duty upon funerals: theſe, being levied at a fixed rate, without any regard to the poverty or riches of the people, and having no immediate dependance on the proſperity of trade and manufactures, were moſt eaſily increaſed at pleaſure, and therefore ſeem to have been the uſual expedients

* See an account of the taxes throughout the Roman dominions, in Burman. de Vect. Rom.

† This tax upon cattle was called *Scriptura*.

‡ Strabo, lib. 4.

for

for raiſing ſupplies, when every other taxation had been found ineffectual*.

The charge of collecting the revenue was committed to an *imperial procurator*, who had the ſuperintendance of all the inferior officers employed in this branch of adminiſtration; and in Britain, as well as in the other provinces, the principal taxes were let to farmers for the payment of a yearly rent. From this mode of collection, ſo liable to abuſe, and from the nature of the government in other reſpects, it may ſeem unneceſſary to remark, that the Britons were expoſed to grievous extortions. If the countries near the ſeat of the empire, and within the obſervation of the ſovereign, were abandoned to the arbitrary meaſures of the provincial officers, it cannot be ſuppoſed that thoſe at a diſtance were in a better ſituation. Tacitus mentions, in terms of the higheſt indignation, the unfeeling rapacity of the Roman officers in Britain; which, at an early period, excited a general revolt of the inhabitants†.

It is well known, that the cities and provinces under the Roman dominion were often reduced, by the demands of government, to ſuch diſtreſs, as obliged them to borrow money at exorbitant intereſt; and that, by taking advantage of their neceſſities, the monied men of thoſe times were enabled to employ their fortunes in a very profitable manner. In this trade, though prohibited by law, and however infamous in its own nature, the beſt citizens of Rome (ſuch is the force of example) were not aſhamed to engage. Seneca the philoſopher, whoſe philoſophy, it ſeems, was not incompatible with the love of money, lent the Britons,

* See the terms in which Boadicea is made to complain of the two laſt-mentioned taxes. Xiphilinus in Nerone.

† Tacit. Agric. ch. 15.

at

at one time, above three hundred and twenty-two thouſand pounds *.

Were it poſſible to aſcertain the extent of the revenue drawn from the province of Britain, we might thence be enabled to form a notion of the opulence and improvement attained by the inhabitants. Dr. Henry, who has made very full collection of the facts mentioned by ancient authors concerning the provincial government of this iſland, ſuppoſes that its annual revenue amounted to no leſs than two millions ſterling†. But this is a mere conjecture, unſupported by any authority; and it ſhould ſeem that no accounts have been tranſmitted by hiſtorians, from which the point can be determined.

The improvements made by the Britons in agriculture were ſuch, as to produce a regular exportation of corn, for ſupplying the armies in other parts of the empire. Their houſes were built in the ſame ſtyle of architecture; and many of them were adorned with ſtatues and public ſtructures, in the ſame taſte of magnificence which prevailed in Italy. In this branch of labour, their mechanics were even ſo numerous, and had ſuch reputation, as to be employed upon the neighbouring continent. In weaving cloth they appear alſo to have made conſiderable proficiency. We are informed,

* Χιλιας μυριαδας, quadringenties ſeſtertium; viz. £. 322,916. 13. 4. Xiphilinus in Nerone.

† This ſuppoſition is built upon a calculation of Lipſius, who makes the revenue of Gaul amount to £.2,421,875. This calculation is only ſupported by a paſſage of Cicero, quoted by Strabo, which mentions the revenue of Egypt, in the time of Auletes, the father of Cleopatra, as amounting to that ſum; and by a paſſage in Velleius Paterculus, aſſerting that Egypt in taxes yielded *nearly as much as Gaul*. But the evidence ariſing from this is too ſlight, when oppoſed to the authority of Suetonius, and that of Eutropius; who ſay, that Cæſar drew from Gaul only *quadringenties*, £.322,916. 13. 4. Suppoſing, however, the fact to be aſcertained, that the revenue of Gaul was about two millions and a half, is there ſufficient ground to infer from this that the revenue of Britain was, at leaſt, two millions? Lipſius de Magn. Rom.—Henry's Hiſt. v. I.

in

in particular, that linen and woollen manufactures were eſtabliſhed at Wincheſter *.

The foreign trade of Britain, ariſing from her valuable tin mines, and for which the Iſland was, at a remote period, frequented by the Phenicians, and other commercial nations of antiquity, is univerſally known. When this branch of commerce, together with thoſe of lead, wool, hides, and ſome other native productions, came to be ſecured of a regular market, under the eye and protection of the Roman magiſtrate, they were undoubtedly puſhed to a conſiderable extent.

In taſte and literature, the advances made by the Britons were no leſs conſpicuous than in the common improvements of life. Even in the time of Agricola, "the youth of diſtinguiſhed families," according to the great hiſtorian of that age, "were "inſtructed in the liberal arts: inſomuch that "thoſe who but lately were ignorant of the lan- "guage, began to acquire a reliſh for the eloquence "of Rome. They became fond of appearing in "the dreſs of the Romans, and by degrees were led "to imitate their vices, their luxury, and effemi- "nacy, as well as their elegance and magnifi- "cence †."

The faſhion of travelling for education, and of reſiding in Rome, and in other learned and polite cities of the empire, was early introduced among the Britons; who, in a noted paſſage of Juvenal, are mentioned as being indebted to the Gauls for their eminent proficiency in pleading at the bar ‡. In Britain, as well as in other provinces, the utmoſt attention was given by government, to propagate the knowledge not only of the Latin and Greek languages, but of all thoſe branches of ſcience that enjoyed any reputation; and for this purpoſe, aca-

* Henry's Hiſt. v. I.
† Tacit. Agric. c. 21.
‡ Gallia cauſidicos docuit facunda Britannos. Juv. Sat. 15.

demies

demies and ſchools, with public encouragement, are ſaid to have been erected in the principal towns. From theſe different ſources the Roman learning, in all its parts, was communicated to this Iſland; where it flouriſhed for ſome time, and was afterward ſubjected to a ſimilar decay as in all other provinces of the empire.

The ſucceſſive changes which happened in the political ſituation of the Roman Empire produced alterations in the adminiſtration of all the provinces, as well as of Britain in particular. The deſpotical government of Rome, as it had been at firſt eſtabliſhed, ſo it was afterwards entirely ſupported by a military force; in its original, therefore, it contained the ſeeds of its deſtruction. As, by his tyrannical behaviour, the reigning emperor became naturally the object of deteſtation and reſentment to his ſubjects, he was expoſed to the continual hazard of inſurrection, from the diſguſt or caprice of that army which he kept on foot for maintaining his authority. It was, at the ſame time, impoſſible that he ſhould command in perſon the different armies neceſſary for the defence of the whole empire, or that he ſhould prevent the general of every ſeparate army from acquiring influence and popularity with the troops under his direction. The greateſt and moſt veteran of thoſe armies were unavoidably employed on the frontiers, where their ſervice was moſt needed, and where their courage and activity were moſt exerciſed; and their leaders being too far removed from the chief magiſtrate to meet with any diſturbance in forming their ambitious plans, were frequently in a condition to render themſelves independent, or to open a direct paſſage to the throne.

But the independence of the opulent and leading men in the diſtant provinces was increaſed by another circumſtance of ſtill greater importance. The firſt emperors, who poſſeſſed the extentenſive

and

and rich countries lately ſubdued by the Roman arms, enjoyed an immenſe revenue, and their influence muſt have been proportionably great; but the oppreſſive nature of their government, and the unbounded licence which they gave to the plunder of their ſubjects, could not fail to diſcourage induſtry, and of courſe to reduce the people to poverty and beggary. The extent of the Roman Empire had, in the mean time, become ſo great that the expence of maintaining forces on a diſtant frontier, with a view of making any farther conqueſt, ſeemed to overbalance the advantages which it might be ſuppoſed to produce. Adrian, a prince no leſs diſtinguiſhed for activity than wiſdom, was induced to contract his dominions, and to abandon a part of what had been already acquired, that he might be able to preſerve the remainder in greater ſecurity. Thus, while the old channels of public revenue were drained, no new ſources could be provided to ſupply the deficiency. In this ſituation the emperor felt a gradual decline of his authority; and as he became leſs able to protect the inhabitants of the provinces, or to puniſh their diſobedience, they were more diſpoſed to ſhake off their allegiance, and emboldened to follow the fortunes of any adventurer who found himſelf in a condition to diſturb the public tranquillity.

For preventing theſe diſorders, it was thought a prudent meaſure to aſſociate different leaders in the ſupreme power. The firſt traces of this practice may be diſcovered about the time of Trajan and the Antonines, who partly, as it ſhould ſeem, from affection, and partly from political motives, adopted in their own life-time *a Cæſar*, or a ſucceſſor to the crown. The ſame plan was farther extended by Dioclefian, who divided the ſovereignty between two emperors and two Cæſars; and who ſeems to have thought that, to preſerve the empire from falling in pieces, it was requiſite to ſubmit to the manifeſt

manifeſt inconveniences ariſing from the jealouſy and bad agreement of ſo many independent heads. The emperor Conſtantine rendered this diviſion more permanent, by erecting a great Eaſtern capital, which became the rival, and even ſuperior, in opulence and dignity, to that of the weſt.

In conformity to ſuch views of dividing the ſovereignty among thoſe leaders who might otherwiſe be diſpoſed to tear the empire aſunder, ſubdiviſions were made in thoſe territories which had formerly compoſed a ſingle province; and in each ſubdiviſion a chief officer was appointed, whoſe authority might ſerve to limit and circumcribe that of him who had the government of the whole. Thus the ſame prince who founded Conſtantinople, having diſbanded the old prætorian guards, whoſe power had long been ſo formidable, diſtributed the empire into four great *præfectures*, correſponding to the four joint ſovereigns already eſtabliſhed. Each præfecture he divided into certain large territories, called *juriſdictions*, under their ſeveral governors; and each juriſdiction he parcelled out into ſmaller diſtricts, under the denomination of *provinces*, which were commited to the care of deputy-governors.

Britain, which originally formed a ſingle province, but which, by the emperor Severus, had been divided into two, was, according to this arrangement, multiplied into five provinces; and the *vicar*, or governor of the whole, enjoyed a paramount authority to that of its five deputy-governors.

The direction of the civil, and that of the military eſtabliſhment, were, for the ſame reaſon, ſeparated, and placed in different hands. After the diſmiſſion of the prætorian guard, and of its commander, two military officers were appointed, the one of which had the command of the infantry, and the other of the cavalry, throughout the empire; and under them the number of generals, in particular

particular diſtricts, appears to have been conſiderably encreaſed. The Roman forces in this Iſland came, in the later periods of its provincial government, to be under the direction of three independent officers; the *duke of Britain*, who commanded on the northern frontier; the *count of Britain*, who conducted the troops in the interior parts of the country; and the *count of the Saxon ſhore*, employed in ſuperintending the defence of the ſouthern and eaſtern coaſts, which, from about the beginning of the third century, had been expoſed to frequent incurſions from the Saxons.

All theſe precautions, however, by which the Roman emperors endeavoured to maintain ſubordination and dependence in the different parts of their dominions, were ineffectual in oppoſition to the prevailing current of the times. The ſame unhappy ſyſtem which tended to looſen the bands of government, contributed alſo to render the military eſtabliſhment unfit for defence againſt a foreign enemy. As all power and diſtinction were ultimately derived from the army, it was the intereſt of every general to court the favour of the troops under his command, not only by enriching them with donations and emoluments, but by treating them with every kind of indulgence. The natural conſequence of ſuch a ſituation was the procuring to the ſoldiers an exemption from the laborious duties of their profeſſion. Feeling their own conſequence, the military people ſet no bounds to their licentious demands, and were rendered inactive and effeminate, in the ſame proportion as they became haughty and inſolent. The heavy armour, which in former times had been uſed with ſo much advantage, was therefore laid aſide, as too cumberſome and fatiguing; and the ancient military diſcipline, the great cauſe of all their victories, was at length intirely neglected. It was thus that the Romans, being deprived of that ſuperiority which they

they had formerly poſſeſſed in their encounters with rude and ignorant nations, found themſelves unable to reſiſt the fierce courage of thoſe neighbouring barbarians, who, about the fifth century, were invited to attack them by the proſpect of plunder and of new ſettlements.

In this declining ſtate of the Roman empire, the revenue of the provinces, by ſuffering a gradual diminution, became at length inſufficient for the ſupport of their civil and military eſtabliſhments; and whenever any country had been reduced to ſuch a degree of poverty as to be no longer able to repay the trouble and expence of maintaining it, good policy ſeemed to require that it ſhould be abandoned. To ſuch an unfruitful condition the diſtant provinces, and Britain more eſpecially, appear to have been faſt approaching, in the reign of Arcadius and Honorius, when a deluge of barbarians, preſſing on all ſides, threatened the ſtate with ſudden deſtruction, and made it neceſſary to withdraw the forces from this iſland, in order to defend the richer and more important parts of the empire.

The ſituation of Britain, when thus deſerted by the Romans, was no leſs new and ſingular, than it was alarming and unhappy. When mankind are formed into political ſocieties, and have acquired property, they are uſually provided with one ſet of regulations for repelling the attacks of their enemies, and with another for ſecuring internal tranquillity. But the Britons, upon this extraordinary emergency, were left equally deſtitute of both. From the diſtruſtful jealouſy of Rome, they had been removed from all concern in military tranſactions, at leaſt in their own country, and made to depend for their ſafety upon an army compoſed entirely of foreigners. In ſuch a ſtate they had remained for more than three centuries, enjoying the protection of their maſters, without any call to exert

exert themſelves in their own defence; and cultivating thoſe arts which tend to ſoften the manners, while they inſpire an averſion from the dangers and hardſhips of a martial life. Thus the Britons, in their advances towards civility, loſt the courage and ferocity of barbarians, without acquiring the ſkill and addreſs of a poliſhed nation; and they ceaſed to be warriors by nature, without being rendered ſoldiers by diſcipline and education.

But the departure of the Romans from Britain was no leſs fatal to all the inſtitutions of civil government. The governors and other officers, who directed the adminiſtration of public affairs, the farmers engaged in the different departments of the revenue, the magiſtrates of Roman appointment, who determined both civil and criminal cauſes, and who had now acquired a complete juriſdiction over the whole province, had no longer occaſion to remain in a country which was totally abandoned by its maſter, and in which, by the removal of the army, they had loſt the means of maintaining their authority. The courts of juſtice, therefore, were diſſolved; the taxes were aboliſhed; and all order and ſubordination were deſtroyed. Even private individuals, of Roman extraction, who had acquired eſtates in Britain, endeavoured to diſpoſe of their fortunes, and by leaving the Iſland, avoided the ſtorm that appeared to be gathering around them.

The diſaſters which followed were of ſuch a nature as might be expected from the anarchy and confuſion which prevailed in the country. The Scots and Picts, who, in the northern part of the Iſland, had remained unconquered, and retained their primitive barbarous manners, took advantage of this favourable opportunity, to invade and plunder their more opulent neighbours. They met with little reſiſtance from the Britons, who, giving way to their fears, and conſcious of their inferiority,

rity, ſeemed to place their only refuge in the protection of their ancient rulers. The abject manner in which they, at different times, ſolicited that protection; the behaviour of their ambaſſadors, who in the preſence of the emperor rent their garments, and putting aſhes upon their heads, endeavoured to excite commiſeration by tears and lamentations; the letter which they wrote to Ætius, the præfect of Gaul, inſcribed *the groans of the Britons*, and in which they ſay, *the barbarians drive us into the ſea, the ſea throws us back upon the barbarians, and we have only the hard choice left us, of periſhing by the ſword, or by the waves;* theſe particulars, which are handed down by hiſtorians, exhibit the ſhocking picture of a people totally deſtitute of ſpirit, and unable to collect reſolution even from deſpair. Upon two occaſions they obtained from Rome the aid of a military force, by which their enemies were ſurpriſed, and repulſed with great ſlaughter; but the relief which this afforded was merely temporary, and they received a peremptory declaration, that, from the embarraſſed condition of the empire, no future ſupplies of this kind could be ſpared *.

The conſternation of the Britons, in this helpleſs condition, may eaſily be conceived, though in the rude annals of that period it is, perhaps, painted with ſome degree of exaggeration. Time and neceſſity, however, ſuggeſted the means of guarding againſt the evils to which they were expoſed. The proprietors of land poſſeſſed a natural influence over the people whom they maintained upon their eſtates; and this was the ſource of a juriſdiction, which, during the ſubſiſtence of the Roman dominion, had been in great meaſure extinguiſhed; but which, upon the diſſolution of the Roman courts, was of courſe revived and rendered independent. The ſame influence enabled theſe perſons to call

* Gildæ Hiſt.—Bedæ Hiſt. Eccleſ.

out their tenants to war, and to aſſume the direction of their conduct during a military enterprize. By theſe two branches of authority, a very ſimple form of government was gradually introduced. The whole country was broken into ſeparate diſtricts, according to the extent of territory in the poſſeſſion of individuals, and fell under the civil and military power of ſo many chiefs, the moſt opulent of whom appear to have been dignified with the title of princes. By the efforts of theſe leaders, it is likely that private robbery and violence were, in ſome degree, reſtrained, and the people were encouraged to return to their tillage and ordinary employments; from the neglect of which, it is ſaid, a famine had been produced. But their great object was to oppoſe the northern invaders; for this purpoſe they elected a general of their united forces, upon whom, after the example of the Romans, they beſtowed the appellation of the *duke of Britain*. The ſame perſon preſided in the aſſemblies held by the chiefs, in which the great affairs of the nation appear to have been determined.

After the government had remained for ſome time in this channel, Voltigern, one of the moſt opulent of their princes, was promoted to that high dignity; and upon a new alarm of an invaſion from the Scots and Picts, he is ſaid to have called a national council, in which it was agreed to ſolicit the aſſiſtance of the Saxons. As this meaſure was fatal in its conſequences, it has been univerſally decried, and ſtigmatiſed as the height of imprudence; but we ought to conſider that it proceeded from the ſame ſyſtem of policy which has been practiſed and approved in all ages, that of courting the alliance of one nation, in order to form a balance againſt the formidable power of another; and the cenſures which, in this inſtance, have been ſo liberally beſtowed upon the Britons, are a plain proof how ready we are to judge of actions

actions from the good or bad ſucceſs which attends them; or how difficult it is to eſtabliſh any general rules of conduct, that will not appear groſsly defective in a multitude of the particular caſes to which they may be applied.

CHAP. II.

Character and Manners of the Saxons.

OF thoſe barbarians who paſſed under the denomination of Saxons, and who, at the time when they were invited to aſſiſt the Britons, inhabited the Northern parts of Germany, it is of little moment to aſcertain the origin, or to trace the ſeveral places in which they had previouſly reſided. The Germans, who ſubdued the Weſtern provinces of the Roman empire, have been ſuppoſed to poſſeſs a ſingular character among the rude inhabitants of the world, and to be diſtinguiſhed by their eminent qualities and virtues; in particular by their love of liberty. Such an opinion may be aſcribed to the elegant deſcription of that people by the maſterly pen of Tacitus; to the great revolutions which they atchieved in Europe; and, above all, to that national vanity which is more extravagant than the vanity of individuals, becauſe the multitude of perſons who are influenced by the ſame weakneſs keep one another in countenance. But there is reaſon to believe that the ancient inhabitants of Germany exhibited the ſame diſpoſitions and manners, and adopted ſimilar inſtitutions and cuſtoms, to thoſe which may be diſcovered in ſuch barbarians,

of every age or country, as have been placed in ſimilar circumſtances.

Deriving their chief ſubſiſtence from the paſturing of cattle, they generally poſſeſſed conſiderable wealth in herds and flocks; but as they were little acquainted with tillage they ſeem to have had no idea of property in land. Like the early nations deſcribed in the Sacred Hiſtory, they were accuſtomed frequently to change their abode. Regarding chiefly the intereſt of their cattle, they often found it convenient to wander from one place to another, according as they were invited by the proſpect of new paſtures; and in their migrations, they were under no reſtraint, either from the cares of huſbandry, or from the nature of their poſſeſſions.

But while the management of their cattle conſtituted the ordinary employment of theſe people, they were alſo frequently engaged in war. In common with all other barbarous nations, they were much addicted to theft and rapine. The right of property muſt be long eſtabliſhed, before the violations of it can be regarded as heinous offences; and it is neceſſary that men ſhould be habituated to an extenſive intercourſe of ſociety, before they are preſented with ſufficient inducements to ſacrifice the immediate profits of fraud and violence to the diſtant but ſuperior advantages derived from their living together upon good terms, and maintaining an amicable correſpondence. The ancient Germans, inhabiting a country almoſt entirely over-grown with wood, or covered with marſhes, were often reduced to great ſcarcity of proviſions, and were therefore ſtrongly inſtigated, by hunger and miſery, to prey upon one another. Example, in ſuch a caſe, found no difficulty to excuſe or vindicate what cuſtom had rendered univerſal.

The rude inhabitants of the earth appear, in all ages and countries, to have been divided into ſepa-

rate

rate tribes and villages; a conſequence of their narrow communication, and of their hoſtile diſpoſitions. When, from accidental circumſtances, a family of ſuch people had been planted, at ſo great a diſtance from their friends and acquaintance as to prevent all correſpondence with them, its members, from inclination, as well as from a regard to mutual defence, were uſually diſpoſed to live together, and to avoid much intercourſe with neighbours by whom they were likely to be treated as enemies. If their multiplication rendered them too numerous to be all maintained under the ſame roof, they naturally ſubdivided themſelves into different families, who erected their huts beſide one another; and if at length their village had been ſo enlarged as to produce a difficulty in finding ſubſiſtence, they were led, by degrees, to remove that inconvenience, by ſending out little colonies, with which, notwithſtanding their diſtance, they frequently preſerved an alliance and connection. The German tribes became larger and more extenſive, according as, by the encreaſe of their cattle, they were enabled to live in greater affluence. In that part of Germany which was known to the Romans, there have been enumerated about forty different tribes or nations, many of which appear to have enjoyed conſiderable opulence and power. But concerning the number or extent of the villages belonging to each of theſe, little or no account can be given.

The political regulations eſtabliſhed among the ancient Germans were few and ſimple, and ſuch as their ſituation could hardly fail to ſuggeſt. Every ſociety, whether great or ſmall, that had occaſion to act in a ſeparate military capacity, required a ſeparate leader: for which reaſon, as every family was under the direction of the father, ſo every village had its own chief; and at the head of the whole tribe or nation there was a great chief, or king. How far the king, or the inferior chiefs, enjoyed

joyed their dignity by election, or by hereditary deſcent, it may be difficult to determine, but their authority was far from being abſolute. It was the buſineſs of every chief to compoſe the differences, and, probably, to command the forces, of that village over which he preſided. The king too ſeems to have acted with their advice in the ordinary adminiſtration of public affairs; but in matters of great moment, ſuch as the making of laws, or the trial of capital offences, he was obliged to procure the concurrence of a great council, compoſed of all the heads of families*.

The general character of theſe barbarians was ſuch as might be expected from their manner of life; it conſiſted not of many features, but they were diſtinctly and ſtrongly marked. As in the carnivorous brute animals, obliged very often to fight for their food, and expoſed to continual ſtrife and contention in the purſuit of mere neceſſaries, their paſſions, though excited by few objects, were ſtrong and violent. Their ſituation, at the ſame time, occaſioned a wonderful ſimilarity in the diſpoſitions and habits of individuals. In every poliſhed nation the labour and application of the people is uſually ſo divided, as to

* "In pace, nullus eſt communis magiſtratus; ſed principes regionum "atque pagorum inter ſuos jus dicunt, controverſiaſque minuunt. Ubi "quis ex principibus in concilio dixit ſe ducem fore—qui ſequi velint profi-"teantur; conſurgunt ii qui et cauſam et hominem probant, ſuumque "auxilium pollicentur, atque ab multitudine conlaudantur: qui ex iis ſecuti "non ſunt, in deſertorum ac proditorum numero ducuntur, omniumque iis "rerum poſtea fides derogatur." Cæſar de Bel. Gal. 6. § 23.——"Reges ex "nobilitate, duces ex virtute ſumunt. Nec regibus infinita aut libera poteſ-"tas; et duces exemplo potius quam imperio, ſi prompti, ſi conſpicui, ſi "ante aciem agunt, admiratione præſunt."——"De minoribus rebus prin-"cipes conſultant, de majoribus omnes: ita tamen, ut ea quoque, quorum "penes plebem arbitrium eſt, apud principes pertractentur."——"Ut "turbæ placuit, conſidunt armati. Silentium per ſacerdotes, quibus tum et "coercendi jus eſt, imperatur. Mox rex, vel principes, prout ætas cuique, "prout nobilitas, prout decus bellorum, prout facundia eſt, audiuntur, "auctoritate ſuadendi magis quam jubendi poteſtate."——Licet apud conci-"lium accuſare quoque, et diſcrimen capitis intendere."——"Eliguntur in "iiſdem conciliis et principes, qui jura per pagos vicoſque reddunt."——Tacit. de Mor. German. c. 7. 11. 12.

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produce an endleſs variety of characters in thoſe who follow different trades and profeſſions. The ſoldier, the clergyman, the lawyer, the phyſician, the taylor, the farmer, the ſmith, the ſhopkeeper; all thoſe who earn a livelihood by the exerciſe of ſeparate employments, whether liberal or mechanical, are led, by the different objects in which they are converſant, to contract ſomething peculiar in their behaviour and turn of thinking. But the ancient inhabitants of Germany had made too little progreſs in arts to require that a ſingle perſon ſhould beſtow his whole attention upon any one branch of labour, in order to acquire the uſual degree of ſkill and proficiency in it. Every man therefore was accuſtomed to exerciſe indiſcriminately the few employments with which they were acquainted. Every family built its own cottage, faſhioned its own tools and utenſils, managed its own cattle, and took precautions for its own ſupport and defence. Thus the whole people, being employed nearly in the ſame manner, and having no purſuits but ſuch as were ſuggeſted by their moſt immediate wants, were trained up in an uniform ſort of diſcipline, and acquired that uniformity of manners and cuſtoms, which is commonly obſerved in perſons of the ſame trade or profeſſion. Even the nations inhabiting the moſt diſtant regions of that extenſive country appear to have been no otherwiſe diſcriminated than by the different ſhades of barbariſm and ferocity which the climate or ſituation, more or leſs favourable to improvement, might eaſily be ſuppoſed to produce.

Among people who are conſtantly expoſed to the attacks of their neighbours, and who are almoſt continually employed in war, courage and other military qualities are naturally intitled to hold the firſt rank. There is an *active* and a *paſſive* courage which may be diſtinguiſhed from each other, as they ſeem to depend upon different principles, and

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are not always to be found in the ſame perſons. The former is diſplayed in the voluntary encountering of danger, the latter in bearing pain and diſtreſs with firmneſs and conſtancy. Valour, which demands a ſudden and violent effort of reſolution, may be regarded as a maſculine quality; while fortitude, which, in many caſes, is the fruit of calmer but more continued exertion, is often conſpicuous in the weaker ſex. In order that, with our eyes open, we may expoſe our lives to imminent danger, we muſt be excited by a ſtrong deſire of procuring eſteem and applauſe, either from others, or from the reflection of our own minds. Efforts of this kind, it is evident are moſt likely to be made in thoſe countries where, from long practice, and frequent emulation in fighting, martial exploits have come to be univerſally admired, and looked upon by every one as the infallible road to honour and diſtinction. Fortitude under pain and diſtreſs may, on the contrary, be promoted by the oppoſite circumſtances, by the want of ſenſibility, or by a conviction that our ſufferings are beheld with unconcern and indifference. To complain or repine, in the midſt of affliction, is an attempt to procure relief, or at leaſt compaſſion from others; and when we find that our complaints are diſregarded, or treated with ſcorn and deriſion, we are led to exert our utmoſt reſolution in order to ſmother and reſtrain them.

The ſavages, who live by hunting and fiſhing, are placed in a ſituation more favourable to fortitude than to valour. Expoſed by their manner of life to innumerable hardſhips and calamities, they are too much loaded by the preſſure of their own wants and ſufferings, to feel very ſenſibly thoſe of their neighbours. They diſdain, therefore, to ſolicit that ſympathy, which they know by experience will not be afforded them; and having, from their daily occurrences, been long enured to pain, they learn

learn to bear it with aſtoniſhing firmneſs, and even to endure every ſpecies of torture without complaining. As, on the other hand, they live in very ſmall ſocieties, and, in order to find ſubſiſtence, are obliged to remove their different villages to a great diſtance from one another, they are not apt to be engaged in frequent or extenſive military enterprizes, nor to attain any degree of refinement in the methods of conducting their hoſtilities. The punctilios of military honour are unknown to them. They ſcruple not to take any unfair advantage in fighting, and can ſeldom be brought to expoſe themſelves in the open field. The unrelenting and blood-thirſty Indian of America is accuſtomed to lie concealed for weeks; that he may have a convenient opportunity of ſhooting his enemy, and may then with ſafety enter his cabbin, to rob and murder the family.

Nations who ſubſiſt by paſturing cattle, as they live in larger ſocieties, and are ſupplied with food in greater abundance, are more at leiſure, and have greater incitements to cultivate their ſocial diſpoſitions. But their magnanimity, in bearing pain and affliction with apparent unconcern, is naturally diminiſhed by their advancement in humanity; and according as individuals diſcover that their diſtreſſes meet with greater attention from their companions and acquaintance, they are more encouraged to diſplay their ſufferings, and to ſeek the tender conſolation of pity, by giving way to the expreſſion of ſorrow and uneaſineſs: they are alſo likely to acquire a much higher degree of the military ſpirit. The wandering life of ſhepherds is the occaſion of bringing frequently into the ſame neighbourhood a variety of ſtranger tribes; among whom any accidental jealouſy, or interference of intereſt, is apt to kindle animoſity, and to produce quarrels and hoſtilities. In the frequent wars that ariſe from ſuch a ſituation, and which are carried on with the ardour

ardour and ferocity natural to barbarians, the victors, having no fixed reſidence, are at full liberty to proſecute their ſucceſs without interruption; and as, in every migration, ſuch people are obliged to carry along with them their wives and children, and ſervants, together with their herds and flocks, and even their furniture and utenſils, a deciſive battle never fails to reduce one tribe completely under the power of another. With the ſame eaſe with which the conquerors may purſue their victory, they can incorporate with themſelves the vanquiſhed party, and make uſe of their aſſiſtance in any future enterprize. Thus by repeated ſucceſſes, and by a gradual accumulation of forces, a ſingle tribe may, in a ſhort time, become ſo powerful, as to meet with no enemy in a condition to cope with them, and be excited with great rapidity to overrun and ſubdue a vaſt extent of country. Hiſtory is accordingly filled with the rapid and extenſive conqueſts made by nations in this early ſtate of ſociety; of which, in particular, there occur many celebrated examples among the Arabs and Tartars.

Such was the condition of the ancient Germans; of whom it is remarked by the hiſtorian, that they were leſs diſtinguiſhed by their patience of labour, or by their capacity to bear the extremities of heat and cold, of hunger and of thirſt, than by their active courage, and their ardent love of military reputation*. "They are more eaſily perſuaded," ſays Tacitus, "to march againſt an enemy, and to "expoſe themſelves in the field, than to plough the "earth, and to wait the returns of the ſeaſon. "They account it unmanly to acquire with ſweat "what may be procured with blood. When they "engage in battle, it is a diſgrace for the chief to

* Laboris atque operum non eadem patientia; minimeque ſitim æſtumque tolerare, frigora atque inediam cœlo ſolove aſſueverunt. Tacit. de Mor. German. c. 4.

"be

" be ſurpaſſed in valour; it is a diſgrace for his " followers not to equal the bravery of their chief; " it is perpetual infamy to eſcape with ſafety, after " the fall of their leader. To defend and protect " his perſon, to devolve upon him the glory of " all their brave actions, is the principal point of " honour. The chiefs fight for victory, their fol- " lowers for the reputation and dignity of the " chief †."

The ſame circumſtances which gave riſe to frequent hoſtilities between the members of different tribes, produced a ſtrong attachment between the individuals belonging to each of thoſe little ſocieties. United by a ſenſe of their common danger, and by their common animoſity, againſt all their neighbours, they were frequently required by their ſituation to defend and relieve one another, and even to hazard their lives for their mutual ſafety. Living in a ſmall circle of acquaintance, and having ſcarcely any intercourſe with the reſt of mankind, they naturally contracted ſuch prejudices and prepoſſeſſions as tended to flatter their own vanity, and to increaſe their partial regard for that village or tribe of which they were members. But however warmly attached to their kindred and friends, it could not be expected that, in their ordinary behaviour, they would exhibit much delicacy or refinement of manners. They were too little acquainted with the dictates of prudence and ſober reflection, to be capable of reſtraining the irregular ſallies of paſſion; and too little converſant in the arts of poliſhed ſociety, to acquire a facility of yielding up their own opinions, and of ſacrificing their own inclinations and humours, to thoſe of their companions. The head of every family, unaccuſtomed to bear oppoſition or controul, demanded an implicit ſubmiſſion and obedience from all its

† Ibid. c. 14.

members.

members. When he met with great provocation, it was not unuſual for him to take away the life of a ſervant; and this was regarded as an exerciſe of domeſtic authority, for which he could not be ſubjected to any puniſhment *. Even the feelings of natural affection did not prevent the children from being, in like manner, ſubjected to the arbitrary power of the father, and from feeling, on many occaſions, the unhappy effects of his caſual diſpleaſure. Neither does the condition of the mother appear to have been ſuperior to that of her children: the little attention which, in a rude age, is uſually beſtowed upon the pleaſure of ſex, and the inferiority of the women in ſtrength, courage, and military accompliſhments, deprived them of that rank and conſequence which they enjoyed in a civilized nation. There is great reaſon to believe that the huſband commonly bought his wife from her father, or other male relations, and that he conſidered her in the light of a ſervant or ſlave. If ſhe was guilty of adultery (a crime which, from the general ſimplicity of manners, was probably not very frequent, but which, by introducing a connection with a ſtranger, was highly prejudicial to the intereſt of the family) the puniſhment inflicted by the huſband, was that of ſtripping her naked, turning her out of doors, and whipping her through the village †.

In the intercourſe of different families, and in their common amuſements, their behaviour was ſuited to the ſpirit and diſpoſition of a martial, but rude and ignorant people. Their military life, which was incompatible with their induſtry, prevented the growth of avarice, the uſual attendant

* "Occidere ſolent, non diſciplina et ſeveritate, ſed impetu et ira, ut inimicum, niſi quod impune." Tacit. de Mor. German. c 25.

† Tacit. de Mor. German. c. 18. 19. The conformity of the German manners with thoſe of other barbarous nations, in relation to the condition of women and children, I have endeavoured to illuſtrate, in a treatiſe entitled, *An Enquiry into the Origin of Ranks*.

of

of conſtant labour and application in every lucrative profeſſion. Their employments were ſuch as united them by a common tie, inſtead of ſuggeſting the idea of a ſeparate intereſt, or engaging them in a ſtruggle for riches, by which the purſuits of every man are, in ſome meaſure, oppoſed to thoſe of his neighbour. Their herds and flocks in which their wealth principally conſiſted, being under the management and direction of a whole village or tribe, were conſidered, in ſome ſort, as the joint property of all; ſo far at leaſt, as to render individuals willing on all occaſions, to relieve their mutual wants, by ſharing their goods with one another. Hence that hoſpitality and generoſity which is ſo conſpicuous among ſhepherd nations in all parts of the world. "No nation," ſays the author above quoted*, "is more hoſpitable than the Germans. "They make no difference, in this reſpect, be- "tween a ſtranger and an acquaintance. When "a perſon has been liberally entertained in one "houſe, he is conducted to another, where he is "received with the ſame hearty welcome. If a "gueſt, at his departure, ſhould aſk a preſent from "his entertainers, it is ſeldom refuſed; and they "will aſk any thing of him with the ſame free- "dom. They are fond of making preſents, which "are ſcarcely underſtood to lay the receiver under "any obligation."

Their military operations, no doubt, required a violent, though an irregular and tranſient exertion; but upon the concluſion of an expedition they were completely at liberty to indulge themſelves in reſt and idleneſs. From theſe oppoſite ſituations, they contracted oppoſite habits, and became equally reſtleſs and ſlothful. When not engaged in the field, the warriors diſdained to aſſiſt in domeſtic offices, they even ſeldom exerciſed themſelves in hunting;

* Tacit. de Mor. Germ. § 21.

but

but, leaving the care of their cattle, and of their houſhold, to the women and children, or to the old and infirm, they were accuſtomed to paſs their time in liſtleſs indolence, having little other enjoyment but what they derived from food or from ſleep*. That from ſuch diſpoſitions they found great delight in convivial entertainments, and were given to great exceſſes in eating and drinking, may eaſily be ſuppoſed. By the pleaſures of intoxication, they ſought to diſſipate the gloom of that languor and wearineſs with which they were oppreſſed, and to enliven the barren proſpect which the ordinary courſe of their thoughts and ſentiments was capable of preſenting to them. For the ſame reaſon they were addicted to games of hazard; inſomuch that perſons who had loſt their whole fortune at play would afterwards, it is ſaid, venture to ſtake their liberty; and having ſtill been unlucky, would voluntarily become the ſlaves of the winner†. The practiſe of gaming muſt have been carried to a high pitch, when faſhion, even among ſuch barbarians, had made it a point of honour to diſcharge a game-debt of that extraordinary nature. It is obſervable, that in countries where men have exhauſted the enjoyments ariſing from the poſſeſſion of great riches, they are apt to feel the ſame want of exerciſe and occupation, as in that ſimple age when they have not yet contracted thoſe habits of induſtry by which wealth is

* "Quotics bella non ineunt, non inultum venationibus, plus per otium "tranſigunt, dediti ſomno, ciboque. Fortiſſimus quiſque ac bellicoſiſſimus "nihil agens, deligata domus et penatium et agrorum cura fœminis ſenibuſque, "et infirmiſſimo cuique ex familia, ipſi hebent: mira diverſitate naturæ, cum "iidem homines ſic ament inertiam et oderint quietem." Tacit. de Mor. Germ. c. 15.

——"Diem noctemque continuare potando nulli probrum." Ibid. c, 22.

† Aleam (quod mirere) ſobrii inter ſeria exercent, tanta lucrandi perdendique temeritate, ut cum omnia defecerunt, extremo ac noviſſimo jactu de libertate et de corpore contendant. Victus voluntariam ſervitutem adit. Quamvis junior, quamvis robuſtior, adligari ſe ac venire patitur. Ea eſt in re prava pervicacia: ipſi fidem vocant. Tac. de Mor. Germ. c, 24.

acquired;

acquired; and they are forced to make uſe of the ſame expedient to deliver them from that *tædium vitæ*, which is the moſt oppreſſive of all misfortunes. The oppoſite extremes of ſociety appear in this reſpect to coincide; and exceſſive gaming is therefore the vice, not only of the moſt opulent and luxurious nations, but of the moſt rude and barbarous.

Among all the German nations, the Saxons, who appear to have been ſcattered over the peninſula of Jutland, and along the neighbouring ſhores of the Baltick Sea, were the moſt fierce and barbarous, as they were moſt completely removed from that civility and improvement which every where attended the progreſs of the Roman arms. Their maritime ſituation, at the ſame time, had produced an early acquaintance with navigation, and had even qualified them to undertake piratical expeditions to ſeveral countries at a diſtance. They had, accordingly, long infeſted the coaſts of Britain and Gaul; inſomuch that in the former country it was found neceſſary, as has been already obſerved, to appoint a military officer, with a regular force, to guard againſt their depredations.

Making allowance, however, for ſuch differences as might ariſe from this peculiarity of ſituation, their character and manners were ſimilar to thoſe of other inhabitants of Germany, and, in general, to thoſe of the wandering tribes of ſhepherds in every age or country.

Upon the whole, when we examine the accounts delivered by the beſt hiſtorians, concerning the ancient inhabitants of Germany, as well as the Saxons in particular, we find nothing, either in their public or private inſtitutions, or in their habits and ways of thinking, which we can reaſonably ſuppoſe to have occaſioned any peculiarity in the government eſtabliſhed by the latter in Britain. Whatever peculiarity therefore is obſervable in the Anglo-

Saxon

Saxon government, it muſt have ariſen from cauſes poſterior to the migration of that people into Britain; from the nature of the country in which they ſettled; from the manner in which their ſettlements were formed; or from other more recent events or circumſtances.

Some writers fondly imagine, that they can diſcover, in the political ſtate of the Saxons, while they remained in their native foreſts, the ſeeds of that conſtitution which grew up in England during the government of the Anglo-Saxon princes. With reſpect to thoſe innate principles of liberty which have been aſcribed to this people, it muſt be obſerved, that in proportion as mankind recede from civilized manners, and approach to the infancy of ſociety, they are leſs accuſtomed to authority, and diſcover greater averſion to every ſort of reſtraint or controul. In this ſenſe the Saxons may be ſaid to have poſſeſſed a ſtronger reliſh for freedom than many of the other German tribes; as the preſent Indians of America, who are mere hunters and fiſhers, diſcover a ſtill freer ſpirit than appeared among the Saxons. But as this love of liberty proceeds from the mere want of the common means of improvement, and from no original peculiarity of character, it is not likely to be retained by ſuch barbarians, after they have opportunities of improving their condition, by acquiring property, and by extending the connexions of ſociety. When the Saxons in Britain became as opulent as the German or Scythian tribes, who ſettled in other provinces of the Roman empire, there is no reaſon to believe, that in conſequence of their primitive poverty and barbariſm, they were with more difficulty reduced into a ſtate of ſubordination, and ſubmiſſion to civil authority. The anceſtors of almoſt every civilized people may be traced back to the moſt rude and ſavage ſtate, in which they

they have an equal title to be diſtinguiſhed, as men impatient of all reſtraint, and unacquainted with the commands of a ſuperior.

CHAP. III.

Settlement of the Saxons in Britain.

THE Saxons accepted with joy and alacrity the propoſals made to them by the Britons; and it appears to have been ſtipulated, that they ſhould immediately ſend a body of troops into Britain, to be employed in the defence of the country, and to receive a ſtated hire during the continuance of their ſervices*. In conſequence of this agreement Hengiſt and Horſa, two brothers, and perſons of diſtinction among the Saxons, with about ſixteen hundred followers, landed in the iſle of Thanet, in the year 449; and having defeated the Picts and Scots, confined them, in a ſhort time, within their ancient boundaries. The Saxon troops immediately after were ſtationed by Voltigern partly upon the confines of the Northern wall, and partly upon the Kentiſh coaſt, the two places that had been uſually ſecured with garriſons under the late dominion of the Romans. In ſuch a ſituation theſe auxiliaries, who formed the principal ſtrength of the country, could hardly fail to perceive their own importance, and to entertain the deſign of extorting a permanent ſettlement from the inha-

* Stillingfleet Orig. Brit.——Bede ſays, that the Saxons firſt took occaſion to quarrel with the Britons, by demanding an increaſe of their *allowance*, to which he gives the name of *annona*. Hiſt. Eccleſ. lib. i. c. 15.

bitants. With this view, Hengiſt is ſaid to have perſuaded the Britons to hire an additional number of his countrymen, as the only effectual means for ſecuring themſelves from the future incurſions of the enemy; and, upon an application for that purpoſe, was joined by a new body of Saxons, amounting to five thouſand men. By this reinforcement he found himſelf ſuperior to the disjointed and unwarlike forces of the country. Having therefore ſecretly concluded a treaty of peace with the Picts and Scots, and pretending that the articles of the orignal agreement, with relation to the pay of his troops, had not been obſerved, he ventured to throw off the maſk, and openly to make war upon the Britons. His example was followed by other adventurers, among the ſame people, who, at the head of different parties, allured by the hope of plunder, and of a new ſettlement, invaded the coaſts of Britain, and endeavoured to penetrate into the country: their attempts were crowned with ſucceſs, and the moſt valuable part of the Iſland was at length reduced under their dominion. This great event, however, was not accompliſhed without a violent ſtruggle, nor in leſs than an hundred and ſeventy years; during which time many battles were fought with various fortune. It is remarkable that, notwithſtanding their fears and puſillanimity, when firſt abandoned by the Romans, the Britons in the courſe of their long-continued conteſt with the Saxons, defended themſelves with more obſtinate reſolution, than, upon the downfal of the Roman empire, was diſcovered by any of the other provinces, though ſupported by the armies of Rome. The want of any foreign aſſiſtance was, in all probability, the cauſe of this vigorous and ſpirited behaviour; as it called forth the exertion of their powers, and produced in them a degree of courage and diſcipline, which the provinces enjoying

joying the protection of the Roman government were not under the ſame neceſſity of acquiring.

We have no full account of the circumſtances attending the ſettlement of the Saxons in Britain; but we may form an idea of the manner in which it was completed, from the general ſituation of the people, from the imperfect relations of this event by our early hiſtorians, and from the more diſtinct information that has been tranſmitted concerning the ſettlement of other German nations, in ſome of the Roman provinces upon the continent of Europe.

The followers of any particular leader having gained a victory, became the maſters of a certain territory, and enriched themſelves with the ſpoil of their enemies. Willing to ſecure what they had obtained, they were led afterwards to offer terms of accommodation to the vanquiſhed; with whom they appear, on ſome occaſions, to have made a formal diviſion of their land and other poſſeſſions. But even in thoſe caſes, where no expreſs treaty of this nature had been formed, the ſame effects were produced, from the mere ſituation of the combatants; and upon the concluſion of a war, the parties were underſtood to have the property of the reſpective diſtricts which they had been able to occupy or retain. Such of the Britons as had been made captives in war were doubtleſs, in conformity to the general practice of the ancient Germans, reduced into a ſtate of ſervitude; but thoſe who had eſcaped this misfortune reſided in the neighbourhood of the Saxons, and often maintained a friendly intercourſe with them.

The ambition, however, and avidity of theſe barbarians, incited them, in a following period, to renew their former hoſtilities, and theſe were generally followed by new victories, and by a farther extention of conqueſt. In this manner, after a long courſe of time, the country was completely

ſubdued by theſe invaders; and the ancient inhabitants were, according to accidental circumſtances, partly degraded into a ſtate of ſlavery, and partly, by particular treaties, and by long habits of communication, incorporated with the conquerors.

From the declamatory repreſentations of ſome early annaliſts, the greater part of hiſtorians have been led to ſuppoſe, that ſuch of the Britons as eſcaped captivity were either put to death by their barbarous enemies, or, diſdaining ſubmiſſion, and expecting no mercy, retired into Wales, or withdrew into the country of *Armorica* in France, to which, from them, the name of *Bretagne* has been given. An acute and induſtrious antiquary, Mr. Whitaker, has lately ſhown, I think in a ſatisfactory manner, that this extraordinary ſuppoſition is without any ſolid foundation. That many of the Britons were at that period ſubjected to great hardſhips, and, in order to ſave themſelves from the fury of their enemies, were even obliged to quit their native country, may be eaſily believed; but that the Saxons were animated with ſuch uncommon barbarity, as would lead them, in direct oppoſition to their own intereſt, to root out the ancient inhabitants, muſt appear highly improbable. Of the total extirpation of any people, by the moſt furious conquerors, the records of well-authenticated hiſtory afford not many examples. It is known, at the ſame time, that no ſuch cruelty was exhibited by any of the German nations who conquered the other provinces of the Roman empire; and it muſt be admitted, that the ſituation of all thoſe nations was very much the ſame with that of the Saxons, as alſo that they were a people in all reſpects of ſimilar manners and cuſtoms. There is even complete evidence that, in ſome parts of the Iſland, the Britons were ſo far from being extirpated, that they were permitted to retain a

certain

certain proportion of the landed property; and it is remarkable, that this proportion, being a third part of the whole, was the ſame with that retained by the ancient inhabitants, in ſome of thoſe provinces, upon the continent of Europe, which were conquered by the other German tribes. Tho' in other caſes, the veſtiges of ſuch early tranſactions have not been preſerved, it is highly probable that a ſimilar diviſion of the land was made, either by expreſs contract, or by tacit agreement. There can be no reaſon to believe that the ſame Saxons would, in one part of the Iſland, exhibit ſuch moderation and humanity to the vanquiſhed people, and in another, ſuch unprecedented ferocity and barbarity.

It is further to be obſerved, that the language which grew up in Britain after the ſettlement of the Saxons, in which a large proportion of the *Britiſh* and the *Latin* tongues were incorporated with the *Saxon*, affords a ſufficient proof that the inhabitants were compounded of the different nations by whom theſe languages were ſpoken.

When the Saxons invaded Britain, they were entirely a paſtoral people; but as they came into a country which had been long cultivated, they could ſcarcely fail to acquire, very rapidly, a conſiderable knowledge of agriculture. Having obtained a quantity of land that was formerly employed in tillage, and having procured a proportionable number of ſervants, already acquainted with the various branches of huſbandry, it may eaſily be imagined that they would avail themſelves of this favourable ſituation, for the proſecution of an employment ſo conducive to their comfortable ſubſiſtence.

In conſequence of a general attention to agriculture, they muſt have been induced to quit the wandering life; ſince, in order to practice the employment of a farmer with any advantage, a continued reſidence

dence upon the ſame ſpot is neceſſary. In the occupancy and appropriation of landed eſtates, thoſe perſons who had been moſt connected in war were moſt likely to become neighbours; and every little knot of kindred and friends were commonly led to build their houſes together, that they might be in readineſs to aſſiſt one another in their labour, and to unite in defending their poſſeſſions. The villages of German ſhepherds were thus converted into villages of huſbandmen, which, in proportion to the progreſs of their arms, and to their advances in improvement, were gradually enlarged and ſpread over the country. It ſhould ſeem that, upon the firſt ſettlement of the Saxons, the whole people were diſtributed into little ſocieties of this kind; and no individual was ſo opulent, that he could expect to live in ſecurity, without maintaining an alliance and intimate communication with others. This cuſtom of reſorting to villages, introduced by neceſſity, in times of extreme barbariſm and diſorder, is even at preſent retained by many of the farmers in England; although from a total change of manners and circumſtances, it is evident that a ſeparate reſidence, upon their different farms, would often be much more convenient.

While the Saxons, by their intercourſe with a more civilized people, were thus excited to a conſiderable improvement of their circumſtances, the Britons were, from an oppoſite ſituation, degraded in the ſame proportion, and continued to ſink in ignorance and barbariſm. Engaged in a deſperate conflict, in which every thing dear to them was at ſtake, and having to cope with an enemy little practiſed in the refinements of humanity, they were obliged, in their own defence to retaliate thoſe injuries which they were daily receiving; and by the frequent exerciſe of depredation, they became inured to rapine and injuſtice. The deſtructive

wars,

wars, in the mean time, which were inceſſantly kindled, and which raged with ſo much violence in every quarter of the country, were fatal to the greater part of its improvements. The numerous towns which had been raiſed under the protection and ſecurity of the Roman government, and which now became the uſual refuge of the weaker party, were often ſacked by the victorious enemy, and after being gradually depopulated, were at length either laid in ruins, or left in the ſtate of inſignificant villages. In theſe times of univerſal terror and confuſion, the ancient ſchools and ſeminaries of learning were abandoned, and every perſon who cultivated the arts ſubſervient to luxury and refinement was forced to deſert theſe uſeleſs occupations, and betake himſelf to employments more immediately requiſite for preſervation and ſubſiſtence. In the courſe of two centuries, within which the conqueſt of the more acceſſiable and valuable parts of Britain was completed, the monuments of Roman opulence and grandeur were entirely erazed; and the Britons who remained in the country, and who retained their liberty, adopted the ſame manner of life with their Saxon neighbours, from whom they were no longer diſtinguiſhable, either by the places of their reſidence, or by their uſages and political inſtitutions.

Thoſe conquerors of Britain who received the general appellation of Saxons had iſſued from different parts of the German coaſt, at ſome diſtance from one another, and belonged to different tribes or nations: they have been divided, by hiſtorians, into three great branches, the *Angles*, the *Jutes*, and the *Saxons*, properly ſo called. As the leaders of the ſeveral parties belonging to any of theſe diviſions poſſeſſed a ſeparate influence over their own adherents, and proſecuted their enterpriſes in different parts of the country, ſo they naturally rejected all ideas of ſubordination, and endeavoured to

to acquire a regal authority; the reſult of which was, that, after various turns of fortune, no leſs than ſeven independent ſtates, each under its own particular monarch, were at length eſtabliſhed.

The followers of Hengiſt and Horſa, compoſed of Jutes, acquired a ſettlement in the Eaſt corner of the Iſland, and eſtabliſhed their dominion in what is now the county of Kent. Different parties of the proper Saxons occupied a much larger territory, and laid the foundations of three different kingdoms. Thoſe who, from their ſituation, were called the Southern Saxons, eſtabliſhed themſelves in the counties of Suſſex and Surrey; the Weſt-Saxons extended their authority over the counties to the Weſtward, along the Southern coaſt; and the Eaſt-Saxons took poſſeſſion of Eſſex, Middleſex, and a conſiderable part of Hertfordſhire. The Angles were ſtill more numerous, and the territories which they occupied were much more extenſive; by them were formed the kingdom of the Eaſt-Angles, in the counties of Cambridge, Norfolk, and Suffolk; that of Northumberland, extending over all the country which theſe barbarians had ſubdued, from the Humber to the Frith of Forth; and that of Mercia, comprehending the inland counties, which were in a manner included by the other kingdoms of the Heptarchy.

In the Weſtern part of the Iſland, from the Land's End to the Frith of Clyde, the ancient inhabitants were ſtill able to maintain their independence; and in this large tract of country were erected four Britiſh principalities or kingdoms; thoſe of Cornwall, of South-Wales, of North-Wales, and of Cumberland. To the North of the Friths of Forth and Clyde the Picts and Scots retained their ancient poſſeſſions.

The changes produced in the manners and cuſtoms of the Saxons, by their ſettlement in Britain, were

were ſuch as might be expected, from the great change of ſituation which the people experienced, in paſſing from the ſtate of ſhepherds to that of huſbandmen. As in following the employment of the latter, they neceſſarily quitted the wandering life, and took up a fixed reſidence, they were enabled to acquire *property in land;* with which it is probable they were formerly unacquainted. The introduction of landed property among mankind has uniformly proceeded from the advancement of agriculture, by which they were led to cultivate the ſame ground for many years ſucceſſively; and upon the principle that every man has a right to enjoy the fruit of his own labour, became entitled, firſt, to the immediate crops they had raiſed, and afterwards to the future poſſeſſion of the ground itſelf, in order that they might obtain the benefit of the improvement which their long cultivation had produced. In this appropriation, of ſo great importance to ſociety, the Saxons in Britain were undoubtedly ſtimulated, and inſtructed, from the cultivated ſtate of the country, as well as from the example of the people whom they had ſubdued.

This alteration in their circumſtances had neceſſarily a mighty influence upon the conduct of their military operations. As a great part of their property was now incapable of being tranſported, the inhabitants of each village were induced to fortify, in ſome degree the place of their abode, for the preſervation of their moſt valuable effects; and therefore, in going out to meet an enemy, inſtead of carrying along with them their cattle, and other moveables, and being accompanied by their wives and children, as well as by the aged and infirm (the uſual practice in the paſtoral life) none but the actual warriors had occaſion to take the field. The immediate plunder, therefore, ariſing from a victory, was rendered more inconſiderable; and even this

this the victors were commonly obliged to ſecure at home, before they could conveniently undertake a new enterprize. Thus, after the ſettlement of the Saxons in Britain, they were leſs in a condition to carry on wars at a great diſtance; and they appear to have laid aſide, for the moſt part, their foreign piratical expeditions.

The permanent reſidence of the people tended likewiſe to open a regular communication between different villages; the inhabitants of which, by remaining conſtantly in the ſame neighbourhood, were led by degrees to contract a more intimate acquaintance. From the acquiſition of landed poſſeſſions, which by their nature are leſs capable than moveables of being defended by the vigilance and perſonal proweſs of the poſſeſſor, the neceſſity of the public interpoſition, and of public regulations for the ſecurity of property, muſt have been more univerſally felt. From theſe cauſes, it is natural to ſuppoſe that the connections of ſociety were gradually multiplied, and that the ideas of juſtice, as well as of policy and government, which had been entertained by the primitive Saxons, were conſiderably extended and improved.

The introduction of landed property contributed, on the other hand, to encreaſe the influence and authority of individuals, by enabling them to maintain upon their eſtates a greater number of dependents than can be ſupported by perſons whoſe poſſeſſions are merely moveable. The heads or leaders of particular families were thus raiſed to greater conſideration; and, in the reſpective communities of which they were members, obtained more completely the excluſive direction and management of public affairs. The influence of the great leader, or prince, by whom they were conducted in their common expeditions, was proportioned in like manner, to his private eſtate, and extended little farther than to his own tenants; for

for which reaſon, in the ſeveral kingdoms of the Heptarchy, the ſovereign poſſeſſed a very limited authority, and the principal powers of government were lodged in a *Wittenagemote*, or national council, compoſed of the independent proprietors, or leading men in the ſtate.

Although the monarchs of theſe different kingdoms claimed an independent ſovereignty, yet, in their ſtruggles with the Britons, they often procured aſſiſtance from one another, and were combined againſt the ancient inhabitants of the country, their common enemies. The direction of their forces was, on thoſe occaſions, committed to ſome particular monarch, who, in conducting their joint meaſures, was frequently under the neceſſity of calling a wittenagemote, or great council, from all the confederated kingdoms. Thus the idea of a permanent union among all the kingdoms of the Heptarchy, and of a leader, or chief magiſtrate, at the head of that large community, together with a ſet of regulations extending to all its members, was gradually ſuggeſted: according to the opulence or abilities of the different Saxon princes, they were, by turn promoted to that ſupreme dignity; which became of courſe, the great object of their ambition, and the ſource of thoſe violent animoſities which, for a period of about two hundred years, continually ſubſiſted among them. The moſt powerful of the ſtates belonging to this confederacy were thoſe of Weſſex, Mercia, and Northumberland, to which the reſt were gradually reduced into a kind of ſubordination; till at length, about the year 827, the ſeveral kingdoms of the Heptarchy were ſubdued by Egbert, the king of the Weſt-Saxons, who tranſmitted to his poſterity the ſovereignty of theſe extenſive dominions. The ſame prince extended his authority over all the Britons on the South ſide of the Briſtol channel, and became maſter of a conſiderable part of Wales, and

of

of the Cumbrian kingdom. From this time the diſtinctions among the different Saxon ſtates were in a great meaſure aboliſhed, and the ſeveral territories, united under Egbert, received the general name of England; as the people, from the union of the two principal nations, and in contradiſtinction to their countrymen in Germany, were called the Anglo-Saxons.

Several circumſtances appear to have contributed to the accompliſhment of this great revolution. With the bravery and military accompliſhments uſual among the chiefs and princes of that age, Egbert, who had been educated in the court of Charles the Great, is ſaid to have united an uncommon degree of political knowledge and abilities; his own kingdom, ſituated along the Southern coaſt of Britain, was probably the moſt improved, if not the moſt extenſive, of thoſe which had been erected by the Anglo-Saxons. In almoſt all the other kingdoms of the Heptarchy, a failure of the lineal heirs of the crown had given riſe, among the principal nobility, to a conteſt about the ſucceſſion: Northumberland, in particular, was weakened by inteſtine diſorders, and in no condition to reſiſt a foreign power; ſo that by the conqueſt of Mercia, the only other independent ſtate, the king of Weſſex was left without a competitor, and found no difficulty in eſtabliſhing an univerſal ſovereignty*.

There can be no doubt that the reduction of all theſe different kingdoms into one monarchy contributed to improve the police of the country, and to civilize the manners of the people. The ſcene of

* It muſt not however be ſuppoſed that the power of all the kings of the Heptarchy was at this period entirely deſtroyed; they retained a ſubordinate authority, founded upon their great property. The Princes of Northumberland and Mercia ſtill retained the title of *king*; and in the reign of Alfred we find them ſtill claiming independence.—See William of Malmſbury.

anarchy

anarchy and violence which was conſtantly exhibited during the conqueſt of Britain by the Saxons was incompatible with any attention to the arts of civil life, and in a great meaſure extinguiſhed the remains of Roman improvement. The beginning of the ſeventh century, which falls about the concluſion of that period, may, therefore, be regarded as the æra of greateſt darkneſs and barbariſm in the modern hiſtory of Britain. The advances, however, that were made, even after this period had elapſed, were very ſlow and gradual. So long as the country was divided into a number of petty ſtates, independent of each other, and therefore often engaged in mutual hoſtilities, the perſons and property of individuals were not ſecured in ſuch a manner as to encourage the exerciſe of uſeful employments.

It appears, indeed, that the monarchs in ſeveral of thoſe kingdoms were anxious to prevent diſorders among their ſubjects, and, with the aſſiſtance of their national councils, made a variety of ſtatutes, by which the puniſhment of particular crimes was defined with great exactneſs. Such were the laws of Ethelbert, and ſome of his ſucceſſors, in the kingdom of Kent; thoſe of Ina, the king of the Weſt-Saxons; and Offa, of the Mercians*. Theſe regulations, however, were probably of little avail, from the numerous independent ſtates into which the country was divided, becauſe an offender might eaſily eſcape from juſtice, by taking ſanctuary in the territories of a rival or hoſtile nation; but when the different kingdoms of the Heptarchy were united under one ſovereign, private wars were more effectually diſcouraged; juſtice was ſomewhat better adminiſtered; and the laws eſtabliſhed throughout the Anglo-Saxon dominions were

*See the Collections of the two former, in Wilkins Leg. Anglo-Sax.—The laws of king Offa have not been preſerved.

reduced

reduced to greater uniformity. We are not, however, to imagine that, from this period, the ſame regulations in all reſpects were extended over the whole Engliſh monarchy. The ſyſtem of private law, being formed in good meaſure by long uſage, was neceſſarily different in different diſtricts; and the cuſtoms which prevailed in the more conſiderable had obtained a currency in the ſmaller ſtates of the Heptarchy. Thus we find that the law of the Weſt Saxons was extended over all the ſtates on the South ſide of the Thames *, while the law of the Mercians was introduced into ſeveral territories adjacent to that kingdom†. In a ſubſequent period a third ſet of regulations, probably a good deal different from the two former, was adopted in the Northern and Eaſtern parts of the country.

CHAP. IV.

Similarity in the Situation of the Anglo-Saxons, and of the other Barbarians who ſettled in the Provinces of the Weſtern Empire. — How far the State of all thoſe Nations differed from that of every other People, ancient or modern.

DURING the ſame century in which the Anglo-Saxons began their ſettlements in England, the other provinces of the Weſtern empire were invaded by a multitude of rude nations, from Ger-

* Called Weſtſaxenlaga.

† Called Mercenlaga. The inhabitants were denominated, from the kind of law which they obſerved. See Ran. Higdan Polychron.—In France the Pais de Droit écrit, and the Pais des Coutumes, were diſtinguiſhed from a ſimilar circumſtance.

many

many and the more Eaſterly parts of the world. Allured by the proſpect of booty, theſe barbarians had long made accidental incurſions upon the frontier provinces; and having, by repeated ſucceſſes, diſcovered the weakneſs of the Roman ſtate, they at length endeavoured to gain more ſolid advantages, by ſettling in the countries which they had ſubdued. The Roman emperors were not only obliged to ſubmit to theſe encroachments, but were even forced, in many caſes, to enter into an alliance with thoſe invaders, to employ them as auxiliaries in the armies of Rome, and to beſtow upon them landed poſſeſſions, upon condition of their defending the country. But theſe were merely temporary expedients, which in the end contributed to increaſe the power of the barbarians. Different ſwarms of theſe people advancing in ſucceſſion, and puſhing each other forward in queſt of new poſſeſſions, continued to penetrate into the Roman dominions, and at laſt entirely over-ran and diſmembered the Weſtern provinces. The Franks, the Burgundians, and the Wiſigoths ſettled in Gaul. Another branch of the Wiſigoths eſtabliſhed their dominion in Spain. Africa became a prey to the Vandals. Italy, for a long time the center of Roman wealth, and of Roman luxury, invited, in a particular manner, the attacks of poverty and barbariſm; and after it had ſuffered from the ſucceſſive inroads of many different nations, a great part of the country was ſubjected to the Oſtrogoths, and in a ſubſequent period, to the Lombards.

As the original manners and cuſtoms of all theſe nations were extremely analogous to thoſe of the Saxons in England, and as their conqueſt and ſetlement in the Weſtern empire were completed nearly in the ſame manner, it was to be expected that they would fall under a ſimilar government. It has happened, accordingly, that their political inſtitutions are manifeſtly formed upon the ſame plan, and preſent, to the moſt careleſs obſerver, the ſame

aſpect

aſpect and leading features, from which, as in the children of a family, their common origin may clearly be diſcovered. They differ, no leſs remarkably, from all the other ſyſtems of policy that have been recorded in ancient or modern hiſtory. It may be worth while, therefore, to examine the cauſes of the uniformity, ſo obſervable among all thoſe nations, and of the peculiarities, by which they are ſo much diſtinguiſhed from the other inhabitants of the world. In this view, there occur five different circumſtances, that ſeem to merit attention.

1. The ſettlement of the barbarous nations, upon the Weſtern continent of Europe, as well as in England, was effected by the gradual ſubjection of a more civilized people, with whom the conquerors were at length completely incorporated.

The rude and ignorant tribes who ſubdued the Roman provinces, were too little connected with one another, and too little accuſtomed to ſubordination, to unite in proſecuting any regular plan of conqueſt; but, according as they were excited by provocation, or met with any encouragement, they made occaſional inroads, with different degrees of ſucceſs; and when they had over-run a particular diſtrict, they commonly choſe to remain in the country, and frequently concluded a treaty of peace with the ancient inhabitants.

Having, on thoſe occaſions, become maſters of a large territory, which had been long occupied in tillage, and having, by repeated victories, obtained a number of captives, whom they reduced into ſlavery, they found it an eaſy matter to employ their ſlaves in cultivating the land which they had procured. In this ſituation they ſoon made ſuch progreſs in agriculture, as determined them more and more to relinquiſh their wandering life, and apply themſelves to the acquiſition of ſeparate landed eſtates. By their intercourſe, at the ſame time, with

with ſuch of the old inhabitants as retained their freedom, they neceſſarily acquired a variety of knowledge, and became acquainted with many of the common arts of life to which they had formerly been ſtrangers.

It was not to be expected, however, that theſe barbarians would long remain at reſt; or that they would have any difficulty in finding pretences for quarrelling with a people whom they meant to ſtrip of their poſſeſſions. In a courſe of time, therefore, new animoſities broke out, which were followed by repeated military enterprizes, attended with ſimilar circumſtances; till at laſt, by ſucceſſive extenſions of territory, and after ſeveral centuries had elapſed, the whole of the Weſtern empire was diſmembered, and reduced under the power of theſe invaders.

The events by which this great revolution was accompliſhed, could not fail to produce very oppoſite effects upon the ancient inhabitants of the country, and upon the new ſettlers. The former, while, in conſequence of the violence and diſorder which prevailed, and of their intercourſe with the barbarians, they ſunk very rapidly into poverty and barbariſm, communicated, in their turn, to the latter, a few great lines of that cultivation, which had not been entirely effaced among themſelves. In the end, thoſe two ſets of people were entirely blended together; and their union produced ſuch a compound ſyſtem of manners and cuſtoms, as might be expected to reſult, from the declining ſtate of the one, and the riſing ſtate of the other.

The deſtruction of the Roman provinces ſtruck out, in this manner, a ſudden ſpark of improvement, which animated their victorious enemies, and quickly pervaded the new ſtates that were founded upon the ruins of the Weſtern empire. In the earlieſt accounts of the modern kingdoms

of Europe, we find the people, though evidently retaining very deep marks of their primitive rudeneſs, yet certainly much advanced beyond the ſimple ſtate of the ancient Germans. Their huſbandry, no doubt, continued for ages in a very low and imperfect condition, inſomuch that extenſive territories were often permitted to lie waſte and deſolate; yet ſuch as it was, it procured the neceſſaries of life in greater plenty, and produced of courſe, a more univerſal attention to its conveniencies. Their permanent reſidence in one place gave room and encouragement to the exerciſe of different employments, from which, during their former migrations, they were in a great meaſure excluded. Their houſes were built of more laſting materials, and rendered more commodious, than the moveable huts in which they formerly ſheltered themſelves. Particular perſons, having acquired very great landed eſtates, were enabled, by the remaining ſkill of Roman artificers, to erect ſuch fortreſſes as were ſufficient to defend them from the ſudden incurſions of an enemy; and lived, in ſuitable magnificence, at the head of their tenants and domeſtics. The numerous, and opulent towns, which had been ſcattered over the dominions of Rome, though they ſuffered greatly in the general wreck of the empire, were not, however, univerſally deſtroyed or deſerted; and ſuch of them as remained, were frequently occupied and inhabited by the leaders of the conquering tribes. In theſe, and even throughout the whole of the country, that policy, which had become familiar to the old inhabitants was, in many reſpects, continued; and in the early codes of laws, collected by the princes of the barbarous nations who ſettled in the Weſtern empire, we often diſcover a cloſe imitation of the Roman juriſprudence.

In theſe particulars, the ſituation of the modern ſtates of Europe appears to have been a good deal

different

different from that of every other nation, of whom any accounts have been tranſmitted to us. In many parts of the world, the rude inhabitants have continued unconnected with any other people more improved than themſelves; and have therefore advanced very ſlowly in the knowledge of arts, as well as in the progreſs of the ſocial life. From the remoteſt period of antiquity, the Arabs and Tartars have remained for the moſt part, in a paſtoral ſtate; and are ſtill almoſt entirely ignorant of huſbandry. The Indians of America ſtill derive their principal ſubſiſtence from hunting and fiſhing; and are in a great meaſure ſtrangers to the invention of taming and rearing cattle. In early ages men are deſtitute of ſagacity and reflection, to make uſe of thoſe diſcoveries which fortune may throw in their way; and their improvement is much retarded by thoſe habits of ſloth which, being foſtered by the primitive manner of life, are not to be overcome without extraordinary incitements to labour and application.

Among the inſtances, preſerved in hiſtory, of nations who have acquired a connection with others, by means of a conqueſt, we meet with none that are ſimilar to thoſe exhibited in Europe, during the period which we are now conſidering. The conqueſt in Aſia, by Alexander and his ſucceſſors, was that of one opulent and civilized people over another; and produced no farther alteration in the Greek ſtates, but that of inſpiring them with a taſte of Aſiatic luxury and extravagance.

The firſt military efforts of the Romans were employed in ſubduing the ſmall neighbouring ſtates of Italy, whom they found in the ſame barbarous condition with themſelves; and they had become a great nation, firmly eſtabliſhed in their manners and political ſyſtem, before they directed their forces againſt the refined and cultivated parts of the world. Beſides the Roman virtue diſdained,

for a long time, to imitate the talents and accomplishments of the people they had subdued.

China, and some other of the great Asiatic kingdoms, have been frequently over-run and conquered by several hords of Tartars, accidentally combined under a great leader; but the conquest, in these cases, was not carried on slowly and gradually, as in the provinces of the Western empire: it was completed by one or two great and rapid victories; so as, on the one hand, to prevent the learning and civilization of the vanquished people from being destroyed by a long-continued course of war and devastation; and, on the other, to prevent the conquerors, by long neighbourhood and acquaintance, from being incorporated with the former inhabitants, in one common system of manners, customs, and institutions. The final success, therefore, of the victorious army, produced no farther revolution, than by suddenly advancing their General, together, perhaps, with some of his principal officers, to the head of a great and civilized empire; of which the native country of the conquerors became only a tributary province.

The same observation is applicable to the dominion acquired by Mahomed, and some of his immediate successors; which was not established by a gradual settlement of Arabian tribes, in the rich countries of Asia; but by a rapid conquest, that gave rise to no intimate coalition of the victors with those who submitted to the Mahometan yoke. No other change, therefore, was produced in the state of conquered nations, than what arose from subjecting them to a new religion, and a new set of monarchs; while the wandering Arabs, the original followers of Mahomed, remained, for the most part, in their primitive state of barbarism. The conquest of the Saracens, and of the Eastern empire, by the Turks, had a greater resemblance to the progressive inroads of those who conquered the Western

Weſtern provinces; but it was far from proving equally deſtructive to the former civilization of the conquered people, or from reducing them to the level of their barbarous conquerors.

2. The German or Gothic nations, who ſettled in the Weſtern part of Europe, were enabled, in a ſhort time, to form kingdoms of greater extent, than are uſually to be found among people equally rude and barbarous.

Of all the arts which contribute to improve or embelliſh ſociety, that of government requires the moſt enlarged experience and obſervation; for which reaſon, its progreſs towards perfection is proportionably gradual and ſlow. In that ſimple age, in which labour is not yet divided among ſeparate artificers, and in which the exchange of commodities is in a great meaſure unknown, individuals, who reſide at a diſtance from one another, have no occaſion to maintain an intimate correſpondence, and are not apt to entertain the idea of eſtabliſhing a political connection. The inhabitants of a large country are then uſually parcelled out into ſeparate families or tribes, the members of which have been led, by neceſſity to contract habits of living together, and been reduced under the authority of that leader who is capable of protecting them. Theſe little communities are naturally independent, as well as jealous of one another; and though, from the dread of a common enemy, they are ſometimes obliged to combine in a league for mutual defence, yet ſuch combinations are generally too caſual and fluctuating to be the foundation of a comprehenſive and permanent union.

But thoſe barbarians who conquered the Weſtern empire were quickly induced, and enabled, to form extenſive aſſociations; partly from the circumſtances attending their conqueſt; and partly, from the ſtate of the country in which they formed their ſettlements.

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With reſpect to the circumſtances attending their conqueſt, it is to be obſerved, that their tribes were far from being large or numerous, and that they over-ran and ſubdued a very large tract of country; in conſequence of which, the members of the ſame tribe were enabled to occupy great landed eſtates, and came to be ſettled at a proportionable diſtance from one another. Individuals who had belonged to a ſmall community, and who had been accuſtomed to fight under the ſame leader, were thus diſperſed over an extenſive territory; and notwithſtanding this change in their ſituation, were naturally diſpoſed to retain their former connections and habits. The notion of uniting under a ſingle chief, which had been eſtabliſhed among the members of a wandering tribe of ſhepherds, continued, therefore, to operate upon the ſame people, after they had acquired ample poſſeſſions, and had reduced multitudes under their dominion.

The extent of the kingdoms, erected by thoſe barbarous nations, was likewiſe affected by the ſtate of each Roman province, in which their ſettlements were made.

As every Roman province conſtituted a part of the whole empire; ſo it formed a diſtinct ſociety, influenced by national views, and directed by a ſeparate intereſt. Among the inhabitants of the ſame province, united by their local ſituation, by the ties of friendſhip and acquaintance, and even by that common ſyſtem of oppreſſion to which they were ſubject, a regular intercourſe was conſtantly maintained. Thoſe who lived in villages, or in the open country, carried on a variety of tranſactions with the ſeveral towns in the neighbourhood, where they found a market for their goods, and were ſupplied with thoſe conveniencies which they required. The inhabitants of theſe towns, and of the whole province, were, at the ſame time, cloſely connected with the capital, where the governor

vernor reſided in a kind of regal pomp and magnificence, and directed the various wheels and ſprings of adminiſtration. Here the public money, accumulated from different parts, was again diſtributed through the various channels of government; and hither men of all deſcriptions, the poor and the rich, the idle and the induſtrious, were attracted from every quarter, by the views of profit, of pleaſure, or of ambition.

The changes which at different periods were made in the political conſtitution of Rome, produced no great alteration, as has been already obſerved, either in the extent or condition of her provincial governments. The ancient boundaries of the provinces appear to have been generally retained under the later emperors; though, in order to ſecure the public tranquillity, they were often ſubdivided into particular diſtricts, which were put under the direction of ſubordinate officers. The connections, therefore, between the ſeveral parts of the ſame province, were gradually ſtrengthened from the length of time during which they had ſubſiſted.

As, by the conqueſt of thoſe countries, the ancient inhabitants were not extirpated, it is natural to ſuppoſe that their former habits of intercourſe were not obliterated and forgotten; but, on the contrary, were in ſome degree communicated to the conquerors. They who had lived under the ſame government were ſtill diſpoſed to admit the authority of a ſingle perſon, and to remain in that ſtate of union and ſubordination to which they had been accuſtomed. Particular chiefs having occupied the remaining towns belonging to a Roman province, were of courſe rendered maſters of the adjacent territory; and he who had ſet himſelf at the head of the moſt powerful diſtrict, was in a fair way of becoming ſovereign of the whole.

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It may alſo be worthy of notice, that as the conquering tribes adopted a number of the Roman inſtitutions, their principal conductor was frequently in a condition to avail himſelf of that authority, however declining, which the Roman government continued to maintain; and by aſſuming, or maintaining, the dignity which had belonged to the chief magiſtrate of a province, was enabled with greater facility to extend his dominion over the territories which had formerly acknowledged the juriſdiction of that officer. Thus we find that Clovis, who conquered a great part of Gaul, was, near the end of his reign, inveſted with the title of *conſul*, and probably with that of *pro-conſul*, by the emperor Anaſtaſius; and that the poſterity of Clovis were at the pains to procure, from the emperor Juſtinian, a reſignation of all the rights of the empire over that nominal branch of his dominions *.

In like manner Theodoric, the king of the Oſtrogoths, who had been inveſted, in the Eaſtern empire, with the title of *patrician* and *conſul*, and who had obtained for himſelf and his followers a ſettlement in Thrace, was afterwards commiſſioned by the emperor Zeno to conquer Italy, and to take poſſeſſion of the country †.

From theſe cauſes, countries at a great diſtance from one another were forced into a ſort of political union: and the boundaries of a modern kingdom came, in moſt caſes, to be nearly of the ſame extent with thoſe of an ancient Roman province.

As Italy, which comprehended the numberleſs villas, and highly-cultivated pleaſure grounds, belonging to the opulent citizens of Rome, was the object of more attention than thoſe parts of the empire which lay at a greater diſtance, it was early

* Hiſt. de l'Etabliſſement de la Mon. Fran. par l'Abbe Du Bos. liv. 4. ch. 18. liv. 5. ch. 7.

† Ibid. liv. 4. ch. 3.

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ſubjected to a more accurate police, and divided into ſmaller diſtricts. It was diſtributed, by Auguſtus, into eleven *regions;* and in the time of the emperor Adrian that country, together with Sicily, Sardinia, and Corſica, included no leſs than ſeventeen diviſions. The ſmallneſs of the diſtricts into which it was thus broken by the Roman government had, no doubt, an influence upon the new arrangements which it underwent from the invaſion of the barbarians; and made it fall more eaſily into a number of petty ſtates, under the ſeveral dukes, or nobles, who aſſumed an independent authority.

In England, though the moſt part of the territories which had compoſed the ancient Roman province were at laſt united in one kingdom, yet this union was effected more ſlowly, and with greater difficulty, than in many of the other European countries. The ſettlement of the Anglo-Saxons was produced in a different manner from that of the other German nations who ſettled upon the continent of Europe. As the expeditions of the latter were carried on, for the moſt part, by land, it was uſual for the whole of a tribe or nation to advance in a body, and after they had defeated the Roman armies, to ſpread themſelves over the extenſive territory which fell under their dominion. The original connections, therefore, among the individuals of the conquering nation, co-operated with the circumſtance of their ſettling in the ſame province, to facilitate their reduction, either by conqueſt or confederacy, under one ſupreme leader. The naval incurſions of the Anglo-Saxons were, on the other hand, made by ſmall detached parties, collected occaſionally by any ſingle adventurer, who, for the ſake of a precarious ſettlement, was willing to relinquiſh his kindred and acquaintance. The followers of every ſeparate leader were therefore too inconſiderable to occupy great landed poſ-

ſeſſions;

ſeſſions; and as they invaded England at different times, and in different places, with ſcarce any previous concert, and with little attachment to one another, they diſcovered ſo much the ſtronger diſpoſition to remain in ſeparate ſtates, and to preſerve their primitive independence. From theſe circumſtances, we may account for the diviſion of England into ſo many independent kingdoms; which were not reduced under one monarch till between three and four centuries after the firſt ſettlement of thoſe invaders.

3. The great extent of the kingdoms that were formed upon the ruins of the Weſtern empire, together with the rudeneſs of the people by whom they were eſtabliſhed, appears to have occaſioned that ſyſtem of feudal tenures, which is commonly regarded as the moſt diſtinguiſhing peculiarity in the policy of modern Europe.

The diſpoſition to theft and rapine, ſo prevalent among rude nations, makes it neceſſary that the members of every family ſhould have a watchful eye upon the conduct of all their neighbours, and ſhould be conſtantly upon their guard to preſerve their perſons from outrage, and their property from depredation. The firſt efforts of civil government are intended to ſuperſede this neceſſity, by puniſhing ſuch offences, and enabling the individuals of the ſame community to live together in peace and tranquillity. But theſe efforts, it is evident, are likely to be more effectual in a ſmall ſtate than in a large one; and the public magiſtrate finds it much more difficult to extend and ſupport his authority over a multitude of individuals, diſperſed through a wide country, than over a ſmall number, confined to a narrow diſtrict. It is for this reaſon that government has commonly been ſooner eſtabliſhed, as well as better modelled, in communities of a moderate ſize, than in thoſe which comprehend the inhabitants of an extenſive region.

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In proportion to the great number of people, and the great extent of territory, in each of the modern European kingdoms, the advances of authority in the public were ſlow, and its capacity of reſtraining violence and diſorder was limited. The different families of a kingdom, though they acknowledged the ſame ſovereign, and were directed by him in their foreign military enterprizes, were not, upon ordinary occaſions, in a ſituation to feel much dependence upon him. Acquiring great landed poſſeſſions, and reſiding at a diſtance from the capital, as well as in places of difficult acceſs, they were often in a condition to ſet the whole power of the crown at defiance; and diſdaining to ſubmit their quarrels to the determination of the civil magiſtrate, they aſſumed a privilege of revenging with their own hands the injuries or indignities which they pretended to have ſuffered. When not employed therefore, in expeditions againſt a public enemy, they were commonly engaged in private hoſtilities among themſelves; and from the frequent repetition of which there aroſe animoſities and feuds, that were only to be extinguiſhed with the life of the combatants, and that, in many caſes, were even rendered hereditary. In ſuch a ſtate of anarchy and confuſion, the ſtrong were permitted to oppreſs the weak; and thoſe who had moſt power of hurting their neighbours, were the moſt completely ſecured from the puniſhment due to their offences.

As the individuals of a nation were thus deſtitute of protection from government, they were under the neceſſity of defending themſelves, or of ſeeking protection from one another; and the little ſocieties compoſed of near relations, or formed accidentally by neighbourhood and acquaintance, were obliged to unite in the moſt intimate manner, to repel the attacks of their numerous enemies. The poor were forced to ſhelter themſelves under the influence

influence and power of the rich; and the latter found it convenient to employ a great part of their wealth, in order to obtain the conſtant aid and ſupport of the former. The head of every family was commonly ſurrounded by as great a number of kindred and dependents as he was capable of maintaining; theſe were accuſtomed to follow him in war, and in time of peace to ſhare in the rural ſports to which he was addicted; it was their duty to eſpouſe his quarrel on every occaſion, as it was incumbent on him to defend them from injuries. In a family ſo ſmall, that all its members could be maintained about the ſame houſe, a mutual obligation of this kind was naturally underſtood from the ſituation of the parties; but in larger ſocieties it was rendered more clear and definite by an expreſs agreement. A man of great opulence diſtributed part of his demeſne among his retainers, upon condition of their performing military ſervices; as, on the other hand, the ſmall proprietors in his neighbourhood, being incapable of maintaining their independence, were glad to purchaſe his protection, by agreeing to hold their land upon the ſame terms. Hence the origin of vaſſalage in Europe, the nature of which will be more particularly explained hereafter. Every conſiderable proprietor of land had thus a number of military ſervants, who, inſtead of pay, enjoyed a part of his eſtate, as the reward of their ſervices. By this diſtribution and arrangement of landed poſſeſſions, the moſt natural remedy was provided for the evils ariſing from the weakneſs of government. Men of inferior ſtation, who ſingly were incapable of defending their perſons or their property, obtained more ſecurity, as well as conſideration, under their reſpective ſuperiors; and the inhabitants of a large territory, being combined in ſocieties, who had each of them a common intereſt, were in a better condition

condition to reſiſt the general tide of violence and oppreſſion.

From theſe obſervations we may diſcover how far the connections between the ſuperior and the vaſſal, and the various parts of what is called the feudal ſyſtem, are peculiar to the modern ſtates of Europe, or belong to them in common with other nations.

In Greece and Rome, or in any of the ſmall ſtates of antiquity, there are few or no traces to be diſcovered of the feudal inſtitutions. From the inconſiderable number of people collected in each of thoſe ancient ſtates, and from the narrowneſs of the territory which they inhabited, the government was enabled, at an early period, to extend its protection to all the citizens, ſo as to free them from the neceſſity of providing for their own ſafety, by aſſociating themſelves under particular military leaders. If any ſort of vaſſalage, therefore, had been introduced in the infancy of thoſe nations, it appears to have been aboliſhed before they were poſſeſſed of hiſtorical records.

In many rude nations of greater extent, both in ancient and modern times, we may diſcern, on the contrary, the outlines of the feudal policy. This, if we can truſt the relations given by travellers, is particularly the caſe at preſent in ſeveral of the kingdoms in Aſia, and upon the Southern coaſt of Africa. In theſe kingdoms, the number of barbarians, collected under one ſovereign has probably rendered the government ſo feeble, as to require a number of ſubordinate aſſociations, for the protection of individuals; but the coalition of different families being neither ſo extenſive, nor produced in the ſame rapid manner, as in the modern ſtates of Europe, the regulations to which it has given occaſion are neither ſo numerous and accurate, nor have they been reduced into ſo regular a ſyſtem.

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4. The cuſtom of duelling, and the peculiar notions of honour, which have ſo long prevailed in the modern nations of Europe, appear to have ariſen from the ſame circumſtances that produced the feudal inſtitutions.

The political eſtabliſhment, in all thoſe nations, was, for a long time, incapable of preventing the unlimited exerciſe of private hoſtilities; and every family, being expoſed to invaſion from all its neighbours, was obliged to be conſtantly in a poſture of defence. In theſe circumſtances, the military ſpirit of the people was not only raiſed to a high pitch, but it received a peculiar direction, and was attended with peculiar habits and opinions.

In a war between two great nations, when large and well-diſciplined armies are brought into the field, there is little room for individuals to acquire diſtinction by their exploits; and it is only expected of them, that, like the parts of a complex machine, they ſhould perform with ſteadineſs and regularity, the ſeveral movements for which they are deſtined; neither are thoſe who belong to the oppoſite armies likely to entertain much perſonal animoſity, the national quarrel being loſt in that promiſcuous multitude among whom it is divided. But in the private wars that took place between the ſeveral families of modern Europe the caſe was very different: for the number engaged upon either ſide was commonly ſo ſmall, and they had ſo little of military diſcipline, that every ſingle perſon might act a diſtinguiſhed part, and in the time of action was left in ſome meaſure to purſue the dictates of his own bravery or prudence; ſo that a battle conſiſted of little more than the random combats of ſuch particular warriors as were led by inclination or accident to oppoſe one another. The natural conſequence of ſuch a ſituation was to produce a keen emulation between the individuals of the ſame party, as well as a ſtated oppoſition, and often

often a violent animoſity, between thoſe of different parties. In a long courſe of hoſtilities, the ſame perſons were often led to encounter each other; and having fought (perhaps on different occaſions) with various ſucceſs, were at length excited by a mutual challenge to a comparative trial of their ſtrength, courage, or ſkill. By repeated ſtruggles of this nature a continual jealouſy was kept up between the members of different families, who in proſecuting their quarrels became no leſs eager to ſupport their military character, and to avenge any inſult or indignity, than to defend their poſſeſſions.

The private wars between different families, which gave riſe to mutual emulation and jealouſy, as well as to violent animoſity and reſentment, continued in Europe for many centuries, notwithſtanding that ſome improvements were made by the people in the common arts and modes of living. To aſſaſſinate thoſe from whom great provocation had been received was, among the primitive conquerors of the Roman empire, a method of revenge purſued without ſcruple, and beheld without cenſure. By degrees however the love of military glory prevailed over the gratification of reſentment, and thoſe who aimed at maintaining the rank of gentlemen became aſhamed of taking an unfair advantage of an enemy, which might imply a confeſſion of inferiority in proweſs; but thought it incumbent upon them, whatever was the quarrel, to invite him to an open conteſt, in which the ſuperiority might be decided upon equal terms. Thus the practice of *duelling*, the moſt refined ſpecies of private vengeance, was rendered more and more faſhionable; and in every country of Europe, according to its progreſs from barbariſm, aſſaſſination became leſs frequent, and was held in greater deteſtation. In Spain and Portugal, the leaſt improved of thoſe countries, it never has been completely

pletely extirpated; and the inhabitants have not yet attained that refinement of the feudal manners, which the reſt of Europe, from a ſtill higher pitch of improvement, are now ſeeking to lay aſide.

So far was the government from reſtraining the cuſtom of duelling, that the efforts of the civil magiſtrate tended rather to encourage it. Thoſe who had ſuſtained an affront thought it diſhonourable to apply for redreſs to a court of juſtice; but when a diſpute had ariſen in matters of property, and had become the ſubject of a law-ſuit, it frequently happened, that in the courſe of the debate the parties, by their proud and inſolent behaviour, affronted each other; which made them withdraw their cauſe from the court, in order to determine it by the ſword; the judge was unable to prevent this determination, but he endeavoured to diminiſh the bad conſequences that might ariſe from it. By regulating the forms of the encounter, and ſuperintending the ceremonies with which it was conducted, he availed himſelf of the punctilios of honour which faſhion had eſtabliſhed, and reſtrained the friends of either party from interfering in the quarrel. Hence the *judicial combat*, which has been erroneouſly conſidered by ſome as the origin of duelling, but which undoubtedly tended to ſupport and extend the practice, by giving it the ſanction of public authority. It has, accordingly, been obſerved, that as, in a judicial controverſy, the moſt common provocation conſiſted in the parties contradicting each other in point of fact; ſo *giving the lye* has become that ſort of offence, on account of which cuſtom has rendered it moſt indiſpenſably neceſſary to require *ſatisfaction* by fighting.

The inſtitutions of *chivalry*, and the *jouſts* and *tournaments*, were the natural appendages of the cuſtom of duelling, or rather of that ſtate of manners which gave riſe to it.

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In the battles of the feudal ages, men of opulence and rank enjoyed many advantages over the common people, by their fighting on horſeback, by the ſuperior weapons and armour which they made uſe of, and above all, by that ſkill and dexterity which they had leiſure to acquire. To improve theſe advantages was the great object of the gentry, who from their early years devoted themſelves to the profeſſion of arms, and generally became attached to ſome perſon of experience and reputation, by whom they were trained up and inſtructed, not only in the ſeveral branches of the military exerciſe, but in all thoſe qualifications that were thought ſuitable to their condition. To encourage theſe laudable purſuits, a mark of diſtinction was beſtowed upon ſuch as had gone through a complete courſe of military education, and they were admitted, with peculiar ceremonies, to the honour of knighthood: from which their proficiency in the art of war, and in the virtues and accompliſhments connected with that employment, were underſtood to be publickly aſcertained and acknowledged.

Among the multitude of knights belonging to every country, who became profeſſed candidates for fame, and upon that account rivals to one another, military ſports, that afforded an opportunity of diſplaying thoſe talents upon which the character of every gentleman chiefly depended, were of courſe the favourite entertainments. All theſe became the ordinary paſtime among private perſons, ſo they were exhibited, on particular occaſions, by princes and men of high rank, with great pomp and ſolemnity. The *tournaments* were the greater and more public exhibitions, the *jouſts* were thoſe of an inferior and private nature; to both of which all who enjoyed the dignity of knighthood were made welcome: they were alſo invited to that *round table*, at which the maſter of the ceremony enter-

tained his company, and of which the figure is ſaid to have been contrived on purpoſe to avoid any diſpute concerning the precedence of his gueſts.

Theſe public ſpectacles were begun in France under the kings of the ſecond race; and were thence, by imitation, introduced into the other countries of Europe. They are ſaid to have been firſt known in England, during the reign of Stephen, and to have been rendered common in that of Richard the Firſt.

There can be no doubt that theſe inſtitutions and practices, by which badges of diſtinction were given to military eminence, and by which numbers of individuals were brought to contend for the prize of ſkill and valour, would contribute to ſwell and diffuſe the idea of perſonal dignity by which they were already elated, and to inflame that mutual jealouſy by which they were ſet in oppoſition to one another. The ſame opinions and ſentiments acquired additional force from thoſe extraordinary enterpriſes in which the people of different European countries were accidentally combined againſt a common enemy; as in the wars between the Moors and Chriſtians, and in the expeditions undertaken by the latter for the purpoſe of reſcuing the holy ſepulchre from the hands of infidels. The competition ariſing on thoſe occaſions among the numerous warriors collected in the ſame army, was daily productive of new refinements upon the military ſpirit of the times, and contributed to multiply and eſtabliſh the forms and ceremonies which, in every diſpute of honour, were held indiſpenſably neceſſary.

From theſe cauſes the cuſtom of duelling has become ſo deeply rooted as, notwithſtanding a total change of manners and circumſtances, to maintain its ground in moſt of the countries of Europe; and the effect of later improvements has only been to ſoften and render more harmleſs a relict of ancient

cient barbarity, which they could not deſtroy. In England, where the lower ranks of men enjoy a degree of conſideration little known in other countries, the military ſpirit of the gentry has even deſcended to the common people, as appears from the cuſtom of *boxing* peculiar to the Engliſh; by which they decide their quarrels according to ſuch punctilios of honour as are dictated by the pure and genuine principles of chivalry.

In other ages and countries there is perhaps no inſtance of any people whoſe ſituation could lead them to entertain the ſame notions of military dignity which have been diſplayed by the modern inhabitants of Europe. The independent families or tribes of ſhepherds, in Tartary or in other parts of the world, have ſeldom occaſion to reſide ſo long in the ſame neighbourhood as to create a ſtated oppoſition and jealouſy between their different members. The nations of huſbandmen, upon the Southern coaſt of Africa, and in ſeveral parts of Aſia, who have in ſome degree adopted the feudal policy, are too little advanced in civilization to admit of any refinement in their methods of execuſing revenge. In thoſe ancient ſtates that were moſt addicted to war, as in Rome and Sparta, the people were early brought under the authority of government, ſo as effectually to prevent the exerciſe of private hoſtilities. A Roman or a Spartan, therefore, was never under the neceſſity of ſupporting his military dignity, in oppoſition to his own countrymen; but was conſtantly employed in maintaining the glory of his country, in oppoſition to that of its enemies. The prejudices and habits acquired in ſuch a ſituation were all of a patriotic nature. The pride or vanity of individuals was exerted in acts of public ſpirit, not in private animoſities and diſputes.

M. Voltaire imagines that the practice of duelling, in modern Europe, has ariſen from the cuſ-

tom, among the inhabitants, of wearing a ſword, as an ordinary part of dreſs; but the ancient Greeks, as we learn from Thucidides, were, at an early period, accuſtomed to go armed; and there is ground to believe that the ſame cuſtom has prevailed in all barbarous countries, where the people found themſelves continually expoſed to danger. The continuance of this practice in Europe longer than in other countries appears to be the effect, not the cauſe of duelling; or rather it is the effect of that peculiar direction given to the military ſpirit, of which duelling is the natural attendant.

5. The ſame ſituation produced the romantic love and gallantry by which the age of chivalry was no leſs diſtinguiſhed than by its peculiar notions of military honour.

The appetite of the ſexes, which, in the greater part of animals, nature has, for wiſe purpoſes, connected with exquiſite pleaſure, is in the human ſpecies productive of ſentiments and affections, which are of great conſequence to the general intercourſe of ſociety, as well as to the happineſs of individuals. Theſe two ſources of enjoyment, though in reality inſeparable, and though the latter is ultimately derived from the former, are not always increaſed and refined by the ſame circumſtances. The mere animal inſtinct ſeems to be ſtrengthened by every circumſtance that gives occaſion to habits of indulgence; but the peculiar paſſions that nature has grafted on this enjoyment appear on the contrary to be raiſed to the higheſt pitch, by the difficulty attending their gratification; which, as it fixes the imagination upon the ſame object, has a tendency to exalt its value, and to debaſe that of every other in proportion.

In the ages of poverty and barbariſm, mankind are commonly too much occupied in purſuit of mere neceſſaries, to pay much regard to the intercourſe of the ſexes; and their ſimple deſires with

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relation to this point being eaſily gratified as ſoon as they ariſe, are not likely to ſettle with much predilection or preference upon any particular perſon.

The firſt great improvements that are made in any country, with reſpect to the means of ſubſiſtence, being calculated to multiply the comforts and conveniencies of life, enable the inhabitants to extend the circle of their pleaſures, and to refine upon every enjoyment which their ſituation affords; the pleaſures of ſex become therefore an object of greater attention, and being carried to a higher degree of refinement, are productive of more variety in the taſte and inclination of different perſons; by which they are often diſappointed in the attainment of their wiſhes, and their paſſions are proportionably inflamed. The introduction of property, which, being accumulated in different proportions, becomes the foundation of correſponding diſtinctions of rank, is at the ſame time the ſource of additional reſtraints upon the free commerce of the ſexes. By the innumerable pretenſions to dignity and importance, derived from the vanity of opulence, or the pride of family, individuals have often to ſurmount a variety of obſtacles in order to gratify their paſſions; and in contracting what is accounted an unſuitable alliance, they are commonly checked and controuled, not only by the watchful interpoſition of their relations, but ſtill more by the rules of propriety and decorum, which cuſtom, in conformity to the ſtate of ſociety, has univerſally eſtabliſhed.

The effect of great wealth and luxury, in a poliſhed nation, is on the other hand to create an immoderate purſuit of ſenſual pleaſure, and to produce habits of exceſſive indulgence in ſuch gratifications. In ſuch a ſituation particular attachments are apt to be loſt in the general propenſity; and the correſpondence of the ſexes becomes in a great meaſure

ſure ſubſervient to voluptuouſneſs, or to the purpoſes merely of elegant amuſement.

The paſſion of love, therefore, is likely to attain the higheſt degree of refinement in a ſtate of ſociety equally removed from the extremes of barbariſm and of luxury.

The nations formed in the Weſtern part of Europe, upon the downfall of the Roman empire appear to have continued for many centuries in that condition. They were poſſeſſed of ſuch opulence, and of ſuch improvements in ſociety, as to ſtamp ſome value upon the pleaſures of ſex, without creating much incitement to debauchery. Their diſtinctions of rank, ariſing from the very unequal diſtribution of property, and the mutual apprehenſion and jealouſy which a long courſe of private hoſtilities had introduced among different families, occaſioned, at the ſame time, in their whole correſpondence, a degree of caution and diſtruſt unknown in other ages and countries. The women of every family, as well as the men, were taught to over-rate their own dignity, and to look upon it as diſgraceful to give any encouragement to a lover, whoſe rank and worth did not entitle him to a preference in the opinion of the world, and in that of her own prejudiced relations.

As no man in that age was allowed to claim any merit, unleſs he had acquired a military reputation, the warrior who had been inſpired with a youthful inclination could not expect any marks of regard, far leſs a return of affection, without ſignalizing his fortitude and proweſs, by encountering a variety of hardſhips and dangers. Before he had in this manner deſerved the favour of his miſtreſs, it was held inconſiſtent with her character to divulge any impreſſion ſhe had received to his advantage; and the laws of delicacy required that ſhe ſhould behave to him on all occaſions with diſtance and reſerve, if not with inſolence and ſcorn. By the delays,

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the diſappointments, the uncertainty of ſucceſs, to which he was thus expoſed, his thoughts were long engroſſed by that favourite object; and the ardours of a natural appetite were at length exalted into a violent paſſion.

The romantic love, peculiar to the ages of chivalry, was readily united with the high ſentiments of military honour, and they ſeem to have mutually promoted each other. An accompliſhed character in thoſe times required not only the moſt undaunted courage and reſolution, ſupported by great generoſity, and a contempt of every ſordid intereſt, but alſo the moſt reſpectful regard and reverence for the ladies, together with a ſincere and faithful paſſion for ſome individual. Perſons poſſeſſed of theſe accompliſhments, or who deſired the reputation of poſſeſſing them, devoted themſelves to the particular profeſſion of protecting the feeble, of relieving the diſtreſſed, of humbling and reſtraining the inſolent oppreſſor. Not content with ordinary occaſions of acquiring diſtinction, there were ſome who thought it neceſſary to travel from place to place, with the avowed purpoſe of redreſſing grievances, and of puniſhing the injuries to which, from the diſorderly ſtate of the country, the unwarlike and defenceleſs, but eſpecially the female ſex, were daily ſubjected.

It happened in thoſe times, as it naturally happens wherever mankind have been directed by faſhion to admire any particular ſort of excellence, that the deſire of imitating the great and gallant actions of heroes and lovers, was often diſfigured and rendered ridiculous by affectation, and became productive of artificial and fantaſtic manners. The knight-errant, who found no real abuſes to combat, endeavoured to procure diſtinction by adventures of no utility, and which had no other merit but the danger attending them, as he who had never felt a real paſſion, tortured his mind with one merely

merely imaginary, complained of rigours that he had never met with, and entered the liſt, to maintain that ſuperior beauty and merit which he had never beheld.

It is unneceſſary to remark, that theſe inſtitutions and cuſtoms, and the circumſtances from which they proceeded, were peculiarly unfavourable to trade and manufactures. The Saxons in England, as well as the other nations who ſettled about the ſame time upon the Weſtern continent of Europe, though immediately after their ſettlement they had been excited to a conſiderable improvement in agriculture, and in ſome of the common arts of life, remained afterwards for ages in that hoſtile and turbulent ſtate which gave little room or encouragement for the exerciſe of peaceable occupations. The manners introduced into thoſe countries in early times being thus confirmed by long uſage, have become proportionably permanent, and notwithſtanding the changes of a ſubſequent period, have left innumerable traces of their former exiſtence.

CHAP.

CHAP. V.

The State of Property, and the different Ranks and Orders of Men, produced by the Settlement of the Saxons in Britain.

THE diſtribution of property among any people is the principal circumſtance that contributes to reduce them under civil government, and to determine the form of their political conſtitution. The poor are naturally dependent upon the rich, from whom they derive ſubſiſtence; and, according to the accidental differences of wealth poſſeſſed by individuals, a ſubordination of ranks is gradually introduced, and different degrees of power and authority are aſſumed without oppoſition, by particular perſons, or beſtowed upon them by the general voice of the ſociety.

The progreſs of the Saxon arms in Britain produced an appropriation of land and moveables, by all the free members of the community. Every warrior conſidered himſelf as entitled to a ſhare of the ſpoil acquired by the conqueſt; and obtained a number of captives, and a landed territory, proportioned to his valour and activity, or to the ſervices which he had performed. It is probable that the ſeveral conquering parties were ſeldom at the trouble of making a formal diviſion of their acquiſitions, but commonly permitted each individual to enjoy the booty which he had ſeized in war, and to become maſter of ſuch a quantity of land, as by means of his captives, and the other members of his family, he was enabled to occupy and to manage. Such of the ancient inhabitants, on the other hand, as remained in the country, and had

had preſerved their liberty, were in all probability underſtood to retain the property of theſe eſtates of which they had been able to maintain the poſſeſſion.

There is good reaſon to believe that, for ſome time after the ſettlement of thoſe barbarians in England, the landed eſtates acquired by individuals were generally of ſmall extent. The Saxons were among the pooreſt and the rudeſt of the German nations who invaded the Roman empire; and Britain was, on the other hand, one of the leaſt cultivated of all its provinces; at the ſame time that the progreſs of the conquerors in the appropriation of land (which from theſe cauſes muſt have been proportionably ſlow and gradual) was further obſtructed by the vigorous oppoſition of the natives, who ſeem to have diſputed every inch of ground with their enemies.

We accordingly find that, from the beginning of the Anglo-Saxon government, the land was divided into *hides*, each comprehending what could be cultivated by a ſingle plough. This, among a ſimple people, becomes a natural boundary to the poſſeſſion of thoſe who live in the ſame houſe, and are jointly at the expence of procuring that uſeful but complicated inſtrument of huſbandry. The general eſtimation of the Anglo-Saxon lands, according to this inaccurate meaſure, points out ſufficiently the original circumſtance which regulated the extent of the greater part of eſtates. When, by the progreſs of cultivation, and by future ſucceſſes in war, the landed property of individuals was increaſed, the ancient ſtandard of computation remained; and the largeſt eſtates, by comparing them with the ſmalleſt, were rated according to the number of *hides* which they contained *

* See Spelm. Gloſſ. v. *Hyda*.

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While the eſtates poſſeſſed by the Anglo-Saxons were ſmall, they were cultivated under the immediate inſpection of the owner, his kindred or ſervants, who lived in his own houſe, and were fed at his table. But when the territory acquired by any perſon became too extenſive, and the members of his family became too numerous, to render this mode of living any longer convenient, a part of his land was parcelled out into different farms, and committed to the management of particular bond-men, from whom, at the end of the year, he required an account of the produce. A part of any great eſtate came likewiſe to be occupied by the kindred and free retainers of the proprietor, to whom, in return for that military ſervice which they undertook to perform, he aſſigned portions of land for a maintenance.

