

But according to the most probable opinion Feuds were a military policy of the Northern conquering Nations, Goths Vandals Franks and Lombards Craig Feud. lib. 1 Tit. 4. § 3 folden Tit. of Honour pag. 274. Schilt. Comment Jus Alam. §. 1. Spolm. Gloss. ad verb. Lex. § 1. as the most likely Means to secure the New Acquisits, and more large Districts and parcels of Land given or allotted by the Conquering General to the superior officers of his Army, and by them d'alt out in less parcels to the inferior officers and most deserving soldiers, Craig Ibid. Temple Intrud. To the Hist. of Engl. by All Gibon, as well as Receivers of Allotments or portions of victory were mutually concerned to defend the whole. Such Receiver was supposed in consequence of his Acceptance of any portion to oblige himself so long as he held it, to attend to and enter into Measures for security and defence of the whole where ever he should be required by his Benefactor or immediate superior. Rufus in usis Feud. part 7 n. 27. and was also supposed to be accountable to him as his Commander or Leader for his Attendance, and a faithful discharge of his Duty: such Benefactor or superior was likewise subordinal to and under the Command of his Benefactor and superior, and so upwards to the prince or Chief himself. Thus a proper military Subordination was rationally established, and an Army of Feudal warriors, as so many stipendiaries, were always on foot, ready to muster and engage in defence of their Country: of which Nature is Loyseau's Account of the Distribution of Gaul among the Franks, Traite de seigneurie 13. 14. 16. So that the feudal Returns of Fealty, or mutual Fidelity and aid was not originally a pacte, Spolman Treatise of parliaments 57. But soon to have been political or rather natural consequences drawn from the apparent necessity these warlike people were under of maintaining their Ground with the same Spirit, and by the same Means they had got it. But as the princes of Europe were every day more and more alarm'd by the progress of the northern Standard, many of them went into this or altho policy as the strongest Intrenchment; and, in Imitation of it, they reserving the Dominion and propriety of the Land they gave, parcelled out some of their own possessions or Territories under an Express Fealty, Spolman. Gloss. ad verb. Feudum. Idem. Treat. of parliaments 57. 58. Coke 1 Inst 58 b. Leg. Malcolmi cap. 1. Craig Feud. lib. 2. Tit. 10 § 3. engaging their Beneficiaries or Feudatories to make them like Returns of Fidelity and Aid, as followed from the design and nature of an original Feud. Feud. lib. 2 Tit. 7. From whence the Feudal obligations probably began to be considered as Returns or services of Fealty, calculated for the benefit of the proprietary who was, in respect of the dominium or propriety remaining in him, from thence forth called Dominus, Hottoman. de verb. Feudal. verb. Dominus. Loyseau Traite de seigneurie 5. 6. The Feudal policy having obtain'd this fur, the few Countries that had not, as above, gone into it, confederated themselves prince and people as Lord and Feudatory to stand by and assist each in cases of common as Lord and Feudatory. In consequence whereof and of the Fealty express'd or Implied in such confederacy, every Man's possession was considered as a Feud or Stipend, and became as such a pledge or security for the due observance of his Fealty. It is to be observ'd, that Fealty, whether implied or express'd between the superior and inferior or Lord and Feudatory or vassal (as now called) mutually to comply with the feodal obligations resulting from the nature of an original Feud; for the Fealty when express was from only by the Feudatory, and is explain'd in the Book of Feuds (lib. 2 Tit. 4) to be Jusjurandum quod a vasallo praestatur Domino: yet that it was binding on both sides, appears from the most authentic Explanation of this Engagement Feud lib. 2 Tit. 6. in fin. Rabonna in consuet. Feud. lib. 2. Tit. 6. p. 115. bid. Craig Feud. lib. 3. Tit. 6 § 13. Hanneton de Jure Feud. lib. 1. cap. 13. The Feudal Law thus fix'd, and thus advanced, was now become the military policy of the western part of the world. By Henry Spolman Treatise

