

Tit. 3.

A History of the Feudal Law.

We find a strange variety of opinions about the origine of the Feudal Law, which seems of the darkest and most intricate points in modern History: And like the Nile, which is said to be and its rise so concealed, that among the ancients of this age past was regarded so difficult as to deserve a task to find it out, and their accounts were so different and inconsistent, that the thing in question was rendered more obscure and dark than clear and evident.

Nestling (De Feud. Disp. 1. Tit. 1.) rings it up to the very infancy of the world, and brings for example the revolt of the Kings from Nodolacomer, whom they had served 12 years as Tributaries Gen. 14. 2. and 7. and his Rebellion against the King of Babylon whom he had sworn to be a faithful Tributary, to 2 Chron. 26. 13. But these Kings were subjected by the Law of Nations to the conqueror, not as Fundatarios, but as Tributarios.

Other learned men fond of themselves and of their own country, will have the Feudal Law to have sprung from them. The Italians contend, that the Feudal is grafted upon Roman Customs. With again are subdivided in these Opinions: Some tracing the Beginning of it from patrons & clients, who of the former defended the latter in their Lives and Fortunes; and these not only paid to those all imaginable respect and deference, but also in occasion required, assisted them with their Labour and Money towards defraying any extraordinary Charge; others following it from that custom of either maintaining themselves & their families who had served their time in the Wars out of the publick Treasury, or assigning Lands to them to be cultivated for their subsistence. But the principles of the Feudal Law were altogether unknown to the old Romans, and laid in that barbarous time, when the Authority of their Law was suppress'd. There was only a kind of bond between patrons and clients, and no possession held thereby. The patrons had not over their clients any Jurisdiction, which is inherent in the Nature of all Feods, nor exacted from them any oath of Fealty. Again, Farms were bestowed upon old Soldiers discharged from serving in the Wars, as a publick Reward of their past services: Whereas Feods were usually given to strong Robust Men in contemplation of future services. Neither were these Veterans sold as a Republick whom they serv'd. Nor yet were they under any such Bonds of Homage or oaths of Fealty, as the Feudal constitution requires from vassals to their superiors. The French as Molinæus, Comenius & Croppinus contend, that Feods had their Beginning among the ancient Franks, and send us for a voucher to Casar's Commentaries (Lib. 3. cap. 22) where mention is made of sworn friends called Soldurij, whose custom was to enjoy all Things in common with those to whom they had bound a friend ship, to share the same Fortunes and kill them selves, rather than survive the Death of their ^{patrons} ~~masters~~. But the difference betwixt the French Soldurij and Feudal vassals is so evident, that it needs not to be farther cleared.

The Germans not to be behind with others draw the source of the Feudal Law from the old German principes who had comites i.e. counts for counsel and assistance in their Wars as Tacitus (Lib. 3. Moribus German.) relates, to whom probably as vassals they gave Lands upon condition of Fealty Strub. Syntag. Jur. Feud. cap. 1. §. 3. Burcard Gethloff. Strub. Hist. Jur. cap. 883.