Hence the diſtinction between what the Saxons called *in-land*, and *out-land*: the former was what lay next the manſion-houſe of the owner, and was retained in his own hands; the latter, which lay at a greater diſtance, was in the poſſeſſion and management either of his retainers or ſervants *.

The *out-land* of every opulent perſon came thus to be poſſeſſed by two different ſorts of people; the bond-men, who laboured their farms for the benefit of their maſter, and thoſe freemen (moſt commonly his kindred) who had become bound to follow him in war, and upon that condition were entitled to draw the full produce of their poſſeſſions. The former have been called *villeins*, the latter vaſſals.

Conſidering the right of the latter to the lands which they poſſeſſed, in contradiſtinction to that of the perſon from whom they derived their poſſeſſion, the landed eſtates of the Anglo-Saxons have been divided into *allodial* and *feudal*. The allodial eſtates were thoſe of every independent proprietor;

* See Spelman on Feuds and Tenures by Knight-ſervice, ch. 5.

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over theſe the owner enjoyed a full dominion, and he had a right to alienate or diſpoſe of them at pleaſure; upon the death of a proprietor, they deſcended to his heirs, according to certain rules of ſucceſſion which cuſtom had introduced, and they were not burdened with ſervice of any kind in favour of a ſuperior.

The feudal eſtates were thoſe poſſeſſed by vaſſals upon condition of military or other ſervices; theſe were held originally during the pleaſure of the ſuperior, though it appears that cuſtom had early ſecured the poſſeſſion of the vaſſal for a limited time. When he had ploughed and ſowed his ground, it was thought equitable that he ſhould be allowed to reap the crop ariſing from his labour and expence. Thus a year came ſoon to be acknowledged as the ſhorteſt period, upon the concluſion of which he might be deprived of his poſſeſſion. Even after this period it was not likely that a ſuperior would think of putting away his relations and ancient retainers, with whoſe perſonal attachment he was well acquainted, and of whoſe valour and fidelity he had probably been a witneſs. The poſſeſſions, therefore, of the greater part of the vaſſals, though not confirmed by any poſitive bargain, with reſpect to the term of their continuance, were in fact uſually retained for life; and even upon the death of the poſſeſſor were frequently enjoyed by his poſterity, whom, out of affection to the anceſtor, the ſuperior commonly preferred to a ſtranger, or to any diſtant relation. When the lands of a vaſſal had, by a poſitive bargain, been only ſecured to him for life, or for a limited period, they were called *benefices* *.

The differences which I have mentioned in the condition of eſtates, gave riſe, moſt probably, to the celebrated diſtinction of *boc-land* and *folc-land*,

* V. Feud. Conſuet. lib. i. tit. i. § 1. 2.

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The former, comprehending the eſtates of the nobler ſort, was *allodial*, and being held in abſolute property, was conveyed by a deed in writing; the latter was the land poſſeſſed by people of inferior condition, who having no right of property, but holding their poſſeſſions merely as tenants, for payment of rents or ſervices, did not obtain any written title for aſcertaining their rights *.

It may be remarked that *boc-land* might belong either to the king or to a ſubject; and that it implied no obligation to feudal ſervices, in the latter caſe, more than in the former. It is true that ſubjects who enjoyed *boc-land* were bound to defend the kingdom from enemies by ſea or land, and to build or repair bridges and caſtles †; but theſe ſervices they owed to the public as citizens, not to the king as vaſſals. Theſe were duties impoſed by a general law of the kingdom, and which were laid upon the poſſeſſors of *folc-land* as well as *boc-land*, upon the clergy as well as the laity, in ſhort, upon all the free members of the community ‡.

Such was the original ſtate of property in the Anglo-Saxon government; from the conſideration of which, together with the early circumſtances and manners of the nation, the inhabitants, excluſive of the ſovereign, may be diſtinguiſhed into three different ranks or orders.

1. The firſt and moſt conſpicuous was that of the military people. It is probable that for ſome time after the ſettlement of the Saxons in England, this comprehended all the free men of the nation. The general character of thoſe adventurers, and the views with which they invaded Britain, were ſuch as diſpoſed every man, who had the direction of his own conduct, to become a ſoldier, and to engage in every enterprize by which

* Spelm. on Feuds and Tenures by Knight-ſervice, chap. 5.
† *Expedition*, *Burghbote*, and *Brigbote*.
‡ See Spelman on Feuds and Tenures by Knight-ſervice, ch. 8. 9. 10. 11.

either

either plunder or reputation might be procured. Theſe warriors, who in general were denominated *thanes*, came ſoon to be arranged in two claſſes; the one conſiſting of thoſe heads of families who had acquired allodial property; the other of ſuch retainers as held lands, by a military tenure, either of the king, or of any other allodial proprietor. Both theſe claſſes of people were accounted gentlemen, and were underſtood to be of the ſame rank, in as much as they exerciſed the honourable profeſſion of arms; though in point of influence and power there was the greateſt diſparity, the vaſſals being almoſt intirely dependent upon their ſuperior. The ſoldiers of this lower claſs appear to have received the appellation of *leſs* or *inferior thanes* *.

2. The peaſants compoſed a ſecond order, greatly inferior in rank to the thanes of either claſs. They appear to have conſiſted chiefly of ſuch perſons as had been reduced into captivity during the long wars between the Britons and the Saxons, and had afterwards been entruſted by their maſters with the management of particular farms; they were called *ceorls*, *carles*, or *churles*. Some of them, no doubt, were kept in the houſe of their maſter, and employed in cultivating the land in his own poſſeſſion; but the greater number were uſually ſent to a diſtance, and placed, as it happened to be convenient, upon different parts of his eſtate. The former being under his eye, and acting on all occaſions from his orders, remained for a long time in their primitive ſervile condition; the latter, on the contrary, being withdrawn from his immediate inſpection, had neceſſarily more truſt and confidence repoſed in them, and were thence enabled, with ſome degree of rapidity, to improve their circumſtances. From their diſtance, the maſter was obliged to relinquiſh all thoughts of compelling

* Spelman, in the Treatiſe above quoted.

them

them to labour, by means of perſonal chaſtiſement; and as, from the nature of their employment, he could hardly judge of their diligence, otherwiſe than by their ſucceſs, he ſoon found it expedient to bribe their induſtry, by giving them a reward in proportion to the crop which they produced. They were thus allowed to acquire property; and their condition became ſimilar, in every reſpect, to that of the *adſcripti glebæ* among the ancient Romans, to that of the preſent colliers and ſalters in Scotland, or of the bondmen employed in the mines in ſeveral parts of Europe. In this ſituation ſome of them, by induſtry and frugality, found means to accumulate ſo much wealth, as enabled them to ſtock their own farms, and become bound to pay a certain yearly rent to the maſter.

It muſt be acknowledged, the writers upon Saxon antiquities have generally ſuppoſed that the *ceorls* were never in a ſervile condition; that from the beginning they were free tenants, forming a diſtinct claſs of people, and holding an intermediate rank between the villeins or bondmen, and thoſe who followed the military profeſſion. But this ſuppoſition, ſo far as I know, is made without any ſhadow of proof: it probably took its riſe from obſerving that the free tenants, towards the end of the Anglo-Saxon government, were very numerous, without attending to the circumſtances from which they obtained their freedom. It is not likely, however, that in ſo rude and warlike an age any ſet of men, who had been debaſed by ſervitude, and reſtrained by their condition, would attach themſelves wholly to agriculture, and be either unfit for war, or unwilling to engage in it. If the *ceorls* had not been originally in ſome degree of bondage, they would undoubtedly have been warriors; and we accordingly find that when, from the circumſtances above mentioned, they had afterwards

wards acquired conſiderable privileges, they were advanced to the rank and employment of thanes.

Though the peaſants were chiefly employed in agriculture, they were ſometimes engaged in other branches of labour, as a collateral profeſſion. From the poverty and rudeneſs of the country, for ſome time after the ſettlement of the Saxons in Britain, it may eaſily be imagined that little encouragement was given to mechanical arts, and that artificers and tradeſmen were not of ſufficient conſequence to become a ſeparate order in the community. Some mechanics, even in that ſimple age, were doubtleſs neceſſary to procure the ordinary accommodations of life, but the demand for their work was too narrow to occupy the ſole attention of any individual. Such of the bondmen as had attained a peculiar dexterity in performing any branch of manual labour, were naturally employed by the maſter in the exerciſe of it, and thus were led, by degrees to make ſome proficiency in particular occupations. But they were not hindered by theſe employments from cultivating the ground; and they obtained a maintenance in the ſame manner with the other peaſants, either by living in the houſe of their maſter, or by the poſſeſſion of ſeparate farms upon his eſtate. As theſe mechanical employments were accounted more unwarlike and contemptible than the exerciſe of huſbandry, there was yet leſs probability that any freeman would be willing to engage in them.

3. A third order of men, who in this period of the Engliſh hiſtory became more and more diſtinguiſhed, was that of the clergy. The numerous body of church-men introduced by the Chriſtian religion, eſpecially in the Weſtern part of Europe, the extenſive power and authority which they gradually acquired, together with the peculiar views and motives by which they were actuated, amidſt the diſorder and barbariſm of the feudal times, are

circumſtances

circumſtances of ſo much magnitude, as to deſerve particular attention in tracing any modern ſyſtem of European policy. A few remarks, however, concerning the nature and origin of eccleſiaſtical juriſdiction, and the primitive government of the Chriſtian church, will be ſufficient, upon a ſubject that has been ſo often and ſo fully examined.

SECT. I. *Of the chief Regulations attending the Eſtabliſhment of Chriſtianity in the Roman Empire, and in the modern Kingdoms of Europe.*

After the Chriſtian religion had been extended over a great part of the Roman dominions, it was at laſt, in the reign of Conſtantine, taken under the protection of government, and obtained the ſanction of public authority. The uniformity of circumſtances attending the introduction of this new religion, produced throughout the whole empire an uniform ſet of eccleſiaſtical regulations.

In every province, religious teachers had taken up their reſidence wherever they met with encouragement; and the country was, by degrees, divided into ſmall diſtricts, or pariſhes, in each of which a particular clergyman had gained an eſtabliſhment.

As the inhabitants of a pariſh were accuſtomed to aſſemble at ſtated times for public worſhip, and were by that means united in a religious ſociety, ſo the zeal with which they were animated in ſupport of their religion diſpoſed them to inſpect the conduct and theological opinions of all their members. For the regulation of theſe, and of all their common affairs, the heads of families, belonging to every congregation, frequently held meetings,

in which their paſtor was naturally allowed to preſide, and gradually obtained the chief direction of their meaſures. Even in ſecular matters, the people were diſpoſed to be guided by his judgment; and when a controverſy had ariſen between individuals, he was eſteemed the moſt proper perſon to compoſe the difference; which was therefore moſt commonly referred by the parties to his determination.

The advancement of Chriſtianity opened a communication between the profeſſors of this religion belonging to different pariſhes, who in like manner were accuſtomed to deliberate upon their common religious concerns. Some particular clergyman became the ordinary preſident in thoſe caſes; and upon that account acquiring ſuperior conſideration and rank, was at length exalted to be ſuperintendant, or biſhop, of a large diſtrict or dioceſe. When theſe dioceſan meetings were greatly multiplied, the attendance of the laity being found inconvenient, and appearing to them of leſs conſequence, was gradually neglected, ſo that the buſineſs came to remain entirely in the hands of the clergy.

The miniſter of every pariſh was at firſt maintained by the occaſional bounty of thoſe who reaped the benefit of his inſtructions; and ſuch was the attachment of the primitive Chriſtians to their teachers, and to one another, that they chearfully made contributions not only for that purpoſe, but alſo for the maintenance of their poor. In the declining ſtate of Rome, when the decay of knowledge, by infuſing a ſtrong leaven of ſuperſtition, had corrupted the purity of the Chriſtian religion, the clergy found means to obtain a more independent revenue, by perſuading perſons upon their death-bed to make donations to the church, in order to atone for their offences. In the reign of the emperor Conſtantine, when Chriſtianity became

came the eſtabliſhed religion of the empire, teſtamentary bequeſts in favour of ſocieties, which had formerly been prohibited by the Roman law, came to be permitted without controul; and from this time the faſhion of leaving legacies to the church for pious uſes became ſo univerſal, that the clergy were enabled to accumulate large eſtates, both in moveables and land.

The management of theſe eſtates, as of all other matters concerning religion, was naturally devolved upon the clergy of every dioceſe, who aſſumed a diſcretionary power of diſtributing the produce in ſuch a manner as they thought moſt expedient, or moſt conformable to the purpoſe of the donors. As the biſhop, however, acquired more influence in eccleſiaſtical meetings, he was in a capacity of appropriating to his own uſe a greater ſhare of that revenue which fell under their diſpoſal. His dignity became more conſpicuous; and for ſupporting it a ſuitable eſtate was deemed neceſſary. His cathedral was enlarged and rendered more magnificent, a more pompous form of worſhip was introduced into it, and a number of clergymen were appointed to aſſiſt in the religious ſervices, or other branches of duty, that were ſuppoſed to belong to his department.

The riſe of a biſhop over the clergy of his dioceſe may be compared to that of a rude chief over the members of his tribe; as in both caſes a ſuperiority of ſtation, derived from perſonal qualities, put it in the power of a ſingle perſon to acquire ſuperior wealth, and thence to become the permanent head or leader of a ſociety: but the original pre-eminence of the chief aroſe from his military talents, that of the biſhop, from the veneration paid to the ſanctity of his character and profeſſion. This makes the only difference in the nature of their advancement.

While thoſe who had the direction of religious matters were thus advancing in opulence and power, there aroſe a new ſet of fanatics, who divided the eſteem and admiration of the people, and were at length admitted into the clerical profeſſion.

The eroneous notions entertained in the dark ages, concerning the Supreme Being; the ſuppoſition that he is actuated by anger and reſentment, in a literal ſenſe, againſt thoſe who tranſgreſs his laws, and that theſe paſſions are to be gratified by the mere ſuffering of his creatures; ſuggeſted to perſons impreſſed with a ſtrong feeling of their own guilt, and tortured upon that account with ſorrow and remorſe, the idea of ſubmitting to voluntary pennances, in order to appeaſe an offended Deity, and to avert that future puniſhment which they were conſcious of having deſerved. From views of this kind, particular perſons became diſpoſed to retire from the world, and to deny themſelves almoſt all the comforts and enjoyments of life; ſocieties were afterwards formed, who expreſsly bound themſelves not only to ſubmit to actual puniſhments, but to renounce all thoſe pleaſures and gratifications to which mankind have the greateſt propenſity; and who for this purpoſe came under the vows of poverty, of chaſtity, and of obedience to the rules of their community. As Chriſtianity took a firmer hold of the mind than any of the religions which had been formerly eſtabliſhed, this perverſion of its doctrines was attended with conſequences proportionably more extenſive.

Theſe miſguided votaries to mortification being originally poor, were ſupported either by alms or by their manual labour; but their exemplary lives, and the auſterities which they practiſed, having excited univerſal admiration, enabled them to follow the example of the ſecular clergy, by procuring donations from the people; and hence, notwithſtanding the poverty ſtill profeſſed by individuals, their

ſocieties

ſocieties acquired the poſſeſſion of great riches. The members of theſe communities were by degrees admitted into holy orders; and became no leſs inſtrumental in promoting the influence of the church, than in communicating religious inſtruction.

As the affairs of a dioceſe had fallen under the chief direction of a biſhop, thoſe of a monaſtery were conducted by an *abbot*, who preſided in the meetings of the ſociety; and who, by obtaining authority in conſequence of that diſtinction, was at length permitted to aſſume the diſtribution and diſpoſal of their property.

Although the authority and juriſdiction of the church in this early period of Chriſtianity, and the ſubordination among different ranks of churchmen, proceeded in good meaſure from the nature of the buſineſs committed to their care, and the influence derived from their profeſſion, yet the general fabric of eccleſiaſtical government was likewiſe a good deal affected by the political circumſtances of the Roman empire. The perſon exalted to the head of a dioceſe was very often the miniſter of the moſt conſiderable town of that diſtrict, who from the greater weight and importance of his flock enjoyed a proportionable conſideration among his brethren of the clergy. As by the civil policy of the empire many of theſe diſtricts were united in what, according to the later diviſion of the country, was called a *province*, the clergy of this larger territory were led frequently to hold provincial ſynods, in which the biſhop of the capital city, acquiring reſpect from his reſidence near the ſeat of government, became the regular preſident, and was thence exalted to the dignity and title of a *metropolitan* or *archbiſhop*. In the yet more extenſive diviſions of the empire, which were called *juriſdictions*, the clergy were induced, upon ſome occaſions, to deliberate; and in thoſe greater meetings

ings the right of preſiding was claimed by the biſhop, who reſided in the ſame city with the governor of each reſpective *juriſdiction*. Hence there aroſe a ſtill ſuperior rank in the church, that of an *exarch* or *patriarch*, who obtained certain prerogatives over the clergy of that great diviſion. Of all the patriarchs in Chriſtendom thoſe of Rome and Conſtantinople, the two great capitals of the empire, became ſoon the moſt diſtinguiſhed, the former of which enjoyed a pre-eminence over all the clergy in the Weſtern, the latter over thoſe in the Eaſtern provinces.

Upon the conqueſt of the Weſtern empire by the barbarous nations, the ancient inhabitants, who had for a long time been declining in arts and knowledge, experienced at once a violent change of ſituation, and were ſuddenly plunged into the darkneſs and barbariſm of their conquerors. As thoſe conquerors, however, embraced the Chriſtian religion, they ſubmitted implicitly to the diſcipline of the church, and to all the forms of eccleſiaſtical government which they had found eſtabliſhed. The Roman clergy, therefore, remained upon their former footing, and were far from loſing any of their former privileges; they even endeavoured, amidſt the general deſtruction of ſcience, to preſerve a degree of that literature which, in order to propagate and defend the tenets of their religion, they had been under the neceſſity of acquiring, and which was the great ſupport of their influence and popularity. With this view, and for the inſtruction of the people, more eſpecially of thoſe that were to be admitted into holy orders, they erected ſchools in their cathedrals and monaſteries, and thence laid the foundation of thoſe communities poſſeſſed of eccleſiaſtical powers and privileges which have received the excluſive appellation of *colleges*.

From

From theſe two circumſtances, from the groſs ignorance and the conſequent ſuperſtition of the people, and from the comparative knowledge and abilities of the clergy, the latter were enabled to reap the utmoſt advantage from their ſituation, and to acquire an almoſt unlimited aſcendency over the former. Hence the doctrines of the church concerning her influence in the remiſſion of ſins, and concerning the diſtribution of rewards and puniſhments in a future ſtate, came to be modelled in ſuch a manner as was plainly calculated to promote her temporal intereſt. From this period, therefore, the donations of land to the church were greatly encreaſed, and the biſhops, abbots, and other dignified clergymen, who reaped the chief advantage from theſe benefactions, became poſſeſſed of eſtates, which enabled them in ſome degree to rival the greater thanes of the country. From the ſame cauſes the contributions made by every congregation for the ſupport of their miniſter, were gradually augmented: to augment theſe contributions, and to render them permanent, the church employed the utmoſt addreſs and influence of all her members. What was at firſt a voluntary offering came afterwards, by the force of cuſtom, to be regarded as a duty. Having gradually raiſed this taxation higher and higher, the clergy, after the example of the Jewiſh prieſts, demanded at length a tenth part of the annual produce of land, as due to them by divine appointment. Not contented with this, they in ſome places inſiſted upon the ſame proportion of the annual induſtry; and it came to be maintained, that they had even a right to the tenth part of the alms given to beggars, as well as of the hire earned by common proſtitutes in the exerciſe of their profeſſion*. To inforce the obligation of ſubmitting to theſe monſtrous exactions, was for a

* F. Paul's Hiſtory of Benefices.

long

long time, it is ſaid, the great aim of thoſe diſcourſes which reſounded from every pulpit, and of the pious exhortations delivered by each ghoſtly father in private. The right of levying *tythes*, which was firſt eſtabliſhed in France, and which afterwards made its way through all the Weſtern parts of Chriſtendom, created to the church a revenue of no leſs value than what ſhe derived from her landed poſſeſſions*. The tythes of every pariſh were collected by its own miniſter, but a large proportion of thoſe duties came to be demanded from the inferior clergy by the biſhop of the dioceſe.

When the provinces of the Weſtern empire were broken into a number of independent kingdoms, it might have been expected that the church eſtabliſhment in thoſe countries would experience a ſimilar revolution, and that the clergy of every ſeparate kingdom, being detached from thoſe of every other, would form a ſeparate eccleſiaſtical ſyſtem. It is not difficult, however, to diſcover the circumſtances which prevented ſuch a ſeparation: and which, notwithſtanding the various oppoſitions of civil government, united the churches of all the Weſtern countries of Europe in one great eccleſiaſtical monarchy.

The patriarchs of Rome and Conſtantinople, of whom the one, as has been already obſerved, became the head of the Weſtern, and the other of the Eaſtern part of Chriſtendom, were in a different ſituation with reſpect to the eſtabliſhment of their power and dignity. The patriarch of Conſtantinople, from his connection with the principal ſeat of government, appears for ſome time to have been exalted above his Weſtern rival, and to have enjoyed ſuperior authority. But after he had attained a certain pitch of exaltation, the very circum-

* The council of Maſcon, in 585, excommunicated all thoſe who refuſed to pay tythes. Ibid.

ſtance

ſtance which had hitherto promoted his advancement, tended immediately to ſtop the progreſs of it; for no ſooner did he become an object of jealouſy to the civil power, than the vicinity of the imperial reſidence contributed the more effectually to thwart and controul every project for the extenſion of his privileges. The Roman pontiff, on the other hand, when he had riſen to ſuch opulence and dignity as might have excited the envy and diſguſt of the civil magiſtrate, was by the diſſolution of the weſtern empire freed from the troubleſome inſpection of monarchs, who probably would have checked the growth of his power; and being placed in the ſituation of an independent prince, was at full liberty to put in practice every politic meaſure which might either enlarge his temporal dominions, or extend his authority over that numerous body of clergy who already owned his ſupremacy.

It may further explain the hiſtory of the Weſtern church to obſerve, that while the biſhop of Rome was thus in a condition to avail himſelf of that ſuperiority which he had acquired, the circumſtances of the clergy were ſuch as made it their intereſt to unite in one body, and to court his protection. The character of churchmen was, from the nature of their profeſſion, a good deal different from that of the laity, and incited them to very oppoſite purſuits. The former in a military and rude age, were generally drawn from the inferior ranks of life; at the ſame time that, from the prevalence of ſuperſtition, they poſſeſſed great influence over the minds of the people, and were daily advancing their claims to power and emoluments. By the ancient nobility, therefore, or leading men of every country, and ſtill more by the ſovereign, the haughtineſs, the inſolence, and the rapacity of theſe upſtarts, was often beheld with indignation and reſentment, and produced continual jealouſies and diſputes between thoſe of different orders; the latter endeavouring to maintain and to extend a ſet of immu-

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nities and privileges which the former were no leſs eager to reſtrain. In ſuch a conteſt the eccleſiaſtics of any particular kingdom were as much inferior to their adverſaries in direct force, as they were uſually ſuperior in ſkill and dexterity; and their ſituation naturally pointed out the expedient of ſoliciting aſſiſtance from their brethren in the neighbouring kingdoms: that aſſiſtance they very ſeldom failed to procure. The controverſy of every individual was regarded as the common cauſe of the whole order. By adhering to one another, however disjoined in point of civil government, they became ſufficiently powerful, not only to avoid oppreſſion, but even to defend their uſurpations; and by combining, like the ſoldiers of an army, under one leader, their forces were directed to the beſt advantage.

The opportunities which this great leader enjoyed, of augmenting his revenue, and of increaſing his power. may eaſily be conceived. In the multitude of diſputes which occurred between the clergy and laity in the different nations of Europe, the former, in order to obtain his protection, were obliged to ſubmit to various taxes, and to the extenſion of his prerogatives. Hence the payment of the *firſt fruits*, and ſuch other impoſitions upon the livings of churchmen, were eſtabliſhed in favour of the holy ſee.

In like manner, during the wars that were carried on between the different potentates of Europe, the contending parties, finding that the countenance and approbation of the Roman pontiff would give great weight and popularity to their cauſe, were ſometimes under the neceſſity of purchaſing his favour, by ratifying his titles, and permitting the exerciſe of his claims over their ſubjects. From the ſame circumſtances, the temporal dominions of the pope in Italy were greatly enlarged, and his authority, as an independent ſovereign, was recog-

nized

nized. Upon the conqueſt of Lombardy by the king of France, his holineſs, who had thrown his whole influence into the ſcale of the latter, was rewarded with a great proportion of the conquered territory; and, at the ſame time, was enabled to aſſume the privilege of conferring the imperial dignity upon the conqueror.

The diſputes among the clergy themſelves, more eſpecially between the ſecular and regular clergy, were another ſource of the papal aggrandizement. Every ſociety of monks was ſubject originally to the biſhop within whoſe dioceſe their monaſtery was ſituated, but as they advanced in riches and popularity, they were led to aſſert their independence; and in ſupporting their pretenſions, having to ſtruggle with the whole body of ſecular clergy, they were induced to court the head of the church, by ſuch obedience and compliances as were likely to gain him over to their intereſt.

In the Eaſtern church, where theſe cauſes did not operate in the ſame degree, neither the authority of the clergy, nor that of the patriarch of Conſtantinople, roſe to the ſame height. The payment of tythes, though it was there warmly aſſerted by churchmen, as well as in the Weſt, was never inforced by public authority; nor was the head of the church in that part of the world in a condition to eſtabliſh ſuch an extenſive revenue as had been acquired by the Roman pontiff.

It may be obſerved, on the other hand, that the ſame circumſtances which produced an independent eccleſiaſtical juriſdiction in Chriſtendom, have been productive of ſimilar effects in other religions, and in different parts of the world. Among illiterate nations, maintaining an intercourſe with one another, and profeſſing a common religion, the clergy, who have been raiſed to importance either by the explanation of theological opinions, or by the direction of myſterious rites and ceremonies, appear naturally

naturally to form a ſeparate claſs of the people; and, by extending their ideas of a common intereſt beyond the bounds of a ſingle kingdom, are eaſily reduced under one great eccleſiaſtical leader. This was formerly the ſituation of the Celtic nations, who inhabited a great part of Europe: they were under the influence of a common religion, the miniſters of which are ſaid to have poſſeſſed a juriſdiction ſuperior to that of the civil magiſtrate. Theſe *druids* were, at the ſame time, united in one ſociety, independent of the different political ſtates to which they belonged; and were under the direction of a *chief druid*, who reſided in Britain, and whoſe authority extended over the laity as well as the clergy, in all the nations of Celtic original.

The authority of the grand *Lama* or *high-prieſt* of the Tartars, which is acknowledged by many tribes or nations totally independent of one another, has, in all probability, the ſame foundation. This eccleſiaſtical monarch, who reſides in the country called Little Thibet, is alſo a temporal prince. The numerous clergy, in the different parts of Tartary, who acknowledge his ſupremacy, are ſaid to be diſtinguiſhed into different ranks or orders, ſomewhat analogous to thoſe which take place in Chriſtendom; and the ordinary prieſts, or lamas, are ſubjected to the authority of biſhops, whoſe juriſdiction is ſubordinate to that of the ſovereign pontiff. Without pretending to aſcertain, with any degree of accuracy, the church-hiſtory either of the Celtic or Tartar nations, we cannot avoid remarking the general analogy that appears in the origin and conſtitution of all theſe different Hierarchies.

SECT. 2. *The Eſtabliſhment of Chriſtianity in Britain, under the Roman Dominion, and in the early Government of the Anglo-Saxons.*

Chriſtianity made its way into Britain, in the ſame gradual manner as into all the other parts of the Roman empire. It is ſuppoſed to have obtained a permanent footing in the country, under the government of Marcus Aurelius, at which time a biſhop of Rome is ſaid, upon the application of Lucius, a Britiſh king, to have ſent over, to this iſland, ſeveral learned men, to preach and propagate the goſpel. But whatever degree of credit may be due to this account, it is certain that, in the reign of the emperor Conſtantine, this religion was taken under the protection of government, in Britain, as well as in all the other provinces of Rome; and that it continued in this ſituation until the iſland was abandoned by the Romans. During this period the Chriſtian Church had received the ſame form as in all the other parts of the empire. Particular clergymen had obtained a ſettlement in ſmall diſtricts or pariſhes, according to the number and ſituation of the inhabitants*. Many of theſe diſtricts were united under the inſpection of a biſhop, the miniſter of a cathedral church; and a metropolitan, or archbiſhop, was exalted over the whole clergy of a province. But though it is probable that this eccleſiaſtical eſtabliſhment was modelled according to the ſituation of the great towns, and the chief diviſions introduced by the civil government of the country; yet neither the number of the Britiſh prelates, nor the churches in which they were ſettled, appear to be known with any degree of certainty†. Mention is made of three archbiſhops,

* Gildas.—Alſo Whitaker, Hiſt. of Mancheſter.

† According to the monkiſh tradition, there were twenty-eight biſhops in

archbiſhops, who, it ſhould ſeem, correſponded to three of the provinces, in the late arrangement which the Romans made of their Britiſh territories. The firſt reſided in London; the ſecond in York; and the third, whoſe juriſdiction extended over Wales, appears, at different times, to have had a different place of reſidence *. That the Hierachy had early acquired a ſettled condition in Britain, and that its biſhops held ſome rank among thoſe of other churches, is evident from their ſending repreſentatives to the council of Arles, called in the year 314, and to other remarkable councils, that were afterwards convened in different parts of Chriſtendom †.

The arrival of the Saxons in this iſland was productive of great diſorder in the religious, as well as in the civil eſtabliſhment. In thoſe parts of the country which fell under the dominion of the Saxons, the chriſtian churches were frequently demoliſhed; the public worſhip was interrupted; and the clergy, in many caſes, could neither be provided with a maintenance from the public, nor continue the regular exerciſe of their juriſdiction. The altars of Thor, and Woden, were often ſubſtituted for thoſe of Jeſus Chriſt; and the life and immortality which had been brought to light by the goſpel, were obſcured and eclipſed by the fictions of Hela's dreary abode, and Valhalla's happy manſions, where heroes drink ale and mead from the ſculls of enemies whom they have ſlain in battle.

Wherever the ancient inhabitants were able to preſerve their independence, their eccleſiaſtical policy remained without any alteration. This was

in Britain, during the Roman government of that iſland. Theſe correſponded to the twenty-eight conſiderable cities in the province. See Ranulph. Higden. lib. i.—This number of Britiſh cities is mentioned by Gildas, Bede, and others; and their names are tranſmitted by Nonnius.

* Ranulph. Higden. lib. i.

† Stillingfleet, Orig. Britan.

particularly

particularly the caſe in the whole Weſtern part of the iſland, from the Southmoſt point of Cornwall to the Frith of Clyde; not to mention the country to the Northward, which the arms of the Saxons had not penetrated. In the territories where that people had formed their ſettlements, there is ground to believe that, after the tumult and violence attending the conqueſt had ſubſided, the two nations frequently maintained an amicable correſpondence, were in ſome meaſure united in one ſociety, and enjoyed the free exerciſe of their religion*. As their long neighbourhood produced, by degrees, a communication of civil inſtitutions and cuſtoms, it was likewiſe, in all probability, attended with ſome approximation of religious opinions and obſervances; and in this particular, it can hardly be doubted that the regular and well-eſtabliſhed ſyſtem of Chriſtianity, to ſay nothing of its genuine merit in other reſpects, would have great advantage over the unformed and looſely connected ſuperſtition of the barbarians. In the ardour of making proſelytes, and in the capacity of propagating their tenets, the profeſſors of the former muſt have greatly ſurpaſſed thoſe of the latter; and it was natural to expect that the Saxons, in England, would at length follow the example of all the rude nations, who had ſettled in the provinces upon the continent, by adopting the religion of the conquered people.

What laid the foundation for a general and rapid converſion of the Saxons, was an event, which happened about an hundred and fifty years after

* This was ſo much the caſe, that among the Eaſt-Angles, according to the teſtimony of Bede, the Chriſtian worſhip, and the Saxon idolatrous rites, were performed in one and the ſame church; ſuch good neighbourhood was maintained between the two religions. "Atque in eodem fano et altare haberat ad ſacrificium Chriſti et Arulam ad victimas dæmoniorum. Quod videlicit fanum, ex ejuſdem provinciæ Alduulf, qui noſtra ætate fuit, uſque ad ſuum tempus perduraſſe, et ſe in pueritia vediſſe teſtabatur." Bed. Hiſt. Eccl. lib. ii. ch. 15.

their

their ſettlement in Britain. Ethelbert, the ſovereign of Kent, having married Bertha, the daughter of a king of the Franks; this princeſs, already a Chriſtian, made open profeſſion of her religion, and brought over a French biſhop to reſide at the Kentiſh court. This incident ſuggeſted to the Roman pontiff, Gregory the Great, a man of unbounded ambition, the idea of converting the Anglo-Saxons to Chriſtianity, and at the ſame time, of eſtabliſhing his authority over the Britiſh clergy, who had hitherto neither acknowledged the papal juriſdiction, nor yielded an exact conformity to the tenets and obſervances of the Roman church. For theſe two purpoſes, he gave a commiſſion to Auguſtine, one of the monks of a convent at Rome, with about forty aſſiſtants, to preach and propagate the goſpel in Britain*. By the induſtry of theſe, and of ſucceeding miſſionaries, the Chriſtian religion was, in the courſe of about half a century, eſtabliſhed univerſally in all the kingdoms of the Heptarchy. The authority of the church of Rome went hand in hand with Chriſtianity; and though the Britiſh clergy ſtruggled for a conſiderable time to maintain their independence, and their peculiar doctrines, they were at length borne down by the prevailing ſyſtem, and reduced into a ſubordinate branch of the Roman Hierarchy†.

The converſion of the Anglo-Saxons has been commonly regarded as an entirely new plantation of the goſpel, in the territories which fell under the dominion of that people; and it ſeems to be imagined, that when Auguſtine entered upon his miſſion, there was no traces of Chriſtianity remaining in thoſe parts of the country. This opinion appears to have ariſen, partly from the ſuppoſition,

* Bed, Hiſt. Eccleſiaſt. lib. i. c. 23. 25.

† Bed. Hiſt. Eccleſ. lib. ii. ſeq.—Stillingfleet, Origin. Brit.—Henry's Hiſt. of Great Britain.

that

that the ſettlement of the Anglo-Saxons was accompanied with a total expulſion of the ancient inhabitants, and partly from a diſpoſition in ſubſequent eccleſiaſtical writers to undervalue that ſyſtem of church-diſcipline and faith which had obtained in Britain, before it was fully ſubjected to the papal juriſdiction.

With reſpect to the general extirpation of the Britons, it ſeems to be a perfect chimera. Neither is there any reaſon to believe that they underwent any perſecution from the Saxons upon account of their religion. The rude polytheiſm, profeſſed by thoſe conquerors, does not ſeem to have taken a firm hold of their minds, or to have inſpired much animoſity againſt foreign deities or modes of worſhip; and if, during the immediate conqueſt of the country, the Britiſh clergy were ſometimes plundered or maſſacred, this, in all probability, proceeded from no peculiar enmity to their religion, but from the ferocity natural to barbarians, who, in the heat of a military enterprize, could not be expected to ſhew much regard to the diſtinction of characters or profeſſions. The effect of theſe diſorders, however, was only partial and temporary. It appears that, even in thoſe parts of the country where the Saxons had remained the longeſt, the ancient church buildings were far from being entirely deſtroyed; for we learn from Bede, that, upon the arrival of Auguſtine in Kent, he firſt preached in a church, which had been erected by the Romans in honour of St. Martin, and that ſoon after, when the monarch of that kingdom had been baptized, orders were given to build or *repair* churches, for the accommodation of the Chriſtian miſſionaries*.

Upon the full reſtoration of Chriſtianity in theſe parts of the country, which had been corrupted by

* Hiſt. Eccleſ. l. i. c. 26.

the mixture of Saxon ſuperſtition, the religious eſtabliſhments, which had been introduced under the dominion of the Romans, and which had always been preſerved in the unconquered parts of the iſland, were completely revived; with this difference, that the Britiſh churches, in the degree of their ſubmiſſion to the papal authority, were brought into a greater conformity with the churches upon the continent. It is probable that the ancient parochial diviſions had not been entirely loſt; more eſpecially in thoſe diſtricts, which the Anglo-Saxons had but recently ſubdued when they embraced the religion of the former inhabitants*.

The number of biſhops, it is natural to ſuppoſe, and the extent of their juriſdiction, were likewiſe directed in ſome meaſure by the antecedent arrangements in the provincial government of Britain; tho' from the changes produced in the ſtate of the country, many variations were, doubtleſs, become neceſſary. Of the three *archbiſhops* who had formerly acquired a pre-eminence over the whole of the Britiſh clergy, one appears to have been ſunk by the disjunction of Wales from the Engliſh monarchy; ſo that there came to be only two metropolitans under the Saxon eſtabliſhment. The archbiſhop of the Northern department reſided, as formerly, at York; but the ſeat of the other, from the reſidence of Auguſtine, who obtained the chief eccleſiaſtical dignity, was transferred from London to Canterbury†.

The revenue for maintaining the clergy was the ſame in Britain as in all the churches acknowledging the juriſdiction of the Roman pontiff. It conſiſted, partly of contributions levied in every pariſh; and partly of landed eſtates, which the ſuperſtition of the people had led them to bequeath for pious uſes:

* Whitaker, Hiſt. of Mancheſter; and the authorities quoted by him.

† Ranulph. Higden. lib. i.

but

but the former of theſe funds remained longer than in the more Southern parts of Europe, before it was converted into a regular tax, and exalted to a tenth of the whole yearly produce.

CHAP. VI.

Inſtitution of Tythings, Hundreds, and Counties.

IN every nation it muſt be a great object to provide for defence againſt the invaſion of neighbouring ſtates; but in a rude age, the proviſions requiſite for this purpoſe are few and ſimple. The great body of the people are ſoldiers, willing and ready to take the field whenever their ſervice is neceſſary. From the mutual depredations frequent among a rude people, they become inured to hardſhips, and familiar with danger; and having little employment at home, they are glad to embrace every opportunity of acquiring military reputation, or of enriching themſelves with the ſpoil of their enemies. Every perſon is therefore accuſtomed to arms as ſoon as he is capable of uſing them, and acquainted with the ſimple manner of fighting practiſed among his countrymen; ſo that, as the chief magiſtrate finds no difficulty in raiſing troops upon any occaſion, he is put to little or no trouble in training and preparing them for thoſe military operations in which they are to be engaged.

The apponitment of certain leaders in particular diſtricts, to collect the forces upon any emergency, and to command them in time of battle, ſeems to

be all that is wanted, in ſuch a ſituation, for putting a whole kingdom in a complete poſture of defence. A few regulations of this nature, ariſing obviouſly from the circumſtances of a barbarous people, were, at an early period, eſtabliſhed among the Saxons in England, as well as among their neighbours upon the continent.

Every feudal ſuperior was the military leader of his own dependents; but upon the ſettlement of the Saxons in Britain the landed eſtates acquired by the greater part of individuals were at firſt ſo ſmall as to render the number of their vaſſals inconſiderable; and the *allodial* or independent proprietors were therefore under the neceſſity, amidſt the diſorder that prevailed in thoſe times, of aſſociating for mutual protection and ſecurity. Different families, connected by the ties of conſanguinity or otherwiſe, found it expedient as well as agreeable to ſettle in the ſame neighbourhood, that they might on all occaſions be in a condition to aſſiſt one another. Thus the inhabitants came to be diſtributed into villages of greater or leſs extent, according to circumſtances; and the members of every village, accuſtomed from their infancy to live together, and finding themſelves united by a common intereſt, were led to acquire the ſtrongeſt habits of intimacy and attachment. Theſe little ſocieties received the appellation of *vills*, *towns*, or *free-bourgs*.

As theſe villages were formed upon the plan of defence, and were frequently employed in the exerciſe of hoſtilities, there naturally aroſe in each of them a leader, who by having the privilege of conducting their military enterprizes, obtained alſo a degree of authority in the management of civil affairs. To this perſon the name of *head-borough* or *borſholder* (a word ſuppoſed by ſome to be contracted from *borough's elder*) was commonly given.

According

According to the early policy of the Anglo-Saxons, each of their villages was divided into ten *wards*, or petty diſtricts; and hence they were called *tythings* or *decennaries*, as their leader was denominated a *decanus* or *tything-man*. This regulation appears to have been extended over all the kingdoms upon the neigbouring continent; and in all probability it originated from the influence of eccleſiaſtical inſtitutions *.

As, upon the firſt eſtabliſhment of Chriſtianity, under the Roman dominion, the form of church government was in ſome reſpects modelled by the political conſtitution of the empire, ſo the civil government, in the modern ſtates of Europe, was afterwards regulated in many particulars according to the ſyſtem of eccleſiaſtical policy. When the Weſtern provinces of the Roman empire were conquered by the barbarous nations, and erected into ſeparate kingdoms, the conquerors, who ſoon embraced the Chriſtian religion, and felt the higheſt reſpect for its teachers, were diſpoſed in many caſes to improve their own political inſtitutions, by an imitation of that regularity and ſubordination which was obſerved in the order and diſcipline of the church.

In the diſtribution of perſons or of things, which fell under the regulation of the Chriſtian clergy, it appears that, in conformity to the cuſtoms of the Jewiſh nation, a decimal arrangement was more frequently employed than any other. By the Moſaic inſtitution the people were placed under rulers of thouſands, of hundreds, of fifties, and of tens. A Jewiſh ſynagogue, correſponding to a modern pariſh, appears at a ſubſequent period to have been

* The term *free-burg* is ſometimes applied not to the whole tything or village, but to each of thoſe wards into which it was divided. [See the laws aſcribed to William the Conqueror. Wilkins, c. 32.] But more frequently a free-burg and tything are underſtood to be ſynonymous. See the Gloſſaries of Spelman and Du Cange, *v. Friborga.*

put

put under the direction of *ten elders*, of whom one became the chief ruler of that eccleſiaſtical diviſion*. A tenth part of the annual produce was appropriated for the ſupport of the Levites, as the ſame proportion of eccleſiaſtical livings was claimed by the high-prieſt. Hence we find that, in modern Europe, the members of a cathedral church, as well as thoſe of a monaſtery, were divided into ten branches, each of which was put under a director, and the tenth of theſe perſons, or *decanus*, was intruſted with a ſuperintendance of all the reſt †. Hence too the modern inſtitution of tythes, and the pretenſions of the Roman pontiff, the Chriſtian high-prieſt, to the tenth of all the revenues of the clergy ‡.

When the Weſtern part of Europe, upon the diſſolution of the Roman government, had been reduced into a ſtate of barbariſm, by which the inhabitants were neceſſarily divided into ſeparate villages or ſmall towns, each of thoſe little communities was naturally formed into one congregation, and annexed to a ſingle church. The ſame people who joined in public worſhip were alſo combined in their military expeditions; and the ſame arrangement, under different rulers, that had been adopted in the former capacity, was eaſily communicated to them in the latter. This diviſion

* Dr. Lightfoot's Harmony of the Four Evangeliſts, part 3, on Luke ch. 4. ver. 15.—Lewis's Antiquities of the Hebrew Republic, b. 3. ch. 21—Goodwin's Moſes and Aaron, b. 2. ch. 2.—alſo Vitringa Archiſynagogus illuſtratus.—This author agrees with Dr. Lightfoot, in ſuppoſing that the *decem otioſi*, mentioned as requiſite in every ſynagogue, were officers employed in the buſineſs of that ſociety; though he differs as to the particular employments that were allotted to them.

† Burn's Eccleſ. Law.—Kennet's Paroch. Antiq.

‡ Though the diſtribution of perſons and things according to *tens*, appears to have been immediately borrowed by the Chriſtian clergy from the Jews, we find among many other nations a tendency to follow the ſame arrangement. Thoſe natural inſtruments of notation, which every man carries about with him, the fingers, have probably been the original cauſe of the common arithmetical progreſſion by *tens*, and of the general propenſity to be governed by this number in the claſſification of objects.—The land-tax upon the Roman provinces is ſaid to have been a tenth of the produce.

of

of a village, with the correſponding territory belonging to its inhabitants, into ten little *wards* or *diſtricts*, probably aroſe in thoſe European kingdoms which had firſt attained a regular form, and was afterwards extended to the Saxons in England, and to the inhabitants of other countries, who remained longer in a ſtate of anarchy and confuſion.

But while the members of every Anglo-Saxon town or village were thus intimately united, a connection of the ſame ſort was gradually introduced between the inhabitants of a larger territory. Thoſe who belonged to different towns or villages in the ſame neighbourhood had frequently occaſion to aſſiſt one another againſt a common enemy; and in conſequence of many joint expeditions, directed by a ſenſe of mutual intereſt, were induced to form a regular aſſociation, under a permanent military officer.

The extent of theſe aſſociations was at firſt perhaps arbitrary and variable, but was at length ſettled in an uniform manner, according to the ſyſtem of eccleſiaſtical policy which prevailed both in England and in other European kingdoms. Upon the principle that has been formerly mentioned, every ten churches of a dioceſe were united under an eccleſiaſtical inſpector, who in England, in contradiſtinction to a ſimilar officer belonging to a cathedral or monaſtery, was called a *rural dean* *. In like manner every ten villages or tythings, which were of the ſame extent with pariſhes, formed a military diſtrict, which obtained the appellation of a *hundred*, and its commanding officer that of a *centenarius* or *hundreder* †.

The connections of ſociety being ſtill farther extended, the members of different hundreds were

* Kennet's Paroch. Antiq.—Burn's Eccleſ. Law, v. *Dean and Chapter*.

† Hundredus autem Latinè, ſays Ralph Higden, ſive Cantredus, Walliceè et Hibernicè, continet *centum villas*. [Polychronicon, lib. i.]

alſo

alſo aſſociated for their common defence, and fell under the direction of a greater officer, called the *heretoch*, a title which, in the Saxon language, is ſaid to be ſynonymous with that of duke, and which appears to have been originally given to ſome of thoſe leaders in the Heptarchy, who afterwards aſſumed the title of kings. The diſtricts belonging to theſe heretochs, which were greater or leſs according to accidents, and had been varied on different occaſions, were gradually aſcertained and eſtabliſhed, ſo as at length to correſpond entirely with the territories that were placed under the eccleſiaſtical juriſdiction of the ſeveral biſhops. Theſe diſtricts were called *ſhires*; and the officer who preſided over them ſeems, at a later period of the Anglo-Saxon government, to have changed his title for that of *alder-man* or *earl*. It is a common opinion, however, that the heretoch and the alder-man were different perſons, intruſted with different departments; and that the former was the chief military, as the latter was the chief civil, officer of the ſhire.

In ſome parts of the country a ſmaller number of hundreds were aſſociated, ſo as to compoſe an intermediate diſtrict, called *lathe*, *rape*, or *tything*; and ſeveral of theſe diſtricts were united in forming a ſhire. But this arrangement, peculiar to ſome ſhires, and depending upon the ſame principles with the diviſions already mentioned, is of little conſequence in our preſent view of the ſubject.

Such were the military inſtitutions of the Anglo-Saxons, which appear to have ariſen almoſt imperceptibly from the rude ſtate of the country, from the natural diviſions of the people, and from their progreſſive attempts in forming more extenſive and permanent aſſociations.

From the great deficiency of Saxon records, there are many particulars concerning theſe inſtitutions, which

which remain in obſcurity, and which have given riſe to various diſputes and conjectures. The earlieſt hiſtorians, who have ſaid any thing upon this ſubject, appear, for the moſt part, to have lived at a period when theſe inſtitutions had undergone many variations, and in ſeveral reſpects had fallen into diſuſe. They were, at the ſame time, ignorant annaliſts of a barbarous age; and their accounts, which appear to have been chiefly derived from tradition, are ſhort and unſatisfactory. It ſeems to be uniformly imagined by theſe authors, that the inſtitutions above mentioned were peculiar to the government of the Anglo-Saxons; and that they were introduced by the ſingular policy of king Alfred, to whom the admiration of Engliſh writers has commonly aſcribed every important regulation during the Saxon period. But it is now generally known, that the eſtabliſhment of tythings, hundreds, and ſhires, was prior, in England, to the time of Alfred; and that it was not peculiar to this country, but was probably extended over all the barbarous nations who ſettled in the provinces of the Weſtern empire.

With reſpect to the eſtabliſhment of tythings and hundreds, it has been the general opinion that the former conſiſted of ten families, and that the latter, of courſe, were compoſed of an hundred families. That ſuch was the exact number of families comprehended in each of theſe diviſions, the reſpective names affixed to them appear to have been thought ſufficient evidence.

But when we examine this opinion, after all the pains that have been taken by late writers to render it plauſible, it ſeems to be attended with inſuperable difficulties. To divide the whole people into military parties of ten and of an hundred families, without any regard to their places of reſidence, would mark a degree of art and contrivance hardly to be expected in a barbarous age: not

not to mention that it would be a moſt abſurd regulation, as it would frequently ſeparate near relations, and place them under the command of different officers, inſtead of uniting them under one common leader, with whom they had acquired a natural connection; for as the accidental collections of kindred and acquaintance, who lived in the ſame village or neighbourhood, could not be regularly compoſed of ten families, nor of any given number, they muſt of neceſſity have been ſplit and jumbled with ſtrangers, in order to make up the ſeveral tythings into which the people were thus artificially divided. If ſuch a regulation ever had place in England, we muſt ſuppoſe that it was introduced by a political projector, neglecting to avail himſelf of the uſual ſources of authority in a rude nation, for the ſake of introducing a finical regularity, and by a legiſlator inveſted with ſuch abſolute power, as might render him capable of enforcing meaſures diametrically oppoſite to the natural courſe of things; a ſuppoſition which is neither applicable to the character nor the condition of the early monarchs of Britain.

As the inſtitution of tythings, together with that of hundreds, and of ſhires or counties, was not limited to England, but had place in moſt if not all of the feudal countries, there is good reaſon to believe that it was not derived from artificial or diſtant views of policy, ſuggeſted to any particular prince; but that it proceeded from a concurrence of circumſtances in the European kingdoms, by which it was recommended to the great body of the people.

That a tything was originally the ſame thing with a village, and that it did not comprehend any preciſe number of perſons or families, may be concluded from this, that in the ancient law-language of England the words *vill*, *town*, *decennary*, and *tything*,

tything, have all the ſame ſignification*. If a tything have the ſame meaning with a vill or town, it is ſurely impoſſible that it can ſignify a collection of ten families only, without relation to the place of their reſidence. Should we, on the other hand, ſuppoſe that a tything was regularly compoſed of ſo many families, the members of the ſame tything muſt frequently have reſided in different towns or villages; in which caſe it would ſometimes be neceſſary, in deſcribing or pointing out thoſe perſons, to mention the *town* which they inhabited, as diſtinct from the tything to which they belonged, and theſe two terms therefore, ſo far from being ſynonymous, would come, upon ſuch occaſions, to be uſed in direct oppoſition to each other.

But what puts this matter in a yet more conſpicuous point of view, is an early regulation mentioned by the Engliſh lawyers, that every tything ſhould have a church, with celebration of divine ſervice, ſacraments, and burials†. If the limits of a tything, and of a town or village, were the ſame, a regulation of this ſort would naturally be eſtabliſhed. It affords complete evidence that a pariſh and tything were of the ſame extent; but how is it poſſible to conceive that a pariſh comprehended only ten families? According to this doctrine every eleventh houſe muſt have been a church, and the clergy muſt have compoſed the eleventh part of the whole people.

To obviate this objection, it is held by ſome authors that a family is not to be underſtood in a literal ſenſe, but as comprehending all the vaſſals and tenants of a proprietor, who in ſome caſes were pretty numerous. Admitting, however, this explanation in its fulleſt extent, it will only vary, inſtead of removing the difficulty. It would ſtill be

* Blackſtone's Comment. vol. I. Introd. § 4.

† Blackſtone's Comment. vol. I. Introd. † 4.

in

in vain to expect that a village or town ſhould always contain exactly ten of theſe enlarged families, or even any number of tens; ſo that it would often be requiſite to patch up a tything from the remnants of different towns or villages; and it would follow that theſe outcaſts did not belong to the church in their neighbourhood, but, however diſperſed over the country, and intermixed with other pariſhes, were united in one congregation, and were provided with a ſeparate church and miniſter of their own.

The eſtabliſhment of tythings, hundreds, and ſhires, was primarily intended for the mutual defence of the inhabitants, but it was likewiſe rendered ſubſervient to other very ſalutary purpoſes. When the people had been aſſembled in thoſe meetings to engage in a military enterprize, or upon the concluſion of it to divide their booty, they had occaſion to hear complaints of the injuries and diſorders committed among themſelves. Every feudal ſuperior was the natural judge of his own tenants and vaſſals; but when a diſpute had ariſen between different allodial proprietors of the ſame tything, there was no ſingle perſon poſſeſſed of ſufficient authority to terminate the difference. The parties being independent of each other in point of property, and therefore maſters of their own conduct, were under no neceſſity, in a matter of that kind, of ſubmitting to the orders of any individual. They acted in the ſame manner with reſpect to the exerciſe of their civil rights, as with relation to peace and war. In both caſes they conſidered themſelves as freemen, ſubject to no reſtraints, but ſuch as aroſe from the nature of their confederacy, or were impoſed by their common conſent.

The ſame motives, however, which induced a village or tything to enter into joint meaſures for their defence againſt a foreign enemy, determined them alſo to take precautions for compoſing animoſities

ſities and differences among their own members. Rouſed by the danger of a quarrel which might be fatal to their union, and which might render them an eaſy prey to their neighbours, they readily interpoſed with all their influence to reconcile the parties, and to enforce their obſervance of the rules of juſtice. A judicial power was thus gradually aſſumed by every tything over the allodial or independent proprietors of which it was compoſed. The hundred, in like manner, came to exerciſe a power of determining the differences between the members of the ſeveral tythings, within the bounds of that larger diſtrict; as the meetings of the ſhire eſtabliſhed a ſimilar juriſdiction over the different hundreds comprehended in that extenſive territory. Theſe courts took cognizance of every cauſe, whether civil or criminal; and as they enjoyed the ſole juriſdiction, in the firſt inſtance, within the reſpective boundaries of each, they became naturally ſubordinate one to another; ſo that from the deciſion of the tything there lay an appeal to the hundred, and the ſentences of this latter tribunal were reviewed in the greater meetings of the ſhire.

Theſe courts were held originally by all the allodial proprietors of each particular diſtrict; and the ſame perſons had the ſame right of preſiding in their judicial procedure, as when their meetings were called to deliberate upon military affairs.

It is probable that every kind of law-ſuit was at firſt determined in full aſſembly, and by a plurality of voices; but in the larger meetings of the hundred, and of the ſhire, it ſhould ſeem that when the authority of thoſe tribunals had been confirmed by cuſtom, and their duty had become ſomewhat burdenſome by the increaſe of buſineſs, convenience introduced a practice of ſelecting a certain number of their members, to aſſiſt their preſident in the determination of each particular cauſe. Hence the origin of *juries*, the preciſe date of whoſe eſtabliſhment

liſhment is uncertain, becauſe it probably aroſe from no general or public regulation, but from the gradual and almoſt imperceptible changes, authorized by common uſage in the ſeveral diſtricts of the kingdom. The number of jurymen was for ſome time different upon different occaſions; till the advantages of an uniform practice produced a general rule, which determined that no leſs than twelve perſons ſhould be called in all ordinary cauſes*.

Concerning the inſtitution of tythings, there is one regulation, connected with the adminiſtration of juſtice, that has been much taken notice of by hiſtorians, and has excited the admiration of all political writers: the members of every tything are ſaid to have been reſponſible for the conduct of one another; and the ſociety, or their leader, might

* The cuſtom of chooſing twelve men for diſtributing juſtice, is frequently mentioned in the Anglo-Saxon laws. Thus, in a law of King Ethelred, it is ſaid, "Et ut habeantur conventus in quolibet wapentachio, "et exeant ſeniores duodecim thani, et prefectus cum iis, et jurent ſuper "ſanctuarium quod iis in manus datur, quod nolent ullum innocentem accuſare, nec aliquem noxium celare."—[Wilkins, p. 117.] In another law, aſcribed to the ſame king, commonly called the *ſenatus-conſultum de montibus Walliæ*, it is enacted, for the mutual benefit of the Engliſh and Welch, that controverſies between them ſhall be determined by twelve law-men, the half of whom ſhall be Engliſhmen, the other half Welchmen. [Wilkins, p. 125.]

Theſe twelve perſons correſpond, it ſhould ſeem, to the *Racimburgi* and the *Scabini*, who under the firſt and ſecond races of the kings in France aſſiſted in the deciſion of the court and of the centenarius.

It has been ſuppoſed by ſome authors that both were not upon the footing of modern jurymen, choſen out of the free men of a diſtrict for each cauſe, but that they were permanent aſſeſſors of the magiſtrate and members of the court. See Brady's complete Hiſt. of Eng.—Hickes's Diſſ. Epiſtol.

But that either theſe twelve men, or the Racimburgi, or Scabini, were permanent members of the court, appears improbable, for the following reaſons: 1. Becauſe theſe twelve men were choſen among the *thanes*; and it is not likely that the ſame perſons, of that rank, would ſubject themſelves to the drudgery of being conſtant aſſeſſors to the magiſtrate. 2. The number of *Racimburgi* or *Scabini* appears to have been varied, according to the importance of the cauſes which they decided. This ſuppoſes a new election in each cauſe. 3. If there was a regular bench of aſſeſſors to the chief magiſtrate of a county, it is wonderful that no traces of that inſtitution ſhould be found at preſent, more eſpecially in Scotland, where the county courts have been continued upon the ancient footing.

Accordingly Horn, an author who lived in the time of Edward I. ſays expreſsly, in his *Mirroir de Juſtices* that king Alfred put to death a number of his judges for deciding cauſes without a jury.

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be profecuted, and compelled to make reparation for an injury committed by any individual.

If we look upon a tything as regularly compoſed of ten families, this branch of its police will appear in the higheſt degree artificial and ſingular; but if we conſider that ſociety as of the ſame extent with a town or village, we ſhall find that ſuch a regulation is conformable to the general uſage of barbarous nations, and is founded upon their common notions of juſtice.

Among barbarians in all parts of the world, perſons who belong to the ſame family are underſtood to enjoy a community of goods, and to be all jointly ſubjected to the ſame obligations. In thoſe early ages when men are in a great meaſure ſtrangers to commerce, or the alienation of commodities, the right of *property* is hardly diſtinguiſhed from the privilege of *uſing* or *poſſeſſing*; and thoſe perſons who have acquired the joint poſſeſſion of any ſubject are apt to be regarded as the joint proprietors of it. At the ſame time, when a debt is contracted by one of ſeveral perſons who have a perfect community of goods, it muſt of neceſſity be diſcharged from the common funds; and the obligation of every individual becomes therefore a burden upon the the whole ſociety.

After a family has been enlarged, and ſubdivided into different branches, their poſſeſſions are not upon this account entirely ſeparated, nor their notions of common property altogether effaced. Though the different families, who are thus formed into a tribe or village, reſide in different houſes, their neighbourhood allows them ſtill to maintain a promiſcuous intercourſe; and their ſituation diſpoſes them to act in concert with each other in all their important employments and purſuits. As, in their expeditions of war and hunting, they go out in a body, ſo, according to the primitive ſtate of agriculture, they labour in the field, and gather in the

the harveſt in common; and what has been acquired by their united exertions, before it is divided among them by conſent, is naturally conceived to be the joint property of all.

It is no hardſhip, that perſons connected in ſo intimate a manner ſhould be liable for the obligations of one another; and when an individual has become bound to a ſtranger, who cannot eaſily know for whoſe benefit the debt was incurred, it ſeems reaſonable that the creditors ſhould be allowed to demand payment from the community, who alone have acceſs to diſtinguiſh the rights of their particular members.

But the greater part of the debts contracted in a barbarous age ariſe from injuries and hoſtilities; for which it is uſual to make atonement by pecuniary compoſitions: and as in ſuch caſes it commonly happens, either that the offence was originally committed by a whole village, or, if it aroſe from a ſingle individual, that the quarrel was afterwards adopted and proſecuted by the other members of the community, this appears a ſufficient reaſon for ſubjecting them to a ſhare of the puniſhment.

Thus, by the general cuſtom of rude nations, the vengeance of the injured party for murder and other attrocious crimes is not confined to the guilty perſon, but is extended to his family, and even to the whole village or tribe of which he is a member. The proſecution of claims, founded upon this general cuſtom, makes a conſiderable part of the hiſtory of mankind in the early periods of ſociety. Traces of this primitive law of nations may be diſcovered even in ſome civilized countries; where, upon account of enormous offences, the criminal, together with his innocent children, and other relations, have been condemned to the ſame common puniſhment*.

* See inſtances of this quoted by the acute author of The Hiſtorical Law Tracts.

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Among the Jews, when a perſon was found murdered in the neighbourhood of a city, and the murderer was unknown, it ſeems to have been thought that the puniſhment might with juſtice be extended to all the inhabitants; who are, upon that account, directed to perform an expiatory ſacrifice. "And all the elders of the city that is "next to the ſlain man, ſhall waſh their hands "over the heifer that is beheaded in the valley. "And they ſhall anſwer and ſay, Our hands have "not ſhed this blood, neither have our eyes ſeen "it. Be merciful, O Lord, unto thy people Iſrael, "whom thou haſt redeemed, and lay not innocent "blood unto thy people Iſrael's charge. And the "blood ſhall be forgiven them." *

When it is cuſtomary to demand ſatisfaction from a whole village for the higheſt perſonal injuries committed by an individual, it cannot appear ſurprizing that the ſame privilege ſhould be claimed upon acount of the ordinary violations of property.

I am aſſured, from the moſt reſpectable authority, that, in the villages belonging to the Highlands of Scotland, a rule of this kind has been immemorially eſtabliſhed. The ſtealing of cattle was formerly the only ſpecies of theft from which the inhabitants of that country could ſuffer any great prejudice; and when ſtolen cattle could be traced within the diſtrict of any particular village, the inhabitants were liable to repair the damage, unleſs they could point out the track of the cattle, paſſing again without their territories. This law, which was founded merely upon long uſage, remained in force at leaſt as far down as the beginning of the preſent century†.

* Deuteron. chap. xxi.

† It does not ſeem to be ſuppoſed by hiſtorians, that the Saxon regulations concerning tythings were extended to a country ſo inacceſſible as the Highlands of Scotland.

It was a cuſtom, we are told, among the ancient Iriſh, "that the head of every *ſept*, and the chief "of every kindred, or family, ſhould be anſwer-"able and bound to bring forth every one of that "ſept, and kindred under it, at all times, to be "juſtified, when he ſhould be required, or charged "with any treaſon, felony, or other heinous "crime*." It is probable that this Iriſh regulation was analogous to that of the other Celtic nations.

From the code of Gentoo laws publiſhed in 1776, it appears that a ſimilar regulation has been introduced among the ancient inhabitants of Indoſtan. If the foot-ſteps of a thief have been traced, or if ſtolen goods are found, within a certain diſtance from any town, the thief is preſumed to be concealed in it.—And whenever a robbery or theft is committed in the neighbourhood of any town or city, the *head-perſon* of that town or city is bound to make up the loſs†.

Upon ſome parts of the coaſt of Guinea, the villages or towns, it ſhould ſeem, are liable for the obligations of every ſort contracted by any of their members; for we are informed, that when a perſon in that country neglects to pay a debt the creditor is under no neceſſity of arreſting the real debtor, but, in the deſtrict where he reſides, has the liberty of ſeizing, at pleaſure, ſuch a quantity of goods as will ſatisfy the demand, leaving the ſufferers to indemnify themſelves in the beſt manner they can‡.

About the middle of the thirteenth century, it appears that the ſtates of Germany had very generally adopted a ſimilar practice; which is men-

* Spencer's View of the State of Ireland.
† Code of Gentoo laws, ch. 17. ſect. 4. 6.
‡ Hiſt. Gen. des Voyages. Mod. Univ. Hiſt.

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tioned by hiſtorians as a proof of uncommon rudeneſs and barbariſm*.

The inhabitants of the ſame foreign country happening, at any one time, to reſide in London, were formerly viewed in the ſame light, and any one of them might be proſecuted for the debts contracted by his countrymen. In a treaty between Edward the Second and Alphonſo king of the two Caſtiles, it is agreed, that the merchants of Bilboa, and the other towns of Biſcay, ſhall not for the future be arreſted, nor have their goods diſtrained, for the debts of any Spaniard, for whom they have not become perſonally bound†. It is probable that the ſmall number of Spaniſh merchants reſiding in London, and the diſtance of their native country, made them appear as much connected as if they had been members of a ſingle rude village or tribe.

This noted regulation concerning the Saxon tythings is therefore to be regarded as the remains of extreme ſimplicity and barbariſm, rather than the effect of uncommon refinement or policy; and in this view, it may be obſerved that, in conſequence of ſome improvement in the manners of the people, the original obligation impoſed upon every tything, to repair the injuries committed by any of its members, was, in a period ſubſequent to that which we are at preſent examining, ſubjected

* The following paſſage is quoted from Plefel's Abregé Chron. de l'Hiſtoire d'Allemagne. "Je ne puis paſſer ſous ſilence une aûtre noveauté qui prouve, on ne peut pas mieux, et le malheur de ces tems, et la barbarie des mœûrs du ſiécle. C'eſt le droit *d'Otage*. [Jus obſtagiorum] Rien de plus bizarre que ce droit. Un ſouabe, un Bourgeois d'Ulm, léſé par un Liegeois, ne ſe donnoit pas la peine de pourſuivre ſa partie, devant ſa juſtice ordinaire; il ſe contentoit de mettre la main ſur le premier Liegéois qu'il pouvoit rencontrer, et le conſtituoit priſonnier a Ulm, c'eſt là qu'il faſoit juger ſa cauſe, et *l'Otage* n'étoit point relâché que là ſentence ne fût executée. L'hiſtoire et les Archives nous fourniſſent mille examples de ces procés ſinguliers: et *Lehmann* rapporte que les citoyens de Spire ont fait declarer par des lettres patentes, qu'ils n'etoient point ſûjets de leur Evêque, et que par conſequent l'on ne pouvoit les arrêter legitemement pour les cauſes que regardoient les ſujets de ce prince.

† Anderſon's Hiſtory of Commerce.

to certain limitations. By a law which has been aſcribed to William the Conqueror, but which is probably of an earlier date, we find it enacted, that, if a crime is committed by any member of a decennary, who eſcapes from juſtice, his tythingman, with two others of the ſame tything, together with the reſpective tythingmen, and two others, out of the three neighbouring tythings, ſhall aſſemble to examine the ſtate of the fact, and if the tything to which the criminal belongs is purged by the oath of theſe twelve perſons, it ſhall be freed from the obligation to pay the damage*. The progreſs of government, by enlarging the general intercourſe of ſociety, contributed to diminiſh the peculiar connexion among the inhabitants of the ſame village, and made it appear an intolerable hardſhip, that they ſhould, without diſtinction, be accountable for the miſdeeds of one another.

Beſides theſe two branches of buſineſs which I have mentioned, the defence of the country and the deciſion of law-ſuits, that were canvaſſed in the Saxon tythings, hundreds, and ſhires, thoſe meetings were accuſtomed to deliberate upon matters of ſtill greater importance. They received complaints concerning ſuch abuſes in adminiſtration, or grievances, as had occurred within their ſeveral diſtricts, and by introducing new regulations endeavoured to apply a proper remedy. Thus the heads of families or independent proprietors of every village, or tything, exerciſed a legiſlative power within their own liberties, but were liable to be controuled, in this reſpect, by the meetings of the hundred, which enjoyed the ſame power in a larger territory; and both of theſe were ſubordinate to the meetings of the

* See the laws collected by Roger de Hoveden, and ſaid by this author to have been made by William the Conqueror in the 4th year of his reign, with the advice of his barons, nobles, wiſe men, &c.

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ſhire, which poſſeſſed a legiſlative authority over all the hundreds of that extenſive diviſion. How the meetings of the ſhire were liable to be controuled by a ſtill greater aſſembly, I ſhall now proceed to enquire.

CHAP. VII.

Of the Wittenagemote.

BY the gradual extenſion of intercourſe between the different families or tribes of the Anglo-Saxons, and by the advancement of their political union, the inhabitants of larger territories were led to aſſemble for the regulation of their public concerns. As the freemen or allodial proprietors of a tything, of a hundred, and of a ſhire, determined the common affairs of their ſeveral diſtricts, and were convened for that purpoſe by the tything-man, the hundreder, and the alderman; ſo the union of people belonging to different ſhires produced a greater aſſembly, conſiſting of all the allodial proprietors of a kingdom, and ſummoned by the king, the great military leader, and chief magiſtrate of the community. This national council received the appellation of the *mickle-mote*, or *Wittenagemote*.

During the continuance of the Heptarchy, each of the Saxon kingdoms had its own Wittenagemote; and there can be no doubt that thoſe national councils, though ſometimes they might act in concert, were independent of one another. But when all the dominions of the Anglo-Saxons were reduced

reduced under one ſovereign, the Wittenagemotes of each particular kingdom were diſſolved, and there was formed a greater aſſembly of the ſame nature, whoſe authority extended over the whole Engliſh nation. The circumſtances attending this important revolution are loſt in obſcurity; and we have no means of diſcovering with certainty, whether it was produced by the mere influence of cuſtom, or by an expreſs regulation. It is probable that when Egbert had ſubdued the different ſtates of the Heptarchy, the members of every ſeparate Wittenagemote were invited to that great council of the monarchy which was then eſtabliſhed; and that, in conſequence of this, they would ſcarcely think it worth while to continue their attendance in thoſe inferior meetings with which they had formerly been connected.

Of the particular claſs or deſcription of perſons who compoſed the Saxon Wittenagemotes, either in the reſpective kingdoms of the Heptarchy, or in the monarchy which was formed from the union of theſe, the hiſtorians of that period have given us little or no direct information. But, from a variety of circumſtances, it appears highly probable that thoſe ancient aſſemblies, as I already have hinted, were compoſed of all the members of the community who enjoyed landed eſtates in full property; that is, of all thoſe who had the appellation of the *Greater Thanes*.

1. From the ſtate of the country after the Saxon conqueſt, theſe perſons, being independent with reſpect to their poſſeſſions, were maſters of their own conduct; and were under no neceſſity of adopting public meaſures to which they had not conſented, or upon which they had not at leaſt had an opportunity of deliberating and giving their ſuffrage. Without their advice and concurrence, therefore, the king could ſeldom adventure to tranſact any important national buſineſs; and from the

the frequent practice of conſulting them, they were gradually formed into a regular aſſembly, and became an eſtabliſhed branch of the conſtitution. The reſt of the inhabitants were either *vaſſals*, whoſe benefices, if not held precarioufly, were ſecured to them only for a limited period; or *peaſants*, whoſe condition was yet more dependent and ſervile. That the king ſhould find it neceſſary or expedient to ſummon either of theſe claſſes of people to his great council, cannot eaſily be conceived. Their ſupport and aſſiſtance might be expected, of courſe, in the execution of every meaſure which had been approved by their ſuperiors; and therefore the voice of the allodial proprietors of land might, on every public emergency, be regarded as the voice of the nation.

2. The uſual deſignations given, by ancient authors, to thoſe who ſat in the Saxon Wittenagemote, ſeem perfectly to coincide with this idea of its conſtituent members. The perſons preſent in that aſſembly, when they happen to be particularly ſpecified, are commonly ſaid to be the *biſhops and abbots*, together with the *aldermen*, the *chiefs*, the *nobles*, or the leading men of the kingdom*. Theſe expreſſions are peculiarly applicable to the allodial proprietors of land. It is to be obſerved, that in thoſe times there was no ſuch perſonal wealth as could create any authority; neither was there any diſtinction between what is now called a nobleman and a gentleman; but every individual, poſſeſſed of landed property, was a ſort of leader, and maintained a degree of influence and rank correſponding to his fortune. The dignified clergy were diſtinguiſhed by their profeſſion, as the aldermen, or governors of ſhires, were by their office; for which

* Principes, optimates, magnates, proceres, &c. See Spelman on Parliaments—Dr. Brady, Anſwer to Petyt—and the ſeries of great councils before the conqueſt. Tyrrell's Bibliotheca Politica, Dial. 6.

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reaſon, in ſpeaking of the perſons who compoſed the Wittenagemote, thoſe two claſſes of men are frequently mentioned in particular, while the other proprietors of land are only pointed out by a general appellation expreſſive of their condition.

3. The ſame concluſion receives an additional ſupport from the obvious analogy between the Wittenagemote, and the inferior meetings of the tythings, hundreds, and ſhires. Theſe inferior meetings were plainly of the ſame nature with the great national council. The former deliberated upon the public affairs of the ſeveral diſtricts to which they belonged: the latter, upon the public affairs of the whole nation. Both of theſe appear to have ariſen from the ſame circumſtances; and probably the one was introduced in imitation of the other. It was becauſe the chief magiſtrate of every inferior diſtrict had not, of himſelf, ſufficient authority to execute public meaſures, that he was accuſtomed to call meetings of thoſe inhabitants whoſe concurrence he thought was expedient; and it was upon the ſame account that the king was accuſtomed to aſſemble the great national council. There is great reaſon to believe, therefore, that all theſe meetings were conſtituted in the ſame manner; and, as it ſeems to be univerſally agreed, that the court of every tything, hundred, and ſhire, was compoſed of the reſpective proprietors of land in thoſe diſtricts; it can hardly be doubted that the conſtituent members of the Wittenagemote were the people of a ſimilar deſcription throughout the whole kingdom.

Laſtly; The probability of this opinion is farther encreaſed, when we examine the ſtate of the national councils, which exiſted about the ſame time in the other European kingdoms. In all thoſe kingdoms, the ſovereign was under the neceſſity of tranſacting the more important parts of the public buſineſs with the concurrence of a great proportion

portion of his ſubjects; and the councils which he convened for this purpoſe appear, in every country, to have been compoſed of that part of the people who enjoyed a degree of influence over the reſt of the community. Thus in France, the country of modern Europe in which the greateſt number of particulars concerning the primitive government has been tranſmitted to us, the ſupreme concerns of the kingdom fell under the deliberations of the aſſemblies of the *field of march*; ſo called from the time of their principal meetings. From the accounts delivered by ſome of the French writers, theſe councils appear to have been compoſed of all the freemen of the nation. According to others, they conſiſted of the leading men or nobility*. Theſe accounts are, at bottom, not very different. In the early periods of the French monarchy, no perſon could be denominated free, unleſs he had the independent property of land; and every landed proprietor was, in reality, a ſort of chief or nobleman †.

In conſequence of the diſputes between the king and the people, that took place in England after the acceſſion of the houſe of Stewart, there aroſe two political parties; the followers of which have maintained very oppoſite opinions concerning the conſtituent members of the Anglo-Saxon Witenagemote. The ſupporters of the prerogative, in order to ſhew that the primitive government of England was an abſolute monarchy, and that the privileges enjoyed by the people have all flowed from the voluntary grants and conceſſions of the

* See Obſervations ſur l'Hiſt. de France par M. l'Abbé Mably—and Memoires Hiſtoriques du Gouvernement de France, par M. le Comte de Boulainvilliers.

† Hinc haud ægre colligere eſt, unde noſtri appellarent parliamenta procerum totius regni conventus.—Du Cange v. Parliamentum. The Salic laws are ſaid to have been made with the conſent of the *proceres* or the *optimates*.—And even charters from the crown uſually bear, that they were granted *cum conſenſu fidelium noſtrum*,—or *in noſtra et procerum preſentia*. Mably, ibid.

ſovereign,

ſovereign, were led to aſſert that the original members of the Wittenagemote were perſons under the king's immediate influence and direction; from which it was concluded, that, ſo far from being intended to controul the exerciſe of his power, this council was called of his own free choice, for the purpoſe merely of giving advice, and might of conſequence be laid aſide at pleaſure. Hence it was contended, that beſide the biſhops and abbots, and the aldermen, both of which were ſuppoſed to be in the nomination of the crown, the other members of the Wittenagemote, who received the appellation of *wites* or *wiſe men*, were the lawyers or judges of the kingdom, who ſat in the privy-council, and were likewiſe in the appointment of the ſovereign *.

Thoſe writers, on the contrary, who defended the rights of the people, appear, from their eagerneſs in combating this opinion, to have been betrayed into the oppoſite extreme. In their endeavours to prove the independent authority of the ancient national council, they were induced to believe, that, from the beginning, it had been modelled upon the ſame plan as at preſent; and that it was originally compoſed of the nobility, the knights of ſhires, and the repreſentatives of boroughs †.

It requires no great ſagacity or attention, at this day, to diſcover that both of theſe opinions are equally without foundation. They may be regarded as the deluſions of prepoſſeſſion and prejudice, propagated by political zeal, and nouriſhed with the fondneſs and credulity of party attachment. Nothing can be more improbable, or even

* Hume's Hiſt. of England, Appendix to Anglo-Saxon period.

† Sir Robert Atkyns' Power, Juriſdiction, and Privileges of Parliament.—Petyt, Rights of the Commons aſſerted.—Jani Anglorum facies nova.—Argumentum Antinormanicum.—Tyrrel's Bibliotheca Politica.——Lyttleton's Hiſt.

ridiculous,

ridiculous, than to ſuppoſe that the lawyers or judges of England were, immediately after the ſettlement of the Anglo-Saxons, a body of men ſo conſiderable as to compoſe the principal part of the Wittenagemote, and, from a title peculiar to themſelves, to fix the general denomination of that great aſſembly. In a very rude age, the buſineſs of pleading cauſes is never the object of a ſeparate profeſſion; and the deciding of law-ſuits does not form a characteriſtical diſtinction in the chiefs or leading men, who are occaſionally employed in that manner. We may as well ſuppoſe that, in the period of Engliſh hiſtory now under conſideration, the Anglo-Saxon *wites* or *wiſe men*, were the phyſicians, the ſurgeons, and apothecaries, or the mathematicians, the chymiſts, and aſtronomers of the country, as that they were the retainers of the law. We have ſurely no reaſon to believe that the latter were, by their employment, more diſtinguiſhed from the reſt of the community than the former.

Beſides, if the *wites* are underſtood to be judges and lawyers, it will follow, that the ancient national aſſembly was often compoſed of that claſs of men excluſive of all others; for, in ancient records, it is frequently ſaid, that laws were made, or public buſineſs was tranſacted, in a council of *all the wites* of the kingdom. But it is univerſally admitted, that the biſhops and abbots, as well as the aldermen or governors of ſhires, were members of the Wittenagemote; from which it is a natural inference, that theſe two ſets of people were comprehended under the general appellation of *wites*.

This may eaſily be explained. The term *wite* ſignifies, primarily, a man of valour, or military proweſs; and hence a man of high rank, a nobleman*. It has been uſed, in a ſecondary ſenſe, to

* Somner's Sax. Dict. v. *Wita*.

denote

denote a *wiſe man*, from the uſual connection, eſpecially in a rude age, between military ſkill and experience or knowledge; in the ſame manner as *an old man*, or *grey-headed man*, is, according to the idiom of many languages, employed to ſignify a ruler or governor. As far as any concluſion, therefore, can be drawn from the appellation of Wittenagemote, or council of the wites, it is likely that this national aſſembly comprehended neither judges nor lawyers, conſidered in that capacity, but that it was compoſed of all the leading men, or proprietors of landed eſtates; in which number the dignified clergy, and the governors of ſhires, if not particularly diſtinguiſhed, were always underſtood to be included*.

The other opinion is not more conſiſtent with the ſtate of the country, and the condition of its inhabitants. It ſuppoſes that in England, ſoon after the ſettlement of the Anglo-Saxons, the lower ranks of men were ſo independent of their ſuperiors, as to form a ſeparate branch of the community, inveſted with extenſive political privileges. This opinion ſuppoſes, in particular, that the mercantile part of the inhabitants were become a diſtinct order of the people, and had riſen to ſuch opulence and authority as entitled them to claim a ſhare in the conduct of national meaſures. There is not, however, the leaſt ſhadow of probability in this ſuppoſition. Whatever improvements in trade and manufactures had been made in Britain, while it remained under the provincial government of Rome, theſe were almoſt entirely deſtroyed, by the convulſions which attended the Saxon conqueſt, and the ſubjection of a great part of the iſland to the dominion of a barbarous people. The arts which remained in the country after this great revolution,

* By a law of king Ina, it is enacted, that if any perſon fought in the houſe of the alderman, *or of any other illuſtrious wite*, he ſhould pay a fine of ſixty ſhillings. See Wilkins' Anglo-Saxonica, Leges Inæ, c. 6.

were

were reduced to ſuch as procure the mere neceſſaries, or a few of the more ſimple conveniencies of life; and theſe arts, as has been already obſerved, were hardly the objects of a ſeparate profeſſion; but were practiſed occaſionally by the inferior and ſervile part of the inhabitants. How is it poſſible to conceive, in ſuch a ſtate of manufactures, that the trading intereſt would be enabled to aſſume the privilege of ſending repreſentatives to the great council of the nation? Even in thoſe European ſtates, whoſe advancement in arts was much earlier than that of the Anglo-Saxons, it was long poſterior to the period we are now examining, before the trading towns were formed into corporations; an event which muſt have preceded their acting in a political capacity, and, conſequently, their being repreſented in the national aſſembly.

But, independent of this conſideration, which can hardly fail to produce conviction in ſuch as are well acquainted with the early hiſtory of modern Europe; the fact in queſtion may be determined in a manner ſtill more deciſive and ſatisfactory. If the repreſentatives of boroughs, and the knights of ſhires, were conſtituent members of the ancient Wittenagemote, it is inconceivable that no traces of their exiſtence ſhould have been preſerved in the annals of the Saxon princes. From the numerous meetings of that aſſembly which are mentioned in many authentic records, and of which accounts are given by hiſtorians, who lived either in that period, or not long after it, a variety of expreſſions muſt have occurred, by which the fact might be aſcertained in a manner admitting of no doubt or heſitation. Had it been a common practice for the towns and ſhires to chooſe repreſentatives in the national aſſembly, is it poſſible to believe that this practice would never once have been alluded to upon any occaſion whatever; or that, when mention is made ſo frequently, of the biſhops and other dignified

nified clergy, of the aldermen, of the wites, or leading men, who ſat in this meeting, another part of its members, conſiſting of a claſs of people totally different from the former, would in no caſe, either from accident or deſign, have been pointed out in clear and unequivocal terms? It cannot be diſputed, however, that notwithſtanding the moſt diligent ſearch into our ancient hiſtories and records, by men of great induſtry and learning, and eager to prove their hypotheſis, not a ſingle unambiguous expreſſion, to that effect, has ever been found: and this obſervation is not limitted to the time of the Heptarchy, but may be extended from the ſettlement of the Anglo-Saxons to the Norman conqueſt.

The attempts to prove that there were repreſentatives of boroughs and ſhires in the Wittenagemote conſiſt, therefore, in giving a forced interpretation to certain vague and general phraſes, which happen to be employed by ancient authors, concerning the members of that aſſembly. The word *alderman*, for example, denoting a *ruler*, may be extended to the ruler, or chief magiſtrate, of a town, as well as of a ſhire; and therefore it is contended, that when the aldermen are mentioned in old records, as a conſtituent part of the national council, we are to underſtand the repreſentatives of boroughs, as well as the governors of ſhires. It is, in like manner, aſſerted that, by chiefs, or leading men, and by wites, or wiſe men, the perſons choſen to repreſent the commons are as properly deſcribed, as the nobility, or proprietors of land *

According to this reaſoning, the repreſentatives of the commons, in every ſhape, and of every deſcription, as they exiſt at preſent, though not ſepa-

* Tyrrell's Bibliotheca Politica, Dial. 6.—It ſeems to be the opinion of this author, however, that the exiſtence of the knights of ſhires, in the Saxon Wittenagemote, is more doubtful than that of the repreſentatives of boroughs.

rately

rately mentioned, are included in almoſt every deſignation, applied to the ancient members of the Wittenagemote. How far this mode of argument may be extended it is difficult to ſay. The *aldermen* and the *wites* have, each of them, the capacity of lord Peter's *bread*, containing the quinteſſence of beef, mutton, veal, veniſon, partridge, plum-pudding, and cuſtard.

In the accounts given by ancient authors of thoſe that were called to the national council, mention is made, in ſome caſes, not only of the biſhops, abbots, aldermen, and chiefs, but alſo of the *people*; and the perſons preſent are ſometimes diſtinguiſhed by the appellation of *a great multitude* *.

But it cannot eſcape obſervation, that if this proves any thing, it will prove too much: it will prove that all the inhabitants, even thoſe of the loweſt rank, inſtead of ſending repreſentatives, were perſonally allowed to vote in the national council. By the appellation of *the people*, it appears that, on ſome occaſions, the lay-nobles are underſtood, in oppoſition to the dignified clergy; and on others, the ordinary proprietors of land, in oppoſition to thoſe of diſtinguiſhed opulence. There is, at the

* Thus in the record of a Wittenagemote held by Ethelbert in 605, it is ſaid, "*Convocato igitur communi concilio tam cleri quam populi.*"

A general council is ſaid to have been held by Ethelwolfe, in 855, *Præſentibus et ſubſcribentibus Archiepiſcopis et Epiſcopis Angliæ univerſis, nec non Beorredo rege Merciæ, Edmundo Eaſt-Anglorum rege, Abbatum et Abbatiſſarum, Ducum, Comitum, Procerumque totius terræ, aliorumque fidelium infinita multitudine, qui omnes regium chirographum laudaverunt, dignitates vero ſua nomina ſubſcripſerunt.*

Canute, in the fifth year of his reign, is ſaid to have held a great council, of his archbiſhops, dukes, earls, abbots, *cum quamplurimus gregariis militibus, ac cum populi multitudine copioſa.*

In ſome other inſtances, expreſſions of a ſimilar nature occur; ſuch as *vulgi conſenſus*, and *populo audiente et vidente.* [See the authors above quoted—as alſo Gurdon's Hiſtory of the Parliament.] In many of theſe expreſſions a diſtinction is clearly pointed out between the members of the meeting and the inferior people that were merely ſpectators. It ought alſo to be remembered, that the greateſt number of thoſe general phraſes, quoted for proving that the commons were repreſented in the Wittenagemote, are uſed only by writers after the Norman conqueſt; who, in tranſlating Saxon laws, or in ſpeaking of Saxon uſages, may be ſuppoſed to accommodate their language to the ideas prevalent in their own times.

ſame

ſame time, good reaſon to believe, that the multitude, ſaid to have been preſent at ſome of thoſe meetings, was partly compoſed of mere ſpectators, who might poſſibly, by their acclamations, teſtify their approbation of the meaſures propoſed.

There is produced an inſtance of a Wittenagemote, held by one of the kings of Mercia, in the year 811, in which a royal charter is ſaid to have been ſigned before "the Mercian chiefs, biſhops, "leaders, aldermen, *procurators* and relations of "the ſovereign, together with Cuthred, the king of "Kent, and Suthred the king of the Eaſt Saxons, "and all thoſe who were preſent in the national "council*." As the members of the Wittenagemote had immemorially the privilege of appointing any perſon to act for them in their abſence, it has been ſuppoſed, with great probability, that the *procurators* here mentioned were the proxies of abſent nobles. In ſupport of this conjecture, it is obſerved, that they are placed next in order to the nobles, and immediately before the king's relations†.

But although there is no ground for believing that the repreſentatives of the commons were ever admitted into the Wittenagemote, there can be as little room to doubt that, when the different Anglo-Saxon kingdoms were firſt united under one monarch, it compoſed a very numerous aſſembly. As, upon the ſettlement of the Saxons in Britain, few perſons were in a condition to occupy large eſtates, the number of allodial proprietors was proportionably encreaſed. It is probable that the eſtates of the greater part of individuals extended to no

* *Merciorum Optimates, Epiſcopos, Principes, Comites,* PROCURATORES, *meoſque propinquos, nec non Cuthredum regem Cantuariorum, atque Suthredum regem Orient. Saxon. cum omnibus qui teſtes noſtris ſynodalibus conciliabulis aderant.* [Annals of Winchelcomb.]

† Gurdon's Hiſtory of the Parliament.—In a charter of Athelſtan, the *procurators* are alſo mentioned. But this charter was not granted in the Wittenagemote. [Ibid.]

more

more than a *hide* of land, or what could be cultivated by a ſingle plough, and that this property conſtituted the primitive qualification for voting in the ſeveral Wittenagemotes of the Heptarchy. We hear of no particular limitation in this reſpect, either in the reign of Egbert, or in any preceding period.

It has been imagined by ſome authors, that the privilege of ſitting in the Wittenagemote was originally confined to ſuch as poſſeſſed forty hides of land; a property of great extent, which few individuals, it is natural to ſuppoſe, could have an opportunity of acquiring; whence it ſeems to be inferred, that a ſmall part only of the landed gentry were admitted into the councils of the ſovereign *. This opinion is founded upon a paſſage in the regiſter of Ely, which mentions a diſtinction in point of rank, enjoyed by ſuch of the nobles as poſſeſſed eſtates amounting to forty hides of land. But this paſſage refers to the ſtate of the kingdom in the reign of Edward the confeſſor; when property had been ſubjected to the moſt important revolutions; and government had widely deviated from its original inſtitution. No inference can thence be drawn, concerning the primitive conſtitution of the national council; which muſt have ariſen from the ſtate of the inhabitants at the time when it was framed. How far the authority above mentioned is ſufficient to juſtify that concluſion, with reſpect to the later periods of the Anglo-Saxon government, will fall to be afterwards examined. It is therefore highly probable that the Wittenagemote of the Anglo-Saxons was originally ſo conſtituted, as to admit a great proportion of the people into a ſhare of its deliberations; and it merits attention, that even ſuch of the inhabitants as were excluded

* Dugdale's preface to his Baronage. Hume's Hiſt. of England, appendix to Anglo-Saxon period.

from this aſſembly, were either the ſlaves, or the tenants and vaſſals of thoſe who ſat in it. The former were thus placed under the protection of the latter. Men of inferior rank, though not formally repreſented in the national council, enjoyed, therefore, a degree of ſecurity from the influence of their maſter or ſuperior, who had an intereſt to defend them, from every injuſtice but his own; and whoſe jealouſy was ever watchful to guard them from any oppreſſion of the ſovereign.

The *powers* exerciſed by the Saxon Wittenagemote, were ſuch as might be expected from the independent ſituation, and the opulence, of its members. It poſſeſſed a ſimilar authority over the whole kingdom, to that of any tything, hundred or ſhire, over its own ſubordinate diviſion. In general, the Wittenagemote ſeems to have taken under its cognizance all thoſe branches of government, which were of ſufficient importance to merit its attention, and which, at the ſame time, could be directed, in conſiſtency with the delays ariſing from the deliberations of a numerous aſſembly.

1. It exerciſed, firſt of all, the power of providing for the defence of the kingdom, and of determining the public military operations*. This was, in all probability, the primary object in calling that aſſembly; and for which, according to the moſt ancient cuſtom, it was regularly held twice in the year: in the ſpring when the ſeed-time was over, to reſolve upon ſuch expeditions as were thought expedient; and, in the autumn, before the harveſt began, to divide the plunder. A people ſo rude, as the early Saxons, had little other buſineſs of importance but what conſiſted in the ſowing and reaping of their grain; and were generally diſpoſed to employ the greateſt part of the ſum-

* Seldon's Notes on Gov. of England, collected by Nath. Bacon, part 1. chap. 20. and the authorities referred to.

mer,

mer, either in private rapine, or in hoſtilities againſt a foreign enemy. The ſame ſeaſons were obſerved, for the meetings of the national council, in the other kingdoms of Europe. We are informed that, in France, the vernal meetings were originally in the beginning of March; but that afterwards, from greater attention, it ſhould ſeem, to the cares of huſbandry, they were delayed till the firſt of May*.

It may here be worth while to remark, that the power of declaring peace and war, which belonged indiſputably to the Saxon Wittenagemote, affords complete evidence that its members were allodial proprietors of land; for, upon the ſuppoſition of their being the vaſſals of the crown, they muſt have been bound, when called upon, to attend the ſovereign in war, and conſequently their conſent would not have been requiſite in undertaking any military enterprize.

The ſame authority, by which military enterprizes were determined, make likewiſe a proviſion for carrying them into execution. As from the circumſtances of a rude nation, every man was in a condition to furniſh a number of ſoldiers proportioned to the extent of his property; it was a general law in the Saxon government, that the proprietors of land ſhould be rated, for military ſervice, according to the number of *hides* which they poſſeſſed; and if any perſon refuſed to contribute his proportion, he was liable to forfeit his poſſeſſions, and to be deprived of the public protection.

The erecting and repairing forts and caſtles, as a defence againſt the ſudden incurſions of an enemy, and the maintaining a free communication, by roads and bridges, between the different parts of

* This change is ſaid to have been made about the beginning of the ſecond race of the French kings.

the kingdom, were objects of police, which, in the ſame view, attracted the notice of the Wittenagemote, and for which individuals were aſſeſſed in proportion to their wealth. The magnificent works of this nature, which were executed by the Romans, in all the provinces of their empire, contributed much to facilitate the progreſs of their arms, and to eſtabliſh their dominion over the conquered people. From their example, it is likely that the Saxons, in Britain, as well as the other nations, who ſettled upon the continent of Europe, were incited to improvements of this nature which they would not otherwiſe have thought of.

2. When the members of the Wittenagemote had been aſſembled, and when they had ſettled every point relating to their martial operations, their attention was frequently turned to other objects of national concern. Whatever inconveniencies had been felt from the manner of conducting public buſineſs, whatever abuſes had been committed in the adminiſtration of government; theſe were canvaſſed; and regulations were made for preventing the like evils for the future. It is not diſputed that the Wittenagemote exerciſed a legiſlative power over the whole kingdom; and, of conſequence, the power of repealing and altering the regulations introduced by the meetings of any particular tything, hundred or ſhire*. The impoſition of taxes, the moſt important appendage of legiſlation, was likewiſe undoubtedly aſſumed by this great aſſembly, ſo far as taxes exiſted in that early period; but theſe were, in a great meaſure unknown; the ordinary expence of government being defrayed out of the private eſtate of the king, and from the various emoluments annexed to the regal dignity.

* The preface to moſt of the collections of Saxon laws publiſhed by Wilkins.

3. To

3. To this legiſlative power was added that of directing and controlling the exerciſe of the royal prerogative. Thus the demeſnes of the crown were conſidered as not entirely the private eſtate of the king; but in ſome meaſure the property of the public, which fell to be managed and diſpoſed of under the public inſpection. The alienation, therefore, of crown-lands, though proceeding in the name of the king, was not effectual without the concurrence of the *wites*; and hence royal charters were frequently granted in the Wittenagemote, and ſubſcribed by a number of its members*.

The coining of money, in order to ſave the trouble of weighing and aſſaying the metals which paſs in exchange, was a privilege early aſſumed by the king in the reſpective kingdoms of Europe; and even by the nobles or great proprietors of land in the territories under their juriſdiction. In the exerciſe of this privilege, great frauds had been committed on many occaſions, by debaſing the coin below its uſual ſtandard; for preventing which abuſes, the Wittenagemote, in England, appears to have ſuperintended the behaviour both of the king and of the nobles, and to have regulated the coinage throughout the whole kingdom †.

The members of this great council had no leſs authority in the government of the church than in that of the ſtate. That they were early accuſtomed to take cognizance of the eſtabliſhed religion, appears from what is related of Edwin king of Northumberland, who being ſolicited to embrace Chriſtianity, is ſaid to have anſwered, that in a matter of ſuch importance he would be determined by the advice of his wites and princes. In the Wittenagemote, all eccleſiaſtical laws were made; the

* Of this privilege of the Wittenagemote there occurs a remarkable inſtance in the reign of Egbert, in 836. Spelm. concil. t. i. p. 340.

† Wilkins leges Athelſtani.

king's

king's nomination of biſhops and other dignified clergy was confirmed; and their number, as well as the extent of their livings, was regulated.

The ſame national council gave ſanction to the eſtabliſhment of monaſteries, and of the revenues with which they were endowed *.

Not contented with directing the exerciſe of the executive power, the nobles and wites aſſumed, in extraordinary caſes, the privilege of calling the ſovereign to account for the abuſes of his adminiſtration. Of this a remarkable inſtance occurs in the reign of Segebert, a king of the Weſtern Saxons; who, for his tyrannical behaviour, and after he had treated with contempt the remonſtrances of his people, was, by a general aſſembly of the nation expelled the kingdom; and another prince of the royal blood was elected in his place. This event is ſaid to have happened in the year 755 †.

Laſtly, when the members of the Wittenagemote, had met to deliberate upon public buſineſs, they were accuſtomed alſo to hear complaints concerning ſuch great quarrels and acts of injuſtice, as could not be effectually redreſſed by inferior judicatories, and to endeavour, by their ſuperior authority, either to reconcile the parties, or to decide their differences. By frequent interpoſitions of this nature, that great council was at length formed into a regular court of juſtice; and became the ſupreme tribunal of the kingdom; in which appeals from the courts of each particular ſhire, as well as original actions between the inhabitants of different ſhires, were finally determined.

* Selden's Notes collected by N. Bacon, part i. ch. 20. and the authorities to which this author refers.

† Saxon chronicle.

CHAP. VIII.

State of the Sovereign in the primitive Anglo-Saxon Government.

THE different parties of the Saxons, who invaded Britain, were each of them under the conduct of ſome adventurer, whoſe fortunes they had followed, either from perſonal attachment, or from a confidence of his abilities. After they had ſettled in the country, the ſame perſon continued to have command of the forces, and became alſo the chief civil officer of the community. The longer he had remained in that high ſtation, his poſſeſſion of it was rendered more ſecure by the continuance of the ſame circumſtances which had originally produced his elevation. His military talents deriving luſtre and importance from the diſtinguiſhed point of view in which they were beheld, excited the admiration and reſpect of his followers; while the dangers with which they were ſurrounded, and a ſenſe of their common intereſt, united them in fighting under his banner. By every new expedition they became more accuſtomed to ſubmit to his direction; and the oftener they had found it neceſſary to ſolicit his protection and aſſiſtance, under theſe calamities to which they were expoſed, they felt more ſenſibly the advantages derived from his favour, as well as the inconveniences ariſing from his diſpleaſure.

In the early hiſtory of the Anglo-Saxons, the leader of every ſeparate tribe or party, is accordingly repreſented as poſſeſſing a permanent office, with the title of *herotoch* or duke, in place of which that of *king* was afterwards aſſumed.

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The king was in poſſeſſion of a landed eſtate, acquired in the ſame manner with that of every inferior leader, by whoſe aſſiſtance the conqueſt had been made. As the booty, ariſing from any ſucceſsful enterprize, was divided among the free people or heads of families concerned in the adventure, and, as on thoſe occaſions, each individual obtained a portion, both of land and moveables, ſuited to his rank and abilities; it may eaſily be conceived that the property accumulated, in a courſe of time, by the ſovereign, would be much greater than that of any one of his ſubjects. His eſtate was naturally diſtributed among his dependents, according to the ſame plan which was adopted by every other landed proprietor. A part of it was beſtowed upon his kindred or free retainers, under the condition of military ſervice; and the remainder was cultivated by his villains, or bondmen, for ſupporting the expence of his houſehold. Over theſe two claſſes of people, he exerciſed the rights of a ſuperior, and of a maſter. Throughout the reſt of the kingdom, excluſive of his own particular eſtate, his authority was much more limited. Every allodial proprietor, unaccuſtomed to ſubjection, and ſupported by his own retainers, was more or leſs in a condition to maintain his independence; and thoſe who had acquired conſiderable property, beholding with jealouſy the ſuperior dignity and pretenſions of the king, were commonly ready to combine againſt him, either in reſenting or oppoſing, whatever they deemed an infringement of their liberties.

The powers with which the ſovereign came to be inveſted, either in the different ſtates of the heptarchy, or in the ſubſequent monarchy which aroſe from the union of thoſe kingdoms, were ſuch as, in order to prevent confuſion and promote the diſpatch of public buſineſs, were tacitly devolved upon him, or as, from the nature of his ſituation, he had

had found encouragement to aſſume, and had, without oppoſition, been permitted to exerciſe. The dignity and office of the king, though higher in degree, were perfectly ſimilar to thoſe of the tythingman, the hundreder, and the earl; and he poſſeſſed nearly the ſame powers over the whole kingdom, which thoſe inferior officers enjoyed in their own particular diſtricts.

1. By having the command of the forces in the time of battle, the original ſource of his greatneſs, he was led to direct their movements on other occaſions; to take preparatory ſteps for bringing them into the field; to ſuggeſt particular enterprizes, to plan the meaſures for conducting them, to execute treaties with foreign ſtates, and in general to ſuperintend the defence of the kingdom, and the whole courſe of its military operations.

2. In conſequence of his being at the head of the military department, the king was led alſo to exert his authority in ſuppreſſing internal diſorders, in quelling tumults and inſurrections, in reſtraining private rapine and violence; in ſeizing offenders, and preventing their eſcape from juſtice; in a word, he obtained the province of maintaining the ordinary police of the country, and the ſecurity of its inhabitants.

3. As, from theſe two branches of power, he became the prime mover, and propoſer of public meaſures, and as, in matters of great moment, the concurrence of the Wittenagemote was neceſſary; he acquired, of courſe, the excluſive privilege of calling that aſſembly, and of preſiding in all its deliberations. The influence which he thence obtained, with regard to its determinations, may eaſily be imagined. The preſident of every numerous aſſembly has many opportunities of moulding the buſineſs that comes before it, in ſuch a ſhape as will promote his own deſigns; more eſpecially, if by the permanent enjoyment of that office, he has leiſure

leiſure to form a regular plan of management; and if, by having a diſcretionary power of calling the particular meetings, he may regulate his motions according as the aſſembly happens, in different conjunctures, to be attended by different members. But while, by theſe favourable circumſtances, the ſovereign was capable of advancing his political intereſt, he enjoyed the additional advantage of ſuperior opulence and dignity; which put him in a condition to intimidate, as well as to over-reach oppoſition. To a prince, therefore, poſſeſſed of much prudence, and of popular talents, it was not difficult, in ordinary caſes, to procure the conſent of the Wittenagemote to thoſe meaſures which he thought proper to ſuggeſt; and the reſolutions of that aſſembly, while they appeared to limit and controul the power of the crown, were at bottom, very often directed by the monarch, and rendered ſubſervient to his will.

4. As the Wittenagemote enacted laws, diſtributed juſtice in the laſt reſort, and regulated the adminiſtration of public affairs; ſo the duty of enforcing the decrees and regulations of that aſſembly, and, in general, the executive part of the government, were naturally devolved upon the king. That great officer, who conducted the military force of the kingdom, could hardly fail to aſſume the province of cauſing the puniſhment decreed againſt offenders to be regularly inflicted, and of compelling every individual to fulfil the deciſions of the law. The ſame perſon was led to procure information with reſpect to the commiſſion of heinous crimes, and to direct that they ſhould be proſecuted before the proper tribunals. In theſe employments, the ſovereign acted as the head and repreſentative of the community. In the ſame capacity, he obtained the nomination of many inferior officers in church and ſtate; the privilege of coining money, and of ſuperintending weights and meaſures;

meaſures; together with the exerciſe of all thoſe powers which, from their nature, could not be conveniently devolved upon a popular aſſembly.

Theſe prerogatives, which, from the natural courſe of things, and probably without any formal or expreſs regulation, were gradually annexed to the crown, became the ſource of ſuch perquiſites and emoluments, as more than compenſated the trouble with which they were attended. The chief executive officer, who proſecuted a crime in the name of the public, had a plauſible pretence, upon the ſame account, for levying the fine or forfeiture ariſing from the conviction of the criminal. Beſides, in government, as well as in religion, the bulk of men are commonly ſo engroſſed by the image or picture, as to forget the original, and to beſtow upon the repreſentative the ſentiments due to the object it repreſents. Thus the ſovereign, who appeared to direct, and to put in motion, all the wheels and ſprings of government, who enforced the laws, who vindicated offences, and took upon himſelf the whole burden of providing for the public ſafety, was apt to be conſidered as exerciſing, in his own right, thoſe powers with which the community had inveſted him. Thoſe laws which he enforced were conceived to be more immediately calculated for his own benefit: thoſe officers whom he appointed were looked upon as the ſervants of the crown; and thoſe crimes, which he proſecuted and puniſhed, were regarded as crimes committed againſt him in particular, for which he was, therefore, entitled, of himſelf, to demand reparation.

The public revenue of the Anglo-Saxons, therefore, by which the rank of the ſovereign was maintained, and out of which the various expences of government were defrayed, conſiſted almoſt entirely of two branches: the original demeſnes of the king, acquired in the ſame manner with the private eſtate of each allodial proprietor; and the various

various forfeitures and fines, whether of land or moveables, which, from time to time accrued, or were tranſmitted to him, as the head of the community. From this latter ſource he derived a continual accumulation of wealth. The diſorder and violence, that prevailed ſo univerſally, gave occaſion to the forfeiture of many rich individuals; and the king was commonly diſpoſed to neglect no opportunity of ſeizing and improving ſuch favourable conjunctures. In the greater part of crimes, as it frequently happens in the infancy of government, the criminal was not puniſhed in a manner adequate to the purpoſes of public juſtice, but was admitted to atone for his offence, by making a pecuniary compoſition with the ſufferer. In thoſe caſes, the king exacted a compoſition as well as the private party; and the profits ariſing to the crown, from the innumerable fines and amerciaments, to which this gave occaſion, were one great cauſe of the long continuance of that imperfect mode of puniſhing offences.