(Traite de seigneurie 57) calls the Feudal Law, The Law of Nations, & military Aid, or Service, (as now called) was understood to be the Real or feilious Terms of all property or possession in Europe. This general view of the original and progress of Feuds, being sufficient to suggest their Nature, I shall now proceed to the General Doctrine of Feuds confining my self to such Feuds or Branches of it as most directly to the Knowledge of our feodal customs in Britain. Feuds, Fiefs or Fees were originally precarious and held at the will of the Lord, Feud. lib. 1. Tit. 1. § 1. Hanneton de Jure Feud. 139. Soma. Treat. of Feud. 108. Then they became certain for one year Feud. Ibid. Hanneton ibid. And were sometime after given for Life, Feud. lib. 1. Hanneton Ibid. This State of Feuds (called their Infancy) not unlike Timers among the Turks ~~was~~ obtained among the French Northern Nations from the time of their Invasion and destruction of the Roman Empire, till year of our Redemption 650. But the Feuds were not at this time hereditary; yet the vassals or Feudal Tenants were called Nobiles, as if born such, and it was unusual and even thought hard to reject the Honor of the former Feudatory, provided he was able to do the services of the Feud, and the Lord had no just objection against him, Craig de Jure Feud. Tit. 4 § 1 in fin. But tho' the Lord did not remove the Honor from the Feud, yet it is not likely that he succeeded absolutely as of course; but that he paid a fine or made some Acknowledgment in the Nature of Relief; for the Renewal of the Feud. Schilt. Cod. de Honoris Laidemialibus. Hottom. de verb. Feud. St. Gloss. ad 10 Scriptores ad verb. Relatum. And tho' such Fine or Acknowledgment, was originally made to secure the Succession which was then arbitrary, and at the will of the Lord, yet it was continued even after Feuds became hereditary, bid. Leg. longobard. lib. 1. Tit. 8. Sect. 4. and is well known this day (tho' by several Names) in most Countries. Feuds were afterwards extended beyond the Life of the first vassal or feodal Tenant, to his Sons or some one of them whom the Lord should name, Feud. lib. 1. Tit. 1. § 1. Hanneton de Jure Feud. 139. Schilt. de Not. succ. Feudi cap. 1. Sect. 5. But in such case, the Feudal Dominion was not extended beyond the words by any presum'd Intent but was taken strictly, Craig Ibid. § 5. In so much, that if the donation was to a Man and his sons without naming one expressly to succeed, all the Sons succeeded in Capite, that is divided the Fee among them equally; and if one of them did, his part did not descend to his Children, or Sisters to his Brothers, but return'd to the Lord, Craig Ibid. This was the Nature of Feuds (called their Childhood) from the year 650. till the Time of Charlemain, who began to reign in the year 800. Under Charles the great we observe the beginning of hereditary Fees, but Conrad 2 Emperor of Germany called The Salick, established them by Law. For in process of Time Grand Children succeeded to Sons, and Brothers to Brothers Feud. lib. 1. Tit. 1. § 2 Hanneton Ibid. 139. 142. Craig Ibid. § 6. If the Feud was antiquum aut paternum, that is to say, not newly purchased, but came to the Brother by descent from the Father, but if the Fee was what the Feudists call Nobum, that is to say, newly purchased or acquired by a Brother, a Brother did not succeed to it, unless it was by virtue of an express pacton in the constitution of the Feud, Feud. lib. 1. Tit. 1. § 2 Tit. 20. lib. 2 Tit. 12. And at last not only descendants in the direct line succeeded in Infinitum, but Collaterals, also without regard to their Degree provided they were descended from, and were of the Blood of the first Feudatory Craig Ibid. § 4. Schilt. de Nat. succ. cap. 1. Sect. 8. Spolm. posthum. Tract. of Feuds 4. 5. Rufus in usis Feud. 26. such Feudal Succession was allowed for encouraging Soldiers who had military Mannors or Fees to maintain and defend the Royal dignity against all opposers, upon the like account our Kings when their Armies were in Battail array ready to fight us'd to discharge the Casualties of awarding of and Marriage of bachelors dying in the Battail in favour of their Sons, act 102 par. 7 § 4. Tho' they to reward them to fight more stoutly for their Country, when they know that their death in such a Battail off it were should bring no Burden upon their Representatives. Which privilege the parliament off