In this early ſtage of the conſtitution, the revenue above mentioned was ſufficient for all the charges of public adminiſtration; which were then inconſiderable. There was no mercenary army to be paid by the king. The judges were either willing to determine differences among individuals, and to take cognizance of crimes, without any conſideration for their trouble; or they obtained a compenſation, by exacting fees from the parties who came before them. Taxes therefore were almoſt entirely unknown. Their introduction belongs to the hiſtory of a more advanced period of ſociety.

But even this primitive revenue of the crown appears to have laid a foundation for the Witenagemote to interfere in the diſpoſal of it; ſince the eſtate, acquired by the king, in the character of the chief executive officer, and as repreſenting the community,

munity, was, in a proper ſenſe, the eſtate of the public. This concluſion was not, indeed, applicable to the whole, though it undoubtedly was, to a conſiderable part of the royal demeſnes. But it was not the genius of that age to make nice diſtinctions; and the interpoſition of the national council, in the management of ſome branches of the crown revenue, might eaſily be extended to others that were placed in different circumſtances.

We find that, not only in England, but in the other ſtates upon the continent of Europe, the arrangements which took place in the management of tha king's houſehold, and private eſtate, had neceſſarily great influence upon the government of the kingdom. According as the ſovereign advanced in opulence and dignity, he was led to employ a greater number of ſervants in the ſeveral branches of his domeſtic œconomy; and the ſame perſons, who enjoyed the chief confidence of their maſter in that private capacity, became, in courſe of time, his miniſters in conducting the buſineſs of the nation. In all the European feudal kingdoms, the management of the king's houſe-hold was anciently divided into five principal departments; and fell under the inſpection of ſo many great officers.

1. The firſt of theſe was the *ſteward*, or maſter of the houſhold, called upon the continent, the *major domo*, the *mayor of the palace*, or *ſeneſchall*; who had originally the care of the king's table. Upon him was naturally devolved the buſineſs of gathering in the rents of the crown lands: for, as thoſe rents were all payable in kind, and were intended for immediate conſumption, it was moſt convenient, that they ſhould be delivered into the hands of that perſon by whom they were afterwards to be laid out for the ſupport of the king's family.

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We may eaſily believe that, from the nature of his office, the maſter of the houſhold was in a condition to acquire much influence over all the tenants and vaſſals of the crown. He was the perſon with whom they were obliged to ſettle their accounts; and who, from his minute acquaintance with their circumſtances, was the moſt capable of giving his maſter information concerning them. He was, therefore, the perſon moſt likely to be employed in adjuſting their differences with one another; and in conſequence of his being the deputy judge upon the royal demeſne, he came, at a ſubſequent period, to be intruſted by the crown, with a ſimilar power over the whole kingdom *.

2. As the collection and management of the victuals, with which the king's table was ſupplied, fell under the direction of the ſteward; ſo the care of the liquors was committed to a ſeparate officer, the *cup-bearer*, or *butler*. In all the Gothic nations, perſons of wealth and diſtinction lived in great ſplendor, and were much addicted to drinking; for which reaſon, it is not ſurpriſing that the accommodation of the ſovereign, in this reſpect, was exalted into a ſeparate employment, and became an object of ſuitable importance.

3. The care of the chambers was committed to a third officer, the *chamberlain*; whoſe buſineſs it was to ſuperintend the *lodging* of his maſter's family. As this officer was entruſted with whatever required to be locked up in the houſe, for the future ſer-

* Spelman v. major domo. This author ſuppoſes three different orders of *major domo* in the houſhold of the Gothic monarchs. The firſt, who had the care of the king's table: the ſecond, who preſided over the whole houſehold: and the third, who was employed under the king as chief executive officer of the kingdom. It ſeems evident, however, that theſe officers were originally derived from one, who, as he became great, appointed deputies to diſcharge the inferior branches of duty incumbent upon him.

In England the ſteward, in the king's houſhold, is mentioned under the name of *Oeconomus* as early as the year 749. [See diſcourſe on this office by Mr. Thynn in Hearne's Coll. of Antiquities.] But he does not ſeem to have acquired great power, as a miniſter of the crown, till the Norman conqueſt. [See ſame collection.]

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vice of the houſhold, he ſeems, upon this account, to have become the keeper of the wardrobe, and, at a ſubſequent period, when the crown rents were paid in money, the king's treaſurer or ſuperintendant of the finances *.

4. Another of the king's principal ſervants obtained the inſpection of the ſtable; and was denominated the *comes ſtabuli*, or *conſtable*. When, by the keeping of many horſes, this department was rendered extenſive, it appears to have been divided into two branches; the one belonging to the chief groom, or conſtable; and the other to the *mareſchal*, or ſmith. It is difficult to mark the period when this diviſion was completed: nor is it an eaſy matter to aſcertain the relative degrees of importance and rank which might then be annexed to theſe two kindred employments.

When the uſe of cavalry in war became frequent, we may eaſily ſuppoſe, that the perſons, who had been accuſtomed to rear and manage the king's horſes, would ſtand forth, as claiming ſuperior diſtinction, and as having a peculiar title to be conſulted. They were thus employed, under the ſovereign, in conducting that important part of the troops; and, by an eaſy tranſition, acquired a juriſdiction in ſuch controverſies, as were either of a military nature, or had ariſen in the army while it remained in the field †.

5. The writing of the king's letters, and the executing of the charters, or other deeds, that iſſued from the crown, became alſo the ſubject of a diſtinct occupation, that of the *ſecretary*. In thoſe times, when the clergy had acquired great influence, and when a proficiency in the art of writing

* It is probable that the butler [pincerna] was, for a long time, not ſeparated from the ſteward; and in the early hiſtory of England neither he nor the chamberlain ſeem to have been much diſtinguiſhed.

† This officer was known to the Anglo-Saxons under the name of *Stallarius*. Spelm. Gloſſ. v. Conſtabularius. The mareſchal ſeems to have been conſidered as the deputy of the conſtable.

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ſuppoſed an uncommon degree of literary education, the only perſon likely to be qualified for this employment was the *chaplain*; who might be conſidered as, in ſome degree, the keeper of the king's conſcience; and who, from the nature of thoſe religious offices which he performed, could ſeldom fail to acquire the confidence of his maſter.

When ſignatures were introduced, for aſcertaining the authenticity of writings, the office of keeping the king's ſeal, and of appending it to his deeds, was committed to the ſame perſon who had been employed in writing them.

As in determining law-ſuits, it was found expedient, in many caſes, to take down the ſentence of the judge in writing, the ſecretary was naturally employed for this purpoſe; and became keeper of the records of the king's court. From this branch of his duty, he got the appellation of *chancellor*; which is ſaid to have originally denoted a *ſcribe*, or *notary*; being derived from *cancella*, the place under the Roman government, allotted to perſons of that profeſſion for carrying on their buſineſs *.

As this arrangement in the domeſtic adminiſtration of the ſovereign, ſuppoſes conſiderable wealth and magnificence; it was probably of a later origin in England than in ſeveral of the kingdoms upon the continent. It is reaſonable to ſuppoſe that the whole of the king's houſhold was at firſt committed to one principal ſervant; whoſe buſineſs having been, by little and little, augmented and rendered more burdenſome, was at length divided into theſe five different departments. A ſimilar plan of adminiſtration, in a more limited ſphere, was adopted by every great landed proprietor; who naturally multiplied his chief domeſtics in proportion to the extent of his wealth; and often followed the exam-

* This officer is clearly diſtinguiſhable in the Anglo-Saxon government. Spelm. v. Cancellarius.

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ple of the king, by dividing the affairs of his houſehold into the ſame number of branches *.

The longer theſe great officers had been eſtabliſhed, they roſe to higher degrees of conſideration; and their authority was farther extended, from the ſuperintendence of the king's houſhold, to the direction and management of the kingdom. As, for the moſt part, they were originally choſen by the ſovereign, upon account of their ſuperior wealth, or abilities, which rendered them capable of ſupporting his dignity in the execution of the buſineſs committed to them; ſo the truſt and confidence which he repoſed in them, together with the ſhare of public adminiſtration which they enjoyed, afforded them numberleſs opportunities of augmenting their private fortunes, and of increaſing their influence. In proportion to their advances in wealth and power, they were in a condition to render their offices more permanent. They were originally nominated by the king during pleaſure; but that ſuperiority, which had been the inducement to their firſt promotion, became commonly more and more conſpicuous during the continuance of their employments. It was, therefore, ſeldom found convenient to diſplace them: and, even after their deceaſe, the heir of that eſtate which they had acquired was naturally regarded as the perſon beſt qualified, and who had a preferable claim to inherit their dignity. By long uſage, theſe offices were thus rendered hereditary in particular families. To this obſervation, however, the office of chancellor, in moſt European countries, is an

* Paſquier in ſpeaking of theſe great officers of the houſhold obſerves, that they were gradually eſtabliſhed in the families of the great lords and gentlemen. "Parquoy eſtoient deſſus tous, cinq eſtats plus eſtimez, le chancelier, "grand chambellan, grand maiſtre, grand eſchançon, que nos anciens apel-"loient grand bouteeller, et, conneſtable. Nous eſtant par cecy monſtrée "une grand œconomie: car auſſi n'y a il maiſon qui vueille tant ſoit peu "paroître, en laquelle ces cinq eſtats ne ſe trouvent eſtre néceſſaires, encore "que ce ne ſoit avec tiltres de telle ſplendeur." Recherches de la France, liv. ii. chap. 12.

exception. As the chancellor was unavoidably a clergyman, who held his rank in the church, and the eſtate connected with it, only during life, he would commonly have neither any opportunity of ſecuring the office to his family, nor any deſire of annexing it to his eccleſiaſtical dignity.

Of the influence eſtabliſhed by the great officers of the king's houſhold, the political conſtitution of Germany affords a remarkable inſtance. When the dominions of that empire, by the conqueſt of large territories in Italy, and in the Southern part of France, had been ſo enlarged as to comprehend three diſtinct kingdoms, the emperor was induced, in that ſituation, to appoint three different ſecretaries *. The officers of his houſhold were, upon this account, increaſed to the number of ſeven. In the progreſs of the German government, the power of theſe great officers advanced, as that of the emperor declined; and after the imperial dignity had become intirely elective, they aſſumed the privilege of *propoſing*, to the national aſſembly, the ſucceſſor to the crown; from which they at length proceeded to claim the ſole right of electing him. Hence the origin of that preciſe number of perſons who compoſed the primitive German *electors*.

The ſteward was originally the officer of greateſt importance in the king's houſhold; becauſe the ſupplying of his majeſty's table with proviſions was regarded as the chief concern of the family. We accordingly find that, in ſeveral countries of Europe, the perſon who enjoyed this hereditary office, attained a degree of rank and opulence which rendered him formidable to the ſovereign. In France, the mayors of the palace, after having for a long time poſſeſſed the real power and authority

* The firſt was the ſecretary for Germany, properly ſo called; the ſecond for Italy, and the third for Arles. It is remarkable that theſe chancellors, having become ſecular princes, their offices have been attached to their eccleſiaſtical dignity.

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of the crown, were at length emboldened to throw off the maſk, and openly to mount the throne.

When the uſe of cavalry in war had become very extenſive, and when that part of the feudal armies had the principal ſhare in deciding the fate of battles, the conſtable, or mariſhal, was frequently in a condition to diſpute the ſuperiority with the ſteward or mayor of the palace. Thus, in Germany, when the throne happened to be vacant, the Elector Palatine, the mayor of the palace, was anciently appointed, for preventing the bad conſequences of an inter-regnum, to be the *vicar of the empire*. But in a ſubſequent period, this high dignity was claimed by the elector of Saxony, the conſtable; and, after, violent diſputes, and various determinations of the *diet*, was at laſt divided between thoſe powerful competitors.

In the ages of greater civility and improvement, when, from the complicated connections of ſociety, its laws became numerous and of difficult interpretation, and when, from the anxiety of individuals to aſcertain their rights, the charters and writings proceeding from the crown were multiplied in proportion, the ſecretary, or chancellor, to whom the king committed that branch of buſineſs, was inveſted with powers of the greateſt conſequence, and therefore was exalted to the higheſt rank.

In thoſe opulent and poliſhed nations which have long been reduced under an equal and regular government; in which the impartial diſtribution of juſtice is looked upon as almoſt a matter of courſe; and in which the ſovereign is accuſtomed to govern by influence, more than by the exertion of his prerogative; in ſuch nations, the perſon who preſides over the public treaſury, who may be regarded as the ſubſtitute of the chamberlain, becomes the great channel through which the revenue of the ſtate is

conveyed, and by which the authority of the crown is maintained.

It is hardly neceſſary to remark, that this diſtribution of the buſineſs in the king's houſhold, into five departments, reaches far below the ſimple period of the Anglo-Saxon government which we are now conſidering. But, on the other hand, it merits attention, that when the exaltation of the ſovereign had multiplied the occupations belonging to theſe different branches, it became expedient, in ſome of them, to appoint a variety of deputies; many of whom, in particular kingdoms, roſe by degrees to ſuch conſideration and rank, as to appear no longer in a ſubordinate ſtation, and even to make the origin of their appointment be forgotten. This circumſtance muſt not be overlooked in peruſing the enumeration, given by many hiſtorians, of the principal officers in the court, or houſehold of particular princes.

From the foregoing imperfect ſketch of the powers of the ſovereign, as well as of the conſtitution and privileges of the Wittenagemote, we may be enabled, notwithſtanding the darkneſs of our ancient hiſtory, to form an idea of the original Engliſh conſtitution. How remote this was from an *abſolute monarchy*, muſt be apparent to every one, who conſiders that the privilege of legiſlation, together with that of determining peace and war, and even that of controuling the executive power, was lodged in the national aſſembly. Neither can this government be deemed in a high degree, ariſtocratical; ſince the national council was compoſed not of a ſmall junto of nobles, but of all the landed proprietors, comprehending a great proportion of the whole people. It ſeems, in fact, to be that ſort of political ſyſtem which is likely to be eſtabliſhed in all rude and extenſive countries; before a few individuals have accumulated ſo much wealth as enables them to domineer over their inferiors; and

before

before the king, in conſequence of his high ſtation and prerogatives, has had leiſure to acquire a revenue ſufficient to overthrow and bear down any oppoſition that can be apprehended from the moſt opulent of his ſubjects. It cannot, however, eſcape obſervation, that, although the powers committed to the monarch by the early Saxon conſtitution, were ſmall, they were not accurately defined; and that in the exerciſe of them he enjoyed, upon this account, a good deal of latitude. Accurate limitations of power, and a regular ſyſtem of ſubordination, the fruit of experience and foreſight, cannot be expected to characterize the inſtitutions of a ſimple people; who are uſually guided by their feelings more than by reflection, and who attend more to the immediate effects of any meaſure, than to its remote conſequences. As the Anglo-Saxon princes were entruſted with every branch of public adminiſtration, in which the Wittenagemote did not think proper to interfere; their conduct was directed in a great meaſure, by particular conjunctures, and by the different unforeſeen events which accidentally required their interpoſition. We need not be ſurpriſed, therefore, if in peruſing the hiſtory of that period, while we diſcover ſtrong marks of the weakneſs of the crown we ſhould alſo meet with ſome extraordinary exertions of the prerogative; and ſhould at the ſame time obſerve, that theſe were ſuffered to paſs without cenſure, or even without notice. It is a common ſource of miſtake, among political writers, to conſider theſe extraordinary exertions as proofs of the ordinary ſtate of the government; and to adduce as an illuſtration of the general practice, what is only the random and caſual exerciſe of a power, not yet brought to a regular ſtandard. We ſhall now examine the changes produced in the Engliſh conſtitution from the reign of Egbert to the Norman conqueſt.

CHAP.

CHAP. IX.

Of the principal Events from the Reign of Egbert to the Norman Conqueſt.

WHILE England, by the union of the different ſtates of the heptarchy, was emerging from barbariſm, and laying the foundation of a great and powerful kingdom, a new enemy involved her in a ſeries of freſh calamities; and contributed to retard the progreſs of her improvements. The inhabitants of the Northern part of Germany, who retained their ancient manners, and were ſtill much addicted to piracy, continued to infeſt the coaſts of Britain and France, and of ſuch other European countries as, by ſome advancement in cultivation, preſented an inviting proſpect of plunder. About the reign of Egbert, ſeveral bands of thoſe pirates, known by the general name of Danes, landed in England; and, after committing great ravages, were generally ſucceſsful in carrying off their booty. Upon the death of that prince, whoſe vigour had kept them under ſome reſtraint, their incurſions became bolder and more frequent; they made their attacks in larger parties; and, having been often victorious over the forces that could be aſſembled againſt them, they were at length encouraged to form ſettlements in different parts of the country. From the time when the kingdoms of the heptarchy were united, to that of the Norman conqueſt; a period extending to about two hundred and fifty years, and comprehending a ſeries of nineteen monarchs; the Engliſh were, with little interruption, engaged in a courſe of hoſtilities with thoſe invaders; and ſubjected to perpetual inquietude and diſorder. In the reign of Alfred, the grandſon of Egbert, the Daniſh arms had been

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ſo ſucceſsful, and their acquiſitions had become ſo extenſive, as to threaten an entire conqueſt of the kingdom.

The hiſtory of that prince exhibits a pattern of the hero and ſtateſman, equal to whatever is recorded of ancient patriotiſm, and even to whatever correct fiction has been able to ſuggeſt, in order to excite admiration and eſteem. During the reign of Ethered, his elder brother, by whom he was unjuſtly deprived of the patrimony left him by his father, he diſcovered neither any marks of reſentment for the private injury he had ſuſtained, nor of what prevailed ſo univerſally among the princes of that age, an ambition to poſſeſs the crown; but with uniform alacrity ſeconded all the public meaſures of the king; and, while yet at an early period of life, diſplayed uncommon valour and talents, in oppoſing the enemies of his country. When he afterwards ſucceeded to the throne, his magnanimity and firmneſs were put to a ſevere trial in the ſchool of adverſity. Though he had been victorious over the Danes in many conflicts, yet the ſwarms of thoſe invaders multiplied ſo faſt, and from every quarter puſhed their depredations with ſuch rapidity, that the Engliſh, throughout the greater part of the kingdom, became quite diſheartened, and ſubmitted to the conquerors. His ancient ſubjects, the Weſtern Saxons, alone retained their fidelity, and ſupported the intereſt of their monarch: but theſe were incapable of reſiſting the torrent which broke in upon them, from the accumulated force of their enemies. After many fruitleſs efforts, and upon a ſudden report of a new invaſion by a powerful body of Danes, that ſpread univerſal conſternation, the king found himſelf almoſt entirely abandoned; and, being able no longer to keep the field, was obliged to diſband his remaining adherents, and to provide for his preſent ſafety; he was even under the neceſſity

neceſſity of concealing himſelf by various artifices, and in mean diſguiſes. The diſtreſſes to which he was expoſed, and the private adventures which he met with, in that ſituation, appear not unworthy of notice; as they relate to a perſon of ſuch eminence; and as the fate of England depended upon his ſurmounting the difficulties in which he was involved. In the garb of a common ſoldier he remained for ſome time unknown, in the houſe of one of his own herdſmen: upon which occaſion, hiſtorians have mentioned a little incident, which exhibits a ludicrous picture of royalty placed in awkward circumſtances without being degraded by them. While the king was one day ſitting by the fire-ſide, and trimming his bow and arrows, the woman of the houſe, who had no ſuſpicion of the quality of her gueſt, happened to be toaſting bread; and having occaſion to go about ſome other affairs, ſhe found, at her return, that the cakes were burned; with which being greatly provoked, ſhe heartily ſcolded his majeſty, telling him, that though he neglected to turn her cakes, he was always very ready to eat them.

Meanwhile the royal demeſnes became a prey to the Daniſh forces; who being no longer reſtrained by the apprehenſion of an enemy, gave a looſe to their cruelty and rapacity. Alfred reduced in this manner, to the condition of an outlaw in his own dominions, and having collected a few faithful followers, wandered for ſome time from place to place, finding ſhelter from the woods and marſhes, which covered a great part of the country, and which were of difficult acceſs even to the natives themſelves. But his principal retreat was in the middle of an extenſive moraſs, formed by the rivers Thone and Parret in Somerſetſhire; which was almoſt entirely ſurrounded with water; and which afforded great plenty of fallow deer, and other wild animals fit for ſubſiſtence. In this place the

the king took up his reſidence, and erecting ſome fortifications, remained for near the ſpace of a twelvemonth. Here he had leiſure to reflect upon the uncertainty of human grandeur; to weigh the real value of all human enjoyments; and to revolve in his mind thoſe benevolent and patriotic plans, by the execution of which he came afterwards to be revered by his countrymen, and has excited the admiration of mankind. From this retreat he made many ſecret excurſions, in order to procure information or plunder, and to revive the drooping courage and ſpirits of his companions.

At length the earl of Devonſhire, having ſuddenly attacked and routed a large body of the Danes, preſented to Alfred a favourable opportunity of appearing once more in the open field, and of animating his ſubjects to hazard another attempt for the recovery of the kingdom. Amid all the difficulties and dangers to which this monarch was expoſed, he appears to have uniformly diſcovered a mind cool and deliberate, reſolute with caution, fruitful in expedients, and dexterous in executing ſuch meaſures as the ſingular and deſperate poſture of his affairs made it adviſeable to adopt. On this occaſion he is ſaid to have employed a ſtratagem, ſuited to the ſtate of diſcipline in the armies of that age, and which recals the memory of thoſe military adventures related in the early periods of antiquity. In the diſguiſe of a minſtrel and fortune-teller, attended only by one companion, he viſited the Daniſh camp; and ſupported the character with ſo much addreſs, as to afford univerſal entertainment, and to paſs through every quarter, not excepting even the general's tent, without incurring the leaſt ſuſpicion. Having thus procured every poſſible information, and having, by means of a previous intercourſe with his nobles, ſuddenly collected a great body of his ſubjects, he found himſelf at the head of a powerful army,

army, exulting at the recovery of their monarch, and eager to be revenged of their oppreſſors. With this force he fell unexpectedly upon the enemy; and entirely defeated them. His victory was ſo complete, that the Danes were incapable of any further oppoſition; and in a little time after were entirely ſubdued. Some part of them were driven out of the kingdom; the reſt were under the neceſſity of ſubmitting to ſuch terms as he thought proper to impoſe.

The moderation and clemency of this prince, and the prudence which he diſplayed in the improvement of theſe advantages, were no leſs conſpicuous, than the vigour and abilities by which they were obtained. The Danes who ſubmitted to him were ſent to reſide in Eaſt Anglia, Northumberland, and ſome of the neighbouring parts of the kingdom, where many of their countrymen had long been ſettled; and they were admitted to the enjoyment of the ſame privileges with his other ſubjects. By the zealous interpoſition of Alfred, they were alſo happily perſuaded to embrace the Chriſtian religion; a circumſtance neceſſary to remove their prejudices againſt the ancient inhabitants, and to unite thoſe different tribes of people in one community.

Upon the reſtoration of peace, the firſt attention of the monarch was employed in providing a fleet, ſufficient to oppoſe any new invaſion of the Daniſh pirates; in erecting fortifications upon the coaſts more immediately expoſed to their depredations; in making regulations for aſſembling the inhabitants upon any ſudden emergency; in rebuilding the towns that had been deſtroyed; and in repairing the waſte and deſolation which the country had ſuffered from a long courſe of rapine and violence.

To compile and publiſh a code of ſtatutes, is, in a rude nation, a meaſure of the higheſt utility, for inſtructing

inſtructing an ignorant people in thoſe rules by which they are to be governed; and accordingly we find that this has been the great object of almoſt all the diſtinguiſhed princes of an early period. It appears that Alfred beſtowed much labour and time upon a work of this nature; of which the greateſt part is now loſt. It is probable, that, from the various feudal inſtitutions and cuſtoms, which had prevailed either in England or upon the neighbouring continent, he ſelected ſuch as were accounted the moſt beneficial, and moſt adapted to the peculiar circumſtances of his time and country; and that, having eſtabliſhed theſe regulations by the authority of his great council, he endeavoured, in the moſt effectual manner, to produce a degree of uniformity in law and government, throughout the whole of the kingdom. We are not, however, to imagine, that all differences in the cuſtoms of different parts of the country were thus entirely aboliſhed. On the contrary, we find that, in conſequence of the new ſettlements in the Northern part of the kingdom, a multitude of Daniſh cuſtoms had been introduced; and that the people were now diſtinguiſhed into three great branches, according to the varieties in the ſyſtem of private law, eſtabliſhed among the Weſtern Saxons, the Mercians, and the Danes.

But the promulgation of good laws is, for the moſt part, and eſpecially in a country remote from civilization, a matter of leſs difficulty and importance than the vigorous and impartial execution of them. When a regulation is made, the beneficial objects, which it is intended to promote, are commonly ſurveyed in that diſtant and diſpaſſionate view which admits the full exertion of patriotic affections; but when it comes to be enforced by the puniſhment of tranſgreſſors, it then frequently aſſumes a different aſpect; and the intereſt of the public is likely to be obſcured and counteracted

acted by the private connections, and by the partiality and prejudice of individuals: not to mention that the ſplendor and eclat, which accompany the temporary interpoſitions of the legiſlator, do not deſcend to the unremitting and laborious attention, to the painful and invidious taſk, of thoſe inferior magiſtrates who render the law effectual. It was here that the genuine virtue of Alfred appeared moſt conſpicuous. From the long courſe of depredation to which England had been expoſed, that country was become a ſcene of the utmoſt licence and diſorder; exhibiting, on the one hand, a people fierce and barbarous in their manners, accuſtomed to live by robbery and violence; and on the other, a ſet of nobles, in reality the leaders of different pillaging parties, abuſing that authority and juriſdiction with which they were inveſted, by protecting their adherents from puniſhment, and by oppreſſing thoſe who had fallen under their diſpleaſure. Yet ſuch was the attention of this monarch to the inferior departments of government, ſo great was his vigilance in examining the conduct of judges and his rigour in puniſhing them for malverſation in office, that, in a ſhort time, theſe evils were in a great meaſure removed, and an equal and regular adminiſtration of juſtice was introduced. In one year of his reign no fewer than forty-four magiſtrates, it is ſaid, were put to death, for miſbehaviour in their judicial capacity; a proof that corruption and licentiouſneſs had riſen to an amazing pitch. There can be little doubt, that in the accounts tranſmitted by hiſtorians, the accuracy and regularity of the police, eſtabliſhed by Alfred, has been greatly exaggerated; but even theſe exaggerations, the uſual effects of wonder and admiration, may ſerve to convince us, that he made great improvements upon the former ſyſtem. We are informed that, in order to try the ſucceſs of his inſtitutions, he cauſed golden bracelets to be hung up near the highway; and that no perſon, ſuch

was

was the terror of the magiſtrate, adventured to touch them.

By the eſtabliſhment of good order and tranquillity, the people were encouraged to follow thoſe peaceable occupations which had been totally interrupted by the preceding diſorders. The king was indefatigable in his efforts to promote manufactures, and to excite the induſtry of his ſubjects; by employing artificers in great public works; by inviting foreigners to ſettle in the country; and by rewarding the inventors of new arts. He contributed, in a particular manner, to the extenſion of foreign commerce, by protecting it with his fleet, and by beſtowing marks of his favour upon ſuch as became eminent for their ſkill in navigation.

He was no leſs attentive to the encouragement of literature, not only by his patronage, but alſo by his example. His ardour, in this reſpect, was the more remarkable, as it ſurmounted the diſadvantages he lay under from the neglect of his early education; for, among the anecdotes which have come down to us concerning the private life of Alfred, it is related, that he was twelve years of age before he had been taught to read; and that he firſt felt a deſire of being inſtructed, in this particular, from the recital of certain pieces of poetry, with which the queen his mother was much delighted. Prompted, however, by a ſtrong inclination for literary purſuits, he ſoon became, not only a proficient in the Latin language, and in ſuch branches of learning as were reſpected in that age, but even a writer of eminence, both in proſe and in verſe. As a poet, he ſeems to have employed himſelf chiefly in tranſlating, or compoſing, *fables*, or *apologues*. Theſe compoſitions are uſually the firſt attempts, in a rude nation, to illuſtrate, by ſimple and familiar examples, the proverbs, or maxims for the conduct of life, which obſervation and

and experience have ſuggeſted, and which, as containing important information to an illiterate people, are frequently repeated, and appealed to, in ordinary converſation. The labours of this eminent ſtateſman appear, in that particular, to have coincided with thoſe of the firſt great teacher of morality among the Greeks. It is probable that thoſe two celebrated perſonages were directed in the choice of their ſubject by a ſimilarity of character; and it may perhaps be ſuſpected, that both of them were more remarkable for their philoſophy and public ſpirit, than for their poetry.

Hiſtorians have mentioned the bodily accompliſhments of Alfred, as correſponding to the extraordinary endowments of his mind. He was diſtinguiſhed by the ſtrength and activity, as well as by the dignity and gracefulneſs of his perſon; and while his dexterity and addreſs, in martial exerciſes, excited univerſal applauſe, he gained the hearts of his ſubjects by an affable and engaging deportment.

After all, though the hiſtory of this monarch may be accounted ſufficiently authentic, to afford a ſolid conviction of his exalted merit; ſome allowance, no doubt, muſt be made for the colouring produced by that admiration which was due to his character, and which has been heightened by the remoteneſs of the period in which he lived. We need not be ſurprized, therefore, to meet with errors and prejudices, concerning his public tranſactions; and in particular, to find that he was ſuppoſed to be the author of ſeveral regulations, which he only revived, or brought to greater perfection than they had formerly attained. The great changes which he produced in the ſtate of his country, by bringing it from anarchy and confuſion into a degree of order and regularity, led his countrymen, in ſubſequent ages, to fix their attention upon him, as the perſon from whom they had derived the entire model of their conſtitution.

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He is thus held, by many hiſtorians, to have firſt divided the kingdom into tythings, hundreds, and ſhires, and to have introduced a peculiar ſyſtem of policy connected with thoſe diviſions; though it ſeems now to be clearly proved, that theſe regulations exiſted in England before his time, and that they extended to other European kingdoms. The inſtitution of *juries* has, in like manner, been aſcribed to this monarch; though there is good reaſon to believe that it aroſe from the general ſituation of the Gothic nations; and that it had a very early eſtabliſhment in all of them. Alfred, in a word, has become the Engliſh Lycurgus; and his interpoſition is the great engine which politicians have employed for explaining the origin of ſuch particulars, in the Engliſh government, as have excited uncommon attention, and are too remote, in their beginnings, to fall within the limits of authentic hiſtory.

For near eighty years after the death of that prince, England appears to have been ſucceſsfully defended againſt every foreign invaſion; though ſhe experienced a variety of diſturbances, occaſioned by the domeſtic quarrels and inſurrections of the Danes and other inhabitants of the country. During this period we may diſtinguiſh the reigns of Edward the elder, the ſon of Alfred, of Athelſtan, and of Edgar, as remarkably vigorous; and as filled with exploits, which, if they make no ſplendid figure in the general ſcale of hiſtorical events, were, however, of conſiderable conſequence to the peace and internal tranquility of the kingdom.

Thoſe princes are ſaid to have adopted a meaſure, which appears extremely ſingular, in the hiſtory of that early age. They are ſaid to have kept in pay a regular body of troops, collected from their Daniſh ſubjects; whoſe military character, it ſeems, was ſuperior to that of the other inhabitants. Though the bulk of the people were not unfit for war, and, by their

their ordinary employments, were not hindered from taking the field upon very ſhort preparation; yet the numerous piratical invaſions to which they were expoſed, and by which they were held in continual warfare, ſuggeſted the ſame ſort of military eſtabliſhment that has been found convenient in all civilized nations. The Daniſh families were employed, in preference to the Engliſh, from the ſame policy, which, in later times, made the inhabitants of Switzerland be engaged in the ſervice of many European princes. As thoſe mercenaries, however, were quartered about the country, and were probably not much under the controul of the civil magiſtrate, they were guilty of many irregularities; and rendered themſelves univerſally odious. They poſſeſſed all the power, and diſcovered, we may ſuppoſe, all the inſolence of a ſtanding army; unreſtrained by the watchfulneſs of a regular government, or by the influence of civilized manners. Hence the appellation of a *lurdane*, or *lorddane*, which was beſtowed upon them, came to be uſed as a term of reproach; and ſignified an idler and oppreſſor. Their ſituation led them, at the ſame time, to ſeek diſtinction, by the ſuperior elegance of their dreſs and behaviour; and we are told, that they were accuſtomed frequently to change their cloaths, to comb their hair once a day, and to bathe or waſh themſelves every Sunday. By theſe effeminate arts they became the favourites of the women; and were ſo ſucceſsful in their gallantries, as to debauch the wives and daughters of many noble families *.

In the reign of Ethelred, a weak and puſillanimous prince, England was again infeſted by more numerous ſwarms of the Northern pirates; and at

* " Habebant etiam ex conſuetudine patriæ unoquoque die comam pectere, ſabbatis balneare, ſæpe etiam veſtituram mutare, et formam corporis multis talibus frivolis adjuvare; unde et matronarum caſtitati inſidiabantur, et filias etiam nobilium concubinarum nomine detinebant." Chron. Joan. Wallingford.

length

length was invaded by a formidable army under Sweyn, the king of Denmark, and Olave the King of Norway. Ethelred, unable to reſiſt theſe united forces, had recourſe to the ineffectual and ruinous expedient of purchaſing peace by the offer of a pecuniary compoſition; and when thoſe princes had returned to their own country, he excited his Engliſh ſubjects, to gratify their reſentment againſt the Danes, by taking advantage of their ſecurity, and putting them to death in cold blood. The extent of this maſſacre, ſo diſgraceful to the monarch, and to the nation, cannot eaſily be aſcertained. The greater part of the hiſtorians conſider it as extending to the whole of the Daniſh race, at that time to be found in England; but the improbability of this, together with the authority of one ancient author, makes it reaſonable to ſuppoſe, with Mr. Hume, that the ſlaughter was, for the moſt part, limited to thoſe mercenaries againſt whom the rage of the populace was more immediately directed.

To revenge an act of ſo much perfidy and cruelty, Sweyn, without loſs of time, made another deſcent into Britain; and after deſtroying many of the towns, and deſolating a great part of the country, ſeems to have meditated an entire conqueſt of the kingdom. He did not live to complete his deſigns; but theſe were proſecuted by his ſon Canute; who met with little oppoſition; and in a ſhort time added the Engliſh monarchy to that of Denmark, which he poſſeſſed by inheritance. This prince, by his abilities, by the prudence and lenity of his adminiſtration, and by the extent of his dominions, was juſtly entitled to the appellation of *great;* which he has received from poſterity. In England, after the firſt effects of the conqueſt were over, he endeavoured to procure the good-will of his ſubjects, by reducing the Engliſh and Daniſh inhabitants under the ſame laws, and by aboliſhing all diſtinctions be-

tween them. He publiſhed a collection of laws, which has been preſerved. After this monarch, two of his ſons reigned ſucceſſively in England; but, as they died without iſſue, the crown was reſtored to a prince of the Saxon line, known by the name of Edward the confeſſor.

The conqueſt of England by the Danes appears to have been productive of no other political conſequences, beſide the interruption given to improvements, by the bloody and deſtructive wars with which it was attended. When Britain was deſerted by the Romans, and fell under the Anglo-Saxon government, the country, which had made conſiderable progreſs in arts and civilization, was, of a ſudden, reduced into a ſtate of barbariſm, and underwent a total revolution of its political ſyſtem. By the Daniſh conqueſt, one ſet of barbarians was ſubjected to another, of kindred origin and manners; ſo that the ſceptre was placed in different hands, without any alteration in the maxims by which it was ſwayed, or the authority by which it was maintained.

From the beginning to the end of the period, which is the immediate ſubject of this review, the circumſtances of the kingdom were ſuch, as contributed to render the government more and more ariſtocratical.

It has been already obſerved, that the landed eſtates, originally occupied by the Saxon conquerors of England, were of moderate extent; for which reaſon there came to be a great number of allodial or independent proprietors. This was what might be expected, from the very limited power and opulence of the ſeveral heads of families who ſettled in the country, and from their want of the knowledge and experience requiſite for the management of extenſive poſſeſſions. During the continuance of their ſettlement, however, and the conſequent improvement of their circumſtances, the induſtry

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and abilities, or the good fortune, of individuals, were attended with gradual accumulations of wealth, and with proportional differences in the diſtribution of landed property.

From the reign of Egbert, when England became an extenſive kingdom, the ſovereign was neceſſarily removed to a diſtance from a great part of his ſubjects; who, for that reaſon, were equally beyond the reach of his protection, and of his authority. For putting a ſtop to thoſe predatory incurſions, by which the inhabitants of different diſtricts were frequently haraſſing and injuring one another, the forces employed by the crown could ſeldom be brought to act, either with ſufficient quickneſs to relieve the ſufferer, or with ſufficient perſeverance to chaſtiſe the offender. It was neceſſary, therefore, when the property of any perſon was invaded, or threatened with invaſion, by a ſuperior power, that the owner ſhould not, in many caſes, depend upon the interpoſition of the ſovereign or public magiſtrate, but ſhould endeavour to procure the immediate aſſiſtance of ſome of his neighbours. As the reciprocal acts of hoſtility, which were frequently committed, gave riſe to hereditary feuds among particular families; ſo they occaſioned, among other families in the ſame neighbourhood, a variety of combinations and alliances for mutual defence and ſecurity. When the parties, who thus formed a defenſive alliance, had been expoſed to the ſame difficulties, and expected to derive an equal benefit from their agreement, they were led to unite upon equal terms, and remained in a ſtate of independence. Of the ſocieties formed in this manner, we have many inſtances, both in England, and in the other countries of Europe *.

But it happened more frequently that ſmall proprietors, being expoſed to continual oppreſſion,

* They have been called *ſodalitia*, *fraternitates*. Dr. Hickes, Diſſ. Epiſt. p. 21.

and to every ſort of injuſtice, from perſons of greater opulence, were obliged to ſolicit the aid of one powerful neighbour, in order to ſhelter them from the attacks of another. In ſuch a ſituation they could not pretend to form an alliance upon the footing of equality; but were commonly reduced to the neceſſity of purchaſing protection by the offer of ſubmiſſion and ſervices. As they were to obtain, from their protector, the ſame advantages which he beſtowed upon his ancient military ſervants, it was reaſonable that they ſhould, in like manner, acknowledge his juriſdiction, and contribute to the advancement of his power and authority. Thus, in ſome caſes, by a formal agreement, in others, perhaps, by a long and uniform ſubmiſſion to the feudal ſervices, many renounced that allodial property which they were no longer able to maintain; and, from the proſpect of living in greater ſecurity, allowed themſelves to be degraded into the ſtate of military retainers or vaſſals.

From a ſimilarity of circumſtances, theſe tranſactions were often repeated in different parts of the country; and were gradually extended over the whole kingdom. The more the demeſnes of particular barons had been increaſed by ſuch voluntary reſignations: the remaining proprietors of ſmall eſtates were the leſs able to retain their independence; and found it the more expedient to provide for their own ſafety by incorporating themſelves in ſome great feudal dependency. The allodial proprietors, were, in this manner, continually diminiſhing; the landed property of England was daily accumulated in fewer hands; and the diſtricts poſſeſſed by particular barons, who profited by the reduction of their neighbours into a ſtate of ſubordination, were proportionably enlarged.

By theſe changes, the nobility, it is evident, muſt have obtained more weight in the ſcale of government. While the landed eſtates of individuals were

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ſo ſmall as barely to ſupply the neceſſaries of life, the owners were too inconſiderable to procure influence over others, and too numerous to proſecute an uniform plan for the advancement of their common intereſt. But in proportion as particular perſons had acquired extenſive poſſeſſions, they were enabled to maintain a train of dependants and followers, directed on all occaſions by the will of their feudal ſuperior, and inured, by long habits, to ſcruple at nothing, in order to gratify his ambition or to exalt his dignity. From the ſmallneſs of their number, theſe great proprietors might, at the ſame time, be combined with more facility, in oppoſing the exertions of the prerogative.

The ſovereign, we may ſuppoſe, was not an idle ſpectator of theſe alterations in the condition of his ſubjects. As every opulent baron obliged his poorer neighbours to become his vaſſals, the king alſo exerted himſelf in the protection of ſuch as reſided near the royal demeſnes; and acquired over them the rights of a feudal ſuperior. But the acceſſions acquired in this manner, to the revenue of the crown, and to the number of crown vaſſals, were probably not ſufficient to counterbalance the vaſt accumulation of landed property under the lords of particular diſtricts. We find accordingly, that about the reign of Edward the confeſſor, a Godwin, earl of Weſſex, a Leofric, duke of Mercia, a Siward, duke of Northumberland, with a few more barons, had become ſo powerful, as to be the objects of conſtant alarm and jealouſy to the crown, and in a great meaſure maſters of the government.

The authority of the Anglo-Saxon princes was, on the other hand, weakened, in many caſes, and prevented from acquiring ſtability, by the defects of their title to the ſovereignty.

The rules of ſucceſſion to the crown appear, in all countries, to have been founded upon the ſame principles

principles which govern the inheritance of private eſtates. It ſeems to have been thought reaſonable, according to the primitive notions of mankind, that, upon the death of any perſon, his eſtate ſhould belong to his neareſt relations, who, by being members of the ſame family, appeared to have the moſt intimate connection with the family goods, of which they had formerly been a ſort of joint poſſeſſors with the deceaſed. But in that ſtate of the world, in which every family required a military leader to provide for their defence, the perſon inveſted with this office was by degrees permitted to aſſume the *management*, and at length to acquire the *property*, of that family-eſtate which was committed to his protection. Hence the right of *primogeniture* in ſucceſſion; which, in oppoſition to the feelings of natural juſtice, has been introduced from conſiderations of expediency. The eldeſt of the ſons, being commonly the firſt who acquired experience and reputation in war, was, upon the death of the parent, admitted to be the leader and heir of the family; and when a general practice in his favour had once been eſtabliſhed from the ordinary courſe of things, it was maintained by the force of cuſtom, even in ſingular caſes, where he had not the ſame ſuperiority. In the ſucceſſion to a monarchy there occurred a double reaſon for introducing this right of primogeniture; as the monarch was not only the leader and repreſentative of the nation, but alſo the heir of that private eſtate, which had been the original ſource, and was the principal ſupport of his dignity. But in kingdoms of great extent, and which had made but ſmall progreſs in the arts of government, the indiviſible ſucceſſion of the crown was, in reality, often maintained with greater difficulty than occurred in the tranſmiſſion of private eſtates; becauſe the ſeveral diſtricts of an extenſive monarchy, being at a great diſtance, and feebly united, were apt, upon the death of a monarch,

narch, to fall aſunder, and to embrace the party of thoſe different members of the Royal family, who might be tempted to aim at the ſovereignty.

The rules of ſucceſſion to the crown of England appear, in the period now under examination, to have been gradually advancing towards a regular ſtandard; but were far from having yet attained a perfect uniformity. Among the nineteen princes who reigned from the union of the Heptarchy to the Norman conqueſt, we meet with no fewer than eight, who, according to the notions of the preſent age, muſt be regarded as uſurpers; and ſeveral of theſe obtained the crown by titles, which, though conſidered as in ſome degree irregular, had not, in that rude age, been entirely exploded.

Inſtead of the eldeſt ſon inheriting the eſtate of a family, it is common, in early ages, that the children ſhould be altogether ſupplanted by the brothers and other collateral relations; who by having arrived at greater maturity, and poſſeſſing ſuperior proweſs, are enabled to put themſelves at the head of their kindred. Thus in many of the hordes, or petty nations upon the coaſt of Guinea, the children are ſaid to inherit nothing from their father but his arms; his other effects are carried off by the older relations of the family. In the ſucceſſion of the ancient kings of Numidia, though a country far advanced beyond the ſtate of primitive barbariſm, the brother, as we are informed by Livy, was preferred to the children of the preceding monarch. A ſimilar practice may be diſcovered in ſeveral parts of the Eaſtern world. It obtains at preſent in the Ladrone iſlands; as it formerly regulated the tranſmiſſion of the crown in the kingdom of Siam, and in ſome dynaſties of the Chineſe empire. Of this preference of the brothers, or other relations, to the direct deſcendants, there are many traces in the early hiſtory of modern Europe; and among the Anglo-Saxon kings, even after the reign

reign of Egbert, we meet with four inſtances of it; in the perſon of Alfred the Great, of Edred, and of Ethelred; each of whom ſucceeded to a brother; and of Edwy, who ſucceeded to an uncle, in prejudice to the children of the predeceſſor. To theſe may be added Edgar, ſurnamed *the Peaceable*, by whom Edwy his brother was dethroned.

According to the manners of a rude people, there is frequently little difference, with regard to the right of ſucceſſion, between the children produced by a concubine and thoſe who are born in marriage. It is the circumſtance of living in the father's houſe, and having a ſort of joint poſſeſſion of the family eſtate, that is apprehended chiefly to beſtow upon the children a title to the inheritance; and, in a country ſo deſtitute of refinement or delicacy, that the wife is indifferent about the fidelity of her huſband, or is of ſo little conſequence that her jealouſy is not regarded, his baſtards are likely to be often brought up under his own eye, and to receive a promiſcuous maintenance with his legitimate offſpring. This obſervation may be illuſtrated from the hiſtory of early nations, both antient and modern, and in all quarters of the world. It ſeems worthy of remark, that, among the Iſraelites, in the time of their judges, the lawful children of Gilead had, apparently, no other way of preventing Jephthah, their baſtard brother, from ſucceeding to the father's eſtate, than by driving him out of the family.

The ſtrictneſs of morals introduced by Chriſtianity, contributed in Europe to diminiſh the privileges of baſtard children. It does not however appear, that, even ſo late as the time of the Norman conqueſt, they were underſtood, in any European country, to be totally diſqualified from inheriting eſtates. In England, not to mention the inſtances that might be collected among the kings of the Heptarchy, we find that Athelſtan, the natural ſon of Edward, the elder,

elder, was permitted to mount the throne, in preference to the lawful children of his father.

The acceſſion of Canute was merely the effect of conqueſt; though that prince endeavoured to ſupport his claim by means of a ſtipulation, real or pretended, with the former king. Upon the reſtoration of the Saxon line, the nobles had acquired ſo much power as enabled them to diſpoſe of the vacant throne. To their favour Edward the confeſſor, who uſurped the right of the lineal heir, was principally indebted for the crown; and the advancement of Harold had confeſſedly no other foundation.

By theſe numerous deviations from the regular courſe of ſucceſſion, the monarch was prevented from acquiring that accumulation of hereditary influence, which is the effect of an uninterrupted and long-continued lineal deſcent; at the ſame time that thoſe princes who obtained the crown in an irregular manner were, upon that account, ſubjected to difficulties, from which they were obliged to extricate themſelves by courting the nobility, and by making ſuch conceſſions as tended to alter the balance of the conſtitution.

From a ſingular incident, in the reign of the firſt Edmund, and which occaſioned the death of that prince, we may eaſily diſcover that the Anglo-Saxon kings depended, in a great meaſure, upon the arbitrary aſſiſtance of their followers, for maintaining the dignity and authority of the crown; and were far from being provided with proper reſources for ſecuring a decent reſpect and obedience to their commands. "As Edmund, one day, was "ſolemnizing a feſtival in the county of Gloceſter, "he remarked, that Leolf, a notorious robber, whom "he had ſentenced to baniſhment, had yet the boldneſs to enter the hall where he dined, and ſit at table "with his attendants. Enraged at this inſolence, "he ordered him to leave the room; but on his "refuſing

" refuſing to obey, the king, whoſe temper, natu-
" rally choleric, was inflamed by this additional
" inſult, leaped on him himſelf, and ſeized him by
" the hair: but the ruffian, puſhed to extremity,
" drew his dagger, and gave the king a wound,
" of which he immediately expired*."

* Hume's Hiſtory of England.

CHAP. X.

Variations in the State of Tythings, Hundreds, and Shires.

THE reſignations of land, made by allodial proprietors in order to procure the patronage and protection of a feudal ſuperior, were moulded in a particular manner, and received a peculiar direction, from the inſtitutions formerly mentioned, of tythings, hundreds, and ſhires; as on the other hand, the ſtate of theſe inſtitutions underwent a great alteration from the progreſs of thoſe reſignations.

A tything was compoſed of a number of heads of families, who, poſſeſſing allodial property of ſmall extent, and therefore having few dependents, found it convenient to live together in the ſame village or neighbourhood, for their mutual defence and ſecurity. The bulk of the free people, or allodial proprietors, appears to have been originally incorporated in the different tythings, throughout the kingdom; though it is probable, at the ſame time, that there were particular thanes, or military leaders, who, from their ſuperior wealth and power,

power, had no occaſion to join in any tything; and who lived, in a ſtate of greater independence and dignity, at the head of their own bond-men, or tenants and vaſſals. Beſide the villages, therefore, which were compoſed of the freemen, and which had the denomination of tythings, there were others, compoſed of the dependents of a feudal ſuperior, placed under his immediate juriſdiction and authority*.

The primitive borſholder, or tythingman, was elected by the freemen of the tything over which he preſided; and at firſt was probably but little ſuperior to them in opulence. By degrees, however, the rank which he enjoyed, together with the influence, and the perquiſites, which he derived from thence, enabled him to increaſe his fortune, and to extend his authority over the different members of the community. Upon his deceaſe, therefore, the perſon who inherited his eſtate, obtaining a great part of the weight and conſideration of the predeceſſor, was naturally promoted to the ſame office; which after being continued for many generations in the ſame family, and beſtowing upon the repreſentative of it ſucceſſive accumulations of property, was at laſt regarded as no longer elective, but as a permanent hereditary dignity. The borſholder came thus, in his own right, to demand military ſervice from the members of the ancient tything; and to claim the privilege of being their judge both in civil and criminal matters. The tything, in ſhort, was converted into a barony, and that voluntary combination of the in-

* See the laws aſcribed to Edward the Confeſſor, publiſhed by Lambard and Wilkins. L. 21. is tranſlated as follows: "Archiepiſcopi, epiſcopi, "comites, barones, *et omnes qui habuerent ſacham et ſocam, thol, theam et infangthefe*, "etiam milites ſuos, et proprios ſervientes, ſcilicet dapiferos, pincernas, "camerarios, piſtores et cocos, ſub ſuo friborgo habeant. Et item iſti ſuos "armigeros, vel alios ſibi ſervientes ſub ſuo friborgo. Quod ſi cui foriſfacerent et clamor vicinorum de eis aſſurgeret, ipſi tenerent eos rectitudini "in curia ſua: illi dico qui haberent ſacham et ſocam, thol et theam, et "infangthefe."

habitants,

habitants, intended for their mutual defence and ſecurity, was now loſt in the more intimate connection between a ſuperior and his vaſſals.

As the preſident of a tything advanced in the acquiſition of this hereditary dignity, and found that his authority depended leſs upon the conſent of his original conſtituents, he became leſs attentive, we may ſuppoſe, to the inferior duties of his office; and the police of the village, in matters of ſmall moment, was at length committed to a deputy. The remains of this inferior officer ſeem to be ſtill preſerved, in the annual election of a perſon to preſide in each of the towns or pariſhes of England; who in ſome caſes retains the old appellation of headborough, or tythingman; but who, from the branches of buſineſs that have ſince devolved upon him, is more commonly called the *petty conſtable*.

Similar cauſes produced a change of the ſame ſort in the condition of the *centenarius*. This magiſtrate, like the tythingman, was originally choſen by the freemen of the diſtrict over which he preſided; but as the richeſt man of the diſtrict was moſt likely to carry the election, ſo the longer any individual had remained in the office, he became, from the many opportunities it afforded of increaſing his riches, the more ſecure of holding it for the future; and for the ſame reaſon, the heir of his private fortune, to whom he communicated his family intereſt, had likewiſe the probability of obtaining the ſame dignity in preference to every other competitor. Thus the leader of the hundred was, through length of time, converted into a hereditary officer; and, from the ſuperiority of his original office, was enabled to eſtabliſh a permanent authority over the ſeveral tythingmen of his diſtrict. When theſe laſt had become the hereditary leaders of tythings, they were frequently reduced, therefore, into a ſtate of feudal ſubordination

nation to the hundreder. In other cafes, the influence of this greater magiſtrate was exerted in bringing particular tythings under his immediate protection, and in checking and ſupplanting the tythingmen, who might otherwiſe have acquired a feudal authority in thoſe little ſocieties.

When the *centenarius* became a perſon of too much conſequence to execute the inferior branches of buſineſs connected with his department, a deputy was appointed for that purpoſe; from whence the office of the *high-conſtable*, elected annually in thoſe diſtricts, appears to have been derived.

With reſpect to the alderman, or chief magiſtrate of a ſhire, it has been diſputed whether he was originally nominated by the king, or elected by the freemen of the territory over which he preſided. From what has been already obſerved, the latter of theſe opinions is much more probable than the former. Conſidering how little power was uſually poſſeſſed by the ſovereign in the infancy of government, not only among the Saxons, but in all the modern ſtates of Europe; and conſidering that he had neither the nomination of the borſholder, nor of the *centenarius*; it is not likely, that he would aſſume the appointment of thoſe who preſided over the greater diviſions of the kingdom.

It is univerſally admitted, that the Anglo-Saxon officers, who, in the early periods of the Heptarchy, received the appellation of *Heretochs*, were elected by the people whom they were appointed to command. Theſe heretochs were the leaders of conſiderable bodies of the Saxons, who, upon the ſettlement of their followers, became the governors of provinces; and of conſequence they were in reality the ſame ſort of magiſtrates with thoſe who, upon the more accurate diviſion of the country into ſhires, were better known by the name of aldermen or earls. It is therefore highly probable, that

that the firſt aldermen were appointed in the ſame manner with their predeceſſors the heretochs. By degrees, however, the chief magiſtrate of a ſhire was intruſted with the collection and management of ſeveral branches of the crown revenue within the bounds of his diſtrict; and for the execution of this part of his duty, he became, of courſe, accountable to the king. This afforded the ſovereign a pretence for interfering in the appointment; and, from the effect which his interference could hardly fail to produce, appears to have given him a negative upon the election*. How long the aldermen were appointed in this manner, it is not eaſy to diſcover: but from the ſame circumſtances which had operated in the caſe of the tythingman, and of the hundreder; from the neceſſity of appointing the moſt opulent thane of a ſhire, who alone was able to command reſpect from the inhabitants; and from the accumulation of property, and of intereſt, ariſing from the poſſeſſion of that high ſtation; the office was frequently continued in the ſame families; and was, in the end, annexed to them as a permanent dignity. We accordingly find, that, in the latter part of the Anglo-Saxon line, the aldermen, or earls, as they were then more commonly called, had in general become hereditary. In France it appears that the ſame change in the ſtate of the *counts* and *dukes* was, in like manner, completed before the acceſſion of Hugh Capet; which correſponds with the Engliſh period of the Norman conqueſt.

We may eaſily conceive that the hereditary governor of a ſhire, who had, in his own right, the privilege of aſſembling and commanding the forces, as well as of holding the chief tribunal for diſtri-

* In the reign of Alfred the earldoms were all held during the pleaſure of the king. Aſſer. de geſt. Alfredi. In the reign of Edward the Confeſſor they had a third part of all fines, forfeitures, and other profits of the ſhire, for their labour. Brady's Compleat Hiſt. of England.

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buting juſtice, in that extenſive territory, was poſſeſſed of great influence and authority; and that many allodial proprietors would find they had no better means of ſecuring themſelves from inſult and depredation than by courting his protection. Even the leaders of hundreds, who had acquired a feudal ſuperiority over their own diſtricts, but who had been placed in a ſtation ſubordinate to the earl, were ſometimes induced, by motives of intereſt, to become his immediate vaſſals; and to promiſe the ſame ſervice and ſubmiſſion to him, which they exacted from their own military retainers. In particular tythings, more immediately ſituated within the ſphere of his influence, the powerful protection of the earl ſuperſeded that of their own tythingmen, and, by a natural conſequence, rendered the inhabitants more deſirous of yielding homage and fealty to that ſuperior magiſtrate, than to their own proper officers. In ſuch caſes the authority of the ſmaller magiſtrates was loſt and ſwallowed up in that of the greater.

The advancement of the earl gave occaſion to the appointment of an inferior officer, the *ſheriff*; upon whom was devolved the real buſineſs connected with the office. This officer was originally choſen by the free inhabitants, or allodial proprietors of the ſhire; though the extenſive department committed to his care, and the great privileges with which he was inveſted, had the ſame tendency, as in the caſe of the chief governors, to vary the mode of his appointment, and in the courſe of time, to beſtow upon him an independent authority.

It was in this manner that allodial was generally converted into feudal property, and that an enlarged ſyſtem of military dependencies was at length eſtabliſhed. The neceſſity of defence produced the primitive aſſociations of tythings, hundreds, and ſhires, compoſed of allodial proprietors, with their reſpective

reſpective bondmen or vaſſals. But, from the diſorders of the ſociety, theſe combinations were too looſe and feeble, to anſwer the purpoſes for which they were intended. To protect and reſcue the individuals in each of theſe communities, it was requiſite that their leader ſhould be inveſted with greater authority than had originally been beſtowed upon him; and that his aſſociates or followers ſhould become his permanent military ſervants. Tythings, hundreds, and even a conſiderable part of ſhires, were thus changed into fiefs; and the tythingman, the hundreder, and the earl, became the feudal ſuperiors over ſuch diſtricts as found it expedient to court their protection. A ſubordination, too, was introduced among the leaders of thoſe diſtricts; and the tythingmen of a hundred became frequently the vaſſals of the hundreder; as many of the hundreders belonging to a ſhire became vaſſals of that great baron, the earl.

As theſe changes were produced very ſlowly and gradually, it is not ſurprizing that they ſhould be overlooked by cotemporary annaliſts. The meetings of the tything, the hundred, and the ſhire, appear to have retained the ſame names, and to have tranſacted the ſame ſort of buſineſs, long after the two former were entirely, and the laſt, in a great meaſure, converted into the courts of a barony. The alteration, in reality, conſiſted merely in a different ſhade of authority acquired by the leader or chief magiſtrate of thoſe diviſions.

It ſeems worthy of notice, that this converſion of allodial aſſociations into feudal dependencies, while it promoted the ariſtocracy, was calculated to improve the police of the country. When the tythingman, the hundreder, and the earl were exalted to the rank of hereditary barons, they were more capable than formerly of maintaining good order in their ſeveral diſtricts; and, as every feudal

dal ſuperior was reſponſible to the public for the conduct of his vaſſals and retainers, he had an intereſt to exert his authority in preventing rapine and violence. Unhappily, indeed, they were often too powerful to ſubmit to this part of their duty; and, inſtead of repairing the injuries done by their dependants, were frequently diſpoſed to ſcreen them from the puniſhment due to their offences.

CHAP. XI.

Changes produced in the Condition of the Vaſſals and of the Peaſants.

THE members of every feudal dependency conſiſted of the military retainers or vaſſals, and of the peaſants, or churles; both of whom, in the latter part of the Anglo-Saxon government, experienced a great alteration in their circumſtances.

In that ſtate of ſociety which determined allodial proprietors to ſhelter themſelves under the protection of a feudal ſuperior, and by which the number of military retainers was gradually augmented, the privileges belonging to this order of men were naturally increaſed; and their condition was rendered more ſecure and comfortable. The original vaſſals of any perſon were the members of his own family, who, from natural affection, and from ancient habits, were ſtrongly attached to his intereſt, and upon whom, from a reciprocal regard, as well as from the conſideration of expediency, when they became too numerous to live in his own houſe, he voluntarily beſtowed the poſſeſſion of lands for their maintenance. As the ſuperior had no reaſon to ſuſpect that theſe men would ever be deficient in fidelity, or ſeek to withdraw their allegiance; ſo they entertained no

apprehenſion that, while they were willing to fulfil their duty, they ſhould ever be diſpoſſeſſed of their lands. The intimate connexion between the parties, and the ſimplicity of their manners, made them place a mutual confidence in each other, and prevented their being apprehenſive of any future diſputes: ſo that neither the ſuperior required any ſpecification of the ſervices to be performed, nor the vaſſal, any expreſs ſtipulation, with reſpect to the duration or terms of his poſſeſſion. Thus the original vaſſals, though, in fact, their land was commonly permitted to remain with them and their poſterity, were properly no more than *tenants at will*, and therefore entirely dependent upon the ſuperior.

But when perſons originally independent, had, with a view to certain advantages, allowed themſelves to fall into a feudal ſubordination, or had agreed to exalt an equal or a ſtranger to the rank of a ſuperior, it could hardly be expected that theſe new vaſſals would be willing to hold their lands in ſo precarious a manner. Cautious of yielding any greater ſubmiſſion than their circumſtances required, or ſuſpicious of neglect or oppreſſion from the perſon whom they had choſen for their protector, they naturally inſiſted, that the preciſe conditions of their tenure ſhould be expreſsly aſcertained; while the ſuperior, diſtruſting the fidelity and attachment of men over whom he had no natural authority, and who ſubmitted to him, perhaps with reluctance, and from the mere preſſure of temporary difficulties, was no leſs anxious to ſpecify the nature of their ſervice, and to ſecure the performance of it, by ſubjecting them, in caſe of negligence or diſobedience, to ſevere penalties and forfeitures. From a variety of conjunctures, individuals might be laid under the neceſſity of ſubmitting to harder conditions, upon ſome occaſions than upon others; but, in general, when a feudal te-

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nure was conſtituted by the conſent of any allodial proprietor, it ſeems to have been expreſsly provided, that the fief ſhould not only remain with the vaſſal during life, but ſhould deſcend, either to his heirs male, or to ſuch of his heirs as were ſpecified in the grant.

By the eſtabliſhment of thoſe hereditary fiefs, the vaſſal, inſtead of being a precarious tenant, became, in effect, the proprietor of the feudal eſtate, and the intereſt of the ſuperior was reduced to a *reverſion* in default of the vaſſal's heirs, together with a right of levying certain perquiſites or caſual emoluments in particular caſes. Of theſe caſual emoluments or *incidents*, as they are called, which might ſtill accrue to the ſuperior from the eſtate of his vaſſal, after it was made tranſmiſſible to heirs, the feudal writers have commonly enumerated ſeven different ſorts.

1. Though fiefs had been rendered hereditary, yet, as every perſon who enjoyed them was liable for the feudal ſervices, it was neceſſary that an heir, before he obtained the inveſtiture, ſhould ſolemnly undertake the performance of them, and come under an oath of fidelity to the ſuperior. Upon the death of any vaſſal, therefore, the ſuperior laid hold of the lands, and detained them in his poſſeſſion, until the heir ſhould appear in order to renew the feudal engagement. This privilege gave riſe to what is called the incident of *non-entry*.

2. Even when the feudal tenures were precarious, it was uſual for the ſons of the vaſſals to endeavour, by a preſent, to procure the favour of the ſuperior, and to obtain the continuance of their anceſtor's poſſeſſion. When fiefs became hereditary, it was found expedient to ſecure, by means of a bribe, what, though a matter of right, was not eaſily extorted by force; and the original arbitrary donation was converted into a regular duty, under the name of *relief*.

3. If the heir of a former vaſſal was incapable of performing the feudal ſervice, he had no right to claim the poſſeſſion of the fief. While he was under age, therefore, the lands were poſſeſſed by the ſuperior; who, at the ſame time, from a regard to his own intereſt, if not from affection to the family of his old vaſſal, was induced to aſſume the guardianſhip and protection of the minor, his future military ſervant. Hence the complex burthen, and privilege, which went under the name of *wardſhip*.

4. During the diſorders which prevailed under the feudal governments, it was of great conſequence that the military vaſſals ſhould not contract an alliance with the enemy of their liege lord; which might have a tendency to corrupt their fidelity. When fiefs therefore were ſecured upon a permanent footing, a proviſion was made againſt an event of this dangerous nature; and the vaſſals who married without the ſuperior's conſent, or who even refuſed to marry according to his deſire, became liable to a pecuniary compoſition or penalty. Such was the incident of *marriage*; a perquiſite ſuited to the barbarous manners of that age which occaſioned its eſtabliſhment.

5. Beſide the ordinary revenue which the ſuperior drew from his eſtate, he was accuſtomed, upon extraordinary emergencies, to apply to his vaſſals, and to requeſt from them a contribution in order to relieve him from his immediate embarraſſment. While they held their lands precariouſly, a requeſt of this nature was equal to a command; ſince the ſuperior might at pleaſure ſeize upon the whole eſtate of his tenants. But when the vaſſals had obtained a more permanent right, it became neceſſary to ſettle the particular occaſions upon which thoſe contributions were to be made, as well as the extent of the ſum that might be demanded; and in this manner, *aids* or *benevolences* came to be enume-

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rated among the duties payable to a ſuperior. Three caſes are mentioned, in which, over all the feudal kingdoms, theſe contributions might be exacted; to redeem the ſuperior from captivity; to portion his eldeſt daughter, at her marriage; and to defray the expence of making his eldeſt ſon a knight.

6. Though a fief had been rendered hereditary; yet, upon the total failure of heirs, it neceſſarily returned to the ſuperior. The vaſſal might alſo forfeit his right to the lands, by his neglect to perform the feudal ſervice, or by any violation of his duty. This forfeiture, or termination of the fief, was called an *eſcheat*.

7. From the primitive ſtate of the feudal tenures, the vaſſal had no title to alienate his fief, which he poſſeſſed as the wages merely of his military ſervice. But when fiefs, by being tranſmiſſible to heirs, began to aſſume the appearance of property; when the general advancement of arts had rendered land more frequently an object of commerce; and when, upon the ſuppreſſion of the former diſorders, the military ſervice of the vaſſal was rendered of leſs importance, it became cuſtomary, by the payment of a ſum of money, to compound with the ſuperior for the privilege of ſelling the feudal eſtate. This produced the perquiſite of ſuperiority called the *fine of alienation*.

Theſe feudal incidents may be conſidered as the remains of that abſolute property of the fief, which the ſuperior had formerly enjoyed; but which, with reſervation of ſuch caſual emoluments, was now conveyed to the vaſſal.

After this new ſpecies of military retainers had become numerous, and had ſpread themſelves over the country, it is natural to ſuppoſe that their privileges would, by the force of example, be communicated to the ancient vaſſals. The ancient feudal tenants, who from the more extended connections of the ſuperior, had probably become leſs the objects

objects of his peculiar attention, and were not always treated with thoſe marks of diſtinction to which they ſuppoſed themſelves entitled, beheld, with envy and jealouſy, the ſtability and ſecurity enjoyed by his new vaſſals; and were ſolicitous to hold their lands under the ſame permanent tenure. A conceſſion of this nature, by which the old and faithful followers of a chief were placed upon a footing of equality with ſtrangers, could ſeldom be decently withheld from them; and in caſes where he ſtood in immediate need of their aſſiſtance, was likely to be eaſily obtained. As theſe privileges were ſlowly and gradually introduced, and as they were often accelerated or retarded by the ſituation of particular baronies, not to mention a variety of accidental circumſtances, it is impoſſible to mark the preciſe period at which their eſtabliſhment was compleated; though it is probable that, before the Norman conqueſt, they were extended to the greater part, if not the whole, of the ancient vaſſals.

That the duration of the military ſervice, for each year, ſhould be exactly determined, was equally neceſſary, to ſecure the intereſt of the vaſſal. In Britain, and probably in ſeveral kingdoms upon the continent, it was limited accordingly to forty days; a period that might appear fully ſufficient for thoſe deſultory enterprizes which the ſuperior had occaſion to undertake. If ever he choſe, after the expiration of this period, to retain his vaſſals in the field, he was obliged to bear the charges of their maintenance.

The effect of theſe changes in the ſtate of the military tenures could not fail to be diſcernible in the adminiſtration and government of every feudal dependency. Though it ſtill was, no doubt, the intereſt of the vaſſals to avoid all contention with the ſuperior, and to merit his favour by their fidelity and alacrity in the diſcharge of their duty, yet they

they were not under the ſame neceſſity of paying an implicit obedience to his commands. To whatever inconveniencies they might be ſubjected from the manner of levying the feudal *incidents*, yet, while they punctually performed their ſervices, they could not, without groſs injuſtice, be deprived of their poſſeſſions; and they had a right to follow their own inclination in the management of their private concerns. Senſible of this alteration in their circumſtances, the ſuperior was induced to be more cautious of diſobliging them, to pay more deference to their opinions, to liſten and give way to their remonſtrances, and, in public meaſures of importance, to act with their advice and concurrence. Thus, while the influence and power of the great lords was gradually extended by the multiplication of their vaſſals, their authority over each particular vaſſal was neceſſarily reduced; and they were obliged to exerciſe it with greater moderation; as well as to endeavour, by the arts of popularity, and even, ſometimes, by pecuniary rewards and advantages, to gain the effectual ſupport of their followers.

The improvements made in agriculture, produced alterations, of no leſs importance, in the ſtate of the peaſants or *churles*. The peaſants, as has been formerly obſerved, were originally bondmen or ſlaves. But as from the nature of their employment, and from their living at ſuch a diſtance as to be beyond the reach of the maſter's inſpection, it was found expedient to excite their induſtry by beſtowing upon them ſucceſſive gratuities and privileges; many of them were enabled, at an early period, to acquire conſiderable property; and ſome of them were advanced to the condition of tenants, intruſted by the maſter with a diſcretionary management of their farms, for the payment of a yearly rent. In the natural courſe of things, theſe tenants were afterwards raiſed to a ſtill better ſituation,

tion. When, in conſequence of ſome degree of ſkill and experience in huſbandry, they were about to undertake an expenſive melioration of their farms, common prudence required that they ſhould be ſecure of the poſſeſſion, for ſuch a period as might afford them a reaſonable proſpect of a return for their labour and expence. By offering an advanced rent to the maſter, they ſometimes prevailed upon him to make an agreement of that nature; and to grant them a *leaſe* for a certain number of years. By raiſing the rent ſtill higher, in conſequence of a greater affluence, the tenant, in ſome caſes, obtained not only a right of holding the eſtate for life, but of tranſmitting it to heirs; and there appear to have been ſome occaſions, though it is probable theſe were not very common, on which, by the payment of a full price, he was enabled to make an entire purchaſe of the lands.

Thoſe churles who had acquired a landed eſtate tranſmiſſible to heirs, to be held for payment of a yearly rent, were denominated *ſoccage vaſſals*. From their employment and character, they were of an inferior rank to the military vaſſals; but they had the ſame permanent right to their eſtates. They were alſo liable to the ſame *incidents of ſuperiority*; excepting thoſe of *wardſhip* and *marriage*; the former, becauſe the ſuperior was diſpoſed to pay no attention to the education of ſuch of his dependants as were employed merely in agriculture; the latter, becauſe the alliances which they contracted were deemed of little conſequence to him.

The churles who made a full purchaſe of a landed eſtate ſhould have become allodial proprietors, and have acquired the rank and privileges of nobility; but were influenced, in thoſe caſes, by a regard to the ancient uſage; and as the proprietor, who ſold his lands, was unwilling entirely to reſign his dignity, ſo the purchaſer had not the preſumption to deprive him of it. To retain a faint ſhadow of the

ancient

ancient connection, the latter became bound, as an acknowledgment of the ſuperiority, to pay to the former an eluſory annual duty, if ever it ſhould be demanded *. We find that, by a ſtatute in the reign of king Athelſtan, a churle who had purchaſed an eſtate conſiſting of five hides of land, with certain appendages, uſually poſſeſſed by gentlemen of that fortune, was declared to have a right to all the *privileges of a thane;* by which thoſe of a *leſſer thane*, or military vaſſal, were probably underſtood †.

From this law, which demonſtrates that the encouragement of agriculture was become an object of public attention, it may be inferred, that though in ſome caſes the *churles* were enabled to acquire landed property, they had not been underſtood, upon that account, to obtain of courſe the privileges of the military people; ſince theſe were not conferred upon them without a ſpecial interpoſition of the legiſlature; nor even by that ſtatute, except upon ſuch as had accumulated a very conſiderable eſtate. Such was the original inferiority of the peaſants, and ſo ſtrong were the habits connected with their primitive condition, that though they had been raiſed to independent circumſtances, it was with ſome difficulty they were permitted to hold the rank of gentlemen, and procured the treatment ſuitable to men of that ſuperior claſs.

The freedom acquired by a great proportion of the peaſants, together with the advances in huſbandry from which it proceeded, gave riſe to an immediate improvement in arts and manufactures. The firſt artificers were villeins, or ſervants of the greater thanes; who happening to diſcover ſome ingenuity in the common mechanical arts, were employed by the maſter in thoſe branches of ma-

* This tenure has been frequently confounded with the ordinary ſoccage; but ſometimes is diſtinguiſhed by the name of *blanch*.

† Judicia civitatis Lundoniæ. Wilkins, Leg. Sax. p. 70.

nufacture,

nufacture, which he found requiſite for his accommodation. The poſſeſſion of their farms, according to the rude manner in which agriculture was then practiſed, did not hinder them from exerciſing this collateral employment. When theſe people began to be emancipated from their ancient bondage, they were at liberty to work, not only for their former maſter, but for every perſon who choſe to employ them; and by working for hire, they drew a regular profit for their labour. A competition was thence introduced among different workmen, which contributed to promote their induſtry and ſkill; at the ſame time that the improvements which have been mentioned in the condition of the lower claſs of people, by increaſing their opulence produced an increaſe of demand for the ordinary conveniencies of life; and therefore afforded greater encouragement to the occupations by which thoſe conveniencies were ſupplied. Particular branches of manufacture, or of labour, coming in this manner to be more in requeſt, occaſioned more conſtant employment to individuals; who, at length, found it their intereſt to abandon every other occupation, and to depend, for their livelihood, upon that ſingle branch in which they had attained a peculiar proficiency.

A variety of trades and mechanical profeſſions were thus introduced; and the artificers and labourers compoſed a ſeparate order of men in the community. As theſe grew up and were multiplied, they became the chief part of the inhabitants in thoſe villages where they reſided; which were gradually enlarged into towns, of more or leſs extent according as their ſituation, or other circumſtances, proved more favourable to manufactures.

It is unneceſſary to obſerve, that the ſeparation of trades and profeſſions, among the different inhabitants, occaſioned, of courſe, a degree of traffick

or exchange of commodities. When the artiſans, as well as the farmers, confined themſelves to a ſingle employment, they were able, by their own labour, to produce only one ſort of commodity; and if they wanted any thing of a different ſort, they had commonly no other method of procuring it, than by an exchange with the perſon who had produced it. This exchange was at firſt limited, we may ſuppoſe, to the inhabitants of the ſame town or village; but, according as different places began to excel in manufacturing goods of different kinds, was extended to neighbouring towns, or to the more diſtant parts of the country. Upon the opening of ſuch intercourſe between places at a diſtance, the inhabitants found it, in ſome caſes, inconvenient to go themſelves to purchaſe the goods which they wanted, and had occaſion therefore to employ ſome of their neighbours for that purpoſe; from which there aroſe, by degrees, a common *carrier*, upon whom this branch of buſineſs was frequently devolved. As this perſon acquired a little ſtock, he adventured ſometimes, at his own riſk, to buy commodities in one place, with a view of ſelling them in another; and his employment was at length improved into that of a pedlar or travelling merchant.

Although theſe tradeſmen and mechanics were no longer in a ſervile condition, they had ſtill much dependence upon the original maſter, or feudal ſuperior, of that village or town in which they reſided. He defended them from the attacks of the military people around them; to which, from the turbulence and diſorder of the times, they were greatly expoſed, and which, from their unwarlike diſpoſitions, they were of themſelves but ill qualified to reſiſt. He alſo encouraged and promoted their trade, by permitting them to hold *fairs* and *markets*, or ſtated ſeaſons of rendezvous, between

between the merchants and cuſtomers of different places; by ſupplying them with warehouſes, and with meaſures and weights, for the ſale of their goods; and by ſuch other kind of aſſiſtance as, from the rude ſtate of the country, and in the infancy of commerce, their circumſtances made them ſtand in need of. In return for theſe advantages, he levied from them ſuch tolls and duties as they were able to bear; and of conſequence augmented his revenue in proportion to the increaſe of their wealth.

According as the patron and protector of theſe manufacturing and trading towns was poſſeſſed of greater influence and power, their trade was likely to be more proſperous and flouriſhing. Some of thoſe towns, having ſprung from the peaſantry of the crown-demeſnes, were under the immediate patronage of the ſovereign; others, being ſituated upon the eſtates of the greater thanes, were under the protection of thoſe nobles. The former, it is evident, enjoyed a great ſuperiority over the latter. The protection of no particular nobleman could reach beyond the limits of his own eſtate; but that of the ſovereign extended, in ſome meaſure, over the whole of the kingdom: not to mention that the king, by reſiding occaſionally in the towns of which he was the immediate protector, and which he was naturally deſirous of encouraging, produced a reſort of the nobility and gentry to thoſe places; and, by the expenſive living incident to a court, created an additional conſumption of their commodities.

The extent of the trade of England, before the Norman conqueſt, cannot, at this diſtance of time, be aſcertained with any degree of preciſion; but there is reaſon to believe that it was not very conſiderable. Of this we need require no farther evidence than the ſmall ſize of the principal towns in the

the reign of William the conqueror*. It appears however, that, for more than a century before that period, the commerce and manufactures of the country had been making advances which attracted the notice of the legiſlature. By a law of king Athelſtan it is enacted, that a merchant who, upon his own account, had made three trading voyages to a foreign country, ſhould acquire the privilege of a thane†. Such extenſive trade, it was probably thought at that time, could be attempted only by a perſon of uncommon ſpirit, and in affluent circumſtances; whoſe elevation, while it ſerved as an incitement to commercial enterprize, might be regarded as no diſparagement to the military people. In other ſtatutes which have been preſerved, of the ſame, and of ſubſequent princes, we meet with ſome of thoſe fundamental regulations, which commonly have place in every country, upon the firſt efforts to introduce a regular commerce; ſuch as the eſtabliſhment of certain formalities in completing mercantile tranſactions‡; and the appointment of a mint in the principal town‖; together with that of a common ſtandard of money, and of weights or meaſures§.

By the addition of artificers and tradeſmen to the different orders formerly mentioned, the whole people of England came now to be diſtinguiſhed into four great claſſes; which, from their differences in rank or employment, in characters and habits of living, were ſeparated and kept at a diſtance from one another. Thoſe who exerciſed the honourable profeſſion of arms, whether in the ſtation of *greater*

* With regard to this point, ſee Doomſday-book—and Dr. Brady on Boroughs.

† Et ſi mercator tamen ſit, qui ter trans altum mare "per facultates proprias abeat, ille poſtea jure thani ſit dignus."—[Judicia civitatis Lundoniæ. Wilkins, Leg. Sax. p. 71.]

‡ Wilkins, Leg. Sax. p. 80, 81.

‖ Ibid. p. 59.

§ Ibid. p. 78.

or

or *leſſer* thanes, of ſuperiors or vaſſals, thought it inconſiſtent with their dignity to engage in any lucrative occupation; and diſdained to contract alliances with farmers or manufacturers*. The two latter orders of men, though nearly of the ſame rank, were by their ſituation prevented from living together, and led to acquire very different manners, and ways of thinking. The ſolitary and robuſt employment of the farmer was not apt to form a ſimilar ſtyle of behaviour and accompliſhments to that which was produced by the ſedentary town-life of the manufacturer; and in a country where improvements had not been carried ſo far as to create an intimate correſpondence among all the members of ſociety, theſe two ſets of men were not likely to exchange their profeſſions. The children of the farmers, as well as thoſe of the tradeſmen and mechanics, were commonly diſpoſed to follow that way of life with which they had been early acquainted. They were even bred up, in moſt caſes, to their father's employment, before they could well have an opportunity of comparing it with any other. Theſe two orders of men were not only confined, in general, to their reſpective profeſſions, but the mechanics, employed in the ſeveral branches of manufacture often tranſmitted their occupations to their poſterity; and continued them, for many generations, in the ſame families. The clergy, who formed a numerous and powerful body, were no leſs diſtinguiſhed from the other three claſſes, by their peculiar education, by their ſeparate views of intereſt, and by their profeſſional character and manners. The celibacy, indeed, of the clergy, which, however, was introduced in England after the period we are examining, prevented

* After the Norman conqueſt, we find that the ſuperior lord was prohibited by ſtatute to marry his female ward to a *villain* or a *burgeſs*. It is probable that the rank of the two laſt-mentioned orders of men had riſen conſiderably, before this prohibition was thought neceſſary.

this

this order of men from being ſo entirely ſeparated from the reſt of the inhabitants, as might otherwiſe have been expected. When churchmen were prohibited from having poſterity of their own, it was neceſſary that their profeſſion ſhould be ſupplied from the other ranks of the ſociety.

From the natural courſe of things, it ſhould ſeem, that in every country where religion has had ſo much influence as to introduce a great body of eccleſiaſtics, the people, upon the firſt advances made in agriculture, and in manufactures, are uſually diſtributed into the ſame number of claſſes or orders. This diſtribution is, accordingly, to be found, not only in all the European nations, formed upon the ruins of the Roman empire but in other ages, and in very diſtant parts of the globe. The ancient inhabitants of Egypt are ſaid to have been divided into the clergy, the military people, the huſbandmen, and the artificers; and theſe four deſcriptions of men were, by a public regulation, or more probably by the influence of cuſtom, derived from the early ſituation of the country, kept invariably diſtinct from one another. The eſtabliſhment of the four great *caſtes*, in the country of Indoſtan, is preciſely of the ſame nature. This diviſion of the people, which goes back into the remoteſt antiquity, has been aſcribed, by hiſtorians and political writers, to the poſitive inſtitution of Brama, the early, and perhaps fabulous legiſlator of that country; but, in all probability, it aroſe from the natural ſeparation of the principal profeſſions or employments in the ſtate; as it has been ſince retained by that exceſſive indolence, to which the inhabitants of thoſe warm and fertile regions are addicted, and which has hitherto checked their improvements, by producing an averſion to every ſpecies of innovation.

CHAP.

CHAP. XII.

The Influence of theſe Changes upon the Juriſdiction and Authority of the feudal Lords.

THE advancement of the Anglo-Saxon vaſſals and peaſants to greater ſecurity and freedom, and the ſeparation of the trading people from the claſs of huſbandmen, could not fail to limit the authority of the ſuperior, and more eſpecially to affect the ſtate of his juriſdiction. When his military retainers held their benefices precariouſly, and when the other members of his barony were either bondmen, or merely tenants at will, he found himſelf under no reſtraint, in deciding their differences, and in puniſhing their offences; but after the former had obtained hereditary fiefs, and a great proportion of the latter had been exalted to the rank of ſoccage-vaſſals, he was obliged to relax his claim to their obedience, and to diſtribute juſtice among them with greater moderation and circumſpection.

The retainers of every feudal ſuperior were bound, not only to the performance of military or other ſervices, but alſo to aſſiſt him in maintaining good order and tranquillity within his barony; and therefore, when any of them complained of injuſtice from another, or was accuſed of a crime, the baron found it expedient, inſtead of deciding by virtue of his own authority to call a number of his other vaſſals, and to proceed with their advice and concurrence in trying the cauſe. This expedient was the moſt equitable for the perſon concerned in the trial, as well as the beſt calculated for giving weight to the deciſion. The aſſeſſors of the judges were the *pares curiæ*, men of the ſame rank with one another, and with the parties; they were choſen occaſionally, and varied in each cauſe, to

to avoid burdening any individual more than his juſt proportion; and they were commonly ſelected from the neighbourhood of the place where the accuſation or diſpute had taken its riſe, that, from their own private knowledge, they might be enabled to form a better judgment of the facts in queſtion.

Thus the trial by an *inqueſt*, or *jury*, which had formerly taken place in the tribunals of the ſhire, and of the hundred, was introduced into thoſe of a feudal barony. The cauſes, however, of this inſtitution, in the former and in the latter, were ſomewhat different. A jury was found convenient, in the courts of the ſhire, and of the hundred, to ſuperſede the attendance of all their members; and might be regarded as a ſort of committee, in place of a full and regular meeting. In the courts of the baron, its interpoſitions became neceſſary, in place of the deciſions formerly given by the judge himſelf, in order to ſupply his deficience in authority over vaſſals whoſe fiefs had been ſecured to them by a permanent right. It is reaſonable, at the ſame time, to ſuppoſe, that, when allodial proprietors had been changed into vaſſals, the cuſtom of jury-trials in the courts of the former, would facilitate the introduction of a ſimilar practice in the judicial eſtabliſhments of the latter.

That this form of trial obtained univerſally in all the feudal governments, as well as in that of England, there can be no reaſon to doubt. In France, in Germany, and in other European countries, where we have any accounts of the conſtitution and procedure of the feudal courts, it appears that lawſuits of every ſort, concerning the freemen or vaſſals of a barony, were determined by the *pares curiæ*; and that the judge took little more upon him, than to regulate the method of proceeding, or to declare the *verdict* of the jury.

The number of jurymen was originally varied in each cauſe, according as the opulence and power of the parties, or the magnitude of the diſpute, rendered it more or leſs difficult to enforce the deciſion. So little, after all, was the authority of the court, that, in many caſes, the party aggrieved by the verdict aſſumed the privilege of challenging the jurymen to ſingle combat *. From the progreſs of regular government, and in conſequence of the diſpoſition among mankind to be governed by general rules, a certain number of jurymen became cuſtomary in ordinary cauſes; and at laſt was univerſally eſtabliſhed. Fom accidental circumſtances, of little importance, a different number has been eſtabliſhed in different countries; as that of twelve in England, and fifteen in Scotland.

With reſpect to the time when trials by jury were firſt introduced into the court of every feudal barony, we are left in the ſame obſcurity as concerning their previous introduction, among the allodial proprietors, in the courts of the hundred and of the county. But conſidering the circumſtances from which the ſuperior was induced to adopt this mode of procedure, there is ground to believe that it aroſe upon the eſtabliſhment of hereditary fiefs, and became gradually more univerſal, according as the number of the feudal tenants, who had obtained a perpetual right to their poſſeſſions, was increaſed.

In this view, it ſeems probable that the practice of juries, in the baron-courts, was not very common in England till near the end of the Anglo-Saxon government. In the opinion of ſome antiquaries, the firſt veſtige of a jury-trial, in the Engliſh hiſtory, is poſterior to the Norman invaſion; a miſtake which appears to have ariſen from the ſuppoſition, that before this period hereditary fiefs were unknown in England.

* Spirit of Laws.

Though

Though the fact ſeems now to be admitted, that jury trials were eſtabliſhed in the baron courts of every feudal kingdom, yet the origin of that inſtitution has been the ſubject of much doubt and controverſy. Some authors have thought that jurymen were originally *compurgators*, called by a defendant, to ſwear that they believed him innocent of the facts with which he was charged. In the church courts, a perſon accuſed of a crime, was underſtood to be guilty, unleſs he could clear himſelf by what was called the *oath of purgation;* and in ſome caſes, unleſs his own oath was confirmed by that of a number of other perſons acquainted with his behaviour. The injuſtice of this general preſumption of *guilt*, the very oppoſite of what ſhould be entertained, in every court of juſtice, was the leſs obſervable, as the conſequence of it was merely to draw upon the guilty perſon a ſpiritual admonition, or cenſure, for the good of his ſoul. From the influence of eccleſiaſtical procedure, the ſame rule, however, was afterwards adopted in the temporal courts; where it came to be much more oppreſſive.

But the province of *compurgators*, in thoſe courts, and that of *jurymen*, were totally different, as to make it ſcarcely poſſible to conceive that the latter could ariſe out of the former. Compurgators were merely witneſſes: jurymen were, in reality, judges. The former were called to confirm the oath of the party, by ſwearing, according to their belief, that he had told the truth: the latter were appointed to try, by witneſſes, and by all other means of proof, whether he was innocent or guilty. Compurgators, for this reaſon, were called by the party himſelf: the jury, on the contrary, were named by the magiſtrate.

In conſequence of the different departments, occupied by theſe two deſcriptions of men, it ſhould ſeem that, in moſt of the feudal governments, they exiſted at one and the ſame time; and that ju-

ries were accuſtomed to aſcertain the truth of facts, by the defendant's oath of purgation, together with that of his compurgators. We can have no doubt that this was formerly the practice; ſince it is, even at preſent, retained by the Engliſh, in what is called the *wager of law*.

There are two particulars in which we diſcover a reſemblance between the procedure of compurgators and of jurymen; whence, in all probability, the opinion above mentioned has ariſen. Both of them were obliged to ſwear they would *tell the truth*; and both were ſubjected to confinement until they had given their declaration. But theſe regulations concerning jurymen afford no proof that they were ever conſidered in the light of compurgators. According to the ſimple idea of our fore-fathers, guilt or innocence was regarded as a mere matter of fact; and a man called occaſionally from the common maſs of the people, to give judgment in a law-ſuit, might lie under the ſuſpicion of being expoſed to improper influence; for which reaſon precautions were taken to prevent his having the leaſt intercourſe with the parties or their connexions.

As to the unanimity required in the Engliſh juries, a circumſtance in which they agree with the ancient compurgators, it has not been univerſally eſtabliſhed in the feudal governments. Preſident Monteſquieu, at the ſame time, accounts for it, from a point of honour obſerved by the *pares curiæ* in their judicial deciſions, that they ſhould agree with one another in pronouncing a verdict; becauſe they were obliged to fight either of the parties who might give them the lie.

The ſame form of procedure which took place in the adminiſtration of juſtice, among the vaſſals of a barony, was gradually extended to the courts held in the trading towns. Notwithſtanding the freedom acquired by the mercantile people, they ſtill ſubmitted to the juriſdiction of that perſon to whom

whom they were indebted for protection; and were reduced by him under a ſyſtem of government, ſimilar to that which he eſtabliſhed among his vaſſals. In as much as they held lands, for which they paid him a certain rent, they were in reality a ſpecies of feudal tenants.

The ancient juriſdiction of the greater thanes, or feudal ſuperiors, came thus to be exerciſed in two different courts. The one, in which cauſes were determined with the aſſiſtance of a jury, took cognizance of the military and ſoccage vaſſals, together with the inhabitants of the trading towns, under the protection of the ſuperior. The other, which proceeded without that formality, was held for the trial of ſuch members of the barony as were ſtill in a ſtate of greater dependence. The former is that which, according to ſome authors, was properly called the *courtleet;* being the court of the Liti, or free people. The latter, in which the ſuperior retained his ancient authority, received, by way of diſtinction, it is ſaid the general appellation of the *court baron* *.

It is worthy of notice, that the king, conſidered as a feudal ſuperior, was in the ſame circumſtances with the greater thanes; and that, by the gradual multiplication of his vaſſals, his authority over them underwent a ſimilar limitation. The ſame regulations, therefore, concerning the diſtribution of juſtice by the intervention of juries, with the ſame diſtinction in this reſpect between his vaſſals and bondmen, were introduced in the baron courts of the king, as into thoſe of the nobility, or ſuch of his ſubjects as retained their allodial property.

The improvements which I have mentioned, in the ſtate of the feudal courts, could not fail to

* Bacon's diſcourſe on the government of England, collected from the MS. notes of Mr. Selden, chap. 33. Alſo the Mirror.

" Liti ac Litones idem ac Laſſi et Liberti cenſentur." Muratori Ant. Med. Ævi, tom. i. diſſert. 15.

produce

produce a more equal and impartial diſtribution of juſtice; and this circumſtance, together with the general advancement of civil ſociety, contributed to increaſe the buſineſs of thoſe tribunals. From the greater diffuſion of property among the people of inferior condition, law-ſuits became ſomewhat more numerous; and from their being frequently decided by men of the ſame rank with the parties, were likely to procure a fuller and more deliberate hearing. As the exerciſe of juriſdiction was thus rendered more tedious and burdenſome, the great lords, as well as the king, who had been accuſtomed to preſide in the trial both of civil and criminal cauſes, within their ſeveral baronies, were leſs diſpoſed to give the neceſſary attendance; and, by appointing deputy judges, endeavoured to relieve themſelves from a great part of the labour. The ſame circumſtances which gave riſe to theſe inferior officers, contributed afterwards to enlarge their powers; and from the negligence of their conſtituents, who ſeldom interfered in controuling their deciſions, and at laſt intirely abandoned the employment of judging, they became the ordinary magiſtrates in the ſeveral demeſnes or territories committed to their direction.

The transference of juriſdicton, from the primitive judges to their deputies, laid a foundation for one of the moſt important alterations in the ſyſtem of judicial policy. The *executive* and *judiciary* powers, with which every feudal baron was originally inveſted, came thus to be ſeparated from each other; and the exerciſe of the latter became the ſole occupation of particular perſons; who, upon that account, were likely to give greater application, as well as to acquire more experience and knowledge in the determination of law-ſuits. The judges of a barony, though nominated by the baron, had neceſſarily their own views of right and wrong; and having a character to ſupport, might be

be ſuppoſed, in ſome caſes, to conduct themſelves without regard to the intereſt of their conſtituents. It happened likewiſe from the natural courſe of things, that, as the moſt opulent vaſſals were found the beſt qualified for maintaining the dignity of a judge, the ſame perſons were frequently enabled to ſecure the office during life, and even ſometimes to render it hereditary. In either caſe the judge became in a great meaſure independent of the feudal lord from whom his authority had been derived. It muſt be acknowledged, however, that long after the period which we are now examining, the king's judges continued under a precarious appointment.

A diſtinguiſhed political author has pointed out the ſeparation of the judicial power from the king's prerogative, as one of the great ſources of the liberty enjoyed by the ſubjects of Britain. To thoſe who ſpeculate upon the conduct of human affairs, it is amuſing to diſcover, that this important regulation was neither introduced from any foreſight of its beneficial conſequences, nor extorted from the monarch by any party that were jealous of his power; but was merely the ſuggeſtion of his indolence; and was adopted by the king, in common with other feudal ſuperiors, to relieve them from a degree of labour and attention which they did not chuſe to beſtow. It was, in reality, a conſequence of the general progreſs of ſociety, by which employments of every ſort, both liberal and mechanical, have been diſtributed among different individuals, and have become the object of ſeparate profeſſions and trades.

As ſoon as the buſineſs of a judge became the ſole employment of particular perſons, it was neceſſary that they ſhould obtain a maintenance in return for their labour. This was acquired without any difficulty, from the very exerciſe of their profeſſion; as the ſuperior by whom they were appointed,

pointed, empowered them to exact a fee or perquiſite from every party whoſe cauſe they had occaſion to determine. Theſe exactions, which came to be fixed, in every ſtep of judicial procedure, according to the degree of trouble it was underſtood to produce, were not only ſufficient for maintaining the judge, but afforded alſo an emolument to the ſuperior, who demanded from his deputy a ſtrict account of the fees he had levied. To prevent any embezzlement in this reſpect, a clerk was appointed, to ſit in the court along with the judge, and to keep a record of judicial proceedings. Such was probably the firſt intention, not only in England, but in all the feudal countries, of recording the deciſions of a judge; though the practice was afterwards made ſubſervient to other purpoſes of the higheſt utility.

Of the fees, or perquiſites, drawn by the judges under the appointment of the crown, the ſovereign acquired a conſiderable proportion, which formed an additional branch of the public revenue.

From this method of maintaining judges, they had obviouſly an intereſt to increaſe their perquiſites by encouraging law-ſuits, and multiplying the forms of judicial procedure. Hence there occurred a new reaſon for the interpoſition of juries in the court of a barony; that they might prevent the unreaſonable delay of juſtice. It may, at the ſame time, perhaps be admitted, that the intereſted activity and vigilance of the magiſtrate was, in that early and rude age, more beneficial in preventing diſorder and violence, than it was hurtful, either by promoting litigiouſneſs, or by introducing tedious and abſurd formalities into the ſyſtem of judicial diſcuſſion.

CHAP.

CHAP. XIII.

Of Eccleſiaſtical Courts.

WHILE the nobles were gradually extending their power, and reducing that of the ſovereign, the eccleſiaſtical order was advancing, with haſty ſtrides, to the eſtabliſhment of an authority independent of either. The barbariſm and ſuperſtition that ſucceeded the downfal of the Roman empire, and the ſyſtem of eccleſiaſtical government erected in the Weſtern part of Europe, had a uniform tendency, as has been already obſerved, to increaſe the wealth and influence of the church. Were we to conſider merely the former circumſtance, we ſhould expect that the uſurpations of the clergy would be moſt rapid in thoſe European countries, which were at the greateſt diſtance from the incitements to cultivation, and in which the ignorance and ſimplicity of the inhabitants diſpoſed them to follow more implicitly the direction of their ſpiritual guides.—But the fact was otherwiſe. The kingdoms in the neighbourhood of the pope's reſidence, and of his temporal dominions, were nearer the center of that artful policy, which by taking advantage of conjunctures, exalted no leſs the power and privileges of the church than the dignity and authority of her leader. Thus the right of levying the *tythes*, that enormous impoſition for the ſupport of the clergy, and which marks the prodigious extent of eccleſiaſtical influence, was introduced in France, and over a great part of Italy, as early at leaſt as the time of Charlemagne; which correſponds to that of Egbert among the Anglo-Saxons; and the ſame tax was afterwards extended, by degrees, to the other countries of Europe. It appears to have been finally eſtabliſhed

ly eſtabliſhed in England, during the reigns of Alfred and of Athelſtan; patriotic princes, who, doubtleſs, found themſelves under the neceſſity of giving way to the current of the times, by ſubmitting to ſuch an oppreſſive exaction.

The increaſing opulence of the clergy, as it was an effect of the blind zeal, and the general debaſement of the people, ſo it was accompanied by a correſponding perverſion of religious opinions, and by an increaſe of ſuperſtitious obſervances. The real virtues of ſociety, whoſe intrinſic value recommends them to our obſervance, and which frequently appear to coſt us nothing, came to be little eſteemed, in compariſon of penances and mortifications; from which nature is diſpoſed to ſhrink; and which are ſubmitted to, for no other purpoſe, but that of appeaſing the wrath of an offended deity. Theſe laſt were accounted highly meritorious in perſons of every deſcription; but were thought more eſpecially ſuitable to the profeſſion and character of churchmen; upon whom it was incumbent to ſet an example to others. The monks, in particular, who, by their original inſtitution, had no other means of diſtinction, were incited to procure admiration by the auſterity of their lives, and by the ſevere and painful diſcipline which they underwent. As they advanced in reputation and popularity, they acquired more numerous and wealthy eſtabliſhments; their influence in religious matters became proportionably extenſive; and they not only roſe to great conſideration in the government of the church, but frequently, too, interfered in that of the ſtate. From the continent of Europe, the ſame practices, and ways of thinking, were communicated to Britain; where, about the middle of of the tenth century, we find St. Dunſtan, at the head of the regular clergy, poſſeſſed of ſuch power and credit, as enabled him to controul the adminiſtration of government, and even to diſpoſe of the crown.

Among

Among the ſeveral branches of mortification impoſed by the monaſtic rules, that of celibacy, or a total abſtinence from the intercourſe of the ſexes, was deemed the moſt important; whether on account of the difficulty attending the obſervance of it, as it counteracts the moſt violent propenſities of nature, or on account of that variation of temperature in the human frame, which makes the indulgence of thoſe propenſities, however irreſiſtable at certain ſeaſons, yet become, on other occaſions, the object of averſion and diſguſt. This, therefore, became now the uſual topic of declamation to the Engliſh monks; who, finding the ſecular clergy to be their great rivals in the public eſteem, and being impatient of that ſuperior authority which theypoſſeſſed, inveighed againſt their married life, as inconſiſtent with the purity of a Chriſtian paſtor; repreſenting their wives in the light of concubines or proſtitutes, and their children as baſtards.—Though the doctrine inculcated by theſe fanatical zealots was not carried into execution until a ſubſequent period, it appears, even at this time, to have been approved and ſupported by the general voice of the people.

From the ſituation of the Chriſtian clergy, and from the influence and authority which they enjoyed, they were led early to aſſume the cognizance of judicial buſineſs, and to form a number of tribunals for the exerciſe of their juriſdiction. Even before the time of Conſtantine, when they received no protection or countenance from the civil government, they were accuſtomed to enquire into the faith and manners of Chriſtians; and, after repeated admonitions, to *excommunicate* thoſe individuals who perſiſted in opinions, or practices, which the church had condemned. This juriſdiction was at firſt exerciſed by the elergyman, together with the moſt reſpectable among the laity, of each particular church; but when the zeal of the latter, from the greater

greater extenſion of the goſpel, had begun to ſlacken, they became weary of interfering in ſuch matters; and as they gradually loſt their privilege by diſuſe, the buſineſs remained entirely in the hands for the former. When a number of churches were afterwards united in one dioceſe, the clergy of that larger diſtrict, under the authority of the biſhop, exerciſed a juriſdiction of a like nature over the whole of the inhabitants. In the meetings that were called, however, for this purpoſe, after the introduction of wealth had produced very different degrees of rank among churchmen, the parochial, or inferior clergy, were by degrees overlooked, or endeavoured to excuſe themſelves from attendance; and the care of maintaining eccleſiaſtical diſcipline, thoughout the dioceſe, was appropriated to the biſhop and clergy of his cathedral church. This dioceſan court, which, from a perfect uniformity of circumſtances, was formed upon the ſame plan in every dioceſe of the kingdom, was every where liable to the review of a ſimilar court, in a ſtill more extenſive diſtrict, convened by the archbiſhop; and from the decrees of this laſt, at a period when the papal authority had arrived at its height, there lay an appeal to the Roman pontiff.

Together with this judicial authority, which was properly of a ſpiritual nature, the Chriſtian clergy came alſo to be inveſted with a temporal juriſdiction. After the Chriſtian religion was taken under the protection of the Roman government, and after the faſhion of making donations to the church, for pious uſes, had become prevalent, the dignified clergy, both ſecular and regular, as has been formerly mentioned, were enabled to acquire great landed eſtates. Theſe, upon the ſettlement of the Gothic nations in the Weſtern part of Europe, were gradually reduced under the ſame feudal policy that obtained in the landed property of the lay-barons; and a great proportion of the lands of every biſhop, or abbot, was commonly diſtributed among his vil-

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leins or vaſſals; over whom he exerciſed the juriſdiction and authority of a temporal lord and ſuperior. The eſtate, or benefice, which from the piety of well-diſpoſed perſons, or from whatever cauſe, had been mortified to the church, and had come into the hands of ſome particular churchman, was afterwards, in like manner as happened to the other fiefs of the kingdom, increaſed by the voluntary ſubmiſſion of neighbouring ſmall proprietors; who, in order to purchaſe his protection, reſigned their allodial property, and became his vaſſals. As the dignified eccleſiaſtics were not only poſſeſſed of a degree of influence correſponding to the extent of their benefices, but were ſupported by the ſpiritual arm of the church, they were often better qualified than many of the nobles, to ſecure their dependants from oppreſſion; and of conſequence, the opportunities of augmenting their wealth, by an artful interpoſition in behalf of the inferior people, were proportionably more frequent.

In thoſe circumſtances, a biſhop came to be inveſted with a civil as well as an eccleſiaſtical juriſdiction; the one extending to the people who lived upon his own eſtate; the other to all the inhabitants of his dioceſe. By virtue of the former, he puniſhed the crimes, and determined the pecuniary differences of his tenants and vaſſals. In conſequence of the latter, he enquired into the opinions and behaviour of ſuch as were under his direction in religious matters; and cenſured them, either for hereſy or for immorality.

It required no great penetration to diſcover, that this temporal juriſdiction of the biſhop might be extended, under cover of the ſpiritual juriſdiction. Every crime; every tranſgreſſion of a rule of juſtice; whether of a public or private nature, might be conſidered as a ſin, or as an offence in the ſight of God; and in that view, it might, conſiſtently with the ſyſtem of church-diſcipline, become an object of eccleſiaſtical cenſure. Whatever therefore

fore could be the ground of an action before the civil magiſtrate, might be brought at the ſame time under the cognizance of the ſpiritual judge. The profeſſed purpoſe of the latter was, indeed, very different from that of the former; as he pretended to act merely with a view of promoting the good of the party in a future world. But when the church had acquired great authority over the people, it was not difficult for the eccleſiaſtical judge to frame his ſentences in ſuch a manner as to effect alſo the intereſt of men in the preſent life. In making atonement for a ſin, the offender might be ordained to indemnify the injured perſon, or even to ſubmit to a public puniſhment.

This extenſion of eccleſiaſtical juriſdiction was made with greater or leſs rapidity, in different parts of Chriſtendom, and with regard to perſons or cauſes of different deſcriptions. It began with regard to the clergy themſelves.

To maintain the dignity and credit of the church it was neceſſary that ſhe ſhould pay the utmoſt attention to the behaviour of her own members; and be careful to avoid ſcandal, by cenſuring their offences with impartiality and rigour. She found, at the ſame time, the leaſt difficulty in compelling churchmen to obey her decrees; for, as ſoon as the Chriſtian church had come to be eſtabliſhed by law, the excommunication of a clergyman muſt have inferred a forfeiture of his benefice; ſince a perſon, who had been caſt out of the ſociety of Chriſtians, could not conſiſtently be permitted to hold any eccleſiaſtical dignity or employment. From the ſevere diſcipline, therefore, which the church exerciſed ever her own members, it became cuſtomary to exhibit complaints againſt them before the eccleſiaſtical, rather than before the civil judge; and to proſecute them in the church court, either for private debts, or of public offences.

After this practice had become general, it was regarded by churchmen as a matter of privilege. The

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peculiar functions and character of a clergyman required a peculiar delicacy, it was pretended, in judging of his conduct, which could not with propriety fall under the cognizance of the civil magiſtrate, and of which the clergy themſelves were the only competent judges. In the progreſs of church power, this exemption from the juriſdiction of temporal courts was gradually eſtabliſhed throughout the greater part of Chriſtendom. It was introduced in the dioceſe of Rome by a law of Alaric, which provided that the clergy of that diſtrict ſhould only be proſecuted, in the firſt inſtance, before their own biſhop; but from his deciſion an appeal was admitted to the civil magiſtrate. In the Eaſtern empire, the inferior clergy obtained a ſimilar privilege, in civil actions, by a law of the emperor Juſtinian; though, in criminal cauſes, not properly eccleſiaſtical, they might ſtill be proſecuted either in the ſpiritual or temporal court. The higher orders of churchmen, however, together with nuns, were, by the regulation of this emperor, permitted, in all caſes, to decline the juriſdiction of laic judges*.

When the exemption of the clergy from the juriſdiction of the civil magiſtrate, which, with the exception of a few cauſes, became univerſal, in the Weſtern part of Europe, had been completely eſtabliſhed, the church was, in reality, independent of the ſtate; ſince, whatever regulations were enacted by the legiſlature of any country, they might, with ſafety, be diſregarded by churchman, who could not be puniſhed for the violation of any law, unleſs they thought proper to enforce it by their own courts†.

The power of the church, in the adminiſtration of juſtice to her own members, was followed by a ſimilar juriſdiction over the laity, in thoſe law-

* V. Nov. 83.—123.—79. Alſo Gianone, Hiſt. of Naples.

† There were certain great crimes, ſuch as high treaſon, to which this exemption did not extend.

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ſuits by which her own intereſts might, in any degree, be affected, or which appeared, however indirectly, to have an influence upon any eccleſiaſtical matter. But, in England, this encroachment upon the province of the civil magiſtrate was poſterior to the Norman conqueſt: and therefore does not fall under our preſent conſideration. During the government of the Anglo-Saxon princes, the clergy did not claim a ſeparate cognizance in the temporal cauſes of the laity; but they laid the foundation of ſuch a claim, in a future period, by aſſuming a privilege of aſſiſting the ordinary magiſtrates in the determination of ſuch cauſes. The extent of a dioceſe being the ſame with that of a ſhire, the biſhop ſat along with the earl or ſheriff, as a judge, in the county courts; and the rural dean, whoſe eccleſiaſtical diſtrict coincided with the hundred, appears, in like manner, to have been aſſociated with the *centenarius*, in the determination of ſuch differences as aroſe among the people of that diviſion. It is not improbable that the union of the civil and eccleſiaſtical powers was carried ſtill lower, and that the parſon of a pariſh was accuſtomed to judge along with the tything-man, in the court of the decennary: this is what might be expected from the correſpondence between the limits of a pariſh and a tything, and from the analogous practice in the ſuperior courts; though the accounts tranſmitted by early hiſtorians are too vague and general to afford any poſitive evidence of the fact.

This arrangement of the Saxon tribunals was a natural conſequence of the influence poſſeſſed by the ſpiritual and the temporal governors, in the territories over which they preſided. It ſeems, at the ſame time, to have been eſteemed a wiſe regulation; in as much as by uniting the opinion of theſe two officers, in the diſtribution of juſtice, it was likely that the deciſions would be tempered in

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ſuch a manner, as might correſpond to the intereſt, and the views, of every ſet of men in the community. The experience and foreſight of that age was too limited to diſcover the inconveniency of confounding the plain and accurate rules of juſtice, with the intricate ſubtleties of caſuiſtry, which naturally introduce themſelves into the judgments of a ſpiritual director: not to mention the danger of committing a ſhare of the judicial power, in thoſe times of ignorance, to a ſet of men who, by their ſuperior education, were likely to be an overmatch for the civil magiſtrate, and who, by their ſituation, had acquired a ſeparate intereſt, and were led to ſeek their own aggrandizement at the expence of the great body of the people.

CHAP. XIV.

Alterations in the State of the Wittenagemote.

THE progreſſive changes in the ſtate of property, and in the conſtitution and circumſtances of the people, of which an account has been given, muſt have contributed, in many particulars, to alter the conſtitution and procedure of the Wittenagemote. As this national council was compoſed of all the allodial proprietors of land, whoſe eſtates, according to the primitive diſtribution of property, were generally of ſmall extent, there can be no doubt that, upon the union of the different kingdoms of the Heptarchy, it formed a very numerous, and, in ſome degree, a tumultuary meeting. The meaſures which came under its deliber-

ation were propoſed, it ſhould ſeem, by ſuch of its members as were diſtinguiſhed by their influence or abilities; and its determinations were ſignified, not by collecting exactly the number of ſuffrages, but by a promiſcuous acclamation, in which the by-ſtanders, it is not unlikely, were accuſtomed frequently to join with thoſe who had the right of voting. This, in all probability, is what is meant by the early hiſtorians, when they ſpeak of the *people* being preſent in the ancient Wittenagemote, and of their *aſſiſting*, and *giving their conſent*, in forming the reſolutions of that aſſembly.

It cannot eſcape obſervation, that this early conſtitution of the national council, while it contained a mixture of democracy and ariſtocracy, was, in ſome reſpects, favourable to the intereſts of the crown. In ſo numerous and diſorderly an aſſembly, there was great room for addreſs, in managing parties, and in conducting the ſubjects of public deliberation; ſo that the king, the chief executive officer, had many opportunities of promoting the ſucceſs of a favourite plan, as well as of parrying, and removing out of ſight, thoſe meaſures which were diſagreeable to him.

The frequent reſignations of land which, during the progreſs of the Saxon government, were made by the ſmall allodial proprietors, in order to ſhelter themſelves under the protection of a feudal ſuperior, neceſſarily withdrew thoſe individuals from the Wittenagemote; and reduced them under the juriſdiction and authority of that particular thane whom they had choſen for their protector. As they became his military ſervants, they were bound, on every occaſion, to eſpouſe his quarrel, and to follow his banner. They were bound, at the ſame time, to attend his baron-court, and to aſſiſt in deciding cauſes, as well as in making regulations, with regard to his vaſſals. In conſiſtency with that ſubordinate ſtation, they could not be permitted to ſit in the

the ſame council with their liege lord, to deliberate with him upon public affairs; but, on the contrary, were underſtood to be repreſented in the Wittenagemote by the perſon who had undertaken to protect them, and to whom they owed ſubmiſſion and obedience.

Thus, according as the vaſſals of the nobility, throughout the kingdom, were multiplied, the conſtituent members of the Wittenagemote became leſs numerous; and the right of ſitting in that aſſembly was more and more limited, to a few opulent barons, who had acquired the property of extenſive diſtricts, and reduced the inhabitants under their dominion.

This change of circumſtances was no leſs unfavourable to the king, on the one hand, than it was, on the other, to the great body of the people. For although the vaſſals of the crown were, by the gradual reſignations of allodial property, increaſed in the ſame, or even in a greater proportion than thoſe of particular noblemen, the ſovereign was not thence enabled to preſerve his former weight in the determination of public meaſures. The more the national council had been reduced to a ſmall junto of nobles, it was the more difficult to impoſe upon them, or by any ſtratagem to divert them from proſecuting their own views of intereſt or ambition. By the accidental combination of different leaders, they ſometimes collected a force which nothing could reſiſt; and were in a condition, not only to defend their own privileges, but even to invade the prerogative. It was often vain for the ſovereign, in ſuch a ſituation, to appeal to the ſword from the deciſions of the Wittenagemote. Thoſe haughty and ambitious ſubjects were generally prepared for ſuch a determination; and, as they came into the aſſembly, ſupported by their vaſſals, armed and ready to take the field, they got frequently the ſtart of his majeſty. To give way,

therefore, to their demands, and to wait for ſome future opportunity of recovering what had been yielded, was in many caſes unavoidable.

In that early period of the Anglo-Saxon ſtate, when the allodial proprietors were numerous, and when their eſtates were generally ſmall, they were underſtood to be all of the ſame rank and condition. Although ſome perſons might be diſtinguiſhed above others, by their abilities, or military reputation; the ſuperiority derived from thence, being accidental and temporary, was not productive of any permanent authority or privileges. But when, from the cauſes which have been mentioned, a few great lords had become maſters of an extenſive landed property, their exaltation in power and dignity was a neceſſary conſequence. Thoſe individuals, on the contrary, who remained in the poſſeſſion of ſmall eſtates, though by any fortunate concurrence of events they had been enabled to retain their independence, were degraded in proportion to their poverty. They could maintain but few retainers to ſupport their influence. Hardly in a condition to defend themſelves, and afraid of every conteſt which might endanger their property, and their perſonal ſafety, they were deterred from claiming political conſideration, and from interfering in public buſineſs. It was their intereſt to live upon good terms with their neighbours; and, by their peaceable and inoffenſive behaviour, to ſhun every ground of jealouſy and reſentment. If they came into the Wittenagemote, their voice was but little heard; or if they ventured to differ from others, of greater opulence, it was likely to be treated with neglect, or with deriſion. They had but ſmall encouragement, therefore, to attend the meetings of that aſſembly; where, at the ſame time that they incurred an expence not ſuited to their fortunes, they were ſubjected to continual mortification, and were incapable of procuring reſ-

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pect. In theſe circumſtances, it is probable that the allodial proprietors, whoſe eſtates were inconſiderable, appeared but ſeldom in the Wittenagemote; and that, unleſs upon extraordinary occaſions, when great unanimity was of the higheſt importance, their abſence was either diſpenſed with, or in a great meaſure overlooked.

It was to be expected that this very unequal diſtribution of property, as it produced a real difference in the conſideration and importance of individuals, would come at length to be accompanied with correſponding marks of diſtinction; and that ſo much wealth as enabled the poſſeſſor to live according to a certain ſtandard of magnificence, might become the foundation of ſuitable dignity. Thus, in the latter part of the Anglo-Saxon government, ſuch of the nobles as enjoyed an eſtate, extending to forty hides of land, were diſtinguiſhed in rank and condition from thoſe who poſſeſſed an inferior property. This appears from a paſſage in the regiſter of Ely, in which mention is made of a perſon who, "though he was a *nobleman*, could not be "numbered among the *proceres*, becauſe his eſtate "did not amount to forty hides of land *."

From this paſſage, political writers have been led to advance two conjectures; to which it gives no countenance whatever. They conſider the rank or privileges, attached to the poſſeſſion of forty hides of land, as having exiſted from the original ſettlement of the Anglo-Saxons; although the writer of that paſſage ſpeaks only, and that by the by, of what was eſtabliſhed in the reign of Edward the Confeſſor. They alſo maintain, that perſons whoſe eſtates were below forty hides of land, were en-

* Habuit enim (ſpeaking of the abbot of Ely) fratrem *Gudmundum* vocabulo, cui filiam præpotentis viri in matrimonium conjungi paraverat. Sed quoniam ille quadraginta *hidarum* terræ dominium minime obtineret, licet nobilis eſſet, inter *proceres* tunc numerari non potuit; eum puella repudiavit. Hiſtoria Elienſis, lib. ii. cap. 40.

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tirely excluded from the right of ſitting in the Wittenagemote. But the paſſage referred to makes no mention of the right of ſitting in the Wittenagemote, nor gives the leaſt hint concerning it; but only points out the extent of property which entitled a perſon to be ranked among the *proceres*. There is no reaſon to believe, either from this, or from any other ancient author, that, even in the latter part of the Anglo-Saxon government, the proprietors of ſuch great eſtates were the only members of the national aſſembly; though it is, no doubt, highly probable, that they would be more apt, than perſons of a lower ſtation, to give a punctual attendance upon its meetings.

The ſuperior dignity, however, enjoyed, in the reign of Edward the Confeſſor, by ſuch of the nobility as were poſſeſſed of a certain extent of property, is the more worthy of attention, as it became ſtill more remarkable after the Norman conqueſt, and laid the foundation of that noted diſtinction between the *greater* and *ſmaller* barons, which was productive of important changes in the conſtitution.

As the Wittenagemote was diminiſhed by the reduction of many allodial proprietors into a ſtate of vaſſalage; it may be queſtioned whether it did not, on the other hand, receive a gradual ſupply of new members, by the advancement of the *churles*, who, in conſequence of the law of king Athelſtan, were, upon the acquiſition of five hides of land, admitted to the privileges of a thane. Concerning this point the following obſervations will occur. 1ſt, That though many of the peaſants appear, in the latter periods of the Anglo-Saxon government, to have become free, and even opulent, it is probable that they held their poſſeſſions upon the footing of vaſſalage, rather than of allodial property; in conſequence of which, they could only be ranked, from the law above-mentioned, among the

the *leſſer thanes*, who had no right of ſitting in the Wittenagemote: 2dly, Suppoſing that any of theſe churles acquired allodial eſtates, and that they were ſtrictly entitled to a voice in the Wittenagemote; yet, about the time when this privilege was beſtowed, a much greater property than five hides of land, the quantity ſpecified in the law of king Athelſtan, was required for giving the proprietor any weight or conſideration in that aſſembly, or for making his attendance upon it a deſirable object. This was a privilege, therefore, which they would be more apt to decline from its inconveniencies, than to exerciſe, or to boaſt of on account of its advantages.

It may alſo be a queſtion, whether thoſe merchants who performed three voyages into a foreign country, and who, by another law of the ſame prince, are ſaid to have obtained the rights of a *thane*, were admitted into the Wittenagemote. But, as theſe mercantile adventurers were not required to poſſeſs any eſtate, real or perſonal, it is not reaſonable to ſuppoſe that they could be allowed to participate, with the ancient nobility, in the deliberations of the ſupreme national council. It has already been obſerved, that by the privileges of a thane, beſtowed as an encouragement to a certain degree of enterprize in trade, were probably underſtood thoſe of a *leſſer thane*, or vaſſal; who, though not a member of the Wittenagemote, was of a condition greatly ſuperior to that of the original peaſants and mechanics.

As it does not appear that individuals among the merchants had, independent of any landed eſtate, the privilege of ſitting in the Wittenagemote; ſo there is no evidence that, collectively, the trading intereſt were, even in the latter part of the Anglo-Saxon hiſtory, entitled to ſend repreſentatives to that aſſembly. Of this we may be ſatisfied from the particulars, relative to the conſtitution of the national

national council, which have been formerly mentioned. The facts which were then adduced, in order to ſhew that in the Saxon Wittenagemote there were no repreſentatives, either from towns, or from the ſmall proprietors of land, appear concluſive with regard to the whole period of the Engliſh government before the Norman conqueſt. If the original conſtitution of that aſſembly admitted of no repreſentatives from either of theſe two claſſes of men, it muſt be ſuppoſed, that the ſubſequent introduction of them, more eſpecially if it had happened near the end of the Saxon period, when hiſtorical events are better aſcertained, would have excited the attention of ſome hiſtorian or other, and have been thought worthy of tranſmiſſion to future ages. But upon this point, of ſo much importance in the political ſyſtem, and ſo unlikely to paſs without notice, the later as well as the early Saxon hiſtorians are entirely ſilent.

The advancement of arts and manufactures, towards the end of the Saxon line, was, indeed, ſo conſiderable, as to have enlarged particular towns, and to have exempted the inhabitants from thoſe precarious duties and ſervices to which they had anciently been ſubjected. They were permitted to form *ſocieties* or *gilds*, for the benefit of their trade; which appear to have at length ſuggeſted the practice of incorporating the whole of a town, with particular privileges and regulations *. By a ſeries of progreſſive improvements, the trading people were thus gradually prepared and qualified for that political conſideration which they afterwards acquired by the eſtabliſhment of repreſentatives in the national council. But the acquiſition of this important privilege was the work of a later period, when they roſe to a higher pitch of opulence and independence.

* Madox firma burgi.

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The original meetings of the Wittenagemote in England, as well as thoſe of the national council, in moſt of the kingdoms upon the neighbouring continent, appear, as was formerly obſerved, to have been held regularly at two ſeaſons of the year; at the end of ſpring, for deliberating upon the military operations of the ſummer, and at the beginning of autumn, for dividing the fruit of thoſe depredations. The ſame times of meeting were, for ſimilar reaſons, obſerved, in the courts belonging to the ſeveral ſhires and baronies of the kingdom. But as, in England, from her inſular ſituation, military enterprizes againſt a foreign enemy were leſs regular than upon the continent of Europe, thoſe meetings fell ſoon into diſuſe; and as, on certain great feſtivals, the king was accuſtomed to appear, with great pomp and ſolemnity, among his nobles; it was found convenient, on thoſe occaſions, to call the Wittenagemote. Hence the meetings of that council came to be held uniformly at three different ſeaſons; at Chriſtmas, at Eaſter, and at Whitſuntide.

The increaſe of the national buſineſs, particularly with reſpect to the diſtribution of juſtice, a conſequence of the gradual progreſs of authority in the public, made it neceſſary that the Wittenagemote ſhould be held more frequently than in former times; and therefore, in any extraordinary exigence, which aroſe between the different feſtivals above-mentioned, a particular meeting of that council was called by the king. Thus there came to be two ſorts of Wittenagemote; the one held by cuſtom; and at three ſtated periods; the other called occaſionally, by a ſpecial ſummons from the king *. Both were compoſed of the ſame perſons, if they choſe to attend; but commonly a much leſs regular attendance was given in the latter than in the former. At the occaſional meetings of the

* The former were called *courts de more*, being founded upon immemorial cuſtom.

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great council, ſuch of the nobility as lived at a diſtance were ſeldom at the trouble of appearing; and the buſineſs, of courſe, devolved upon thoſe members who happened to be in the king's retinue, and who might be ſaid to compoſe his privy-council.

For this reaſon, the occaſional meetings of the Wittenagemote uſually confined themſelves to matters of leſs importance than were diſcuſſed in the old cuſtomary meetings. The chief employment of the former was the hearing of appeals from inferior courts: but legiſlation, and other weighty tranſactions, were generally reſerved to the latter.

If, however, it was found neceſſary, in the interval between the three great feſtivals, to deliberate upon public buſineſs of importance, the king iſſued an extraordinary ſummons to his nobles; in which he expreſsly required their attendance, and ſpecified the cauſe of their meeting*.

It may here be proper to remark, that the ſmaller occaſional meetings of the Wittenagemote appear to have ſuggeſted the idea of the *aula regis*; a ſeparate court, which, after the Norman conqueſt, was formed out of parliament for the ſole purpoſe of deciding law-ſuits.

As the occurrences which demanded the immediate interpoſition of the Wittenagemote could not be foreſeen, the king was led to determine the particular caſes in which the deliberation of that aſſemby was requiſite; and in the exerciſe of this prerogative, he was originally under no reſtraint. The powers exerciſed by the crown ſeem, at firſt, to have been all diſcretionary; and to have remained without limitation, until experience had ſhewn the danger of their being abuſed.

We ſhall afterwards have occaſion to obſerve, that, under the princes of the Norman and Plantagenet race, the ancient and regular meetings of the national council were more and more diſregarded, and at length entirely diſuſed; in conſequence

* Gurdon's Hiſtory of the high court of Parliament.

of

of which the whole parliamentary buſineſs came to be tranſacted in extraordinary meetings, which were called at the pleaſure of the ſovereign. The attempts to limit this important branch of the royal prerogative will be the ſubject of future diſcuſſion.

Concluſion of the Saxon Period.

Such appear to be the outlines of the Engliſh government under the adminiſtration of the Anglo-Saxon princes. To the ſubjects of Britain, who conſider the nature of their preſent conſtitution, and compare it with that of moſt of the nations upon the neighbouring continent, it ſeems natural to indulge a prepoſſeſſion, that circumſtances peculiarly fortunate muſt have concurred in laying the foundation of ſo excellent a fabric. It ſeems natural to imagine, that the government of the Anglo-Saxons muſt have contained a proportion of liberty, as much greater than that of the neighbouring nations, as our conſtitution is at preſent more free than the other European governments.

When we examine, at the ſame time, the ſtate of our country, in that remote age; the uniform juriſdiction and authority poſſeſſed by every allodial proprietor; the diviſion of the country in various diſtricts, ſubordinate one to another; the perfect correſpondence between the civil and eccleſiaſtical diviſions; the ſimilarity in the powers exerciſed by the meetings of the tything, the hundred, and the ſhire, in their reſpective territories, and thoſe of the Wittenagemote over the whole kingdom; the analogy between the office of the tythingman, the hundreder, and the earl, in their inferior departments, and that of the ſovereign in his more exalted ſtation: when, I ſay, we examine theſe, and other particulars relating to the Anglo-Saxon government, in which we may diſcover ſo much order and regularity, ſuch a variety of regulations, nicely adjuſted to one another, and calculated for the moſt beneficial

cial purpoſes; it is natural to ſuppoſe, that the whole has originated in much contrivance and foreſight; and is the reſult of deep laid ſchemes of policy.

In both of theſe concluſions, however, we ſhould undoubtedly be miſtaken. When we look round and examine the ſtate of the other European kingdoms about the ſame period; and when we obſerve, in each of them, the cloſe and minute reſemblance of its political ſyſtem to that of England, how little ſoever the apparent intercourſe of the inhabitants; we feel ourſelves under the neceſſity of abandoning our former ſuppoſition, and of acknowledging that the regulations eſtabliſhed in all of theſe countries proceeded from no artificial or complicated plans of legiſlation; but were ſuch as occurred ſucceſſively to the people, for the ſupply of their immediate wants, and the removal of incidental inconveniencies; in a word, that the feudal conſtitution was, every where, a kind of natural growth, produced by the peculiar ſituation and circumſtances of the ſociety

Neither was the Anglo-Saxon government calculated, in any peculiar manner, to ſecure the liberty and the natural rights of mankind; though, in the long period during which it ſubſiſted, it underwent conſiderable variations. The ſovereign, indeed, was at no time inveſted with abſolute power. The ſupreme authority in the ſtate was originally poſſeſſed by a numerous body of landed proprietors; but the reſt of the community were either ſlaves, or tenants at the will of their maſter. The number of thoſe who enjoyed a ſhare in the government was afterwards greatly diminiſhed; at the ſame time that, upon, the advancement of the ariſtocracy, the lower part of the inhabitants became ſomewhat more free and independent. The reſtriction of political power in men of a ſuperior claſs was thus compenſated by ſome little extenſion of privileges in the great body of the people.

BOOK II.

OF THE ENGLISH GOVERNMENT FROM THE REIGN OF WILLIAM THE CONQUEROR, TO THE ACCESSION OF THE HOUSE OF STEWART.

THE political hiſtory of this extenſive period may be ſubdivided into three parts; the firſt extending from the Norman conqueſt to the end of the reign of Henry the third; the ſecond, from the beginning of the reign of Edward the firſt, to the acceſſion of Henry the ſeventh; and the third, comprehending the reigns of the Tudor family. In each of theſe parts we ſhall meet with progreſſive changes in the Engliſh conſtitution, which appear to demand a ſeparate examination, and which, being analogous to ſuch as were introduced, about the ſame time, in the other European governments, may be regarded as the natural growth and developement of the original ſyſtem, produced by the peculiar circumſtances of modern Europe.

CHAP.

CHAP. I.

The Norman conqueſt.—Progreſs of the feudal Syſtem.—View of the ſeveral Reigns before that of Edward I.—The great Charter, and Charter of the Foreſt.

WILLIAM the conqueror aſcended the throne of England, partly by force of arms, and partly by the voluntary ſubmiſſion of the people. The great landed eſtates, acquired by a few individuals, towards the end of the Saxon government, had exalted particular nobles to ſuch power and ſplendor, as rendered them, in ſome degree, rivals to the ſovereign; and even encouraged them, upon any favourable emergency, to aſpire to the crown.—Among theſe, under the feeble reign of Edward the confeſſor, we may diſtinguiſh Godwin earl of Weſſex, who had become formidable to the monarch; and, after the death of that earl, his ſon Harold, who, at the ſame time that his poſſeſſions were not leſs extenſive than thoſe of his father, being endowed with ſuperior abilities, and much more amiable diſpoſitions, appears to have attained a degree of influence and authority which no Engliſh ſubject had ever enjoyed. He became, of courſe, an object of jealouſy to Edward; who, in the decline of life, and having no children, was anxious to exclude this nobleman from the throne, by ſecuring the ſucceſſion to one of his own kindred. Edward himſelf was properly an uſurper, having ſeized the crown to the prejudice of his elder brother's ſon, the undoubted lineal heir. This prince being now dead, the right of inheritance devolved upon his ſon Edgar Atheling, whoſe tender age, and ſlender abilities, appeared to diſqualify him in ſuch a critical

cal conjuncture, for wielding the ſceptre over a fierce and turbulent people. In thoſe diſorderly times, the line of hereditary ſucceſſion, though not intirely diſregarded, was frequently broken from particular accidents: perſons incapable of defending the ſovereignty, were commonly deemed unworthy to obtain it; and the recommendation, or *will*, of the reigning prince was always held to be a ſtrong circumſtance in favour of any future competitor for the ſucceſſion.

Edward the confeſſor had reſided four and twenty years in the court of Richard the ſecond, duke of Normandy, his maternal uncle; by whom, in the ſhort reign of his brother Edmund Ironſide, and during the uſurpation of the Daniſh monarchs, he was generouſly educated and protected. By remaining, for ſo long a period, in a foreign country, where he was careſſed, and treated with every mark of diſtinction, the Engliſh prince was led to form an attachment to the people, whoſe progreſs in arts, government, and manners, ſurpaſſed that of his own countrymen; and he ever retained a grateful remembrance of the hoſpitality and kindneſs which he had experienced in the family of his kinſman. When he mounted the throne of England, a communication was opened between the two countries; and an intimate connexion ſubſiſted between the reſpective ſovereigns. Multitudes of Normans reſorted to the Engliſh court, in expectation of preferment; many individuals of that country obtained landed poſſeſſions in England; and many were promoted to offices of great dignity, both in church and ſtate. Theſe foreigners, who ſtood ſo high in the favour of the ſovereign, were imitated by the Engliſh in their dreſs, their amuſements, their manners, and cuſtoms. They imported alſo the French language; which had for ſome time been adopted by the Normans; and which, being regarded as a more improved and

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elegant dialect than the Saxon, became fashionable in England, and was even employed, it is said, in the writings and pleadings of lawyers.

The dutchy of Normandy having descended to William, the natural son of Robert, and nephew of Richard II. the affections, as well as the policy of Edward, made him cast his eyes upon that prince, his nearest relation by the mother, and the most able and accomplished warrior of his time, as the most proper person to succeed him in the throne. His illegitimate birth was, in that age, an objection of little moment; since it had not prevented him from inheriting the dukedom of Normandy; and since a similar stain is observable in the line of our Saxon kings. Some historians have asserted, that the English monarch actually made a *will*, by which he bequeathed his crown to the duke of Normandy; and that this deed was even ratified by the states of the kingdom. But whether such a transaction was really executed, appears extremely doubtful. It is certain, however, that Edward had publickly declared his intentions to this purpose; that William, in consequence of such declaration, had openly avowed his pretensions to the crown of England; and that Harold himself, being upon a visit to the Norman court, and having received a promise of the duke's daughter in marriage, had taken a solemn oath to support his title. An artifice which was put in practice, with relation to that oath, in a contract between two of the most conspicuous personages of the age, is worthy of attention, as it exhibits a ludicrous picture of the superstition to which the minds of men were then universally subjected. William secretly conveyed under the altar upon which Harold was to swear, the bones of some of the most revered martyrs; and after the oath was taken, shewed the relics to the affrighted nobleman; who discovered, with equal concern and indignation, that he was

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enſnared into a much ſtronger obligation than he had intended; and that his future breach of promiſe would be productive of more fatal conſequences than he had been aware of.

By what ſpecies of caſuiſtry Harold afterwards endeavoured to ſatisfy his conſcience with reſpect to the violation of this oath, which had, indeed, been in ſome degree extorted from him, we have no information; but, in fact, he neglected no opportunity of increaſing his popularity, and of ſtrengthening his connexions among the nobility; ſo that upon the death of Edward, he found himſelf, before his rival could take any meaſures for preventing him, in a condition to obtain poſſeſſion of the throne, and to bear down every appearance of oppoſition. The duke of Normandy was not of a temper to brook this diſappointment, and tamely to relinquiſh his pretenſions. He collected a great army, compoſed not only of ſuch forces as could be levied in his own dominions, but of all thoſe deſperate adventurers whom the proſpect of plunder, and of military reputation, allured to the ſtandard of ſo celebrated a leader. The battle of Haſtings, in which Harold and his principal adherents were ſlain, put an end to the ſtruggle, and left the victorious general without a competitor. This deciſive action was followed by a ſpeedy ſubmiſſion to his authority; and the chief of the nobility and clergy, together with Edgar Atheling himſelf, having made him an offer of the vacant throne, he was crowned at Weſtminſter Abbey with the uſual ſolemnities. It is worthy of notice, that, on this occaſion, he took the ſame oath which had formerly been adminiſtered to the Saxon kings, "that he "would maintain the ancient fundamental laws of "the kingdom;" to which there was added a particular clauſe, ſuggeſted by the peculiarity of the preſent circumſtances, "that he would diſtribute juſtice "impartially between his Engliſh and his Norman "ſubjects."

The crown of England having thus been transmitted to a foreign family, William, according to the barbarous Latin of thoſe times, received the title of *conquæſtor*; which has, without much propriety, been tranſlated the *conqueror*. It imported merely an *acquirer*, in contradiſtinction to a perſon who inherits by lineal deſcent, correſponding to the ſenſe in which, by the preſent law language of Scotland, *conqueſt* is oppoſed to *heritage**.

Whether the acceſſion of this monarch is to be conſidered in the light of a real conqueſt by force of arms, unſupported by any other circumſtance, would be a frivolous queſtion, were it not for the ſerious and important conſequences which have, by ſome authors, been connected with that ſuppoſition. It is maintained, that if William intirely conquered the kingdom, he could be under no reſtraint in modelling the government; that he accordingly, overturned altogether the ancient conſtitution; and in place of that moderate ſyſtem which had grown up under the Saxon princes, introduced, an abſolute monarchy. The ſuppoſition itſelf is no leſs remote from truth, than the concluſion drawn from it is erroneous. It was the party of Harold only that was vanquiſhed by the arms of the Normans; and had it not been for the uſurpation of that nobleman, William would probably have met with no oppoſition to his claim. After the defeat of Harold, there was, beſide the duke of Normandy, no other candidate able to hold the reins of government.—Even ſuppoſing William to have completely conquered the whole of the Engliſh, his conqueſt, ſurely, was not extended over thoſe Norman barons, the aſſociates and companions of his enterprize, to whom he was chiefly indebted for his ſucceſs.—When thoſe powerful chieftains obtained poſſeſſions,

* *Conqueſtus* id quod à parentibus non acceptum, ſed labore pretio vel "parſimonia comparatum poſſidemus—Hinc Guliel. I. *conqueſtor* dicetur que "Angliam conquiſivit, i. e. acquiſivit, PURCHASED; non quod ſubegit." Spelm. Gloſſar. v. Conqueſtus. See alſo Skene, de verbor. ſign.

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in England, proportioned to their ſeveral merits and became grandees of the kingdom, it is not likely that they would willingly relinquiſh the independence which they had enjoyed in their own country, or that they would regard the aſſiſtance they had given to their duke, in raiſing him to be a great king, as a good reaſon for enſlaving them*.

But, however this be, nothing is more clear in point of fact, than that William was far from wiſhing to hold himſelf up to the people of England in the light of a conqueror. Like every wiſe prince, who has employed irregular and violent meaſures for obtaining the ſovereignty, he endeavoured as much as poſſible to cover every appearance of uſurpation; aud was willing to exerciſe his power in the manner moſt likely to ſecure the continuance of it. He was active in reſtraining his Norman followers from committing depredations on the Engliſh, and in preventing diſputes between the individuals of thoſe different nations. The partiſans of Harold, who had diſtinguiſhed themſelves by ſupporting his cauſe in the field, were, doubtleſs, deprived of thier poſſeſſions; but the reſt of the Engliſh, who ſubmitted to the authority of the monarch, were treated with marks of his favour and confidence. Many of thoſe who had been in arms againſt him, were overlooked or forgiven; and the people in general received aſſurances of his protection. London, and the other cities of the kingdom, were confirmed in

*The dutchy of Normandy was at that period governed like moſt of the other feudal countries of Europe; and the duke, at the ſame time that he was a feudatory of the king of France, enjoyed a very moderate authority over his Norman vaſſals. In particular, he could neither make laws, nor impoſe taxes, without the conſent of the barons, or principal land-holders of the dutchy. This appears from the Latin cuſtoms of Normandy, printed at the end of the old French edition of the *Couſtumier de Normandy*; in the preface to which it is ſaid; "Quoniam leges et inſtituta quæ Normanorum "principes, non ſine magna proviſionis induſtria prælatorum, comitum, et "baronum, nec non et cæterorum virorum prudentum conſilio, et aſſenſu, "ad ſalutem humani fœderis ſtatuerunt." [Tyrrel's Bibliotheca Politica, dial. 10. Alſo many inſtances of Norman great councils, collected by Brady.]

their immunities and privileges. Even Edgar Atheling himſelf, the lineal heir of the crown, was permitted to live in ſafety, and to retain the eſtate and honours which had formerly been conferred upon him. Juſtice was every where adminiſtered, not only with great impartiality, but by tempering clemency with ſeverity; and the public tranquillity being thus, in a ſhort time, perfectly reſtored, the government under the new ſovereign proceeded, without interruption, in its former channel *.

But though the conſtitution was far from being converted into an abſolute monarchy, by virtue of an immediate conqueſt, a conſiderable change was, about this time, introduced, both in the ſtate of landed property, and in the authority of the ſovereign. For this change, the country, during the latter part of the Anglo-Saxon government, had been gradually ripened and prepared. When, by the frequent converſion of allodial into feudal eſtates, the ſmall proprietors of land were at length reduced into the condition of military ſervants, thoſe great lords, who remained at the head of extenſive diſtricts, were brought into a more direct oppoſition and rivalſhip to one another. Their eſtates, by gradual enlargement, were become contiguous;

* Several hiſtorians, who write near that period, conſider William's advancement to the Engliſh throne as the effect of a formal election. William of Poictou, this king's chaplain, gives the following account of it: "Die "ordinationi decreto locutus ad Anglos concedenti ſermone Eboraci Archi"epiſcopus, ſapiens, bonus, eloquens, an conſentirent eum ſibi dominum "coronari inquiſivit; proteſtati ſunt hilarem conſenſum univerſi minime "hæſitantes, ac ſi cœlitus unâ mente datâ, unâque voce, Anglorum, quam "facilime Normanni conſonuerunt ſermocinato apud eos, ac ſententiam "præcunctatorium Conſtantini Præſule, ſic *electum* conſecravit Archiepiſco"pus, &c."

Odericus Vitalis, who lived in the reign of William Rufus, ſpeaks of the ſame event as follows: "Dum Aldredus Præſul allquocretur Anglos, et "Godofredus Conſtantinienſius Normannos, an conſederent Guilielmum reg"nare ſuper ſe, et univerſi conſenſum hilarum proteſtarentur unâ voce non "unius linguæ locutione."

Gul. Gemeticenſis, in his hiſtory of the dukes of Normandy, agrees with "the two authors above quoted: "Ab omnibus," ſays he "tum Norman"norum, quam Anglorum proceribus rex *eſt electus*," &c. Tyrrel's Bibl. "otheca Polit. dial. 80.

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and thoſe intermediate poſſeſſors, whom they had formerly been employed in ſubduing, were now diſtributed upon either ſide, and ready to aſſiſt their reſpective ſuperiors in their mutual depredations. Thoſe hereditary feuds, which had been ſcattered over a multitude of individuals, were now concentered in a few great leaders; who felt a ſtronger incitement to the exerciſe of reciprocal hoſtilities, as well as the capacity of proſecuting them with greater vigour and perſeverance, according as their power, together with their pride and their ambition, had been augmented. The public magiſtrate was often unwilling to interfere in reconciling their differences; and was even pleaſed to ſee their force waſted and broken by their mutual ravages. The greater nobles were thus permitted to injure and oppreſs one another at their own diſcretion; and, being expoſed to ſuch difficulties and diſtreſſes as had formerly been ſuſtained by the proprietors of ſmall eſtates, were obliged to extricate themſelves by ſimilar expedients. They endeavoured to provide againſt the dangers which threatened them, from the invaſion of ſome of their neighbours, by forming an alliance with others; or, if this reſource had proved ineffectual, by courting the favour and ſoliciting the protection of the king. Nothing leſs than the power of the crown was capable, in many caſes, of delivering them from their embarraſſment; and, in order to procure that relief which their ſituation required, it was neceſſary that they ſhould promiſe, upon their part, a return of good offices. If they were anxious to enjoy that ſecurity which he beſtowed upon his immediate retainers, they could not decently withold from him the ſame homage and fealty, or refuſe to perform the ſame ſervices. They found, in a word, that it was expedient for them to reſign their allodial property, and to hold their eſtates by a feudal tenure as vaſſals of the crown.

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The political theatre, at that time, exhibited a frequent repetition of the ſame parts by different actors. Thoſe opulent individuals, who had formerly been in a condition to oppreſs their neighbours, and force them into a ſtate of dependence upon the ſovereign, were, by a different combination of rival powers, or by an alteration of circumſtances, rendered, on other occaſions, incapable of maintaining their own independence; and being, in their turn, induced to ſupplicate the interpoſition of the crown in their favour, were obliged to purchaſe it by the ſame terms of ſubmiſſion. As theſe reſignations of land were in the higheſt degree advantageous to the ſovereign, we can have no doubt, that the influence of the court would be uniformly exerted, and that every poſſible artifice would be employed, in promoting them. The great nobles were thus rendered ſubordinate to the crown, in the ſame manner as the inferior free people had become ſubordinate to the nobility; the whole kingdom was united in one extenſive barony, of which the king became the ſuperior, and in ſome meaſure the ultimate proprietor; and the feudal ſyſtem, as it is called, of which the foundations had been laid ſeveral centuries before, was at length entirely completed.

From the ſtate of England, about the acceſſion of the Norman race of kings, a change of this nature was likely to have happened: though it was, undoubtedly, promoted and accelerated by the peculiar circumſtances of William the Conqueror. From the great abilities of that prince, as well as from the manner in which he aſcended the throne, he became poſſeſſed of uncommon perſonal influence; and, by his uniting the dutchy of Normandy to the crown of England, the royal demeſnes, and the public revenue, were greatly extended. But above all, the numerous forfeitures, incurred by the partiſans of Harold, and by ſuch as were incited

cited to acts of rebellion, during the courſe of William's reign, enabled the ſovereign to acquire a prodigious landed territory in England; part of which he retained in the poſſeſſion of the crown; and the reſt he beſtowed upon his favourites, under condition of their performing the feudal ſervices.

It muſt not be overlooked, that this feudal policy was extended to the greater eccleſiaſtical benefices, as well as the eſtate of the laity. The biſhops and abbots became immediate vaſſals of the crown; and, though not bound to the king for perſonal ſervice in war, were obliged to ſupply him with a number of military tenants proportioned to the extent of their poſſeſſions. Notwithſtanding the great influence of the clergy, ſupported by the Roman pontiff, who ſtrongly remonſtrated againſt this innovation, yet, as eccleſiaſtical benefices were enjoyed only for life, thoſe churchmen who expected preferment from the crown were, without much difficulty, prevailed upon to accept of a benefice, under ſuch general conditions as now began to be impoſed upon all the great proprietors of land.

The change, which was thus effected in the ſtate of the great nobles, was far from being peculiar to England. It was extended, nearly about the ſame time, over all the kingdoms in the Weſtern part of Europe; and in moſt of them, was the reſult of no conqueſt, or violent effort of the ſovereign; but appears to have proceeded from the natural courſe of the feudal governments.

In France the great barons appear to have become the immediate vaſſals of the crown, in the time of Hugh Capet; whoſe reign began about eighty years before the Norman conqueſt; and who obtained the regal dignity, without any appearance of diſorder or violence, by the free election of the national aſſembly. The feudal inſtitutions having been completed in that kingdom, of which Normandy conſtituted

conſtituted one of the principal baronies; it is likely that William, when he came into England with a train of Norman vaſſals, found it the more eaſy to eſtabliſh that ſyſtem, becauſe his followers had already been acquainted with it in their own country.

In the German empire many powerful barons became vaſſals of the emperor, as early as the reign of Otho the Great; who had likewiſe been advanced to the ſovereignty, not by force of arms, but by the voice of the diet. From particular cauſes, however, the feudal ſubordination of the nobility was not rendered ſo univerſal in Germany as in other European countries*.

By this alteration in the ſtate of landed property, the powers of the crown was undoubtedly increaſed,

* Concerning the time when the feudal ſyſtem was introduced into England, authors of great note have entertained very different opinions. Lord Coke, the judges of Ireland who gave their deciſion upon the caſe of defective titles, Mr. Selden, the author of the *Mirroir des Juſtices*, and many others, ſuppoſe that it was eſtabliſhed under the Anglo-Saxon government.—Lord Hale, Mr. Somner, Cambden, Dugdale, Mathew Paris, Bracton, maintain that it was unknown before the Norman conqueſt.—Sir Henry Spelman, in his Gloſſary, ſeems to hold this laſt opinion; but in his poſthumous treatiſe he explains his meaning to be only that fiefs did not become *hereditary*, ſo as to yield feudal incidents, before the reign of William the Conqueror. The opinion which I have delivered above ſeems to account for theſe oppoſite conjectures. It ſeems impoſſible to deny that there were fiefs among the Anglo-Saxons; on the other hand, it appears equally clear that there were many allodial eſtates principally in hands of the great nobility.—Nothing therefore remained for William, towards completing the feudal ſyſtem, but the reduction of theſe laſt into a ſtate of vaſſalage.

We find accordingly, that, in the twentieth year of his reign, this monarch, having finiſhed a ſurvey of all the lands in the kingdom (except thoſe of Northumberland, Cumberland, and Weſtmoreland) ſummoned all the great men and land-holders, to do homage, and ſwear fealty to him. The expreſſion uſed in the Saxon Chronicle, in mentioning this fact, is *Proceres, & omnes prædia tenentes, ſe illi ſubdedere, ejuſque facti ſunt vaſſalli.* Having become vaſſals of the crown, at that time, it may be inferred they were not in that condition formerly. It is further probable, that the twenty years which had elapſed, ſince the acceſſion of William, were occupied in bringing about this great revolution; for if the great men had been crown vaſſals during the Saxon government, it was the intereſt of this prince not to delay their renewal of the feudal engagement, by their ſwearing fealty to him as ſoon as he came to the throne.

From doomſday-book, which is now happily laid open to the inſpection of all the world, this fact is made ſtill more certain, as innumerable inſtances occur of land-holders, who are ſaid to have held their lands *allodially*, in the reign of Edward, the preceding king.

but

but it was not increaſed, in ſo great a proportion as at the firſt view may perhaps be imagined. When the allodial eſtates of the great lords were converted into fiefs, they were invariably ſecured to the vaſſal and his heirs. The power and influence of thoſe opulent proprietors were therefore but little impaired by this change of their circumſtances. By their tenures they were ſubject to the juriſdiction of the king's courts, as well as bound to ſerve him in war; and they were liable for various *incidents*, by which his revenue was conſiderably augmented; but they were not in other reſpects dependent upon his will; and, while they fulfilled the duties which their condition required they could not with any colour of juſtice be deprived of their poſſeſſions. Neither was the ſovereign capable, at all times, of enforcing the performance of the feudal obligations; but from the power of his great vaſſals, or the exigence of his own ſituation, he found it neceſſary, in many caſes, to connive at the omiſſions, and even to overlook their offences.

The reign of William the Firſt was filled with diſquietude and uneaſineſs, both to the monarch, and to the nation. About ſix months after the battle of Haſtings, he found the kingdom in ſuch a ſtate of apparent tranquillity, that he ventured to make a viſit to Normandy; in order, as it ſhould ſeem, to receive the congratulations of his ancient ſubjects. He probably intended to ſurvey his late elevation from the moſt intereſting point of view, by placing himſelf in the ſituation in which he had planned his undertaking, and by thence comparing his former anxious anticipations with his preſent agreeable reflections. William is, on this occaſion, accuſed by ſome authors of having formed a reſolution to ſeize the property of all his Engliſh ſubjects, and to reduce them into the moſt abject ſlavery. He is even ſuppoſed to have gone ſo ſoon into Normandy, for the purpoſe of giving them an opportunity

to

to commit acts of rebellion, by which a pretence might be afforded for the ſeverities which he had purpoſed to execute*. But as this has been advanced without any proof, ſo it appears in itſelf highly improbable. It is altogether inconſiſtent with the prudence and ſound policy aſcribed to this monarch, not to mention the feelings of generoſity of juſtice, of which he does not ſeem to have been wholly deſtitute, that he ſhould, in the beginning of his reign, have determined to cruſh and deſtroy the Engliſh nobility, merely for the ſake of gratifying his Norman barons; ſince, by doing ſo, he muſt have expected to draw upon himſelf the hatred and reſentment of the whole kingdom, and to incur the evident hazard of loſing that crown which he had been at ſo much trouble and expence in acquiring. Although William was, doubtleſs, under the neceſſity of beſtowing ample rewards upon many of his countrymen, it was not his intereſt that they ſhould be enriched, or exalted beyond meaſure. Neither was he of a character to be guided by favourites, or to ſacrifice his authority to the weakneſs of private affection. When he found himſelf ſeated upon the Engliſh throne, it is natural to ſuppoſe that he would look upon the dutchy of Normandy as a diſtant province, or as a mere dependency of the crown of England; and that he would be more intereſted in the proſperity of the latter country than of the former, as being more immediately connected with his own dignity and reputation. Upon his return from Normandy, William, accordingly, exerted himſelf in putting a ſtop to thoſe quarrels which, in his abſence, had broke out between his Engliſh and his Norman ſubjects, and in giving redreſs to the former, for thoſe injuries which they had ſuſtained from the latter.—In particular, he endeavoured, every where, to reſtore the Engliſh to thoſe poſſeſſions from which they

* Hume's Hiſt. of England.

had

had been expelled, through the partiality, or want of authority of thoſe perſons with whom he had left the adminiſtration of government.

Several circumſtances contributed to render this monarch unpopular, and have ſubjected his conduct to greater clamour and cenſure than it appears to have merited.

1. The jealouſy with which the Engliſh beheld the Normans, whom they looked upon as intruders, and who became the ruling party, gave riſe to numberleſs diſputes, and produced a rooted animoſity between them. The partiality which, in ſuch caſes, might frequently be diſcovered, and perhaps was oftener ſuſpected, in the ſovereign, or in thoſe to whom he committed the inferior branches of executive power, inflamed the paſſions of men who conceived themſelves loaded with injuries, and excited them to frequent inſurrections. By the puniſhment which fell unavoidably upon the delinquents, and which could not fail to be regarded by their countrymen as rigorous, new diſcontents were occaſioned, and freſh commotions were produced.

To the averſion which the Engliſh conceived againſt William, as a Norman, and as the friend and protector of Normans, they joined a ſtrong prejudice againſt thoſe foreign cuſtoms which he and his followers had imported. Devoted, like every rude nation, to their ancient uſages, they were diſguſted with thoſe innovations which they could not prevent; and felt the utmoſt reluctance to adopt the peculiar manners and policy of a people by whom they were oppreſſed. The clamours propagated againſt particular laws of William the Conqueror, which were conſidered as the moſt oppreſſive, may ſerve to demonſtrate, that his ſubjects had more diſpoſition to complain than there was any reaſon to juſtify. It appears that the origin and nature of ſome of theſe laws have been groſsly miſunderſtood and miſrepreſented. The regulation,

gulation, for inſtance, that lights ſhould be extinguiſhed in every houſe by eight in the evening; for the execution of which, intimation was given to the public by the ringing of a bell, thence known by the name of the curfew, has been regarded as the moſt violent exertion of tyranny; and the moſt inconteſtible evidence, not only that William was determined entirely to break and ſubdue the ſpirit of the Engliſh, but that he was held in continual terror of their ſecret conſpiracies. It is now generally underſtood and admitted, that this was a rule of police eſtabliſhed in the greater part of the feudal nations; as by the extreme ſobriety which it enforced, it was peculiarly adapted to the circumſtances of a ſimple people. Another law, the ſource of much complaint, and deemed an intolerable grievance, was, that when a Norman was robbed or ſlain, the hundred, within whoſe territory the crime had been committed, ſhould be reſponſible. and ſubject to a pecuniary puniſhment. This regulation, which, in all probability had become neceſſary, from the multitude of Normans that were daily aſſaſſinated, was originally of Saxon inſtitution, and was only accommodated in this reign to the exigence of the times.

2. The extenſion of the prerogative, by reducing the allodial proprietors of land into a ſtate of vaſſalage under the crown, was likewiſe, we may ſuppoſe, the ground of diſſatisfaction and murmuring to thoſe great barons, who found themſelves deprived of their ancient independence, and were expoſed to much vexation from thoſe various *incidents*, the fruit of the feudal tenures, that were now claimed by the ſovereign. The diſcontent ariſing from this cauſe, and the deſire of recovering that condition which they had held under the Anglo-Saxon princes, was not limited to the Engliſh nobility; but was readily communicated to thoſe Norman chiefs who had obtained eſtates in England,

land, and were naturally animated with the ambition of ſupporting the privileges of their own order in oppoſition to the claims of the ſovereign. One of the moſt formidable inſurrections, during the reign of William the Firſt, appears to have been excited and conducted by ſome of the principal Norman barons; and to have proceeded from the impatience of thoſe individuals under that recent authority which the crown pretended to exerciſe.

3. Another circumſtance which contributed, no leſs than either of thoſe which have been mentioned, to render William unpopular, was the reſentment of the clergy, whom he greatly offended by his exactions from them, and by his oppoſition to the progreſs of eccleſiaſtical authority. As the clergy poſſeſſed great influence over the people, ſo they were the only hiſtorians of thoſe times; and in eſtimating the character of any particular prince, they ſeem to have no other criterion but the liberality and favour which he diſplayed to the church. According to his diſpoſitions in this reſpect they appear to have extolled or depreciated his virtues, to have aggravated or extenuated his vices, and to have given a favourable or malignant turn to the whole of his behaviour. From theſe impure fountains the ſtream of ancient hiſtory contracted a pollution, which has adhered to it even in the courſe of later ages, and by which it is prevented from reflecting a true picture of the paſt occurrences.

After all, it cannot be controverted, that this monarch was of a ſevere and inflexible temper; and that he puniſhed with rigour every attempt to ſubvert or to diſturb his government. That he was rapacious of money, as the great inſtrument for ſupporting his authority, muſt likewiſe, perhaps, be admitted. Among other exactions, he revived a tax, no leſs hateful than ſingular, known to the Engliſh by the name of *Dane-gelt*, which had been aboliſhed by Edward the Confeſſor. It appears to have

have arisen from an extraordinary contribution, which the Anglo-Saxon kings were under the necessity of levying, in order to oppose the inroads of the Danes, or to make a composition with those invaders. According to the maxims of prudence, common to the princes of that age, William was not content with providing a revenue sufficient to defray his annual expence; but accumulated a large treasure for the supply of any sudden or extraordinary demand. That he exterminated, however, the whole English nobility, or considerable proprietors of land, or that he stripped them of their possessions, as has been asserted by Dr. Brady and by some later writers, from the authority of some declamatory and vague expressions in one or two ancient annalists, there seems no good reason to believe *.

When,

* This point has been the subject of much disquisition and controversy. See Petit's Rights of the Commons asserted—Atwood's Janus Anglorum ab Antiquo—Cook's Argumentum Antinormanicum—Tyrrell's History—and Bibliotheca Politica, dial. 10. On the other side of the question, Dr. Brady's History, and his various political treatises,

From an inspection of Doomsday-book, it cannot be denied that William the First, before the end of his reign, had made prodigious changes in the landed property of England, and that very large estates were conferred upon his Norman barons, who had the principal share of his confidence.—But, on the other hand, it seems equally clear, that a great part of the landed property remained in the hands of the ancient possessors. Whatever burdens were imposed upon the church, it is not alledged that the clergy, or that any religious societies, which had been established under the Anglo-Saxon government, were deprived of their property. These ecclesiastical estates were of great extent, and the tenants, or knights, who held of the church were numerous and powerful. Of 60,215 knights' fees, computed to have been in England not long after the conquest, no fewer than 20,015 are said to have belonged to churchmen. It must be owned, however, that when vacancies occurred in the church livings, they were most commonly bestowed upon Normans.

With respect to the laity, there are great numbers mentioned in Doomsday-book, as having held estates in the reign of Edward the Confessor. This is so palpable, that even Dr. Brady himself, in his answer to the Argumentum Antinormanicum, seems to abandon his assertion, that the English were deprived of their possessions, and contents himself with maintaining, that the nature of their property was changed, by their being reduced into a subordinate state of vassalage.

But even here the fact seems to be misrepresented, and in the list of crown vassals recorded in Doomsday, we may discover great proprietors, who held lands in England before the conquest: such as, *Radulfus de Mortimer—Hugo de*

When, at the ſame time, the ſituation of William, and the difficulties which he was obliged to encounter, are properly conſidered, it muſt on the one hand be acknowledged, that the rigours imputed to him were, for the moſt part, excited by great provocation; as, on the other, it may be doubted, whether they were not in ſome degree neceſſary for reducing the country into a ſtate of tranquillity; and whether a ſovereign, endowed with greater mildneſs of diſpoſition, would not have probably forfeited the crown, as well as involved the kingdom in greater calamities than thoſe which it actually ſuffered.

William Rufus, the ſecond ſon of the Conqueror, ſucceeded to the throne, in preference to Robert his elder brother, from the recommendation of his father; from the influence of Lanfranc, the archbiſhop of Canterbury; and from his being, at his father's death, in England to ſupport his claim, while his brother was at a diſtance. His reign exhibits the ſame aſpect of public affairs with that of his father; the internal diſcord of the nobles; their frequent inſurrections againſt the ſovereign; with his correſpondent efforts to keep them in ſubjection. As by the ſucceſſion of this prince, the dutchy of Normandy, which was bequeathed to Robert by

le Poitl—and even in this number we may reckon the *Earl of Moreton*, who, though a Norman, had, along with many others, obtained Engliſh poſſeſſions in the reign of Edward the Confeſſor. Among thoſe crown vaſſals, it ſeems difficult, in many caſes, to diſtinguiſh the names of the Norman from thoſe of the Anglo-Saxon families; but there are many which appear to have been appropriated to the latter. Such as, *Oſwald, Eldred, Alberi, Grimbald, Edgar, Edmund, Alured.*

It is ſaid indeed, by William of Malmſbury and Henry of Huntington, that, about the end of William's reign, no Engliſhman was either a *biſhop*, abbot, or earl, in England.

We may add, that, ſuppoſing the whole of the Engliſh to have been extirpated by William the conqueror, it would not thence follow that his government became abſolute. For what motive could have induced his Norman barons, now became Engliſh nobles, and poſſeſſed of immenſe eſtates, which were ſecured to them in perpetuity, to acquieſce in any violent extenſion of the prerogative, to which neither the nobility of Normandy nor of England had been accuſtomed?

his

his father, was detached from the crown of England, many of the Norman barons, foreſeeing the inconvenience that might ariſe from a diviſion of their property under different ſovereigns, endeavoured to prevent his eſtabliſhment, and raiſed a rebellion in favour of Robert. But the ſame circumſtance, that rendered the advancement of William ſo diſagreeable to the Normans, made this event equally deſireable to the Engliſh, who dreaded the continuance of a connexion, from which, in the late reign, they had experienced ſo much uneaſineſs and hard treatment. By their aſſiſtance, the Norman rebels were ſoon defeated; the eſtates of the greater part of them were confiſcated; and the authority of the king was completely eſtabliſhed: a proof that, in the reign of the Conqueror, the Engliſh nobility or conſiderable land-holders were far from being extirpated; and that their power was not nearly ſo much impaired as has been pretended*.

Not long after, the king paſſed over into Normandy, with an army, in order to retaliate the late diſturbances which had been promoted from that quarter; but before hoſtilities had been puſhed to any conſiderable length, a reconciliation, between the two brothers, was effected, by the interpoſition of the principal nobility in both countries; and a treaty was concluded, by which among other articles, it was agreed, that, upon the death of either,

* The expreſſion uſed on this occaſion by William of Malmſbury, is, "Rex videns Normannos pene in una rubie conſpirato, Anglos probos et "fortes viros, *qui adhuc reſidui erunt*, invitatoriis ſcriptis arceſſit; quibus ſuper "injuriis ſuis queremoniam faciens, bonaſque leges, et tibutorum levamen, "liberaſque venationes pollicens, fidelitati ſuæ obligavit." Odericus Vitalis ſays, "Lanfrancum archiepiſcopum, cum ſuffrganeis præſulibus, et comites *Angloſque naturales*, convocavit; et conatus adverſariorum, et velle "ſuum expugnandi eos, indicavit."

Dr. Brady, whoſe ſyſtem led him to maintain that none of the native Engliſh retained conſiderable property in the end of the reign of William the Conqueror, labours to prove, that, by the *Angli Naturales*, and the *Angli qui adhuc erant reſidui*, Normans, or Frenchmen, who had ſettled in England, are to be underſtood, in oppoſition to ſuch as lived in Normandy, or were but recently come from that country.

without

without iſſue, the ſurvivor ſhould inherit his dominions. Twelve of the moſt powerful barons on each ſide became bound, by a ſolemn oath, to guaranty this treaty: a circumſtance which, as Mr. Hume obſerves, is ſufficient to ſhew the great authority and independence of the nobles at that period. Nothing can afford fuller conviction, that neither this king nor his predeceſſor, though they undoubtedly extended their prerogative, had been able to deſtroy the ancient ariſtocracy, and to eſtabliſh an abſolute deſpotiſm.

The re-union of Normandy with the dominions of the Engliſh monarch was, however, more ſpeedily accompliſhed, in conſequence of an event, by which, at the ſame time, all Europe was thrown into agitation. The *cruſades;* which were begun in this reign, towards the end of the eleventh century, and continued for about two hundred years. The cauſes which produced thoſe expeditions; the general ſuperſtition of the age, by which Chriſtians were inſpired with a degree of phrenſy to deliver the holy ſepulchre, and the holy land, from the hands of infidels; and the ambitious deſigns of the Pope, ſupported by the whole Weſtern church, to extend the dominion of Chriſtianity over both the religion and the empire of Mahomed; theſe circumſtances inflamed moſt of the princes of Europe with an eager deſire of ſignalizing themſelves in a war, from which they had the proſpect, not only of the higheſt reputation and glory in this world, but of much more tranſcendent rewards in the next. Such motives were peculiarly calculated to work upon the gallant, thoughtleſs, diſintereſted character of Robert, the duke of Normandy; who, in the ſame proportion as he was deficient in political capacity, ſeems to have excelled in military accompliſhments, and to have been poſſeſſed with all thoſe religious ſentiments and thoſe romantic notions of military honour, which were faſhionable in that

age. Embarking, therefore, in the firſt cruſade, and being under the neceſſity of raiſing money to equip him for that extraordinary enterpriſe, he was prevailed upon to mortgage, to his brother the king of England, the dutchy of Normandy, for the paltry ſum of ten thouſand marks. William Rufus took no part in that war; and ſeems to have beheld it with perfect indifference. He was upon bad terms with the clergy, whoſe reſentment he incurred by the contributions which he levied from them; and he has, partly, we may ſuppoſe, for that reaſon, been branded even with irreligion and profaneneſs. His covetous diſpoſition allowed him to entertain no ſcruple in taking advantage of his brother's neceſſities; and, being immediately put in poſſeſſion of Normandy, his authority, by this extenſion of territory, and by the diſtant occupation thus given to Robert, was more firmly eſtabliſhed.

This monarch, after a reign of thirteen years, having been killed accidentally, by an arrow aimed at a wild beaſt, was ſucceeded by his younger brother, Henry; who immediately ſeized upon the treaſure of the late king, and obtained poſſeſſion of the throne. The duke of Normandy was at this time in Syria, where he had gained great reputation by his valour. It was to be expected, that, as ſoon as he ſhould be informed of theſe tranſactions, he would take vigorous meaſures for ſupporting his title to the crown of England. Few of the Engliſh princes have appeared at their acceſſion to be ſurrounded with greater dangers and difficulties than Henry the Firſt; but his capacity enabled him to encounter them with firmneſs, and to extricate himſelf with dexterity.

During many of the reigns that ſucceeded the Norman conqueſt, we find that the demands of the nobility, in their diſputes with the ſovereign, and the complaints of ſuch as were diſcontented with the government, were pretty uniformly confined to

one

one topic, "the reſtoration of the laws of Edward the Confeſſor." But what particular object they had in view, when they demanded the reſtoration of thoſe laws, it is difficult to aſcertain. That they did not mean any collection of ſtatutes, enacted or publiſhed by the laſt of the Saxon princes, is now univerſally admitted; and it ſeems to be the prevailing opinion, that their demand related to the ſyſtem of common law eſtabliſhed in England before the Norman conqueſt. From what has been obſerved concerning the advancement of the feudal ſyſtem in the reign of William the Firſt, it appears evident, that the nobility had in view the recovery of the allodial property, and the independence, which they had formerly enjoyed. They ſaw with regret, we may eaſily ſuppoſe, the late diminution of their dignity and influence; and ſubmitted with reluctance to the military ſervice, and to the other duties incumbent on them as vaſſals of the crown. The feudal incidents, which were levied by the crown-officers, and of which the extent was not aſcertained with accuracy, were, in particular, the ſource of much vexation, and gave occaſion to many complaints. Of theſe complaints the ſucceſs was generally proportioned to the difficulties in which the ſovereign was involved, and the neceſſity he was under of purchaſing popularity by a redreſs of grievances.

As Henry the Firſt was expoſed to all the odium attending an open and palpable uſurpation; and was threatened with an immediate invaſion from the duke of Normandy, the acknowledged heir of the crown; he endeavoured to ſecure the attachment of his barons by yielding to their demands; and, in the beginning of his reign, he granted them a public charter of their liberties; by which the encroachments of prerogative made in the reign of his father, and of his brother, were limited and reſtrained. When we examine this charter, the firſt of thoſe that were procured from the Engliſh monarchs after the

Norman conqueſt, we find, that, beſides containing a clauſe with reſpect to the privileges of the church, it relates principally to the incidents of the feudal tenures.

One of the moſt oppreſſive of theſe was *wardſhip*; by which the king became the guardian of his vaſſals, in their minority, and obtained the poſſeſſion of their eſtates during that period. It is probable that this important privilege had not, in the caſe of crown-vaſſals, been yet fully eſtabliſhed; ſince the guardianſhip of them is, in the charter of Henry the Firſt, relinquiſhed by the king, and committed to the neareſt relations*.

The *relief*, or compoſition, paid by the heir of a vaſſal, in order to procure a renewal of the inveſtiture, was not given up by the ſovereign; but the extent of this duty appears to have been ſettled, with a view of preventing oppreſſion or diſpute in particular caſes†.

The incident of *marriage*, by which, in after times, the ſuperior was entitled to a compoſition, for allowing his vaſſals the liberty of marrying, ſeems, by this charter, to have extended no farther than the privilege of hindering them from forming, by intermarriages, an alliance with his enemies§.

Upon the whole, the parties appear to have intended, in this famous tranſaction, to compound their differences. The feudal ſuperiority of the crown is permitted to remain; while the nobles are, on the other hand, relieved from ſome of the chief inconveniencies which had reſulted from it; and, after the regulations particularly ſpecified, the charter contains a general clauſe, in which the king promiſes to obſerve the laws of Edward the Confeſſor, with ſuch amendments as William the Firſt, with the advice of his barons, had introduced.

* The charter of Henry I. publiſhed by Blackſtone.
† Ibid.
§ Ibid.

Copies

Copies of this deed were ſent to all the counties of England; and depoſited in the principal monaſteries, in order to preſerve the memory of an agreement, by which the prerogative of the crown, and the rights of the people, in ſeveral important articles, were aſcertained and defined.

The popularity which Henry acquired by theſe prudent conceſſions, enabled him to defeat the ill-concerted enterprize of the duke of Normandy; who, becoming the dupe of his brother's policy, was perſuaded to reſign his preſent claim to the crown, in conſequence of an agreement ſimilar to that which had formerly been made with William Rufus, that, upon the death of either of the two princes without iſſue, the ſurvivor ſhould inherit his dominions. Not contented with the quiet poſſeſſion of England, Henry ſoon after invaded Normandy; gained a complete victory over Robert, and reduced the whole country into ſubjection. The duke himſelf, being taken priſoner, was carried over to England, and detained in cuſtody during the remainder of his life, which was eight and twenty years. It is added by ſome authors, that he lived moſt part of this time in utter blindneſs; having, on account of an attempt to make his eſcape, been condemned to loſe his eye-ſight. The character of theſe two brothers appears to exhibit a ſtriking contraſt, in the virtues of generoſity and private affection, as well as in activity and talents for public affairs; and the unfortunate duke of Normandy was no leſs diſtinguiſhed by his ſuperiority in the former, than by his inferiority, or rather total deficiency, in the latter.

During a reign of thirty five years, Henry conducted the adminiſtration of government, with conſtant moderation, and with uninterrupted proſperity. He was attentive to the grievances of his people, vigilant in the diſtribution of juſtice, and careful to levy no exactions without conſent of the national council. From the progreſs of eccleſiaſtical uſurpation,

uſurpation, he was involved in diſputes with the church; but in the courſe of theſe he conducted himſelf with ſuch addreſs as, not only to avoid the reſentment, but, in the iſſue, to become even the favourite of the clergy. His character has, of conſequence, been highly celebrated: at the ſame time, when regarded only in a public view, it ſeems to merit all the praiſes with which it has been tranſmitted to poſterity.

Henry left no legitimate ſons; and only one daughter, Matilda; who had been firſt married to the emperor, and afterwards to the earl of Anjou, by whom ſhe had children. Setting aſide the conſideration that her father was an uſurper, ſhe had, according to the rules of ſucceſſion in that period, by which females were beginning to inherit landed eſtates, the beſt title to the crown; but a great part of the nobility were in the intereſt of Stephen, a younger ſon of the count of Blois, and grandſon, by a daughter, of William the Conqueror. This nobleman, who had long reſided in England, and was diſtinguiſhed by his popular manners, had procured many partizans; and was probably thought the fitter perſon to wield the ſceptre*. After obtaining poſſeſſion of the ſovereignty, he immediately called a parliament at Oxford, in which he granted a charter, confirming all the privileges contained in that of his predeceſſor; and in the preſence of the aſſembly he took an oath to maintain them; upon which the biſhops and peers recogniſed his authority, and ſwore fealty to him†. The policy of this monarch was not equal to his bravery. During the long conteſt in which he was engaged with Matilda, and her eldeſt ſon, Henry, he was generally unfortunate; and, in the end, was obliged to yield the reverſion of the crown to the latter.

* Daniel's Hiſt.

† Ibid. Blackſtone, Hiſtory of the Great Charter.

Henry

Henry the Second, who ſucceeded, in right of his mother, but who irregularly mounted the throne in her life-time, had excited ſanguine expectations of a proſperous and brilliant reign. To the early diſplay of great activity and abilities, he joined the poſſeſſion of more extenſive dominions than had belonged to any Engliſh monarch. Upon the continent he was maſter of Normandy, Britany, Anjou, Guienne, and other territories, amounting to more than a third of the whole French monarchy. He was, at the ſame time, a deſcendant, though not the lineal heir, of the Anglo-Saxon monarchs; his grandmother, the wife of Henry the Firſt, being the niece of Edgar Atheling; a circumſtance which contributed not a little to conciliate the affection of the Engliſh. Notwithſtanding theſe advantages, his adminiſtration, though full of vigour, was clouded with misfortunes. Having conceived the deſign of repreſſing the incroachments of the church, and wiſhing to execute this in the ſmootheſt and moſt effectual manner, he promoted to the ſee of Canterbury his principal favourite, Thomas a Becket, by whoſe aſſiſtance he expected that the direction of his own clergy would be infallibly ſecured. This prelate, however, happened to poſſeſs a degree of ambition, not inferior to that of his maſter; and no ſooner found himſelf at the head of the Engliſh church, than he reſolved to dedicate his whole life to the ſupport of eccleſiaſtical privileges, and of the papal authority.

The particulars of that controverſy, which terminated ſo unfortunately, and ſo diſgracefully, to the king, are known to all the world. The greateſt monarch in Europe, reduced to the neceſſity of walking three miles barefooted, to the tomb of *Saint Becket;* proſtrating himſelf before that ſhrine, and lying all night upon the cold pavement of the cathedral, in prayer, and with demonſtrations of the deepeſt penitence, for having offended a man from whom

whom he had received the higheſt provocation; and, after all, ſubmitting to be ſcourged by the prior and monks of the neighbouring convent; beſides yielding up implicitly all thoſe points which had been the original cauſe of the conteſt: ſuch an unuſual and humiliating ſpectacle cannot fail to excite ſingular emotions; and it is believed that few readers can peruſe this part of our hiſtory without viſible marks of indignation.

That eccleſiaſtical tyranny is more extenſively miſchievous than civil, is indiſputable; and that the former ſhould therefore raiſe greater indignation than the latter, is reaſonable. There may be ground for ſuſpecting, however, that our feelings, in the preſent inſtance, proceed from a natural bias or prejudice, more than from any ſuch rational or liberal views. The ambition of St. Becket, though accompanied with ſuperior ſteadineſs and intrepidity; and though it may be conſidered as a purer principle of action, by purſuing the aggrandiſement of his own order more than of himſelf; yet is leſs calculated to dazzle the imagination, and to ſeize our admiration, than that of a Cæſar or an Alexander, who makes his own will the law of his conduct, and who ſcruples not to tread upon the necks of his people.

Beſide the feudal incidents formerly mentioned, which were a ſort of rights reſerved by the ſuperior, upon his granting fiefs in perpetuity, there was another pecuniary payment, which grew up in courſe of time, from the regular duty of military ſervice. As, in many caſes, the performance of this duty became inconvenient for the vaſſal, he was led to offer a ſum of money in place of his perſonal attendance in the field; and ſuch a compoſition was generally acceptable to the ſovereign; who, by means of it, was enabled to hire a ſoldier more perfectly ſubject to his direction. The ſum payable by the vaſſal in place of military ſervices, the extent of which

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was at firſt determined by an agreement with the king in each caſe, was denominated a *ſcutage*. In England, the practice of levying ſcutages became very general in the time of Henry the Second; when the connexions of the ſovereign with France gave riſe to more expenſive enterprizes than had formerly been cuſtomary; and conſequently induced the crown-vaſſals more frequently to decline their perſonal attendance.

In this reign the conqueſt of Ireland, as it is called, was begun and compleated. As that iſland had never been conquered, or ever invaded, by the Romans, it retained, with its independence, a total ignorance of thoſe arts, and of that civilization, which every where accompanied the Roman yoke. It ſeems, on the other hand, to have eſcaped, in a great meaſure, the fury of the Saxons, Danes, and other Northern invaders; who never penetrated into that country, but only committed occaſional depredations upon the coaſts, where they formed ſome ſmall ſettlements, and built ſeveral towns. Thus, while the greateſt part of Europe was, for ſeveral centuries, thrown into convulſions by the repeated irruption, of the German or Scythian nations, Ireland was, by reaſon of its ſituation, expoſed to little diſturbance or commotion from any foreign enemy; and the inhabitants were ſeldom engaged in any military enterprizes, but ſuch as aroſe from their own private quarrels and depredations. It is therefore highly probable, that, for ſome time after that country was firſt inhabited, and while the ſeveral families or petty tribes, to whom by its fertility it afforded an eaſy ſubſiſtence, were not much crowded together, they enjoyed more tranquility than the other barbarians of Europe, and, of conſequence, were leſs counteracted and reſtrained in thoſe exertions of generoſity and friendſhip, to which, among people who live in ſmall ſocieties, and are ſtrangers to induſtry, and to the concomitant

concomitant habits of avarice, there are peculiar incitements. That they might, upon this account, acquire a conſiderable ſhare of that refinement which is attainable in the paſtoral ages, it is natural to ſuppoſe; and that they actually did ſo, the ſpecimens of Celtic poetry, lately publiſhed, which have been claimed reſpectively by the Iriſh and by the inhabitants of the Weſtern Highlands of Scotland, both of whom may, in this caſe, be conſidered as one people, appear inconteſtible evidence. The authenticity of theſe publications has, indeed, been called in queſtion; but it would require an equal degree of ſcepticiſm to doubt, that the ground-work of them is genuine, as it would of credulity to believe that they are the original production of any modern publiſher.

According as Ireland became gradually more populous, a greater number of families came to be united in particular principalities; the leaders of which being actuated by larger views of ambition, found more frequent pretences for quarrelling with each other; and their ſubjects or followers, being thus involved in more numerous acts of hoſtility, or in ſuch as were productive of greater violence and outrage, the manners of the people in general were, of courſe, rendered more ferocious. The whole iſland came at length to be reduced into four or five extenſive diſtricts, under ſo many different ſovereigns; one of which frequently claimed a ſort of authority or pre-eminence over all the reſt.

After the Engliſh monarchy had come to be connected with the continent of Europe, and to interfere in its tranſactions, it was natural for the king of England to entertain the ambition of adding to his dominions a country ſo commodiouſly ſituated as Ireland, and which appeared to be ſo little in a capacity of making reſiſtance. Henry the Second is accordingly ſaid to have taken ſome ſteps for executing a project of this nature, when application

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was made to him for protection, by Dermot the king of Leinſter, who had been driven out of his dominions. In virtue of a bare permiſſion from the king of England, two needy adventurers, Fitzſtephen and Fitzgerald, and afterwards, Richard ſurnamed Strongbow, likewiſe a man of deſperate fortune; to whom the two former acted in a kind of ſubordination; landed with a few followers in Leinſter, defeated any force that was brought in oppoſition to them, beſieged and took ſeveral towns, and formed a ſettlement in the province. Upon receiving information of their progreſs, Henry, inflamed, as it ſhould ſeem, with jealouſy of their ſucceſs, haſtened immediately to take poſſeſſion of the territory which they had ſubdued; and coming over to Ireland, received the ſubmiſſion of ſeveral chiefs or princes of the country, who dreading the effects of his power, were anxious to avoid any conteſt with him.

Neither Henry himſelf, nor his ſucceſſors for ſeveral centuries, appear to have derived any ſubſtantial benefit from this acquiſition. Their authority was confined to that narrow diſtrict inhabited by the Engliſh; and even *there* was more nominal than real; for the Engliſh inhabitants, harraſſed by continual inroads from their neighbours, and receiving a very uncertain and caſual ſupport from England, were, on many occaſions, tempted to throw off their allegiance, and were ſeduced to imitate the barbarous manners and practice of the natives.

Henry, in the latter part of his life, was rendered unhappy by domeſtic misfortunes. A conſpiracy was formed againſt him, by his queen and ſons, which became the ſource of repeated inſurrections, accompanied with ſeveral very formidable invaſions from the neighbouring powers.

Though the king was ſucceſsful in repreſſing theſe diſorders, and in defeating all his enemies; yet

yet the obſtinacy with which his children perſiſted in their unnatural attempts, appears to have impreſſed his mind with deep ſentiments of melancholy and dejection. From the difficulties, at the ſame time, with which he was ſurrounded, he found it highly expedient to court the good-will of his ſubjects, not only by a careful attention to the police of the kingdom, and by an equal diſtribution of juſtice, but by granting a new charter in the ſame terms with that of Henry the Firſt *.

Richard the Firſt, who ſucceeded his father, was entirely ingroſſed by the love of military glory; and the ſhort period, during which he held the reins of government, was, for the moſt part, employed, either in preparations for a magnificent cruſade, the faſhionable atchievement of that age, or in oppreſſive exactions, to relieve him from the burdens which he had incurred by that unfortunate enterprize.

The character of John, his brother and ſucceſſor, is univerſally known, as a compound of cowardice, tyranny, ſloth, and imprudence. This infatuated king was involved in three great ſtruggles, from which it would have required the abilities of his father, or of his great grandfather, to extricate himſelf with honour; but which, under his management, could hardly fail to terminate in ruin and diſgrace.

It is obſerved by Mr. Hume, with his uſual acuteneſs, that the extenſive territories which the kings of England, at this period, poſſeſſed in France, were the ſource of much leſs real than apparent ſtrength; and that, from their ſituation, they were filled with the ſeeds of revolt and diſobedience. In the ordinary ſtate of the feudal tenants, the vaſſals of the nobility were much more attached to their imme-

* Blackſtone, Hiſtory of the Great Charter.

diate

diate ſuperior, by whom they were moſt commonly protected, and with whom they maintained an intimate correſpondence, than with the ſovereign, who lived at a diſtance from them, and with whom they had little connexion. The power of the king, therefore, depended, for the moſt part, upon the extent of his own demeſnes; and in every quarrel with his nobles, it was to be expected that all their vaſſals would take part againſt him. But in the dominions which the king of England held in France, theſe circumſtances were completely reverſed; and his immediate vaſſals, by their ſituation, were leſs capable, on any emergence, of receiving protection from him, than from the French monarch, their paramont ſuperior: not to mention, that they regarded the king of England as a foreign prince, whoſe intereſt was commonly very different, and ſometimes, diametrically oppoſite to that of their native country. Their affections therefore were gradually alienated from their immediate ſuperior; and transferred to their ſovereign; who, it was natural to ſuppoſe, might, ſome time or other, availing himſelf of his advantageous ſituation, be enabled to wreſt thoſe dominions from his rival.—This accordingly happened in the beginning of the preſent reign: as John was advanced to the throne in preference to Arthur, the ſon of his elder brother, and conſequently the lineal heir; and as he had incurred great odium in a war with that prince, whom he defeated, and was afterwards believed to have murdered; Philip Auguſtus, at that time king of France, ſeized the opportunity of interfering in a diſpute, which afforded ſo fair a proſpect of acquiring popularity, as well as of promoting his intereſt. Having called a national council, he procured a declaration, that the king of England, by his behaviour, had forfeited Normandy, and the other territories which he held in France; and in the

the greater part of thoſe territories, this decree, from the concurrence of the inhabitants, co-operating with the power of the French crown, was eaſily carried into execution.

This diſaſter was followed by a conteſt with the Roman pontiff, concerning the right of electing the archbiſhop of Canterbery; in which John was, if poſſible, ſtill more unſucceſsful. In order to remove the papal excommunication which had been inflicted upon him, he was laid under the neceſſity, not only of abandoning the points in diſpute, but of ſurrendering his kingdom to the pope, and ſubmitting to hold it as a feudatory of the church of Rome.

The contempt which this abject ſubmiſſion of their ſovereign could not fail to excite in the breaſt of his ſubjects, together with the indignation raiſed by various acts of tyranny and oppreſſion of which he was guilty, produced at length a combination of his barons, who demanded a redreſs of grievances, and the reſtoration of their ancient laws. As this appeared the moſt favourable conjuncture which had occured, ſince the Norman conqueſt, for limiting the encroachments of prerogative; the nobility and principal gentry were deſirous of improving it to the utmoſt; and their meaſures were planned and conducted with equal moderation and firmneſs.—The king attempted, by every artifice in his power, to fruſtrate their deſigns. He endeavoured by menaces to intimidate them; and, by deluſive promiſes, to lull them aſleep, in order to gain time for breaking their confederacy. When all other expedients proved ineffectual, he made application to the pope as his liege-lord; and called upon his holineſs to protect the rights of his vaſſal. The barons were neither to be deluded nor terrified from the proſecution of their purpoſe. Finding that their petitions were diſregarded, they roſe up in arms, and proceeded to actual hoſtilities. The number of their adherents was daily increaſed; and the king,

king, who retired before them, was deſerted by almoſt all his followers; till at laſt there were only ſeven lords who remained in his retinue. All further oppoſition therefore, became impracticable. At Runnemede, a large meadow between Windſor and Staines; a place which has been rendered immortal in the page of the hiſtorian and in the ſong of the poet was held that famous conference, when the barons preſented, in writing, the articles of agreement upon which they inſiſted; and the king gave an explicit conſent to their demands *. The articles were then reduced into the form of a charter; to which the king affixed his great ſeal; and which, though it was of the ſame nature with the charters obtained from the preceding monarchs, yet, as it was obtained with difficulties which created more attention, and as it is extended to a greater variety of particulars, has been called, by way of diſtinction, *the great charter of our liberties.*

As the feudal ſuperiority of the crown, over the nobles, together with the various caſual emoluments, or *incidents*, ariſing from that ſuperiority, had now been eſtabliſhed, with little or no interruption, ever ſince the reign of William the Conqueror; it would probably have been a vain project to attempt the abolition of it. The chief aim of the nobility, therefore, in the preſent charter, was to prevent the ſovereign from harraſſing and

* ——————" Hail Runny mead!
" Illuſtrious field! like Marathon renowned!
" Or Salamis, where freedom on the hoſts
" Of Perſia, from her radiant ſword ſhook fear
" And dire diſcomfiture! Even now I tread
" Where Albion's ancient barons won the pledge
" Of independence.——————
——" O gallant chiefs! whether ye ride the winds,
" Bound on ſome high commiſſion to confound
" The pride of guilty kings; or, to alarm
" Their coward ſpirits, though the realms of night
" Hurl the tremendous comet, or in bowers
" Of blooming paradiſe enjoy repoſe;
" I ween the memory of your patriot-zeal
" Exalts your glory, and ſublimes your joys."

oppreſſing

oppreſſing them by the undue exerciſe of thoſe powers, the effects of their feudal ſubordination, with which he was underſtood to be fully inveſted. The incidents of wardſhip, relief, and marriage, notwithſtanding the proviſions in the charter of Henry the Firſt, had continued the ſubject of much controverſy; for the removal of which, the nature and extent of thoſe feudal perquiſites were more particularly defined and explained. With regard to the practice of levying *aids and ſcutages*, it was provided that the former ſhould not be demanded, unleſs in the three caſes eſtabliſhed in the feudal cuſtoms, to redeem the ſovereign from captivity, to portion his eldeſt daughter, or to make his eldeſt ſon a knight; and that the latter ſhould not be impoſed in any caſe without the authority of parliament *.

The juriſdiction exerciſed by the king, as a feudal ſuperior, was another ſource of oppreſſion, for which a remedy was thought requiſite; and ſeveral regulations were introduced, in order to facilitate the diſtribution of juſtice, to prevent the negligence, as well as to reſtrain the corruption, of judges: In particular, it was declared, that no count or baron ſhould be fined unleſs by the *judgment of his peers*, and according to the quality of the offence †.

While the barons were thus labouring to ſecure themſelves againſt the uſurpations of the prerogative, they could not decently refuſe a ſimilar ſecurity to their own vaſſals; and it was no leſs the intereſt of the king to inſiſt upon limiting the arbitrary power of the nobles, than it was their intereſt to inſiſt upon limiting that of the crown. The privileges inſerted in this

* Blackſtone's edition of king John's Magna Charta, § 2, 3, 4, 6, 12, &c.

† Ibid. § 21.

great

great tranſaction were, upon this account, rendered more extenſive, and communicated to perſons of a lower rank, than might otherwiſe have been expected. Thus it was provided that juſtice ſhould not be *ſold*, nor unreaſonably *delayed*, *to any perſon* *. That no freeman ſhould be impriſoned, nor his goods be diſtrained, unleſs by the *judgment of his peers*, or by the law of the land †; and that even a villein ſhould not, by any fine, be deprived of his carts and implements of huſbandry ‡.

It is worthy of notice, however, that though this great charter was procured by the power and influence of the nobility and dignified clergy, who, it is natural to ſuppoſe, would be chiefly attentive to their own privileges; the intereſt of another claſs of people, much inferior in rank, was not entirely overlooked: I mean the inhabitants of the trading towns. It was declared, that no aid ſhould be impoſed upon the city of London, unleſs with conſent of the national council; and that the liberties and immunities of this, and of all the other cities and boroughs of the kingdom, ſhould be maintained §. To the ſame claſs we may refer a regulation concerning the uniformity of weights and meaſures, and the ſecurity given to foreign merchants, for carrying on their trade without moleſtation. The inſertion of ſuch clauſes muſt be conſidered as a proof that the mercantile people were beginning to have ſome attention paid to them; while the ſhortneſs of theſe articles, and the vague manner in which they are conceived, afford an evidence equally ſatisfactory, that this order of men had not yet riſen to great importance.

In order to diffuſe the knowledge of the charter over the kingdom, and to enſure the execution of it, a number of originals was made, and one of

* Blackſtone's edition of king John's Magna Charta, § 21.
† Ibid. § 40 ‡ Ibid. § 39. § Ibid. § 20.

theſe was lodged in every county, or at leaſt in every dioceſe; twenty-five barons were choſen, as guardians of the public liberties, and inveſted with power ſuitable to the diſcharge of ſo important a truſt; and the nobles farther required, that, in the mean time, the city of London ſhould remain in their hands, and that the tower ſhould be put in their poſſeſſion. The king conſented to theſe meaſures; though nothing could be farther from his intentions, than to fulfil the conditions of the charter. No ſooner had he obtained a bull from the pope annulling that deed, and prohibiting both the king and his ſubjects from paying any regard to it, than, having ſecretly procured a powerful ſupply of foreign troops, he took the field, and began without mercy to kill and deſtroy, and to carry devaſtation throughout the eſtates of all thoſe who had any ſhare in the confederacy. The barons, truſting to the promiſes of the king, had raſhly diſbanded their followers; and being in no condition to oppoſe the royal army, were driven to the deſperate meaſure of applying to Lewis, the ſon of the French monarch, and making him an offer of the crown. The death of John, in a ſhort time after, happened opportunely to quiet theſe diſorders, by tranſmitting the ſovereignty to his ſon Henry the Third, who was then only nine years of age.

Under the prudent adminiſtration of the Earl of Pembroke, the regent, the young king, in the firſt year of his reign, granted a new charter of liberties; at the ſame time that the confederated barons were promiſed a perpetual oblivion for the paſt, in caſe they ſhould now return to their allegiance.

It is obſervable, that a copy of this deed, with ſome variations, was alſo tranſmitted to Ireland, for the benefit of the Engliſh inhabitants of that iſland; who, it was juſtly thought, had an equal right to all the privileges enjoyed by their fellow-ſubjects in Britain.

The

The following year, when peace was concluded with Lewis, and the public tranquillity was reſtored, this charter was renewed, with additions and improvements; and, as the charter of king John contained one or two clauſes relating to the foreſt laws, theſe were now extended, and made the ſubject of a ſeparate inſtrument, called the *Charter of the Foreſt*. The two deeds, into which the original great charter came thus to be divided, were again renewed, with ſome variations, and confirmed, in the ninth year of Henry Third, when the king was, by a papal bull, declared of age, and began to hold the reins of government.

The charter of the foreſt, how inſignificant ſoever the ſubject of it may be thought in the preſent age, was then accounted a matter of the higheſt importance. The Gothic nations, who ſettled in the Roman empire, were, all of them, immoderately addicted to the diverſion of hunting; inſomuch that this may be regarded as a peculiarity in their manners, by which they are diſtinguiſhed from every other people ancient or modern *. It aroſe, in all probability, from their having acquired very extenſive landed eſtates, a great part of which they were not able to cultivate; and from their continuing, for many centuries, in that rude and military ſtate, which diſpoſed them to bodily exerciſe; while it produced ſuch a contempt of induſtry, and profound ignorance of the arts, as were the ſources of much leiſure and idleneſs. The free people, or gentry, commonly allotted to hunting the moſt part of the time in which they were not engaged in war; and the vaſſals of every chieftain, or feudal ſuperior, were uſually his companions in the former occupation as well as in the latter. Every independent proprietor, however, endeavoured to

* Muratori, Antiq. Med. Æv. tom. ii. diſſ. 23.—The Romans generally employed their ſlaves in hunting. Ibid.

maintain the excluſive privilege of killing game upon his own grounds; and, having ſet apart, for the purpoſe of this amuſement, a large portion of uncultivated land, under the name of a *foreſt*, he denounced ſevere penalties againſt his vaſſals, as well as againſt every other perſon, who ſhould hunt upon it without his conſent. The ſovereign, in each kingdom, enjoyed the ſame privilege, in this reſpect, with the other allodial proprietors; though it appears to have been originally confined within the limits of his own demeſnes. The completion of the feudal ſyſtem, however, by reducing the great lords to be the vaſſals of the crown, rendered the ſovereign the ultimate proprietor of all the lands of the kingdom; and the privilege of hunting, being thus conſidered as a branch of the royal prerogative, was not underſtood, without a ſpecial grant in their charter, to be communicated to his vaſſals. Upon the ſame principle that the king was alone entitled to kill game within his dominions, he aſſumed the excluſive privilege of erecting lands into a foreſt; by which they were appropriated to the diverſion of hunting; at the ſame time, for preſerving the game in the royal foreſts, a peculiar ſet of regulations came to be eſtabliſhed; and particular officers and courts of juſtice were appointed, for executing ſuch regulations, and for trying offences committed againſt them.

The diverſion of hunting became ſtill more favourable, and was carried to a greater height, in England, than in the countries upon the continent of Europe. The inſular ſituation of Britain enabled the inhabitants in a great meaſure to extirpate the fiercer and more hurtful ſpecies of wild animals; ſo as to leave no other but thoſe which, placing their whole ſafety in flight, directed the attention of the people to the pleaſure merely of the chaſe. Hunting, therefore, in Britain, came to conſiſt in a long and intricate purſuit, admitting the diſplay

diſplay of much art and ſkill, while upon the continent, it was often a ſort of combat with wild animals, requiring only a momentary exertion of ſtrength and courage, or at moſt, of military dexterity. As the inhabitants of this iſland were, beſides, leſs engaged in diſtant wars than the other European nations, they had, upon that account, more leiſure to employ themſelves in rural ſports. It has farther been alledged, that Britain was anciently famous for its breed of ſlow-hounds, a ſpecies of dogs peculiarly fitted for the improvement of the chaſe; but whether this ought to be regarded as one cauſe of the national propenſity to this diverſion, or rather as the effect of it, there may be ſome reaſon to doubt. It is more probable that the Engliſh were led early to cultivate the breed of ſlow-hounds, becauſe they were much addicted to that mode of hunting which required thoſe animals, than that this kind of dogs, from ſomething unaccountable in the nature of our ſoil and climate, were the original and peculiar growth of our country *.

We may remark, by the way, that the Engliſh manner of hunting, and their fondneſs for that ſport, has been the cauſe of another peculiarity, their paſſion for horſe-racing. When hunting came to conſiſt entirely in a purſuit, there was a neceſſity that the company ſhould, for the moſt part, be on horſeback; and when different ſportſmen were engaged in the ſame chaſe, they had frequently occaſion to vie with one another in the ſwiftneſs of their horſes; which naturally produced a more formal trial, by running in a ſtated courſe; while the improvement of this latter diverſion excited the people to cultivate that breed of race-horſes which is now reckoned peculiar to the country.

* That England was anciently famous for its breed of ſlow-hounds, appears from Strabo, c. 4. The French, under the kings of the Merovingian race, were accuſtomed to procure hunting dogs from England. Velly's Hiſt. vol. i.

During

During the whole period of the Anglo-Saxon government, the great lords, who poſſeſſed allodial eſtates, appear to have enjoyed the privilege of hunting upon their own ground, independent of the ſovereign *. But, in conſequence of that feudal ſuperiority over the nobles, which was acquired by the crown upon the acceſſion of William the Firſt, it became a maxim, that the killing of game was a branch of the royal prerogative, and that no ſubject had any right, either to poſſeſs a foreſt, or even to hunt upon his own eſtate, unleſs by virtue of a charter from the crown.

In this part of the prerogative, William the Conqueror, and his immediate ſucceſſor, are ſaid to have committed great abuſes. As thoſe princes were exceſſively addicted to the amuſement of hunting, they laid waſte very extenſive territories, in different parts of England, in order to convert them into foreſts; having, for that purpoſe, demoliſhed many houſes, and even villages, and expelled the inhabitants. New and ſavage penalties were inflicted upon ſuch as encroached upon the king's game, or committed any treſpaſs in his foreſts; and the laws upon this ſubject were executed in a manner the moſt rigorous and oppreſſive.

It may, indeed, be ſuſpected that theſe abuſes have been ſomewhat exaggerated. The extenſion of prerogative, with reſpect to the privilege of hunting, muſt have been highly offenſive to the nobles, and could hardly fail to excite loud complaints, together with ſome degree of miſrepreſentation, againſt the proceedings of the crown. The erection of great foreſts, even though theſe had been confined within the demeſnes of the king, was likely of itſelf to occaſion much popular clamour; as it

* By a law of Canute the Great, whoſe authority was more extenſive than that of his predeceſſors, the right of the nobles to protect the game upon their own grounds ſeems to be laid under reſtrictions. The words are "Volo ut omnis liber homo, pro libito ſuo, habeat venerem, ſive viridem "in planis ſuis ſuper terras ſuas. ſine chacea tamen, et deviteut omnem "meam, ubicunque eam habere voluero."

qui

our own times, the change of a large eſtate from tillage to paſturage, by which many tenants are deprived of their livelihood, is frequently the ſource much odium and reſentment. There is reaſon however to believe that theſe exertions encroached, in ſome caſes, upon the private property of individuals, and were, therefore, no leſs unjuſt than they were unpopular.

The charter of the foreſt contained a variety of ſalutary regulations, for mitigating the ſeverity of the laws upon that ſubject, for the rectification of the former abuſes, and for preventing the future encroachments of the ſovereign. In the proceedings againſt thoſe who treſpaſſed upon a foreſt, a greater degree of regularity was introduced; and capital puniſhments were, in all caſes, aboliſhed. The invaſions of private property, by erecting a royal foreſt, except upon the demeſnes of the crown, were prohibited; and it was ordained that all the lands, belonging to particular perſons, which, from the reign of Henry the Second, had been included within the boundaries of a foreſt, ſhould be *diſafforeſted*, and reſtored to the owner*.

The long reign of Henry the Third, from the feeble character of that monarch, and from the injudicious, the inconſtant, and the arbitrary meaſures which he purſued, according to the different favourites by whoſe counſel he happened to be governed, was filled with inſurrections and diſorders; and in the latter part of it, the rebellion conducted by the daring ambition and great abilities of Simon Montfort, the earl of Leiceſter, had reduced the ſovereign to the moſt deſperate ſituation, and threatened to deprive him of his crown; when his enemies were unexpectedly and completely defeated, by the intrepidity, ſteadineſs, and good fortune, of his ſon Edward. During the courſe of theſe commotions, Henry, in order to appeaſe his barons, granted more

* See the Charter publiſhed by Blackſtone.

than

than once, a renewal of the great charter, and the charter of the foreſt. He alſo ſwore, in the moſt ſolemn manner, to preſerve them inviolable; an oath to which, after he was relieved from the preſent embarraſſment, he appears to have ſhewn little regard.

We may here take notice, though it falls beyond the period which we are now conſidering, that another ſolemn confirmation of theſe charters was afterwards obtained, in the vigorous and ſucceſsful reign of Edward the Firſt.

1. When we take a view of theſe great tranſactions, and endeavour to eſtimate the degree of attention which they merit, their number, their ſimilarity, and the long intervals of time at which they were procured, are circumſtances which cannot be overlooked. Had one charter only been granted by the ſovereign, on a ſingular occaſion, it might well be ſuppoſed to have ariſen from a concourſe of accidents and from particular views. Inſtead of expreſſing the opinions entertained by the king and his people, concerning the rights of either, it might, in that caſe, have been the effect of a mere caſual advantage, which the one party had gained over the other; and, ſo far from diſplaying the ordinary ſtate of the government at that period, it might have exhibited the triumph and injuſtice of a temporary uſurpation. But thoſe important ſtipulations, not to mention the confirmations of them in a later period, were begun and repeated under the reigns of ſix different monarchs, comprehending a courſe of about two hundred years; they were made with princes of extremely different characters, and in very oppoſite ſituations; and though, by the inſertion of different articles, thoſe deeds were gradually expanded, and accommodated to the circumſtances of the times, yet their main object continued invariably the ſame; to limit thoſe abuſes of prerogative, which, from the nature of the monarchy, were moſt likely to be committed. Taking thoſe charters, therefore

therefore, in connexion with one another, they ſeem to declare, in a clear and unequivocal manner, the general and permanent ſenſe of the nation, with reſpect to the rights of the crown; and they aſcertain, by expreſs and poſitive agreement between the king and his ſubjects, thoſe terms of ſubmiſſion to the chief magiſtrate, which, in moſt other governments, are no otherwiſe explained than by long uſage, and which have therefore remained in a ſtate of uncertainty and fluctuation.

2. It ſeems to be a common opinion, that, by theſe charters, the crown deprived of many of thoſe powers which had been aſſumed by William the Conqueror, or by his ſon William Rufus, and the conſtitution was brought nearer to that equal balance, which it had maintained under the direction of the Saxon princes. In particular, by the charter of king John (for the preceding charters have been frequently overlooked) it has always been ſuppoſed that the bounds of the prerogative were greatly limited. But upon examination it will be found, that this opinion is contrary to the real ſtate of the fact. During the whole period which we are now conſidering; that is, from the Norman conqueſt to the time of Edward the Firſt; while the barons were exerting themſelves, with ſo much vigour, and with ſo much apparent ſucceſs, in reſtraining the powers of the crown, thoſe powers were, notwithſtanding continually advancing; and the repeated conceſſions, made by the ſovereign, had no farther effect than to prevent his authority from encreaſing ſo rapidly as it might otherwiſe have done. For a proof of this we can appeal to no better authority than that of the charters themſelves; from which, if examined according to their dates, it will appear, that the nobility were daily becoming more moderate in their claims; and that they ſubmitted, in reality, to a gradual extenſion of the prerogative; though, by more numerous regulations, they endeavoured

deavoured to avoid the wanton abuſes of it. Thus, by the great charter of Henry the Third, the powers of the crown are leſs limited than by the charter of king John; and by this laſt the crown-vaſſals abandoned ſome important privileges with which they were inveſted by the charter of Henry the Firſt.

In the charter of Henry the Firſt, *the incident of wardſhip*, the ſevereſt and moſt oppreſſive of all the feudal incidents, is relinquiſhed by the ſovereign; and, according to the ſame charter, the *incident of marriage* extended no farther than to prevent the vaſſals of the crown from marrying any woman with whoſe family the ſuperior was at variance. But in the reign of king John, the incident of wardſhip had taken ſuch root, that the crown vaſſals no longer thought of diſputing the continuance of it; and that of marriage had been ſo much enlarged, as to imply a right in the ſuperior to prohibit his vaſſals from marrying without his conſent, and even to require that they ſhould marry any woman whom he preſented to them. In the charter of this monarch, therefore, the former incident is underſtood to be completely eſtabliſhed, and ſome regulations are made to prevent abuſes in making it effectual. With regard to the latter, it is provided that the heirs of a vaſſal ſhall be married without *diſparagement*, that is, they ſhall not be required to contract unſuitable alliances; and, to ſecure them from impoſition or undue influence, in a matter of this kind, it is farther ſtipulated, that before they contract any marriage their neareſt relations ſhall be informed of it.

The charter of king John may, on the other hand, be compared with that of Henry the Third, in relation to *aids* and *ſcutages*, a ſort of indirect taxes, from which a conſiderable part of the crown-revenue was derived. By the charter of John, the excluſive power of impoſing thoſe duties is committed to parliament; but that of Henry the Third is entirely

entirely ſilent upon this point; and leaves the monarch under no reſtraint in impoſing ſuch burdens by virtue of his own prerogative. It is true, that the former limitation upon this part of the prerogative was afterwards renewed in the reign of Edward the Firſt*.

What I have obſerved, concerning the variations in the ſeries of great charters, does not ſeem applicable to the laws of the foreſt. The violations of private property, committed in this reſpect by William the Firſt, and his ſucceſſors, were too notorious to be ſeriouſly defended; and therefore, notwithſtanding the general progreſs of monarchy, it was thought neceſſary to remove theſe abuſes, and to guard againſt them for the future.

3. Whoever enquires into the circumſtances in which theſe great charters were procured, and into the general ſtate of the country at that time, will eaſily ſee that the parties concerned in them were not actuated by the moſt liberal principles; and that it was not ſo much their intention to ſecure the liberties of the people at large, as to eſtabliſh the privileges of a few individuals. A great tyrant on the one ſide, and a ſet of petty tyrants on the other, ſeem to have divided the kingdom; and the great body of the people, diſregarded and oppreſſed on all hands, were beholden for any privileges beſtowed upon them, to the jealouſy of their maſters; who, by limiting the authority of each other over their dependants, produced a reciprocal diminution of their power. But though the freedom of the common people was not intended in thoſe charters, it was eventually ſecured to them; for when the peaſantry, and other perſons of low rank, were afterwards enabled, by their induſtry, and by the progreſs of arts, to emerge from their inferior and ſervile condition, and to acquire opulence, they

* 34 Edw. I. ſtat. 4. cap. i.—Alſo 25 Edw. I. 2, 5, 6.

were

were gradually admitted to the exerciſe of the ſame privileges which had been claimed by men of independent fortunes; and found themſelves entitled, of courſe, to the benefit of that free government which was already eſtabliſhed. The limitations of arbitrary power, which had been calculated chiefly to promote the intereſt of the nobles, were thus, by a change of circumſtances, rendered equally advantageous to the whole community as if they had originally proceeded from the moſt exalted ſpirit of patriotiſm.

When the commons, in a later period, were diſpoſed to make farther exertions, for ſecuring their natural rights, and for extending the bleſſings of civil liberty, they found it a ſingular advantage to have an ancient written record, which had received the ſanction of paſt ages, and to which they could appeal for aſcertaining the boundaries of the prerogative. This gave weight and authority to their meaſures; afforded a clue to direct them in the mazes of political ſpeculation; and encouraged them to proceed with boldneſs in completing a plan, the utility of which had already been put to the teſt of experience. The regulations, indeed, of this old canon, agreeable to the ſimplicity of the times, were often too vague and general to anſwer the purpoſes of regular government; but, as their aim and tendency were ſufficiently apparent, it was not difficult, by a proper commentary, to beſtow upon them ſuch expanſion and accommodation as might render them applicable to the circumſtances of an opulent and poliſhed nation.

CHAP.

CHAP. II.

In what Manner the Changes produced in the Reign of William the Conqueror, affected the State of the national Council.

THE changes in the ſtate of landed property, ariſing from the completion of the feudal ſyſtem, in the reign of William the Firſt, were neceſſarily tended with correſpondent alterations in the conſtitution and powers of the national council. The Saxon Wittenagemote was compoſed of the allodial proprietors of land; the only ſet of men poſſeſſed of that independence which could create a right of interfering in the adminiſtration of public affairs. The number of theſe, as I formerly obſerved, having been originally very great, was gradually diminiſhed, according as individuals were induced, from prudential conſiderations, to reſign their allodial property, and to hold their eſtates of ſome feudal ſuperior. But in the reign of William the Conqueror, when the moſt powerful of the nobility, thoſe who alone had hitherto retained their allodial property, became at laſt the immediate vaſſals of the crown, the ancient Wittenagemote was of courſe annihilated; ſince there no longer exiſted any perſon of the rank and character which had been deemed eſſential to the members of that aſſembly.

As, during the government of the Anglo-Saxon princes, every feudal ſuperior had a court, compoſed of his vaſſals, by whoſe aſſiſtance he decided the law-ſuits and regulated the police of his barony; ſo the king, conſidered in the ſame capacity, had likewiſe a private baron-court, conſtituted in the ſame manner, and inveſted with ſimilar powers. In that period, however, the former of theſe courts, being held

held by allodial proprietors, acknowledging no farther ſubjection to the king than as chief magiſtrate of the community, were totally independent of the latter. But in the reign of William the Conqueror, when the whole of the nobility became vaſſals of the crown, they were incorporated in the king's baron-court, and the juriſdiction which they exerciſed in their own demeſne was rendered ſubordinate to that of the king as their paramount ſuperior. The ſeveral diſtricts, which had formerly been divided into ſo many independent lordſhips, were now united in one great barony, under the ſovereign; and his baron-court aſſumed of conſequence, a juriſdiction and authority over the whole kingdom. Thus, upon the extinction of the Wittenagemote, there came to be ſubſtituted, in place of it, another court or meeting, ſimilar to the former, and calculated for the ſame purpoſes, though conſtituted in a manner ſomewhat different. To this meeting, as the Norman or French language was now prevalent at the Engliſh court, and even employed in public deeds and legal proceedings, the name of *parliament* was given; as the meeting itſelf correſponded, not only to the aſſembly known by the ſame appellation in France, but to the national council of all thoſe European countries in which the feudal ſyſtem had attained the ſame degree of advancement*.

The Engliſh parliament, though its members appeared under a different deſcription, comprehended in reality the ſame claſs of people who had been members of the ancient Wittenagemote. It was compoſed of all the immediate vaſſals of the crown; including the dignified clergy, and the nobility, whether of Engliſh or of French extraction. The wealth of theſe perſons, from the ſucceſſive accumu-

* It has been alledged, that the name of parliament was beſtowed upon the Engliſh national council even in the reign of Edward the Confeſſor, at which time the French language began to be faſhionable in England. Diſcourſe on the Engliſh government, publiſhed by Nathaniel Bacon.

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lations of property before, and in the reign of William the Conqueror, muſt have been prodigious. From the ſurvey in doomſday-book it appears, that, about the end of William's reign, the immediate vaſſals of the crown were in all about ſix hundred: ſo inconſiderable was the number of baronies, whether in the hands of laymen or eccleſiaſtics, into which the whole territory of England, excluſive of Wales, and the three Northern counties, and excluſive of the royal demeſnes, had been diſtributed *.

Notwithſtanding the vaſſalage into which the barons had been reduced, their influence was but little impaired; and though changed in outward appearance, they continued to maintain that authority which great landed eſtates will always procure. By the nature of their tenures, their property was not rendered more precarious than formerly; but merely ſubjected to certain burdens or exactions in favour of the king. As vaſſals of the crown, their dependence upon it was even ſlighter than that of the inferior hereditary vaſſals upon their immediate ſuperior; and from their number, their diſtance,

* The ſeparate baronies in the different counties, including the lands in the crown demeſne, amount in all to 1462. But as the ſame perſons were often poſſeſſed of eſtates in many different counties, it is a matter of ſome labour to diſtinguiſh the exact number of ſeparate proprietors. For example, the king himſelf held lands in every county except Shropſhire.—Comes Moritonienſis poſſeſſed baronies in 20 counties.—Comes Euſtachius, in 11.—Comes Rogerius, in 13.—Willelmus de Warenna, in 12.—Edwardus Sariſberienſis, in 9.—Willelmus filius Anſculfi, in 11.—Hunfridus Camerarius, in 9.—Comes Alanus, in 11.—Comes Hugo, in 21.—Ernulfus de Heſding, in 10.—Radulphus de Mortimer, in 13.—Epiſcopus Cantuarenſis, in 8.—Epiſcopus Baiocenſis, in 17.—Epiſcopus Wentonienſis, in 11.—Abbatea Weſtmonaſterii, in 14.—Epiſcopus Lincolcenſis, in 9.

After a pretty accurate ſcrutiny, it is believed the ſeparate crown-vaſſals, recorded in doomſday-book, are not above 605, though they may poſſibly be one or two below the number. Of theſe, the eccleſiaſtical vaſſals, including the different ſorts of religious ſocieties, amount to about 140. It is to be obſerved, however, that ſome of theſe appear to have belonged to Normandy, though they poſſeſſed lands in England.

It is evident that the power and influence of the crown-vaſſals, in the reign of William the Conqueror, muſt have been great in proportion to the ſmallneſs of their number, and the vaſt extent of their property.

and

and their vaſt opulence, the king was leſs able to retain them in ſubjection. Standing frequently in need of their ſupport and aſſiſtance, he found it highly expedient to avoid their diſpleaſure, to conſult them in matters of a public nature, and to proceed with their approbation. In their new capacity, therefore, they ſtill aſſumed the privilege of controuling the abuſes of adminiſtration; and in directing the great machine of government, their power was little inferior to that which had formerly been poſſeſſed by the Wittenagemote*.

The power of declaring peace and war was from this time, indeed, regarded as a branch of the royal prerogative. It was a principle inſeparably connected with the feudal polity, that the vaſſal of the king, as well as thoſe of every ſubordinate baron, ſhould be liable for military ſervice to their liege lord, and ſhould be ready to attend him in the field whenever he choſe to call upon them. To determine the particular quarrels in which he ſhould engage, and the military enterprizes which he ſhould undertake, was his province, not theirs; and, pro-

* That Parliaments were frequently held by William the Conqueror, and by his ſon William Rufus, as well as by the ſucceeding monarchs, is indiſputable. In the fourth year of William the Conqueror, the laws of Edward the confeſſor were confirmed by a great national council. [R. Hoveden. Annal. Alſo Selden, Spicilegium in Eadmerum.] It is doubtful whether this was the ſame Parliament which confirmed the collection of Edward the Confeſſor's laws, preſerved by Ingulphus, the abbot of Croyland, and ſecretary to William the Firſt. Selden, ibid.—Another parliament was held in 1076, for terminating a diſpute between the archbiſhop of York and the biſhop of Worceſter—*Coram rege et doroburnie archiepiſcop. Lanfranco, et epiſcopis, abbatibus, comitibus, et primatibus, totius Angliæ.* Dr. Brady's Tracts.—Another parliament is mentioned in 1084, for changing the canons of Durham into Monks—*Preſentibus omnibus epiſcopis et baronibus meis.* Ibid.—See alſo, in the author, the inſtances of national councils convened by William Rufus.

The whole territory of England not having been united as the feudal barony of the king, till near the end of the Conqueror's reign, his Parliament or baron-court could not, before this period, be properly inveſted with an authority over the whole kingdom. It is probable, however, that this circumſtance was overlooked; and that, as a great part of the nobility, ſoon after the conqueſt, were become vaſſals of the crown, they were called, in that capacity, to the national council; while others, who ſtill retained their allodial property, might be willing perhaps, without regarding the difference of their ſituation, to join in the deliberations of that aſſembly.

vided

vided their attendance was not more burdenſome than their duty required, it was underſtood to be a matter of indifference to them, againſt what enemy they ſhould happen to be employed. The diſcretionary power, which came thus to be aſſumed by the king, as the great feudal ſuperior of the kingdom, was, at the ſame time ſupported by the conſideration of its expediency. During the numerous invaſions cuſtomary in the feudal times, it was neceſſary, upon the ſudden emergency, that the leader of a barony ſhould take his meaſures upon the ſpot; and that, without conſulting his vaſſals, he ſhould proceed to repel the enemy by force of arms. To call a council, in ſuch a caſe, would be to loſe the critical moment; to waſte, in deliberation, the proper ſeaſon for action; and, for the ſake of a punctilio, to involve the whole community in utter deſtruction.

This may be accounted the chief difference between the Anglo-Saxon and the Anglo-Norman government. In the former, the power of making peace and war was invariably poſſeſſed by the Wittenagemote; and was regarded as inſeparable from the allodial condition of its members. In the latter, it was transferred to the ſovereign: and this branch of the feudal ſyſtem, which was accommodated, perhaps, to the depredations and internal commotions prevalent in that rude period, has remained in after ages, when, from a total change of manners, the circumſtances, by which it was recommended, have no longer any exiſtence.

The legiſlative power was viewed in a different light. New regulations generally took their origin from a complaint of grievances, made to the ſovereign, the great executor of the law, and accompanied with a requeſt, that in the future adminiſtration of government, they might be redreſſed. The privilege of preferring ſuch petitions, or at leaſt that of demanding a poſitive anſwer to them from the ſovereign, was anciently appropriated to the Wit-

tenagemote; and, upon the diſſolution of that aſſembly was devolved upon the Anglo-Norman parliament. In every ſubordinate barony into which the kingdom was divided, the vaſſals exerciſed a ſimilar privilege with reſpect to the adminiſtration of their own ſuperior. A public ſtatute was, according to this practice, a ſort of paction or agreement between the king and his vaſſals; by which, at their deſire, he promiſed to obſerve a certain rule of conduct; and in which, therefore, the conſent of both was clearly implied. No ſuch rule was ever thought of without the previous requeſt of parliament, nor was it ever effectual to bind the parties, unleſs the ſovereign acceded to the propoſal.

The ſupreme diſtribution of juſtice was likewiſe a matter of ſuch conſequence as to require the interpoſition of the crown-vaſſals; and therefore conſtituted another privilege of the Anglo-Norman parliament. How this branch of buſineſs came, in ordinary caſes, to be devolved upon an inferior court, with reſervation of an ultimate controuling power in the parliament, will be the ſubject of a ſeparate enquiry.

Taxation is properly a branch of the legiſlative power; ſince every rule that is made, with reſpect to the payment of taxes, is a law which directs and limits the future adminiſtration of government.—This branch of legiſlation is in itſelf of greater importance, and it is more likely to be abuſed, than any other; becauſe every member in the community has an intereſt to avoid all public burdens, and to roll them over upon his neighbours; while the chief executive officer, or whoever has the management and diſpoſal of the revenue, is intereſted to ſqueeze as much as he can from the people. We may eaſily ſuppoſe, therefore, that as the vaſſals of the crown, after the Norman conqueſt, aſſumed the ordinary exerciſe of the legiſlative power, they would not be diſpoſed to relinquiſh that peculiar

branch

branch of it, which conſiſted in the impoſition of taxes; and there is, accordingly, no reaſon to doubt, that, as far is it could exiſt in that period, it was immediately transferred, from the Witten-agemote of the Saxons to the Anglo-Norman parliament.

But in that age, there was little occaſion for exerciſing this power; few taxes being then, directly at leaſt avowedly, impoſed upon the nation. The chief ſupport of the crown was derived from a revenue independent of the people; and when additional ſupplies became requiſite, they were obtained either by means of a private bargain, for a valuable conſideration; or under the maſk of a gift or voluntary contribution.

At a period when mercenary armies were unknown, and when the adminiſtration of juſtice, inſtead of being a burden upon the crown, was the ſource of emolument, the royal demeſnes, which, after the acceſſion of William the Firſt, became prodigiouſly extenſive, together with the profits of amerciaments and fines, and the common feudal rents and incidents ariſing from the eſtates of crown-vaſſals, were fully ſufficient to maintain the dignity of the ſovereign, and to defray the ordinary expence of government. This ancient revenue, however, was gradually improved, according to the increaſing charges of government, by the addition of *ſcutages*, *hydages*, and *talliages*.

The firſt, of which an account was formerly given, were pecuniary compoſitions paid by the crown-vaſſals, in place of their military ſervice; and, being ſettled, in each caſe, by a ſtipulation between the parties, had no reſemblance to what is properly called a tax. It was always in the power of the vaſſal to inſiſt upon ſuch terms, with reſpect to this compoſition, as he judged expedient, or to avoid the payment of it altogether, by performing the ſervice for which he was originally bound. The ſum paid was a voluntary commutation; and therefore it

muſt be underſtood that he who paid it thought himſelf a gainer by the bargain.

Hydages were due by the ſoccage vaſſals of the crown; who, beſide their conſtant yearly rent to their ſuperior, were bound to ſupply him with carriages, and to perform various kinds of work.—As theſe were, by their nature, ſomewhat indefinite, they came to be frequently exacted by the crown-officers in an oppreſſive manner; and, when the vaſſal roſe to a degree of wealth and independence, he was willing to exchange them for a pecuniary payment, which might, at the ſame time, yield more profit to the crown. Of this payment the extent was originally fixed, like that of the ſcutage, by an agreement in each caſe between the parties.

Talliages were paid, in like manner, by the inhabitants of towns in the king's demeſne. As the king protected his boroughs, and beſtowed upon them various privileges, with reſpect to their manufactures, ſo he levied from them ſuch tolls and duties as they were able to bear. According as thoſe communities became opulent and flouriſhing, their duties were multiplied, and rendered more troubleſome and vexatious; from which it was at length found convenient that they ſhould be converted into a regular pecuniary aſſeſſment*.

The trade of the country, however inconſiderable, became alſo the means of procuring ſome revenue to the ſovereign. Perſons engaged in his employment, ſtanding in need of the protection of government, and being alſo frequently deſtitute of conveniencies for tranſporting and vending their goods, were not only protected, but even ſometimes provided with warehouſes, and with meaſures and weights, by the king; who, in return, de-

* The name of talliage is frequently extended to every pecuniary contribution levied by the ſuperior from his vaſſals.

manded

manded from them, either a part of their commodity, or ſome other payment ſuited to the nature of the benefit which they had received. A ſimilar payment was demanded by the king upon the paſſage of goods from one port of the kingdom to another. To the duties which came thus to be eſtabliſhed by long uſage, was given the appellation of *cuſtoms*. Having ariſen from the demands of one party, and the acquieſcence of the other, they were in reality founded upon a ſort of ſtipulation or mutual agreements.

When all theſe branches of revenue proved inſufficient, the king, upon any extraordinary exigence, applied for an *aid*, or general contribution, from his vaſſals. We find that aids are enumerated among the feudal incidents; but, excluſive of the three caſes formerly mentioned, whatever was contributed in this manner, appears to have been regarded in the light of a free gift; and, according to this view, came afterwards to be denominated a *benevolence*.

Though none of thoſe duties, which were levied by the expreſs or implied conſent of parties, could with propriety be conſidered as taxes, they became in reality the ſource of much oppreſſion and injuſtice. It was dangerous to refuſe the ſovereign, even when he demanded a thing to which he had no right. It was difficult to make an equal bargain with a perſon ſo greatly ſuperior in power and influence. By adhering ſtrictly to their privileges, and by incurring the reſentment of the king, the people ſubjected to thoſe impoſitions might be utterly ruined; and were, on every occaſion, likely to loſe much more than the value of what was demanded from them. When the abuſes, however, of which the crown was guilty in relation to theſe exactions, had riſen to a certain height, they became the ſubject of general complaint, and attracted the notice

notice of the legiſlature. Scutages, payable by the military vaſſals of the crown, came to be fixed by parliament, of which thoſe vaſſals were members. After the ſocceage tenants and the burgeſſes had acquired a degree of opulence, the ſame rule was extended to the hydages, and talliages, levied from thoſe two orders of men. The aids, demanded promiſcuouſly from all the different ſorts of crown vaſſals, came to be regulated by the ſame authority*. The cuſtoms, originally of little importance, were, by the gradual extenſion of trade, and the increaſing demands of the crown, brought likewiſe into public view, and acquired ſuch magnitude as to occaſion the interpoſition of parliament. By a ſtatute in the reign of Edward the Firſt, it is provided that thoſe duties ſhall not be levied without the "common "aſſent of the realm†."

With reſpect to the manner of convening the national council, it was not immediately varied by the Norman conqueſt. The parliament, from the acceſſion of William the Firſt, was held, like the Witenagemote in the Saxon times, either according to ancient uſage, at the three ſtated feſtivals of Chriſtmas, Eaſter, and Whitſuntide, or, upon particular exigencies, by virtue of a ſummons from the king. By degrees, however, the occaſional meetings extended the ſubjects of their deliberation; while on the other hand, the regular cuſtomary aſſemblies were frequently prevented by the diſorderly ſtate of the country. In the war between the Empreſs Matilda and king Stephen, they met with great interruptions, and from the beginning of the convulſions in the reign of king John, were entirely diſcontinued. The power of calling parliaments,

* With regard to aids, and ſcutages, this proviſion is made in the charter of king John, § 12. The ſtatutes 25 Edward I. c. 5, 6. and 34 Edw. I. contain the ſame regulation with reſpect to aids and talliages.

† 25 Edw. I. c. 7.

and

and conſequently of putting a negative upon its meetings, was thus in all caſes devolved upon the ſovereign*.

From theſe particulars, it is evident, that the Engliſh monarchs, after the Norman conqueſt, were far from poſſeſſing an abſolute authority; and that the conſtitution, notwithſtanding the recent exaltation of the crown, ſtill retained a conſiderable proportion of the preceding ariſtocracy. As the national council, compoſed of the nobility or great proprietors of land, was inveſted with the legiſlative power, including that of impoſing taxes, and with the power of diſtributing juſtice in the laſt reſort, it enjoyed, of courſe, the right of controling and directing the ſovereign in the moſt important parts of adminiſtration.

From the ſtate of the revenue, indeed, in that period, the executive power was under leſs reſtraint from the legiſlature than it has become in later ages. As the king had ſeldom occaſion to ſolicit a ſupply from parliament, he was the leſs liable to be queſtioned about the diſpoſal of his income. The people, who gave nothing to the public magiſtrate for defraying the expence of government, had but little incitement or pretence either to find fault with his œconomy, or to require a ſtrict account of his management. He managed the revenue of the kingdom, as other individuals were accuſtomed to manage their own eſtates; and the idea of a public officer, or magiſtrate, was apt to be ſunk in that of an ordinary proprietor, to whom the crown, and the revenues connected with it, have been tranſmitted like a private inheritance.

It muſt at the ſame time be admitted, that abuſes in the exerciſe of the executive power were then extremely frequent, and were often ſuffered to paſs without animadverſion or notice. The legiſlature

* Gurdon's Hiſtory of Parliament.

had

had too little experience, to provide regulations for preventing the numerous inſtances of malverſation in office that were likely to occur; judicial eſtabliſhments had not yet attained ſuch perfection as might enable them with quickneſs to puniſh the ſeveral violations of juſtice; nor had long uſage eſtabliſhed thoſe equitable maxims of government, which are the common effects of poliſhed manners, and which often ſupply the place of poſitive inſtitutions. The conduct of the ſovereign, therefore, and even that of inferior officers, in the ordinary courſe of adminiſtration, was in a great meaſure diſcretionary; and was no otherwiſe reſtrained, than by the fear of exciting the general clamour and diſturbance. But individuals might ſuſtain much oppreſſion before their complaints were likely to excite attention, and might be diſpoſed, from prudential conſiderations, to ſubmit to many injuries and inconveniencies, rather than contend againſt the whole force of the crown. In this diſorderly ſtate of ſociety, perſons who preferred any requeſt to the king, or who had even any claim of right, in which his intereſt was concerned, were commonly induced to ſecure his favour by a preſent, or, if you will, by a bribe. A numerous liſt of thoſe preſents, which were made to the ſovereign, in order to procure what was barely juſtice, has been collected by different authors, with a view of demonſtrating the deſpotical nature of the Anglo-Norman government. But theſe inſtances tend only to prove the frequency of abuſes, from the want of a regular polity, extending to all the departments of adminiſtration. They ſhew that the government was rude and imperfect, and therefore in many caſes arbitrary; not that it was an abſolute monarchy: that the national council was negligent and unſkilful in reſtraining diſorders; not that it was deſtitute of authority to limit the prerogative. This is what happens in the infancy

infancy of every political ſyſtem, whatever be the peculiar plan upon which it is formed. The ſtrong find themſelves often at liberty to oppreſs the weak; perſons of inferior ſtation are therefore obliged to ſhelter themſelves under the wings of a ſuperior; and are glad to obtain, by ſollicitation or bribery, the quiet exerciſe of thoſe rights which they are unable to maintain by any other means.

What puts this obſervation in a clear light is, that the abuſes of the executive power, which were ſo frequent in the early periods of the Engliſh conſtitution, have ſince been removed by the gradual improvement of arts, and the correſpondent progreſs of manners, without any conſiderable change in the diſtribution of the great powers of government. The outlines of the Engliſh conſtitution are not very different, at this day, from what they were in the reign of William the Conqueror; but the powers which were then univerſally acknowledged, have been ſince more minutely applied to the detail of adminiſtration; and the variations that have occured in the modes of living, and in the condition of individuals, have been gradually accommodated to the ſpirit of the old inſtitutions.—The experience of the nation has led them to fill up the picture, of which a rude ſketch was delineated in that early period.

CHAP.

CHAP. III.

Of the ordinary Courts of Juſtice after the Norman Conqueſt.

THE diſtribution of juſtice, in the laſt reſort, was not the moſt brilliant or conſpicuous, though it was, undoubtedly, one of the moſt uſeful departments belonging to the national council. During the latter part of the Anglo-Saxon government, this branch of buſineſs, as has been already obſerved, was commonly devolved upon occaſional meetings of the Wittenagemote; which being called for diſcuſſing matters of inferior concern, were ſeldom attended by any other members than ſuch as happened, at the time, to be retained about the king's perſon. But, after the Norman conqueſt, the changes which have been mentioned in the ſtate of the country, contributed to produce farther alterations in the judicial eſtabliſhments; and particularly to diveſt more entirely the public aſſembly of the ordinary cognizance of law-ſuits. By the completion of the feudal ſyſtem in France, the adminiſtration of juſtice in that country attained a degree of regularity which was formerly unknown; and upon the acceſſion of William the Firſt, to the Engliſh throne, the improvements in this branch of policy, which had been extended to Normandy, at that time a part of the French dominions, were gradually introduced into Britain. As the ſeveral diſtricts of the kingdom, which had formerly been diſtracted by the feuds of their independent leaders, came now to be united under the feudal ſuperiority of the crown, the deciſion of private quarrels by the ſword was more effectually reſtrained; while the vigor and influence, poſſeſſed by the two firſt princes of the Norman race, co-operated

co-operated with the natural progreſs of ſociety in bringing the differences among all the inhabitants under the determination of the magiſtrate. From the conſequent multiplication of appeals to parliament, the members of that aſſembly became daily leſs diſpoſed to execute this part of their duty; at the ſame time that, from the increaſing authority of the crown, their attendance was rendered proportionably leſs neceſſary. The number of crown-vaſſals, convened on ſuch occaſions, was therefore gradually diminiſhed; the abſence of others was more and more overlooked; and at length there was formed, out of parliament, a regular tribunal, for the ſole purpoſe of deciding law-ſuits, and compoſed of an arbitrary number of thoſe perſons who ſat in the greater aſſembly. The great officers of the crown, being always upon the ſpot, whenever a meeting of this kind was called, became its ordinary conſtituent members; and to theſe were added by the king particular perſons, who from their knowledge of law, or experience in buſineſs, were thought qualified to aſſiſt in the inferior departments of office*.

This

* Account of this tribunal in Madox's Hiſtory of Exchequer. The great officers of the king's court are made by this author to be ſeven in number. 1. The chief juſticier. 2. The conſtable. 3. The mareſchall. 4. The ſeneſchall or dapifer. 5. The chamberlain. 6. The chancellor. 7. The treaſurer. Of theſe the chief juſticier was originally the ſeneſchall or high-ſteward. But when the primitive high-ſteward who had been the chief officer of the family, came to be poſſeſſed of great miniſterial powers over the whole kingdom, a deputy was appointed to manage the affairs of the houſhold, who acquiring high rank and authority, received the appellation of ſeneſchall, or *ſteward of the houſhold*, as the other was called the *ſteward of the kingdom*. The ſubordinate appointment of a ſteward of the houſhold, or *comes palatii*, is alſo to be found in France, Germany, and other feudal countries.

The office of conſtable, or chief groom, had come in England, as well upon the continent, to be divided into two branches, that of the conſtable and marſhal; or of the groom and the ſmith, or farrier.

The ſeneſchall and dapifer ought, in all probability, to have been diſtinguiſhed; as in France, and of courſe in Normandy, the offices of ſteward, and butler, or cup-bearer, had been long ſeparated.

The treaſurer is ſuppoſed to have been originally the deputy of the high-ſteward.—But in later times was more probably that of the chamberlain who came to have the principal charge of the revenue.

See

This court, from the place in which it was commonly held, received the appellation of the *aula regis*. In its conſtitution and origin, it correſponded exactly with the *cour de roy*, which, after the acceſſion of Hugh Capet, was gradually formed out of the ancient parliament of France; and with the *aulic council*, which, after the time of Otho the Great, aroſe, in like manner, out of the diet of the German empire. In Scotland we met with a court of the ſame nature; and there is reaſon to believe that, in every European kingdom of conſiderable extent, the progreſs of the feudal ſyſtem gave riſe to a ſimilar inſtitution. In all theſe countries, as well as in England, it appears probable, that this tribunal was detached from the national council by connivance rather than by any poſitive appointment; from a diſpoſition in the people to conſult their own eaſe and conveniency, more than from any deſign upon the part of the crown to limit their privileges; in ſhort, from no pre-conceived plan of altering the conſtitution, but from a natural and obvious accommodation to the circumſtances of the community, and from an immediate proſpect of advantage, by facilitating the diſtribution of juſtice. As this tribunal, therefore, has been formed in a ſlow and gradual manner, it ſeems difficult, in any of the countries above-mentioned, to aſcertain the preciſe date of its formation. In England, the inſtitution of the *aula regis* is commonly aſcribed to William the Conqueror; but this muſt be underſtood, it ſhould ſeem, with relation to the firſt appearance of that court, as diſtinct from the greater meeting of parliament, and not with reſpect to the ſubſequent variations and improvements which preceded its complete eſtabliſhment.

[1] See an account of the rank and employment of theſe officers, in that branch of the king's court which had the management of the revenue, in the *Dialogus de Scaccario*, publiſhed by Madox, from the *black* and the *red books of Exchequer*.

This

This court was held by the Engliſh monarchs, not only in their moſt uſual place of reſidence, but wherever they happened to be, when there was found occaſion for its interpoſition. It had the ſame extent of juriſdiction with parliament, out of which it had grown; and therefore obtained the cognizance of all ordinary law ſuits, whether civil, criminal, or fiſcal.

The king himſelf preſided in the *aula regis*, whenever he thought proper to ſit there as a judge; but the ordinary preſident of this court was the lord high ſteward, the principal officer of the crown; who in rank and authority, had riſen to be the ſecond perſon in the kingdom; and upon whom the king, when abſent from parliament, had likewiſe devolved the right of preſiding in that aſſembly*.

For ſome time after this tribunal had been ſeparated from the meetings of Parliament, it ſtill conſiſted of all the great officers of the crown; but according as, by the gradual extenſion of its authority, it had occaſion to ſit more frequently, the attendance even of the greater part of theſe members was rendered more uſeleſs, as well as inconvenient; and therefore became the leſs regular. The king at the ſame time, acquiring higher notions of his own dignity, or finding himſelf more engaged in the other departments of government, ceaſed alſo to exerciſe the ordinary functions of a judge; ſo that the high ſteward became in a manner the ſole magiſtrate of the *aula regis*; and, from this moſt conſpicuous branch of power annexed to his office, was denominated the *grand juſticiary*†.

While

* When the members of this court tranſacted civil and criminal pleas they ſat in the hall of the king: when they acted as a court of revenue, they ſat in the Exchequer. Dial. de Scacario. Baron Gilbert's Hiſt. of Chancery.

† That the grand juſticiary of England was originally the high ſteward appears indiſputable. 1. That the high ſteward, or *maire of the palace*, in France, was anciently the officer of the crown who acquired the higheſt dignity

While the judical authority of parliament was thus delegated to another court, the king exerciſed the chief parts of the executive power, by the aſſiſtance of a *privy-council*, compoſed of ſuch barons as enjoyed his particular favour and confidence. Some inſtitution of this nature had probably exiſted, at leaſt occaſionally, during the reigns of the latter Saxon princes; but, after the Norman conqueſt, when the prerogative was conſiderably exalted, the privy-council, of conſequence, roſe in dignity, and its interpoſitions became proportionably more extenſive. The members of this meeting, it is probable, were nearly the ſame perſons, who from their employment about the king's perſon, had uſually been called to ſit in the *aula regis*, after it came to be ſeparated from the greater meeting of parliament; and even when the king and his privy-counſellors had devolved the ordinary buſineſs of that court upon a ſingle magiſtrate, they ſtill retained the cognizance of ſuch extraordinary cauſes both civil

nity and authority over the kingdom, is univerſally admitted. 2. In Normandy a ſimilar officer, appointed by the duke, appears to have been chief juſticiar throughout the dutchy. See Couſtumier du Normandie. 3. From the black and red books of Exchequer, there is diſtinct evidence that Robert earl of Leiceſter, who in the reign of Henry the Second, was the high ſteward, had alſo the office of *grand juſticiary*. *Non ſolum ad ſcacarium verum per univerſum regnum* PRESIDENTIS *dignitatem obtinuit.* The author of this account was a cotemporary, who ſays he ſaw the great officer whom he ſpeaks of. 4. That the high ſteward had by his office the right of preſiding over the king's privy counſellors, and over all the officers and miniſters of juſtice in the kingdom, appears alſo from an old manuſcript, intitled, *Quis ſit Seneſchallus Angliæ, & quid ejus officium*, quoted by Sir Robert Cotton and other antiquaries whoſe researches upon this ſubject are preſerved in Hearne's Collection.—See the facts collected by thoſe authors—alſo Spelm. Gloſſ. v. Juſticiarius Capitalis.

It is true, that among the Engliſh hiſtorians and antiquaries there is ſome confuſion in the accounts given of the perſons who held the office of high ſteward and of juſticiary. This ſeems to have ariſen partly from the difficulty of diſtinguiſhing the old high ſteward from his original deputy the ſteward of the houſhold; and partly from the occaſional appointments made by the ſovereign of perſons to preſide in particular trials, who have been miſtaken for permanent juſticiaries. This laſt ſeems to be the great ſource of error in Madox.

5, That the high ſteward was anciently the preſident over the king's judges, and even of the high court of parliament, is further confirmed by the privilege of that officer, when created, in latter times, to preſide in the houſe of lords.

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and criminal, as more immediately excited their attention. Of the cauſes which came, in this manner, to be determined by the king and his privy-council, and were at length, by cuſtom, appropriated to that court, there were three different ſorts.

1. When a crime was committed, for the puniſhment of which the common law had made no proper proviſion, it was thought expedient, that the criminal ſhould not be permitted to eſcape from juſtice; but that he ſhould be called before this extraordinary tribunal, and puniſhed according to the nature of his offence. From the meetings of the privy-council to determine, in ſuch uncommon and ſingular caſes, there was formed, in after times, a regular juriſdiction, known by the name of the *ſtar-chamber**.

From the nature of things, it was to be expected, that this juriſdiction would ſoon degenerate into tyranny and oppreſſion. The procedure of the court, as it related to matters in which no rule had been eſtabliſhed, was, of courſe, diſcretionary and fluctuating: at the ſame time that the cauſes which might come before it, under pretence of not being properly regulated by common law, were capable of being multiplied without end: not to mention, that, as the members of this court were created and removed at pleaſure by the king, ſo the deciſions, whenever he choſe to interfere, depended entirely upon his will. Theſe objections, however, to the juriſdiction of the ſtar-chamber, which appear ſo well founded, and which, in a future period, occaſioned the abolition of that court, were not likely to be ſuggeſted upon its firſt eſtabliſhment, when its interpoſitions, we may ſuppoſe, were few, and

* Concerning the origin of the name of ſtar-chamber, and the original nature of that court, ſee Sir Thomas Smith de Repub. Angl.—Lamb. Arch.—Blackſtone's Comment.—The nature of the juriſdiction anciently poſſeſſed by the ſtar-chamber may be conceived from the ſort of offences concerning which that court is directed to enquire, by the ſtatutes 3 Henry VII. c. 1. and 21 Henry VIII. c. 20. See Coke's Inſt.

limited

limited to cases of great neceſſity, and when the ſimplicity of the age was more diſpoſed to regard the immediate benefit ariſing from any meaſure, than to conſider the diſtant conſequences of which, as a matter of precedent, it might poſſibly be productive.

2. In civil queſtions the rules of common law, which had been gradually eſtabliſhed by judges in order to avoid reflections, and to prevent inconſiſtency of conduct, were ſometimes found ſo extremly defective as to lay the court under the diſagreeable neceſſity, either of refuſing juſtice to individuals, or of pronouncing an improper deciſion. The king and his privy-council, upon the ſame principle which led them to interfere in extraordinary crimes, were induced to hear the complaints of perſons who had ſuffered injuſtice from the rude and imperfect ſyſtem of juriſprudence adopted by the grand juſticiary; and to afford them relief by a deciſion according to conſcience or natural equity. The interpoſitions derived from this ſource, becoming numerous, and being often attended with ſome difficulty, were put more immediately under the direction of the chancellor; who as the king's ſecretary, was uſually a man of ſome literature; and who, having become the clerk, or keeper of the records of the *aula regis* was particularly converſant in matters of law, and qualified to decide in ſuch nice and intricate caſes. In what manner the deciſions of this officer, who acted at firſt with the aſſiſtance of a committee of privy-counſellors, gave riſe to the juriſdiction of the *court of chancery*, will fall more properly to be conſidered hereafter.

3. When the Chriſtian clergy had acquired an extenſive authority and juriſdiction in the Weſtern part of Europe, we find that, whatever cenſure they may deſerve for the intereſted policy which they practiſed in other reſpects, they had the ſingular merit of endeavouring every where to repreſs the diſorder and injuſtice ariſing from the anarchy of the feudal times.

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The weak and defenceleſs, who met with inſult and oppreſſion from every other quarter, found protection from the church; and the cauſes of widows and orphans, and of all perſons in circumſtances of diſtreſs*, which had been baniſhed from the barbarous tribunal of the lay-judges, procured a welcome reception in the ſpiritual court; where they were commonly examined with candour, and determined with impartiality.

In imitation, as it ſhould ſeem, of this eccleſiaſtical interpoſition, the king of England took under his immediate protection the cauſes of ſuch as, by reaſon of their poverty, were unable to bear the expence of an ordinary law-ſuit; and ſince no other court in the country could give the proper redreſs, he encouraged thoſe perſons to bring a petition or ſupplication to the privy-council; which decided their claims in a ſummary manner, and without the forms obſerved in the ordinary tribunals. Hence particular perſons, being entruſted with this branch of buſineſs, compoſed at length a *court of requeſts*, as it was called; which, for a long time, had no warrant of ordinary juriſdiction; but which, as the complaints that came before it could not be accurately defined, aſſumed at length ſo great a power as to render it unpopular, and, in the reign of Charles the Firſt, to occaſion its abolition †.

The influence of that humanity, diſplayed by the church, was not confined to England; but appears to have produced a ſimilar interpoſition in the government of other European countries. In France it was anciently the cuſtom to preſent petitions or complaints to the king at the gate of his palace; and, for the purpoſe of receiving and examining theſe, the king was early led to appoint

* *Perſonæ miſerabilis.*

† Sir Tho. Smith de Repub. Anglor.—Blackſtone's Comment.

certain perſons belonging to his houſehold. If any petition was of too great conſequence to be anſwered immediately by theſe commiſſioners, they were directed to make a report of it to the king, and to require the attendance of the parties, in order that the cauſe might be heard and determined. The perſons appointed for the determination of ſuch cauſes, who ſeem to have been members of the king's privy-council, were called *maiſtres des requeſtes de l'hoſtel du roy*. Their number was increaſed to ſix, of which the one half were eccleſiaſtics; and they ſeem at length to have been formed into a ſeparate court, under the name of the *chamber of réqueſts* *.

The inſtitution of the *aula regis*, or court of the grand juſticiary, was a natural, and a very great improvement in the ſyſtem of judicial policy. The great national council could not be very frequently convened, and its deciſions, therefore, eſpecially in matters of private property, were not eaſily procured. But the ſmaller tribunal of the *aula regis* was eaſily kept in readineſs, to determine every controverſy whether civil or criminal. As the king, amid the diſorders of the feudal government, was under the neceſſity of making frequent journies over the kingdom, in order to maintain his authority, and to ſuppreſs or prevent inſurrections, he was enabled to receive, in every quarter, the complaints of his people, and found no difficulty in calling this court to give ſuch redreſs as the occaſion might require. Juſtice was made, in this manner, to pervade the country; reparation of injuries was rendered more certain, while the expence of litigation was diminiſhed; and, by puniſhing crimes in the neighbourhood of thoſe places where they had been commit-

* Recherches de la France. D'Eſtienne Paſquier.

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ted, the axe and the halter became an immediate and powerful antidote to the poiſon of bad example.

From the deciſions of this tribunal, there always lay an appeal to the high court of parliament. This was a conſequence of the manner in which the *aula regis* was formed; by the mere diſuſe of attendance in the greater part of the members of parliament; who thence were underſtood to have delegated the ordinary judicial power to ſuch of their number as continued in the exerciſe of it. But as this delegation was intended merely to ſave trouble to the members of parliament; it was not conceived to exclude a full meeting of that council from reviewing, in extraordinary caſes, the procedure of the committee upon whom this ordinary juriſdiction had been devolved. Though parliament might wiſh to be diſengaged from the labour attending the deciſion of law-ſuits, it was probably not willing to reſign the authority connected with that employment; and while it acquieſced in the ſubſtitution of a court for exerciſing the whole parliamentary juriſdiction in the firſt inſtance, it ſtill reſerved the power, which might be exerted on ſingular occaſions, of ſuperintending the proceedings of that court, and of controuling its deciſions.

The *aula regis*, being a ſort of deputation from the national council, or king's baron-court, had, on the other hand, a power of reviewing the ſentences of the ſeveral tribunals erected in different parts of the kingdom; and became an intermediate court between them and the high court of parliament. There was the ſame reaſon for committing to the court of the grand juſticiary, the province of hearing and diſcuſſing appeals from inferior tribunals, as for devolving upon it an original juriſdiction in parliamentary actions. The full eſtabliſhment of this tribunal, however, together with the changes in the ſtate of property after the Norman

conqueſt, contributed to limit the authority of theſe inferior courts, and to render their interpoſition of little importance.

When the great lords of a county had become vaſſals of the crown, they claimed the privilege of bringing their law-ſuits, in the firſt inſtance, before the baron-court of the ſovereign, their immediate ſuperior. To the ſame court were brought immediately, appeals from the ſentences pronounced by theſe barons in the cauſes of their own tenants and vaſſals. The ſheriff, now converted into a crown vaſſal, beſide the juriſdiction over his own feudal barony, appears to have ſtill retained the power of deciding controverſies between the inferior vaſſals or tenants belonging to different baronies within his county.

The authority poſſeſſed by the *aulâ regis*, which was daily extended, from the increaſing power of the crown, enabled that court even to make continual encroachments upon the ſubordinate juriſdiction of the ſheriff and of the different barons. It could be of little advantage to the inhabitants, that their law-ſuits were brought in the firſt inſtance before the court of the baron or of the ſheriff, ſince the deciſion of thoſe judges might with the utmoſt facility be reviewed by the court of the grand juſticiary; and, as this great tribunal appeared occaſionally in all parts of the kingdom, and diſtributed juſtice with ſuperior efficacy and ſplendor, men were frequently diſpoſed to paſs over the inferior courts, and took encouragement to bring their diſputes immediately before the court of appeal. Thus, by the gradual operation of the ſame circumſtances, the judicatories of each barony, and county, dwindled into a ſtate of inſignificance; their juriſdiction was at length reſtricted to matters of ſmall value; and the greater part of cauſes, civil and criminal, as well as fiſcal, were appropriated to the ordinary baron-court of the ſovereign.

Mr.

Mr. Hume imagines, that none of the other feudal governments in Europe had ſuch inſtitutions as the county-courts; and ſeems at the ſame time to be of opinion, that as theſe courts, by requiring the frequent attendance of the barons, contributed to remind them of their dependence upon the king, they muſt have had remarkable effects in reducing thoſe great perſonages under the authority of the chief magiſtrate.

But the county-courts were ſo far from being peculiar to England, that they appear, in the early periods of the feudal ſyſtem, to have exiſted throughout all the Weſtern parts of Europe. In France, and in ſeveral other countries upon the continent, thoſe courts began ſooner to loſe their authority than in England; becauſe the ſovereign had ſooner acquired a feudal ſuperiority over the great lords; by which they were reduced under the immediate juriſdiction of the king's baron-court, and withdrawn from that of the chief officer of a county. In Scotland, on the other hand, where the influence of the crown over the nobles advanced more ſlowly than in England, the county-courts were enabled much longer to preſerve their primitive juriſdiction; ſo that a conſiderable ſhare of it has been tranſmitted to the preſent time, and become a permanent branch of the judicial polity.

It ſeems difficult, therefore, to ſuppoſe that the long continuance of the courts of the ſheriff in England had any tendency to increaſe or maintain the authority of the king over the barons. The decay of thoſe judicial eſtabliſhments appears, on the contrary, to have been a neceſſary conſequence of a correſpondent exaltation of the crown; and we ſhall find that, in every country, they remained longer in power and ſplendor, according as particular circumſtances contributed to thwart the ambitious views of the monarch, and to prevent the extenſion of his prerogative.

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In the dominions belonging to France the judicial power of the *cour de roy* advanced very quickly from the reign of Hugh Capet, by the diſuſe of the county courts, and by receiving appeals from the courts of the barons. Theſe appeals agreeable to the general cuſtom of the feudal governments, contained at firſt a complaint that injuſtice had been committed by the inferior judge; who, therefore, was obliged to appear as a party, before the ſuperior tribunal. But according as the practice of appealing became more frequent, the petitions of appeal were admitted upon ſlighter grounds; the charge of wilful injuſtice againſt the inferior courts was more and more overlooked; the magiſtrates, who had preſided in theſe courts, were no longer ſufficiently intereſted to appear for the juſtification of their conduct; and the controverſy was examined in the court of review, for the ſole purpoſe of determining the propriety or impropriety of the former deciſion.

It is true. that, from the diſorders which prevailed in France, under the later princes of the Carlovingian race, one or two of the great lords had acquired ſuch independence, as, for ſome time after the reign of Hugh Capet, prevented the king from reviewing their ſentences; but this is mentioned by all the hiſtorians as a remarkable ſingularity. It alſo merits attention, that the French monarchs, about this period, were not content with the power of receiving appeals from the ſeveral courts of their barons. An expedient was deviſed of ſending royal bailiffs into different parts of the kingdom, with a commiſſion to take cognizance of all thoſe cauſes in which the ſovereign was intereſted, and in reality for the purpoſe of abridging and limiting the ſubordinate juriſdiction of the neighbouring feudal ſuperiors. By an edict of Philip Auguſtus, in the year 1190, thoſe bailiffs were appointed in all the principal towns of the kingdom *.

* Hainault's Abridgment of Hiſt. of France.

CHAP.

CHAP. IV.

Progreſs of eccleſiaſtical Juriſdiction and Authority.

THE hierarchy of the Weſtern church grew up and extended itſelf over the kingdoms of Europe, independent of the boundaries which had been ſet to the dominion of ſecular princes, and of the revolutions which took place in the ſtate of any civil government. The Roman pontiff, having found the means of uniting under his protection the clergy of each particular kingdom, was equally intereſted in promoting their influence, as they were in maintaining the authority of their ſpiritual leader. By taking advantage, therefore, of the various and ſucceſſive contentions among oppoſite and rival powers, he was enabled to extort conceſſions from thoſe whom he had ſupported, to levy impoſitions, and to exalt the dignity and prerogatives of the holy ſee.

The Norman conqueſt, in England, was followed by a complete ſeparation of the eccleſiaſtical from the temporal courts. By a regulation of William the Conqueror, the biſhop was no longer permitted to ſit as a judge in the court of the county; nor the archdeacon in that of the hundred *. This alteration had undoubtedly a tendency to promote that excluſive juriſdiction which the clergy were deſirous of eſtabliſhing; and to build up that ſyſtem of church power which the wiſdom of after ages found it ſo neceſſary, and at the ſame time ſo difficult, to pull down. Under the dominion of the Anglo-Saxon princes, while the ſpiritual judges

* William the Conqueror's charter, with advice of the national council. Spelman.

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were aſſociated with the civil magiſtrate, many cauſes of an eccleſiaſtical nature were brought under the cognizance of the temporal courts; and though, from the ſuperior knowledge and addreſs of churchmen, the deciſions given by thoſe tribunals might be apt, in ſome caſes, to favour of a clerical ſpirit, there was little danger, from this arrangement, that the church would become totally independent of the ſtate. But from the moment that the clergy were excluded from a voice in the courts of the hundred and of the county, eccleſiaſtical controverſies were appropriated, in all caſes, to the judicatories of the church; and the ambition of churchmen immediately excited them to extend their own peculiar juriſdiction, by invading that of the civil magiſtrate.

The encroachments made by the ſpiritual, upon the province of the temporal courts, were of a ſimilar nature in England, and in all the other countries belonging to the Weſtern church. The pretence for theſe encroachments was, the privilege of the clergy to inflict cenſure upon every irregularity, which could be conſidered as a *ſin*, or an offence in the ſight of God. Under this deſcription every act of injuſtice, every violation of the laws of the land, was manifeſtly included; but the offences which in this view attracted more particularly the attention of churchmen were ſuch, it may eaſily be conceived, as had an immediate connexion with their own intereſt, or with thoſe religious obſervances from which their own dignity and importance were in ſome meaſure derived.

One of the firſt interpoſitions of the church, in a matter of civil juriſdiction, appears to have been made with relation to *tythes*, and other eccleſiaſtical revenues. Even after the rights of the clergy, in this particular, had received the ſanction of public authority, they were not likely to meet with a vigorous and hearty ſupport from the civil magiſtrate; and it was therefore conſidered by the church,

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as a matter of general concern, to render them effectual in the ſpiritual court.

The performance of teſtamentary bequeſts was viewed in a ſimilar light. As in the exerciſe of their profeſſion, the clergy were frequently employed about dying perſons, and had almoſt the excluſive poſſeſſion of all the literature of that ignorant age, they were uſually conſulted upon the making of teſtaments, and became the common witneſſes to thoſe deeds. It would be doing them injuſtice to ſay, that they neglected to avail themſelves of that ſituation, for increaſing the revenue of the reſpective corporations to which they belonged. With ſo great diligence and ſucceſs did they perform this part of their duty that few perſons adventured to take a near proſpect of a future ſtate, without making conſiderable donations for *pious uſes*; and the effect of inculcating the ſame doctrine was at length rendered ſo univerſal, that, in many countries of Europe a great proportion of every perſonal eſtate was, without any teſtament, and in virtue of a tacit or preſumed will of the proprietor, transfered, by the ordinary courſe of ſucceſſion, to the church. Thus the clergy were not only the beſt qualified for explaining the will of the teſtator, but had beſides a peculiar intereſt in the execution of it; and therefore by their activity and vigilance, joined to the indifference and remiſſneſs of the civil tribunals, they found it not difficult, in queſtions of this nature, to acquire an excluſive juriſdiction.

From the ſame principle which recommended penances and mortifications as highly meritorious, the miniſters of religion thought it incumbent upon them to cenſure and diſcourage all exceſſes in ſenſual pleaſure; and in a particular manner to reſtrain every irregularity with reſpect to the intercourſe of the ſexes. The contract of marriage was therefore brought under their immediate inſpection; and, as it came to be celebrated by a clergyman, and to be accompanied

accompanied with religious forms and ſolemnities, was regarded as a ſpecies of ſacrament. Upon this account, every breach of the duties of marriage, every queſtion with relation to its validity, or concerning the terms and conditions which were held compatible with that inſtitution, became an object of eccleſiaſtical cognizance.

This branch of juriſdiction afforded, by degrees, a pecuniary revenue, which the clergy did not fail to improve. By the Roman law, which was at firſt adopted in eccleſiaſtical courts, marriage was prohibited between collateral relations in the ſecond degree; that is, between brothers and ſiſters. This prohibition, comprehending thoſe perſons who uſually were brought up in the ſame family, and who, unleſs their union had been entirely prevented, might be frequently expoſed to the hazard of ſeduction, is founded upon manifeſt conſiderations of expediency. But no ſooner was the church poſſeſſed of ſufficient authority in this point, than, becoming diſſatisfied with ſuch a reaſonable and ſalutary regulation, ſhe thought proper to introduce a ſtricter diſcipline; and proceeded, by degrees, to prohibit the union of more diſtant relations; in ſo much that marriage between perſons in the fourteenth degree, according to the Roman computation, was at length declared illegal*. Not contented with preventing the intercourſe of natural relations, the ſuperſtition of the age recommended, and the intereſted policy of the church ordained, a reſtraint of the ſame nature, in conſequence of the ſpiritual connexion ariſing from baptiſm; between the perſon baptized and his godfathers and godmothers, as well as the clergymen by whom that ſacra-

* The fourteenth degree, according to the computation of the civilians, is equal to the ſeventh degree among the canoniſts; comprehending perſons removed by ſeven generations from the common ſtock. To change the Roman method of counting kindred, was the firſt contrivance of the clergy in the dark ages, for extending the laws of ancient Rome with reſpect to the relations prohibited from contracting marriage.

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ment was adminiſtered; and the marriage of thoſe perſons, together with their relations, as far as the fourteenth degree, was likewiſe forbidden. The number of people, thus prohibited from intermarrying, came to be ſo immenſe, that perſons at liberty to form that union, at a time when relations were not, as at preſent, ſcattered over the world by the influence of commerce, could ſeldom be found, at leaſt among perſons of rank, in the ſame quarter of a country, and hardly ever in the ſame circle of acquaintance †.

Theſe regulations were intended merely for the purpoſe of levying contributions from the people; for, though marriages contracted within the forbidden degrees were null and void, the church aſſumed a power of diſpenſing with the law; and to ſuch as were able to pay for it, with exception of parents and children, and ſome other very near relations, a diſpenſation, in moſt caſes, was readily granted.

By this juriſdiction with relation to teſtaments, and with relation to the validity of marriage, the church decided the moſt important queſtions concerning the tranſmiſſion of property. She poſſeſſed the ſole power of determining the legitimacy of children, upon which depended their capacity of inheritance; at the ſame time that ſhe gave authority to the nomination of every perſon who ſucceeded to an eſtate by the *will* of the proprietor.

Amid the diſorders which prevailed in Europe for many centuries after the downfal of the Roman empire, and by which the inhabitants were ſunk in profound ignorance and barbariſm, the clergy exerted themſelves in reſtraining the perfidy and in-

† Blackſtone in his Comment. vol. ii. calculates the number of relations which may, at an average, exiſt in different degrees of conſanguinity; by which it appears, that every perſon may have at leaſt 16,000, in the 14th degree, according to the Roman computation, not to mention ſuch as are a ſtep or two nearer, who may be living at the ſame time; and of *ſpiritual relations* in conſequence of baptiſm, he may have three or four times as many more.

juſtice

juſtice of the times; and, by the influence of religious motives, endeavoured, as far as poſſible, to induce mankind to the obſervance of good faith in their various tranſactions. For this purpoſe they introduced a general practice, that contracts of every ſort ſhould be confirmed by the ſanction of an oath; by which means the violation of a contract, being conſidered as the breach of religious duty, fell under the cognizance of the church. From the ſtrictneſs obſerved in the deciſions of the ſpiritual court, the private party, at the ſame time, found it more adviſeable to bring his complaint before this tribunal than that of the civil magiſtrate. The extent of juriſdiction, acquired in this manner, may eaſily be conceived.

Laſtly. To the church courts were appropriated, as I formerly had occaſion to obſerve, the cauſes of widows and orphans, and of all perſons in circumſtances of diſtreſs. Cauſes of this deſcription were too apt to be neglected by thoſe military barons inveſted with civil juriſdiction, who paid but little attention to the claims of any perſon from whoſe future ſervices they could derive no benefit, or from whoſe reſentment they had nothing to fear.

It muſt be remembered, to the honour of the clergy of thoſe times, that they were the friends of order and regular government; that, if they laboured to rear a ſyſtem of eccleſiaſtical deſpotiſm, their authority was generally employed in maintaining the rules of juſtice; and that they diſcovered a uniform inclination to protect the weak and defenceleſs, againſt that violence and oppreſſion which was too much countenanced by ſuch of the laity as were poſſeſſed of opulence and power. From this circumſtance, the extenſions of eccleſiaſtical juriſdiction were highly acceptable to the people; and, notwithſtanding the pernicious conſequences which they ultimately tended to produce, were, in the

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mean time, of great advantage to the lower ranks of men, if not of general benefit of the community.

Having thus occaſion to determine a multitude of cauſes, both of an eccleſiaſtical nature, and ſuch as fell within the province of the civil magiſtrate, the church courts advanced in the knowledge and experience of judicial buſineſs. As by their literature, the clergy could not fail to be acquainted with the ancient Roman law, they were led, in many caſes, to adopt the rules of that equitable ſyſtem: Their own deciſions were collected, in order to ſerve as precedents in future queſtions; and from theſe, together with the opinions of learned fathers in the church, the decrees of councils, and the regulations of popes, was at length formed that body of canon-law, which obtained univerſal reputation in the Weſtern part of Europe.

It would have been to little purpoſe, however, for the church to aſſume a juriſdiction, had ſhe not been able to render herſelf independent in the exerciſe of it. But the ſame vigour and dexterity, by which the clergy eſtabliſhed their power in any European kingdom, were exerted in order to withdraw their ſubjection from the ſovereign, and to render them ſubordinate only to the Roman pontiff. In England this was, in ſome meaſure, effected ſo early as the reign of William the Conqueror, by the expedient of appointing papal legates, or commiſſioners, to hear and determine eccleſiaſtical cauſes. As thoſe appointments might be renewed at pleaſure, they ſoon opened the way for a direct appeal from the Engliſh church-courts to that of Rome; which was firſt attempted in the reign of William Rufus, and finally accompliſhed in that of king Stephen*.

The entire exemption of churchmen, or *clerks*, from ſecular juriſdiction, which had been early introduced into ſome other European countries, and

* Burne's Eccleſiaſtical Law.

which

which appears to be a natural conſequence of the advancement of eccleſiaſtical power, was, in England, made effectual about the time of Henry the Second, the effects of this exemption, which have, in ſome meaſure, been retained in later ages, are univerſally known by what is called the *benefit of clergy*. As the church-courts never inflicted a capital, or corporal puniſhment, thoſe offenders, who could be ſubjected to no other juriſdiction, were of courſe exempted from ſuch puniſhment, unleſs in ſome few caſes, where the church might refuſe her interpoſition, or was pleaſed to deliver over the criminal to the ſecular arm. After the reformation, this privilege of clerks, which by the progreſs of literature, came to be within the reach of almoſt all the inhabitants, was looked upon as a convenient method for moderating the rigorous puniſhments of the commom law; and therefore, with various modifications by ſtatute, was then incorporated in the legal ſyſtem.

In the reign of Henry the Firſt, the monaſtic rule of celibacy, after long and violent ſtruggles, was at length impoſed upon the ſecular clergy of England; and received the ſanction of eccleſiaſtical authority*. By this regulation, churchmen, being freed from the cares of a family, and from the burden of making a proviſion for poſterity, were detached, in a great meaſure, from the reſt of the community, and, by motives of intereſt and ambition, were more uniformly and firmly united in that eccleſiaſtical corporation of which they were members. Though it may be true, therefore, that this abſurd ſyſtem of mortification was introduced from perverted notions of refinement, and by the univerſal influence of ſuperſtition, there can be no doubt that it was afterwards promoted and extended from the intereſted policy of churchmen, and more eſpecially from that of their ſpiritual ſovereign.

* Lyttelton's Hiſt. of Henry. II.

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But the great circumſtance which contributed to eſtabliſh the independent power of the church, was the privilege of beſtowing eccleſiaſtical preferments. Upon the firſt eſtabliſhment of eccleſiaſtical benefices, by the donation of dying perſons, and the conſequent riſe of eccleſiaſtical dignities, the inferior clergy of each dioceſe were choſen by the biſhop and chapter, and the biſhop himſelf by the dean and chapter of the cathedral church. After the modern European kingdoms had been erected upon the ruins of the ancient Roman empire, the ſovereign in each of thoſe kingdoms, was tempted to interfere in eccleſiaſtical elections, and by his influence over thoſe who had the power of nomination acquired at length the privilege of beſtowing the higher church livings. But when the authority of the biſhop of Rome had riſen to a great height in the Weſtern church, he left no meaſure unattempted, in order to wreſt out of the hands of princes an inſtrument of ſo much importance as the nomination of the ſuperior clergy. The diſpute concerning this point, which laſted for more than a century and a half, is one of the moſt remarkable events in the hiſtory of modern Europe. It was begun by the famous Gregory the Seventh; a man who, by his abilities, his intrepidity, and his unbounded ambition, was qualified to draw the utmoſt advantage from the ſituation in which he was placed. This pontiff not only rejected with diſdain the prerogative which the German emperors had for ſome time exerciſed, of confirming the election of the popes; but prohibited them from interfering in the election of biſhops and abbots; and proceeded ſo far as to iſſue decrees, by which he excluded the laity, of every rank or condition, from the collation to eccleſiaſtical benefices. Henry the Fourth, who at this time wore the imperial diadem, defended his rights with vigour; and, as many princes were, by various motives, induced to ſupport the intereſt of the church, the contending parties had recourſe to arms. During the

the progreſs of the quarrel, all Italy and Germany were thrown into convulſions; millions of people were deſtroyed upon the one ſide and the other; and it is computed that no leſs than ſixty battles were fought, in the reign of this emperor; together with eighteen more in that of his ſon and ſucceſſor, Henry the Fifth; who, at length, was perſuaded to conclude a peace with the court of Rome, by granting an expreſs renunciation of all his pretenſions*.

The conteſt, with reſpect to the right of inveſtitures, was not confined to Italy and Germany, but extended itſelf over the other countries of Europe; in which the church, for the moſt part, was equally ſucceſsful. In France, the decrees, of the pope were made effectual with leſs rapidity; but without violence, and even without much diſturbance. In England, the right of the laity to confer eccleſiaſtical benefices, was firſt diſputed in the reign of Henry the Firſt, when Anſelm, the archbiſhop of Canterbury, refuſed to conſecrate the biſhops nominated by the king. The controverſy was continued under ſeveral of the ſucceeding princes; but no blood was ſpilt in the quarrel, farther than by the aſſaſſination of Becket, or than what might ariſe from the ſcourging of Henry the Second. In this kind of warfare, the church was properly in her own element; and managed her weapons with her uſual dexterity. When king John had been weakened by an unſucceſsful war, and had incurred the contempt and reſentment of his ſubjects, the pope laid hold of that opportunity to invade his prerogative; and, by thundering out againſt him the different orders and degrees of eccleſiaſtical cenſure, at the ſame time that he had the addreſs to employ the ſecular arm of France to ſupport his authority, he at length obliged the infatuated Engliſh monarch, not only to relinquiſh all claim to the right of inveſti-

* Father Paul's Hiſtory of Benefices.

tures,

tures, but even to reſign his kingdom to the church and to hold it for the future as a feudatory of the holy ſee.

It could hardly be expected that the pope would engage in ſuch long and violent ſtruggles for the ſake merely of the clergy over whom he preſided, and that when he had, at laſt, gained a complete victory, he would not endeavour to improve it to his own advantage. No ſooner was the nomination of biſhops and abbots placed in the clergy of each cathedral church or monaſtery, than his holineſs began to interfere in elections, by recommending particular perſons to vacant benefices. Conſidering the influence and authority which he poſſeſſed over all the members of the church, and the exertions which he had made in procuring the right of election to the clergy, ſuch a recommendation could not, with decency, be overlooked; and, in moſt caſes, could ſcarcely fail of ſucceſs. The frequency, however, of theſe recommendations diſpoſed the electors to anticipate them on particular occaſions, by filling up the vacancy with the utmoſt expedition. Foreſeeing the death of ſome particular incumbent, the pope endeavoured ſometimes to prevent a precipitate ſupply of the vacancy, by requeſting that it ſhould be delayed for ſome time. Such recommendations and requeſts, having come at length to be frequently diſregarded, were afterwards accompanied with commands; and commiſſioners were ſent to put them in execution, as well as to puniſh the clergy, in caſe of their diſobedience. To all theſe expedients was added, at length, a more effectual interpoſition for preventing every diſappointment. With regard to the mode of electing biſhops and abbots, and the qualifications of the perſon to be elected, a ſet of regulations was made, ſo numerous and intricate, that the ſtrict obſervance of them became impoſſible; while it was declared, that, upon the leaſt failure in any point, the election

ſhould be void, and the nomination ſhould devolve to the apoſtolic ſee. By theſe artifices the biſhop of Rome acquired, in reality, the power of appointing all the dignified clergy, together with all that influence and revenue which could be obtained, either directly or indirectly, from the diſpoſal of every important eccleſiaſtical preferment.

CHAP. V.

General View of the kingly Power, from the Reign of Edward I. to that of Henry VII.

THE period of the Engliſh monarchy, from Edward the Firſt to the acceſſion of the houſe of Tudor, correſponds, with great exactneſs, to that of the French, from Philip the Fair to Lewis the Eleventh. About the beginning of theſe periods, the government, in each of theſe countries, aſſumed a degree of regularity unknown in former ages; and it afterwards continued, by ſimilar ſteps, advancing towards maturity. The power of the king, and that of the nobles, formed, at this time, the only balance in the conſtitution; which came, in the natural courſe of things, to lean more and more to the ſide of the former. The nobility were too much divided among themſelves, to be capable of proſecuting any regular plan for the aggrandiſement of their own order. Their opulence, which, if collected in one great current, might have borne down every obſtacle before it, was deprived of its efficacy by being broken into many ſeparate channels, and ſpent in various and contrary directions. In order to make an effectual oppoſition to the crown,

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it was requiſite that the greater barons ſhould be firmly united in defence of their privileges; but ſuch a union was not eaſily procured, and, for any length of time, could hardly ever be maintained. Diſtracted by mutual animoſity, and actuated by private jealouſies, or by oppoſite views of intereſt, theſe reſtleſs, but ſhort-ſighted chiefs, were, without much difficulty, perſuaded to abandon any joint meaſures; and excited to employ their force in weakening and deſtroying one another. What they gained, therefore, upon ſome occaſions, by a ſudden and violent effort, was afterwards thrown away, from the want of perſeverance or management; and the effect of a temporary combination was more than compenſated by their uſual tendency to diſunion and diſſenſion. But the crown was not capable of being divided againſt itſelf. Its property, being under the diſpoſal of a ſingle perſon, was always directed, however injudiciouſly, to the ſame end; and made ſubſervient to one political purpoſe; that of extending the royal prerogative. The revenue of the crown, therefore, created a degree of influence, which was continually extending itſelf, and which, by its uniform operation, afforded continual opportunities for increaſing that revenue. While the ariſtocracy was thus remaining ſtationary, or left in a fluctuating ſtate, according to the impulſe of caſual circumſtances, the monarchy, by receiving regular ſupplies from every quarter, was gradually riſing to a greater height, and overflowing its ancient boundaries.

It muſt, however, be admitted, that the period of Engliſh hiſtory, now under conſideration, is diſtinguiſhed by many powerful efforts of the nobility to ſupport their privileges; and that the crown did not riſe to the ſummit of dignity and ſplendor which it attained in the poſſeſſion of the Tudor family, without ſurmounting a variety of obſtacles, and

without being frequently checked and retarded by unfavourable occurrences.

There is even good reaſon to believe, that in England, the regal authority was more limited, about the time of Edward the Firſt, than it was in France, during the reign of Philip the Fair. Though the Engliſh crown was conſiderably exalted upon the acceſſion of William the Conqueror, yet under the ſucceeding reigns, its progreſs was apparently more ſlow than gradual. The barons, by taking advantage of particular conjunctures, and in ſome caſes, by proceeding to ſuch extremities as threatened an immediate revolution, obtained from the ſovereign the moſt important conceſſions; and, in little more than a century and a half, no fewer than ſix great charters were granted, ſome of them repeatedly, by ſix different princes. By theſe charters the power of the crown does not, indeed, ſeem to have been contracted within a narrower compaſs than immediately after the Norman conqueſt; but it was undoubtedly reſtrained in its advancement, and prevented from riſing to that height which it would otherwiſe have attained. In France, on the other hand, the extenſion of the royal prerogative appears, from the time of Hugh Capet, to have ſcarcely met with any oppoſition. No formidable combination of the nobles, to withſtand the incroachments of the kingly power! No ſeries of charters, as in England, relinquiſhing the ſuppoſed uſurpations of the crown, and confirming the privileges of the ariſtocracy! The only deed of this nature, which we meet with in the French hiſtory, was near half a century poſterior to the reign of Philip the Fair; and was extorted from king John, in conſequence of difficulties under which he laboured from the invaſion of his kingdom by the Engliſh monarch*.

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* "The opportunity of the ſtates general, aſſembled in the year 1355," ſays the count de Boulainvilliers, "is favourable to my deſign; ſince, upon their remonſtrances, king John gave a declaration which irrevocably eſtabliſhed

To what cauſes may we aſcribe this different ſpirit of the French from that of the Engliſh nobility? From what circumſtances were the former diſpoſed to look with ſo much tranquillity and indifference upon the exaltation of the crown, as never, but upon one occaſion, to exert themſelves in repreſſing it; while the latter diſcovered ſuch a conſtant jealouſy of the ſovereign, and made ſo many and ſuch vigorous attempts to reſtrain the progreſs of his authority? The importance of this queſtion is obvious; for the efforts then made to reſiſt the uſurpations of the crown, may be regarded as the groundwork of thoſe more preciſe limitations of the prerogative, which have been introduced in a later period.

1. There occurs one remarkable difference between the ſituation of the French and the Engliſh kings; that in France, the crown was without interruption, tranſmitted directly from father to ſon, during a period of more than three hundred years; that is, from the time of Hugh Capet to that of Philip the Long; including a ſeries of eleven different reigns: whereas in England, during the ſame period, we meet with no leſs than five deviations from the lineal courſe of ſucceſſion; and about one half of the reigning princes, who, however their title might be recognized by parliament or their pretenſions might be ſupported by the prevailing party, were according to the common notions of that age, conſidered in the light of uſurpers. In France, therefore, the crown paſſed, with perfect tranquillity, from one ſovereign to another; and each of thoſe princes, when he mounted the throne, having no competitor

" eſtabliſhed the right of thoſe aſſemblies, and which, upon that account, " might juſtly be compared to the *great charter* granted to the *Engliſh* by a " prince of the ſame name; were it not unfortunately too true, that it " has been buried in oblivion for above two hundred years paſt, even ſo " far that there is no public inſtrument of it remaining, except one copy pre- " ſerved in the king's library; from whence I took that of which I ſhall " give you an extract in the courſe of this letter." [Boulainv. account of the ancient parliaments of France.] See a full account given by this noble author, of that famous *French charter*, which in reality has a great reſemblance to the *Engliſh charter* above mentioned.

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to obſtruct his immediate poſſeſſion, no flaw in his title to weaken or diſturb the general prepoſſeſſion in his favour, ſucceeded of conſequence, to all that hereditary influence which had been accumulated by his predeceſſors. To render the ſucceſſion ſtill more quiet and ſecure, Hugh Capet introduced the precaution, which had been in ſome meaſure ſuggeſted by the Roman emperors, of crowning his heir in his own life time; and the ſame practice was uniformly obſerved by ſix of the ſucceeding monarchs; that is, till the reign of Philip Auguſtus, when, from the ſuperior ſtability of the throne, any ceremony of this kind was become ſuperfluous.

In England, on the contrary, the ſucceſſion of thoſe princes, whoſe title was ill founded or diſputable, gave always occaſion to diſatisfaction and complaint, if not to direct oppoſition, and open reſiſtance; and, as the nobles were invited to lay hold of theſe opportunities for maintaining or extending their privileges, the king was obliged to compound for the poſſeſſion of the ſovereignty, by ſubmitting to limitations in the exerciſe of it. The perſonal authority of William the Conqueror, produced a ſubmiſſion to William Rufus, though in preference to his elder brother Robert, a man of a popular character; but Henry the Firſt, and Stephen, may be ſaid to have purchaſed the crown, by the reſpective great charters which they granted to their vaſſals. With reſpect to Henry the Second, it muſt be acknowledged, that, though he was a foreigner, and though he had in ſome meaſure fought his way to the throne, yet in the end his acceſſion was agreeable to the whole nation. But after having ſuffered a variety of diſappointments, and having been expoſed to much uneaſineſs from the unnatural behaviour of his own children, he appears to have confirmed the two preceding charters, from a diſpoſition to guard againſt any future accident, by ſecuring the good-will of his people. The uſurpation of John accompanied with the murder of the lawful

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heir had excited againſt that prince an indignation and reſentment, which his future conduct, inſtead of removing tended only to confirm; and the conceſſions which he made to his ſubjects, were plainly extorted from him by the accumulation of diſtreſs and embarraſſment under which he laboured. Henry the Third, though there were no objections to his title, inherited, while he was yet a minor, a civil war from his father; and afterwards, by his imbecility and imprudence, was involved in calamities, from which nothing leſs than the good fortune, and the great abilities, of his ſon Edward the Firſt could have extricated him. The charters granted by the former of thoſe two princes were evidently the fruit of theſe difficulties *.

2. Another circumſtance which, in that early period, produced a peculiar exaltation of the monarchy in France, was the forfeiture of Normandy by the king of England, and the reduction of that extenſive country into an immediate fief of the French crown. This forfeiture, though the particular time when it happened might be accidental, was to be expected, as I formerly took notice, from the ſituation of that country, with reſpect to the king of England, the immediate ſuperior, and to the king of France, the lord paramount. The effect of ſo great an acceſſion of revenue and influence to the French crown was viſible; and Philip Auguſtus, in whoſe reign it happened, became evidently poſſeſſed of much greater authority than his predeceſſors.

No acquiſition of equal importance was made to the crown of England at this early period; for the ſettlement which was effected in Ireland, by Henry the Second, and which hiſtorians have been pleaſed to dignify with the ſplendid appellation of a conqueſt, was productive neither of wealth nor of authority to the Engliſh monarch; nor does it ap-

* It appears, that one of the charters granted by Henry III. was ſubſcribed by his ſon prince Edward. Blackſtone, Hiſtory of the Great Charters.

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pear, for ſeveral centuries, to have yielded any advantage whatever.

3. The inſular ſituation of Britain may be conſidered as a general cauſe of the ſlower advancement of the royal prerogative in England, than is to be found in the greater part of the modern kingdoms upon the continent of Europe. As, in the infancy of the government, the kingly office aroſe from the neceſſity of having a general to command the united forces of the ſtate, it was to be expected, that the oftener any ſovereign had occaſion to act in this capacity, his authority and dignity would ſooner arrive at maturity. During the time of a military enterprize, when the national forces, the great body of the people, were placed under the immediate direction of the king, they acquired habits of ſubmitting to his orders; their admiration was excited by his eminent ſtation or diſtinguiſhed proweſs; and they were taught by experience to look up to him as the principal ſource of honours and preferment. In times of peace, on the contrary, when the members of different baronies, or tribes, had retired to their ſeveral places of abode, they were, in a great meaſure, withdrawn from the influence of the king; and were accuſtomed to no other juriſdiction, or authority, but that of the baron or chief by whom they were protected. Even after the feudal governments had attained ſome degree of regularity, and when the ſovereign had acquired numerous branches of civil power, it ſtill was in the field that his pre-eminence attracted ſuperior attention, and that he had the beſt means of procuring popularity.

It ſeems reaſonable to conclude, therefore, that, upon the continent of Europe, where every ſovereign found his dominions ſurrounded by bordering nations, whom he was frequently tempted to invade, and againſt whom he was obliged to be conſtantly upon his guard, the moſt ample ſcope was afforded him for diſplaying thoſe talents, and for availing himſelf

himſelf of thoſe ſituations, which were beſt calculated for extending his authority. In England, on the other hand; a country in which there were fewer inducements to undertake a national war, and in which the military operations of the ſovereign were chiefly employed in quelling the diſturbances excited by his rebellious barons, or in repelling the inroads of the Scots, which were not of much more importance than the inſurrection of particular barons; he had fewer opportunities of exciting a national ſpirit in his favour; and conſequently found it more difficult to reduce the nobility into a ſtate of dependence.

The proſperous reign of Edward the Firſt, had undoubtedly a conſiderable effect in confirming and exalting the prerogative. This prince was equally diſtinguiſhed by his policy in the cabinet, and by his activity, courage, and conduct, in the field; at the ſame time that he does not appear, by any ſcrupulous regard to the principles of honour or juſtice, to have been, on any occaſion, prevented from directing thoſe talents to the purſuit of his own grandeur or emolument. By the conqueſt of Wales he not only gained an enlargement of dominion, but freed himſelf from the vexatious depredations, of a troubleſome neighbour. Had he lived ſomewhat longer, it is more than probable that he would alſo have compleated the entire conqueſt of Scotland; in which caſe, there is good ground to believe, that the reduction of the Northern and Southern parts of the iſland into one monarchy, would have been productive of ſuch advantages, to both countries, as might in ſome meaſure have atoned for the perfidy and injuſtice by which it was accompliſhed.

The reign of Edward the Second was no leſs adverſe to the influence of the crown, than that of his father had been favourable to it. By the total deficiency of that prince, in vigour and military capacity, he ſoon loſt all the acquiſitions which his father

ther had made in Scotland; and ſaw the independence of that kingdom completely re-eſtabliſhed.—For the internal adminiſtration of government he was equally diſqualified. The nobility of that age were, with difficulty, reconciled to the dignity and pre-eminence of the ſovereign; but they could not endure that any perſon of inferior condition ſhould, by the favour of the monarch, be exalted over them, and be inveſted with the exerciſe of the prerogative. The extreme facility of Edward ſubjected him, however to the conſtant dominion of favourites, in ſupporting whom he excited the indignation of the nobles; and the queen, whoſe affections had been ſeduced by Mortimer, and who ſeems to have thought herſelf better entitled than any other perſon to govern her huſband, having joined the malcontents, the king was formally depoſed by a meeting of parliament; was kept for ſome time in confinement; and at length barbarouſly murdered. The fate of this unhappy prince cannot fail to move compaſſion, as it proceeded from the weakneſs of his underſtanding, and even from the gentleneſs of his diſpoſition, more than from ambition, or any paſſion for arbitrary power: while it afforded a ſalutary leſſon to his ſucceſſors, by exhibiting a ſtriking example of the authority of parliament, to controul, and even to puniſh, the ſovereign.

The ſame power of the nobles, which had depoſed Edward the Second, advanced to the throne his ſon Edward the Third, while yet a minor. The early indications of genius, and of a martial diſpoſition, diſcovered by this prince, diſpelled very quickly the gloom which had for ſome time hung over the nation; and gave a total change to the aſpect of public affairs. He ſoon freed himſelf from the direction of the queen his mother; and put to death her favourite Mortimer, with little ceremony, and without much regard to the forms of juſtice. His firſt military enterprize was directed to the recovery of what

what his father had loſt in Scotland; in which, from the weak and diſorderly ſtate of that country, he met with little obſtruction; but he was prevented from the execution of this plan, by another object, which was thought of much greater importance, and which, during the remainder of his reign, ingroſſed his whole attention. This was his pretenſion, in right of his mother, to the crown of France; a claim which, though founded neither in juſtice nor expediency, was yet ſufficiently plauſible to palliate that love of extenſive dominion, with which not only princes, but even the people, in all ages and countries, have been almoſt conſtantly intoxicated. The conduct of Edward, in aſſerting this claim, was probably ſuch as every monarch of ſpirit, in that age, muſt have held, and in ſo doing was ſure of meeting with the general approbation of his ſubjects. As the undertaking, therefore, was crowned with unexpected and amazing ſucceſs, it is no wonder that the ſplendid victories obtained by this king, and by his ſon the Black Prince, who acted ſo conſpicuous a part in thoſe ſcenes, procured them the admiration as well as the affections of the whole Engliſh nation. While theſe two princes flattered the national vanity, by the proſpect of conquering ſo great a kingdom as France, they diſplayed all the talents and virtues which, in thoſe times, were ſuppoſed to enter into the compoſition of the moſt complete military character. Even at this day, when we contemplate the gallantry of the Black Prince, and the humanity and generoſity with which he treated the king of France, his priſoner, we muſt acknowledge that they are ſurpaſſed by nothing either in ancient or modern ſtory. Without detracting from the merit of this diſtinguiſhed perſonage, we are led at the ſame to conceive an exalted idea of the inſtitutions and manners of *chivalry*, which, in ſo rude a ſtate of ſociety, were capable, among people of the better ſort, of promoting

promoting ſo much delicacy of ſentiment, and of encouraging any individual to form ſuch a perfect model of propriety and refinement.

In the courſe of his long war againſt France, the king obtained, more and more, an aſcendant over thoſe nobles who followed his banner, and were ſmitten by an univerſal enthuſiaſm to diſtinguiſh themſelves in that illuſtrious field of national glory. His adminiſtration at home was equally prudent and vigorous, and calculated to reſtrain injuſtice, as well as to command reſpect. Though not diſpoſed to relinquiſh any part of his prerogative, he appears to have had a real regard for the ancient conſtitution; and though he acquired greater authority than was poſſeſſed by the former kings of England, he confirmed, on many occaſions, the great charters of his predeceſſors. He was under the neceſſity of making large and frequent demands of money from his ſubjects; but, as he endeavoured in moſt caſes, to procure it by the concurrence of parliament, and as the nation entered heartily into the views which gave occaſion to ſo much expence, the ſupplies which he required were commonly furniſhed without any complaint. His numerous applications to the national aſſembly contributed beſides, to aſcertain its powers and privileges, as well as to eſtabliſh and reduce into order the forms and method of its procedure.

It merits attention, that, notwithſtanding the alacrity with which the Engliſh nation ſupported the claim of their ſovereign to the crown of France, the parliament ſeem to have been alarmed at the idea of falling under the government eſtabliſhed in that country; and, to remove this apprehenſion, a ſtatute was made, in which the king expreſsly declares, that the realm and people of England "ſhall not, in any time to come, be put in ſubjec-"tion nor in obeiſance of us, nor of our heirs nor "ſucceſſors, as kings of France, nor be ſubject nor "obedient

"obedient, but ſhall be free and quit of all man-
"ner of ſubjection and obeiſance aforeſaid, as they
"were wont to be in the time of our progenitors,
"kings of England, for ever *." From this precaution, it may be inferred, that the parliament underſtood the French monarchy, at this time, to be more abſolute than the Engliſh; and were afraid that their monarch, if he came to the poſſeſſion of that kingdom, might be led to exerciſe over them a power inconſiſtent with the conſtitution of England.

The reign of Richard the Second is, in many reſpects, a repetition of the ſame diſguſting and melancholy ſcenes, which that of his great grandfather, Edward the Second had exhibited. In each of them we behold a young prince aſcending the throne with great advantages; regarded by the nation with a partiality and affection derived from paternal connections; incurring the general contempt and indignation, by his folly and miſconduct; governed, through the whole courſe of his adminiſtration, by favourites; dethroned at length by parliament, impriſoned, and brought to a tragical end. But the occurrences, in the time of Richard, were accompanied with circumſtances which, in a review of the Engliſh government, are more particularly worthy of obſervation.

This reign affords a memorable example of the interference of parliament for the removal of the king's miniſters. To the addreſs which was preſented for this purpoſe, Richard is ſaid to have anſwered, that, *at the deſire of parliament, he would not remove the meaneſt ſcullion of his kitchen.* Having occaſion for a ſubſidy, however, which could not otherwiſe be obtained, he was obliged to comply with their demand: the earl of Suffolk, the chancellor, was not only removed from his office, but

* 14 Edw. III.

impeached.

impeached, and found guilty of misdemeanours; an inquiry was ordered into the disposal of the public revenue; and a commission was granted by parliament, to fourteen persons, for the space of a twelvemonth, to concur with the king in the administration of government.

To these regulations Richard submitted no longer than till he thought himself in a condition to oppose them; and it soon became evident, that he had formed a resolution of extending his prerogative beyond its ancient limits. For this purpose he consulted with the principal judges and lawyers of the kingdom; from whom he found no difficulty in procuring an unanimous opinion agreeable to his wishes. Whatever may be the virtue of individuals, it is not to be expected that a body of men, sprung very frequently from a low origin; bred up in the habits of a gainful profession; whose views must be continually directed towards preferment and the emoluments of office; soldiers of fortune and whose fortune depends chiefly upon the favour of the crown; will be disposed to stand forth in critical times, and expose themselves to much hazard in maintaining the rights of the people.

This design was frustrated by the vigour and activity of the nobles, who levied a great army, and defeated that of the crown. The king's ministers made their escape; but in their absence were impeached, and their estates confiscated. Two persons of note, one of whom was the famous Tresilian, chief justice of the king's bench, who happened to be caught, were tried and executed. The rest of the judges, who had concurred in the opinions above-mentioned, were banished to Ireland.

The behaviour of the king, in this situation, was abject and mean, in proportion to his former haughtiness. At an interview with the nobles, he is said to have answered their reproaches with a flood of tears. But Richard was possessed of a high degree

of obſtinacy; a quality which is frequently connected with inferiority of underſtanding: whether it be that the ſame ſtupidity, which leads men into error, puts them out of the reach of conviction by reaſoning; or that, in proportion as they are incapable of examining objects on every ſide, they are commonly ſelf-conceited and opinionative.

The parliament being then compoſed of two houſes, as will be mentioned more fully hereafter, it was perceived, by the adviſers of this infatuated prince, that the eaſieſt method of carrying his views into execution, was by dividing that aſſembly, and in particular, by procuring a majority in the houſe of commons. We accordingly find, that, by adhering invariably to the ſame plan; by directing the nomination of ſheriffs, and of the principal magiſtrates of boroughs; and by employing the intereſt and addreſs of all thoſe different officers in the election and return of repreſentatives, this object was, in a few years, entirely accompliſhed. The king now ventured to avow his pretenſions to abſolute power; and in a meeting of parliament, in the year 1397, the opinions of the judges, which had been formerly condemned, were approved of and ratified; the chief heads of the ariſtocracy were put to death, or baniſhed; the duke of Gloceſter, the king's uncle, was privately murdered; and to ſuperſede the neceſſity of calling the national aſſembly for the future, a committee was appointed, conſiſting of twelve peers, and ſix commoners, upon whom the authority of both houſes was devolved.

This expedient of the crown, to pack the houſe of commons, is the firſt of the kind that occurs in our hiſtory; and it muſt be conſidered as forming a remarkable æra in the Britiſh conſtitution. It ſhows, in the firſt place, the limited nature of our ancient government; ſince, notwithſtanding the late advances of the regal authority, the king, in order to carry his meaſures, was obliged to employ ſuch indirect

indirect means for procuring the concurrence of parliament.

It proves alſo, that political conſideration was not, at this period, confined to the greater nobility; but that men of ſmall property, and of inferior condition, the repreſentatives of counties and boroughs, were poſſeſſed of ſo much intereſt as enabled them, by throwing their weight into the ſcale of the ſovereign, to beſtow upon him an entire aſcendant over the national council.

From the conſequences which followed this undue influence, acquired by the king over the houſe of commons, we may plainly perceive that a ſpirit of liberty, or, if you will, of oppoſition to the tyranny of the crown, was even then diffuſed, in ſome meaſure, over the nation. Finding that he was now maſter of the reſolutions of parliament, Richard ſuppoſed the diſpute was at an end; was therefore lulled in perfect ſecurity; and abandoned himſelf to the dictates of his own arbitrary will. But the people ſaw, with concern, that they had been betrayed by their own repreſentatives; their indignation and reſentment were excited, and they became ripe for a general inſurrection. The leaders of the malcontents caſt their eyes upon the duke of Hereford, the eldeſt ſon of the duke of Lancaſter; who, by the injuſtice of the king, had been ſent into exile, and afterwards excluded from the inheritance of his father's large poſſeſſions. This nobleman, the moſt diſtinguiſhed by his rank and accompliſhments, was invited to put himſelf at the head of the conſpiracy, for the purpoſe of redreſſing his own private injuries, no leſs than of delivering the nation from tyranny and oppreſſion. Richard, mean while, went over to Ireland, in order to quell the diſturbances of that country; and thus gave to his enemies the opportunity which they wanted of executing their deſigns. The general ſentiments of the people were made abundantly evident by the

events which followed. The duke of Hereford landed at Ravenſpur, in Yorkſhire, with no more than eighty attendants; but in a ſhort time found himſelf at the head of an army amounting to ſixty thouſand. The duke of York on the other hand, who had been left regent of the kingdom, aſſembled a body of troops to the number of forty thouſand; but theſe, from diſſaffection, were unwilling to fight; and being therefore diſbanded, they immediately joined the enemy. Another army having been tranſported by the king from Ireland, were infected with the ſame ſpirit; and the greater part of them deſerted the royal ſtandard.

Richard, abandoned by the whole nation, was forced to ſubſcribe an inſtrument of *reſignation*, in which he acknowledged himſelf unworthy to govern the kingdom. An accuſation for miſbehaviour, conſiſting of no leſs than thirty-five articles, was preferred againſt him to parliament, and univerſally approved of: after which, this prince was ſolemnly depoſed by the ſuffrages of both houſes; and the crown was conferred on the duke of Hereford.

It is remarkable, according to the obſervation of an eminent writer, "that theſe extremities fell upon "Richard the Second, at a time when every thing "ſeemed to contribute to his ſupport in the exerciſe "of that arbitrary power which he had aſſumed. "Thoſe whom he had moſt reaſon to fear, were "removed, either by violent death or baniſhment; "and others were ſecured in his intereſt by places, "or favours at court. The great offices of the "crown, and the magiſtracy of the whole king-"dom, were put into ſuch hands as were fit for his "deſigns; beſides which he had a parliament en-"tirely at his devotion; but all theſe advantageous "circumſtances ſerved only to prove, that a prince "can have no real ſecurity againſt the juſt reſent-"ments of an injured and exaſperated nation; for, "in ſuch governments as that of England, all en-

" deavours uſed by the king to make himſelf abſo-
" lute, are but ſo many ſteps towards his own
" downfal*."

The right of Henry the Fourth to the crown of England was derived from the authority of parliament, confirmed by the voice of the whole kingdom. No tranſaction of the kind was ever compleated with greater unanimity. But although, in that age, the people gave way to their natural feelings in dethroning an arbitrary and tyrannical prince, they were probably little accuſtomed to reaſon upon thoſe philoſophical principles, by which, in caſes of extreme neceſſity, the right of doing ſo may be vindicated. Even ſo late as the revolution, in the year 1688, when the neceſſity and propriety of the ſettlement, which then took place, was univerſally underſtood, the parliament were unwilling to avow, in expreſs terms, that power which they were determined to exerciſe; they had recourſe to childiſh evaſions, and fictitious ſuppoſitions; and the abſurd pretext of an *abdication* was employed to cover the real depoſition of the ſovereign. It is not ſurpriſing, therefore, that, in the days of Richard the Second, the ſpeculative opinions of men, concerning points of this nature, were looſe and fluctuating. Henry appears to have been ſenſible of this; and founds his claim to the throne upon three different circumſtances; upon the mal-adminiſtration of Richard; upon the right of conqueſt; and upon a popular, though probably a groundleſs tradition, that, by his mother, he was deſcended from Henry the Third, by an elder brother of Edward the Firſt, who, on account of his perſonal deformity, had been excluded from the ſucceſſion to the crown. Theſe particulars, however, are jumbled together, in a manner calculated to avoid a minute inveſtigation. " In the name of Fadher, Son, and Holy

* Remarks upon the Hiſtory of England by H. Oldcaſtle.

" Ghoſt,"

" Ghoſt," ſays he, I Henry of Lancaſter challenge " this rewme of Ynglande, and the crown, with " all membres and appurtenances; als I that am " deſcendit by right line of the blode, coming fro " the gude king Henry therde, and throge that " right that God of his grace hath ſent me, with " helpe of kyn, and of my friends, to recover it; " the which rewme was in poynt to be ondone by " defaut of governance, and ondoying of the " gude lawes."

As no credit ſeems due to this connection with Henry the Third; ſo it muſt be admitted, that, ſuppoſing it neceſſary to ſet aſide Richard the Second, for *defaut of governance*, Henry the Fourth was not, according to the eſtabliſhed rules of ſucceſſion, the next heir of the crown. He was the grandſon of Edward the Third, by the duke of Lancaſter, third ſon of that monarch. But the duke of Clarence, Edward's ſecond ſon, had left a daughter, who was married into the houſe of Mortimer, and whoſe grandſon, the earl of Marche, now a boy of ſeven years of age, was the repreſentative of that family.

In examining this point, however, it ought to be remembered, that by the rules of ſucceſſion eſtabliſhed among rude and warlike nations, what is called the right of *repreſentation* is unknown, and the nearer deſcendants of a family are frequently preferred to the more diſtant; as alſo, that, upon ſimilar principles, female relations are uſually excluded by the males. According to the early laws of almoſt all Europe, the title of Henry the Fourth to the crown was therefore preferable, from both of theſe conſiderations, to that of the earl of Marche. A contrary cuſtom, indeed, in conſequence of more improved manners, had undoubtedly been gaining ground, before this competition became an object of attention; but we muſt not ſuppoſe that it had yet become univerſal, or had acquired ſuch a degree of ſtability, as the peaceful ſituation, and the ſcientific

views of a poliſhed age, have ſince beſtowed upon it.

But whatever might be the opinions of parliament, or of the people, upon this point, the preference of Henry to any other competitor was at this time, a matter of the higheſt expediency, if not of abſolute neceſſity. To dethrone a prince, who had for years been eſtabliſhing a ſyſtem of abſolute power, and who had given proofs of his violent and ſanguinary diſpoſition, was a meaſure no leſs dangerous than it was difficult; and the ſucceſsful execution of it could only be expected under a leader of great popularity, weight, and abilities. Henry appears to have been the only perſon in the kingdom qualified for conducting ſuch an enterpriſe, and likely to ſecure the public tranquillity under the new eſtabliſhment. To depoſe Richard, and at the ſame time to commit the reins of government to a perſon who, in that extraordinary exigence, was manifeſtly incapable of holding them, would have been to attempt the abolition of deſpotiſm by ſubſtituting anarchy in its place; and wantonly to introduce a revolution, at the hazard of much bloodſhed and injuſtice, but with no reaſonable proſpect that it could be productive of any laſting advantages.

Henry the Fourth enjoyed, however, but little tranquility in the poſſeſſion of that ſovereign power which was thus conferred upon him. The great lords, who had taken a diſtinguiſhed part in placing him on the throne, and who probably over-rated their ſervices, became diſſatisfied with that ſhare of the royal favour and confidence which he thought proper to beſtow upon them; and were diſpoſed to believe they might eaſily pull down that fabric which they themſelves had erected. The perſevering activity, the deliberate valour, and ſound policy, diſplayed by this monarch through the whole of his conduct, enabled him to cruſh thoſe frequent conſpiracies which were formed againſt him;

him; although it muſt be admitted, that his uncommon talents, which were uniformly exerted for this purpoſe, during a reign of thirteen years, were hardly ſufficient to recover the prerogative from the ſhock which it had received by the depoſition of his predeceſſor.

The ſplendid character of Henry the Fifth; his courage and magnanimity; his clemency, moderation, and humanity; his engaging appearance and deportment; his affability, addreſs, and popular manners; together with his renewal of the claim to the kingdom of France, and his invaſion of that country, accompanied with moſt aſtoniſhing ſucceſs; theſe circumſtances revived the flattering and deluſive proſpects entertained by the Engliſh in the days of Edward the Third; and, by ſeizing the national enthuſiaſm, reinſtated the crown in that authority and dignity which it had formerly maintained.

But the death of that monarch produced a ſad reverſe in the ſtate of the kingdom. By the long minority of Henry the Sixth, and his total incapacity, after he came to be of age; by the diſaſters which befel the Engliſh in proſecuting the war with France; and by their entire expulſion from that country, without the leaſt hope of recovering it; the people were filled with diſcontent; were inſpired with contempt of their ſovereign; and of courſe were diſpoſed to liſten to any objections againſt the title by which his family had obtained the crown.—In the preceding reign thoſe objections were held to be of ſo little moment, that Henry the Fifth diſcovered no jealouſy or apprehenſion of the earl of Marche, the lineal heir of Richard; and there even ſubſiſted between them an intercourſe of mutual confidence and friendſhip; a circumſtance which reflects great honour both upon the king and upon that nobleman. As the right of the governing family had been confirmed by a poſſeſſion of three ſucceſſive

ſucceſſive reigns, it would not, in all probability have now been called in queſtion, had not the weakneſs and misfortunes of the preſent adminiſtration deſtroyed all reſpect to the government, and excited uncommon diſſatisfaction.

Upon the death of the earl of Marche without heirs male, the duke of York, in right of his mother, was now become the repreſentative of that family; and from the extenſive property poſſeſſed by this nobleman, together with his powerful connections, in conſequence of various alliances among the principal nobility, he found himſelf in a condition to aſſert that claim to the crown, which had been over-ruled by the prevailing aſcendant of the houſe of Lancaſter. It is needleſs to enter into particulars of the famous contention between thoſe two branches of the royal family; which was continued through the reigns of Henry the Sixth, of Edward the Fourth, and of Richard the Third; and which, during a period of about five-and-thirty years, filled the kingdom with diſorder and with blood. That this long-continued civil war in which different princes were alternately ſet up and dethroned by the different factions, and in which all public authority was trampled under foot, was extremely unfavourable to the prerogative, will readily be admitted. It cannot however eſcape obſervation, that in the courſe of this violent contention, the nobles were not, as in ſome former diſputes, leagued together in oppoſition to the king; but, by eſpouſing the intereſt of different candidates, were led to employ their whole force againſt one another. Though the crown, therefore, was undoubtedly weakened, the nobility did not receive proportional ſtrength and the tendency of this melancholy ſituation was not ſo much to increaſe the ariſtocracy, as to exhauſt and impoveriſh the nation, and to deſtroy the effect of all ſubordination and government.

When

When we conſider, in general, the ſtate of the Engliſh conſtitution, from the acceſſion of Edward the Firſt, to that of Henry the Seventh, we muſt find ſome difficulty to aſcertain the alterations produced in the extent of the regal authority. That the powers of the monarch were, upon the whole, making advances during this period, it ſhould ſeem unreaſonable to doubt; but this progreſs appears to have been ſlow, and frequently interrupted. If, in the vigorous and ſucceſsful reigns of Edward the Firſt, of Edward the Third, and of Henry the Fifth, the ſceptre was remarkably exalted, it was at leaſt equally depreſſed by the feeble and unfortunate adminiſtration of Edward the Second, of Richard the Second, and of Henry the Sixth. By what circumſtances the prerogative acquired additional ſtrength under the princes of the Tudor family, we ſhall afterwards have occaſion to examine.

CHAP. VI.

Hiſtory of the Parliament in the ſame Period.

AMONG the important ſubjects of inquiry, which diſtinguiſh the period of Engliſh hiſtory, from the acceſſion of Edward the Firſt to that of Henry the Seventh, our firſt attention is naturally directed to the changes which affected the legiſlative power; by the introduction of repreſentatives into parliament; by the diviſion of that aſſembly into two houſes, attended with the appropriation of peculiar powers to each of them; and laſtly, by the ſubſequent regulations, with reſpect to the right of electing

ing members of the national council. Theſe particulars appear to be of ſuch magnitude, as to deſerve a ſeparate examination.

SECT. I. *The Introduction of the Repreſentatives of Counties and Boroughs into Parliament.*

THE parliament of England, from the time of William the Conqueror, was compoſed, as I formerly took notice, of all the immediate vaſſals of the crown, the only part of the inhabitants that, according to the feudal conſtitution, could be admitted into the legiſlative aſſembly. As the Engliſh nobility had accumulated extenſive landed property, towards the latter part of the Anglo-Saxon government; as yet larger territories were acquired by many of thoſe Norman barons who ſettled in England at the time of the conqueſt; and as the converſion of allodial into feudal eſtates, under the crown, occaſioned no diminution in the poſſeſſions of individuals; the original members of parliament muſt have been, for the moſt part, men of great power, and in very opulent circumſtances. Of this we can have no doubt, when it is conſidered that, in the reign of William the Firſt, the vaſſals of the crown, as I formerly had occaſion to obſerve, did not amount to more than ſix hundred, and that, excluſive of the royal demeſne, the whole land of the kingdom, in property or ſuperiority, was divided among ſo ſmall a number of perſons. To theſe opulent barons, attendance in parliament was a duty which they were ſeldom unwilling to perform; as it gave them an opportunity of aſſerting their privileges, of courting preferment, or of diſplaying their influence and magnificence. But in a long courſe of time, the members of that aſſembly were ſubjected to great revolutions; their property was frequently diſmembered, and ſplit into ſmaller diviſions; their number was thus greatly increaſed; while

while the conſideration and rank of individuals were proportionably impaired; and many of thoſe who had appeared in eminent ſtations were reduced to poverty and obſcurity. Theſe changes proceeded from the concurrence chiefly of three different cauſes.

1. During that continual jealouſy between the king and the nobles, and that unremitting ſtruggle for power, which aroſe from the nature of the Engliſh conſtitution, it was the conſtant aim of the crown, from a conſciouſneſs of inferiority in force, to employ every artifice or ſtratagem for undermining the influence of the ariſtocracy. But no meaſure could be more effectual for this purpoſe, than to divide and diſmember the overgrown eſtates of the nobles; for the ſame wealth, it is evident, which became formidable in the hands of one man, would be of no ſignificance when ſcattered among twenty. As the frequent inſurrections and diſorders, which prevailed in the country, were productive of numberleſs forfeitures, they afforded the king opportunities of ſeizing the property of thoſe barons who had become obnoxious to him, and of either annexing it to the crown or diſpoſing of it at pleaſure. In this manner a conſiderable part of the land in the kingdom, during the courſe of a century or two, paſſed through the hands of the ſovereign, and, being diſtributed in ſuch parcels as coincided with his views of policy, gave riſe to a multiplicity of petty proprietors, from whoſe exertions he had no reaſon to fear much oppoſition to the progreſs of his authority.

2. Another circumſtance, which contributed ſtill more effectually, though perhaps more ſlowly and gradually, to diminiſh the eſtates of the crown-vaſſals, was the advancement of arts and manufactures.

The irruption of the Gothic nations into the Roman empire; the ſtruggles which took place during their

their conqueſt of the different provinces; the ſubſequent invaſions carried on by new ſwarms of the ſame people, againſt the ſtates erected by their predeceſſors; the violent convulſions, which, in a great part of Europe, were thus continued through the courſe of many centuries, could not fail to deſtroy all induſtry, and to extinguiſh the mechanical as well as the liberal profeſſions. The rude and barbarous manners of the conquerors were, at the ſame time, communicated to thoſe countries which fell under their dominion; and, the fruits of their former culture and civilization being gradually loſt, the inhabitants were at length ſunk in univerſal ignorance and barbariſm.

When theſe diſorders had riſen to a certain pitch, the countries which had ſo long poured out their inhabitants, to diſturb the peace of Europe, put a ſtop to their depredations. The Northern hive, it has been ſaid, was then exhauſted. Thoſe countries, however, were in reality ſo far from being drained of inhabitants, that they had increaſed in population. But they had become a little more civilized; and conſequently, had leſs inclination to roam in queſt of diſtant ſettlements, or to procure ſubſiſtence by the plunder of nations who were now in a better condition to withſtand them.

The greater tranquility which was thenceforward enjoyed by the ſtates that had been formed upon the ruins of the Roman empire, gave the people more leiſure and encouragement to introduce regulations for ſecuring property, for preventing mutual injuries, and for promoting their internal proſperity. That original diſpoſition to better their circumſtances, implanted by nature in mankind, excited them to proſecute thoſe different employments which procure the comforts of life, and gave riſe to various and ſucceſſive improvements. This progreſs was more or leſs accelerated, in different countries, according as their ſituation was more favourable to navigation

navigation and commerce; the firſt attention of every people being uſually turned to the arts moſt eſſential to ſubſiſtence, and in proportion to the advancement of theſe, being followed by ſuch as are ſubſervient to conveniency, or to luxury and amuſement. The eleventh and twelfth centuries have been marked by hiſtorians as preſenting, in modern times, the firſt dawn of knowledge and literature to the Weſtern part of Europe; and from this period we begin to trace the rude footſteps of manufactures, in Italy, in France, and in the Netherlands.

The communication of the Normans with England, in the reign of Edward the Confeſſor, which began in 1041, and ſtill more from that of William the Conqueror, contributed to ſpread, in this iſland, the improvements which had made a quicker progreſs upon the continent; the common arts of life were now more and more cultivated; tradeſmen and mercantile people were gradually multiplied; foreign artificers, who had made proficiency in various branches of manufacture, came and ſettled in England; and particular towns, upon the coaſts of the ſea, or of navigable rivers, or which happened to be otherwiſe advantageouſly ſituated, began to extend their commerce.

This alteration in the circumſtances of ſociety, which became more and more conſpicuous through the reigns of the ſeveral princes of the Norman and Plantagenet race, was productive, as we may eaſily ſuppoſe, of a correſpondent variation of manners. The proprietors of land, for whoſe benefit the new improvements were chiefly intended, endeavoured to render their ſituation more comfortable, by purchaſing thoſe conveniencies which were now introduced; their ancient plainneſs and ſimplicity, with reſpect to the accommodations of life, were more and more deſerted; a mode of living more expenſive, and ſomewhat more elegant, began to take place; and even men of ſmaller for-

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tunes were tempted, in this, as well as in moſt other particulars, to follow the example of their ſuperiors. By an increaſe of their annual expence, without any addition to their annual revenue, many individuals, therefore, were laid under difficulties; found it neceſſary to contract debts; and, being ſubjected to incumbrances, were at laſt obliged to diſmember and alienate their eſtates.

To this general cauſe of alienation, we may add the epidemical madneſs of the cruſades, by which many perſons were induced to ſell or mortgage their poſſeſſions, that they might put themſelves in a condition for bearing a part in thoſe unproſperous and expenſive expeditions.

It may accordingly be remarked, that as, about this time, the commerce of land was rendered more frequent, it was gradually freed from thoſe legal reſtraints to which it had anciently been ſubjected. According to the ſimplicity of manners which had prevailed among the rude inhabitants of Europe, and which had kept eſtates invariably in the ſame families, no perſon was underſtood to have a right of ſquandering his fortune to the prejudice of his neareſt relations*. The eſtabliſhment of the feudal ſyſtem produced an additional bar to alienation, from the circumſtance that every vaſſal, being a military ſervant, and having obtained his land as a conſideration for ſervices to be performed, could not transfer the property without the conſent of his maſter. In England, upon the dawnings of improvement after the Norman conqueſt, perſons who had acquired an eſtate by purchaſe, were permitted to diſpoſe of it at pleaſure; and in towns, the inhabitants of which became familiar with commerce, the ſame privilege was probably ſoon extended to every tenement, however acquired. When the diſpoſition to alienate became ſomewhat more general

* Vide L. L. Aelfred, c. 37.

over

over the country, the conveyance, even of eſtates deſcending by inheritance, was executed, in a manner conſiſtent with feudal principles, by *ſubinfeudation*; the purchaſer became the vaſſal of the perſon who ſold the lands, and who ſtill continued liable to the chief lord for all the feudal obligations. But in the reign of Edward the Firſt a ſtatute was made, by which an unbounded liberty was given to the alienation of landed property; and when any perſon ſold an eſtate, the ſuperior was bound to receive the purchaſer as his immediate vaſſal*.

3. By the courſe of legal ſucceſſion, the property of the crown vaſſals, or members of parliament, was alſo frequently broken and diſmembered. The right of primogeniture, indeed, which, among the feudal nations, was introduced in order to ſhelter the individuals of every family under the protection of their own chief or leader, prevented, ſo far as it went, the diviſion of eſtates by inheritance. But primogeniture had no place in female ſucceſſion. Beſides, the improvements of ſociety, by enlarging the ideas of mankind, with relation to property, contributed to extend and to multiply *deviſes*, by which even landed poſſeſſions were bequeathed at pleaſure; and according to the ſituation or caprice of the owner, were liable to be ſplit and diſtributed among different perſons.

When the alienation of eſtates, together with thoſe diviſions of landed property which aroſe from female ſucceſſion, or from deviſe, had proceeded ſo far as to threaten the deſtruction of great families, the nobility took the alarm, and had recourſe to the artifice of entails for preſerving their opulence and dignity. In the reign of Edward the Firſt, they are ſaid to have extorted from the king a remarkable ſtatute, by which the privilege of entailing was

* The famous ſtatute *quia emptores*, paſſed in the 18th of Edward I. This law was farther extended, or at leaſt received a more liberal interpretation, in the reign of Edward III.

greatly

greatly extended; from which it may be inferred that there had appeared, about this time, a ſtrong diſpoſition to alienate and diſmember eſtates; ſince, in order to check the progreſs of the evil, this extraordinary remedy was thought requiſite*.

Theſe changes in the ſtate of landed property had neceſſarily an extenſive influence upon the government, and more eſpecially upon the intereſt and political views of thoſe perſons who compoſed the national council. Many of the crown-vaſſals were now, from the ſmallneſs of their fortune, unable to bear the expence of a regular attendance in parliament: at the ſame time that they were diſcouraged from appearing in that aſſembly; where, inſtead of gratifying their ambition, they were more likely to meet with ſituations to mortify their vanity, by expoſing the inſignificance into which they had fallen. They were no longer in a condition to view the extenſions of the royal prerogative with an eye of jealous apprehenſion; but had commonly more cauſe of complaint againſt the great barons, who lived in their neighbourhood, and by whom they were frequently oppreſſed, than againſt the ſovereign, whoſe power, being more diſtant, and operating in a higher ſphere, gave them leſs diſturbance.

But while, from theſe conſiderations, the ſmall barons were diſpoſed, in many caſes, to withdraw themſelves from the meetings of parliament, the king had commonly an intereſt in requiring their punctual attendance; becauſe he found it no difficult matter to attach them to his party, and by their aſſiſtance was enabled to counterbalance the weight of the ariſtocracy. On every occaſion, therefore, where any meaſure of public importance was to be agitated, the king was uſually ſolicitous that many

* This was the ſtatute of Weſtminſter *de donis conditionalibus*. 13 Edward I. c. 1. By which it was provided, that an eſtate left to a perſon, and the *heirs of his body*, ſhould in all caſes go to the iſſue, if there was any; if not, ſhould revert to the donor.

of

of the poorer members of parliament ſhould be preſent; and a great part of theſe, on the other hand, were continually excuſing themſelves from ſo burdenſome a ſervice. The longer the cauſes which I have mentioned had continued to operate, in dividing and diſmembering landed eſtates, the number of crown-vaſſals, deſirous of procuring an exemption from this duty, became ſo much the greater.

Comparing the condition of the different landholders of the kingdom, towards the latter part of the Anglo-Saxon government, and for ſome time after the Norman conqueſt, we may obſerve a ſimilar diſtinction among them, proceeding from oppoſite cauſes. In the former period, when people of ſmall fortune were unable to ſubſiſt without the protection of their ſuperiors, the property of many allodial proprietors was gradually accumulated in the hands of a few, and thoſe who poſſeſſed a landed territory of a certain extent, acquiring ſuitable conſideration and rank, were diſtinguiſhed by the title of *proceres*, or chief nobility. Under the firſt Norman princes, when the dependence of the lower ranks had produced its full effect in the completion of the feudal ſyſtem, the owners of ſmall eſtates were almoſt entirely annihilated; and in the condition of thoſe opulent barons among whom the kingdom came to be divided, no difference was probably acknowledged. But when the revival of arts, and the progreſs of the people towards independence, had begun to diſmember eſtates, and to multiply the vaſſals of the crown, the diſproportion between the property of individuals became, once more, conſpicuous; and the former diſtinction between the *great* and *ſmall* barons excited the attention of the legiſlature.

The prior accumulation, and the ſubſequent diſſipation, of wealth, had in this reſpect a ſimilar effect. In amaſſing great fortunes ſome of the barons were neceſſarily more ſucceſsful than others, which rendered eſtates extremely unequal. In that ſtate of

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ſociety which tempted men to ſpend, or promoted the diviſion of their eſtates, ſome proprietors proceeded likewiſe in this career with greater rapidity, by which the ſame inequality was produced.

In the great charter of king John it is ordained, that the archbiſhops, biſhops, earls, and *greater barons*, ſhall be ſummoned to the meetings of parliament, by particular letters from the king; and that all other perſons, holding immediately of the crown, ſhall receive a general citation from the king's bailiffs or ſheriffs. But, although the more opulent vaſſals of the crown are thus clearly exalted above thoſe of inferior wealth, and dignified with particular marks of reſpect, it is difficult to aſcertain the extent of property by which thoſe two orders of men were ſeparated from each other. That the ſtatute has a reference to ſome known boundary between them, can hardly be doubted; but whether, in order to obtain the rank and title of a *great baron*, an eſtate amounting to forty hides of land was requiſite, agreeable to the diſtinction of the *chief nobility* in the reign of Edward the Confeſſor; or whether the qualification in point of property had been varied according to the alteration of times and circumſtances, no account can be given.

The effect of a regulation for ſummoning the ſmall barons to parliament, by a general citation only, was to place them in greater obſcurity, and to encourage their deſertion, by giving them reaſon to hope that it would paſs without obſervation. In ſuch a ſituation, however, where a complete and regular attendance was not to be expected, and where each individual was endeavouring to excuſe himſelf, and to throw as much as poſſible of the burden upon his neighbours, an agreement would naturally be ſuggeſted to the inhabitants of particular diſtricts, that they ſhould relieve and ſucceed each other by turns, in the performance of this duty; and thus contribute to their natural eaſe and advantage, by ſharing among

among them an inconvenience which they could not entirely avoid. Of theſe joint meaſures, it was an obvious improvement, that, inſtead of a vague and uncertain rotation, particular perſons, who appeared the beſt qualified for the taſk, and were moſt willing to undertake it, ſhould be regularly elected, and ſent, at the common expence, to repreſent their conſtituents in parliament. Nor can it be doubted that the king would be highly pleaſed with ſuch an expedient, by which he ſecured a proportion of the ſmall barons in the ordinary meetings of the national council, and which did not hinder him from convening a greater number on extraordinary occaſions.

In this manner the knights of ſhires appear to have been firſt introduced into parliament. The date of this remarkable event cannot be fixed with preciſion; but it was undoubtedly as early as the reign of Henry the Third*. The diviſion of counties produced a ſeparate aſſociation among the crown vaſſals, in each of thoſe diſtricts, for electing their own repreſentatives. The number of theſe appears to have been originally precarious, and probably was varied in different emergencies. On different occaſions we meet with four knights called from each county; but they were gradually reduced to two, the ſmalleſt number capable of conſulting together for the intereſt of their conſtituents†.

* The records of parliament, for ſeveral reigns after the Norman conqueſt, are in a great meaſure loſt, having probably, during the barons wars, been deſtroyed alternately by each prevailing party, who found them unfavourable to their intereſt. [Prynne's preface to Cotton's Abridg. of Records in the Tower.] This circumſtance accounts for the great obſcurity in which, after all the labour of antiquaries, the origin of ſo great a change in the conſtitution of that aſſembly ſtill remains. The firſt introduction of repreſentatives of counties may, with ſome probability, be traced as far back as the reign of king John. See Carte's Hiſt. Reign of Edw. I.

† In the eleventh year of Edward I. four knights were ſummoned for each county. [Brady's Hiſt. of England.] In the reign of John, there had been a writ iſſued to the ſheriff of Oxfordſhire, to return four knights for that county. Carte, in the reign of Edward I.

The ſame changes in the ſtate of the nation, which contributed principally to the riſe of the knights of ſhires, introduced likewiſe the burgeſſes into parliament.

By the advancement of agriculture, the peaſants, in many parts of Europe, had been gradually emancipated from ſlavery, and been exalted ſucceſſively to the condition of farmers, of tenants for life, and of hereditary proprietors. In conſequence of the freedom attained by this inferior claſs of men, a great proportion of them had engaged in mechanical employments; and, being collected in towns, where the arts were moſt conveniently cultivated, had, in many caſes, become manufacturers and merchants. The ſituation of theſe manufacturing and trading people enabled them, after the diſorders which prevailed in Europe had in ſome meaſure ſubſided, to make a rapid progreſs in improving their circumſtances, and in acquiring various immunities and privileges. By mutual emulation, and by the influence of example, the inhabitants of the ſame town were excited to greater induſtry, and to the continued exertion of their talents; at the ſame time that they were in a capacity of uniting readily for mutual defence, and in ſupporting their common intereſt. Being originally the tenants or dependants, either of the king or of ſome particular nobleman, upon whoſe demeſne they reſided, the ſuperior exacted from them, not only a rent for the lands which they poſſeſſed, but various tolls and duties for the goods which they exchanged with their neighbours. Theſe exactions, which had been at firſt precarious, were gradually aſcertained and fixed, either by long cuſtom, or by expreſs regulations. But, as many artifices had, no doubt, been frequently practiſed, in order to elude the payment of thoſe duties, and as, on the other hand, the perſons, employed in levying them were often guilty of oppreſſion; the inhabitants of particular towns, upon their increaſ-

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ing in wealth, were induced to make a bargain with the ſuperior, by which they undertook to pay a certain yearly rent, in the room of all his occaſional demands: and theſe pecuniary compoſitions, being found expedient for both parties, were gradually extended to a longer period, and at laſt rendered perpetual.

An agreement of this kind appears to have ſuggeſted the firſt idea of a *borough*, conſidered as a *corporation*. Some of the principal inhabitants of the town undertook to pay the ſuperior's yearly rent; in conſideration of which, they were permitted to levy the old duties, and became reſponſible for the funds committed to their care. As managers for the community, therefore, they were bound to fulfil its obligations to the ſuperior; and, by a natural extenſion of the ſame principle, it came to be underſtood that they might be proſecuted for all its debts; as, on the other hand, they obtained, of courſe, a right of proſecuting all its debtors. The ſociety was thus viewed in the light of a body politick, or fictitious perſon, capable of legal deeds, and executing every ſort of tranſaction by means of certain truſtees or guardians.

This alteration in the ſtate of towns was accompanied with many other improvements. They were now generally in a condition to diſpenſe with the protection of their ſuperior; and took upon themſelves the burden of keeping a guard, to defend them againſt a foreign enemy, and to ſecure their internal tranquillity. Upon this account, beſide the appointment of their own adminiſtrators, they obtained the privilege of electing magiſtrates, for diſtributing juſtice among them. They became, in a word, a ſpecies of *ſoccage tenants*, with this remarkable peculiarity in their favour, that by remaining in the ſtate of a corporation from one generation to another, they were not liable to the *incidents* be-

longing to a ſuperior, upon the tranſmiſſion of lands to the heirs of a vaſſal.

The preciſe period of the firſt incorporation of boroughs, in the different kingdoms of Europe, is not eaſily determined; becauſe the privileges ariſing from the payment of a fixed rent to the ſuperior, in the room of his caſual emoluments, and the conſequences which reſulted from placing the revenue of a town under permanent adminiſtrators, were ſlowly and gradually unfolded and brought into the view of the public. In the eleventh and twelfth centuries we may trace the progreſs, if not the firſt formation, of thoſe communities, in Italy and in Germany, which correſponds with the advancement of trade and manufactures in thoſe countries*. The towns in France are ſaid by Father Daniel to have been firſt incorporated in the reign of Lewis the Groſs; but it appears that they had then acquired conſiderable privileges, were intruſted with their own government, and the inhabitants were formed into a militia for the ſervice of the crown †.

In the reign of Henry the Firſt of England, the cotemporary of Lewis the Groſs, the inhabitants of London had begun to farm their tolls and duties, and obtained a royal charter for that purpoſe ‡. Their example was followed by the other trading towns, and from this time forward the exiſtence of Engliſh boroughs becomes more and more conſpicuous.

When the towns, under the immediate protection of the king, had been incorporated, and, of courſe

* With reſpect to the riſe of the cities of Italy, ſee Muratori Antiq. Ital. Med. Ævi, tom. iv. The advancement of the German free cities appears to have been rather poſterior to that of the Italian; their chief privileges having been acquired under the princes of the Swabian family. They attained their higheſt pitch of grandeur in conſequence of the famous Hanſeatick confederacy, which began in the year 1241. See Abregé de l'hiſtoire et du droit public d'Allemagne, par. M, Pleffel.

† M. Pleffel's Hiſtory of the reign of Lewis VII.

‡ Hume's Hiſtory of England.

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exalted into the rank of crown-vaſſals, it was agreeable to the general ſyſtem of the feudal policy, that they ſhould have a voice in the national council; and, more eſpecially, when extraordinary aids, beſide their conſtant yearly rent, were demanded from them, as well as from the other tenants *in capite*, that they ſhould have an opportunity of refuſing or conſenting to theſe demands. Their attendance in that aſſembly was, at the ſame time, of advantage to the ſovereign, and even more ſo than that of the ſmall barons; for the trading people, of all the inferior part of the nation, were the moſt liable to be inſulted and oppreſſed by the nobles, and were of conſequence proportionably attached to the monarch, who had found his account in protecting and ſupporting them.

It was impoſſible, however, that all the members of every royal borough ſhould aſſemble in order to deliberate upon the buſineſs of the nation; and in this, as well as in the ſeparate concerns of each reſpective community, it was natural for them to commit the adminiſtration to particular commiſſioners or repreſentatives. In England, accordingly, it appears, that, after the boroughs had been incorporated, and had been raiſed, by their trade, to a degree of conſideration and independence, they began to ſend repreſentatives into parliament. The records of parliament, as has been before remarked, during ſeveral reigns after the Norman conqueſt, have not been preſerved; ſo that it is no leſs uncertain at what preciſe time the burgeſſes, than at what time the knights of ſhires, made their firſt appearance in that aſſembly; but as thoſe two events proceeded from the ſame cauſe, the advancement of commerce and manufactures, it is probable that they were nearly coeval*.

* Sir Henry Spelman declares, that, from the moſt careful examination, he could find no traces of the repreſentatives of boroughs in parliament, before the latter part of the reign of Henry III. Gloſſar v. Parliamentum.

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In the great charter of king John, it is expreſsly ordained, that aids ſhall not be impoſed upon the boroughs without the conſent of parliament; from which it may be inferred, that thoſe communities had then acquired the rank of ſoccage tenants, and that matters were at leaſt ripened and prepared for their introduction into the councils of the nation. The firſt inſtance, upon record, of the burgeſſes attending in parliament, occurs in the forty-ninth year of the reign of Henry the Third; when they are ſaid to have been called by the famous earl of Leiceſter, in order to ſupport his ambitious views: but this is not mentioned by any hiſtorian as a late innovation; neither is it probable that this nobleman, at the very time when he was endeavouring to ſcreen himſelf from the reſentment of the nation, would have ventured to open a new ſource of diſcontent, by making a ſudden and violent change in the conſtitution. It is likely that ſome of the burgeſſes had been preſent in former parliaments; as we find that they afterwards were, upon two different occaſions, in the early part of the reign of Edward the Firſt: but the number of them was not fixed; nor were they accuſtomed to give a regular attendance.

The policy of Edward the Firſt led him to take hold of the circumſtances, which have been mentioned, for promoting the intereſt of the crown. In the twenty-third year of his reign, directions were given to ſummon regularly the knights of the ſhires, together with the burgeſſes; of which, after the example of the former, two were generally ſent by each borough; and from that period, both theſe claſſes of repreſentatives continued to be conſtant members of the legiſlature.

The ſame circumſtances, according as they exiſted more or leſs completely, in the other countries of Europe, were productive of ſimilar changes in the conſtitution of their national councils.

In Scotland, a country whoſe government and laws bore a great analogy to thoſe of England, not only from the common circumſtances which operated upon all the feudal nations, but alſo from that vicinity which produced an intercourſe and imitation between the two countries, the parliament, as far back as we can trace the records of Scottiſh hiſtory, appears to have been compoſed of the greater thanes, or independent proprietors of land. The repreſentatives of boroughs are ſuppoſed by hiſtorians to have been firſt introduced into its meetings during the reign of Robert Bruce; which correſponds to that of Edward the Second; but ſatisfactory evidence has lately been produced, that this event muſt have happened at an earlier period*. From the ſlow progreſs, however, of trade in Scotland, the number of burgeſſes in her national council was for a long time inconſiderable; and their appearance was limited to a few extraordinary caſes.

The repreſentatives of counties became conſtituent members of the Scottiſh parliament, by the authority of a ſtatute, which, being ſtill preſerved, affords great light with reſpect to the origin of this eſtabliſhment both in Scotland and in England. By that ſtatute it is provided, that the ſmaller vaſſals of the crown ſhould be excuſed from perſonal attendance in parliament, upon condition of their ſending repreſentatives, and maintaining them at the common expence. This regulation was introduced by James the Firſt; who, as he had reſided for many years in England, and was a prince of learning and diſcernment, had probably been induced to copy this branch of policy from the inſtitutions of a people, among whom the monarchy had made greater advances than in his own country. But the Scottiſh barons, whoſe poverty had given occaſion to this regulation, laid hold of the diſpenſation which

* See Dr. Stuart's acute reſearches into the ancient government of Scotland.

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it beſtowed upon them, without fulfilling the conditions which it required; and it was not until the reign of James the Sixth, that their obligation to ſend repreſentatives into parliament was regularly enforced*.

In France, the repreſentatives of boroughs, according to the moſt probable account, were firſt introduced into the national aſſembly in the reign of Philip the Fair; by whom they are ſaid to have been called for the purpoſe chiefly of conſenting to taxes †. It is remarkable, however that in the French *convention of eſtates*, no ſet of men, correſponding to the knights of ſhires in England, was ever admitted. The improvement of arts, in France as well as in England, contributed not only to raiſe the trading people, but alſo to diſmember the eſtates of many proprietors of land; but the king does not ſeem to have availed himſelf of that ſituation for obliging the ſmall barons to ſend repreſentatives into the national council. The greater authority poſſeſſed, about this period, by the French monarch, was probably the cauſe of his not reſorting to the ſame ſhifts, that were practiſed in England, to counterbalance the power of the ariſtocracy. That a ſovereign ſhould court the lower part of his ſubjects, and raiſe them to conſideration, with a view of deriving ſupport from them, is none of the moſt agreeable expedients; as nothing, we may ſup-

* In the reign of James the Firſt, we meet with two ſtatutes upon this ſubject. By act 1425, c. 52. it is required, that all the *freeholders* ſhall give perſonal attendance in parliament, and not by a *procurator*; unleſs they can prove a lawful cauſe of their abſence. Afterwards, by a ſtatute 1427, c. 102. it is enacted, "that the ſmall barons and free tenants need not "come to parliaments, provided that, at the head court of every "ſheriffdom, two or more wiſe men be choſen according to the extent of "the ſhire, who ſhall have power to hear, treat, and finally to determine all "cauſes laid before parliament; and to chuſe a *ſpeaker*, who ſhall *propone* all "and ſundry needs and cauſes pertaining to the commons in parliament."

From theſe two acts of parliament, it is evident the king had firſt endeavoured to enforce the attendance of all the ſmall barons; and, upon finding this impracticable, had reſorted to the expedient of introducing repreſentatives.

† This happened about the year 1300. See Paſquier Recherches de la France.

poſe,

poſe, but ſome very urgent neceſſity could make him think of ſubmitting to it.

The circumſtance now mentioned, created a moſt eſſential difference between the national council in France and in England; the latter, comprehending the repreſentatives of counties as well as of boroughs, and conſequently a large proportion of the people; whereas the former admitted no other repreſentatives but thoſe of boroughs, the number of which, in either country, was for a long time inconſiderable.

The free cities of Germany had, in the thirteenth century, acquired ſuch opulence as enabled them to form that famous Hanſeatick league, which not only ſecured their independence, but rendered them formidable to all the military powers in their neighbourhood. From theſe circumſtances they roſe to political power, and obtained a ſeat in the Diet of the empire. But in Germany, the repreſentatives of the ſmall barons were not admitted into that aſſembly, from an oppoſite reaſon, it ſhould ſeem, to that which prevented their admiſſion into the French convention of eſtates. At the time when the riſe of commerce had led the way to ſuch a regulation, the nobility, and the free ſtates of the empire, had ſo firmly eſtabliſhed their independence, and the emperors had ſo far declined in authority, that it was vain to expect, by any artifice or exertion to ſtop the progreſs of the ariſtocracy. The great exaltation of the German ſtates had indeed produced a wide difference, in the power and dignity of the different nobles; and thoſe of inferior rank, inſtead of maintaining an equal voice with their ſuperiors, were at length aſſociated in different claſſes; each of which, having only a ſingle vote in the diet, were in fact reduced to a worſe condition than if they had acted by repreſentatives.

In Flanders, in the ſeveral principalities which afterwards compoſed the Spaniſh monarchy, and, in

in general, in all the feudal governments of Europe, we may obſerve, that whenever the towns became free and opulent, and where they continued members of a larger community, they obtained a ſeat in the legiſlative aſſembly. But with reſpect to the repreſentatives of the ſmall barons, or inferior nobles, their introduction into the legiſlature is to be regarded as a more ſingular regulation, which, depending upon a nice balance between the crown and the nobility, has been adopted in ſome countries, and in others neglected, according as it happened to ſuit the intereſt and policy of the ſovereign, or the peculiar circumſtances of the people*.

In Italy, a country which had been broken into ſmall principalities, under princes poſſeſſed of little power, or reſiding at ſuch a diſtance as to have little capacity of exerting it over the inhabitants, the principal towns, whoſe proſperity in trade, if we except the territories belonging to the Moors in Spain, was prior to that of the other parts of Europe, became ſeparate and independent ſtates; and fell under ſuch modes of republican government as were agreeable to the ſituation of their reſpective ſocieties.

From a connected view of the different countries of Europe, during the period now under examination, it ſeems hardly poſſible to entertain a doubt, that the repreſentatives in the Engliſh parliament were introduced in the manner, and from the cauſes, which have been ſpecified. It appears, at the ſame time, ſurpriſing, and may perhaps be conſi-

* The boroughs are ſaid to have been introduced into the *cortes* of the different petty kingdoms of Spain, about the ſame time as in the other nations of Europe. In each of thoſe kingdoms the cortes came to be compoſed of the nobility, of the dignified eccleſiaſtics, and the repreſentatives of the cities. But in none of them do we find that the repreſentatives of the ſmall proprietors of land were admitted into thoſe aſſemblies; though, in the kingdom of Arragon, it appears that the nobility were diſtinguiſhed into thoſe of the firſt, and thoſe of the ſecond rank. See Dr. Robertſon's Hiſtory of Charles V.

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dered as an objection to the account which had been given, that there is a profound ſilence, among all cotemporary writers, concerning this important event. The hiſtorians of that age, it is true, were neither philoſophers nor politicians; they were narrow-minded and bigotted eccleſiaſtics, who ſaw nothing of importance in the hiſtory of England, but what was immediately connected with thoſe religious inſtitutions to which they were devoted. But ſtill it may be ſaid, that if the commons were unknown in the early aſſemblies of the nation, the introduction of that order of men into parliament, would have been ſuch a novelty, as could hardly fail to ſtrike the imagination, and to be mentioned in ſome of the writings of thoſe times.

It is neceſſary, however, to remark, that this alteration was produced in a gradual manner, and without any appearance of innovation. When the knights of the ſhire began to attend the meetings of parliament, they were no other than barons formerly entitled to that privilege. Their being ſent at the common expence of the ſmall barons belonging to a diſtrict, was a circumſtance that would excite little attention; as it probably aroſe from the private contribution of the parties concerned, not from any public regulation. The burgeſſes, in like manner, were not admitted into parliament all at once, or by any general law of the kingdom; but when particular towns, by their incorporation, and by the privileges beſtowed upon them, had acquired the rank of crown-vaſſals, their obtaining a ſhare in the legiſlature, by means of repreſentatives named for that purpoſe, was a natural conſequence of their advancement. This privilege, ſo far from being regarded as new or uncommon, had regularly been acquired by ſuch of the churles, or peaſantry, as were exalted to the condition of ſoccage tenants; and was in reality a conſequence of vaſſalage, interwoven in the ſyſtem of that feudal government, with which the

the people of that age were familiarly acquainted. Neither was it likely that the appearance, from time to time, of a few of thoſe inferior perſons, along with the greater lords of parliament, would have an apparent tendency to vary the deliberations of that aſſembly; and the practice had, in all probability been long continued, and greatly extended, before the effects of it were of ſuch magnitude as to attract the notice of the public.

SECT. II. *The diviſion of Parliament into two Houſes, and the peculiar Privileges acquired by each Houſe.*

THE members of the great council, in all the feudal governments of Europe, were divided originally into two claſſes or orders; the one compoſed of eccleſiaſtical, the other of lay barons. Theſe two ſets of men, from their circumſtances and way of life, having a different intereſt, and being actuated by different views of policy, entertained a mutual jealouſy, and were frequently diſpoſed to combat and thwart the deſigns of each other. In the conduct of national buſineſs, they uſually held ſeparate conferences among themſelves; and when they afterwards came to a joint meeting, were accuſtomed, inſtead of voting promiſcuouſly, to deliver, upon the part of each, the reſult of their previous deliberations. As each of thoſe bodies was poſſeſſed of independent authority, it would have been dangerous to venture upon any meaſure of importance, in oppoſition to the inclination or judgment of either; and therefore, in all public tranſactions which they had occaſion to determine, the concurrence of both was held indiſpenſable. Hence, by long cuſtom, they became two ſeparate *eſtates*, having each a negative upon the reſolutions of the legiſlature.

When the burgeſſes were admitted into the national aſſembly, they were by their ſituation and character, ſtill more diſtinguiſhed from the eccleſi-

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aſtical and lay barons, than theſe laſt from each other. They acted not in their own name, but in the name of thoſe communities, by whom they had been appointed, and to whom they were accountable: at the ſame time that the chief object in requiring their attendance, was to give their conſent to ſuch peculiar aids, or taxes, as were demanded from their conſtituents. It was neceſſary, therefore, that they ſhould conſult among themſelves, in matters, relating to their peculiar intereſt; and, as the department allotted them was unconnected with that of all the other members, they naturally obtained a ſeparate voice in the aſſembly. We may eaſily conceive, that when this method of procedure had been eſtabliſhed in the impoſition of taxes, it was afterwards, upon the ſubſequent riſe of the burgeſſes, extended to every branch of parliamentary buſineſs, in which they claimed the privilege of interfering. Thus, in all the feudal kingdoms which had made advances in commerce, the great council came to be compoſed of three eſtates: each of whom, in the determination of public meaſures, enjoyed a ſeparate negative.

Whether theſe different claſſes of men ſhould be convened in the ſame, or in different places, depended, in all probability, upon accident, and in particular on the number of their members, which at the times of their meeting, might render it more or leſs difficult to procure them accommodation. In England, the prelates, and the nobility, were accuſtomed, in ordinary caſes, to meet in the ſame place; although it is likely that each of them, in order to ſettle their plan of operations, had previous conſultations among themſelves. When the deputies from counties and boroughs were firſt called into parliament, they proceeded upon the ſame plan, and were included in the ſame meeting with the ancient members. It is probable, that the boroughs, then in a condition to uſe this privilege, were

were not numerous. To a parliament held in the eleventh of Edward the Firſt, we find that no more than twenty towns were required to ſend repreſentatives; of which two were ſummoned from each town*. But upon the regular eſtabliſhment of the deputies from counties and boroughs, in the twenty-third year of that reign, the number of the latter was greatly encreaſed. The returning boroughs, from each of which two repreſentatives were generally required, are ſaid to have then amounted to about an hundred and twenty; beſides thoſe belonging to Wales, of which there are ſuppoſed to have been about twelve †.

From the number of the burgeſſes at this time, from the influence and weight which they had acquired, and from their peculiar character and circumſtances, as repreſenting the commercial intereſt, they now found it convenient, it ſhould ſeem, to have a different place of meeting from the other members of parliament, and began to form a ſeparate body, which was called the houſe of commons.

The knights of ſhires continued, for ſome time after, to ſit in what now became the houſe of

* The trading towns, who ſent repreſentatives to this parliament, were London, York, Carliſle, Scarborough, Nottingham, Grimeſby, Lincoln, Northampton, Lynne, Yarmouth, Colcheſter, Norwich, Cheſter, Shrewſbury, Worceſter, Hereford, Briſtol, Canterbury, Wincheſter, and Exeter. See Carte's Hiſt.

† Some of theſe boroughs, however, were omitted in the ſummons to future parliaments. Mr. Browne Willis, from a diligent inſpection of ſuch materials as he could find, to afford any information upon this point, is of opinion, that from about the middle of Edward the Third's reign, to the beginning of that of Edward the Sixth, the parliament conſiſted of a pretty uniform number of boroughs: that, about this laſt period, it conſiſted of 126, and at no former time amounted to 130. See Notitia Parliam.

Mr. Hume aſſerts, that the ſheriff of each county had anciently a diſcretionary power of omitting particular boroughs in his returns, and was not deprived of this power till the reign of Richard II. [Hiſt. 4to, vol. ii. p. 287.] In proof of this aſſertion, he refers to 5 Richard II. c. 4. But that ſtatute proves the direct contrary. It declares, "That if any ſheriff leaves "out of his returns any cities or boroughs which be bound, and of old time "were wont to come to the parliament, *he ſhall be puniſhed in the manner as was "accuſtomed to be done in the ſaid caſe in times paſt.*" Statutes at Large.

peers.

peers. Although the ſmall barons were, in general, excuſed from perſonal attendance, yet, as crown-vaſſals, they had ſtill a title to vote in parliament; and ſuch of them as attended, even in conſequence of an election, were at firſt conſidered in the ſame light with the greater nobility. By appearing frequently, however, in the capacity of mere repreſentatives, not only elected, but having their charges borne by their conſtituents, their privilege of attending in their own right was gradually loſt and forgotten. In conſequence of the progreſſive alienation and diviſion of landed property, their perſonal influence was continually ſinking, while that of mercantile people was riſing in the ſame proportion; and, as thoſe two claſſes were thus brought nearer to a level, the landed gentry were often indiſcriminately choſen to repreſent either the one or the other. In ſuch a ſituation, it became at length an obvious improvement, that the deputies of the counties and boroughs, as by the circumſtance of their being repreſentatives, and reſponſible to thoſe who had appointed them, they were led into a ſimilarity of procedure, ſhould meet in the ſame houſe, and carry on their deliberations in common. It is conjectured by Carte the hiſtorian, that this change was not effected before the latter part of the reign of Edward the Third; but with reſpect to the preciſe time when it happened, there ſeems to be no evidence whatever.

The coalition of theſe two orders of deputies may perhaps be regarded as the great cauſe of the authority acquired by the Engliſh houſe of commons.—The members of that houſe were by this meaſure exalted to higher conſideration and reſpect, from the increaſe of their numbers as well as from the augmentations of their property. They now repreſented the mercantile people and the landed gentry; who, excluſive of thoſe who remained in a ſtate of ſervitude, compoſed the great body of the people, and

and who poſſeſſed a great proportion of the national wealth. Of thoſe two claſſes of the free inhabitants, the landed gentry, for a long time, enjoyed the firſt rank; and the deputies of boroughs were therefore frequently choſen among the neighbouring gentlemen, who, by reaſon of their independence, were more capable than their own burgeſſes of protecting their conſtituents. By joining together and confounding theſe different orders of repreſentatives, the importance of either was in ſome degree communicated to both; at the ſame time that the people, under ſo many leaders, became attentive to their common privileges, and were taught to unite in defending them. Had all the conſtituents been to appear in the national council, they would have been a diſorderly multitude, without aim or direction: by chooſing deputies to manage their parliamentary intereſt, they became an army, reduced into regular ſubordination, and conducted by intelligent officers.

We accordingly find, that, even ſo early as the reign of Richard the Second, the commons, when they had been induced to take party with the crown, were able to defeat the deſigns of the nobility, and to raiſe the ſovereign from the loweſt extremity to the height of abſolute power. The ſudden revolution, produced at that time by the national repreſentatives, was a prelude to thoſe greater exertions, which at a ſubſequent period they diſplayed in a better cauſe.

In the principal kingdoms upon the continent of Europe, the *third eſtate* was differently conſtituted. It comprehended, as I formerly obſerved, no other deputies but thoſe of the trading towns; a ſet of men, who, in compariſon even of the ſmall barons, or inferior gentry, were long obſcure and inſignificant. In ſupporting their privileges, the boroughs were not aided by the joint efforts of the counties; and

and the family intereſt of the repreſentative was not ſuperadded to the weight of his perſonal wealth.

In ſome of thoſe kingdoms, therefore, as in France and in Spain, the monarch was enabled to break the ariſtocracy, and to annihilate the national council, before the *third eſtate*, in conſequence of the advancement of commerce, was in a condition to eſtabliſh its authority: In others, as in the German empire, the great nobles, before the deputies of towns had acquired much influence in the *diet*, reduced the power both of that aſſembly and of the emperor to a mere ſhadow.

After the members of parliament had been accuſtomed to meet regularly in two ſeparate places, the three eſtates were gradually melted down and loſt, in the diviſion of the two houſes. The eccleſiaſtical and lay barons, who ſat in the upper houſe, were led, moſt frequently, into a promiſcuous deliberation; and did not think it worth while to demand a ſeparate voice except in determining any nice or important queſtion, by which the intereſt of either was particularly affected. But as government came to be more eſtabliſhed upon a regular plan, thoſe extraordinary queſtions occurred leſs frequently; at the ſame time that the progreſs of knowledge, and of the arts, diminiſhed the influence of the clergy, and rendered them leſs willing to hazard a direct and avowed conteſt with the nobles. The cuſtom of deliberating promiſcuouſly, was thus more and more confirmed, and the exertions of a ſeparate negative, being conſidered as indications of obſtinacy or a factious diſpoſition, were marked with diſapprobation and cenſure, and at length entirely exploded. It appears that, in the time of Richard the Second, this innovation was not entirely completed.

The two houſes, on the other hand, having occaſion always to deliberate apart, acquired an independent authority, and were naturally regarded as diſtinct branches of the legiſlature. The reſolutions of each houſe conſtituted a ſeparate voice, the con-

currence of which was neceſſary in all the determinations of parliament.

After the formation of the two houſes of parliament, in the manner juſt mentioned, each of them came to be poſſeſſed of certain peculiar privileges; which, although probably the objects of little attention in the beginning, have ſince riſen to great political importance.

1. The houſe of commons, from the nature of its original eſtabliſhment, obtained the ſole power of bringing in money-bills. This was not, at firſt, regarded as a privilege; but was introduced merely for the ſake of diſpatch. The primitive houſe of commons was compoſed of burgeſſes only, empowered to grant the king a ſupply, by one general agreement, in place of the ſeparate bargains, which had formerly been made with each borough. In conducting this buſineſs, each borough ſeems to have directed its repreſentatives with reſpect to the rate of aſſeſſment to which they ſhould conſent; and by collecting theſe particular directions, the ſum total to be granted by the whole trading intereſt was eaſily aſcertained. In a matter ſo ſimple as that of determining the extent of the contribution which, on any particular occaſion, they were willing to make, the conſtituents found no difficulty either in preparing their deputies, by expreſſing a previous opinion upon the ſubject, or by ſending them clear and pointed inſtructions, in caſe, from any new exigence, after the meeting of parliament, an unexpected demand was made by the ſovereign.

According to this conſtitution of parliament, the impoſition of taxes produced no intercourſe between the two houſes; but each houſe conſented to the exactions laid upon that order of men with which it was connected. This method of procedure was continued ſo long as the houſe of commons conſiſted only of burgeſſes; but when the deputies from counties came to ſit and to deliberate along with them,

them, a variation was neceſſary. The deputies of the counties having, by this change, aſſumed entirely the character of repreſentatives, came naturally to be limited, in the ſame manner as the burgeſſes, by the inſtructions of their conſtituents*. But theſe two orders of men, who now formed the cumulative body of the commons, were connected with different parts of the nation; and, while the burgeſſes were intereſted in the taxes laid upon the boroughs, the county members had an equal concern in ſuch as were paid by the landed gentry. In their promiſcuous deliberations, therefore, upon the ſubject of taxation, it was found convenient, that each of them ſhould not confine their views to that part of the community which they repreſented, but ſhould agree in the duties to be paid in common by the whole of their conſtituents; and, as the taxes paid by landed gentry or ſmall barons were of the ſame nature with thoſe which were laid upon the great barons or peers, this naturally ſuggeſted the idea of a general aſſeſſment upon the nation at large, to be impoſed by the concurrence of both houſes of parliament. Hence the introduction of *tenths*, *fifteenths*, and *ſubſidies*; the two former of which were taxes upon perſonal property; the laſt, upon eſtates real and perſonal. In the impoſition of ſuch taxes, both houſes of parliament were equally concerned; and the concurrence of both was therefore held requiſite.

The houſe of commons, however, if the preciſe ſum to be granted by them had not been previouſly ſpecified, were accuſtomed, in caſes of this nature, to conſult their conſtituents, and to regulate their conduct by the inſtructions which they received.

They could have no debate, therefore, on any occaſion, upon the ſubject of taxation; as their province extended no farther than merely to declare

* In a parliament held in the year 1339, that is about the middle of the reign of Edward the Third, we find the knights of ſhires pleading that they durſt not grant a tax without the conſent of their conſtituents. Carte.

the determination of their conſtituents. Upon this account, it was to no purpoſe that any particular tax ſhould firſt become the ſubject of deliberation among the peers, and afterwards be ſubmitted to the conſideration of the commons; ſince, after the fulleſt and moſt laborious diſcuſſion of the queſtion by the former, no other point could be conſidered by the latter, but whether the intended ſupply was agreeable to their inſtructions. The moſt expedient courſe in order to ſave time and uſeleſs diſputation, was evidently, that the commons ſhould begin with ſtating the exact ſum which they had been empowered to grant; and that the tax propoſed by them ſhould afterwards be examined and canvaſſed in the houſe of peers, whoſe conduct, in this as well as in other particulars, was not ſubject to any direction or control.

From the ſame circumſtance which introduced the practice, that every propoſal for a tax ſhould originate in the houſe of commons; it became cuſtomary that every ſuch propoſal or bill, when preſented to the houſe of peers, ſhould receive their ſimple aſſent, or negative, without variation or amendment. It could anſwer no purpoſe, to return the bill, with amendments, to the houſe of commons; becauſe the members of that houſe had no power of deliberating upon ſuch matters, and, having once declared the opinion of their conſtituents, could not venture to deviate from it in any ſubſequent ſtage of the buſineſs.

It is probable, at the ſame time, that this mode of conducting the buſineſs of taxation was promoted by the king; who, finding the people of inferior condition moſt ready to acquieſce in his demands, was willing that, by taking the lead in the impoſition of taxes, they might incite the nobility to follow their example, and make them aſhamed of declining a burden which they were much more able to bear.

Such

Such appears to have been the origin of this important privilege, which is now juſtly regarded by Engliſhmen as one of the greateſt pillars of their free conſtitution. Like many other parts of the Britiſh government, it aroſe from views of immediate conveniency; and its diſtant conſequences were neither foreſeen nor intended: but, after it had received the ſanction of immemorial cuſtom, it was preſerved inviolable, without any conſideration of the circumſtances from which it had taken its riſe. As the commons interfered by degrees in legiſlation, and in various other branches of buſineſs, their interpoſitions became too extenſive and complicated, to permit that they ſhould be regulated by the opinion of conſtituents living at a diſtance. In conſequence of more liberal views, it came alſo to be conſidered as the of duty each repreſentative, to promote the good of the nation at large, even in oppoſition to the intereſt of that particular community which he repreſented. The inſtructions, therefore, of conſtituents were laid aſide, or regarded as producing no obligation, upon any ſet of deputies, to depart from the dictates of their own conſcience. The expediency of this important privilege, with which the houſe of commons came thus accidentally to be inveſted, will fall more properly to be examined hereafter.

2. Upon the eſtabliſhment of the two houſes of parliament, the ſupreme judiciary power was, on the other hand, appropriated to the houſe of peers. The juriſdiction belonging to the Saxon Wittenagemote was exerciſed promiſcuouſly by all the members of that aſſembly; and in the Norman parliaments, both before and after the formation of the *aula regis*, the ſame rule was obſerved. It ſeems, however, to be a principle of natural law, that when a magiſtrate of any ſort is inveſted with juriſdiction, he is bound to a perſonal diſcharge of the duties of his office, and has no power to commit the exerciſe of them to a delegate. The public by whom he is appointed, has

a right

a right to the fruit of that capacity or diligence, upon account of which he was ſelected to the office; and as, in the deciſion of law-ſuits, no ſecurity can be given that different individuals will act preciſely in the ſame manner, the appointment of a delegate for the diſcharge of this employment, would be to impoſe upon the public a different rate or meaſure of ſervice from that which was due. Upon this principle, the members of the houſe of commons, having only a delegated power, were excluded from the exerciſe of that juriſdiction with which the members of parliament, in general, had been anciently inveſted. Their diſqualification, at the ſame time, was rendered ſtill more apparent, by their acting in conſequence of inſtructions from their conſtituents. The counties and boroughs might be in a condition, from their general information, to inſtruct their deputies concerning the taxes to be impoſed, or even concerning any law to be enacted; but were altogether incapable of directing them how to proceed in the determination of law-ſuits. The deciſion given in any cauſe muſt depend upon a complex view of the proofs and arguments produced in court; and therefore no perſon who is abſent, eſpecially in caſes where the chief part of the buſineſs is tranſacted *viva voce*, can form any proper judgment concerning it. Upon this account, the only members of parliament, qualified to act as judges, came to be thoſe who ſat in their own right, who had the liberty to form their opinions upon the ſpot, and, by an immediate inveſtigation of the circumſtances, were capable of deciding from the impreſſion made upon their own minds.

From the ſame cauſe, therefore, which beſtowed upon the commons the right of ſuggeſting taxes, the houſe of peers became the ultimate tribunal of the nation, and obtained the power of determining, in the laſt reſort, both civil and criminal actions.

Thus,

Thus, while one of theſe branches of the legiſlature enjoyed an immediate acceſs to the purſes of the people for the public ſervice, the other was intruſted with the guardianſhip of their lives and fortunes. What was acquired by the commons, in one department, was fully compenſated by what fell to the ſhare of the peers in another; ſo that the conſtitution remained upon its ancient baſis, and was kept in equilibrio by an equal diſtribution of privileges.

It may farther deſerve to be remarked, that, by the excluſion of the commons from the judicial power, the ſupreme tribunal of the nation came to be compoſed of a moderate number of perſons; a circumſtance highly conducive to the uniformity of their deciſions, as well as to the expedition and regularity of their procedure.

When law-ſuits, before the Norman parliament, had become frequent, it was found inconvenient to determine them in a full meeting, and they were brought, in the firſt inſtance, before the *aula regis*. But even as a court of review, the parliament, after the deputies of boroughs and counties were obliged to give conſtant attendance, was perhaps too numerous; while by the diviſion of its members into two houſes, they were prevented, at leaſt according to their uſual forms, from co-operating with one another in the diſtribution of juſtice. The ſame regulation, therefore, which was introduced from the peculiar ſituation of the lords and of the commons, was afterwards recommended, no doubt, and ſupported by general conſiderations of utility.

3. The ſupreme judiciary power being limited to the houſe of peers, the right of *impeachment* was of courſe devolved upon the commons.

When perſons intruſted with great offices under the crown, or enjoying any ſhare in the public adminiſtration, were guilty of malverſation in office, or of what are called high miſdemeanors, it was frequently

frequently thought neceſſary, that they ſhould be tried before the higheſt court in the nation, whoſe weight alone was adequate to the taſk of bringing ſuch powerful offenders to juſtice. In the earlier periods of the Engliſh government, the national council was accuſtomed to enquire into the conduct of the different executive officers, and to puniſh them for their offences. The king himſelf was not exempted from ſuch inquiry and puniſhment, more than perſons of inferior rank. On ſuch great occaſions, the proſecution, inſtead of being committed, as in ordinary crimes, to the management of an individual, was uſually conducted by the aſſembly, who acted both in the capacity of accuſers and judges. This was, doubtleſs, a practice ill calculated for ſecuring a fair trial to the delinquent; but it was no more than what happened in criminal trials before the ordinary courts of juſtice, where the king was both judge and proſecutor.

Upon the eſtabliſhment of the two houſes of parliament, it became a natural and obvious improvement, that, as the power of trying thoſe offences was reſtricted to the houſe of peers, the privilege of conducting the accuſation ſhould belong to the commons; that branch of the legiſlative aſſembly, which had no ſhare in the judicial department, though it was no leſs concerned than the other to prevent the abuſes of adminiſtration. In this manner the two characters of a judge and a proſecutor, which, in the ordinary courts, had been placed in different hands by the cuſtom of appointing deputies to officiate in the name of the crown, came likewiſe to be ſeparated in the trial of thoſe extraordinary crimes, where, from the danger of arbitrary meaſures, an amendment of the ancient method of proceeding was moſt eſpecially requiſite.

4. Beſide the foregoing privileges, which, from the influence of peculiar circumſtances, were acquired by the different branches of parliament, either houſe

houſe was led to aſſume the power of aſcertaining the perſons of whom it was compoſed, a juriſdiction and authority over them, and the cognizance of the ſeveral rights and immunities belonging to their own order. Hence it came to be eſtabliſhed, that the houſe of commons ſhould determine queſtions concerning the election of its own members; and that every bill affecting the rights of the peerage ſhould take its origin in the houſe of peers. The privileges, ariſing from this principle, which have been acquired by the houſe of commons, were afterwards greatly multiplied, and variouſly ſubdivided, in conſequence of the attention given to the forms of procedure, and to the rules and maxims neceſſary for ſecuring its independence.

SECT. III. *Concerning the Manner of electing the national Repreſentatives, and the Forms of Procedure in Parliament.*

THE eſtabliſhment of a houſe of commons, conſiſting entirely of repreſentatives, required a ſet of regulations for the election of its members. From the different ſituation of the counties and boroughs, the deputies of thoſe two claſſes of men came to be choſen in a very different manner.

1. Upon the firſt incorporation of a borough, the nomination of particular perſons, for diſtributing juſtice, for managing the funds, and for executing the other buſineſs of the community, would ſeem naturally to belong to all its members, who have a common concern in thoſe branches of adminiſtration. In thoſe towns, accordingly, where commerce had introduced a degree of wealth and independence among the bulk of the inhabitants, ſuch a popular plan of government appears to have been generally adopted. But in many of the boroughs, whoſe trade was more in its infancy, the people of inferior rank were ſtill too poor, and in too ſervile a condition,

to

to claim the privilege of electing their own adminiſtrators; and by their neglecting to intermeddle in public buſineſs, the care of every thing relating to the community was devolved upon particular citizens, diſtinguiſhed by their opulence. When the boroughs were afterwards permitted to have a voice in parliament, the differences in their condition occaſioned the ſame, or even a greater diverſity in the mode of chooſing their repreſentatives; and, in a long courſe of time, many other varieties were added from the operation of accidental circumſtances. In ſome towns, therefore, the repreſentatives were choſen by a conſiderable part, in others, by a very ſmall proportion, of the inhabitants; in many, by a few individuals, and theſe, in particular caſes, directed, perhaps, or influenced, by a ſingle perſon.

Two ſorts of inequality were thus produced in the repreſentation of the mercantile and manufacturing intereſt: the one from the very different magnitude of the boroughs, who ſent, for the moſt part, an equal number of repreſentatives: the other, from the very different number of voters, by whom, in each borough, thoſe repreſentatives were choſen. But this inequality, whatever bad conſequences may have flowed from it in a later period, was originally an object of little attention; and excited no jealouſy or complaint. The primitive burgeſſes were ſent into parliament for the purpoſe chiefly of making a bargain with the crown, concerning the taxes to be impoſed upon their own conſtituents; and the repreſentatives of each borough had merely the power of conſenting to the ſum paid by that community which they repreſented, without interfering in what was paid by any other. It was of no conſequence, therefore, to any one borough, that another, of inferior ſize or opulence, ſhould have as many repreſentatives in the national aſſembly; ſince thoſe repreſentatives, as far as taxes were concerned, could only protect their own corporation, but

but were incapable of injuring or hurting their neighbours. So far were the boroughs from entertaining a jealouſy of one another upon this account, that ſome of them found it more eligible to acquieſce in whatever aids the king thought proper to demand, than to be at the expence of ſupporting their deputies in parliament; and were willing to renounce the privilege, in order to be free of the burden attending it. Many inſtances of this occur in the Engliſh hiſtory, from the reign of Edward the Firſt. Mr. Browne Willis has produced a large liſt of boroughs, which had early ſent repreſentatives into parliament, but which loſt that privilege by diſuſe; and there is no doubt that ſeveral towns, which had been incorporated, and which obtained the denomination of boroughs, exerted themſelves from the beginning, and ſucceſsfully, in avoiding any parliamentary repreſentation.

Neither was it originally of much importance to any parliamentary borough, in what manner its deputies were choſen; for theſe, being inſtructed by the corporation, with reſpect to the preciſe amount of the ſupply to be granted, were only the meſſengers, who declared the will of their conſtituents; and as they were not entruſted with diſcretionary powers, their behaviour occaſioned no apprehenſion or anxiety. The honour of being the repreſentative of a borough was, in thoſe times, little coveted; and the privilege of voting in his election was yet leſs. The rank which the burgeſſes held in parliament was too low to become the object of much intereſt or ſolicitation; and thoſe who voted for a burgeſs, were ſo far from gaining any thing by it, that they had ſcarcely an opportunity of obliging their friends.

2. The knights of the ſhires were at firſt elected, in each county, by a meeting compoſed of the ſmall barons, or vaſſals of the crown. Of this, from the nature of the thing, it ſeems hardly poſſible to doubt.

The

The ſmall barons had been originally members of parliament, but were excuſed from perſonal attendance, upon condition of their ſending repreſentatives. Who could have a right to chooſe thoſe repreſentatives, but the perſons whom they repreſented, the perſons by whom they were ſent, and who bore the charges of their attendance?

But although the vaſſals of the crown only had, in the beginning, a right to interfere in the appointment of the knights of ſhires; the *rear-vaſſals*, or ſuch as held their lands of a ſubject-ſuperior, were afterwards admitted to a ſhare in the election. This, although an important change in the conſtitution of parliament, has paſſed, like many others, without any notice of cotemporary hiſtorians. Of the circumſtances from which it proceeded, a probable conjecture ſeems to be the utmoſt that can be attained.

The ſmall barons or vaſſals, who, excluſive of the nobility, held their lands of the crown, and thoſe who held of a ſubject-ſuperior, were ſeparate orders of men, who originally, by their ſituation, were removed to a great diſtance from each other. As members of the community, they appeared to be diſtinguiſhed moſt remarkably in two reſpects. The vaſſals of the crown ſat in parliament: thoſe of a ſubject-ſuperior were members of his baron-court. The former were liable for aids, and for the other feudal incidents, to the king: the latter were bound, for ſimilar duties, to their inferior liege lord.

But theſe diſtinctions, ariſing from the feudal policy, continued no longer than while that ſyſtem remained in its vigour. After the reign of Edward the Firſt, the ſmall barons, having ceaſed to attend in parliament, otherwiſe than by repreſentatives, were at length underſtood, unleſs when particularly called by the king, to have no more a ſeat in that aſſembly than the vaſſals of a ſubject-ſuperior.

With

With reſpect to the feudal incidents, great alterations, in the courſe of time, were alſo produced. The demeſnes of the crown, together with the extraordinary aids, and other incidents, drawn from the crown-vaſſals, were the only original funds for ſupporting the expence of government. But when the charges of the public, in conſequence of the gradual advancement of ſociety, had from time to time been encreaſed, theſe funds became at length inſufficient; new ſupplies were demanded by the king; and, after ſtretching as far as poſſible the ancient duties of the crown-vaſſals, it was found neceſſary to levy an aſſeſſment upon all the proprietors of land, without conſidering whether they held immediately of the king, or of a ſubject. The greater part of the public burdens came thus to be impoſed upon the nation at large; and the caſual emoluments, which the crown derived from its immediate vaſſals, became, in proportion, of little importance.

In this ſituation, there was no longer any eſſential difference between the ſmall proprietors of land, who held immediately of the crown, and thoſe who held of a ſubject. Neither of them had any right, in their own perſons, to ſit in the houſe of commons. Both of them, according to the later notions of property, had the ſame full power over the reſpective eſtates which they poſſeſſed; and the eſtates of both were equally ſubject to the taxes impoſed upon the counties. Both of them, therefore, were equally beholden to the knights of the ſhires, by whoſe conſent thoſe taxes were impoſed, and who had it in their power to ſecure either the one or the other from oppreſſion. As thoſe two claſſes of men thus reaped an equal benefit from the ſervice of the knights of ſhires, it became reaſonable that they ſhould contribute jointly to the expence with which that ſervice was attended; and if they joined in maintaining the county-repreſentatives, it

was

was no leſs equitable, that they ſhould have a voice in their election. If they ſubmitted to the burden, they could not decently be excluded from the privilege.

By this relaxation of the feudal ſyſtem, the foundation of the houſe of commons was enlarged; and its eſtabliſhment was rendered more extenſively uſeful. The knights of the ſhires became properly the repreſentatives, not of one claſs, but of the whole gentry of every rank and deſcription. All the independent property in the kingdom was, according to this conſtitution repreſented in parliament: the lords appeared in behalf of their own poſſeſſions; the inferior landed intereſt fell under the care of the county-members; and the burgeſſes were entruſted with the protection of that wealth which was employed in trade.

Such, in all probability, were the circumſtances, from which the rear-vaſſals obtained a ſhare in the election of county-members; but at what time this change was produced is very uncertain. Mr. Hume has concluded, that it took place in conſequence of an act of parliament in the reign of Henry the Fourth. But when we examine that ſtatute, it does not appear to have introduced any ſuch regulation: on the contrary, it ſuppoſes that proprietors of land, not holding directly of the crown had been formerly entitled to vote for the county-members; and makes a general proviſion for ſecuring the freedom of their election, as well as for preventing undue returns by the ſheriff*.

A late reſpectable hiſtorian, notwithſtanding all the light which has been thrown upon the ſubject in the preſent age, declares it ſtill to be his opinion, not only that the knights of counties were coeval with the exiſtence of the Engliſh parliament; but

* 7 Henry IV. c. 15. See a farther proviſion to the ſame purpoſe, 11 Henry IV. c. 1.

that,

that, from the beginning, they were choſen, as at preſent, in a joint meeting of the rear-vaſſals, and thoſe who held immediately of the crown*. The former part of this opinion has been already examined. With regard to the latter, it is totally inconſiſtent with the original plan of the feudal government. But what puts the matter beyond all poſſibility of doubt, is, that in Scotland, whoſe conſtitution, from a ſimilarity of circumſtances, as well as from imitation, is extremely analogous to that of England, but who, from the ſlow progreſs of arts, has retained a number of her primitive regulations; in Scotland, the original practice has been invariably continued; and, from the firſt introduction of county-repreſentatives to the preſent day, no perſon who does not hold his lands immediately of the crown, whatever be the extent of his property, has ever been permitted to vote in a county election †.

When a number of the crown-vaſſals had been excuſed from perſonal attendance in parliament, on account of the ſmallneſs of their fortunes, it might have been expected that ſome rule would be eſtabliſhed, concerning the preciſe extent of property which gave a title to this conceſſion; and that an exact line of partition would thus be formed between the ſmall barons, or *gentry*, and the great barons, or nobility. It appears, however, that no ſuch regulation was ever made. The liberty of abſence enjoyed by particular members of parliament, ſeems to have depended, at firſt, upon the mere will of the ſovereign, who never thought of reſtraining himſelf with regard to the terms upon which he granted this indulgence. To procure this liberty was the aim of by far the greater part of the crown-vaſſals; as to prevent the unreaſonable extenſion of it, was the great object of the king; and the exemption

* See Lord Lyttelton's Hiſtory of Henry II.

† Holding of the prince of Wales, is in Scotland viewed in the ſame light with holding of the king.

was,

was, by cuſtom, eſtabliſhed in favour of individuals, before any precautions had been ſuggeſted for aſcertaining its boundaries *.

The want of a general rule to define the limits, in point of property, between the *ſmall* and the *great* barons, appears to have produced an irregularity in this part of the conſtitution. Thoſe crown-vaſſals whoſe attendance in parliament had been diſpenſed with, continued ever after to be excluded from that aſſembly, and their poſterity remained in the ſame ſituation, however great the fortune which they might happen to acquire. On the other hand, thoſe opulent barons who continued, in their own right, to ſit in parliament, after the time of Edward the Firſt, retained for the future their ſeat in the houſe of peers, notwithſtanding all the viciſſitudes of their fortune, and whatever might be the degree of poverty to which they were afterwards reduced. Property, the natural ſource of influence and authority, was, in this manner, detached from political power; while indigence, the parent of ſervility and dependence, was often inveſted with privileges which he was not qualified to exerciſe. The former inconvenience might, in particular caſes, be removed by the interpoſition of the ſovereign; who could, at pleaſure, create any commoner a member of the houſe of peers: but the latter admitted of no remedy; ſince a peer, who had ſquandered his eſtate, could not, unleſs he committed a crime, be deprived of his rank; and ſince by that rank he was excluded from the uſual means of repairing his fortune †.

* It ſeems at one time to have been intended by Edward I. that perſonal attendance in parliament ſhould be required from every landed proprietor whoſe yearly rent was above 20l. This was the rule preſcribed to the ſheriffs of counties, in ſummoning the crown-vaſſals to an aſſembly held in the eleventh of that king's reign. This was alſo the extent of property in Scotland, which diſtinguiſhed the *great* barons, or thoſe who were "*conſtrenzied* to come to the parliament or general council." Parl. 1457, c. 75.

† There occurs, in the reign of Edward IV. an act of parliament, declaring, in the caſe of George Nevil, duke of Bedford, that his title of honour, as a duke, was void and extinguiſhed, in reſpect of his poverty, by which he was incapable of ſupporting his dignity.

As

As there was no regulation concerning the *greateſt* extent of property, from which a baron might be excuſed from attending in parliament, ſo there was originally none with reſpect to the *leaſt* which entitled him to vote for a county-member. All the crown-vaſſals whatever, whoſe perſonal attendance was diſpenſed with, had of courſe a title to chooſe repreſentatives, and were bound by their joint contribution to defray the expence of maintaining them*. But when landed property had undergone ſo much diviſion, that the poſſeſſions of many individuals were become extremely inſignificant; more eſpecially after the rear-vaſſals had been joined with thoſe who held immediately of the crown, in voting for the county-members; the poorer ſort of proprietors endeavoured to excuſe themſelves from contributing to the ſupport of national repreſentatives; and, upon being relieved from that burden, had no longer a pretence for interfering in their election.

By an act of parliament, in the reign of Henry the Sixth, it is provided, that the knights of ſhires ſhall be choſen by perſons reſiding within the ſame county, and poſſeſſed of lands or tenements, of which the yearly rent, free from all charges, amounts to forty ſhillings †. By another ſtatute, in the ſame reign, it is declared, that the voter ſhall have this eſtate within the county where the election is made ‡. Mr. Hume is of opinion, that forty ſhillings, at that time, making allowance for the alteration in the weight of the coin, and in the price of commodities, was equivalent to near twenty pounds of the preſent money.

According as parliament had occaſion to determine a greater variety of queſtions, and attained

* With reſpect to the contribution laid upon the counties for maintaining the members, ſee Madox *Firma-burgi*. It was at firſt levied by the king's writ; and afterwards by act of parliament, from the time of Richard II. ſee 12 Rich. II. c. 12.

† 8 Henry VI. c. 7.

‡ 10 Henry VI. c. 2.

more experience in diſcuſſing the buſineſs which came before it, the forms of parliamentary procedure became an object of greater attention, and received, as we may eaſily imagine, a variety of improvements. The appointment of a preſident, in order to prevent confuſion in delivering opinions, to declare the reſult of a debate, and even, in ſome meaſure, to direct the method of handling any queſtion, was a ſtep ſo neceſſary in a numerous meeting, that we meet with it as far back as there are any records of the Engliſh national council. The lord high ſteward, as I formerly took notice, was anciently the perſon who, in abſence of the king, preſided in that aſſembly; and when that officer no longer exiſted, the chancellor, who then roſe to the chief conſideration in the king's houſehold, was commonly entruſted with this department. After the diviſion of parliament into two houſes, this officer continued in moſt caſes to preſide in the houſe of peers; but in that of the commons, whoſe deliberations were totally ſeparate, another preſident became neceſſary.

From the primitive ſituation of the commons, who, in all caſes, were inſtructed how to act, they had no opportunity of debating upon any ſubject; but they required a perſon to intimate their determinations to the king; and for this purpoſe they, at firſt, elected a *ſpeaker*. The farther the buſineſs of that houſe was extended the more they ventured to form reſolutions without the advice of their conſtituents; the power and privileges of their ſpeaker were enlarged in proportion; and he at length obtained the province of an ordinary preſident. The firſt election of this officer, which is upon record, occurs in the firſt parliament of Richard the Second. From the influence and dignity acquired, in that reign, by the commons, their ſpeaker was exalted to an eminent ſtation; and the perſons who enjoyed the office became ſo conſpicuous, as to attract the attention of the public.

One

One of the principal branches of buſineſs which fell under the conſideration of parliament was legiſlation. The firſt method of conducting a meaſure of this kind was by a petition from parliament addreſſed to the king, ſetting forth ſome particular grievance or inconvenience, and requeſting that it ſhould be removed. To the king belonged the direction both of the executive and judicial powers; and, agreeably to the ſpirit of a rude age, he was originally under no reſtraint in the exerciſe of his prerogative, farther than what might ariſe from his apprehenſion of incurring the public diſpleaſure. By a ſtatute it was propoſed to limit the former diſcretionary power of the king, and, out of reſpect to his dignity, any propoſal to this effect was made in the form of a requeſt, that he would conſent to the intended regulation. As every new law was, in fact, an innovation of the ancient eſtabliſhment, it required the agreement of all parties concerned; that is, of the national aſſembly, including virtually the whole people, and of the king, whoſe power was to undergo a limitation. When the petition, therefore, had paſſed the two houſes, and had obtained the conſent of the king, it became an act of the legiſlature.

The petitions which had thus been granted, during the courſe of a parliament, were afterwards digeſted into the form of a ſtatute; and, as the execution of this taſk required a degree of legal knowledge, it was devolved upon the principal judges of the kingdom. From the obſervation, it is ſaid, that miſtakes and abuſes were committed in a matter of ſuch importance, it was provided, in the reign of Henry the Fifth, that the ſtatutes ſhould be drawn up by the judges before the end of each parliament; and, in the reign of Henry the Sixth, the preſent mode of preſenting bills to parliament, already digeſted in the form of a ſtatute, was firſt introduced *.

* See Blackſtone's Commentaries.

For ſome time after the introduction of the commons into parliament, no notice was taken of them in the character of legiſlators. The burgeſſes who compoſed the firſt houſe of commons, were not regarded as the adviſers of the crown; and if on any occaſion they obtained a redreſs of grievances, it was merely from this conſideration, that the ſupply expected from the boroughs could not otherwiſe be procured. In the beginning of the reign of Edward the Third, the commons are mentioned in the character of petitioners; and the ſtatutes are ſaid, in the preamble, to have been ordained "at the requeſt of the commonalty of the realm, by their petition made before the king and his council in the parliament, by the aſſent of the prelates, earls, barons, and other great men aſſembled at the ſaid parliament." The union of the knights of ſhires, in the ſame houſe with the burgeſſes, contributed quickly to beſtow a deliberative voice upon the aggregate body of the commons; and in the reign of Richard the Second, we find them interfering in public regulations of the higheſt importance *. In digeſting the ſtatutes, however, the old ſtile was continued, until the reign of Edward the Fourth; when laws are ſaid to be eſtabliſhed *by the advice and conſent of the lords, at the requeſt of the commons*, and *by the authority of the ſame parliament* †.

From the primitive method of conducting bills for a new law, in the form of a petition to the king, was derived the cuſtom that they ſhould take their origin from parliament, and that the king ſhould give no opinion concerning them, till they had been approved of in that aſſembly. As the king had no inclination to limit his own diſcretionary powers, it was never ſuppoſed that a bill for that purpoſe would be ſuggeſted by the crown. All that could be expected from the ſovereign, in a matter of this nature, was, that he would be graciouſly

* See Gurdon's Hiſtory of Parliament.

† See the Preamble to thoſe Statutes.

pleaſed

pleaſed to comply with the deſires of his people, communicated to him by the national council: and when a bill had come to be agitated in parliament, it was not yet conſidered as the requeſt of the nation, and could not, therefore, be regularly preſented to the king, for the royal aſſent, before the two houſes had given their authority for that meaſure.

Such was the original foundation of a maxim, which is now regarded as one of the main pillars of the Britiſh conſtitution; that the king's negative upon bills ſhall not be interpoſed, until they have undergone the final diſcuſſion of the two houſes of parliament; and, as a conſequence of this, tha the ſhall not take notice of any bill depending in parliament, until it ſhall be communicated to him in the uſual and parliamentary manner. The effect of this maxim, in ſupporting the democratical part of the government, is now univerſally admitted; but that it was dictated by a regard to the intereſt of the people, or from the view of encreaſing their weight in the exertions of the legiſlature, there is no reaſon to believe. It is probable, on the contrary, that the form of procedure above mentioned was thought advantageous, or at leaſt reſpectful, to the ſovereign; as it prevented his being troubled with ſolicitations to limit his power, until there was an immediate neceſſity for it. But, in reality, this method of conducting the deliberations of the legiſlature, was not the fruit of any preconceived ſyſtem of policy, nor the reſult of any claim of right, either upon the part of the king or parliament; it aroſe merely from the nature of the buſineſs under conſideration, which was moſt conveniently brought to an iſſue in that manner; and, as this gave riſe to a practice, which was obſerved with ſome degree of uniformity, ſo, in the revolution of ages, the ancient uſage, whoſe utility became daily more obſervable, was inveſted with complete legal authority.

It merits attention, however, that what has been obſerved, concerning the method of ordinary legiſlation,

lation, is not applicable to the impoſition of taxes. As the effect of a ſtatute was to aſcertain and determine the behaviour of the king, and conſequently implied a privilege gained by the people; that of taxation was to beſtow ſome emolument upon the crown, and to lay a correſpondent burden upon the nation. An oppoſite courſe, therefore was followed in thoſe two branches of government. The people were underſtood to be the prime movers in the former; the king, in the latter. The propoſal for a new law proceeded upon a petition from parliament to the crown. The propoſal for a new tax proceeded upon a requeſt or ſolicitation of the crown to parliament. Each of theſe parties having ſomething to beſtow which the other wanted, they both became coy and reſerved in their turn, and, by their addreſs and perſeverance, were enabled to extort reciprocal advantages. When the king was in want of money, he offered his conſent to beneficial regulations, upon condition that certain taxes were impoſed. When parliament were about to grant ſupplies to the crown, they took advantage of its neceſſities, and, as a preliminary article, ſtipulated the redreſs of grievances.

Upon this principle, that taxes are granted by parliament, at the deſire of the king, is founded a rule, at preſent, "that the houſe of commons ſhall "receive no petition for any ſum of money relating "to the public ſervice, but what is recommended "from the crown." And when a money bill is offered to that houſe, it is neceſſary, that the chancellor of the exchequer, or ſome other officer of the crown, ſhould declare, "that his majeſty, hav-"ing been informed of the contents of the ſaid bill, "recommends the ſame to the conſideration of the "houſe*." After this preliminary ſtep, a bill for the impoſition of taxes is conducted in the ſame

* See Hatſell's Proceedings in the Houſe of Commons.

courſe,

courſe, and paſſes through ſimilar ſtages, with every other matter which comes under the determination of the legiſlature.

CHAP. VII.

Alterations in the State of the ordinary Courts of Juſtice.

THE reign of Edward the Firſt is no leſs diſtinguiſhed by inſtitutions of great importance relating to the diſtribution of juſtice, than by thoſe which have been mentioned with regard to the legiſlative authority; and in both theſe particulars we may trace back to this period, the introduction of that regular ſyſtem which we at preſent enjoy. The chief of thoſe inſtitutions reſpecting the exerciſe of the judicial power, and ſome of the moſt remarkable conſequences with which they were attended, we ſhall proceed to examine.

SECT. I. *Eſtabliſhment of the Courts of Common Law at Weſtminſter.*

THE *aula regis*, which, after the Norman conqueſt, had riſen by degrees out of the high court of parliament, was productive of great advantages, by facilitating the diſtribution of juſtice. A full meeting of parliament could not be obtained, unleſs upon ſingular occaſions; but this tribunal, conſiſting of a ſmall number of judges, and theſe commonly attending the king's perſon, could eaſily be held upon any emergency, and was ready to take cognizance of every complaint.

Although

Although the inſtitution of the *aula regis*, however, was, at the time of its introduction, accommodated to the infant ſtate of improvements in the country, yet, in a ſubſequent period, when thoſe improvements were advanced to greater maturity, and when the authority of government was better eſtabliſhed, its interpoſitions became not only defective, but liable to many inconveniencies. For ſome time after the Norman conqueſt, the inveſtigation of law-ſuits, although requiring a degree of attention unknown to the preceding ages, was not ſo tedious as to prevent their being commonly decided in the neighbourhood of the place in which they had been commenced. But when the advancement of law and government had farther multiplied the legal diſputes among the members of ſociety, as well as the forms of judicial procedure, ſuch a quick diſpatch of the buſineſs was no longer practicable; and, as the court had no fixed reſidence, but followed the king, wherever the political ſtate of the kingdom required his preſence, it was frequently neceſſary that cauſes ſhould be decided in a part of the country very remote from that in which they had ariſen. The circumſtances of this ambulatory court, became thus inconſiſtent with the leiſure and deliberation requiſite for judges in forming their deciſions; and ſtill more incompatible with the intereſt of parties, who, in many caſes, were obliged to attend the court from place to place, and ſometimes, before they would obtain a final ſentence, to travel over a great part of the kingdom. This attendance was rendered more expenſive and burdenſome, from the gradual advancement of law, as a ſcience; which tended to promote the employment of lawyers, as well as other retainers of judicial controverſy; and which, by contributing to encourage the fulleſt and moſt ample diſcuſſion of every plea, laid parties frequently under the neceſſity of calling a number of witneſſes in ſupport of their ſeveral averments.

It

It was to be expected, therefore, that, according to the general improvements of the country, the attention of government would be directed to the removal of these inconveniencies; by rendering the *curia regis* a stationary court, or at least by appointing, that it should hold regular meetings at particular places.

While the natural progress of improvement in the kingdom appeared to require this alteration in the state of the principal tribunal, the increase of judicial business had likewise a tendency to distinguish different branches of jurisdiction, and to place them in the hands of different judges. The prosecutions carried on against atrocious offenders, to satisfy public justice, and to prevent the future commission of crimes, came to be viewed in a different light from private controversies concerning property, and the various rights and obligations which occur among individuals. Law-suits of the former sort, or *criminal actions*, are usually much less numerous than those of the latter, which have received the appellation of *civil actions*. The trial of a crime is apt to be terminated in a more expeditious manner, than a civil process. Those heinous offences, which are supposed to require a prosecution at the instance of the public, excite, for the most part, a general indignation in the minds of men, who are therefore disposed to call for a speedy vengeance upon the criminal. In many of those offences, besides, it is necessary, that, before a prosecution is commenced, the person suspected of the crime should be arrested and imprisoned, in order that, if guilty, he may be prevented from escaping a trial; and the hardships to which he is thus unavoidably subjected, together with the difficulty of securing his person, afford additional reasons, from expediency, as well as from justice, for bringing the action against him to a speedy conclusion. To all these peculiar circumstances, we may add, that the laws

of

of a country, reſpecting the puniſhment of crimes, are uſually plain and ſimple; ſo that, in proſecutions of this nature, the judge can ſeldom have any farther difficulty, than what ariſes from the inveſtigation of the fact.

Law-ſuits about private property are in a different ſituation. A cool ſpectator feels himſelf but little intereſted in ſuch diſputes; and it ſeems reaſonable that the parties ſhould be left, in a great meaſure, to their own diſcretion, in bringing the buſineſs to an iſſue. As in ſuch differences there is no reaſon to ſuſpect that either party will endeavour to eſcape from juſtice, no impriſonment of either is neceſſary. The laws, too, relating to the civil rights of mankind, are apt to become ſo numerous and intricate, as may occaſion great heſitation and embarraſſment in applying them to particular caſes. Theſe peculiarities, by multiplying the pleadings of parties, as well as the delays of court, and by introducing peculiar forms of procedure, have contributed to diſtinguiſh a civil from a criminal action.

To theſe two ſpecies of law-ſuits may be ſubjoined a third, ariſing from diſputes between the king and the people, in matters of revenge. Such law-ſuits are calculated to intereſt the public, at leaſt the crown, like a criminal trial; at the ſame time that they are ſtrictly of a mere pecuniary nature. Though the public revenue of a ſtate is really the property of the community, yet, in a monarchical government, the ſovereign, who has the immediate diſpoſal of that revenue, and who reaps more benefit from it than any other individual, is likely to conſider it as his own patrimony, and to become particularly attentive to the ſupport and encouragement of thoſe judges by whom it is made effectual.

Thus, in every kingdom which is advancing in improvement, the ſame diviſion of labour which takes place in the arts becomes alſo convenient in the

the conduct of law-ſuits; and, upon the ſame principle which gives riſe to ſeparate trades and profeſſions, the province of diſtributing juſtice will be divided, and appropriated to a number of diſtinct judicatories.

Theſe two objects, the fixing the reſidence of the *aula regis* to a particular place, and the diviſion of the powers with which it was inveſted, had not been entirely overlooked by the Engliſh, before the time of Edward the Firſt. From what has been already obſerved, it is evident, that an ambulatory court is leſs qualified for diſcuſſing a civil than a criminal action. From the multitude of civil, in compariſon of criminal cauſes, ſuch an unſettled tribunal is attended with more inconvenience to the judge; from the greater length of time required in their diſcuſſion, it is more burdenſome to the parties.

We accordingly find, that, by a clauſe in the great charter of king John, an improvement was made with reſpect to the exerciſe of civil juriſdiction; a court of *common pleas* was detached from the ancient *aula regis*, and was appointed, for the future, to have a permanent reſidence *. The making this an article in that great tranſaction between the king and his nobles, is a proof that a regulation of this nature was thought of the utmoſt importance; and that the want of it, in former times, had been a ground of general complaint. The new court of common pleas, which was thus erected, and held by ſeparate judges, appears to have been deemed inferior in rank to the criminal court, held by the grand juſticiary, and in which the king continued ſometimes to ſit in perſon. For this reaſon, the latter court was permitted, in certain caſes, to review the deciſions of the former †.

Even at an earlier period, the *aula regis*, when acting as a court of revenue, had been ſo far diſ-

* "Communia placita non ſequantur curiam regis, ſed teneantur in aliquo "loco certo."

† See Blackſtone's Commentaries, Book III.

tinguiſhed

tinguiſhed as to have a ſeparate *preſident*; that officer who had the charge of the public treaſury *.

At laſt, in the reign of Edward the Firſt, theſe changes were completed: the court of the grand juſticiary was entirely aboliſhed; and three permanent courts were eſtabliſhed at Weſtminſter; a court of king's bench, to have the cognizance of crimes; a court of common pleas, to determine civil cauſes; and a court of exchequer, to decide in matters of revenue. As the juriſdiction committed to theſe three tribunals was totally different, they had, each of them, a ſeparate place of meeting, a different preſident, and were compoſed of different judges.

There is ground to ſuppoſe, that the jealouſy, entertained by the king, of that great officer who preſided in the *aula regis*, co-operated with the natural courſe of things in aboliſhing this court, and in producing the inſtitutions which came in its place. The office of the grand juſticiary was originally an appendage of that of the lord high ſteward; who, in all the feudal kingdoms, was the chief officer of the king's houſehold, and the perſon next in power and dignity to the ſovereign. As an employment of ſuch high importance was naturally claimed by one of the greateſt of the nobility, ſo his remaining in the poſſeſſion of it could not fail to augment his opulence and authority. It was the ſame officer in France, who, at an early period, found himſelf in a condition to dethrone the Merovingian race of kings, and to eſtabliſh the crown in his own family. We need not wonder, therefore, that Edward, a prince of equal policy and activity, and who had been ſucceſsful in extending the regal authority, ſhould be deſirous, at the ſame time that he improved the judicial eſtabliſhments, of putting an end to the exiſtence of a miniſter, of whoſe deſigns he might be apprehenſive, and whom he

* Baron Gilbert's Hiſtory of the High Court of Chancery. Dialogus de Scaccario.

found

found it difficult to retain in ſubjection. The chief juſtice, who preſided in the new criminal court, was conſidered merely in the light of a judge, without any ſhare of public adminiſtration.

In this, as well as in other branches of government, the hiſtory of modern Europe exhibits a remarkable uniformity; accompanied, however, with certain varieties, the effect of accidental circumſtances. The *cour de roy* in France, which, like the Engliſh *aula regis*, had grown out of the national council, and which was likewiſe an ambulatory court, was at length productive of ſimilar inconveniencies to thoſe felt in England; and it was thought proper to remove them, by giving a permanent reſidence to this tribunal. By an ordinance, in the reign of Philip the Fair, a branch of the *cour de roy* was fixed at Paris, and another at Thoulouſe *; to both of which the name of parliaments was given. Other courts of the ſame nature were afterwards added in different diſtricts, or had riſen in provinces which came to be reduced under the French monarchy; ſo that the whole kingdom, inſtead of being placed, like England, under one ſet of great tribunals, remaining in the capital, was divided into a number of ſeparate territories, in each of which there was a particular court, inveſted with a ſupreme and independent juriſdiction. The multiplication of lawſuits in any of thoſe courts occaſioned a ſubdiviſion of its members into different *chambers*, among which the different ſorts of judicial buſineſs were diſtributed.

The *aulic council* in Germany, as I formerly obſerved, was in like manner, an ambulatory court, which had ariſen from the diet of the empire; but, from the ſlower improvements of that country, or perhaps from the decline of the imperial dignity, it was much later than in France, before any attempts

* In the year 1302.

were

were made to correct this inconvenient mode of distributing juſtice. In the year 1495, and the reign of the emperor Maximilian, was formed the *imperial chamber*, a new and ſtationary court, with ſimilar powers to thoſe of the aulic council. But, as this latter tribunal was not aboliſhed, the German empire has come to be provided with two diſtinct judicatures, the one ambulatory, the other with a fixed reſidence; which have, in the greater part of cauſes, a concurrent juriſdiction.

In Scotland, the *aula regis*, both in its original conſtitution, and in its powers, was perfectly ſimilar to the court of the ſame name in England; and, from ſimilar motives of conveniency, it was afterwards broken into the different courts, of the ſeſſion the exchequer, and the juſticiary; correſponding to the diſtinction of civil, fiſcal, and criminal cauſes; and theſe tribunals came, at length, to have a regular eſtabliſhment in the capital.

In conſidering the policy of the judicial inſtitutions, in modern Europe, thoſe of England and France, the two moſt powerful nations, appear to merit particular notice.

In France, the eſtabliſhment of a number of parliaments, or ſupreme tribunals, in different diſtricts throughout the kingdom, has the manifeſt advantage of diminiſhing the expence of litigation, by bringing the diſtribution of juſtice near the reſidence of the different inhabitants: an advantage which is farther improved, by the appointment of ſubordinate courts, held by the *lieutenant civil* and *criminel*, within the diſtrict of every ſuperior judicatory.

The independence of theſe great tribunals has, on the other hand, a tendency to produce inconſiſtent and jarring deciſions. The diſtricts belonging to the different parliaments may, ſo far as the interpretation of law, and the opinion of the judges, are concerned, be conſidered as in the ſtate of ſeparate kingdoms; having, in the ordinary operation of government

government, no means for ſecuring uniformity of conduct. This, no doubt, is one great cauſe of the diverſity of laws and cuſtoms, which, notwithſtanding the general influence of civilized manners, is to be found at preſent in different parts of the French monarchy.

To remove this inconvenience, an extraordinary meaſure is, in ſome caſes, adopted. The king, who is the fountain of juſtice, nominates, at pleaſure, any number of perſons, to receive an appeal from the deciſion of any particular parliament; and in this way, the members of the one parliament are ſometimes appointed to review the ſentence of another. But this is a partial remedy, which cannot be effectual to prevent all diſcordance in the judgment of thoſe different courts. In a few inſtances of groſs abſurdity, or flagrant injuſtice, the interpoſition of the ſovereign may be procured; but it is impoſſible that he ſhould give attention to the ordinary courſe of deciſions, through the whole extent of his dominions, and reſtrain the numberleſs varieties and inconſiſtencies which are introduced into the common law of the country.

The judicial eſtabliſhments of England are totally free from this inconveniency. As the principal courts have a juriſdiction over the whole kingdom, the principles of law, in every department, being determined by the ſame ſet of judges, are reduced to an uniform ſtandard. As theſe courts have, beſides, a fixed reſidence in the neighbourhood of each other, it was eaſy for them to communicate their opinions; and hence, in order to ſecure the propriety of their deciſions, it became cuſtomary, in matters of great difficulty, depending before any one court, to refer the deciſion to a meeting compoſed of the judges of all the three courts. With the ſame view, it was provided, by a ſtatute in the reign of Edward the Third, that the deciſions of the court of exchequer may be reviewed by a court conſiſting

conſiſting of the judges of the king's bench, and common pleas, with the aſſiſtance of certain officers of the crown; and by another ſtatute, in the reign of Elizabeth, that certain proceedings of the king's bench may be reviewed in a joint meeting of the juſtices of the common pleas and the barons of the exchequer.

The ſyſtem of Engliſh juriſprudence has become what might be expected from this general plan of the Engliſh tribunals. There ſeems to be no country in the world where the lawyers and judges are ſo ſtrongly impreſſed with a notion of the advantages derived from uniformity and ſtability in the rules of law. That a certain rule ſhould be eſtabliſhed, and invariably maintained, is juſtly eſteemed of more conſequence, than that the rule itſelf ſhould be the moſt perfect imaginable. Almoſt any regulation whatever is preferable to fluctuation and uncertainty. To ſuch an extreme, it ſhould ſeem, has this principle been carried in England, as to have produced a maxim, that when any point has once been decided in a judicial controverſy, or has even been ſettled by the opinion of any lawyer of good authority, it ſhall be regarded as not liable, on any future occaſion, to be altered or diſputed.

But the Engliſh tribunals, according to the plan above mentioned, were calculated to render litigation expenſive and troubleſome, by giving to the capital a monopoly in the diſtribution of juſtice. The inferior judicatories, thoſe of the baron in his own demeſne, and of the ſheriff in each county, had, upon the advancement of the *aula regis*, been ſo far reduced as to retain only the cognizance of petty crimes, and the determination of civil actions below the value of forty ſhillings. Theſe, therefore, could be of little ſervice in ſettling diſputes, and reſtraining injuſtice, throughout the kingdom; and, as no intermediate courts were provided, the moſt part of law-ſuits, both in civil and criminal matters,

and

and whether of ſmall or of great importance, could only be decided by the courts of Weſtminſter-hall. In a country ſo extenſive as England, a great proportion of the inhabitants were thus removed to a great diſtance from the ſeat of juſtice, and laid under many diſadvantages in making their rights effectual.

To ſupply this deficiency in the ordinary eſtabliſhment, the king appointed certain extraordinary judges, as auxiliaries to thoſe of the capital, for the purpoſe of circulating the adminiſtration of juſtice through every corner of the kingdom.

Although the diſtant reſidence of individuals from the ſeat of juſtice is in all caſes, inconvenient, it is more ſo in criminal than in civil actions. It ſeldom happens that a crime can be proved in any other manner than by parole evidence; for a criminal does not uſually act with ſo little caution as to afford a written document of his guilt; neither is it competent to demand his oath concerning the truth of the facts with which he is charged. But of all the methods of proof, that which requires the attendance of witneſſes, more eſpecially when they muſt be conveyed from diſtant parts of a country, is neceſſarily the moſt expenſive and burthenſome. In the view of public utility, it is likewiſe expedient, that every criminal trial ſhould be conducted, and that the puniſhment of the offender ſhould be inflicted, as much as poſſible, in the neighbourhood of the place where the crime has been committed. The chief object in the puniſhment of crimes is to preſerve the peace and good order of ſociety, by deterring others from following the example of the criminal; and this is moſt effectually obtained, when the ſame perſons who have beheld the violation of the law, are alſo ſpectators of the terror, mortification, and miſery, with which that violation is attended.

From theſe conſiderations, when the king's bench came to have its uſual reſidence at Weſtminſter, the ſovereign was induced to grant ſpecial commiſſions, for trying particular crimes, in ſuch parts of the country as were found moſt convenient; and this practice was gradually modelled into a regular appointment of certain commiſſioners, empowered, at ſtated ſeaſons, to perform circuits over the kingdom, and to hold courts in particular towns, for the trial of all ſorts of crimes. Theſe judges of the circuit, however, never obtained an ordinary juriſdiction; but continued, on every occaſion, to derive their authority from two ſpecial commiſſions; that of *oyer and terminer*, by which they were appointed to hear and determine all treaſons, felonies, and miſdemeanors, within certain diſtricts; and that of *gaol delivery*, by which they were directed to try every priſoner confined in the gaols of the ſeveral towns falling under their inſpection. Thus, by the addition of an ambulatory court, in ſupplement of another which has a fixed reſidence, precautions are taken to prevent the various and oppoſite inconveniencies incident to the diſtribution of criminal juſtice; and, as far as human inſtitutions are capable of attaining perfection, the moſt complete eſtabliſhment ſeems to be made for the trial and puniſhment of crimes.

The appointment of the circuit judges, in order to facilitate criminal trials, naturally ſuggeſted the idea, that the ſame commiſſioners might aſſiſt the courts at Weſtminſter in another department, and be made ſubſervient to the more expeditious deciſion of civil cauſes. With this view the commiſſion of *aſſiſe*, and that of *niſi prius* was granted to theſe judges. By the former they were impowered to take the verdict of a jury in the trial of landed diſputes. The latter was intended to ſhorten the procedure in ordinary civil actions, by directing the judges

judges in the circuits to inveſtigate all ſuch matters of fact as were then under diſpute before any court of Weſtminſter-hall*.

What is commonly an article of the greateſt magnitude, even in a civil proceſs, the proof of the different averments made by the parties, came thus to diſcuſſed within the county, and frequently in the very neighbourhood of the place where the diſpute had ariſen; while the mere matter of law was left to the conſideration of the great court at a diſtance; a court, from its permanent ſituation, as well as from its authority and dignity, the beſt qualified for deciding points of ſuch difficulty and importance

To theſe regulations, of ſuch manifeſt utility, there was added a further proviſion, for maintaining the general tranquility. When quarrels aroſe among individuals, when outrage and violence were committed, and theſe were likely to be followed by riots and inſurrections, it was in vain to expect, that by application to the ordinary courts of juſtice, a timely interpoſition could be procured for ſuppreſſing ſuch diſorders. It was expedient, therefore, that men of rank and character, living in the different parts of the country, and who might of conſequence, be at hand upon any emergency, ſhould be inveſted with ſufficient authority to ſeize diſorderly perſons, to put them under confinement, and, in general, to prevent violations of the public peace.

We find accordingly, that, by the ancient law of England, *conſervators of the peace*, with powers of that nature, were in the different counties, elected by the freeholders; and the ſame powers were alſo annexed to many of the higher offices of government. It appears that thoſe magiſtrates had originally no cognizance of crimes, but merely an authority to ſecure offenders, in order to their trial before the ordinary tribunals. We may eaſily conceive, how-

* See Blackſtone's Commentaries. Hawkins's Pleas of the Crown.

ever, that ſuch an employment would lead to a ſpecies of juriſdiction. When a perſon has been guilty of a breach of the peace, his conduct, although deſerving animadverſion, may often be unworthy of the trouble and expence which would attend a trial before the ordinary courts; and if, in ſuch a caſe, the magiſtrate, who has taken the offender into cuſtody, and who muſt, in ſome meaſure, have already examined the caſe, ſhould proceed of himſelf to inflict a moderate puniſhment, the expediency of ſuch a meaſure would afford its juſtification, or at leaſt would induce the public to connive at ſo ſmall an extenſion of authority.

In the reign of Edward the Third, the appointment of thoſe magiſtrates, as might be expected from the riſing ſtate of the prerogative, was transferred to the crown; at the ſame time that they were inveſted with a power of trying all offences excepting thoſe which inferred a capital puniſhment *. From this period they acquired the appellation of *juſtices of the peace*. By ſubſequent regulations they came to be entruſted with various branches of civil juriſdiction; by which they were enabled, in many queſtions of importance, to ſuperſede the interpoſition of the ſuperior tribunals.

Although in Scotland, the principal courts of law were eſtabliſhed in the capital, upon the ſame plan as in England, the inhabitants were not ſubjected to the ſame inconvenience by their diſtance from the place where juſtice was adminiſtered. To ſay nothing of the narrowneſs of the country, compared with England, the Scottiſh nobles maintained their authority much longer than the Engliſh; and the courts of the baron, and of the ſheriff, were therefore enabled to preſerve a great part of their original

* By 18 and by 34 Edward III. the juſtices of peace are empowered to determine felonies and treſpaſſes but in practice their juriſdiction is reſtricted to ſuch felonies are within the benefit of the clergy. See Hawkins.

juriſdiction.

jurisdiction. As these tribunals had the power of determining both civil and criminal actions, in their several districts, there was no necessity for bringing such matters, in the first instance, before the superior courts in the capital; and upon this account, although the judges of the court of justiciary were empowered to make circuits over the country, as in England, there was no occasion for bestowing upon them any civil jurisdiction, corresponding to what arises from the English commission of *nisi prius*.

The appointment of justices of the peace, to supply what is defective in the jurisdiction of the ordinary courts for suppressing riot and disorder, was introduced into Scotland at a later period, but in a similar manner, and upon the same footing, as in England.

SECT. II. *Of the Petty Jury—and the Grand Jury.*

FROM the progressive alterations, which have been mentioned, in the English courts of justice, it is natural to conclude, that the judges were continually advancing in experience and knowledge, and that the forms of judical procedure were daily attaining higher degrees of perfection. Of all the institutions relative to the management of judicial business, which may be considered as the effect of that improvement, those of the *petty jury*, and the *grand jury*, are most deservedly the boast of English jurisprudence; and as, in the period which we are now examining, both of them appear to have arrived at their complete establishment, a review of the circumstances from which they proceeded, and of steps by which they were introduced, may not be improper.

1. I had formerly occasion to observe, that under the government of the Anglo-Saxon princes, the chief magistrates of the several counties and hundreds of a county, or of a hundred, found it unnecessary,

ceſſary, in the determination of law-ſuits, to call a full meeting of the courts over which they preſided; and, for the greater diſpatch of the buſineſs, as well as for the eaſe and convenience of the people, were accuſtomed to ſelect a certain number of the freemen, or allodial proprietors, in each particular cauſe, to aſſiſt in giving a deciſion. Hence the firſt idea of the *petty jury* was probably ſuggeſted.

In a ſubſequent period, a ſimilar practice was adopted in the courts of a barony. When the vaſſals of a ſuperior had acquired hereditary fiefs, they were no longer under the neceſſity of ſubmitting to his arbitrary will; and in regulating their conduct, as well as in diſtributing juſtice among them, he found it expedient to act with their advice and concurrence. To have aſſembled the whole of his vaſſals, for the determination of every law-ſuit, would have been too great a hardſhip upon them; but a moderate number were convened, in order to ſatisfy the parties, and to give weight and authority to the ſentence.

The calling, occaſionally, a number of the vaſſals, in each caſe, to aſſiſt the ſuperior, was a more natural expedient, than the appointment of certain permanent aſſeſſors. It was attended with no trouble or expence; for every vaſſal was bound not only to fight for the ſuperior, but alſo to perform ſuch other ſervices as might be requiſite, in order to ſupport his authority and dignity. According to the ſimple notions of that age, theſe perſons were ſufficiently qualified to determine the points referred to their deciſion; more eſpecially as they might receive advice and direction from the magiſtrate. In ſome reſpects they were held even preferable to every other ſort of judges; being men of the ſame rank and condition with the parties; and from their ſituation, having frequently acceſs to know the ſtate of the controverſy, as well as the circumſtances of the facts in queſtion.

The

The introduction of juries in the courts of a barony, aroſe from the eſtabliſhment of hereditary fiefs; for, ſo long as vaſſals held their land precariouſly, or even were not ſecure of tranſmitting it to their poſterity, they had too much dependence upon their ſuperior, to diſpute his authority, either in ſettling their differences or puniſhing their offences. We may eaſily ſuppoſe, therefore, that, under the Anglo-Saxon government, this mode of procedure was not very common; becauſe the cuſtom of ſecuring landed eſtates to the heirs of a vaſſal was then far from being general. It is from the reign of William the Conqueror, that we may date the remarkable extenſion of jury-trials; proceeding partly from the imitation of Norman or French cuſtoms; but ſtill more from the completion of the feudal ſyſtem, and the conſequent multiplication of hereditary fiefs.

It merits attention, that this inſtitution had been hitherto limited to the hundred and county courts, and to thoſe of a feudal barony, but never had taken place in the judiciary proceedings of the national council. The cauſes which came under the cognizance of the Wittenagemote were not ſo numerous, as to create much trouble to its members, or to ſuggeſt the meaſure of devolving that branch of buſineſs upon any ſort of Committee, or partial meeting, in place of the full aſſembly.

Upon the eſtabliſhment of the Anglo-Norman parliament, its ordinary judicial buſineſs, was, in a ſhort time, committed to the *aula regis*; a court which at firſt conſiſted of ſeveral members, but was afterwards held by a ſingle magiſtrate, the deputy judge of the ſovereign. This tribunal was properly the ordinary baron court of the king; and being in the ſame circumſtances with the baron courts of the nobility, it was under the ſame neceſſity of trying cauſes by the intervention of a jury. As the vaſſals of the crown were uſually more independent

of

of the king, than the rear-vaſſals were of their immediate ſuperior; it is not likely, that, while juſtice was adminiſtered by the *pares curiæ* to the latter, the former would ſubmit to the deciſions of a ſingle magiſtrate, named at pleaſure by the ſovereign. We find accordingly, that by a general law in the reign of Henry the Second, either party in a law-ſuit was allowed to decline the cuſtomary mode of trial by ſingle combat, and to demand that his cauſe ſhould be determined by an *aſſize* or *jury* of twelve perſons. From this time forward, there can be no doubt that jury-trials were admitted in all the courts of ordinary juriſdiction. They are expreſsly recognized and eſtabliſhed by the great charters of king John, and of Henry the Third *.

When the office of the grand juſticiary was aboliſhed, in the reign of Edward the Firſt, and when the powers of the *aula regis* were diſtributed to the king's bench, the common pleas, and the exchequer, it was natural for theſe courts to follow the ſame forms of procedure which had been obſerved by that high tribunal to which they were ſubſtituted. The former practice of determining law-ſuits by a jury, was doubtleſs viewed, at the ſame time, in the light of a privilege, which the nation would not have been willing to reſign. The number of judges, in each of the courts of Weſtminſter-hall, was much inferior to that of the ordinary aſſize; and, as they were not men of the ſame rank with the parties, it was not likely that the ſame degree of confidence would be repoſed in them. To have transferred the powers of an inſtitution ſo popular as that of juries, to a ſet of courts conſtituted in this manner, would notwithſtanding the late advances of prerogative, have been a dangerous meaſure. What is called the petty jury was therefore introduced into theſe tribunals, as well as into their auxiliary courts employed to diſtribute

* Magna Charta reg. Johan. c. 21. M. C. reg. Hen. III. c. 32.

juſtice

juſtice in the circuits; and was thus rendered eſſentially neceſſary in determining cauſes of every ſort, whether civil, criminal, or fiſcal.

In the high court of parliament, however, this method of trial was never admitted; being neither found requiſite for the convenience of the members, nor conducive to the intereſt of parties. It was not requiſite for the convenience of the members; becauſe the trials which came before parliament were few, and ſpeedily brought to an iſſue. It was not conducive to the intereſt of parties; becauſe they were better ſecured from partiality and oppreſſion, by a judgment of the whole houſe, conſiſting of all the crown vaſſals, than they could expect to be from a deciſion given by a limited number of thoſe vaſſals, arbitrarily appointed by the preſident.

It has been queſtioned, whether an inſtitution, ſimilar to that of the petty jury in England, had place in any of the nations of antiquity. Among the Greeks and Romans, as far back as we can trace the hiſtory of their judicial eſtabliſhments, it does not appear that the inhabitants of certain diſtricts were ever inveſted with juriſdiction, or that a part of their number were, in each trial, ſelected by the ordinary magiſtrate to aſſiſt him in giving a deciſion. The ordinary courts of Greece and Rome were compoſed of a chief magiſtrate, and of certain aſſeſſors; but theſe laſt were permanent officers, appointed, as it ſhould ſeem, from year to year, or for the ſame period with the magiſtrate himſelf.

The Roman *judex pedaneus*, indeed, was nominated for each trial; but he was originally no more than a commiſſioner for taking a proof of the facts in queſtion; and, although he was afterwards empowered in many caſes, to determine the law, as well as the fact, the intention of his appointment was not to give weight and authority to the deciſion, but merely to relieve the magiſtrate and his aſſeſſors from a part of their labour.

Among

Among the Gothic nations of modern Europe, the cuſtom of deciding law-ſuits by a jury ſeems to have prevailed univerſally; firſt in the allodial courts of the *county*, or of the *hundred*, and afterwards in the baron-courts of every feudal ſuperior. The ſame cuſtom, however, does not appear, in any European kingdom except England, to have been extended to thoſe great courts, which, upon the advancement of civilized manners, aroſe out of the national council, and were inveſted with the principal branches of ordinary juriſdiction.

The *cour de roy*, in France, was not, like the court of the grand juſticiary in England, reduced under the direction of a ſingle magiſtrate; but conſiſted of an indefinite number of the ſame perſons who ſat in the national aſſembly. The parliament of Paris, formed out of the *cour de roy*, was likewiſe compoſed of as many of the nobles as choſe to attend; with the addition of a body of lawyers, who, it was underſtood, were to direct the forms of procedure, and to take upon them the drudgery of the buſineſs *. The parliament of Thouloufe, which was authoriſed at the ſame time, and the other parliaments which were afterwards formed in particular diſtricts, conducted themſelves upon the ſame principles with the parliament of Paris; and, as all of them were compoſed of a numerous council of judges, the intervention of a jury, to prevent erroneous judgments, or even to ſecure the parties from oppreſſion, was the leſs neceſſary.

This obſervation is applicable to the principal courts of the German empire. The aulic council was compoſed of an indefinite number of the ſame perſons who had a right to ſit in the diet. The im-

* Soon after the eſtabliſhment of the parliament of Paris, the king diſpenſed with the attendance of the dignified clergy. The ordinary lay barons afterwards abſented themſelves, without any expreſs diſpenſation; and there remained only the princes of the blood, and peers, who retained the privilege of attending that court on ſolemn occaſions.

perial

perial chamber was a numerous council of judges. In both of theſe tribunals, therefore, the aſſiſtance of a jury was probably thought unneceſſary.

In Scotland, the court of the grand juſticiary came to be eſtabliſhed upon the ſame plan as in England; and admitted, in like manner, the form of jury-trials. But upon the diviſion of the powers of that court into different branches, the civil tribunal, then introduced, was a committee of parliament; that is, a committee of thoſe crown-vaſſals of whom juries had been compoſed. By one or two variations of that model, was formed the preſent court of ſeſſion, which was made to conſiſt of fifteen ordinary judges, the uſual number of jurymen in Scotland; with a view, it ſhould ſeem, to ſuperſede the uſe of jury-trials: and, as this mode of judicial procedure was laid aſide in the principal civil tribunal, the example appears to have been quickly followed in the inferior civil courts of the kingdom. In the court of juſticiary, however, which conſiſted of a ſmaller number of judges, and conſequently in the inferior criminal courts, the ancient practice of jury-trials was continued.

Beſide the circumſtance now mentioned, relating to the conſtitution of the principal courts of juſtice in ſeveral European kingdoms, the influence of the ancient Roman law, as delivered in the compilations of the emperor Juſtinian, was another more general cauſe, which contributed to the diſuſe of juries through the greater part of Europe. Upon the revival of letters in Europe, that improved ſyſtem of juriſprudence was recommended and propagated by the clergy; was taught, under their direction, in almoſt all the univerſities; and its deciſions and forms of procedure were conſidered by the civil magiſtrate as models for imitation.—The Gothic inſtitution of juries, which had been unknown to the Romans, was therefore brought more

more and more into diſcredit; and, that the whole cognizance of a law-ſuit ſhould be committed to judges, who, by being ſet apart for that purpoſe, and by devoting themſelves to this employment, might become peculiarly qualified for the exerciſe of it, was regarded as an improvement in the ſtate of judicial policy.

In England, where, from circumſtances that will be mentioned hereafter, the Roman ſyſtem was leſs incorporated with the common law than in other countries, the cuſtom of jury-trials has, accordingly, been moſt religiouſly maintained. But even in England, this cuſtom has been totally excluded from eccleſiaſtical tribunals, from thoſe of the two univerſities, and from all other courts in which, from particular cauſes, the maxims and principles of the civil law have been adopted.

Scotland was, in ſome degree, under the influence of oppoſite ſyſtems; and ſeems, upon that account, to have held a middle courſe. Like the nations upon the continent, ſhe was laid into a cloſe imitation of the Roman deciſions and forms of procedure; while, by her vicinity to England, ſhe was induced to borrow many regulations and cuſtoms from that more cultivated and powerful country. Thus the Scottiſh tribunals imitated the Engliſh, by retaining a jury-trial in criminal proſecutions; but followed the practice of the Romans, by neglecting that inſtitution in the greater part of civil actions. In the former, it was natural to entertain a greater ſuſpicion of the court than in the latter; becauſe, in a criminal trial, the king, who nominates the judges, and to whom they muſt look for preferment, is always a party; whereas in a civil action, or controverſy between private individuals, the crown has no intereſt; and there is commonly no circumſtance to influence the magiſtrate upon either ſide, or lay him under a temptation to groſs partiality.

It

It is not likely that the inſtitution of juries would, in any country, be very acceptable to the ſovereign; ſince it limited the power of thoſe judges whom he appointed, and of whom he had, in ſome meaſure, the direction. We may eaſily imagine, therefore, that, according as, among any people, the prerogative was exalted or depreſſed, its influence would be exerted, more or leſs effectually, in diſcouraging this mode of trial; and hence we may diſcover an additional reaſon for the continuance of juries in England. As the Engliſh were ſucceſsful in reducing the power of the monarch within moderate bounds, and acquired proportionably higher notions of liberty; they became, of courſe, the more attached to that method of diſtributing juſtice, by which the diſpoſal of their lives and fortunes was committed to their fellow citizens, rather than to officers in the nomination of the crown. They became not only the more paſſionately fond of this privilege, which had been handed down to them from their anceſtors, but at the ſame time the more capable of maintaining it. There is no reaſon, indeed, to believe that this circumſtance alone would have been ſufficient to retain, in England, the practice of jury-trials; for other European ſtates have had alſo the good fortune to reſtrain the prerogative, and to eſtabliſh a popular government. But this circumſtance undoubtedly co-operated, with the other cauſes formerly mentioned, in rendering the people of England more tenacious of that ancient appendage of the feudal policy, and more jealous of every attempt, from whatever pretences, either to limit the power of juries, or to exclude them from the deciſion of particular cauſes.

2. In order to ſecure the regular diſtribution of juſtice, it is not enough that courts are properly conſtituted, and that judges are attentive to the determination of law-ſuits. The magiſtrate muſt alſo be informed of thoſe caſes which require his interpoſition;

ſition; and meaſures muſt be taken for bringing them under his examination. A diſtinction, however, in this reſpect, may be obſerved between that branch of judicial buſineſs which relates to civil, and that which relates to criminal cauſes. In a controverſy between private individuals, each party is likely to prove ſufficiently attentive to his own intereſt; and may therefore be left to vindicate his own rights as he ſhall think fit. But when a crime is committed, which requires a puniſhment for the ſake of a public example, there is danger that the intereſt of the community will be neglected; that no information of the fact will be given to the judge; and that no perſon will take upon him the trouble, the odium, and the expence, of bringing an accuſation. It is here that ſome regulation is neceſſary, to prevent the diſorders that might be apprehended, from permitting criminals to paſs with impunity.

Among the Romans, not only the perſon injured, but any one of the people, was allowed to proſecute a public offence. As the crime was underſtood to affect the whole community, any one of its members, being in ſome degree a ſufferer, was entitled, upon that account, to come forward and claim redreſs.

It requires but little ſagacity to diſcover, that this mode of proſecution was liable to great abuſes. It was likely, on the one hand, to produce negligence in proſecuting crimes; and, on the other, to encourage unjuſt and groundleſs proſecutions. Few people were found ſo public-ſpirited, as to undertake the diſagreeable taſk of convicting criminals, from the view of promoting the intereſt of ſociety; while many were tempted to become public accuſers, from ſecret motives of reſentment or malice, or even for the purpoſe of obtaining a pecuniary compoſition from the perſon whom they had found an opportunity to proſecute. To prevent this latter enormity, ſevere penalties were inflicted upon ſuch as brought an unjuſt accuſation of a public offence. In particular,

cular, it was enacted, that he who failed in proving his accuſation, ſhould ſuffer the ſame puniſhment to which, if he had been ſucceſsful, the defendant would have been ſubjected: a regulation which, if ſtrictly enforced, muſt have put an end to every capital proſecution: For who is there that will hazard his own life, upon the uncertainty of prevailing in any criminal trial?

In the modern feudal nations, the judge himſelf was originally the public proſecutor. Every feudal lord, whether a ſovereign prince or a ſubject, was excited to puniſh offences within his demeſne; not only from the deſire of repreſſing diſorders, but alſo from that of procuring fines and amerciaments. As repreſenting the community, of which he was the leader and executive officer, he firſt brought an accuſation againſt thoſe whom he ſuſpected of crimes: as the chief magiſtrate, he afterwards examined the proof, and gave judgment in the cauſe.

The miſchief attending this practice muſt have ſoon become notorious. It can hardly be ſuppoſed that the ſame perſon would acquit himſelf with propriety in the two-fold character of an accuſer and a judge. Even in the courſe of a ſpeculative debate, men uſually acquire a prejudice in favour of thoſe tenets which they are endeavouring to ſupport; and find it extremely difficult to preſerve a degree of candour in judging of ſuch as are advanced upon the oppoſite ſide. What ſhall we ſay then of a perſon who is engaged in preparing a public accuſation; who ſets out with a ſtrong ſuſpicion, that the defendant is guilty; who converſes with informers, likely to employ every artifice to ſtrengthen that opinion; and who, to paſs over his pecuniary intereſt, involved in the iſſue of the cauſe, has exerted himſelf in collecting and arranging all the facts and arguments in confirmation of his hypotheſis? how is it poſſible to avoid that blind zeal and prepoſſeſſion, that eagerneſs to convict the defendant, acquired in the capacity

city of a profecutor; and to behave with that impartiality, coolneſs, and moderation, which are eſſentially requiſite in the diſtribution of juſtice?

To prevent this dreadful enormity, and at the ſame time to ſecure a proper attention to the public intereſt, the proſecution of crimes was, in all the feudal countries, reduced into a ſeparate employment, by the appointment of a procurator or factor to act in the name of the ſovereign. Hence the attorney-general in England, and the king's advocate in Scotland, were appointed to manage the judicial buſineſs of the crown, before the principal tribunals; and a ſimilar inſtitution, from the ſame views of expediency, was even extended to inferior courts.

But, previous to the proſecution of offences, there muſt be information of their exiſtence; and frequently, too, the immediate interpoſition of the magiſtrate is neceſſary, to apprehend and impriſon the offender. In a rude nation, however, eſpecially if it is of conſiderable extent, many crimes are likely to be hid from the public eye, and to eſcape the examination of any court. It appears, accordingly, that, in modern Europe, this branch of police had early become an object of general attention. To make inquiry concerning the commiſſion of public offences, and to tranſmit an account of them to the criminal court, was one great purpoſe of the appointment of *coroners*; a ſet of officers who had place not only in England and Scotland, but in the greater part, if not in all, of the feudal kingdoms upon the continent.

The office of the coroners, in England, is of ſo great antiquity, that the commencement of it is entirely loſt in obſcurity. It ſeems to have been an immemorial cuſtom of the Anglo-Saxons, that ſeveral perſons of diſtinction ſhould be named by the freeholders in each county, with power to ſecure and impriſon criminals of all ſorts, to the end that they might be brought to a trial. From this employment,

ployment, theſe officers, as in after times the juſtices of the peace, found the means of aſſuming a criminal juriſdiction, which, from ſmall beginnings, became gradually more and more extenſive. Another branch of buſineſs, devolved upon the coroner, and which may be regarded as an appendage or conſequence of the former, was that of aſcertaining and determining the value of the fines, amerciaments, and forfeitures, or of any other emoluments, which accrued to the ſovereign, either from the condemnation of public offenders, or from the right of the crown to all the goods, of which no other proprietor could be found.

When the coroner had occaſion to enquire into the truth of any fact, either with a view to determine thoſe matters which fell under his own juriſdiction, or in order to tranſmit an account of it to ſome other criminal court, he proceeded, in the ſame manner that was cuſtomary in the courts of the hundred, and of the county, by the aſſiſtance of an *inqueſt* or jury; and the number of jurymen, who, in thoſe caſes, were called from the neighbouring town-ſhips, was not leſs than was employed in other judicial inveſtigations.

After the Norman conqueſt, when the *aula regis* drew to itſelf the cognizance of the greater part of crimes, it became the duty of the coroner to certify to that court his inquiſition concerning thoſe offences which fell under its juriſdiction; and upon this information, the moſt authentic that could well be procured, a trial before the grand juſticiary was commenced. Upon the eſtabliſhment of the king's bench, and of the commiſſions of oyer and terminer and gaol delivery, the like certification, and for the ſame purpoſe, was made by the coroner to thoſe tribunals.

But in proportion to the advancement of the prerogative, the authority of the coroner, an officer elected by the county, was diminiſhed; his juriſ-

diction was daily ſubjected to greater limitations; and his reports became gradually more narrow and defective: whether it be that, by having a fellow-feeling with the inhabitants, he endeavoured to ſcreen them from juſtice, or that, from the ruſt and relaxation to which every old inſtitution is liable, his operations became tardy and inaccurate; certain it is, that he came to overlook the greater part of the offences which require the interpoſition of the magiſtrate, and his inquiſition was at length confined to a few of thoſe enormous crimes, which excite univerſal indignation and reſentment.

To ſupply the deficiency of the coroner's inqueſt, the ſheriff, who had come, in a great meaſure, under the appointment of the crown, was directed, upon the meeting of judges in the circuits, or of the other criminal courts, to call a jury, in order to procure information concerning the crimes committed in particular diſtricts. Hence the origin of what is called the *grand jury*, by whoſe inquiſition the judges were authoriſed to proceed in the trial of public offenders.

It is probable, that when the grand jury were firſt called, they made an inquiry at large concerning every fact which ought to become the ſubject of a criminal trial, and of their own proper motion delated the perſons whom they found to deſerve an accuſation; but, by degrees, when the agent for the crown had been led to ſuſpect any particular perſon, he was accuſtomed to lay before them the immediate queſtion, how far that ſuſpicion was well founded? Hence the two methods of finding the fact; by *preſentment* and by *indictment*.

It ſeems evident, from what has been obſerved, that the original purpoſe of the inquiſition by the coroner, and of a *preſentment* by the grand jury, was to prevent offenders from being overlooked, and from eſcaping a trial. When the cuſtom of preferring *indictments* to the grand jury was introduced, the

the intention of that meaſure was, probably, to avoid the trouble and expence of a fruitleſs proſecution. But, whatever was originally intended by this practice, the neceſſity of procuring the previous approbation of a jury, by one or other of the forms above mentioned, was productive of the higheſt advantage to the people, that of ſecuring them from groundleſs or frivolous accuſations. If a perſon is known to have committed a crime, or lies under a ſtrong ſuſpicion of guilt, the voice of the whole neighbourhood will probably call aloud for juſtice, and demand an immediate trial of the offender. But if, on the contrary, an innocent man is attacked, if he is threatened with a proſecution, from apparently malicious motives, or for the purpoſe of ſerving a political job, it is moſt likely that his fellow citizens will view this proceeding with indignation; that they will conſider his misfortune as, in ſome meaſure, their own; and that, from a principle of humanity and juſtice, as well as from a regard to their own intereſt, they will be excited to ſtand forth as the protectors of innocence.

This is a new inſtance, perhaps more conſpicuous than any that we have had occaſion to obſerve in the hiſtory of the Engliſh government, of a regulation whoſe conſequences were not foreſeen at the time when it was introduced. The great benefit ariſing to ſociety from the interpoſition of the grand jury is not only totally different, but even diametrically oppoſite to that which was originally intended by it. The original purpoſe of that inſtitution was to aſſiſt the crown in the diſcovery of crimes, and by that means to encreaſe the number of proſecutions. But when an accurate police had been eſtabliſhed in the country, there was little danger that any crime of importance would be concealed from the public; and it became the chief end of the grand jury to guard againſt the abuſes of the diſcretionary power

with which the officers of the crown are inveſted, that of proſecuting public offences.

The employment of the coroner in Scotland, was the ſame as in England; and he appears to have uſed the ſame forms in the exerciſe of his juriſdiction. With the aſſiſtance of a jury, he enquired into the commiſſion of crimes; and either puniſhed them by his own authority, or tranſmitted information concerning them to the competent court. The negligence of this officer ſeems, in that country, to have likewiſe produced the interpoſition of the ſheriff, or chief magiſtrate of particular diſtricts, by calling a jury for the ſame purpoſe. By a ſtatute in the reign of Alexander the Second, it is enacted, that no proſecution, at the inſtance of the crown, ſhall proceed againſt any perſon, unleſs by an accuſation, upon the inquiſition of a jury, conſiſting of the chief magiſtrate of the place and three reſpectable perſons in the neighbourhood. This rule continued till near the end of the ſixteenth century; when, in conſequence of the eſtabliſhment of the court of ſeſſion, and from other cauſes, the inveſtigation of judicial matters, by a jury, came to be much more limited than it had formerly been. By an act of the Scottiſh parliament, in 1587, certain commiſſioners, inſtead of the inqueſt formerly called, were appointed in the ſeveral counties, for enquiring into public offences; and indictments, framed upon the report of theſe commiſſioners, were put into a liſt, which got the name of the *porteous roll* *.

The ſame ſtatute empowered the king's advocate to proſecute crimes of his own proper motion †; and, as he was the perſon employed to raiſe indictments, upon the information tranſmitted by the commiſſioners, he naturally aſſumed the privilege of determining whether the facts laid before him ought to be the ground of a proſecution or not. Thus in

* See Act of Parliament, 1587. ch. 82. † Ch. 77.

Scotland

Scotland the ancient grand jury was abolished; and criminal actions, at the instance of the public, came, in all cases, to be directed at the discretion of a crown officer.

The attorney-general, in England, and the master of the crown-office, have acquired in like manner, a power of prosecuting by *information*, without any previous authority of a grand jury; but this mode of prosecution is confined to misdemeanours tending to disturb the government, or the peace and good order of society, and is never extended to crimes of a capital nature.

How far the nations upon the continent were possessed of a similar provision, to secure the people from unjust and groundless prosecutions, it is not easy to determine. That in the greater part of them the coroner's inquest was employed for bringing to light those disorders which required the interposition of a criminal court, there is no room to doubt. But when, from the circumstances which have already been pointed out, the method of trial by the petty jury had fallen into disuse, it is not likely that a previous inquest would still be employed to judge of the necessity or expediency of commencing a criminal accusation. From the rapid advancement of the prerogative in these nations, the sovereign was freed from any restraint in this branch of administration, and an unbounded liberty of trying public offences was committed to the officers of the crown. To whatever causes it may be ascribed, the English grand jury is now the only institution of the kind that remains in Europe; and perhaps, as it is modelled at present, there cannot be found, in the annals of the world, a regulation so well calculated for preventing abuses in that part of the executive power which relates to the prosecution of crimes.

SECT.

SECT. III. *Circumſtances which prevented the Civil Law from being ſo much incorporated in the Syſtem of Engliſh Juriſprudence, as in that of other European Countries.*

To thoſe who ſurvey the common law of England, in its progreſs towards maturity, there is one peculiarity which muſt appear extremely remarkable; the little aſſiſtance it has borrowed from the ancient Roman juriſprudence; that ſyſtem of equity, which has been ſo highly eſteemed, and which, in the other countries of Europe, has excited ſuch univerſal imitation. Why the Engliſh have deviated, in this particular, from the practice of all the neighbouring nations, and have diſdained to draw ſupplies from thoſe plentiful ſources of legal knowledge, by which many ſyſtems of modern law have been ſo amply enriched, it ſeems a matter of curioſity to enquire: at the ſame time that, by examining the cauſes of a proceeding ſo ſingular, and apparently ſo unreaſonable, we ſhall, perhaps, be enabled to diſcover the advantages or diſadvantages which have reſulted from it; and likewiſe to form an opinion, how far expediency may, in the preſent ſtate of things, recommend the ſame, or a different line of conduct.

The Gothic nations who ſubdued the provinces of the Roman empire, and ſettled in the countries which they had over-run, were by degrees incorporated with the ancient inhabitants; and from the communication and mixture of theſe two races of men, there was formed a compoſition of laws, manners, and cuſtoms, as well as of language; in which, upon different occaſions, and from a variety of circumſtances, the proportions contributed by the one people, or by the other, were accidentally more prevalent. Although the ancient inhabitants were, every where, the vanquiſhed party, they poſſeſſed that

that ſuperiority which knowledge and civilization have uſually beſtowed over ignorance and barbariſm; and hence we find a multitude of Roman inſtitutions inſerted in the codes of law, which at an early period, were publiſhed by many kings or leaders of thoſe barbarous nations.

Soon after the ſettlement of thoſe barbarians, or rather before it was completed, they embraced Chriſtianity, and fell under the direction of the Chriſtian clergy; who, having been firmly eſtabliſhed in the Roman empire, were enabled to preſerve their footing in thoſe new ſtates that were formed. Theſe eccleſiaſtics were attached to the Roman law, in oppoſition to the barbarous cuſtoms of the new ſettlers; both as it was the ſyſtem with which they were acquainted, and as it was calculated to maintain that peace and tranquillity, which their profeſſion and manner of life diſpoſed them to promote.

The doctrines of Chriſtianity, unlike the fables which conſtituted the mythology of the Greeks and Romans, contained philoſophical truths, which the teachers of that religion were under the neceſſity of knowing, and by the knowledge and propagation of which they ſupported their credit among the people. Thoſe teachers, therefore, became converſant in ſeveral branches of literature; and, as their theological ſyſtem afforded them great ſcope for ſpeculation and reaſoning, and conſequently for difference of opinion; they ſoon arranged themſelves in different ſects; diſputed eagerly with one another; and in proportion to their zeal in making proſelytes, acquiring a degree of acuteneſs and ſkill in defending their ſeveral tenets.

The learning and abilities which came, in this manner, to be poſſeſſed by the clergy, together with the general ignorance and ſuperſtition of the people, beſtowed upon the former an influence and authority over the latter, and produced, as I formerly took notice, an extenſive juriſdiction, both in eccleſiaſtical

ſiaſtical and ſecular matters. It is ſufficient here to obſerve, that, in the exerciſe of this juriſdiction, eccleſiaſtical judges were guided, as far as the difference of circumſtances would permit, by the rules and principles of the Roman juriſprudence; which had been tranſmitted from the ancient inhabitants of the provinces, and were delivered in the collections made by different Roman emperors, by Theodoſius the younger, by Juſtinian, and by many of his ſucceſſors. The Roman ſyſtem became, in a great meaſure, the law of the church; and was therefore propagated by her, with the ſame zeal, and from the ſame views and motives, by which ſhe was actuated in ſupporting and extending her influence and authority. The diſorders which, for ſome centuries, were continued by the ſucceſſive invaſions of new barbarous tribes, retarded, no doubt, the progreſs of every regular eſtabliſhment. But when Europe began to recover from theſe convulſions, and when the reſtoration of public tranquillity was followed, as there was reaſon to expect, by the revival of letters, the efforts of the clergy, to extend the credit and authority of the Roman law, became highly conſpicuous and ſucceſsful. Innumerable ſchools were founded in cathedrals and monaſteries, many of which, under the patronage of the church, obtaining large endowments, and being inveſted with juriſdiction and various privileges, became what are now called univerſities. Both the *canon law*, which was the rule of deciſion in eccleſiaſtical courts, and the *civil law*, properly ſo called, the original fund from which a great part of the former had been gathered, were taught in theſe different ſeminaries, and thus rendered familiar, not only to thoſe who had views of entering into holy orders, but to all who received the benefit of a liberal education.

About the end of the eleventh century, Ivo de Chartres publiſhed a collection of canon-law, much more complete than any that had been formerly made;

made; though it was much inferior to the ſubſequent compilation of Gratian, a Benedictine monk, known by the title of the *Decretum*.

In the year 1137, the Piſans, at the taking of the town of Amalphi, found a copy of Juſtinian's Pandects; and to this accident, the rapid cultivation of the civil law, from that period, has been commonly aſcribed. But we may be allowed to entertain ſome doubt, whether an event of that magnitude could have proceeded from a circumſtance apparently ſo frivolous.

There is no reaſon to believe that this book had been entirely loſt in the Weſtern part of Europe, although, for a long time, it had been leſs in requeſt than other compilations upon the ſame ſubject. Ivo de Chartres, in the preceding century, quotes the laws of the Pandects; and Irnerius, profeſſor of law at Bologna, as early as the year 1128, prelected upon ſome part at leaſt of Juſtinian's compoſitions.

Even ſuppoſing the Pandects to have been loſt, there were many other writings upon the Roman law ſtill remaining, from which the knowledge of it might, in ſome degree, have been preſerved; the the Inſtitutes, the Codex; and the Novellæ of Juſtinian; the Theodoſian code; and the compilations, publiſhed after the time of Juſtinian, by different emperors of Conſtantinople.

Neither is it likely that, if men had poſſeſſed no previous diſpoſition to that ſtudy, it would have been inſpired by finding an old book upon the ſubject. Few people will be at the pains to peruſe a long book, upon any abſtract ſcience, unleſs they already feel a ſtrong inclination to acquire the knowledge contained in it. But, in the twelfth century, when, from different circumſtances, a ſpirit of improvement began to diffuſe itſelf in Italy and France, it is probable that men of learning were excited to the diſcovery of ancient books upon every ſubject; and, as the civil law became then a principal object of attention, the Pandects, containing the fulleſt collection

lection of legal opinion and deciſions, was conſidered as the moſt inſtructive work of the kind, and copies of it were greedily ſought for. As Amalphi was, at this time, the chief trading ſtate of Italy, an Amalphitan merchant, obſerving the demand for books of that nature, is ſaid to have brought from Conſtantinople this copy of the Pandects, which was found by the Piſans. Some authors mention another copy of the ſame book, that had been diſcovered in the year 1128, at Ravenna*.

However this be, the Roman law was, upon the revival of letters in Europe, univerſally held up, and admired, as the great ſyſtem, from an imitation of which the laws of each particulr country might receive the higheſt improvement. This the modern lawyers were, by their education, accuſtomed to conſider as the ſtandard of reaſon and equity; and, wherever their own municipal cuſtoms were defective, they had recourſe to it, in order to ſupply what was wanting, or to correct what was amiſs. Even ſuch of the modern writers as endeavoured to delineate the principles of natural juſtice, independent of all poſitive inſtitutions, made uſe of the Roman ſyſtem, almoſt excluſively of every other, in order to illuſtrate their doctrines.

Although the Roman law was, in this manner, generally incorporated in that of the modern European nations, it acquired more authority in ſome of theſe nations than in others. The German emperors appear to have conſidered themſelves as the ſucceſſors to the Roman empire in the Weſt, and their dominions as therefore ſubject to that ſyſtem of law by which the Romans were governed. Hence, in Germany, properly ſo called, in the Southern part of France, or what are called the *Pays de droit ecrit*, and in ſeveral parts of Italy, which, at the time when the German emperors enjoyed the higheſt

* Giannone, Hiſtory of Naples.

proſperity, were included under their dominion, the Roman law is underſtood to be the common law of the country, to which the inhabitants, upon the failure of their own municipal cuſtoms and regulations, are bound to ſubmit. In other European countries it is viewed in the light of a foreign ſyſtem; which, however, from its intrinſic merit, is entitled to great attention and regard; and of which many particulars have been, in a manner naturalized by long uſage, or adopted by the poſitive will of the legiſlature. This is the caſe in Spain, in Portugal, in the Northern parts, or what are called the *Pays des coutumes*, in France, in Sweden, in Denmark, and in Scotland *.

Upon the revival of letters, the ſame regard to the Roman law was diſcovered in England as in the other countries of Europe. It was propagated with equal zeal by the clergy, and, in the twelfth century, became the ſubject of public lectures in both the univerſities. The deciſions and principles delivered in the writings of Juſtinian, were borrowed, and even the expreſſion was frequently copied, by Bracton, by the author of Fleta, and by other Engliſh lawyers of that period. The work attributed to Glanville, the grand juſticiary of Henry the Second, and a Scotch law-book, known by the name of *Regiam Magiſtatem*, both ſet out with a paſſage which is almoſt literally the ſame; whence, as well as for other reaſons, it is concluded, that the latter of theſe productions has been copied from the former. Upon examination, however, the paſſage in queſtion is found in the preface to the inſtitutes of Juſtinian.

The ſettlement of the chief courts of common law in the neighbourhood of the capital, which was begun in conſequence of the great charter of king John, and completed in the reign of Edward the Firſt,

* Duck de Auctoritate Jur. Civil.—It ſhould ſeem, that, ſince the time when this author wrote, the ideas of the inhabitants, in ſome of thoſe countries, have undergone a conſiderable change upon that ſubject.

made

made it neceſſary that the lawyers, and other practitioners in thoſe courts, ſhould reſide there alſo. Hence aroſe the *inns of court*, and *of chancery*, which were lodging-places in the neighbourhood of London, intended for the accommodation of the retainers about the courts at Weſtminſter. Seminaries of common law were ſoon formed in thoſe places of reſort; and lectures upon that ſubject were given to the eldeſt ſtudents, in the inns of court, and to the younger ſtudents, in the inns of chancery. The king gave encouragement to theſe inſtitutions, by forming the members of each lodging-place into a ſort of corporation, and by eſtabliſhing a ſet of rules for their conduct. We find that Henry the Third beſtowed upon them an excluſive privilege, by prohibiting any other ſchool for teaching law within the city of London.

The univerſities of Oxford, and of Cambridge, were the only other inſtitutions in the kingdom, in which law was taught with public encouragement. But in thoſe learned ſocieties, the only ſyſtems which had reputation, and which were thought worthy of public lectures, were thoſe of the civil and the canon law. The municipal law, from its tendency, in many particulars, to encourage violence and diſorder, from the barbarous jargon in which it was involved, and from the want of literature among its practitioners, was treated with contempt. Theſe practitioners, we may eaſily imagine, were diſpoſed to retaliate thoſe unfavourable ſentiments. Upon this account, and from the diſtance between the ſeats of inſtruction, in civil and municipal law, the former contributed no aſſiſtance to the latter. Thoſe two branches of education were carried on apart, and became entirely diſtinct, and ſeparate. The teachers of each, inſtead of co-operating, in order to form a complete lawyer, were actuated by mutual jealouſy and oppoſition; and the one ſcience being treated as deſpicable in the univerſities, the other was pro-

bably

bably repreſented as uſeleſs by the practitioners of the common law.

For ſome time the civil law, under the patronage of the clergy, and of the univerſities, was in the higheſt eſteem throughout the nation; and the ſtudy of the municipal law was confined to mere lawyers by profeſſion; but at length, from the natural courſe of things, the comparative value of thoſe two branches of ſcience was of neceſſity altered. The latter, being that ſyſtem by which the property and the conduct of individuals were chiefly regulated, could not fail to riſe in conſideration and importance: at the ſame time that, by the progreſs of judges in experience and refinement, its defects were gradually ſupplied; while the laws of Rome, which were unconnected with the ordinary courts of juſtice, and therefore of no practical utility, became an object of little attention.

We accordingly find, that, in the reign of Edward the Fourth, and even before that time, the inns of court and chancery had become the faſhionable places of education for men of rank and fortune, and were frequented by a great multitude of ſtudents. There were four inns of court, and no leſs than ten of chancery: in each of the former, the number of ſtudents amounted to about two hundred, in each of the latter, to about an hundred. Neither was the ſyſtem of education, in this great ſeminary, confined entirely to law: it comprehended all exerciſes, and every ſort of accompliſhment, becoming a gentleman of the king's court; ſuch as dancing and muſic. Sir John Forteſcue informs us, that it was likewiſe cuſtomary to ſtudy divinity *on feſtival days*; I ſuppoſe, by way of relaxation *.

Juſtice Shallow is introduced by Shakeſpeare, boaſting, that he had been a ſtudent of *Clement's Inn*, and

* Forteſcue de laudibus Leg. Ang.—Alſo the diſcourſes on this ſubject preſerved in Hearne's collection of antiquities.

that

that he had often heard the chimes at midnight; as a proof that he was a young man of faſhion and ſpirit.—In the ſame manner, as he boaſted of his acquaintance with John of Gaunt.

When thoſe teachers of the common law had begun to feel their own conſequence, they aſſumed the privilege of beſtowing rank upon their ſtudents of a certain ſtanding; and conferred the degrees of *ſerjeant*, and *apprentice*, correſponding to thoſe of *doctor* and *bachelor* in the univerſities.

As the ſeparation of the civil and the municipal law produced an averſion to the former in the inns of court and chancery, we may eaſily conceive, that the ſame prejudice would be communicated to their numerous pupils, and thus become prevalent among the nobility and gentry of the kingdom. Hence the jealouſy diſcovered, on ſeveral occaſions, by the Engliſh parliament, leſt, by the influence of the clergy, the laws of ancient Rome ſhould be introduced into England; of which a remarkable inſtance is mentioned in the reign of Richard the Second; when the nobility, in parliament, declare, "that the realm of England hath never been unto "this hour, neither, by the conſent of our lord the "king, and the lords of parliament, ſhall it ever be "ruled or governed by the civil law*." As the laws of ancient Rome had not been incorporated in the municipal ſyſtem, they ſeem to have been viewed, by the partizans of the latter, in the ſame light with the doctrines of a rival ſect, which has with difficulty been prevented from acquiring the ſuperiority in the national eſtabliſhment.

It has been alleged by authors of note, that the oppoſition of the Engliſh nobility to the civil law, aroſe from its being the law of a deſpotic government, and therefore inconſiſtent with their notions of Engliſh liberty. But whoever has examined the

* Blackſtone's Commentaries.

compilations

compilations of Juſtinian with any attention, muſt be ſenſible that there is no foundation for this remark. Thoſe collections relate almoſt entirely to the private, and touch very ſlightly upon the public law of the empire. But with reſpect to property and the rights of private perſons, the opinions and deciſions of the Roman lawyers do not ſeem to have been at all perverted by the nature of their government. Perhaps it will be difficult to point out any modern ſyſtem of law, in which the rules of juſtice among individuals appear to be ſo little warped by the intereſt of the crown, and in which the natural rights of mankind are inveſtigated and enforced with greater impartiality. In one or two caſes, you meet with an obſervation, "that the "prince is above the laws." Theſe, however, are detached, and, as it were, inſulated expreſſions, delivered in general terms, and without any viſible effect upon the body of the work; which relates, not to diſputes between the emperor and his ſubjects, but to ſuch as may ariſe among the people.

After the free government of Rome was overturned, the emperors found it expedient for a long time to conceal the extent of their uſurpation, and to leave the ordinary judges, in a great meaſure, undiſturbed in the exerciſe of that juriſdiction which had been founded in the more fortunate times of the republic. Auguſtus firſt ſet the example of this prudent diſſimulation, which was copied by a great number of his ſucceſſors. Beſide the apprehenſion that the old republican ſpirit was not entirely extinguiſhed, and the circumſtance that the throne continued elective, the emperors were kept in awe by thoſe powerful armies, under particular officers of diſtinction, which were maintained in the provinces. Theſe were much ſuperior to that prætorian guard, which, for the immediate ſupport of the imperial dignity, was eſtabliſhed in the neighbourhood of Rome. In this manner a ſort of balance,

lance, however precarious, was for ſome time held, by the military forces diſperſed over the empire, and by the jealouſy between the emperor and the leader of each conſiderable army; in conſequence of which, the former was deterred from invading and deſtroying the internal ſtructure of the conſtitution.

Some of the firſt emperors, indeed, were guilty of enormous crimes and diſorders; but the effect of theſe appears to have been limited, in a great meaſure, to perſons high in office, or in ſuch rank or ſtation as to be involved in the intrigues of the court. In the ſucceeding period the Romans were more fortunate, and the throne was filled by a ſeries of princes who are an honour to human nature; Nerva, Trajan, Adrian, Antoninus Pius, and Marcus Aurelius. Under theſe emperors no interference of the crown prevented the equal diſtribution of juſtice; the experience of an empire, which included the whole civilized world, was accumulated in one maſs; and the ſyſtem of private law was thus brought to much greater perfection than it had attained in the preceding ages.

In the reign of Adrian was compoſed the *perpetual edict*, the firſt great compilation of the rules of deciſion; and this became the ground-work of moſt of the writings publiſhed by ſucceeding lawyers. It was about this time that the law began to be regularly cultivated as a ſcience; that it became the object of a lucrative profeſſion; and that it was taught at Rome with public encouragement *.

Severus new modelled the Prætorian guard, by appointing that it ſhould conſiſt of above fifty thouſand men; about four times the ancient number; and that it ſhould be recruited, not, as formerly,

* The practice of lawyers taking an *honorarium*, had been introduced before the end of the commonwealth, but was prohibited by ſtatute. Complaints of the violation of this law were made in the reign of Claudius, when it was enacted, that no lawyer ſhould receive, in one cauſe, more than 100 *aurei*, or about 80l. ſterling.

from

from the effeminate inhabitants of Italy, but from the hardy and well-diſciplined legions upon the frontiers. With the command of this army the emperor poſſeſſed a force which nothing in the whole empire was able to oppoſe: and the government of courſe degenerated into an abſolute military deſpotiſm. From this time, therefore, the law could not fail to decline. From the influence of long uſage, however, it appears to have declined very ſlowly; and, notwithſtanding the ignorance and barbariſm in which the people were ſunk, together with the heavy yoke of tyranny to which they were ſubjected, the ancient ſyſtem was treated with reſpect.

It merits attention, that the opinions and deciſions contained in the *Pandects* of Juſtinian, were delivered by authors, who either lived entirely, or at leaſt received their education, before this great revolution was introduced; and probably a conſiderable time before its effects, in ſubverting the private law of the country, had been very ſenſibly felt.—Modeſtinus, the lateſt of thoſe authors, wrote in the reign, I think, of the younger Gordian, and only about thirty years below that of Severus.

The *Inſtitutes*, an elementary book upon the ſcience of law, intended as an introduction to the peruſal of the former, was likewiſe compoſed, with a very few additions of Juſtinian, by an old lawyer, who lived within the period above mentioned.

As the proſcription of civil law from the courts of Weſtminſter-hall proceeded entirely from the animoſity and oppoſition between the univerſities and the inns of court and chancery; it may be ſuppoſed that this would continue no longer than while the latter preſerved their conſideration and popularity. For a long time, however, theſe inſtitutions have not only ceaſed to be the great ſeminaries for educating the nobility and gentry; but have become of little uſe for conveying inſtruction to practical lawyers. No lectures are now given in the inns of

court or chancery; no exercises are performed; no measures are taken for directing the application of those who, of their own accord, may be disposed to study. The whole care of education seems to be devolved upon the cook; and the only remaining part of the ancient regulations, is, that the student shall eat his commons for a certain number of terms.

The causes of this alteration it is not difficult to discover. Beside the luxury of a great metropolis, which is calculated to produce idleness and dissipation both in teachers and scholars, the profits arising from the practice of the law, together with the prospect of preferment in the state, have allured men of spirit and abilities to desert the more speculative and less distinguished employment of communicating the principles of the science to a set of pupils. To counteract this natural tendency, and to maintain the vigour of teaching law, notwithstanding the superior advantages derived from the practical profession of a lawyer, public encouragement, as well as the strictest regulation, would have been requisite; but this object appears to have been overlooked by government: and, upon the advancement of national wealth and prosperity, the old institutions were left to their natural course.

But the decay of the inns of court and chancery did not immediately change the ideas which, in their more flourishing condition, they had impressed upon the nation. The movement continued, and its direction was little varied, for a long time after the hand that gave it was withdrawn. It is but of late years that the prejudices, which had so long prevailed, have begun to disappear, and that the same liberal spirit, with which the nation is animated in the prosecution of other sciences, has been extended to the interpretation of the rules of justice. In ecclesiastical courts, indeed, and in those of the universities, the civil law has been long followed; but

but this proceeded in ſome meaſure from prepoſſeſſion; as the rejection of that ſyſtem, in the courts of Weſtminſter-hall, was the effect of prejudice. Upon the riſe of the court of chancery, its deciſions were commonly directed by a clergyman; who naturally poſſeſſed an attachment to that ſyſtem of equity, the propagation of which was the great aim of the whole eccleſiaſtical order. In the court of the admiral, which acquired a juriſdiction in maritime cauſes, the principles adopted were ſuch as had been ſuggeſted, not by the peculiar cuſtoms of England, but by the common intercourſe of commercial nations, and in which a great proportion of the civil law was introduced. A ſimilar ſyſtem was embraced in the courts of the conſtable and marſhal; who, from having the command of armies, more eſpecially when engaged in foreign expeditions, were permitted to aſſume a military juriſdiction. Theſe officers, as might be expected, were led to imitate the general practice of Europe, or what may be called the law of nations.

It was reſerved for the enlightened judges of the preſent age to eſtimate the ſyſtem of Roman juriſprudence according to its intrinſic merit; and, without being influenced by adventitious circumſtances, to derive from it, in the courts of common law, ſuch aſſiſtance as it was capable of beſtowing. Of all the ſciences, law ſeems to be that which depends the moſt upon experience, and in which mere ſpeculative reaſoning is of the leaſt conſequence. As the Roman ſyſtem contains the accumulated experience and obſervation of ages, and of the moſt extenſive empire that ever exiſted in a civilized form; the advantages reſulting from it, as an example to the lawyers and judges of any modern country, muſt be proportionably great. It preſents the largeſt collection of equitable deciſions, and rules, that is any where to be found. Theſe are calculated to enlarge the compaſs of legal knowledge, without having the in-

fluence to miſlead; they have all the benefit of precedents, without any authority to impoſe; and, therefore, may render the ſyſtem of Engliſh law more full and comprehenſive, without any danger of corrupting it.

SECT. IV. *The Riſe of the Court of Chancery.*

IN attempting a general outline of the principal Engliſh courts, the judicial authority of the Chancellor now remains to be conſidered. The juriſdiction of this officer was plainly derived from the nature of his employment in the king's houſehold, and from the miniſterial powers over the kingdom, with which he thence came to be inveſted. By being the king's ſecretary and chaplain, he enjoyed the peculiar confidence of his maſter; and had the ſole charge of writing his letters; and afterwards of iſſuing *writs* in the name of the crown. As it became cuſtomary that every vaſſal ſhould hold his fief by a charter from the ſuperior, the power of granting thoſe deeds, throughout the royal demeſne, became the ſource of great influence, and, after the Norman conqueſt, when the nobility were all reduced into the ſtate of crown-vaſſals, raiſed the chancellor to be a principal officer of ſtate.

When the deeds iſſuing from the crown became numerous, the care of expediting many of them was devolved upon inferior perſons; and, to aſcertain their authenticity, the ſubſcription of the chancellor, and afterwards a public ſeal, of which he obtained the cuſtody, was adhibited *.

* The ſubſcription of the *referendarius*, who was probably the chancellor, occurs as far back, in the Anglo-Saxon period, as the reign of Ethelbert, the firſt Chriſtian king. In the reign of Edward the Confeſſor we meet with a charter ſubſcribed by the chancellor, under that expreſs appellation: "Ego Rembaldus cancellarius ſubſcripſi." Selden on the office of lord chancellor in England.

In France, and probably in all the kingdoms in the Weſtern part of Europe, the chancellor came to be the ordinary keeper of the king's ſeal.

At

At what time ſignatures became cuſtomary, in England, to deeds proceeding from the crown, appears uncertain. It is probable that they were known to the Anglo-Saxons; but that they did not become frequent until the ſettlement of the Norman princes. From this period the chancellor was conſidered as having a title to the keeping of the great ſeal; but as, from the caprice of the monarch, there occured ſome inſtances in which it was entruſted to a different perſon, a ſtatute was made in the reign of Henry the Third, requiring that the employments of lord-keeper and chancellor ſhould always be conjoined; a regulation which, having ſometimes been overlooked, was afterwards renewed in the reign of Elizabeth †.

In this manner all important writings, iſſued by the king, either came through the medium of the chancellor, or were ſubjected to his inſpection. Before he affixed the great ſeal to any deed, he was bound to examine its nature, and, if it proceeded upon a falſe repreſentation, or contained any thing erroneous or illegal, to repeal and cancel it. So early were laid the foundations of a maxim, which in after days has been gradually extended; that the ſervants of the crown are juſtly reſponſible for meaſures which cannot be executed without their concurrence. As the exerciſe of theſe powers required a previous examination and cognizance, it gave riſe to an ordinary juriſdiction, which, although of great importance, has occaſioned no controverſy, and appears to have excited little attention.

The extraordinary juriſdiction of the chancellor aroſe more indirectly, from his character and ſituation. The origin of his interpoſition, to correct the deciſions of the ordinary tribunals, was formerly ſuggeſted. When the king's baron-court, confining itſelf within the rules of common law, had

† Selden on the office of chancellor, 5 Eliz. c. 18.

been

been laid under the neceſſity of giving a deciſion, which, in its application to particular caſes, was found hard and oppreſſive, the party aggrieved was accuſtomed to petition the king for relief. Applications of this nature were brought before the privy council; and the conſideration of them was naturally referred to the chancellor; who, as the ſecretary of the king, being employed to regiſter the decrees, and to keep the records of his baron-court, was rendered peculiarly converſant and intelligent in all judicial diſcuſſions.

A juriſdiction of this nature appears to have been acquired by the ſame officer, in ſeveral, if not in the greater part, of the kingdoms of Europe. Such, in particular, was that of the chancellor in France; who, under the kings of the firſt and ſecond race, had the cuſtody of their ſeal, and was diſtinguiſhed by the appellation of the *grand referendaire**.

In England, it ſhould ſeem that, before the end of the Saxon government, the chancellor was employed in giving redreſs againſt the hard ſentences pronounced by the judges of the king's demeſne. As thoſe judges, however, had then a very limited authority, his interpoſitions were proportionably of little importance. But, after the acceſſion of William the Conqueror, when the *aula regis* became the king's ordinary baron-court, and drew to itſelf almoſt the whole judicial buſineſs of the nation, the exerciſe of ſuch extraordinary juriſdiction began to appear in a more conſpicuous light. From this period, the multiplication of law-ſuits before the grand juſticiary, produced more various inſtances of imperfection in the rules of common law; and, from greater experience and refinement, the neceſſity of relaxing in the obſervance of theſe rules, by the

* See Paſquier, Recherches de la France, and the authorities to which he refers.

admiſſion

admiſſion of numerous exceptions, was more ſenſibly felt.

As applications for this purpoſe became frequent, proviſion was made in order to facilitate their progreſs; and the tribunal to which they were directed grew up into a regular form. A committee of the privy council had, in each caſe, been originally appointed along with the chancellor, to determine the points in queſtion. But, as theſe counſellors paid little or no attention to the buſineſs, of which they had ſeldom any knowledge; their number, which had been arbitrary, was therefore gradually diminiſhed; and at laſt their appointment, having come to be regarded as a mere ceremony, was entirely diſcontinued. Subordinate officers were, on the other hand, found requiſite in various departments, to aſſiſt the chancellor in preparing his deciſions, and in diſcharging the other branches of his duty.

The authority, however, which was thus exerciſed by this great magiſtrate, in order to correct and to ſupply the moſt remarkable errors and defects in the ancient rules of law, appears to have ſtill proceeded upon references from the king or from the privy council. His interpoſitions depended upon the deciſions given by other courts; and were of too ſingular a nature to be eaſily reduced into a ſyſtem, or to be viewed in the light of a common remedy.

It was at a later period, that the chancery became an *original* court, for determining cauſes beyond the reach of the ordinary tribunals. This inſtitution, ariſing from circumſtances more accidental than thoſe which produced the juriſdiction above-mentioned, does not ſeem to have pervaded the other European countries, but is in a great meaſure peculiar to England.

According to the feudal policy in the weſtern part of Europe, all juriſdiction was inſeparably connected with landed property; and actions of every ſort proceeded upon a mandate, or commiſſion, from that

that particular ſuperior within whoſe territory the cauſe was to be tried. If an action was intended before a court deriving its juriſdiction from the king, the plaintiff made application to the crown, ſtating the injuſtice of which he complained; in anſwer to which, the ſovereign ordered the adverſe party to appear before a particular court, in order that the cauſe might be heard and determined. The *writ* or *brief*, iſſued for this purpoſe by the king, ſerved not only to ſummon the defendant into court, but alſo, in that particular queſtion, to authorize the inveſtigation of the magiſtrate. The different barons, in their reſpective demeſnes, iſſued briefs in like manner, for bringing any law-ſuit under the cognizance of their ſeveral courts.

In England this mode of litigation was uniformly obſerved, in proceedings before the *aula regis*; and was afterwards adopted in the three courts of common law, among which the powers of the grand juſticiary were divided.

The primitive writs, upon which any action was commenced, being accommodated to the few ſimple claims that were anciently enforced in a court of juſtice, were probably conceived in ſuch terms as might occur without much reflection. But complaints upon the ſame principle of law being frequently repeated, the ſame terms naturally continued; ſo that, by long uſage, a particular form of writ was rendered invariable and permanent in every ſpecies of action. This preſervation of uniformity, although perhaps the effect of that propenſity, ſo obſervable in all mankind, to be governed on every occaſion by analogy, proved, at the ſame time, of great advantage, by aſcertaining and limiting the authority of the judge. From the advancement of property, however, and from the multiplied connections of ſociety, there aroſe new claims, which had never been the ſubject of diſcuſſion. Theſe required a new form of writ; the invention of which, in conſiſtency with the eſta-

bliſhed rules of law, and ſo calculated as to maintain good order and regularity in the ſyſtem of judicial procedure, became daily a matter of greater nicety and importance.

Application, in ſuch caſes, was made to the chancellor; who, from a ſcrupulous regard to precedents, was frequently unwilling to interpoſe, but referred the parties to the next meeting of parliament. Theſe references, however, as might be expected, ſoon became burdenſome to that aſſembly; and, by a ſtatute in the reign of Edward the Firſt, it was provided, that, "Whenſoever, from thence-"forth, it ſhall fortune in chancery, that, in one "caſe a writ is found, and in like caſe, falling un-"der like law, and requiring like remedy, is found "none, the clerks in chancery ſhall agree in mak-"ing the writ, or ſhall adjourn the plaintiffs to the "next parliament, where a writ ſhall be framed, "by conſent of the learned in the law; leſt it might "happen for the future, that the court of our lord "the king ſhould long fail in doing juſtice to the "ſuitors *."

The new writs, deviſed in conſequence of this law, were, for ſome time, directed to ſuch of the ordinary courts as, from the nature of the caſe, appeared to have the moſt proper juriſdiction. At length, however, there occurred certain claims, in which, though ſeeming to require the interpoſition of a judge, it was thought the courts of common law would not interfere. In theſe, the chancellor, willing to grant a remedy, and, perhaps, not averſe to the extenſion of his own authority, adventured to call the parties before himſelf, and to determine their difference †. This innovation is ſaid to have been introduced about the time of Richard the Second, and for the purpoſe of ſupporting a contriv-

* Statutes at Large, 13 Edward I. c. 24.

† This was done by the writ of *ſubpœna*.

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ance to elude the ſtatute of *mortmain*, by the appointment of truſtees to hold a landed eſtate, for the benefit of thoſe religious corporations to which it could not be directly bequeathed. The courts of common law could give no countenance to a ſtratagem ſo palpably intended to diſappoint the will of the legiſlature. But the chancellor, as a clergyman, was led, by a fellow-feeling with his own order, to ſupport this evaſion; and, pretending to conſider it as a matter of conſcience, that the truſtees ſhould be bound to a faithful diſcharge of their truſt, took upon him to enforce the will of a teſtator, in oppoſition to the law of the land.

Having ſucceſsfully aſſumed the cognizance of one caſe, in which he was particularly intereſted, the chancellor found little difficulty in extending his juriſdiction to others. In theſe, he appears to have acted more from a general regard to juſtice; and, in conſequence of the limited views entertained by the ordinary courts, his interpoſition ſeemed immediately neceſſary. His authority thus grew up imperceptibly: what was begun in uſurpation, by acquiring the ſanction of long uſage, became a legal eſtabliſhment; and, when it afterwards excited the jealouſy of the courts of common law, its abolition was regarded as impolitic and dangerous. After the direction of chancery had long been poſſeſſed by clergymen, who, from their ſituation, were intent upon the increaſe of its juriſdiction, it was, upon ſome occaſions, committed to lawyers by profeſſion; by whom its procedure was more digeſted into a regular ſyſtem.

From what has been obſerved, concerning the extraordinary juriſdiction of the court of chancery, there can be no doubt that it was originally diſtinguiſhed from that of the other courts of Weſtminſter-hall, by the ſame limits which mark the diſtinction between *common*, or *ſtrict law*, and *equity*. Its primitive interpoſitions were intended to

to decide according to conſcience, upon thoſe occaſions, when the deciſions of other courts, from an adherence to ancient rules, were found hard and oppreſſive. It was afterwards led to interpoſe in original actions, in order to make effectual thoſe new claims which the ordinary courts accounted beyond the limits of their juriſdiction. The firſt branch of this authority in the court of chancery was therefore deſigned to correct the *injuſtice*, the other to ſupply the *defects*, of the other tribunals.

This accordingly ſeems to have been the univerſally received idea of that court; which is called a *court of equity*, by every author who has occaſion to mention it. In this view it is conſidered by Lord Bacon, who himſelf held the office of chancellor, and who, among all his cotemporaries, appears to have been the beſt qualified to underſtand its nature. The ſame opinion of this court was entertained by the learned Selden. "Equity," ſays that author, "is a ro-"guiſh thing; for law we have a meaſure; know "what to truſt to. Equity is according to the con-"ſcience of him that is chancellor; and, as that is "larger or narrower, ſo is equity. It is all one as "if they ſhould make the ſtandard for meaſure a "chancellor's foot. What an uncertain meaſure "would this be! One chancellor has a long foot; "another a ſhort foot; a third, an indifferent foot. "'Tis the ſame thing in the chancellor's conſci-"ence *."

The ingenious and acute author of "The Prin-"ciples of Equity" has adopted this notion concerning the nature of the court of chancery; and diſputes with Lord Bacon, whether it is more expedient, that the equitable juriſdiction, and the juriſdiction according to ſtrict law, ſhould be united in the ſame court, as in ancient Rome; or divided between different courts, as in England?

* Selden's Table-talk.

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In oppoſition to theſe authorities, Juſtice Blackſtone, a writen whom, in a practical point of this nature, we can hardly ſuppoſe to be miſtaken, affirms * that there is no ſuch diſtinction between the chancery and the other courts of Weſtminſter; and maintains that the latter are poſſeſſed of an equitable juriſdiction; while the former, to which, like other writers, he gives the appellation of a *court of equity*, is accuſtomed to decide according to the rules of ſtrict law.

To reconcile theſe different opinions, it ſeems neceſſary to ſuppoſe that they refer to different periods; and that both the chancery, and the other courts in queſtion, have, ſince their firſt eſtabliſhment, been ſubjected to great alterations. This is what, from the nature of things, might reaſonably be expected. Lord Bacon and Mr. Selden ſpeak of the court of chancery as it ſtood in a remote period; and, in a matter relating to the hiſtory, or even the philoſophy of law, Juſtice Blackſtone might eaſily be deceived.

The diſtinction between ſtrict law and equity is never, in any country, a permanent diſtinction. It varies according to the ſtate of property, the improvement of arts, the experience of judges, the refinement of a people.

In a rude age the obſervation of mankind is directed to particular objects; and ſeldom leads to the formation of general concluſions. The firſt deciſions of judges, agreeable to the ſtate of their knowledge, were ſuch as aroſe, in each caſe, from immediate feelings; that is, from conſiderations of equity.—Theſe judges, however, in the courſe of their employment, had afterwards occaſion to meet with many ſimilar caſes; upon which, from the ſame impreſſions of juſtice, as well as in order to avoid the appearance of partiality, they were led to pronounce

* See his Commentaries, Book III. chap. 4 and 7.

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a ſimilar deciſion. A number of precedents were thus introduced, and, from the force of cuſtom, acquired reſpect and authority. Different caſes were decided, from the view of certain great and leading circumſtances in which they reſembled each other; and the various deciſions, pronounced by the courts of law, were gradually reduced into order, and diſtributed into certain claſſes, according to the ſeveral grounds and principles upon which they proceeded. The utility of eſtabliſhing general rules for the determination of every law became alſo an object of attention. By limiting and circumſcribing the power of a judge, they contributed to prevent his partiality in particular ſituations, and by marking out the preciſe line of conduct required from every individual, they beſtowed upon the people at large, the ſecurity and ſatisfaction ariſing from the knowledge of their ſeveral duties and rights.

But although the ſimplification of deciſions, by reducing them to general principles, was attended with manifeſt advantage, it was, in ſome caſes, productive of inconvenience and hardſhip. It is difficult, upon any ſubject, to eſtabliſh a rule which is not liable to exceptions. But the primitive rules of law, introduced by unexperienced and ignorant judges, were even far from attaining that perfection which was practicable. They were frequently too narrow; and frequently too broad. They gave riſe to deciſions, which, in many inſtances, fell extremely ſhort of the mark; and which, in many others, went far beyond it. In caſes of this nature, it became a queſtion; whether it was more expedient, by a ſcrupulous obſervance of rules, to avoid the poſſibility of arbitrary practice, or, by a particular deviation from them, to prevent an unjuſt determination? In order to prevent groſs injuſtice under the ſanction of legal authority; an evil of the moſt alarming nature; it was thought adviſable, upon extraordinary occaſions, to depart from eſtabliſhed

eſtabliſhed maxims, and, from a complex view of every circumſtance, to decide according to the feelings of juſtice. The diſtinction between *ſtrict law* and *equity* was thus introduced; the former comprehending the eſtabliſhed rules; the latter, the exceptions made to thoſe rules in particular caſes.

But when queſtions of equity became numerous, they, too, were often found to reſemble one another; and requiring a ſimilar deciſion, were by degrees arranged and claſſed according to their principles. After a contract, for example, had been enforced by a general rule, it might happen, on different occaſions, that an individual had given a promiſe, from the undue influence of threats and violence, from his being cheated by the other party, or from advantage being taken of his ignorance and incapacity. On every occaſion of this nature an equitable deciſion was given; and, by an exception to the common rule of law, the promiſer was relieved from performance. But, the remedy given in ſuch caſes being reduced into a regular ſyſtem, could no longer be viewed in the light of a ſingular interpoſition; and, by the ordinary operation of law, every contract extorted by force, elicited by fraud, or procured in conſequence of error and incapacity, was rendered ineffectual. Every primitive rule of juſtice was productive of numerous exceptions; and each of theſe was afterwards reduced under general principles; to which, in a ſubſequent period, new exceptions became neceſſary: as from the trunk of a ſpreading tree there iſſue large branches; each of which gives riſe to others, that are loſt in various diviſions.

Law and equity are thus in continual progreſſion; and the former is conſtantly gaining ground upon the latter. Every new and extraordinary interpoſition is, by length of time, converted into an old rule. A great part of what is now ſtrict law was formerly conſidered as equity; and the equitable deciſions

ſions of this age will unavoidably be ranked under the ſtrict law of the next.

Although the chancellor, therefore, was originally entruſted with the mere province of equity, the revolutions of time have unavoidably changed the nature of his juriſdiction. He continues to exert an authority in all ſuch claims as were anciently taken under his protection; but his interpoſitions concerning them are now directed by general principles, to which various exceptions, according to equity, have ſince been introduced. He continues, likewiſe, thoſe modes of procedure which were ſuitable to his primitive ſituation, and adapted to ſuch inveſtigations, as the purpoſe of his eſtabliſhment required.

The ordinary courts of Weſtminſter-hall have, on the other hand, extended their juriſdiction beyond its ancient limits. Though they originally did not venture to deviate from the rules of ſtrict law, the improvements of a later age have inſpired them with a more liberal ſpirit; and have rendered their deciſions more agreeable to the natural dictates of juſtice.

Thus the court of chancery has been gradually diveſting itſelf of its original character, and aſſuming that of the courts of common law; while theſe latter have been, in the ſame proportion, enlarging their powers, and advancing within the precincts of equity.

According to Juſtice Blackſtone, the eſſential difference at preſent, between the chancery and the courts of common law, conſiſt in the modes of adminiſtering juſtice peculiar to each. It may deſerve to be remarked, that theſe differences are ſuch as would naturally ariſe between courts originally diſtinguiſhed, by having the ſeparate departments of ſtrict law and of equity.

1. From the mode of proof adopted by chancery, all queſtions which require a reference to the oath of a party are appropriated to that court. This peculiarity

culiarity arose from an opinion, entertained by early judges, that it was a hardship to compel any person to furnish evidence against himself. But the view suggested by equity was more liberal and refined. It appeared unjust that a defendant should refuse to satisfy a claim which he knew to be well founded; and unless he was conscious of having fraudulently withheld performance, he could suffer no damage by his judicial declaration.

2. The chancery alone is competent for taking proofs by commission, when witnesses are abroad, or shortly to leave the kingdom, or hindered by age or infirmity from attending. In the courts of common law, the method of trial by a jury was universally established; and as this form required that the witnesses should be examined in court, the interposition of equity was indispensable, to authorize their examination in absence.

3. Instead of awarding damages for the neglecting to fulfil a contract, the court of chancery has power to order specific performance. From the narrow principles embraced, in early times, by the courts of strict law, no complaint was regarded unless the plaintiff had suffered in his pecuniary interest; and, consequently, upon the breach of contract, nothing farther could be claimed than reparation of the damage incurred. In a more equitable view, it appeared that every innocent and reasonable purpose of the contractors ought to be enforced; although, perhaps, the loss arising from the failure of performance could not be estimated in money. A court of equity, therefore, was accustomed to enjoin, that a contract should be expressly fulfilled.

4. Two other branches of power are mentioned as peculiar to the court of chancery: the one to interpret securities for money lent. This arose from the prohibition, introduced by the canon law, of taking interest for the loan of money; which occasioned an evasion, by means of what is called a *double bond*.

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The true conſtruction of this deed, according to the intention of the parties, and in oppoſition to the words, was beyond the juriſdiction of the ordinary courts. The other branch of power alluded to was that of enforcing a *truſt*. This, as I formerly obſerved, was intended to evade the ſtatute of *mortmain*; and afforded the chancellor the firſt ground for aſſuming his extraordinary authority in original actions.

Conſidering the origin of the court of chancery, there was no reaſon to expect that its juriſdiction would be ſeparated from that of the ordinary courts by any ſcientific mode of arrangement. It was the offſpring of accidental emergency; being merely a temporary expedient for granting an immediate relief to thoſe who had ſuffered from legal injuſtice. Suppoſing that, after t became a permanent and regular tribunal, it had remained upon its original footing, the advantages likely to have reſulted from it may reaſonably be called in queſtion. That one court ſhould have a juriſdiction according to ſtrict law, and another according to equity; that the former ſhould be obliged, with eyes open, to pronounce an unjuſt ſentence, in conformity to an old rule, leaving parties to procure relief by an application to the latter; that, in a word, the common-law tribunal ſhould be empowered to view the law-ſuit only upon one ſide, and the court of equity upon a different one; ſuch a regulation appears in itſelf no leſs abſurd and ridiculous, than its conſequences would be hurtful, by producing a waſte of time, and an accumulation of expences: not to mention the uncertainty and fluctuation of conduct ariſing from the inaccurate and variable boundaries by which equity and ſtrict law muſt ever be diſtinguiſhed. Even acccoding to the later form which the chancery has aſſumed, and by which it has appropriated cauſes of a very peculiar deſcription, or ſuch as require a ſingular mode of procedure, its line of partition from the ordinary civil courts may

be thought rather arbitrary and whimſical. But, however the preſent diſtribution of the judicial powers may be deficient in ſpeculative propriety, it ſeems in practice to be attended with no inconvenience. The province belonging to each of the courts of Weſtminſter-hall appears now to be ſettled with an exactneſs which prevents all interference or embarraſſment; and there is, perhaps, no country in the world where equity and ſtrict law are more properly tempered with each other, or where the adminiſtration of juſtice, both in civil and criminal matters, has a freer and more uniform courſe.

CHAP. VIII.

Of the Circumſtances which promoted Commerce, Manufactures, and the Arts, in modern Europe, and particularly in England.

THE commerce of the ancient world was confined, in a great meaſure, to the coaſts of the Mediterranean and of the Red Sea. Before the invention of the mariner's compaſs, navigators were afraid of venturing to a great diſtance from land; and in thoſe narrow ſeas found it eaſy, by ſmall coaſting expeditions, to carry on an extenſive traffic. Not to mention what is related concerning the fleets of Seſoſtris and of Solomon, which are ſaid to have been built upon the Red Sea, we may aſcribe to this cauſe the commerce of the Phenicians, the Carthaginians, the Athenians, the Rhodians, and many other ſtates, in the iſlands and upon the coaſt of the Mediterranean.

From the time of Alexander the Great, when Greece had become one extenſive kingdom, and had formed

formed connections with Aſia, the two narrow ſeas above-mentioned became the channel of a more diſtant commerce along the Indian ocean, by which the valuable productions of the Eaſt were imported into Europe. It was in order to facilitate this traffic that the city of Alexandria is ſaid to have been built.

The ſame commerce was carried on, and probably much extended, in the flouriſhing periods of the Roman empire, when the numerous articles of Aſiatic luxury were in ſuch univerſal requeſt among that opulent people. The decline of the Roman power tended gradually to diminiſh that branch of trade; but did not entirely deſtroy it. Even after the downfall of Rome, when Italy had been often ravaged, and a great part of it ſubdued, by the barbarous nations, there aroſe upon the ſea-coaſt ſome conſiderable towns, the inhabitants of which continued the ancient courſe of navigation, and ſtill maintained a degree of traffic with India. The road, however, to that country was a good deal changed by the revolutions and diſorders which happened in Egypt, and by the riſe of the Saracen empire; ſo that the Indian trade was carried on leſs frequently by Alexandria, and moſt commonly by the Black Sea and part of Tartary, or by a middle way through the city of Bagdat.

During the barbarous period that ſucceeded the deſtruction of the Roman empire, the ſame cauſe which had formerly promoted the commerce of the Mediterranean, gave riſe, in the Northern part of Europe, to a ſmall degree of traffic upon the narrow ſea of the Baltic. The inhabitants of the Southern coaſt of Scandinavia, and the Northern parts of Germany, being neceſſitated, in that inhoſpitable climate, to fiſh for their ſubſiſtence, became early acquainted with navigation, and were thereby encouraged not only to undertake piratical expeditions, but alſo to exchange with each other the rude produce of the country. From the conveniency of that ſituation, numbers of people were drawn, by

degrees to reſide in the neighbourhood, and trading towns were formed upon the coaſt, or in the mouths of the adjoining rivers. For ſeveral centuries, the commerce in the Northern part of Europe was ingroſſed by thoſe towns, in the ſame manner as that of the Southern was ingroſſed by ſome of the Italian ſtates. As the laws relating to commerce are uſually eſtabliſhed by the general cuſtom of merchants, it commonly happens, that the practice of nations who have gained a remarkable ſuperiority in trade, becomes a model for imitation to the neighbours, or ſuch as come after them in the ſame employment. Thus, as the Rhodian laws at one period regulated the commerce of the ancient world, the ſtatutes of Wiſby, the famous capital of Gothland, in the Baltic, obtained a ſimilar authority, and have ſince been conſidered, by many European ſtates, as the baſis of all their mercantile regulations.

In modern Italy, the maritime laws of Amalphi were in like manner, reſpected and obſerved by the merchants in that part of Europe*. Nothing can ſhew more deciſively the early advances in trade which were made by thoſe towns.

While the inhabitants of thoſe different parts of Europe were thus advancing in navigation and in commerce, they could hardly fail to make ſome progreſs alſo in manufactures. By having a vent for the rude produce of the country, they muſt have had frequent opportunities of obſerving that, by beſtowing a little labour upon their native commodities, they could draw a much greater profit upon the exchange of them. In this manner they were encouraged to occupy themſelves in working up the raw materials; to acquire habits of induſtry; and to make proficiency in mechanical employments. If we examine the hiſtory of commercial nations, thoſe eſpecially of the ancient world, we ſhall find that

* Giannone's Hiſt. of Naples.

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this has been the uſual courſe of their advancement; and that their trade and manufactures have been commonly derived from a convenient maritime ſituation; which, by affording them the benefit of water-carriage, opened a diſtant market for their goods, and tempted them to engage in foreign commerce.

The commerce of Italy ſeems accordingly to have been followed by a rapid improvement of the mechanical arts. In the twelfth and thirteenth centuries, many of the Italian towns had arrived at great perfection in manufactures; among which we may take notice of Venice, Genoa, Bologna, Piſa, Sienna, and Florence. It was from Italy that the art of making clocks and watches, as well as many other of the finer branches of manufacture, together with the moſt accurate method of keeping mercantile accompts, was afterwards communicated to the other nations of Europe.

The advancement of the common arts of life was naturally ſucceeded by that of the fine arts, and of the ſciences; and Florence, which had led the way in the former, was likewiſe the firſt that made conſiderable advances in the latter. That city, after having been aggrandized by trade, banking, and manufactures, began about the middle of the thirteenth century, to diſcover a taſte of elegance and refinement, and to promote the cultivation of letters. Charles of Anjou, who then obtained the kingdom of Naples as a donation from the Pope, and who was, at the ſame time, the feudal ſovereign of Florence, is ſaid to have been a zealous encourager of theſe liberal purſuits. The example of the Florentines was ſoon followed by the other ſtates of Italy, in proportion as trade and manufactures, had raiſed them to eaſe and opulence.

The intercourſe of thoſe Italian ſtates with ſome of the opulent nations of the Eaſt, in conſequence of the cruſades, or of other caſual events, may have contributed

contributed ſomething towards the revival of letters in Europe. But the operation of this accidental circumſtance muſt have been entirely ſubordinate to the great natural cauſe of improvement already ſuggeſted. While the inhabitants of Europe continued rude and barbarous, they were not likely to procure much knowledge by their tranſient or hoſtile communication with Aſia; but after they had acquired a taſte for the cultivation of arts and ſciences, they, doubtleſs, found inſtructors in that part of the world.

As the people upon the coaſt of the Baltic inhabited a poorer country, the produce of which was not ſo eaſily wrought up into valuable manufactures, they made a proportionably ſlower progreſs in the mechanical arts; though, by continuing to export their native commodities, they acquired a degree of wealth, and many of their towns became large and powerful. Having been much oppreſſed, and obſtructed in their trade, by the barons and military people in their neighbourhood, they were led by degrees into joint meaſures for their own defence; and, about the twelfth century, entered into that famous Hanſeatic league, which, being found of great advantage to the commercial intereſt, was at length rendered ſo extenſive as to include many cities in other parts of Europe.

As the ſituation of towns, upon the coaſt of a narrow ſea, was favourable to foreign commerce, a country interſected by many navigable rivers gave a ſimilar encouragement to inland trade, and thence likewiſe to manufactures. An inland trade, however, cannot be rendered very extenſive, without greater expence than is neceſſary to the trade of a maritime town. That all the inhabitants may have the benefit of a market, canals become requiſite, where the river-navigation is cut off; roads muſt be made, where water-carriage is impracticable; machinery muſt be conſtructed, and cattle, fit for draught,

draught, muſt be procured and maintained. It may be expected, therefore, that inland trade will be improved more ſlowly than the commerce which is carried on along the ſea-coaſt; but, as the former holds out a market to the inhabitants of a wider country, it is apt, at length, to produce a more extenſive improvement of manufactures.

We accordingly find, that, after the towns of Italy, and thoſe upon the coaſt of the Baltic, the part of Europe which made the quickeſt advances in trade was the Netherlands; where the great number of navigable rivers, which divide themſelves into many different branches, and the general flatneſs of the country, which made it eaſy to extend the navigation by canals, encouraged the inhabitants to employ themſelves in the manufacture of their natural productions.

Beſide the facility of water carriage, the inhabitants of the Netherlands appear to have derived another advantage from the nature of their ſoil. The two moſt conſiderable branches of manufacture, which contribute to ſupply the conveniencies or luxuries of many people, are the making of linen and of woollen cloth. With regard to the former of theſe branches, that country ſeems fitted to produce the rude materials in the greateſt perfection. As early as the tenth century, we accordingly find that the people had, by this peculiar circumſtance, been excited to attempt the manufacture of linens; and that, in order to promote an inland trade of this kind, which ſuppoſes that the commodity muſt often be carried to a conſiderable diſtance, Baldwin the young, the hereditary count of Flanders, eſtabliſhed fairs and markets in particular towns, as the moſt convenient places of rendezvous between the merchants and their cuſtomers.

After the Flemings had made ſome progreſs in this trade, and when, of conſequence, individuals among them had acquired ſome ſtock, as well as habits

habits of induſtry, they alſo endeavoured to ſupply the demand for *woollen* manufactures, which required no very different ſpecies of ſkill and dexterity from what they had already attained. In this employment, however, they were ſubjected to greater inconveniency; as, after puſhing it to any conſiderable extent, they were under the neceſſity of purchaſing the rude materials from foreign nations.—This obliged them to carry on a regular trade with Spain, and with Britain, the two countries of Europe in which wool was produced in greateſt abundance. The union, however, of the ſovereignty of Spain with that of the Netherlands, which happened in the perſon of the emperor Charles the Fifth, contributed in part to remove that inconveniency, by ſecuring to the latter country the wool produced by the former; and the Spaniſh monarch, who ſaw the rude materials manufactured within his own dominions, had an opportunity of protecting and encouraging every branch of the labour connected with that employment. From this time the woollen and linen manufactures of the Netherlands came to be in the ſame flouriſhing condition.

But while this part of Europe enjoyed ſuch advantages for inland trade, it was not entirely excluded from a ſhare in foreign commerce, by means of Antwerp, and of ſome other maritime towns in the neighbourhood. The inhabitants of Italy, and of the countries upon the coaſt of the Baltic, having reciprocally a demand for the commodities produced in ſuch different climates, were led by degrees into a regular traffic. As the ſhips, employed in this extenſive navigation, found a convenient middle ſtation in the ports of the Netherlands, the merchants of this country were furniſhed with opportunities of tranſporting their linen or woollen cloths, both to the Southern and Northern parts of Europe; and a ſure market was thus opened for thoſe valuable commodities. It merits attention, that the opulence,

thus

thus acquired by Flanders, and the neighbouring provinces of the low countries, had the ſame effect as in Italy, of giving encouragement to literature, and to the cultivation of the fine arts. The riſe of the Flemiſh painters was later than that of the Italian, becauſe the trade of the Netherlands was of a poſterior date; and their not attaining the ſame perfection may, among other cauſes, be aſcribed to this circumſtance, that the flouriſhing trade of that country was of ſhorter duration.

The encouragement given, in the Netherlands, to painting, was extended alſo to muſic, and was productive of a ſimilar proficiency in that art. It is obſerved, that the Flemings were accuſtomed, in this period, to ſupply the reſt of Europe with muſicians, as is done in our days by the Italians *.

Towards the end of the ſixteenth, and the beginning of the ſeventeenth century, three great events concurred to produce a remarkable revolution upon the ſtate of trade and manufactures in general, and that of Europe in particular.

1. The firſt of theſe was the invention of the mariner's compaſs; which changed the whole ſyſtem of navigation, by enabling navigators to find their way with certainty in the wide ocean, to undertake more diſtant expeditions, and to complete them with much greater quickneſs. When this diſcovery had been properly aſcertained, and reduced to practice, thoſe who inhabited the coaſt of a narrow ſea had no longer that ſuperiority, with reſpect to commerce, which they formerly poſſeſſed; for, whatever advantages they might have in a ſmall coaſting navigation, theſe were overbalanced by the inconveniencies of their ſituation, whenever they had occaſion to ſail beyond thoſe adjacent capes or promontories by which they were limited and circumſcribed.—The harbours, which became then moſt favourable

* See Reflections on Poetry, Painting, and Muſic, by the Abbé du Bos.

to

to commerce, were ſuch as had formerly been leaſt ſo; thoſe which were the fartheſt removed from ſtreights, or dangerous ſhores, and, by their diſtance from oppoſite lands, admitted the freeſt paſſage to every quarter of the globe.

2. The diſcovery of America, and the opening of a paſſage to the Eaſt-Indies by the Cape of Good Hope, which may be regarded as a conſequence of the preceding improvement in navigation, contributed ſtill farther to change the courſe of European trade. By theſe diſcoveries a ſet of new and magnificent objects of commerce was preſented, and Europe began to entertain the proſpect of forming ſettlements in diſtant countries; of trading with nations in various climates, producing a proportional variety of commodities; and of maintaining an eaſy correſpondence between the remoteſt parts of the world. The merchants of Italy, and of the Northern parts of Germany, were naturally left behind, in the proſecution of theſe magnificent views. Their ſituation, hemmed in by the coaſt of the Baltic, or of the Mediterranean, was particularly unfavourable for that new ſpecies of trade. They had, beſides a reluctance, we may ſuppoſe, to abandon their old habits, and to relinquiſh that ſettled traffic in which they had been long engaged, for the new and hazardous adventures which were then pointed out to them. Adhering, therefore, to their former courſe, they found their profits decreaſe according as the new commerce became conſiderable; and their commercial importance was at length, in a great meaſure, ſunk and annihilated.

3. The violent ſhock given, by the Spaniſh government, to the trading towns of the Netherlands, occaſioned, about this period, a change in the manufactures of Europe, no leſs remarkable than the two foregoing circumſtances produced in its commerce. Philip the Second of Spain embraced the narrow and cruel policy of his father Charles the Fifth,

Fifth, in attempting to extirpate the doctrines of Luther throughout his dominions; at the ſame time that he added a bigotry, peculiar to himſelf, which led him to ſeek the accompliſhment of his purpoſe by meaſures yet more imprudent and ſanguinary.—The doctrines of the reformation had been ſpread very univerſally in the Netherlands; and had been adopted with a zeal not inferior to that which appeared in any other part of Europe. Philip employed the whole force of the Spaniſh monarchy in order to ſubdue that ſpirit of religious innovation; and, after a long and obſtinate ſtruggle, he at laſt prevailed; but it was by extirpating a great part of the inhabitants, and ruining the manufactures of the country. The moſt independent and ſpirited, that is, the moſt active and ſkilful part of the manufacturers, diſdaining to ſubmit to a tyranny by which they were oppreſſed in their moſt valuable rights, fled from their native country; and, finding a refuge in other European nations, carried along with them that knowledge and dexterity in manufactures, and thoſe habits of induſtry, which they poſſeſſed in ſo eminent a degree.

Of all the European nations, Great Britain was in a condition to reap the moſt immediate profit from theſe important changes in the ſtate of commerce and manufactures.

England has long enjoyed the peculiar advantage of rearing a great number of ſheep, and producing larger quantities of wool, fit for manufacture, than moſt other parts of the world. This is probably derived from the flatneſs of the country, by which a great part of it is plentifully ſupplied with moiſture, and from the moderate temperature of its climate; both of which circumſtances appear favourable to the production of paſture, and to the proper cultivation of ſheep. But, whatever be the cauſes of it, the fact is certain, that, Spain excepted, no other country can, in this particular, be brought in competition with England. Particular mention

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is made of the Engliſh wool, even when Britain was a Roman province; and, in the early periods of our hiſtory, the exportation of that commodity was a conſiderable article of commerce. What is remarkable, the Engliſh wool of former times appears to have been of a finer quality than the preſent; and there is even reaſon to believe that it was held ſuperior to the Spaniſh*. Of this extraordinary fact it ſeems difficult to give any ſatisfactory account. I am credibly informed, that the improvements, made of late years, in the paſture-grounds of England, have greatly debaſed the quality of the wool; though, by the increaſe of the quantity, they have ſufficiently indemnified the proprietors.

By poſſeſſing the raw material in great plenty, the Engliſh appear to have been incited, at an early period, to make ſome attempts toward the fabrication of it. The woollen cloth of England is taken notice of while the country was under the dominion of the Romans. The diſorders which followed while the Saxons were ſubduing the country, and during the ſubſequent ravages of the Danes, gave great interruption to manufactures; but, ſoon after the Norman conqueſt, and particularly in the reigns of Henry the Third and Edward the Firſt, that of woollen cloth appears to have become an object of attention.

The flouriſhing reign of Edward the Third was extremely favourable to improvements; and that enterpriſing monarch, notwithſtanding his ardour in the purſuit of military glory, was attentive to reform the internal policy of the kingdom, and gave particular encouragement to the woollen manufactures. He invited and protected foreign manufacturers; and, in his reign, a number of Walloon weavers, with their families, came and ſettled in England. An act of parliament was made, which

* See Obſervations upon National Induſtry, by James Anderſon, and the authorities to which he refers.

prohibite

prohibited the wearing of foreign cloth; and another, by which the exportation of wool was declared to be felony. Theſe regulations, however narrow the principles upon which they were built, were certainly framed with the beſt intentions; but they could have little or no effect, as the Engliſh, at that time, were neither capable of manufacturing the whole of their wool, nor even of ſupplying their own demand for woollen cloth. The crown, therefore, in virtue of its diſpenſing power, was accuſtomed to relieve the raiſers of wool, by granting occaſionally, to individuals, a licence for exportation; and, as a diſpenſation in this caſe was abſolutely neceſſary to procure a market for the commodity, it became the ſource of a revenue to the ſovereign, who obtained a price for every licence which he beſtowed.

The woollen trade of England made conſiderable advances in the reign of Henry the Seventh, when, after a long courſe of civil diſſenſion, the people began to enjoy tranquillity under a prince who favoured and protected the arts of peace. About this time were ſet on foot the coarſe woollen manufactures of Yorkſhire; particularly at Wakefield, Leeds, and Halifax; places remarkably well adapted to that ſpecies of work, from the plenty of coal, and the numerous ſprings of water with which they are ſupplied.

The extenſion of manufactures, about this period, became ſo conſiderable as to produce an alteration in the whole face of the country; and in particular, gave riſe to remarkable improvements in huſbandry, and in the different arts connected with it. The enlargement of towns and villages, compoſed of tradeſmen and merchants, could not fail to encreaſe the demand for proviſions in the neighbourhood, and, by enhancing the value of every article raiſed by the farmers, to advance the profits of their employment. From this improvement of their circumſtances, the tenants were ſoon enabled, by offering

ing an additional rent, to procure leaſes for a term of years: and the maſter, whoſe daily expences were encreaſed by the progreſs of trade and luxury, was content to receive a pecuniary compenſation, for the loſs of that authority over his dependants, which he was obliged to relinquiſh. Thus the freedom and independence, which the mercantile and manufacturing people derived from the nature of their employment, was, in ſome meaſure, communicated to the peaſantry; who, inſtead of remaining tenants at will, were ſecured for a limited term in the poſſeſſion of their farms.

In conſequence of theſe changes, the number of villeins in England was greatly diminiſhed, in the reign of Henry the Seventh; and before the acceſſion of James the Firſt, that claſs of men had entirely diſappeared. Without any public law upon the ſubject, their condition was gradually improved by particular bargains with their maſter; and, according as their opulence enabled them to purchaſe higher privileges, they acquired longer leaſes, or were converted into *copyholders*, or *freeholders*.

As, from this time, the Engliſh continued, with unremitting ardour, to proſecute their improvements, and were continually advancing in opulence, as well as in ſkill and dexterity, and in the habits of induſtry, it was to be expected that, in the long run, the poſſeſſion of the rude material of the woollen manufacture would give them a manifeſt ſuperiority in that branch of buſineſs, and put in their power to underſell other nations who had not the ſame advantage.

In the reign of queen Elizabeth, that ſevere blow, which I formerly mentioned, was given to the trade of the Low Countries; by which every branch of manufacture was greatly impaired, and that of woollen cloth was totally deſtroyed. Thus the deſtruction of the woollen trade of the Netherlands happened at the very critical period, when the Engliſh were

were come to be in a condition of turning that event to their own emolument. The manufacturers who had been driven from their native land found a welcome refuge from queen Elizabeth; and the greater part of them took up their reſidence in England; ſo that the inhabitants of the former country became, in the higheſt degree, inſtrumental in promoting the trade of the latter; inſtead of retarding or depreſſing it, by that ſuperiority of induſtry and ſkill, and that uninterrupted poſſeſſion of the market which they had long maintained.

In Spain, the only other country of Europe enjoying ſimilar advantages to thoſe of England, the improvement of the woollen manufacture was prevented by a variety of concurring circumſtances. The rooted animoſity between the profeſſors of the Chriſtian and Mahometan religions, cheriſhed by the remembrance of many acts of cruelty and oppreſſion, had excited Ferdinand of Arragon, when he became maſter of the country, to perſecute the Moors, the only induſtrious part of the inhabitants. In a ſubſequent reign, they were entirely extirpated. The ſame imprudent and barbarous policy interrupted and diſcouraged the trade of the Netherlands; and, after theſe two fatal events, the ſudden importation of gold and ſilver into Spain, in conſequence of the poſſeſſion of America, completed the deſtruction of induſtry among the people, by raiſing individuals to ſudden wealth, and making them deſpiſe the ſlow and diſtant returns of trade and manufactures.

Upon the ruin of the Spaniſh Netherlands, were eſtabliſhed the fine woollen manufactures of Wiltſhire, and ſome of the neighbouring counties; thoſe parts of England which produced the greateſt number of ſheep, and in which the ſuperior quality of the wool was moſt remarkable. The rapid improvements in that great branch of manufacture, which became conſpicuous in England, had a natural tendency to introduce other branches, more or leſs connected

connected with it; and when a great body of the people had acquired induſtry and ſkill in one ſort of employment, it was not very difficult, as occaſion required, to extend their application to other trades and profeſſions.

While theſe circumſtances beſtowed upon England a ſuperiority in manufactures, ſhe began to enjoy advantages no leſs conſpicuous, with regard to navigation and commerce. When the people of Europe had become qualified for extenſive naval undertakings, the diſtance of Britain from the continent, and her ſituation as an iſland, afforded her a ſuperiority to moſt other countries in the number of ſuch harbours as have a free communication with all parts of the globe. Her inſular ſituation was, at the ſame time, not leſs advantageous with reſpect to inland trade, from the numerous bays and rivers, which by interſecting the country in different places, extended the benefit of water-carriage to the greater part of the inhabitants. As the bulk of the people became thus familiar with the dangers and viciſſitudes incident to thoſe who live upon water, they acquired habits which fitted them for a ſeafaring life, and rendered them dextrous in thoſe arts which are ſubſervient to navigation, the great inſtrument of commerce. In theſe circumſtances, there has been formed a numerous body of ſailors, equally prepared for commercial and for military enterpriſes. As, in the early ſtate of the feudal nations, the great body of the people were, without labour or expence, qualified for all the ſervices of the field; ſo, in Britain, a great proportion of the inhabitants, after the advancement of commerce, became a ſort of naval militia, ready, upon all occaſions, for the equipment of her fleets, and, without the aſſiſtance of *navigation acts*, or other precautions of the legiſlature, fully ſufficient for the defence of the country.

Theſe advantages, however, were rendered more ſtable and permanent by the great extent of this iſland,

iſland, ſuperior to that of moſt others upon the globe. This, as it united the inhabitants in one great ſtate, made them capable of exerting a force adequate to the protection of its commerce and manufactures. To the extent of her dominions Great Britain is indebted for her long-continued proſperity. The commercial ſtates, both in ancient and modern times, which were formed in iſlands of ſmall extent, have been frequently overturned in a ſhort time, either by the jealouſy of neighbours, or by an accidental colliſion with more powerful nations. The preſent combination of European powers againſt Great Britain, demonſtrates the jealouſy which a national ſuperiority in trade is likely to excite, and the force which is neceſſary to maintain that dangerous pre-eminence *.

That the government of England, in that period, had alſo a peculiar tendency to promote her trade and manufactures, it is impoſſible to doubt. As the inhabitants were better ſecured in their property, and protected from oppreſſive taxes, than in any other European kingdom, it is natural to ſuppoſe that their induſtry was excited by the certain proſpect of enjoying whatever they ſhould acquire. Though the Engliſh conſtitution was then deſtitute of many improvements which it has now happily received, yet, compared with the other extenſive governments of Europe in that age, it may be regarded as a ſyſtem of liberty.

* This was written before the peace in 1782.

CHAP. IX.

Of Henry the Seventh.—Circumſtances which, in his reign, contributed to the exaltation of the Crown.—Review of the Government of this period.

IN the reign of Henry the Seventh, the power of the crown, which had been gradually advancing from the Norman conqueſt, was exalted to a greater height than it had formerly attained. The circumſtances which produced this alteration, either aroſe from the general ſtate of the country, and the natural tendency of its government; or were the conſequence of ſingular events, and occaſional conjunctures.

1. The improvements in agriculture, and in trade and manufactures, which appeared ſo conſpicuouſly from the acceſſion of the Tudor family, contributed, more than any other circumſtance, to increaſe the influence and authority of the crown. By theſe improvements, perſons of the lower claſs were led to the acquiſition of different privileges and immunities: inſtead of remaining in the idle ſtate of retainers, they found employment either as farmers, who paying a fixed rent, were exempted from the arbitrary will of a maſter, or as tradeſmen and merchants, who, at a diſtance from any ſuperior, were enriched by the profits of their induſtry. Theſe circumſtances naturally produced that ſpirit of independence which is ſo favourable to civil liberty, and which, in after times, exerted itſelf in oppoſition to the power of the crown. But ſuch was the ſituation of the great body of the people, upon their firſt exaltation, that, inſtead of attempting to depreſs, they were led to ſupport the political influence of the monarch. His protection they had formerly experienced,

experienced, in oppoſition to thoſe great proprietors of land in their neighbourhood, by whom they had been oppreſſed, and who ſtill were endeavouring to retain them in ſubjection. Notwithſtanding the change of their condition, their power was not ſo eſtabliſhed as to enable them, alone and unprotected, to withſtand theſe ancient oppreſſors; and from their former habits, as well as from the dangers and difficulties which were not yet entirely removed, they ſtill adhered to the ſovereign as their natural protector. In this peculiar ſtate of things, the intereſt of the crown coincided with that of the great body of the people; while the ambition of the nobles appeared equally inconſiſtent with both. To humble the ariſtocracy was therefore the firſt aim of the lower order of the inhabitants; but, in their attempts to deſtroy two or three hundred petty tyrants, they incurred the hazard of raiſing up a ſingle one more powerful than them all.

This union of the crown with the great body of the people, at the ſame time that it primarily encreaſed the authority of the monarch, contributed indirectly to preſerve the ancient privileges of parliament. As the houſe of commons, which daily roſe to higher conſideration, was in the intereſt of the king, and uſually ſupported his meaſures if not extremely odious and oppreſſive, he found it expedient to call frequent meetings of that aſſembly. Thus the very power, which the interpoſitions of parliament were calculated to reſtrain, invited and prompted this national council to exerciſe its rights; becauſe, in the exerciſe of them, it was diſpoſed to gratify the inclination or humour of the ſovereign, who regarded preſent convenience more than the future effects of example.

The ſame views of intereſt, which led the king to call frequent meetings of parliament, induced him to beſtow additional weight upon the houſe of commons, by encreaſing the number of its members.

For this purpoſe, many ſmall towns, upon the demeſne of the crown, were incorporated, and inveſted with all the privileges of royal boroughs; in conſequence of which they became entitled to ſend the uſual number of burgeſſes to parliament. In other towns, which had anciently been incorporated, but which had long neglected to ſend repreſentatives, that obligation was renewed and inforced. The poorer and more inſignificant theſe boroughs were, they promoted more effectually the deſign with which they were created; being ſo much the more dependent upon the ſovereign, and the more likely to chooſe repreſentatives willing to follow his direction.

During the reigns of the Tudor princes, after that of Henry the Seventh, and even upon the acceſſion of the Stewart-family, this expedient was put in practice to a great extent, and apparently with great ſucceſs. Henry the Eighth reſtored, or gave, to twelve counties, and to as many boroughs in Wales, the right of ſending, each of them, one repreſentative. In other parts of his domain he alſo created eight new boroughs, requiring two delegates from each. Edward the Sixth created thirteen boroughs; and reſtored ten of thoſe which had given up the right of repreſentation. Mary created ten, and renewed the ancient privilege in two. In the reign of Elizabeth, no fewer than twenty-four parliamentary boroughs were created; and ſeven were reſtored. James the Firſt created ſix, and reſtored eight. Charles the Firſt reſtored nine. From each of theſe boroughs two repreſentatives appear to have been admitted *.

The circumſtances now mentioned will, in a great meaſure, account for that very unequal repreſentation in parliament, which has been ſo often and ſo juſtly complained of. No view of national utility

* See Notitia Parliamentaria, by Brown Willis.

could

could ever have produced ſo groſs an abſurdity. But, as the king had an intereſt in augmenting the houſe of commons, in order, with their aſſiſtance, to counteract the influence of the peers; ſo by multiplying the ſmall and inſignificant boroughs, he ſecured a more numerous party in that houſe, and was enabled, with greater facility, to over-rule its determinations.

2. The occurrences which had preceded the acceſſion of Henry the Seventh, and the general diſpoſition which theſe had produced in the nation, were likewiſe highly favourable to the intereſt of the monarch. During the long and bloody civil war between the houſes of York and Lancaſter, every perſon of diſtinction had been engaged in ſupporting one or other of the competitors; and, from the various turns of fortune exhibited in the progreſs of the conteſt, had alternately fallen under the power of the adverſe party. At the final termination of the diſpute, many of the great families were totally ruined; all of them were much exhauſted and weakened. The dignity of the crown had, indeed, from the ſame cauſes, been alſo greatly impaired. But the royal demeſnes were not ſo liable to be diſmembered as thoſe of the nobility; and, upon the reſtoration of public tranquillity, the numerous reſources of the monarch, which were all directed to the ſame object, afforded him great advantages, in extending his authority over a broken and disjointed ariſtocracy. During the alternate government of the two contending branches of the royal family, the partizans of both had probably occaſion to think their ſervices undervalued; and to be diſguſted with the ſyſtem of adminiſtration which prevailed. Henry the Sixth, in whom the line of Lancaſter forfeited the crown, had, by his incapacity, excited univerſal contempt. The crimes of Richard the Third, the laſt monarch of the houſe of York, had rendered him the object of horror and deteſtation.

Time

Time and experience had gradually abated the zeal of party; and the nation, tired in waſting its blood and treaſure in ſo unprofitable a quarrel, was become willing to adopt any ſyſtem that promiſed a removal of the preſent diſorders. Henry the Seventh, accordingly, obtained the crown by a ſort of compromiſe between the two parties; being the acknowledged head of the houſe of Lancaſter; and having come under a ſolemn engagement to marry Elizabeth, the daughter of Edward the Fourth, and now heireſs of the houſe of York. In that conjuncture a better bargain for the Yorkiſts, or one more likely to promote the general intereſt of the nation, could hardly be expected. Henry was the deliverer of his country from the tyranny of Richard; and appears to have been the only perſon poſſeſſed of ſuch credit and influence, as were neceſſary to hold the ſceptre with ſteadineſs, and to create the expectation of a quite and permanent reign. The ſame views and diſpoſitions which had eſtabliſhed this prince upon the throne, were likely to produce a general ſubmiſſion to his authority, and averſion to every meaſure which might occaſion freſh diſturbance, or threaten once more to plunge the nation into the former calamities.

3. The perſonal character of Henry was calculated for improving, to the utmoſt, the advantages which he derived from his peculiar ſituation. Leſs remarkable for the brilliancy of his talents, or the extent of his genius, than for the ſolidity of his judgment, he diſcovered uncommon ſagacity in diſcerning his own intereſt, and unremitting aſſiduity and vigour in promoting it. His great objects were, to maintain the poſſeſſion of the throne, to depreſs the nobility, and to exalt the prerogative; and theſe he appears to have invariably purſued, without being ever blinded by paſſion, relaxed by indolence, or miſled by vanity. Cautious in forming no viſionary or diſtant ſchemes, he was reſolute in executing his meaſures,

meaſures, and dextrous in extricating himſelf from difficulties. In war he diſplayed activity, valour, and conduct, and was fortunate in all his undertakings; but he ſeems to have engaged in them from neceſſity, or from the proſpect of emolument, more than from the deſire of procuring military reputation. Full of ſuſpicion, he admitted no perſon to his confidence; but aſſumed the entire direction of every public department; and was even attentive to the moſt minute and trivial concerns. His miniſters were generally eccleſiaſtics, or men of low rank; and were employed as the mere inſtruments of his government.

The jealouſy which Henry diſcovered of all the friends of the York family, and the ſeverity with which he treated them, have been uſually cenſured as illiberal and impolitic. To the praiſe of liberal views and ſentiments, this monarch had certainly no claim. But that this plan of conduct was contrary to the maxims of ſound policy, may perhaps be doubted. When a political junto is ſo much broken and reduced as to be no longer formidable, prudence ſeems to require that its members ſhould not be pointed out by invidious diſtinctions; but that, by gentle treatment, they ſhould be induced to lay aſide their peculiar principles and opinions. But when the individuals of an unſucceſsful party are ſtill poſſeſſed of ſo much power, as to afford the proſpect of riſing to ſuperiority in the ſtate, it is vain to expect that their attachment will be ſecured by marks of confidence and favour. Hope co-operates with reſentment, to keep alive the ſpirit of oppoſition; and the participation of honours and emoluments is only furniſhing them with weapons for the deſtruction of their political enemies. Such was the ſituation of the numerous adherents of the houſe of York. They had, indeed, yielded to the exigency of the times; but they were ſtill poſſeſſed of much influence, and were far from being thoroughly reconciled

conciled to the advancement of a family which they had ſo long oppoſed.

From the imputation of avarice the character of Henry cannot ſo eaſily be vindicated. That vice, it ſhould ſeem, was equally promoted by thoſe habits of minute attention for which he was noted, and by the circumſtances of the crown during the period in which he lived. In the preſent age, when the chief ſupport of government is derived from taxes, and when it is regarded as a duty upon the people to ſupply all the deficiencies of the public revenue, the diſpoſition of the king to accumulate wealth would be a moſt extravagant and ridiculous propenſity. But in thoſe times, when the private eſtate of the ſovereign was the principal fund for defraying his expences, and when every new exaction from his ſubjects was deemed a general grievance, he had the ſame intereſt with every other individual to practiſe œconomy; and his love of money might be in reality the love of independence and of power. In all countries, accordingly, in which commerce and the arts have made little progreſs, it becomes the aim of every wiſe prince, by frugality in time of peace, to prepare for war by amaſſing a treaſure. "Whereunto," ſays my Lord Bacon, in his character of Henry the Seventh, "I ſhould "add, that having every day occaſion to take no- "tice of the neceſſities and ſhifts for money, of "other great princes abroad, it did the better, by "compariſon, ſet off to him the felicity of full "coffers."

The uſe that might be made of the advancement of the commons, in raiſing the power of the crown, in oppoſition to that of the nobility, ſeems not to have eſcaped the penetration of Henry; and in the ſtatutes which paſſed in his reign, we diſcover the policy of the monarch, co-operating with the natural improvements of ſociety, in diminiſhing the influence of the ariſtocracy.

The

The artifice of entails, rendered effectual by a ſtatute, in the reign of Edward the Firſt, had for a long time prevented the barons from diſmembering their eſtates. But the general propenſity to alienation, ariſing from the advancement of commerce and manufactures, became at length ſo ſtrong, that it could no longer be withſtood by ſuch unnatural reſtraints. When a law is directly contrary to the bent of a whole people, it muſt either be repealed or evaded. In the reign of Edward the Fourth, the device of a *common recovery*, that is, a colluſive judgment by a court of juſtice, was accordingly held ſufficient to defeat an entail. For the ſame purpoſe, the ingenuity of lawyers had ſuggeſted the expedient of a *fine*, or colluſive agreement, entered upon the records of a court; to which Henry the Seventh, by an act of parliament, in the fourth year of his reign, procured the ſanction of the legiſlature. Thus, by the diſſolution of entails, an unbounded liberty was given to the alienation of land; and by the growing luxury of the times, a great part of the wealth, which had been artificially accumulated in the poſſeſſion of the nobility, was gradually diſſipated and transferred to the commons. Whatever might be the ultimate conſequences of this alteration, its immediate effects were undoubtedly advantageous to the monarch.

The wealth of the barons being leſſened, while their manner of living was becoming more expenſive, they were laid under the neceſſity of reducing the number of their military ſervants. This change in the ſituation of the nobility, ſo conducive to the good order of the kingdom, parliament had repeatedly endeavoured to promote, by prohibiting their keeping retainers in liveries, for the purpoſe of aſſiſting them in their quarrels; a regulation which Henry is ſaid to have exerted the utmoſt vigilance and activity to enforce.

Many

Many other regulations were introduced in this reign, which, by tending to improve the police, and to promote the induſtry and the importance of the lower orders of the people, contributed more indirectly to the ſame political changes.

From theſe concurring circumſtances, the prerogative was, no doubt, conſiderably advanced, after the acceſſion of Henry the Seventh. Its advancement, however, appears not ſo much in the aſſumption of new powers by the monarch, as in the different ſpirit with which the ancient powers began to be exerciſed. This will be evident from an examination of thoſe different branches of government which cuſtom had then appropriated to the king, and to the national aſſembly.

The legiſlative power, in conformity to the ancient conſtitution, was, without all queſtion, excluſively veſted in parliament; as the executive power, that of declaring peace and war, of levying troops, of commanding the armies, and, in general, that of providing for the national defence, was committed to the king. There were two methods, however, by which, upon ſome occaſions, the king evaded or encroached upon this power of parliament.

When a ſtatute prohibited any action, or enjoined any rule of conduct, the king, as repreſenting the community, might remit the penalties incurred by the tranſgreſſion of it. From a ſtep of this nature it was thought no conſiderable ſtretch, that he ſhould previouſly give to individuals a diſpenſation from the obſervance of the law; ſince the latter ſeemed to be nothing more than a different mode of exerciſing a power which he was univerſally allowed to poſſeſs. To pardon a criminal, after he has been guilty, is indeed leſs dangerous to ſociety than to give a previous indulgence to the commiſſion of crimes; but in a rude age, this difference was likely to be overlooked. Hence the origin of the *diſpenſing*

fing power; which was early exercised by the sovereign; and which, as long as it was kept within a narrow compass, appears to have excited little attention. By degrees, however, these extraordinary interpositions of the crown were multiplied, and extended to things of greater importance; and in some cases, instead of granting a mere exemption to particular persons, were at length carried so far as at once, by a general dispensation, to suspend all the effects of a statute. This last exertion of the regal power, which was of much greater magnitude, appears to have been, in some measure, concealed under the mask of the former; and had never been avowed as a distinct branch of the prerogative *. It was indeed impossible that the parliament could admit such a claim of the sovereign, without surrendering to him its legislative authority. The general suspension of a law is equal to a temporary abrogation; and therefore can only proceed from the same power by which the law was made.

But the dispensing power of the crown, even in favour of particular persons, had been virtually disallowed and reprobated in parliament. In the reign of Richard the Second, a power was granted to the king of *making such sufferance, touching the statute of provisors, as should seem to him reasonable and profitable.* But this statute, at the same time that it implies his having, of himself, no such authority, allows this power only until the next parliament; and contains a protestation, that it is a *novelty*, and that it shall not be drawn into example for the time to come †.

As

* See the trial of the Bishops in the reign of James II. In the course of that trial, in which all the lawyers of eminence were engaged, and contended every point with great eagerness, it is asserted by the counsel for the bishops, and not contradicted on the other side, that from the Norman conquest, until the accession of the house of Stewart, a general power of suspending or dispensing with the laws had never been directly claimed by the crown.

† The statute, which passed in the fifteenth of Richard the Second, is as follows:—"Be it remembered, touching the statute of *Provisors*, that the "commons (for the great confidence which they have in the person of our "lord

As the king attempted, in ſome caſes, to interrupt the courſe of the ſtatutes already made, ſo he endeavoured, ſometimes, by his commands, to ſupply the place of new regulations. In the character of chief magiſtrate, he aſſumed the care of maintaining the police of the kingdom; and, in order to put his ſubjects upon their guard, ſo that none might pretend ignorance of the duties required of them, he frequently iſſued proclamations, with reſpect to thoſe rules of conduct which he had occaſion to enforce. But as theſe commands of the ſovereign were not always confined to the mere execution of the laws already in being, it was not eaſy for the people at large to diſtinguiſh in what caſes they exceeded that boundary, and to determine the degree of obedience to which they were ſtrictly entitled. As, however, few would be willing to incur the king's

" lord the king, and in his moſt excellent knowledge, and in the great tenderneſs which he hath for his crown, and the rights thereof, and alſo in the noble and high diſcretion of the lords) have aſſented in full parliament that our ſaid lord the king, by advice and aſſent of the ſaid lords, *may make ſuch ſufferance, touching the ſaid ſtatute, as ſhall ſeem to him reaſonable and profitable, until the next parliament*, ſo as the ſaid ſtatute be not repealed in no article thereof: and that all thoſe who have any benefices by force of the ſaid ſtatute, before this preſent parliament; and alſo that all thoſe, to whom any aid, tranquillity, or advantage is accrued by virtue of the ſaid ſtatute, of the benefices of holy church (of which they were heretofore in poſſeſſion) as well by preſentation or collation of our lord the king, as of the ordinaries, or religious perſons whatſoever, or by any other manner or way whatſoever; may freely have and enjoy them, and peaceably continue their poſſeſſion thereof, without being ouſted thereof, or any ways challenged, hindered, moleſted, diſquieted, or grieved hereafter, by any proviſors or others, againſt the form and effect of the ſtatute aforeſaid, by reaſon of the ſaid ſufferance, in any time to come. And moreover, that the ſaid commons may diſagree, at the next parliament, to this ſufferance, and fully reſort to the ſaid ſtatute, if it ſhall ſeem good to them to do it: with *proteſtation*, this aſſent which is a *novelty*, and has not been done before this time, *be not drawn into example or conſequence*, for time to come. And they prayed our lord the king, that the proteſtation might be entered of record in the roll of parliament: and the king granted and commanded to do it."

The ſtatute of *Proviſors* had prohibited, under ſevere penalties, the procuring or accepting eccleſiaſtical benefices from the pope; and it is evident that by the preſent act of parliament, it was intended that the king ſhould diſpenſe with that ſtatute in favour of particular perſons only, not that he ſhould all at once ſuſpend the effect of it. Even this diſpenſation to individuals is termed a *novelty*.

diſpleaſure

diſpleaſure by calling their validity in queſtion, the royal proclamations were allowed to advance in authority, according to the increaſing influence and dignity of the crown. In the reign of Henry the Seventh, they roſe to higher conſideration than they had poſſeſſed in any former period. But even in this reign, it is not pretended that they had the force of laws; nor does it appear that they were made effectual by the ordinary courts of juſtice.

2. Under the legiſlative power was included that of determining the rules by which the people ſhould contribute to defray the expence of government. The right of impoſing taxes had therefore been invariably claimed and exerciſed by parliament. But, in order to procure money, without the authority of that aſſembly, the king had recourſe to a variety of expedients.

The firſt, and moſt obvious, was that of ſoliciting a *benevolence*. This was originally a contribution made by the king's immediate vaſſals; but, from a relaxation of the ancient feudal principles, had afterwards, in the reign, it ſhould ſeem, of Edward the Fourth, been extended over the whole kingdom*. It was always, except in three ſingular caſes, conſidered as a free gift; and could not be levied by force, from ſuch as perſiſted in refuſing it. But although the people were not bound, in law, to contribute; they had every inducement from expediency; ſince a refuſal was likely to be attended with greater inconveniency than the payment of the money which was demanded. From the diſcretionary power of executing the law, the crown had many opportunities of haraſſing thoſe who ſhewed themſelves unwilling to relieve its neceſſities; and ſeldom could fail to make them heartily repent of their obſtinacy. In

* This extenſion of a *benevolence* is probably what is meant by Lord Bacon when he ſays, "This tax was deviſed by Edward the Fourth, for which he "ſuſtained much envy."

particular,

particular, from the direction of the army, the king had the power of quartering troops in any part of the kingdom; by which means he was enabled, however unjuſtly, to create expence and vexation to ſuch of the inhabitants as had not complied with his demands. The very ſolicitation of a benevolence upon the part of the crown, was therefore juſtly regarded in the light of hardſhip; and in the preceding reign, appears to have been, in every ſhape, condemned and prohibited by parliament: which provides, "that the king's ſubjects ſhall from "henceforth, in no wiſe, be charged by ſuch charge, "exaction, or impoſition called a *benevolence*, nor "by ſuch like charge; and that ſuch exacti- "ons called *benevolences*, before this time taken, be "taken for no example, to make any ſuch, or any "like charge of any of the king's ſubjects, hereaf- "ter, but ſhall be *damned and annulled for ever* *."

Notwithſtanding the violence with which the legiſlature had thus teſtified its diſapprobation of this practice, we find that in the ſeventh year of Henry the Seventh, the parliament, upon occaſion of a war with France, expreſsly permitted the king to levy a *benevolence*. That this, however, was intended as a mere voluntary contribution, appears from the account of it given by Lord Bacon, who ſays, it was to be levied *from the more able ſort*, and mentions a tradition concerning the arguments which the commiſſioners for gathering the benevolence were inſtructed to employ; "that, if they met with "any that were ſparing, they ſhould tell them, "that they muſt needs have, becauſe they laid up; "and if they were ſpenders, they muſt needs have, "becauſe it was ſeen in their port, and manner of "living: ſo neither kind came amiſs." This was called by ſome biſhop Morton's *fork*, by others his *crutch* †.

* 1 Richard III. c. 2.

† Hiſt. of the reign of Henry the Seventh.

In

In a few years after, parliament made what my Lord Bacon calls *an underpropping act of the benevolence*, by ordaining that the ſums, which any perſon had agreed to pay, might be levied by the ordinry courſe of law. This act, however, ſtill ſuppoſes that, independent of the conſent of the party, no contribution of this nature could ever be made effectual.

Beſide the benevolence formerly mentioned, which was obtained by the permiſſion of the legiſlature, there was only one more levied by Henry the Seventh. On all other occaſions, the general aſſeſſments procured by this monarch were ſupported by the authority of parliament, and impoſed in the direct form of a tax.

When the kings of England had reaſon to ſuſpect that the benevolence of their ſubjects might be exhauſted, they had ſometimes recourſe to another expedient, that of requeſting a *loan*. This mode of relief, as it ſtrongly marked the neceſſities of the crown, and its reluctance to burden the people, and required no more than the temporary uſe of their money, could with leſs decency be withheld. But, in reality, a loan, when granted to the ſovereign, came to be nearly of the ſame amount with a benevolence. From the condition of the debtor, he could never be compelled to do juſtice to his creditors; and his circumſtances were ſuch as always afforded plauſible pretences for delaying and evading repayment. Although the nature of a loan, implying a mutual tranſaction, appeared to exclude any idea of right in demanding it, yet the ſame indirect methods might eaſily be practiſed by the crown for procuring a ſupply in this manner, as under the form of a benevolence. We accordingly find, that in a parliament, as early as the reign of Edward the Third, the commons pray the king, "that the loans which were "granted to the king by many of that body may "be releaſed; and none compelled to make ſuch "loans for the future againſt his will, for that it

"was

" was againſt reaſon and the franchiſe of the land; " and that reſtitution might be given to thoſe who " had made the loans." The king's anſwer was, " that it ſhould be done*." It does not appear that Henry the Seventh ever practiſed this mode of exaction.

Purveyance was another ſpecies of exaction, by which the people were expoſed to great vexation from the crown. It was requiſite that the king and his followers, who in early times were frequently moving over different parts of the country, ſhould, wherever they came, be ſpeedily ſupplied with proviſions. Inſtead of making, therefore, a previous bargain with the inhabitants, the officers of the crown were accuſtomed to lay hold of ſuch commodities as were wanted, leaving commonly the indemnification of the proprietors to ſome future occaſion. It may eaſily be ſuppoſed, that this practice was liable to much abuſe, and that thoſe whom the king employed in this department would endeavour to make profit at the expence of the people. The number of ſtatutes, that from the reign of Edward the Firſt, were made for preventing the fraud and oppreſſion of the king's purveyors, afford ſufficient evidence of the great enormities with which that ſet of people had been charged, and of which they probably were guilty†.

It muſt not be overlooked, that, from the excluſive power of making laws, with which parliament was inveſted, that aſſembly had the privilege of reſtraining theſe, and all other arbitrary proceedings of the crown. Its exertions for this purpoſe, however, were frequently interrupted or prevented by the want of a fixed rule with reſpect to the times of its meeting.

* 26th of Edward III. See Parliamentary Hiſtory in that year.

† See 28 Edw. I. c. 2—4 Edw. III. c. 4.—5 Edw. III. c. 2.—10 Edw. III. ſtat. 2.—25 Edw. III. ſtat. 5.—36 Edw. III.—1 Rich. II. c. 32.—6 Rich. II. ſtat. 2. c. 2.—23 Henry VI.

Upon

Upon the diſuſe of the ancient practice, by which parliaments had been regularly held at the three ſtated feſtivals of Eaſter, Whitſuntide, and Chriſtmas, the power of convening thoſe aſſemblies devolved entirely upon the king. The magiſtrate, entruſted with the ſupreme execution of the laws already exiſting, was the beſt qualified to diſcover, in what caſes theſe were defective, and upon what occaſions a new interpoſition of the legiſlature was requiſite. In that ſimple age it was perhaps not apprehended that with a view of extending the prerogative, he would be diſpoſed to avoid the meetings of parliament; or rather, the barons truſted, that, whenever they had a mind, they could compel him to ſummon thoſe meetings. But when experience had ſhewn the abuſes in this particular, which were likely to ariſe, it was thought proper that the diſcretionary power of the crown ſhould be limited; and accordingly, by a ſtatute in the fourth year of Edward the Third, it was expreſsly provided, that "a parliament ſhall be held every year once, and "oftner if need be." By another ſtatute, in the thirty-ſixth year of the ſame reign, this regulation is confirmed *. In a ſubſequent period, when the houſe of commons had begun to throw conſiderable weight into the ſcale of the crown, it became the intereſt of the king to ſummon frequent meetings of parliament; and the nobility were of conſequence, leſs anxious to enforce this branch of his duty. Henry the Seventh, during the reign of twenty-three years, had occaſion to convene ſeven different parliaments.

To diſſolve a parliament was originally nothing more than to put an end to the attendance of it members; with which, as it ſaved them from farther expences, they were commonly well ſatisfied. Before the introduction of repreſentatives into that

* Statutes at Large.

aſſembly, every new meeting of the barons was properly a new parliament; and there could no diſtinction between a *diſſolution* of parliament and a *prorogation*. But after the eſtabliſhment of the houſe of commons, which conſiſted of members whoſe election was attended with trouble and expence, it became convenient that the ſame parliament ſhould, in ſome caſes be prolonged, and that there ſhould be intervals in its meeting. When the meetings of parliament came thus to be divided into different ſeſſions, the power of proroguing a parliament from one ſeſſion to another, like that of diſſolving it, was devolved upon the crown; and for a long time, this branch of the prerogative was exerciſed within ſuch narrow limits as to excite no apprehenſion or jealouſy. The danger of allowing too great an interval between one parliament and another, as well as that of permitting the king to reign entirely without a parliament, was always manifeſt; but the miſchiefs ariſing from the long continuance of the ſame parliament; the reducing the members of the houſe of commons, more immediately, under the influence of the crown, and rendering them leſs dependent upon their conſtituents; in a word, the erection of the national aſſembly into a ſtanding ſenate, and deſtroying, or at leaſt greatly impairing, its repreſentative character; theſe evils had never been felt, and, in that early age, were not likely to be foreſeen.

3. With reſpect to the judicial power, it muſt be acknowledged, that the extent of the prerogative was, in ſeveral reſpects, incompatible with an equal and proper diſtribution of juſtice.

The nature and origin of the *ſtar-chamber* have been formerly conſidered. This court conſiſted of the king and his privy-council, together with the judges of the principal courts, and ſuch other perſons as, in each particular caſe, he thought proper to nominate; and was intended for the determination of ſuch criminal actions as were beyond the

the juriſdiction of the ordinary tribunals. Being calculated to ſupply the deficiency of the common rules of penal law like the chancery in thoſe relating to civil rights, it was regarded, in early times, as an inſtitution of great utility. But, as the limits of its juriſdiction could not be aſcertained with accuracy; as the actions of which it took cognizance related principally to crimes affecting the ſtate, in which the crown was immediately intereſted; and as the king, by ſitting in this tribunal, was enabled to control and direct its deciſions; we have every reaſon to believe that its proceedings were partial and arbitrary, and that it might eaſily be employed as an engine of miniſterial oppreſſion. According as the crown roſe in authority, the juriſdiction of this court was enlarged; and being, in certain caſes, confirmed by act of parliament, in the reign of Henry the Seventh, was, by the ſubſequent princes of the Tudor line, rendered yet more inſtrumental in promoting the incroachments of the monarch.

When a military enterprize had occaſioned the levying of troops, it was neceſſary that among theſe a ſtricter and more ſevere diſcipline ſhould be enforced, than among the reſt of the people. Hence the origin of the *martial law*, as diſtinguiſhed from the common law of the kingdom. As, according to the policy of the feudal governments, the king had the power of calling out into the field all his military vaſſals, with their followers, it ſeemed a natural conſequence, that he might, at pleaſure extend to the whole of his ſubjects that arbitrary ſyſtem of law, which was held ſuitable to men living in camps. In that period of the Engliſh hiſtory, when family feuds and civil wars were frequent and univerſal, this extenſion might often prove ſalutary, as the means of quelling and preventing diſorders. It was, at the ſame time, a meaſure from which great abuſes might be expected; as it ſuperſeded, at once, that mild and equitable ſyſtem of regula-

tions, by which the rights and liberties of the nation were ſecured.

But the chief handle for the oppreſſion of individuals, aroſe from the influence of the crown in the direction and conduct of public proſecutions. As every public proſecution proceeded in the name of the king, and was carried on by an officer whom he appointed during pleaſure, he poſſeſſed, of courſe, a diſcretionary power in bringing the trial to an iſſue. Thus, by directing the proſecution of individuals for any atrocious crime, it was in the power of the ſovereign to deprive them of their liberty, and ſubject them to an indefinite impriſonment. Early attempts had been made to prevent this abuſe of the prerogative; and in the great charter of king John, as well as in that of Henry the Third, it is provided, that there ſhall be no unreaſonable delay of juſtice. This regulation was conceived in terms too vague and general, to be of much advantage; although its meaning and ſpirit was ſufficiently obvious. Henry the Seventh carried the abuſe to ſuch a height, as, upon pretence of crimes, to make a trade of impriſoning perſons of great opulence, and of extorting from them ſums of money as the price of their liberty. The names of Empſon and Dudley, as the common agents of the crown in that infamous traffic, have been handed down to poſterity; and it is remarkable that the houſe of commons, inſtead of diſcovering a reſentment of ſuch notorious oppreſſion, made choice of Dudley for their ſpeaker. The houſe of commons were, at this period, attached to the crown; and probably took little concern in the fate of the great barons, againſt whom, upon account of their opulence, and their oppoſition to the king, this kind of extortion was moſt likely to be committed. But although theſe minions, for ſome time, eſcaped the vengeance due to their iniquitous practices, it overtook them in the beginning of the next reign; when, in conſequence both of the

the ſentence of a court and of a bill of attainder in parliament, they were condemned to death and executed.

Upon the whole, it is a groſs error to ſuppoſe, that the Engliſh government was rendered abſolute in the reign of Henry the Seventh. There is, on the contrary, no reaſon to believe, that any material variation was produced in the former conſtitution. Although the influence of the crown was increaſed, the prerogative remained upon its former baſis. The king's authority was entirely ſubordinate to that of the national aſſembly; and if, in ſome caſes, precautions had not been taken to prevent his arbitrary and oppreſſive meaſures, this was owing to the want of experience, which prevented the legiſlature from ſuggeſting a remedy. Thoſe abuſes of prerogative, although they might have excited occaſional diſcontent and clamour, had not yet attained ſuch magnitude, or been ſo long continued, as to demonſtrate that a general limitation was neceſſary.

The period of Henry the Seventh in England, correſponded, in ſome meaſure, to that of Lewis the Eleventh in France. Charles the Seventh, the father of this prince, had recovered the kingdom from the Engliſh; and, after long convulſions and diſorders, had re-eſtabliſhed the public tranquillity. The nature of the ſtruggle in which he was engaged, had excited a national ſpirit in favour of the crown, while the ſucceſs of his undertaking rendered him highly popular, and diſpoſed his ſubjects to promote and ſupport all his meaſures. By the ſeizure of thoſe lands which had been in the poſſeſſion of the enemy, it is probable that the royal demeſnes were alſo augmented. Lewis came to the throne at a time when theſe favourable circumſtances had begun to operate, and by his abilities and political character was capable of improving them to the utmoſt. The ſudden annexation of many great fiefs to the crown contributed

contributed likewiſe to extend its influence. Upon the deceaſe of the duke of Burgundy, without male deſcendants, the monarch found himſelf in a condition to ſeize that dutchy, as not being tranſmiſſible to females. He acquired Provence by a legacy; and, in a little time after, his ſon Charles the Long, by marrying the heireſs of Brittany, became the maſter of that territory.

The authority of the ſovereign, however, which had formerly been advancing with greater rapidity in France than in England, became now much more abſolute, and unlimited. Lewis the Eleventh new-modelled, and afterwards laid aſide, the convention of eſtates, having united in his own perſon the legiſlative and executive powers. The ſame line of conduct was in general purſued by his ſucceſſors; although, in one or two extraordinary caſes, the temporary exigence of the prince might induce him to ſummon that ancient aſſembly. In ſeveral other governments upon the continent, we may alſo obſerve, that, nearly about the ſame period, the circumſtances of the monarch were ſuch as produced a ſimilar exaltation of the prerogative.

CHAP.

CHAP. X.

Of Henry the Eighth.—The Reformation.—Its Cauſes.—The Effects of it upon the Influence of the Crown.

HENRY the Eighth reaped the full benefit of thoſe favourable circumſtances which began to operate, and of that uniform policy which had been exerted, in the reign of his father. By uniting, at the ſame time, in the right of his father and mother, the titles of the two houſes of York and Lancaſter, he put an end to the remains of that political animoſity which had ſo long divided the nation; and was univerſally acknowledged by his ſubjects as the lawful heir of the kingdom. The perſonal character of this monarch was better ſuited to the poſſeſſion and enjoyment of power, than to the employment of the ſlow and gradual means by which it is to be acquired. Vain, arrogant, headſtrong, and inflexible, he ſhowed little dexterity in the management of his affairs; was unable to brook oppoſition or control; and, inſtead of ſhunning every appearance of uſurpation, was rather ſolicitous to let ſlip no opportunity for the diſplay of his authority.

The moſt remarkable event, in the reign of Henry the Eighth, was the ſudden downfal of that great ſyſtem of eccleſiaſtical tyranny, which, during the courſe of many centuries, the policy of the Roman pontiff had been continually extending. To this religious reformation, the minds of men, in other European countries as well as in England, were prediſpoſed and excited by the changes which had lately occurred in the general ſtate of ſociety.

1. The Chriſtian religion, by teaching mankind to believe in the unity of the Deity, preſented to their minds the contemplation of the aſtoniſhing attributes

tributes diſplayed in the government of the univerſe. While the profeſſors of Chriſtianity thus agreed in the main article of their belief, other diſpoſition to ſpeculate upon other points was promoted by their differences of opinion, by the controverſies with one another in which they were unavoidably engaged, and by the variety of ſects into which they were at length divided. The church, however, aſſumed the power of determining the orthodox faith; and by degrees availed herſelf of the prevailing ſuperſtition, in order to propagate ſuch opinions as were moſt ſubſervient to her intereſt. Hence the doctrines relating to purgatory, to the impoſition of penances, to auricular confeſſion, to the power of granting a remiſſion of ſins, or a diſpenſation from particular obſervances, with ſuch other tenets and practices as contributed to encreaſe the influence of the clergy, were introduced and eſtabliſhed.—Not contented with requiring an implicit belief in thoſe particular opinions, the church proceeded ſo far as to exclude entirely the exerciſe of private judgment in matters of religion; and, in order to prevent all diſpute or enquiry upon that ſubject, even denied to the people the peruſal of the ſacred ſcriptures, which had been intended to direct the faith and manners of Chriſtians. A ſyſtem of ſuch unnatural reſtraint, which nothing but extreme ignorance and ſuperſtition could have ſupported, it was to be expected that the firſt advances of literature would be ſufficient to overturn. Upon the revival of letters, accordingly, in the fourteenth and fifteenth centuries, it was no longer poſſible to prevent mankind from indulging their natural propenſity in the purſuit of knowledge, and from examining thoſe fundamental tenets of Chriſtianity which had been ſo anxiouſly withheld from their view. They were even prompted, ſo much the more, to pry into the myſteries of religion, becauſe it was prohibited. To

diſcover

diſcover the abſurdity of many of thoſe doctrines, to which an implicit aſſent had been required, was not difficult. But the mere examination of them was to reject the decrees of the church, and to merit the cenſure of contumacy.

2. While the advancement of knowledge diſpoſed men to exert their own judgment in matters of religion, the progreſs of arts, and of luxury, contributed to diminiſh the perſonal influence of the clergy. "In the produce of arts, manufactures, "and commerce," ſays the ingenious and profound author of the Inquiry into the Nature and Cauſes of the Wealth of Nations *, "the clergy, like the great "barons, found ſomething for which they could "exchange their rude produce, and thereby diſco-"vered the means of ſpending their whole revenue "upon their own perſons, without giving any "conſiderable ſhare of them to other people. Their "charity became gradually leſs extenſive, their "hoſpitality leſs liberal, or leſs profuſe. Their re-"tainers became conſequently leſs numerous, and "by degrees dwindled away altogether. The clergy, "too, like the great barons, wiſhed to get a better "rent from their landed eſtates, in order to ſpend "it, in the ſame manner, upon the gratification of "their own private vanity and folly. But this "increaſe of rent could be got only by granting "leaſes to their tenants, who thereby became, in a "great meaſure, independent of them. The ties "of intereſt, which bound the inferior ranks of "people to the clergy, were, in this manner, gra-"dually broken and diſſolved.—The inferior ranks "of people no longer looked upon that order, as "they had done before, as the comforters of their

* I am happy to acknowledge the obligations I feel myſelf under to this illuſtrious philoſopher, by having, at an early period of life, had the benefit of hearing his lectures on the Hiſtory of Civil Society, and of enjoying his unreſerved converſation on the ſame ſubject.—The great Monteſquieu pointed out the road. He was the Lord Bacon in this branch of philoſophy. Dr. Smith is the Newton.

"diſtreſs,

" diſtreſs, and the relievers of their indigence. On " the contrary, they were provoked and diſguſted " by the vanity, luxury, and expence of the richer " clergy, who appeared to ſpend upon their own " pleaſures what had always before been regarded " as the patrimony of the poor."

3. The improvement of arts, which obliged the dignified clergy, as well as the great barons, to diſmiſs their retainers, enabled this inferior claſs of men to procure ſubſiſtence in a different manner, by the exerciſe of particular trades and profeſſions. By this way of life they were placed in a condition which rendered them leſs dependent upon their ſuperiors, and by which they were diſpoſed to reſiſt every ſpecies of tyranny, whether eccleſiaſtical or civil. That ſpirit of liberty, however, which, from theſe circumſtances, was gradually infuſed into the great body of the people, began ſooner to appear in oppoſing the uſurpations of the church, than in reſtraining the encroachments of the king's prerogative. In pulling down the fabric of eccleſiaſtical power, and in ſtripping the clergy of their wealth, all who had any proſpect of ſharing in the ſpoil might be expected to give their concurrence. But in limiting the power of the crown, the efforts of the people were counteracted by the whole weight of the civil authority. Thus, in England, the reformation was introduced more than a century before the commencment of the ſtruggle between Charles the Firſt and his parliament; although the ſame principle which produced the latter of theſe events, was evidently the chief cauſe of the former.

But whence has it happened, that the circumſtances above-mentioned have operated more effectually in ſome parts of Europe than in others? What has enabled the pope to retain in obedience one half of his dominions, while the other has rejected his authority? That this was owing, in ſome meaſure, to accident, it ſeems impoſſible to deny. The exiſtence

tence of ſuch a perſon as Luther in Germany, the diſpute that aroſe in England between Henry the Eighth and his wife, the policy of particular princes, which led them to promote or to oppoſe the intereſt of his holineſs; theſe, and other ſuch caſual occurrences, during the courſe of this great religious controverſy, had undoubtedly a conſiderable influence in determining its fate. We may take notice, however, of certain fixed cauſes, which contributed more to the progreſs of the reformation in ſome of the European countries than in others.

1. The Roman pontiff found it eaſier to maintain his authority in the neighbourhood of his capital than in countries at a greater diſtance. The ſuperſtition of the people was not, indeed, greater in the neighbourhood of Rome than in the diſtant parts of Europe. The contrary is well known to have been the caſe. But Rome was the centre of eccleſiaſtical preferment, and the reſidence, as well as the occaſional reſort, of great numbers of the moſt opulent churchmen, whoſe influence over the people was proportionably extenſive. Here the pope was a temporal, as well as an eccleſiaſtical ſovereign; and could employ the arm of fleſh, as well as the arm of the ſpirit. Beſides, he had here a better opportunity, than in remoter countries, of obſerving and managing the diſpoſitions and humours of the inhabitants; and, being at hand to diſcover the ſeeds of any diſorder, was enabled to cruſh a rebellion in the bud. This circumſtance tended to prevent, or to check, the reformation in Italy, or in France, more than in Sweden, in Denmark, in Germany, in England, or in Scotland.

2. Independent of accidental circumſtances, it was to be expected that thoſe countries, which made the quickeſt progreſs in trade and manufactures, would be the firſt to diſpute and reject the papal authority. The improvement of arts, and the conſequent diffuſion of knowledge, contributed on the one hand,

hand, to diſpel the miſt of ſuperſtition, and, on the other, to place the bulk of a people in ſituations which inſpired them with ſentiments of liberty. That principle, in ſhort, which is to be regarded as the general cauſe of the reformation, produced the moſt powerful effects in thoſe countries where it exiſted the ſooneſt, and met with the greateſt encouragement.

This alone will account for the baniſhment of the Romiſh religion from the independent towns of Germany, from the Dutch provinces, and from England; thoſe parts of Europe which were ſoon poſſeſſed of an extenſive commerce. In the ten provinces of the Netherlands, the advancement of trade and manufactures was productive of ſimilar effects. The inhabitants acquired an attachment to the doctrines of the reformation; and maintained them with a degree of courage and firmneſs which nothing leſs than the whole power of the Spaniſh monarchy was able to ſubdue. In France too the ſame ſpirit became early conſpicuous, in that part of the inhabitants which had made the greateſt improvement in arts; and, had it not been for the moſt vigorous efforts of the crown, accompanied with the moſt infamous perfidy and barbarity, and aſſiſted by the celebrated league of the Catholic powers, it is probable that Calviniſm would have obtained the dominion of the Gallican church. The tendency of mercantile improvements to introduce an abhorrence of the Catholic ſuperſtition, and of papal domination, is thus equally illuſtrated from the hiſtory of thoſe kingdoms, where the reformation prevailed, as of thoſe where, by the concurrence of caſual events, it was obſtructed and counteracted.

3. In thoſe countries where the ſmallneſs of a ſtate had given riſe to a republican conſtitution, the ſame notions of liberty were eaſily extended from civil to eccleſiaſtical government. The people, in thoſe

thoſe governments, were not only diſpoſed to reject the authority of the pope, as they did that of a temporal ſovereign; but were even diſguſted with the hierarchy, no leſs than with that ſubordination which is required in a monarchy. Hence that high-toned ſpecies of reformation, which began in Geneva, and in ſome of the Swiſs cantons; and which, from the weakneſs and imprudent oppoſition of the crown, was introduced by the populace into Scotland.

The ſmall ſtates of Italy, indeed, although they fell under a republican government, and ſome of them were diſtinguiſhed by their early advancement in commerce, have remained in the Catholic church. In ſome of the cantons of Switzerland, notwithſtanding their very limited extent, and their popular government, the reformation has likewiſe been unſucceſsful. The vicinity of the pope's reſidence, and of his temporal dominions, appear, in ſpite of the circumſtances which had ſo plainly an oppoſite tendency, to have retained them under his juriſdiction. It may deſerve, however, to be remarked, that the Venetians, the principal traders of Italy, and who formed the moſt eminent republic, though they did not eſtabliſh the doctrines of any ſect of the reformers, effected what is perhaps more difficult, and had more the appearance of moderation: they diminiſhed the authority of the pope, without rejecting it altogether; and, though they did not attempt to root out the ancient ſyſtem, they lopped off ſuch parts of it as they deemed inconſiſtent with their civil conſtitution.

After the controverſy between the Catholics and Proteſtants had proceeded ſo far, in England, as to divide the whole nation, Henry the Eighth became poſſeſſed of additional influence, by holding a ſort of balance between the two parties. Although that prince had quarrelled with the papal authority, and was willing to enrich himſelf by the plunder of the church, he adhered religiouſly to many of thoſe tenets

nets which had given the greateſt offence to the reformers. While he took the lead in the reformation, he aſſumed the power of directing and controlling its progreſs; and as he ſtill kept meaſures with both parties, he was at the ſame time feared and courted by both. In the end, however, he eſtabliſhed a ſyſtem which was agreeable to neither.

The reformation, as it was modelled in this reign, opened a new ſource of influence and authority to the ſovereign. The diſſolution of the monaſteries, whoſe revenues were immediately annexed to the crown, beſtowed upon him a large acceſſion of riches. Theſe funds, indeed, in conſequence of the improvements in trade and manufactures, which tended to augment the expences of the king, as well as of the great barons, were afterwards diſſipated, and, in the end, transferred to that lower order of people who by their induſtry were enabled to accumulate wealth.

As the pope was ſtripped of all that authority which he had poſſeſſed in England, the king became the head of the church; and as the Engliſh hierarchy was, without any variation, permitted to remain, he acquired, by the diſpoſal of all the higher benefices, the entire direction of the clergy, and conſequently the command of that influence which they ſtill maintained over the people. By claiming, at the ſame time, the ſupremacy of the Roman pontiff, the ſovereign was furniſhed with a new pretext for aſſuming the power to diſpenſe with the law.

But, notwithſtanding all the circumſtances which contributed to extend the influence of the crown, the prerogative, during the greateſt part of this king's reign, appears to have remained upon this ſame footing as in that of his predeceſſor. Through the whole of it, the power of impoſing taxes was uniformly exerciſed by parliament. Upon one occaſion, a loan was demanded by the king; but ſo little money was raiſed by it, that an immediate application

application to parliament became neceſſary for procuring a ſubſidy.

Cardinal Wolſey, in the plenitude of his power, ſeems to have projected an encroachment upon this branch of the conſtitution. He began by interfering in the debates of the commons, in relation to a money-bill, and inſiſted upon the liberty of reaſoning with them upon the ſubject. But this demand was peremptorily refuſed; and he was unable to procure the ſupply, in the terms which he had propoſed. Not long after, he attempted to levy a *tax* by the authority of the crown; but this meaſure excited ſuch univerſal commotion, and reſentment, that Henry thought fit to diſavow the whole proceeding, and ſent letters all over England, declaring, *that he would aſk nothing but by way of benevolence**.

From this time no money was levied by the king without the conſent of parliament; except in the thirty-fifth year of his reign, when a benevolence was again ſolicited. It is further to be obſerved, that the parliamentary grants of ſupply to the king, were ſometimes preceded by an inquiry into the propriety of the wars which he had undertaken, or of the other meaſures of government by which his demand of money had been occaſioned.

The legiſlative authority of the national council was no leſs regularly exerted. It was by act of parliament that the monaſteries were ſuppreſſed; that the king became the head of the church; that the authority of the pope in England, together with all the revenues which he drew from that kingdom, was aboliſhed; in ſhort, that the ancient ſyſtem of eccleſiaſtical government was overturned. In the numerous divorces procured by the ſovereign, in the regulations that were made concerning the legitimacy of the children by his different wives, in the

* This attempt was made in the year 1526, and the 17th of this king. See Parl. Hiſtory, vol. III.

various

various and contradictory ſettlements of the crown, Henry never pretended to act by virtue of his own prerogative, but continually ſheltered himſelf under the ſanction of parliamentary eſtabliſhment.

Nothing, indeed, could exceed the ſervility with which the parliaments, eſpecially in the latter part of this reign, complied with the moſt eccentric inclinations of the monarch. Pleaſed with the general tendency of his meaſures, by which the nation was delivered from the yoke of papal dominion, they ſeem to have reſolved not to quarrel with his ridiculous humours, nor even with particular acts of tyranny and oppreſſion. In a dangerous diſtemper, they were unwilling to reject a violent medicine, on account of the uneaſineſs and trouble with which its operation was attended. Their complaiſance, however, was at length carried ſo far as to make them abandon their own privileges. In the thirty-firſt year of Henry the Eighth, it was enacted, "That "the king, with the advice of his council, might "iſſue proclamations, under ſuch penalties as he "ſhould think neceſſary, and that theſe ſhould be "obſerved, as though they were made by act of "parliament," with this limitation, "that they "ſhould not be prejudicial to any perſon's inheri-"tance, offices, liberties, goods, chattels, or life*." What are the particular ſubjects of proclamation, which do not fall within the reſtrictions mentioned in this act, is not very clear. But there can be no doubt that it contains a delegation, from parliament, of its legiſlative authority; which, in practice, might ſoon have been extended beyond the original purpoſe for which it was granted. By another ſtatute, about the ſame time, the king was impowered, with the aſſiſtance of a committee, or even by his own authority alone, to regulate the religious

* 31 Henry VIII. ch. 8.

tenets,

tenets, as well as the external obſervances, of the kingdom.

If theſe powers had been aſcertained, and confirmed by uſage, the government of England would have become as abſolute as that of France was rendered by Lewis the Eleventh. Fortunately, the Engliſh monarch, from the obſequiouſneſs of parliament, had little occaſion to exerciſe this new branch of prerogative; and, as he did not live to reduce it into a ſyſtem, the conſtitution, in the reign of his ſucceſſor, returned into its former channel. The laſt years of Henry the Eighth exhibited the greateſt elevation, which the crown ever attained, under the princes of the Tudor family.

CHAP. XI.

Of Edward the Sixth—Mary—and Elizabeth.—General Review of the Government.—Concluſion of the Period from the Norman Conqueſt to the Acceſſion of the Houſe of Stewart.

BY the minority of Edward the Sixth, the ambitious deſigns of his father became entirely abortive. The adminiſtration was committed to a council of the nobles; who, from want of authority, from diſagreement among themſelves, or from the deſire of popularity, were induced to retrench all the late extenſions of prerogative. The very firſt year of this reign produced a repeal of that offenſive ſtatute, by which royal proclamations had, in any caſe, obtained the force of laws. Other innovations, which had proceeded from the extraordinary influence of Henry the Eighth, were likewiſe aboliſhed; and, in

a ſhort time, the former conſtitution was completely reſtored. The reformation, although it continued the direction which had been given to it by Henry the Eighth, was carried, in this reign, to an extent, and acquired a form, ſomewhat more agreeable to the general ſentiments of the party by whom it was embraced.

The reign of Mary is chiefly diſtinguiſhed by the violent ſtruggle which it produced, in order to re-eſtabliſh the Roman catholic ſuperſtition. Although the reformation was, at this time, acceptable to the majority of the nation, there ſtill remained a numerous body, zealouſly attached to the ancient religion, and highly exaſperated by the late innovations. With this powerful ſupport, and by the moſt vigorous exertion of crown-influence upon the elections of the commons, Mary was able to procure a parliament entirely devoted to her intereſt, and willing to execute her deſigns *. The reſtitution of the revenues, of which the monaſteries had been plundered, and in which a great part of the nobility and gentry had been ſharers, was the only meaſure at which they ſeemed to feel any ſcruple of conſcience. But the reign of Mary, though it occaſioned a violent ſhock to the reformation, was too ſhort for extirpating thoſe religious opinions, which had taken a deep root through the kingdom; and which upon the acceſſion of her ſucceſſor, were prudently cultivated and brought to maturity.

In the Engliſh annals we meet with no reign ſo uniformly ſplendid and fortunate as that of Elizabeth. Never did any ſovereign, ſince the days of Alfred, enjoy ſuch high and ſuch deſerved popularity, or procure ſuch extenſive advantages to the nation. To her the nation was indebted for the ſecurity of religious, the great forerunner of civil liberty. Her own religion coin-

* Burnet's Hiſtory of the Reformation.

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cided with that of the greater part of her ſubjects; who looked up to her as their deliverer from a ſuperſtition which they abhorred. Nor did ſhe appear in this light to her own ſubjects only: ſhe was the great ſupport and protector of the Proteſtant intereſt in Europe; and, while this drew upon her the enmity of all the Catholic powers, ſhe was endeared to her own people by the reflection, that her zeal in defending them from the tyranny of Rome was continually expoſing her to machinations, which threatened to bereave her of her crown and her life. Her magnanimity and public ſpirit, her penetration and dexterity, her activity and vigour of mind, her undaunted reſolution, and command of a temper naturally violent and impetuous, were equally conſpicuous in her domeſtic and foreign tranſactions; and in the whole courſe of her adminiſtration, it will be hard to point out an inſtance where ſhe miſtook herpolitical intereſt, or was guilty of any error or neglect in promoting it. Notwithſtanding the number and power of her enemies, and in ſpite of all the combinations that were formed againſt her, ſhe maintained invariably the peace and tranquillity of her own dominions; and her ſubjects, during a reign of five and forty years, enjoyed a courſe of uninterrupted proſperity and happineſs.

Whether Elizabeth entertained a juſt idea of the Engliſh conſtitution, has been called in queſtion. But ſuch as her idea was, her behaviour ſeems to have been ſtrictly conformable to it. Between the prerogative, and the privileges of parliament, ſhe appears to have drawn a fixed line; and as in her greateſt proſperity ſhe never exceeded this boundary, ſo in the utmoſt diſtreſs and perplexity ſhe never permitted the leaſt encroachment upon it.

With the legiſlative power of parliament ſhe never interfered. The excluſive privilege of that aſſembly, in impoſing taxes, was neither controverted by her, nor impaired. There is no veſtige of her either at

tempting, or deſiring, to violate theſe important branches of parliamentary authority *. Mention is made of her having, in one or two caſes, obtained a loan from her ſubjects: but there is no appearance that any compulſion was employed in making it effectual; and her conduct is, in this particular, illuſtriouſly diſtinguiſhed from that of moſt other princes, by her punctual repayment of the money.

Inſtead of aſking a benevolence, ſhe even refuſed it when offered by parliament. Such expedients, indeed, for procuring ſupplies, were in a great meaſure ſuperfluous. So rigid was her œconomy, ſo great and ſo apparent were the occaſions upon which ſhe ever demanded a ſupply, ſuch was the confidence repoſed in her by parliament, and ſo intimately did they conceive her interprizes to be connected with the public welfare, that they never diſcovered any reluctance to grant whatever ſums of money ſhe thought proper to require.

There was one point invariably maintained by Elizabeth, in which, to thoſe who form their notions of the Engliſh government from what is at preſent eſtabliſhed, ſhe appears to have been guilty of an encroachment. An act of parliament originally proceeded upon a petition to the ſovereign for the redreſs of a grievance, or the removal of ſome inconvenience; and when this petition had obtained the king's conſent, it acquired the force of a law. According to this method of conducting the buſineſs of legiſlation, the king had no occaſion to declare his reſolution concerning any bill, until it was diſcuſſed, and finally approved of, by both houſes of parliament. Before this was done, it could not be conſidered as a national requeſt, to which an anſwer from the throne was demanded.

From the nature of this tranſaction, and from the view of ſaving trouble to the ſovereign, a regular

* In the 13th of Elizabeth, we find parliament ſtrongly aſſerting its power to ſettle and limit the ſucceſſion to the crown, by declaring it high treaſon for any perſon to call this power in queſtion.

courſe

courſe of procedure was thus introduced, by which any new law received the aſſent of the crown, after the ſanction of the other two branches of the legiſlature had been given to its enactment. This practice, deriving authority from cuſtom, was at length followed independent of the circumſtances from which it had been originally ſuggeſted; and was confirmed by the experience of a later age, which diſcovered, that any deviation from it would be attended with dangerous conſequences. When the propoſal of a new law, after being fully debated in parliament, has excited the public attention, and its utility has become apparent to the nation, the crown is, in moſt caſes, unwilling to counteract the inclinations of the people, by refuſing its conſent to the meaſure. But if the ſovereign were permitted to ſmother any bill, the moment it was propoſed in parliament, there could ſcarcely exiſt a poſſibility that any new law, diſagreeable to the crown, or adverſe to the views of a miniſtry, ſhould ever be enacted. It has therefore become a fundamental principle of the conſtitution, that, with a few exceptions, the king ſhall not take notice of any bill depending in parliament; and that, before it has paſſed the two houſes, the Royal aſſent or negative ſhall not be declared.

But that this rule was completely and invariably eſtabliſhed in the reign of Elizabeth, there is no reaſon to believe. The political expediency of ſuch a regulation was, in that age, not likely to become an object of general attention. Neither was it inconſiſtent with the nature of the buſineſs, however contrary to the uſual practice, that the king, upon the introduction of a bill into parliament, ſhould prevent the labour of a fruitleſs diſcuſſion by an immediate interpoſition of his negative *.

* We find, however, that even ſo early as the ſecond of Henry the Fourth, the commons petitioned the king, that he would not ſuffer any report to be made to him of matters debated amongſt them, till they ſhould be concluded; to which the king aſſented.

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Of this interpoſition Elizabeth exhibited ſome remarkable inſtances. The firſt improvement of arts, manufactures, and commerce, by raiſing the lower claſs of the inhabitants to a better condition, diſpoſed them to free themſelves from the tyranny of the great barons, and, for that purpoſe, to court the protection of the crown. But when this improvement was farther extended, the great body of the people became ſtill more independent, and found themſelves capable of defending their privileges, whether in oppoſition to the crown or to the nobles. This gave riſe to a new ſpirit, which became conſpicuous after the acceſſion of James the Firſt, but of which the dawn began to appear in the reign of his predeceſſor; a ſpirit of liberty in the commons, by which they were incited to regulate and to reſtrain ſuch branches of the prerogative as appeared the moſt liable to abuſe, and moſt inconſiſtent with the enjoyment of thoſe rights which they were diſpoſed to aſſert.

Whenever a bill of this tendency was brought into parliament; ſuch as that for limiting the crown as head of the church, or for the diminution of its power in granting monopolies; the queen made no ſcruple to declare immediately her oppoſition to the meaſure, and even to prohibit any farther debate upon the ſubject. In doing this, ſhe ſeems to have conſidered herſelf as merely defending thoſe rights of the crown which had been tranſmitted by her anceſtors. Is not the ſovereign, ſaid the miniſtry in thoſe caſes, a branch of the legiſlature? Has ſhe not a voice in the paſſing of laws? When her negative has once been interpoſed, all farther deliberation upon the ſubject muſt be entirely excluded; and the bill muſt be laid aſide, in the ſame manner as if it had been rejected by either houſe of parliament.

This view of the prerogative ſuggeſted another exertion of authority, which in the preſent age, has been thought ſtill more illegal and arbitrary than the former. If at any ſtage of a bill in parliament, the

the crown was entitled to interpoſe its negative, it ſeemed to be a conſequence, that, upon the exerciſe of this right, any farther debate or deliberation upon the ſubject was precluded. The attempt to proſecute the bill, after ſuch intimation was given upon the part of the crown, was to reject the determination of the legiſlature, to contemn the authority of the ſovereign, and, by faction and clamour, to ſtir up diſorder and diſcontent. A behaviour of this kind was thought liable to puniſhment; and Elizabeth, upon ſeveral occaſions, adventured to impriſon thoſe members of parliament who perſiſted in puſhing forward thoſe bills which had been refuſed by the crown.

It is proper to remark, that theſe exertions of her power were limited to caſes of that nature. She never prevented the diſcuſſion of any bill in parliament, except in caſes where her ancient prerogative was invaded; nor did ſhe ever pretend to puniſh the liberty of ſpeech, unleſs when indulged in continuing to puſh thoſe bills which ſhe had declared her final reſolution to reject.

That ſuch proceedings, however, by intimidating members of parliament, are calculated to prevent the proper diſcharge of their duty, is indiſputable. The liberal ideas upon this point, which are now happily reduced into practice, may be regarded as one of the greateſt improvements in the Britiſh conſtitution. That a ſenator may be encouraged to perform his duty to the public with ſteadineſs and confidence, he ought to enjoy an unbounded liberty of ſpeech, and to be guarded againſt the reſentment either of the ſovereign, or of any other perſons in power, whom that liberty may offend. From the control of that houſe, of which he is a member, he is likely to be prevented from any great indecency and licentiouſneſs in the exerciſe of this privilege; and his parliamentary conduct ſhould not be impeached, or called in queſtion, in any other court,

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or from any other quarter. This principle is now ſufficiently underſtood, and univerſally acknowledged. Its eſtabliſhment, however, marks a degree of refinement, and of experience in political ſpeculation, which, under the government of the Tudor princes, the nation could hardly be ſuppoſed to attain; and the liberty of ſpeech, then belonging to members of parliament, was probably limited to ſubjects which that aſſembly had a right to diſcuſs.

The ſituation of religious controverſy, in the reign of Elizabeth, gave riſe to a new eccleſiaſtical tribunal, which, in after times, was likewiſe held inconſiſtent with free government, the *court of high commiſſion*. It muſt be acknowledged, that the primitive reformers, in any country of Europe, though they zealouſly oppoſed the papal tyranny, were far from adopting the liberal principle of religious toleration. Such a principle would, perhaps, have been unſuitable to their circumſtances, which required that they ſhould combat the moſt inveterate prejudices, and overturn a ſyſtem, which for ages had been advancing in reſpect and authority. As, in England, the king ſucceeded to the ſupremacy, which had been veſted in the Roman pontiff, he became the judge of orthodoxy in matters of religion; and aſſumed the power of directing the modes and forms of religious worſhip. This authority was, by Henry the Eighth, delegated to a ſingle perſon, with the title of *Lord viceregent*. In the reign of Elizabeth, parliament, thinking it ſafer that ſuch juriſdiction ſhould be entruſted to a numerous meeting, empowered the queen to appoint a commiſſion for the exerciſe of it*. This alteration was a manifeſt improvement; yet the court of high commiſſion was ſo little fettered by the rules of law, and was ſo much calculated to indulge the rancour and animoſity inſpired by theological diſputes, that we may eaſily

* Burnet, Hiſt. Reform.

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ſuppoſe the complaints, which it excited, were not without foundation. Its abolition, in a ſubſequent reign, was farther recommended from this conſideration, that, after the full eſtabliſhment of the reformation, the ſame neceſſity of inculcating uniformity of religious tenets could no longer be pretended.

The great hiſtorian of England, to whom the reader is indebted for the complete union of hiſtory with philoſophy, appears very ſtrongly impreſſed with a notion of the deſpotical government in the reign of Elizabeth, and of the arbitrary and tyrannical conduct diſplayed by that princeſs.

1. He obſerves, that "ſhe ſuſpended the laws, ſo "far as to order a great part of the ſervice, the li-"tany, the Lord's prayer, the creed, and the goſpels, "to be read in Engliſh. And, having firſt publiſh-"ed injunctions, that all the churches ſhould con-"form themſelves to the practice of her own chapel, "ſhe forbad the hoſte to be any more elevated in "her preſence; an innovation, which, however "frivolous it may appear, implied the moſt mate-"rial conſequences."

But we muſt not forget, that, in this caſe, the diſpenſing power was exerciſed under great limitations and in very ſingular circumſtances. Upon the acceſſion of Elizabeth, the Proteſtants, who now formed the greateſt part of her ſubjects, exaſperated by the late perſecution, and in full confidence of protection, began to make violent changes; to revive the ſervice authorized by Edward the Sixth, to pull down images, and to affront the prieſts of the Roman catholic perſuaſion. The queen had called a parliament to ſettle the national religion; but, in order to ſtop the progreſs of theſe diſorders, an immediate interpoſition of the crown was neceſſary. It was even pretended by ſome, that the parliaments, in the late reign, had not been legally held, and that of conſequence the laws of Edward the Sixth,

Sixth, relating to the government of the church, were ſtill in force*. But, whatever regard might be due to this, a temporary indulgence to the Proteſtants, with reſpect to the external forms of religious worſhip, was highly expedient for quieting their minds, and for preventing the commiſſion of greater enormities. This indulgence was followed by a proclamation prohibiting all innovations, until the matters in diſpute ſhould be finally determined by parliament; and, conſidering the circumſtances of the caſe, ought to be regarded rather as a meaſure calculated for the preſent ſecurity of the eſtabliſhed religion and its profeſſors, than as a violent exertion of the prerogative, in oppoſition to the laws of the land.

2. But this author, not contented with aſcribing to the crown a power of ſuſpending the laws, has gone ſo far as to aſſert, that it was entitled, at pleaſure, to introduce new ſtatutes. "In reality," ſays he, "the crown poſſeſſed the full legiſlative "power, by means of proclamations, which might "effect any matter, even of the greateſt importance, "and which the ſtar-chamber took care to ſee more "rigorouſly executed than the laws themſelves†."

In anſwer to this, it will perhaps be thought ſufficient to obſerve, that anciently the crown poſſeſſed no legiſlative power; that royal proclamations were firſt declared to have the force of laws, in the latter part of the reign of Henry the Eighth; that even then, this force was given them under great reſtrictions, and in ſingular caſes; and that in the beginning of the ſubſequent reign, it was entirely aboliſhed by the ſame authority from which it had proceeded.

If the ſtar-chamber, therefore, ſupported this power in the reign of Elizabeth, it muſt have been

* Burnet.

† Hiſt. of Eng. vol. V. Appendix 3.

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in direct violation of the conſtitution; and it is not likely, that ſtretches of this kind would often be attempted. But let us conſider what were the proclamations iſſued in this reign, which the ſtar-chamber had an opportunity to enforce. In virtue of the papal ſupremacy, with which ſhe was inveſted, Elizabeth prohibited *prophecyings*, or particular aſſemblies inſtituted for fanatical purpoſes, and not authorized by the church *. Having the regulation of trade and manufactures, ſhe alſo prohibited the culture of *woad*, a plant uſed for the purpoſe of dying. And, as a director of ceremonies, preſcribing rules for the dreſs of thoſe who appeared at court, or in public places, ſhe gave orders that the length of the ſwords, and the height of the ruffs then in faſhion, ſhould be diminiſhed. Theſe are the important inſtances adduced in order to prove that Elizabeth ſuperſeded the authority of acts of parliament, and aſſumed the legiſlative power in her own perſon.

3. The ſame hiſtorian appears to conceive, that, among other branches of prerogative exerciſed by Elizabeth, was that of impoſing taxes. "There "was," he remarks, "a ſpecies of *ſhip-money* impoſed "at the time of the Spaniſh invaſion: the ſeveral "ports were required to equip a certain number of "veſſels at their own charge; and ſuch was the "alacrity of the people for the public defence, "that ſome of the ports, particularly Lon-"don, ſent double the number demanded of "them †." And in a ſubſequent period of the Engliſh hiſtory, having mentioned a requiſition made by Charles the Firſt, that the maritime towns, *toge-*

* In the fifth of Elizabeth there was paſſed an act, conformable to a preceding one in the reign of Edward the Sixth, againſt *fond and fantaſtical prophecies concerning the queen and divers honourable perſons*, which, it ſeems, had a tendency to ſtir up ſedition. From the name, it is not unlikely that the aſſemblies, alluded to in the proclamation above-mentioned, were ſuppoſed guilty of the like practices, and that Elizabeth was merely following out the intention of an act of parliament.

† Vol. V. Appendix 3.

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ther with the adjacent counties, ſhould arm a certain number of veſſels, he adds; "This is the firſt appearance, in Charles's reign, of ſhip-money; a taxation which had once been impoſed by Elizabeth, but which afterwards, when carried ſome ſteps farther by Charles, occaſioned ſuch violent diſcontents *."

Ship-money was originally a contribution by the maritime towns, for the ſupport of the fleet, correſponding, in ſome meaſure, to the ſcutages which were paid by the military people in the room of perſonal ſervice in the field. When it come, therefore, to be a regular aſſeſſment, exacted by public authority, it fell of courſe under the regulation of parliament; and, like other taxes, being gradually puſhed beyond its original boundaries, was extended to the counties in the neighbourhood of the ſea, and at length to the moſt inland parts of the kingdom. To oppoſe an invaſion which threatened the immediate deſtruction of her empire, Elizabeth had recourſe to the cuſtomary aſſiſtance of the ſea-port towns; and, ſo far from uſing compulſion to procure it, was freely ſupplied with a much greater force than ſhe required. How can this meaſure be conſidered as analogous to the conduct of Charles the Firſt in levying that *ſhip-money*, which gave riſe to ſuch violent complaints? The contribution obtained by Elizabeth was altogether voluntary: that which was levied by Charles was keenly diſputed by the people, and enforced by the whole power of the crown. The ſupply granted to Elizabeth was furniſhed by the maritime towns only; who, by their employment and ſituation, were connected with the equipment of veſſels: that which was extorted by Charles, had been converted into a regular tax; and was impoſed upon the nation at large. The ſhip-money of Elizabeth was procured in a ſingle caſe, and one of ſuch extraordinary neceſſity as

* Vol. VI.

would

would have excuſed a deviation from the common rules of government. But the ſhip-money of Charles was not palliated by any pretence of neceſſity: it was introduced, and, notwithſtanding the clamours of the people, continued for a conſiderable period, with the avowed intention of enabling the king to rule without a parliament.

4. But the chief ground of this opinion, concering the tyrannical behaviour of Elizabeth, and the deſpotical nature of her government, appears to be, her interference in the debates of parliament; her impriſonment of members for preſuming to urge the proſecution of bills, after ſhe had put a negative upon them; and the tameneſs with which parliament ſubmitted to thoſe exertions of prerogative.

It muſt be confeſſed, that if, in the preſent age, a Britiſh monarch ſhould act in the ſame manner, and ſhould meet with the ſame acquieſcence from parliament, we might reaſonably conclude that our freedom was entirely deſtroyed. But the ſubmiſſion of that aſſembly, at a period when the order, in which the king's negative ſhould be interpoſed, was not invariably determined, does not argue the ſame corruption; and therefore will not warrant the ſame concluſion. Whatever might be the view entertained by ſome members of parliament in that age, the greater part of them were probably not aware of the conſequences with which thoſe exertions of the crown might be attended; and as, with reaſon, they placed great confidence in the queen's intentions, their jealouſy was not rouſed by a meaſure which did not ſeem to violate any fixed rule of the government.

Neither have we any good reaſon to infer, that, becauſe this point had hitherto been left undetermined, the conſtitution was of no value or efficacy to maintain the rights of the people. It was, no doubt, a great defect in the political ſyſtem, that the king might put a ſtop to any bill depending in parliament,

liament, and prevent any farther debate with relation to it. But even this power of the ſovereign was far from rendering the government deſpotical. By means of it, he might the more effectually defend his own prerogative, but it could not enable him to encroach upon the liberty of the ſubject. The parliament, without whoſe authority no innovation could be made, was the leſs capable of introducing any new regulation; but not the leſs qualified to maintain the government as it ſtood. The power of taxation, at the ſame time, threw a prodigious weight into the ſcale of parliamentary influence. By the increaſing expence of government, a conſequence of the improvement of arts, and the advancement of luxury, the old revenues of the crown became daily more inadequate to the demands of the ſovereign; which laid him under the neceſſity of making frequent applications to parliament for extraordinary ſupplies. This, as it reduced him to a dependence upon that aſſembly, enabled it to take advantage of his neceſſities, and to extort from him ſuch conceſſions as experience had ſhown to be requiſite for ſecuring the rights and privileges of the people.

5. According to Mr. Hume, "the government of "England, during that age, however different in "other particulars, bore, in this reſpect, ſome re"ſemblance to that of Turkey at preſent: the ſove"reign poſſeſſed every power, except that of im"poſing taxes: and in both countries this limitation, "unſupported by other privileges, appears rather "prejudicial to the people. In Turkey, it obliges "the Sultan to permit the extortion of the baſhaws "and governors of provinces, from whom he after"wards ſqueezes preſents, or takes forfeitures. In "England, it engaged the queen to erect mono"polies, and grant patents for excluſive trade: an "invention ſo pernicious, that had ſhe gone on, "during a tract of years, at her own rate, England,

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" the ſeat of riches, and arts, and commerce, " would have contained, at preſent, as little induſtry " as Morocco, or the coaſt of Barbary *."

But ſurely, in England, the ſovereign was not poſſeſſed of every power, except that of impoſing taxes. The power of legiſlation was veſted in the king, lords, and commons. The judicial power was not, in ordinary caſes, exerciſed by the crown, but was diſtributed among various courts of juſtice; and though, in theſe, the judges, from the manner of their appointment, might be ſuppoſed to favour the prerogative, yet the modes of their procedure, and the general rules of law, were in moſt caſes too invariably determined, to permit very groſs partiality. The inſtitution of *juries*, beſides, which had long been completely eſtabliſhed in England, was calculated to counterbalance this natural bias of judges, and to ſecure the rights of the people. Is it poſſible that, in ſuch a government, the power of the monarch can be ſeriouſly compared to that which prevails in Turkey?

The ſovereign, indeed, was entitled to erect monopolies, and to grant excluſive privileges; which, in that period, were thought neceſſary for the encouragement of trade and manufactures. That theſe grants were often beſtowed for the purpoſe merely of deriving a pecuniary advantage to the crown, it is impoſſible to deny. But who can believe that the perquiſites, ariſing from this branch of the prerogative, or from ſuch of the feudal incidents as were ſtill of an arbitrary nature, were ever likely to defray the extraordinary expences of the crown, and to ſuperſede the neceſſity of ſoliciting taxes from parliament?

The ſtar-chamber, and the court of high commiſſion, were doubtleſs arbitrary and oppreſſive tribunals; and were in a great meaſure under the direc-

* Hiſtory of England, vol. V. Appendix 3.

tion

tion of the ſovereign. But their interpoſition, though juſtly the ſubject of complaint, was limited to ſingular and peculiar caſes; and, had it been puſhed ſo far as to give great interruption to the known and eſtabliſhed courſe of juſtice, it would have occaſioned ſuch odium and clamour, as no prince of common underſtanding would be willing to incur.

To be ſatisfied, upon the whole, that the Engliſh conſtitution, at this period, contained the eſſential principles of liberty, we need only attend to its operation, when the queſtion was brought to a trial, in the reigns of the two ſucceeding princes. At the commencement of the diſputes between the houſe of commons and the two firſt princes of the Stewart family, the government ſtood preciſely upon the ſame foundation as in the time of Elizabeth. Neither the powers of parliament had been encreaſed, nor thoſe of the ſovereign diminiſhed. Yet, in the courſe of that ſtruggle, it ſoon became evident, that parliament, without going beyond its undiſputed privileges, was poſſeſſed of ſufficient authority, not only to reſiſt the encroachments of prerogative, but even to explain and define its extent, and to eſtabliſh a more complete and regular ſyſtem of liberty. It was merely by withholding ſupplies, that the parliament was able to introduce theſe important and ſalutary regulations. Is the power of taxation, therefore, to be conſidered as prejudicial to the people? Ought it not rather to be regarded as the foundation of all their privileges, and the great mean of eſtabliſhing that happy mixture of monarchy and democracy which we at preſent enjoy?

Concluſion of the Period, from the Norman Conqueſt.

WHEN we review the Engliſh conſtitution, under the princes of the Norman, the Plantagenet, and the Tudor line, it appears to illuſtrate the natural progreſs of that policy which obtained in the Weſtern part of Europe, with ſuch peculiar modifications, as might be expected, in Britain, from the ſituation of the country, and from the character and manners of the inhabitants. By the completion of the feudal ſyſtem, at the Norman conqueſt, the authority of the ſovereign was conſiderably encreaſed; at the ſame time that his powers, in conformity to the practice of every rude kingdom, were, in many reſpects, diſcretionary and uncertain. The ſubſequent progreſs of government produced a gradual exaltation of the crown; but the long-continued ſtruggle between the king and his barons, and the ſeveral great charters which they extorted from him, contributed to aſcertain and define the extent of his prerogative. While the monarchy was thus gaining ground upon the ancient ariſtocracy, the conſtitution was acquiring ſomething of a regular form, and, by the multiplication of fixed laws, proviſion was made againſt the future exertions of arbitrary power.

By the inſular ſituation of Britain, the Engliſh were little expoſed to any foreign invaſion, except from the Scots, whoſe attacks were ſeldom very formidable: and hence the king, being prevented from engaging in extenſive national enterprizes, was deprived of thoſe numerous opportunities for ſignalizing his military talents, and for ſecuring the admiration and attachment of his ſubjects, which were enjoyed by the princes upon the neighbouring continent. Thus the government of England, though it proceeded in a ſimilar courſe to that of the other monarchies in Europe, became leſs abſolute

than the greater part of them; and gave admittance to many peculiar inſtitutions in favour of liberty.

The ſame inſular ſituation, together with the climate and natural produce of the country, by encouraging trade and manufactures, gave an early conſequence to the lower order of the inhabitants; and, by uniting their intereſt with that of the king, in oppoſing the great barons, diſpoſed him to encreaſe their weight and importance in the community. Upon this account, when the crown had attained its greateſt elevation, under the princes of the Tudor family, the privileges of the commons were not regarded as hoſtile to the ſovereign, but were cheriſhed and ſupported as the means of extending his authority.

In conſequence of theſe peculiar circumſtances, the government of England before the acceſſion of James the Firſt, had come to be diſtinguiſhed from that of every other kingdom in Europe: the prerogative was more limited; the national aſſembly was conſtituted upon a more popular plan, and poſſeſſed more extenſive powers; and, by the intervention of juries, the adminiſtration of juſtice, in a manner conſiſtent with the rights of the people, was better ſecured.

Theſe peculiarities, it is natural to ſuppoſe, could hardly eſcape the attention of any perſon, even in that period, who had employed himſelf in writing upon the government of his country. And yet the hiſtorian, whom I formerly quoted, imagines that, before the reign of James the Firſt, the Engliſh had never diſcovered any difference between their own conſtitution and that of Spain or France; and declares, "that he has not met with any writer in that "age, who ſpeaks of England as a limited mo-"narchy, but as an abſolute one, where the peo-"ple have many privileges *." This appears the

* See note Q, at the end of the vol. VI.

more

more extraordinary, as foreigners, he acknowledges, were ſufficiently ſenſible of the diſtinction. "Philip "de Comines remarked the Engliſh conſtitution "to be more popular, in his time, than that of "France. And Cardinal Bentivoglio mentions the "Engliſh government as ſimilar to that of the "Low Countries under their princes, rather than "to that of France or Spain *."

To prove that Engliſh authors did not conceive their government to be a limited monarchy, it is farther obſerved, that Sir Walter Raleigh, a writer ſuſpected of leaning towards the puritanical party, divides monarchies into ſuch as are *entire*, and ſuch as are *limited* or *reſtrained*; and that he claſſes the Engliſh government among the former. It muſt be obſerved, however, that by a limited monarchy, in this paſſage, is meant that in which the king has not the ſovereignty in time of peace, as in Poland.

But not to inſiſt upon the expreſſions of Sir Walter Raleigh, a courtier, who thought it incumbent upon him to write of queen Elizabeth in a ſtyle of romantic love; an adventurer, continually engaged in projects which required the countenance and ſupport of the prince; I ſhall mention two Engliſh writers, whoſe authority upon this point will perhaps be thought ſuperior, and whoſe opinion is much more direct and explicit.

The firſt is Sir John Forteſcue, the lord chief juſtice, and afterwards the chancellor to Henry the Sixth, who has written a treatiſe upon the excellence of the Engliſh laws, and who from his profeſſion, as well as from the diſtinguiſhed offices which he held by the appointment of the ſovereign, will not readily be ſuſpected of prejudices againſt the prerogative †. This author, inſtead of conceiving

* Ibid.

† This book was tranſlated in Engliſh, and publiſhed, in the reign of Elizabeth, by Robert Mulcaſter, a ſtudent at law, and dedicated to one of her juſtices of the Common Pleas.

the Engliſh government to be an abſolute monarchy, deſcribes it in language that ſeems, in every reſpect ſuitable to the ſtate of our preſent conſtitution. After diſtinguiſhing governments into *regal* and *political*, that is, into abſolute and limited, he is at pains, through the whole of his work, to inculcate that the Engliſh government is of the latter kind, in oppoſition to the former. "The ſecond point, "moſt worthy prince, whereof you ſtand in "fear," (I make uſe of the old tranſlation, to avoid the poſſibility of ſtraining the expreſſion) "ſhall, in "like manner, and as eaſily as the other, be con-"futed. For you ſtand in doubt whether it be bet-"ter for you to give your mind to the ſtudy of the "laws of England, or of the civil laws; becauſe "they, throughout the whole world, are advanced "in glory and renown above all men's laws. Let "not this ſcruple of mind trouble you, O moſt no-"ble prince: for the king of England cannot alter "nor change the laws of his realm, at his pleaſure. "For why, he governeth his people by power, "not only *regal* but *political*. If his power over "them were regal only, then he might change "the laws of his realm, and charge his ſubjects with "tallage and other burdens without their con-"ſent*."—The aim of a limited monarchy he afterwards explains more fully. "Now you under-"ſtand," ſays he, "moſt noble prince, the form "of inſtitution of a kingdom *political*; whereby you "may meaſure the power, which the king thereof "may exerciſe over the law, and ſubjects of the

* "Secundum vero, princeps, quod tu formidas, conſimili nec majori "opera elidetur. Dubitas nempe, an Anglorum legum, vel civilium ſtudio "te conferas, dum civiles ſupra humanas cunctas leges alias, fama per "orbem extollat glorioſa. Non te conturbet, fili regis, hæc mentis evagatio: "nam non poteſt rex Angliæ ad libitum ſuum, leges, mutare regni ſui. Prin-"cipatu namque, nedum *regali*, ſed et *politico*, ipſe ſuo populo dominatur. Si "*regali* tantum ipſe præeſſet iis, leges regni ſui mutare ille poſſet, *tallagium* "quoque et cætera onera eis impoere ipſis inconſultis."—*Forteſcue, de Laudibus* "*Legum Angliæ*, c. 9.

"ſame.

" ſame. For ſuch a king is made and ordained for " the defence of the law of his ſubjects, and of " their bodies, and goods, whereunto he receiveth " power of his people, ſo that he cannot govern his " people by any other power.*"—Then follows a more particular application of this doctrine to the conſtitution of England. " Now whether the ſta- " tutes of England be good or not, that only re- " maineth to be diſcuſſed. For they proceed not " only from the prince's pleaſure, as do the laws of " thoſe kingdoms that are ruled only by *regal* go- " vernment, where ſometimes the ſtatutes do ſo " procure the ſingular commodity of the maker, " that they redound to the hinderance and damage " of his ſubjects.—But ſtatutes cannot thus paſs in " England, for ſo much as they are made, not only " by the prince's pleaſure, but alſo by the aſſent of " the whole realm: ſo that of neceſſity they muſt " procure the wealth of the people, and in no wiſe " tend to their hinderance†."—After ſtating ſome objections, in the name of the Prince, he goes on; " Do you not now ſee, moſt noble prince, that the " more you object againſt the laws of England, the " more worthy they appear?—I ſee plainly, quoth " the Prince, that in the caſe wherein you have now " travailed, they have the pre-eminence above all " other laws of the world; yet we have heard that " ſome of my progenitors, kings of England, have " not been pleaſed with their own laws, and have

* " Habes in hoc jam, princeps, *inſtituti* omnis *politici* regni formam, ex " qua metire poteris poteſtatem quam rex ejus in leges ipſius, aut ſub- " ditos valeat exercere. Ad tutelem namque legis ſubditorum, ac eorum cor- " porum, et bonorum, rex hujuſmodi erectus eſt; et ad hanc poteſtatem a po- " pulo effluxam ipſe habet, quo ei non licet poteſtate alia ſuo populo do- " minari."—Cap. 13.

† " Statuta tunc Anglorum, bona ſint necne, ſolum reſtat explorandum. Non enim emanant illa a principis ſolum voluntate, ut leges in regnis, quæ " tantum *regaliter* gubernantur, ubi quandoque ſtatuta ita conſtituentis pro- " curant commodum ſingulare, quod in ejus ſubditorum ipſa redundant " diſpendium.—Sed non ſic Angliæ ſtatuta oriri poſſunt, dum *nedum principis* " *voluntate, ſed et totius regni aſſenſu*, ipſa condúntur, quo populi læſuram illa " efficere nequeunt, vel non eorum commodum procurare."—Cap. 18.

" therefore

" therefore gone about to bring in the civil laws to " the government of England, and to abolish their " own country laws. For what purpose and intent " they so did I much marvel.—You would nothing " marvel thereat, quoth the Chancellor, if you did " deeply consider with yourself the cause of this " intent. For you have heard before, how that " among the civil laws, that maxim or rule is a " sentence most notable, which thus singeth, *The* " *prince's pleasure standeth in force of a law*; quite " contrary to the decrees of the laws of England, " whereby the king thereof ruleth his people, not " only by *regal* but also by *political* government; " insomuch that, at the time of his coronation, he " is bound by an oath to the observance of his own " law: which thing some kings of England, not " well brooking, as thinking that thereby they " should not freely govern their subjects as other " kings do, whose rule is only regal, governing their " people by the civil law, and chiefly by that foresaid " maxim of the same law, whereby, they, at their " pleasure, change laws, make new laws, execute " punishments, burden their subjects with charges; " and also, when they list, do determine contro- " versies of suitors, as pleaseth them. Wherefore " these your progenitors went about to cast off the " yoke *political*, that they also might rule, or rather " rage over the people their subjects in *regal* wise " only: not considering that the power of both " kings is equal, as in the aforesaid treatise of the " law of nature is declared, and that to rule the " people by government *political* is no yoke, but " liberty, and great security, not only to the sub- " jects, but also to the king himself, and further " no small lightening or easement to his charge. " And that this may appear more evident unto " you, ponder and weigh the experience of both " regiments; and begin with the king of France, " perusing after what sort he ruleth his subjects,

" by

" by *regal government alone :* and then come to the " effect of the joint governance, *regal* and *political*, " examining by experience how and in what man- " ner the king of England governeth his ſubjects *." After theſe obſervations, the author, in two ſeparate chapters, contraſts the miſery produced by the abſolute government in France with the happineſs reſulting from the limited monarchy in England. The whole treatiſe is well worth an attentive peruſal; as it contains the judgment of a celebrated lawyer, concerning the mixed form of the Engliſh conſtitution, at a period when ſome have conceived it to be no leſs arbitrary and deſpotical than that which was eſtabliſhed in France or in any other kingdom of Europe.

It will occur to the reader, that the opinion of Sir John Forteſcue, in the paſſages above quoted, is widely different from that of Mr. Hume, who main-

* " Nonne vides jam, princeps, clariſſime, leges Angliæ tanto magis " clareſcere, quanto eiſdem tu amplius reluctaris ? *Princeps*, video, inquit, et " eas inter totius orbis jura (in caſu quo tu jam fudaſti) præfulgere conſidero ; " tamen progenitorum meorum Angliæ regnum quoſdam audivimus, in legi- " bus ſuis minime delectatos, fatagentes proinde leges civiles ad Angliæ regi- " men inducere, et patrias leges repudiare conatos : horum revera conſilium " vehementer admiror. *Cancellarius*. Non admirareris, Princeps, ſi cauſam " hujus conaminis mente ſolicita pertractares. Audiſti namque ſuperius " quomodo inter leges civiles præcipua ſententia eſt, maxima ſive regula illa " quæ ſic canit, *quod principi placuit legis habet vigorem :* qualiter non ſanciunt " leges Angliæ, dum nedum *regaliter*, ſed et *politice* rex ejuſdem dominatur " in populum ſuum, quo ipſe in *coronatione* ſua ad legis ſuæ obſervantiam " aſtringitur ſacramento ; quod reges Angliæ ægre ferentes, putantes proinde " ſe non libere dominari in ſubditos, ut facient reges *regaliter* tantum princi- " pantes, qui lege civili et potiſſime predicta legis illius maxima, regulant " plebem ſuam, quo ipſi, ad eorum libitum, jura mutant, nova condunt, " pœnas infligunt, et onera imponunt ſubditis ſuis, propriis quoque arbitriis, " contendentium, cum velint dirimunt lites. Quare moliti ſunt ipſi progeni- " tores tui hoc jugum *politicum* abjicere, ut conſimiliter et ipſi in ſubjectum " populum *regaliter* tantum dominari, ſed potuis debacchari queant : non " attendentes quod æqualis eſt utriuſque regis potentia ; ut in predicto trac- " tatu *de natura legis naturæ* docetur ; et quod non jugum ſed libertas eſt *politice* " regere populum, ſecuritas quoque maxima nedum plebi, ſed et ipſi regi, " allevatio etiam non minima ſolicitudinis ſuæ. Quæ ut tibi apertius pateant, " utriuſque regiminis experientiam percunctare, et a regimine *tantum regali*, " qualiter rex Franciæ principatur in ſubditos ſuos, exordium ſumito : deinde " a *regalis* et *politici* regiminis effectu, qualiter rex Angliæ dominatur in ſibi " ſubditos populos, experientiam quære." Vide cap. 32, 33, 34.

tains

tains that the legiſlative power of the Engliſh parliament was a mere *fallacy*.

The other Engliſh writer, from whoſe authority it appears that the government of England was, at this time, underſtood to be a limited monarchy, is Sir Thomas Smith, a diſtinguiſhed lawyer, and principal ſecretary both to Edward the Sixth and to Elizabeth. In his *Commonwealth of England*; a work which unites liberality of ſentiment with ſome philoſophy; this author, after explaining the origin and progreſs of government, has occaſion to conſider more particularly the nature of the Engliſh conſtitution. "The moſt high and abſolute power," ſays he, "of the realm of England, conſiſteth in the "parliament.—The parliament abrogateth old "laws, maketh new, giveth order for things paſt, "and for things hereafter to be followed, changeth "rights and poſſeſſions of private men, legitimateth "baſtards, eſtabliſheth forms of religion, altereth "weights and meaſures, giveth form of ſucceſſion "to the crown, defineth of doubtful rights, where-"of no law is already made, appointeth ſubſidies, "tailles, taxes, and impoſitions, giveth moſt free "pardons and abſolutions, reſtoreth in blood and "name, as the higheſt court, condemneth or ab-"ſolveth them whom the prince will put to "that trial. And, to be ſhort, all that ever "the people of Rome might do, either in "*centuriatis comitiis*, or *tributis*, the ſame may be "done by the parliament of England, which re-"preſenteth, and hath the power of the whole "realm, both the head and the body. For every "Engliſhman is intended to be there preſent, either "in perſon or by procuration and attorney, of what "preheminence, ſtate, dignity, or quality ſoever "he be, from the prince, to the loweſt perſon of "England. And the conſent of the parliament is "taken to be every man's conſent *."—Among the

* Commonwealth of England, b. ii. ch. 2.

privileges

privileges of parliament, mentioned by this well-informed writer, one is, that the members "may "frankly and freely ſay their minds, in diſputing "of ſuch matters as may come in queſtion, and that "without offence to his majeſty *."—He alſo enumerates the ſeveral branches of the prerogative; ſuch as, that of making peace and war, of coining money, of appointing the higher officers and magiſtrates of the realm, of drawing the tenths and firſt fruits of eccleſiaſtical benefices, of iſſuing writs and executions, of levying the wardſhip, and firſt marriage, of all thoſe who hold of the king in chief.—What he ſays concerning the *diſpenſing power* of the ſovereign deſerves particular notice, as he mentions the foundation of that power, and the limitations under which it was underſtood to be exerciſed.

"The Prince," he obſerves, "uſeth alſo to diſ-"penſe with laws made, whereas equity requireth a "moderation to be had, and with pains for tranſ-"greſſing of laws, where the pain of the law is ap-"plied only to the prince. But where the forfeit, "(as in popular actions it chanceth many times) "is part to the prince, the other part to the decla-"rator, detector, or informer, there the prince "doth diſpenſe for his own part only. Where the "criminal is intended by inquiſition (that manner "is called with us at the prince's ſuit) the prince "giveth abſolution or pardon, yet with a clauſe, "*modo ſtet rectus in curia*, that is to ſay, that no man "object againſt the offender. Whereby, notwith-"ſtanding that he hath the prince's pardon, if the "perſon offended will take upon him the accuſation "(which in our language is called the appeal) in "caſes where it lieth, the prince's pardon doth "not ſerve the offender †."

In peruſing theſe accounts of the Engliſh government, we cannot fail to remark, that they are ſo

* Ibid. ch. 3.

† Ibid. ch. 4.

little

little enforced by argument, and delivered with ſuch plainneſs and ſimplicity, as makes it probable that they contained the doctrines univerſally received in that age, and which had never been the ſubject of any doubt or controverſy.

The views of this important queſtion, which have been ſuggeſted by other writers, it is not my intention to examine. But the opinions of this eminent hiſtorian are entitled to ſo much regard, and appear, in this caſe, to have ſo little foundation, that I could not help thinking it improper to paſs them over in ſilence. The improvements made in the Engliſh government, from the acceſſion of the houſe of Stewart to the preſent ſtate of the Britiſh conſtitution in all its principal branches, are intended for the ſubject of a future inquiry.

INDEX.

INDEX.

A.

ABBOTS preſide in the affairs of monaſteries, page 85
Actions, criminal, in law, leſs numerous than civil, 377
Admittance of the commons to a ſeat in parliament, how brought about, 347
Adrian, the emperor, contracts the limits of the empire, 12
Adultery, its puniſhment among the ancient Germans, 28
Africa falls a prey to the Vandals, - - 47
Alaric, a law in favour of the clergy of that diſtrict, 207
Alderman, or earl, chief civil officer of the ſhire, among the Anglo-Saxons, 104
Alienation of landed property, when firſt authoriſed by ſtatute, - - 333
Alfred, his character and misfortunes, 151, 52. His demeſnes ſeized, *ib.* He retreats to a moraſs formed by the rivers Thane and Parrot, in Somerſetſhire, *ib.* Collects an army, 153. Viſits the Daniſh camp in diſguiſe, *ib.* Defeats them in battle, 154. Creates a fleet, fortifies the coaſt, rebuilds the towns and improves the country. Compoſes a new code of laws, 155. Eſtabliſhes the regular adminiſtration of juſtice, 156. Excites induſtry among all orders of men, and extends the intereſts of commerce, 157. His manly virtues, and literary talents, *ib.* His portly figure, and dexterity in athletic exerciſes, 158. Moſt accounts of him fabulous, - page 158
Allodial and feudal eſtates, what, and how diſtinguiſhed, - - 75, 6.
Allodial property renounced, 164. Effects of that meaſure, - - *ib.*
Alterations in the ſtate of the courts of juſtice, 375
Anglo-Saxons, the fierceſt and moſt warlike of the German tribes, 32. The power of their princes weakened, 166. Their government how diſtinguiſhed from that of the Anglo-Saxon Normans, 273
Amalphi, its maritime laws how reſpected, - 436
Aſſaſſination, the practice of, aboliſhed by duelling, 64
Archbiſhops, their functions, 85. Three of, originally in England, - 104
Ariſtocracy, feudal, what, 3
Army, Roman, in Britain, its number, 4. Operations, *ib.* Effects on the manners of the people, - 5
Aſſiſe, commiſſion of, why given, - - 386
Athelſtan, in his reign, 159. Mounts the throne in preference to his father's legitimate offspring, 169. A ſingular

gular ſtatute of 185. Another, page 189
Attorney General, office of, for what purpoſe created, 399
Aula regis explained, 218. Its analogies, 284. Its date uncertain, 285. Ordinary and extraordinary preſident, who, *ib.* Acquires the title of grand juſticiary, *ib.* A great improvement in judicial policy, 290. A deputation from the national council, 291. Limits the authority of inferior courts, 292. Encroaches on the juriſdiction of the ſheriffs and barons, *ib.* Its extenſive influence, *ib.* Its imperfections, 377. Its reſidence fixed, 379. Aboliſhed, and from what cauſes, 380. Subjected, in Scotland, to ſimilar revolutions, - 382
Aulic council, in Germany, deſcribed, 284. Diſtinguiſhed from the imperial chamber, - - 17
Auguſtine and forty aſſiſtants commiſſioned by the pope to preach the goſpel in Great Britain, - - 96
Auſpices of Henry II.'s aſcenſion to the throne, 247
Authority of the diſtant provincial Roman governors, 6. Of the feudal lords, by what means diminiſhed, 92

B.

Baldwin, count of Flanders, inſtitutes fairs and markets, - 439
Barons, hereditary, ſkreen their followers, 177. Greater and leſſer, diſtinguiſhed, 214. The leſſer barons conſider their attendance on parliament as a burden, 283. Weakened by their animoſities, 307. Extort frequent conceſſions from the crown, 308. Their conduct materially different from thoſe of France, 309. They defeat Richard II. in battle, page 318
Baronies, in ſeparate counties, amount of - 271
Becket, Thomas, promoted to the ſee of Canterbury, 247. His inordinate ambition, 248. His aſſaſſination alluded to, - 304
Benefices, eccleſiaſtic, ſubjected to military ſervice, 256
Benefit of clergy, what, and how eſtabliſhed, 302
Benevolence, its derivation, 277 Always conſidered as a free gift, except in three ſingular inſtances, 461. Damned and diſannulled for ever by act of parliament, 462
Biſhops, the ſource of that dignity, 82. Their primitive ſituation, 85. Inveſted with civil as well as eccleſiaſtic juriſdiction, 205. Become judges, with ſheriffs, in the county courts, 208. Diſpoſſeſſed of this diſtinction, - - *ib.*
Bills for a new law, how conducted, - - 372
Boc-land and *Folc-land* deſcribed and diſtinguiſhed, 77
Boroughs, the idea of, how ſuggeſted, 339. When repreſented in parliament, 340,

340, 41. For Scotland, when, 343. An hundred and twenty of, under Edward I. ſend two delegates each, 350. Repreſentatives of, how elected, 362, 63. Twelve in Wales receive the privilege of repreſentation from Henry VIII. who at the ſame time gives the ſame right to as many counties in England, 452. Twenty-four raiſed, and ſeven reſtored, under queen Elizabeth, *ib.* Sixteen made, and ten renewed, by Edward VI.; ten made, and two renewed, by *Mary*, *ib.* James I. created ſix and reſtored eight, *ib.* Charles I. reſtored nine, page 452

Burgeſſes, when firſt introduced to parliament, 337

Borſholder, who, 171

Boxing peculiar to the Engliſh, 67. Its laws derived from thoſe of chivalry, *ib.*

Black Prince, his gallantry and delicacy of ſentiment, 315

Brady quoted 236, 7, cenſured, - - 238 n.

Britain, its ſituation when firſt ſubdued by the Romans, 4. The Roman government of, *ib.* Duke of, his office, 14. Count of, who, *ib.* Deſerted by the Romans, 15. Conſequences of that event, *ib.* Forms ſchemes of ſelf-defence, 17. Calls the Saxons to its aid, and is betrayed, 33, 4.

Britons, the ancient, reduced to ſervitude, 35. Not extirpated, 36, 7. Their language a compound of the ancient Saxon and Britiſh, *ib.* Their barbariſm and wretchedneſs, page 39

C.

Canute, king, his conqueſts and conduct, - 161, 2.

Canon law formed into a ſyſtem, 301. Improved, 408.

Carles, *ceorls*, *churles*, names of the ancient Britiſh peaſantry, - - 78

Centenarius, or hundreder, the office of, - 103

Claſſes, fourfold, into which the people of England were formerly divided, 190. Analogous to the caſtes of the Indians, - 191

Clergy, the third order of ancient Britons, 80. Acquire influence in ſeculiar affairs, 82. Accumulate great property by legacies bequeathed to the church, 83. Retain their literature amidſt the groſſeſt barbariſm, 86. Claim a tenth from the alms of the beggar, and the hire of the proſtitute, 87. Combine in their own defence, 90. Their merits admitted, 300. Obtain an exemption from ſecular juriſdiction, - - 301

Chancellor, origin of that office, - - 144

Changes in the condition of vaſſals and peaſants, 177

Charles I. reſtored nine boroughs to the right of ſending delegates to parliament - - 452

Charles

Charles of Anjou, a liberal patron of the fine arts, page 437
Clocks, the art of making, derived from Italy, 437
Charter of the foreſt explained, 259, 60. The great charter of liberty renewed, *ib.* Begun and repeated under ſix different monarchs, 264. Mentioned again, 308
Chriſtianity, eſtabliſhment of, 81. Among the Anglo-Saxons, 93. Debaſed by Saxon ſuperſtition, 94
Chivalry, a conſequence of duelling, 66. Its ſpectacles firſt exhibited in France, *ib.* Produced the nobleſt delicacy of ſentiment, 315, 16
Church gather ſtrength from the diſmemberment of the empire, 88. Increaſe in wealth and power, 202. Celibacy of its officers, 203. Aſſumes the cognizance of judicial buſineſs, *ib.* Excommunicates refractory members, *ib.* Severe diſcipline, 205. Framed to affect men's preſent intereſts, *ib.* Its legal eſtabliſhment, 303
Churles, their ſtation and rank in life deſcribed, 183, 4, 5.
Circumſtances which contributed to form the Britiſh conſtitution of government, 48. Prevented the civil incorporating with the common law, 406, 7, 8, 9.
Coalition of the mercantile deputies with thoſe of the leſſer barons, - 351
Commons, in parliament, acquire a ſeparate houſe, 354. Houſe of, its privileges, 354, page 355, &c.
Civil law, its excellence and alterations, 415, 16, 17.
Common law of England little indebted to Roman juriſprudence, and why, 406
Commerce, origin and extent of, 434. Confined by the ancients to the coaſts of the Mediterranean and the Red Sea, *ib.* Engroſſed in the northern ports of Europe by towns ſituated on the ſhores of the Baltic, and in the ſouthern by the Italians, 434, 35. Its rapid progreſs in England, 443. By the woollen trade, 444. By improvements in agriculture, 446. And navigation, 448. Encouraged and facilitated by the nature of a free government, - 449
Conſervators of the peace, their origin and employment, 387
Coroner, appointment of, and for what purpoſe, 400. The buſineſs of that office, 401, 2. Superſeded by the inſtitution of a grand jury, *ib.* Undergoes in Scotland a ſimilar change, 404
Cortes of Spain, when introduced, - 346, n.
Compurgators explained, 248
Conſtantine erects an eaſtern capital, 13. Diſbands the Pretorian guards, *ib.* Diſtributes the whole empire into four great prefectures, *ib.*
Conſtitution, Engliſh, remote from abſolute monarchy, 148. Not ariſtocratic, *ib.* Nor

Nor very different, even at this day, from what it was under William the Conqueror, 281. State of, from the acceſſion of Edward I. to that of Henry VII, page 308
Conſtable, petty origin of, 172
Count, the derivation and meaning of that title, 174
Courage diſtinguiſhed from fortitude, 23, 24
Court baron, and leet, diſtinguiſhed, 197. Eccleſiaſtic, explained, 201. Dioceſan, how conſtituted, 204. Its ſentence, 206. Of chancery, its inſtitution, 288. Of requeſts aboliſhed, 289. Of king's bench, common pleas, exchequer, when and by whom eſtabliſhed, 380.
Cour de roy, what, 284. Alterations in the form and ſtation of, 381
Councils, national of France and England, how different, 345
Crown, the prerogative of, at firſt diſcretionary, 218
Cruſades, commencement of, 241
Curfew, its inſtitution, 236
Cuſtoms, their origin, 277

D.

Danes, their invaſion of England, 150, 1. Their abilities, 152. Subdued, 154
Decimal arrangement, how and why adopted, 101, 2
Dean, Rural, his office, 103
Devonſhire, earl of, routs a large body of Danes, 153
Differences among the Anglo-Saxons, were decided, page 109
Dioclefian divides the ſovereignty of the empire between two Cæſars, 12
Dermot, king of Leinſter, aſſiſted by the Engliſh, 251
Diſpenſing power of the crown, its origin, 458. Proteſted againſt in parliament ſo early as the reign of Richard II. 459
Deſpondency of the ancient Britons, 17
Doctrines of the church promote the power of the clergy, 87
Duelling, its origin, nature, and effects, 62
Dunſtan, the ſaint of that name, his exceſſive power, 202

E.

Eaſt Indies, a paſſage opened to, by the Cape of Good Hope, advantageous to commerce, 442
Eccleſiaſtical government, how affected by the politics of the empire, 85
Edward the Elder, his reign, 159
Edward the Confeſſor, an uſurper, 222. Educated in the court of Normandy, 223. Connections between the Engliſh and Normans, 224. Names the duke of Normandy his ſucceſſor, *ib.* His great ability and ſucceſs, 313. Confirms the great charter of liberty, 316. Relieves

Relieves his ſubjects from the apprehenſions of the French government, page 316, 17.
Edward II. his deficiency in military capacity, 313. Excites the indignation of the nobles, 314. Confined and murdered, *ib.* His character, *ib.*
Edward VI. created thirteen boroughs, and reſtored ten to the right of ſending members to parliament, 452. He corrects, notwithſtanding the ſhortneſs of his reign, abuſes introduced by his father, 482
Edmund, king, killed by a robber, 170
Ethelbert, his laws defined with correctneſs the nature of crimes, 45
Ethelred, though a weak prince, deceives his enemies by a pecuniary offer, 161. Maſſacres the Danes, *ib.*
Electors of the Germanic empire, the number of, how rendered permanent, 146. For members of parliament, in Scotland, ſtill hold their lands of the crown, 357. Their qualifications in England ſtated and examined, 361
Egbert, king, his abilities and addreſs, 44.
Elizabeth, queen, created twenty-four, and reſtored ſeven, boroughs to the right of repreſentation, 482. The ſplendor of her reign, 439. Her princely character and demeanour, 483. Her deference to parliamentary authority, *ib.* She punctually repays her creditors, *ib.* Aſſerts the royal prerogative, 484, 5. Court of high commiſſion, for trying religious opinions, inſtituted in her reign, 488. Exerciſes the diſpenſing power of the crown under great limitations, 489. Prohibits propheſying, 491. Lays an inhibition on the dye ſtuff called woad, *ib.* Her mode of raiſing money, when menaced by a Spaniſh invaſion, not ſimilar to the ſhip-money under Charles I. 491, 2. Apology for her interfering with the debates of parliament, and impriſoning its members, 493. Her government improperly compared to that of Turkey, by Mr. Hume, 494. The powers of parliament extended under her auſpices, 495, 6.
England, when ſhe began to eſtabliſh a maritime power, and aſſume her rank in the ſcale of Europe, *Intr.* page 2. Conſtitution of, when and how founded, *Intr.* 4. Has no equal, in point of excellence and liberality, in the annals of mankind, *Intr.* 5. Famous for the breed of ſlow-hounds, 261. Antiquity of her woollen manufactures, 445. Her juriſprudence, how ſuperior to that of France, and

and the other nations on the continent, page 384
England, when firſt given as the name of South Britain, 44
Æra of darkneſs and barbariſm in the modern hiſtory of Britain, 45
Entails, when and for what reaſon introduced, 333, 4
Eſtates, the three of parliament, melted down by its meeting in two ſeparate houſes, 353
Equity, how diſtinguiſhed from ſtrict law, 430
Europe, the weſtern continent of, how ſubdued, 47
Events from the reign of Egbert to the Norman conqueſt, 150
Extirpation of the ancient Britons, fabulous, 97
Extenſion of the royal prerogative, 265

F.

Field of march deſcribed, 121
Fine of alienation explained, 181
Feudal ſyſtem peculiar to the modern ſtates of Europe, 61. The progreſs of, 222. Its mode of trying criminal cauſes, 398. Its completion, 230. Controverſy concerning the eſtabliſhment of, 232. Acquired authority rather from accident than deſign, 217
Firſt fruits, the impoſition of, how occaſioned, 90
Forty days the term of military ſervice, during the prevalence of the feudal ſyſtem, 91
Feuds, hereditary, their effects, 229
Forteſcue, Sir John, quoted, 413. Quoted again, in oppoſition to Mr. Hume, 499
Florence, its taſte formerly for elegance and refinement, 237
France derives peculiar advantages by its acquiſition of Normandy, 311. Its juriſprudence how diverſified, and in what reſpects defective, 383

G.

Gallantry, its origin and effects, 68, 69, 70, 71.
Gaul invaded by the Franks, the Burgundians, and the Wiſigoths, 47
Gentoo code of laws quoted, 115
Germans, ancient, deſcribed, 20, 1. Their employment, manners, political regulations, and perſonal qualities, 21, 2. Account of them by Tacitus, the Roman hiſtorian, 26, 7. Their unity, their ſimplicity, and unpoliſhed habits, 27, 8. Their military talents, common intereſt, and virtues of hoſpitality, 28, 9. Addicted to hard drinking, indolence, and games of hazard, 30
Goths, their facility in forming kingdoms, 53
Godwin, earl of Weſſex, formidable

midable to Edward the Confeſſor, page 222
Gaol delivery, when and why appointed, 383
Goſpel preached in England by St. Auguſtine, 96
Government, commercial, what, 3. Of a moderate ſize, why ſo eaſily eſtabliſhed, 59. The Anglo-Saxon diſtinguiſhed from that of the Anglo-Saxon Normans, 273
Grand Juries, 389. Their buſineſs aſcertained, 402, 3.
Gregory the Great extends his authority over the Britiſh clergy, 96

H.

Hanſeatic league, its operations, 345. The origin and date of, 438
Haſtings, the battle of, alluded to, 225
Harold, his extenſive property and great ambition, 222. He is outwitted at the Norman court by a ſtratagem, 224. Obtains poſſeſſion of the government, 225. Is overthrown at the battle of Haſtings, *ib.* His party only, and not the Engliſh in general, conquered, 226
Hatſel's Proceedings in the Houſe of Commons quoted, 374
Hengiſt the Saxon, his artifice, 33, 4
Henry, the Rev. Doctor, his hiſtory quoted, 9
Henry I. ſeizes the vacant throne, 242. Reſtoration of the common law demanded of him by the barons, 243. He is threatened with an invaſion by the Normans, *ib.* He grants ſome mitigation of the feudal incidents, 244. Copies of this grant ſent to all the counties of England, 245. He invades Normandy, and carries the duke a captive to England, *ib.* His character and merits, *ib.* Tolls and duties farmed in his time, 340. The charter granted by this prince was in lieu of the crown, page 310
Henry II. mounts the throne in the midſt of ſeveral auſpicious circumſtances, 247. His diſappointment and mortification, *ib.* He aſſiſts Dermot, king of Leinſter, 251. Grants a charter to the barons, 252. Popularity the object of all his complaiſance to the people, 310. Melancholy circumſtances which crowd the end of his reign, 252
Henry III. only nine years old at his father's death, 258. The earl of Pembroke becomes regent during his minority, *ib.* He renews the great charter in favour of liberty, 259
Henry IV. his right to the crown derived from parliament, 322. He was not the legal heir, 323. He poſſeſſed great ability and popularity, 324. His policy and valour, *ib.*

Henry V. his military talents and virtues, 324. He reinſtates the crown in all its former authority and ſplendour, page 324
Henry VI. his long minority, and want of ability, filled his reign with diſaſters, 325
Henry VII. mentioned, 327. Influence of the crown prodigiouſly extended by the meaſures purſued in his reign, 450, 1, 2, 3. Unites the intereſts of the two Houſes of York and Lancaſter, 454. His perſonal character, *ib.* His policy, 455. His avarice, 456. He aſſumes the controul of the police, 460. His expedients for raiſing money, 461. He levies benevolences, 462. But he never has recourſe to loans, 464. He adopts the exaction by purveyance, *ib.* He inſtitutes martial law, 467. Conducts public proſecutions, 468. The conſtitution how affected by the meaſures of his reign, 469, 70.
Henry VIII. raiſes twelve counties, and as many Welch boroughs, to the right of ſending members to parliament, 452. Puts an end to the political animoſities which had ſo long diſtracted the nation, 471. Affects to controul both parties in the reformation, 478. Demoliſhes monaſteries, *ib.* Becomes the head of the church, *ib.* Diſclaims the interference of his miniſter in the deliberations of parliament, 479. In all his meaſures he ſhelters himſelf under the ſanction of parliament, page 480
Heptarchy combined againſt the inhabitants of the country, 43. The leader of, an object of ambition, *ib.*
Hereford, duke of, heads the conſpiracy againſt Richard II. 321
Hides of land, what, 74
Heretoch, among the Anglo-Saxons, the chief military officer of the ſhire, 104
High Conſtable, the office and duties of, explained, 173
Hierarchies of the Tartars, Celtics, and modern Europeans, analogous, 102
Hiſtory of England, natural diviſion of, 1. Of the Britiſh parliament, 327. Of the court of chancery, 420. Inſtituted to correct injuſtice, and ſupply the defects of other tribunals, 427. Various opinions whether it be a court of equity, 428. Has gradually diveſted itſelf of its original character, 431. Diſtinguiſhed from other courts of law, 432. Its mode of examining proofs, *ib.* Takes evidence by commiſſion, *ib.* Realizes contracts, *ib.* Interprets ſecurities for monies lent, 433. Enforces a truſt, *ib.*
Horſley's Britiſh Roman Antiquities quoted, 4
Houſe of Commons has the ſole power of bringing in money bills,

bills, 354, 55, 56, 57. Why incapable of judiciary power, 357, 58, 59. Its right of impeachment, how founded, 359, 60. Competent to determine all queſtions concerning its own members, 360, 61. Its primitive mode of electing its members, 362, 63. Chuſes a ſpeaker, 370. Receives no petition concerning public money but what comes recommended by the crown, page 374

Hugh Capet, the manner of his obtaining the French crown, 231

Horſe-racing, its origin, 261

Hume, the hiſtorian quoted, 252. Examined and corrected, 366. His opinions of queen Elizabeth's reign refuted, 489, 90, 91, 92, 93, 94, 95, 96.

Hundreds, the denomination of, whence, 103

Hunting, a favourite exerciſe of our anceſtors, 261

Hydages explained, 274

I.

James I. created ſix, and reſtored eight boroughs to the right of ſending repreſentatives to parliament, 452

John, king, aſcends the throne, 252. Surrenders his kingdom to the pope, 254. Yields to the requiſition of the barons, 255. Raiſes an army to puniſh them, 258. Dies and leaves the crown to a minor, *ib.* His conceſſions in favour of liberty, obtained by the great charter, 257. The privileges ſecured by that famous deed, the effects of neceſſity, page 311

Imperial procurator, his office, 8

Imperial chamber of Germany, how, and of whom conſtituted, 382

Ina, his laws, 45

Inhabitants of the firſt ages deſcribed, 20, 1

Inland and Outland, the diſtinction of, 75

Indictment before a grand jury, 308

Inveſtiture to church livings claimed by the pope, in all the countries of Europe, 304

Inſtitution of tythings, hundreds, and counties, 99

Incidents, feudal, 179. Of non-entry, *ib.* Of relief, *ib.* Of wardſhip, 180. Of marriage, *ib.* Of aids and benevolence, *ib.* Of eſcheat, 181. Of fines of alienation, *ib.*

Inns of court, and of chancery, their origin, 412. The number of the former *four*, of the latter ten, 413. Faſhionable ſeminaries of education, *ib.* Their declenſion, its cauſes, 417, 18

Influence of the crown, how extended under the reign of Henry VII. 450. By the improvements of the manufactures, and the increaſe of the royal boroughs, 451,

451, 2, 3. By various occurrences which preceded his acceſſion to the throne, *ib.* By his perſonal character, *ib.* By the abolition of entails, 457. By the extenſion of the royal proclamations, 460. Under Henry VIII. by the progreſs of the reformation, 471. By the revival of letters, 472. By the progreſs of luxury, 473. By the refinement of the arts, 474. Its elevation at the death of this monarch, page 481

Ireland, original ſituation of, 243

Jouſts, a ſpecies of private tournaments, 65

Italy ſubjugated by the Oſtrogoths, and afterwards by the Lombards, 48. Divided by Auguſtus into eleven regions, 57

Juvenal quoted, 10

Judex pedanius of the Romans, who, 393

Judges, the ſalary of, its neceſſity and commencement, 200

Judgment of his peers ſecured to every Engliſhman by the great charter of liberty, 256

Judicial combats, whence, 64

Juſtinian the emperor, a law of his, 207

Juſtice, ordinary courts of, after the Norman conqueſt, 282

Juſtices of the peace, when created in England, 388. In Scotland, 389

Juries, or jurymen, their origin, 110. Their office, 193. Grand and petty, deſcribed and diſtinguiſhed, page 389

Juriſdiction, eccleſiaſtical, its progreſs, 295. Interferes with the province of other courts, 296. In tythes, legacies, and marriages, 296, 7, 8. Decides on the legitimacy of children, 299. Preſcribes to the adminiſtration of *laſt wills*, *ib.* Vindicates the claims of widows and orphans, 300. Its capacities or powers, *ib.*

K.

Keeper of the King's conſcience, who, 144

Killing game, a branch of the royal prerogative, 262

Kingly power, a view of, from Edward I. to Henry VII. 306. Why leſs rapid in England than France, 309. Deviations in the lineal ſucceſſion to the crown more frequent in the one than the other, 310. Forfeiture of Normandy by the former, and its acceſſion to the latter, 311. Different ſituation of the two countries, 312. Increaſed by the addreſs of Edward I. 313. Declines under the reign of Edward II. 313, 14. Is ſupported and augmented by Henry IV. and Henry V. languiſhes under Henry VI. and finally triumphs in conſequence of the conteſt between the two houſes of York and Lancaſter, 326

King's Bench court, when and by whom eſtabliſhed, page 380
King's advocate of Scotland, for what purpoſe appointed, 400
Knights of ſhires, when firſt introduced to parliament, 337. In what manner elected, 364
Knight errant, his manners and purſuits, 71

L.

Landed property, how acquired by the Saxons, 41
Legacies, how bequeathed to the church, 83
Legiſlation, the power of, when aſſumed by the Commons, 371
Leolff, a robber, his temerity, 169
Law, civil and canon, taught at both univerſities, 412
Livy, the Roman Hiſtorian, quoted, 167
Linen manufacture, its origin, 439
Literature of the ancient Britons, 10
Loans, an expedient for raiſing money, 463
Love ſuppoſes a ſtate of refinement not compatible with extreme barbariſm or luxury, 70
Lords of particular diſtricts objects of jealouſy to the crown, 165
Lurdane, or *Lord-dane*, a term of reproach, 160
Lye, the giving of which why ſo generally reſented, 64
Lyttelton's Hiſtory of Henry II. quoted, page 367

M.

Manufactures and mechanical arts introduced, 94. Their progreſs and improvement, 104, 5. Acquire peculiar advantage from the Normans, 331. Accelerated by the convenience of water carriage, 437. An effect of inland trade, 439. Linen and woollen, their origin, *ib.* The ſucceſs of, produces improvement in agriculture, 445
Manufactures of the ancient Britons, 10
Mariners compaſs diſcovery of, advantageous to commerce, 441
Marriage, why conſtituted a ſacrament, 298. Regulated by certain degrees of conſanguinity, on what account, 229
Mary, queen of England, created ten, and renewed the ancient privileges of two boroughs, 452. Her ſhort reign, intolerant principles, and packed parliament, 482
Mayors of the palace, in France, who, 146. Their ambition, 147
Moors, the conſequences of their extirpation in Spain, 447
Martial law, its origin, 467
Morton, his fork or crutch, 462
Mechanics of the ancient Britons, 10

Monaſteries, their origin, 85. By whom and when eſtabliſhed, 134. Aboliſhed in England, page 482
Monuments of Roman opulence and grandeur eraſed, 39
Monarchy, feudal, explained, 3

N.

Nations in a ſtate of barbariſm and migration, 25, 26
Naval militia explained, 449
Niſi prius, the chief object of, 386
Normandy, the duchy of, mortgaged for ten thouſand marks, 242. Barons of, their inſurrection, 240
Nuns, when and by whom permitted to decline the juriſdiction of laic judges, 207

O.

Oath of purgation explained, 195
Obſtinacy deſcribed, 319
Offa, his laws, 45
Officers of the king's court, who, 283, n.
Oyer and Terminer explained, 432

P.

Pares curiæ, 192
Pandects of Juſtinian, when diſcovered, 409. Whether the rapid cultivation of the civil law, in the twelfth century, was owing to that event, 410, 11
Packing the Houſe of Commons, firſt inſtance of, 319
Parliament, its commencement, 270. Compoſed of ſuch as were members of the ancient Wittenagemote, *ib.* Impoſe taxes, 274. Interfere in regulating the cuſtoms and other duties, 277, 78. Formerly convened at the three ſtate feſtivals, Chriſtmas, Eaſter, and Whitſuntide, 278. Aſſemble at the king's ſummons, 279. Calling and diſſolving of, the prerogative of the crown, *ib.* Protects the ſubject from the introduction of a French government, under the reign of Edward III. 316, 17. Inſiſt upon a change of adminiſtration, 317. Impeach the miniſters of Richard the IId. 318. Hiſtory of, from Edward I. to Henry VII. 327. Its two houſes independent of each other, and poſſeſſed of a diſtinct voice, 354. A court of review, 359. Its annual meeting ſecured, 456. Extreme ſervility to Henry VIII. 478
Patronage of the church the ſource of its power, 303, 4. Eſtabliſhed by Gregory the Seventh, and much diſputed, 304, 5
Peace and war, the right of declaring, where lodged by the conſtitution, 272
Patriarch, his primitive office, 86. More enterpriſing in Rome than Conſtantinople, 91

People, how preſent in the ancient Wittenagemote, page 209
Pleas, Common, court of, when and by whom eſtabliſhed, 371
Peers, the houſe of, poſſeſs ſupreme judiciary power, 357. Are entruſted with the guardianſhip of the people's lives and fortunes, 359. Every bill affecting their own rights, originates with themſelves, 361
Petty Juries, their nature, 389. Hiſtory of their origin, formation, and powers, 390, 1, 2, 3. Obtain in all the courts of Weſtminſter, *ib.* Why not in parliament, *ib.* No traces of, among the nations of antiquity, 394. Excluded from the courts of France, and the civil tribunals of Scotland, and why, 394, 5. Eccleſiaſtic courts of England not carried on by juries, 396. Admitted in the criminal law of Scotland, and on what account, 406. Why retained in ſo much purity in England, 397
Philip Auguſtus, king of France, claims the Norman dominions, 253, 4
Primogeniture, the right of, whence derived, 166. How applied by the owners of landed property, under the feudal ſyſtem, 333
Privy council, its inſtitution, 286. Its members the ſame as in the *aula regis*, *ib.*
Property, its influence accumulated in the hands of the king, 2. In land how acquired, page 41
Philip II. of Spain accelerates the progreſs of commerce, manufactures, and arts, by his cruelty, 442, 3
Preſentment to grand juries, what, 405
Provinces, Roman, deſcribed, 54, 5, 6.
Poetry, Celtic, whether genuine, 250
Poll Tax, 7
Pope, his power of nominating all the dignified clergy aboliſhed, 305, 6. Loſt his authority in countries moſt diſtant from Rome, 475. Where trade and manufactures made moſt progreſs, *ib.* When notions of liberty were moſt eaſily extended, 476
Population of England, 7
Porteous Roll, in Scotch law, what, 404
Power, political, its riſe and progreſs, 2
Powers executive, and *judiciary*, diſtinguiſhed, 198
Purveyance, the nature of, defined, 464

Q.

Queſtion, a party one, 122. What enabled the Roman Pontiff to retain in obedience one half of his dominions, while he loſt the other, 475

R.

Reformation, its cauſes, 471. Effects upon the influence of the crown, *ib.*
Richard I. his ſhort reign, 252
Richard II. his impotent government, 317. He is defeated in battle, and his miniſters are impeached, 318. He divides parliament into lords and commons, and in both obtains a majority, 319. Cauſes his uncle the duke of Glouceſter to be murdered, *ib.* Is lulled into ſecurity, 320. Subſcribes an inſtrument of reſignation, and is ſolemnly depoſed by the ſuffrage of both houſes, 321
Riſe of the court of chancery, 420
Robert, eldeſt ſon of William the Conqueror, ſupplanted by his brother, 239. Succeeds however by his father's will to the duchy of Normandy, *ib.* From thence he collects an army, and invades England, 240. Engages in the cruſades, and mortgages his duchy, 242. Makes war on Henry, 245. Loſes at once his dominions and liberty, *ib.* Remains twenty-eight years, and dies at laſt, a priſoner in England, *ib.*
Revenue of the crown creates its own increaſe, 307. How raiſed, 275, 6, 7. Independent of the people, *ib.* Augmented by ſcutages, hydages, and talliages, *ib.*
Rome, its downfal, 1. Its ſimple form of government, 2. Oppreſſions by its provincial governors, *ib.* Its means of civilizing the nations, 3. Its attention to the diſtribution of juſtice, 5. Declenſion of its military proweſs, *ib.*
Round Tables, the origin and utility of, 56, 7
Runnymede, the great charter of, 255
Saxon auxiliaries, their intrigues, treachery, and ſucceſs againſt the ancient Britons, 33, 4. Their improvements in the arts of peace and ſociety, 38. Divided into Angles, Jutes, and Saxons, and ſettled in various parts of England, 39. How they acquired property in land, 41. Fortify their towns, and cultivate the ſocial virtues, 42. Individually accumulate influence, *ib.* Unite under Egbert, 44. Effects of this revolution on civilization, *ib.* Their converſion to Chriſtianity, 96. Rated according to the extent of their lands, 131
Saxon ſhore, count of, 14
Savages poſſeſs more fortitude than courage, 24, 5
Scutage explained, 249, 276
Seeds of the Britiſh conſtitution not found in the woods of Germany, 32

Seneca, the philoſopher, his avarice, page 8
Shakeſpeare quoted, 413
Shires, their derivation, 104
Sheriff, office of, why inſtituted, 175
Spain over-run by a branch of the Wiſigoths, 47
State of property under the ſettlement of the Saxons in Britain, 73
Star-chamber, its origin and inſtitution, 287. More particulars of, 466
Stephen, grandſon to William I. aſſumes the government, 246. Purchaſed the crown by conceſſions to the barons, 310. Is driven from the throne by Henry ſon of Matilda, 246
Stuart, Dr. quoted, 343
Smith, Sir Thomas, his opinion oppoſed to that of Hume, 504
Sovereign, ſtate of, among the Anglo-Saxons, 141. Originally the heretoch, or duke, 135. Commanded the forces in battle, 137. Suppreſſed tumults, *ib.* Preſided in the national aſſemblies, 138. Aſſumed the executive part, of government, 139. His various prerogatives, how accumulated, 140. His revenues, whence, *ib.* Management of his houſhold, 141. Officers of, their reſpective duties and departments, *ib.*
Sweyn, king of Denmark, invades England, 161. Revenges with much ſeverity the maſſacre of his countrymen, page 161
Subinfeudation, a term in feudal law, explained, 333

T.

Tacitus, the Roman hiſtorian, quoted, 8
Taſte of the ancient Britons, 9
Talliages explained, 276
Taxation the prerogative of parliament, 274. Originates in the Houſe of Commons, 356
Taxes impoſed by the Romans, 7. Unknown among the Anglo-Saxons, 140
Tenths of landed property, how acquired by the clergy, 87
Tenures, feudal, how occaſioned, 59. Of eſtates changed from allodial to feudal, 228
Thanes, whence that application, and to whom it belonged, 78. The greater, who, 121. The leſſer, 215
Trade of the Britons deſtroyed by the Saxon conqueſt, 124. Extent of the Britiſh, before the Norman conqueſt, 188. Inland, what, and how carried on, 438, 9.
Trajan and the Antonines adopt a Cæſar, 12
Tournaments, whence, 65
Towns not repreſented in the Wittenagemote, 126
Tythes, the right of levying, firſt eſtabliſhed in France, 88. How early introduced, 201. Eſtabliſhed in England by Alfred and Athelſtan, 202

Tythings described, 104, 5, 6, 170. Converted into baronies, page 171

V.

Vassalage in Europe, its origin, 60. Described, 177, 8
Vassals of the crown, six hundred in number, under William the Conqueror, 328
Variations in the state of tythings, hundreds, and shires, 170
Vicar of the empire explained, 147
View of several reigns prior to that of Edward I. 222
Villeins distinguished from vassals, 75
Voltaire quoted, 68
Voltigern solicits the assistance of the Saxons, 33
Unanimity of English juries explained, 196

W.

Wager of law explained, 196
Watches, art of making, derived from Italy, 437
Wealth of Nations approved, 473
Whitaker's History of Manchester quoted, 4
William the Conqueror, a law of his, 116. Invades England, 225. Is crowned at Westminster, *ib.* His coronation oath, and moderation, 227. His clemency and impartiality, *ib.* Great revenue and territory, 231. His reign full of inquietude, 233. A general aversion to many of his laws, 235. Institutes the curfew, 236. Claims the feudal incidents, *ib.* His exactions offend the clergy, 237. His rigour and rapacity, *ib.* The notion of his exterminating the English nobility refuted, 238, n. His provocations stated, 239
William Rufus succeeds to the government, 239. Is attacked by Robert, his brother, 240. Retaliates the insult by an invasion of Normandy, *ib.* Reconciliation of the two brothers, *ib.* A treaty formed between them, and guarantied by the barons, 241. He takes no part in the crusades, 242. His avarice and irreligion, *ib.* Accidentally slain, *ib.*
William of Malmsbury quoted, 44
Wites, or *wise men*, who, 122
Wittenagemote, what, and on what occasion assembled, 43. Circumstances of, 117. Of whom chiefly composed, 119, 120, 1, 2, 3, 4. Its convention described, *ib.* Analogous to the national assemblies in other parts of Europe, *ib.* The various prerogatives it assumes, 130. The qualifications of its members, *ib.* A remarkable one held by the kings of Mercia, 128. It provided for the general defence, 130. The time of its

its meeting ſpecified, 131. It arrogated the right of declaring peace and war, *ib.* It made laws, 132. It contracted the exerciſe of the royal prerogative, 133. Regulated the coinage, *ib.* Governed the church, *ib.* Eſtabliſhed monaſteries, 134. Took cognizance of the ſovereign's adminiſtration, *ib.* Conſtituted itſelf into the ſupreme tribunal of the kingdom, *ib.* Interfered in the management of the revenues, 140. When and how diſſolved, 117, 18. Right of ſitting in, limited, and to whom, 121. Conſequences of its diſſolution, 270. Its ſtrength while unbroken, *ib.* Abandoned by the leſſer barons, 213. On what occaſion its time of meeting changed from twice to three times a year, 217. Two kinds of, mentioned, 218

Writers, political, a miſtake of, 149

Woollen manufactures, their origin, 440. Superiority of the Engliſh, 447. Deſtroyed in the Netherlands, and Spain, *ib.*

Wool, Engliſh, its ſuperlative quality, 443, 4

Wolſey, cardinal, his abortive interference in the debates of parliament, 479

FINIS.

ERRATA.

Page 67, *line* 23, *for* execuſing *read* executing—Page 95, Note, one *line* from botton, *for* vediſſe *read* vidiſſe—Page 151, *line* 9, *for* Ethered *read* Ethelred—Page 181, *line* 5, *for* danghter *read* daughter—Page 204, *line* 16, *for* thoughout *read* throughout—Page 207, *line* 32, *for* Churchman *read* Churchmen—Page 213, Note *line* 2, *for* vocabnlo *read* vocabulo—Page 214, *line* 6, *for* eutitled *read* entitled—Page 218, *line* 10, *for* infeior *read* inferior—Page 227 *line* 10, *for* aud *read* and—The ſame page, *line* 22, *for* thier *read* their—Page 233, *line* 20, *for* the *read* their—Page 239, Note, *line* 6, *for Alberi* read *Albert*; ſame page, *line* 14, *for* became *read* become—Page 240, Note, *line* 4, *for* tibutorum *read* tributorum; ſame page, *line* 5, *for* Vitalis *read* Vitulis; ſame page, *line* 6, *for* ſuffrganeis *read* ſuffraganeis—Page 249, *line* 12, *for* ever *read* even—Page 253, *line* 15, *for* paramont *read* paramount—Page 254, *line* 7, *for* Canterbery *read* Canterbury—255, Note, *line* 5 from bottom, *for* though *read* through—Page 257, *line* 9, *for* villein *read* villain—Page 263, *line* 3, *after* ſource, *add* of—Page 265, *line* 12, *after* crown, *add* was—Page 269, *line* 4, *for* tended *read* attended—Page 277, *line* 11, *for* agreements *read* agreement—Page 280, *line* 14, *after* exciting, *dele* the—Page 284, *line* 9, *for* met *read* meet—Page 302, *line* 18, *for* commom *read* common—Page 315, *line* 4. from bottom, *after* ſame *read* time—Page 330, *line* 28, *for* by *read* in—Page 357, *line* 17, *for* of duty *read* duty of; ſame page, *laſt line*, *for* adeligate, *read* a deligate—Page 373, *line* 13, *for* tha the *read* that he—Page 387, *line* 7, *before* diſcuſſed *add* be—Page 388, Note 2 *lines* from bottom, *after* felonies *add* as—Page 389, 6 *lines* from bottom, *before* ſteps *add* the—Page 409, *line* 24, *dele* the—Page 410, *line* 14 *for* particult *read* particular—Page 414, *line* 10, *for bachelor read bachelour*—Page 428, *line* 2, *for* writen *read* writer—Page 439 *line* 24, *for* iable, *read* liable; laſt line ſame page, *for* occaſions *read* occaſions—Page 433, *line* 17, *for* aftert *read* after it; ſame page 8 *lines* from bottom, *for* fluctuation *read* fluctuation—Page 446, *line* 30, *after* put *add* it—Page 454, *line* 19, *for* quite *read* quiet—Page 463, *line* 4, *for* ordinry, *read* ordinary—Page 464, *line* 14, *for* barbain *read* bargain; ſame page, note, *line* 3 *for* chap. 32 *read* chap. 3—Page 465, *line* 34, *for* it *read* its—Page 472, 6 *lines* from bottom, *for* king *read* kind—Page 478, 6 *lines* from bottom, *for* this *read* the—Page 488, *line* 29, *for viceregent* read *vicegerent*.