

## BOOK XXX

### THEORY OF THE FEUDAL LAWS AMONG THE FRANKS IN THE RELATION THEY BEAR TO THE ESTABLISHMENT OF THE MONARCHY

#### 1.—*Of Feudal Laws*

I SHOULD think my work imperfect were I to pass over in silence an event which never again, perhaps, will happen; were I not to speak of those laws which suddenly appeared over all Europe without being connected with any of the former institutions; of those laws which have done infinite good and infinite mischief; which have suffered rights to remain when the demesne has been ceded; which by vesting several with different kinds of seigniorship over the same things or persons have diminished the weight of the whole seigniorship; which have established different limits in empires of too great extent; which have been productive of rule with a bias to anarchy, and of anarchy with a tendency to order and harmony.

This would require a particular work to itself; but considering the nature of the present undertaking, the reader will here meet rather with a general survey than with a complete treatise of those laws.

The feudal laws form a very beautiful prospect. A venerable old oak raises its lofty head to the skies, the eye sees from afar its spreading leaves; upon drawing nearer, it perceives the trunk but does not discern the root; the ground must be dug up to discover it.<sup>a</sup>

#### 2.—*Of the Source of Feudal Laws*

The conquerors of the Roman Empire came from Germany. Though few ancient authors have described their manners, yet

<sup>a</sup> "Quantum vertice ad oras  
Æthereas, tantum radice ad Tartara tendit."—Vergil.

we have two of very great weight. Cæsar making war against the Germans describes the manners of that nation;<sup>b</sup> and upon these he regulated some of his enterprises.<sup>c</sup> A few pages of Cæsar upon this subject are equal to whole volumes.<sup>d</sup>

Tacitus has written an entire work on the manners of the Germans. This work is short, but it comes from the pen of Tacitus, who was always concise, because he saw everything at one glance.

These two authors agree so perfectly with the codes still extant of the laws of the barbarians, that reading Cæsar and Tacitus we imagine we are perusing these codes, and perusing these codes we fancy we are reading Cæsar and Tacitus.

But if in this research into the feudal laws, I should find myself entangled and lost in a dark labyrinth I fancy I have the clue in my hand, and that I shall be able to find my way through.

### 3.—*The Origin of Vassalage*

Cæsar says,<sup>e</sup> that "The Germans neglected agriculture; that the greatest part of them lived upon milk, cheese, and flesh; that no one had lands or boundaries of his own; that the princes and magistrates of each nation allotted what portion of land they pleased to individuals, and obliged them the year following to remove to some other part." Tacitus says,<sup>f</sup> that "Each prince had a multitude of men, who were attached to his service, and followed him wherever he went." This author gives them a name in his language in accordance with their state, which is that of companions.<sup>g</sup> They had a strong emulation to obtain the prince's esteem; and the princes had the same emulation to distinguish themselves in the bravery and number of their companions. "Their dignity and power," continues Tacitus, "consist in being constantly surrounded with a multitude of young and chosen people; this they reckon their ornament in peace, this their defence and support in war. Their name becomes famous at home, and among neighboring

<sup>b</sup> Book VI.

<sup>c</sup> For instance, his retreat from Germany.—Ibid.

<sup>d</sup> M. Chabrit expresses his astonishment that Montesquieu dwells upon Cæsar's knowledge of the Germans, and quite ignores the Gauls, with their fund of information upon this subject.—Ed.

<sup>e</sup> Book VI. "of the Gallic Wars." Tacitus adds, "Nulli domus aut ager, aut aliqua cura; prout ad quem venere aluntur."—"De Moribus Germanorum."

<sup>f</sup> "De Moribus Germanorum."

<sup>g</sup> "Comites."

nations, when they excel all others in the number and courage of their companions: they receive presents and embassies from all parts. Reputation frequently decides the fate of war. In battle it is infamy in the prince to be surpassed in courage; it is infamy in the companions not to follow the brave example of their prince; it is an eternal disgrace to survive him. To defend him is their most sacred engagement. If a city be at peace, the princes go to those who are at war; and it is thus they retain a great number of friends. To these they give the war horse and the terrible javelin. Their pay consists in coarse but plentiful repasts. The prince supports his liberality merely by war and plunder. You might more easily persuade them to attack an enemy and to expose themselves to the dangers of war, than to cultivate the land, or to attend to the cares of husbandry; they refuse to acquire by sweat what they can purchase with blood."

Thus, among the Germans, there were vassals, but no fiefs; they had no fiefs, because the princes had no lands to give; or rather their fiefs consisted in horses trained for war, in arms, and feasting. There were vassals, because there were trusty men who being bound by their word engaged to follow the prince to the field, and did very nearly the same service as was afterwards performed for the fiefs.

### 4.—*The same Subject continued*

Cæsar says,<sup>h</sup> that "when any of the princes declared to the assembly that he intended to set out upon an expedition and ask them to follow him, those who approved the leader and the enterprise stood up and offered their assistance. Upon which they were commended by the multitude. But, if they did not fulfil their engagements, they lost the public esteem, and were looked upon as deserters and traitors."

What Cæsar says in this place, and what we have extracted in the preceding chapter from Tacitus, are the substance of the history of our princes of the first race.

We must not, therefore, be surprised, that our kings should have new armies to raise upon every expedition, new troops to encourage, new people to engage; that to acquire much they were obliged to incur great expenses; that they should be con-

<sup>h</sup> "De Bello Gallico," lib. VI.

stant gainers by the division of lands and spoils, and yet give these lands and spoils incessantly away: that their demesne should continually increase and diminish; that a father upon settling a kingdom on one of his children <sup>i</sup> should always give him a treasure with it: that the king's treasure should be considered as necessary to the monarchy; and that one king could not give part of it to foreigners, even in portion with his daughter, without the consent of the other kings.<sup>j</sup> The monarchy moved by springs, which they were continually obliged to wind up.

#### 5.—Of the Conquests of the Franks

It is not true that the Franks upon entering Gaul took possession of the whole country to turn it into fiefs. Some have been of this opinion because they saw the greatest part of the country towards the end of the second race converted into fiefs, rear-fiefs, or other dependencies; but such a disposition was owing to particular causes which we shall explain hereafter.

The consequence which sundry writers would infer thence, that the barbarians made a general regulation for establishing in all parts the state of villanage is as false as the principle from which it is derived. If at a time when the fiefs were precarious, all the lands of the kingdom had been fiefs, or dependencies of fiefs; and all the men in the kingdom vassals or bondmen subordinate to vassals; as the person that has property is ever possessed of power, the king, who would have continually disposed of the fiefs, that is, of the only property then existing, would have had a power as arbitrary as that of the Sultan is in Turkey; which is contradictory to all history.

#### 6.—Of the Goths, Burgundians, and Franks

Gaul was invaded by German nations. The Visigoths took possession of the province of Narbonne, and of almost all the South; the Burgundians settled in the East; and the Franks subdued very nearly all the rest.

<sup>i</sup> See the "Life of Dagobert."  
<sup>j</sup> See Gregory of Tours, book VI, on the marriage of the daughter of Chilperic. Childebert sends ambassadors to tell him that he should not give

the cities of his father's kingdom to his daughter, nor his treasures, nor his bondmen, nor horses, nor horsemen, nor teams of oxen. etc.

No doubt but these barbarians retained in their respective conquests the manners, inclinations, and usages of their own country; for no nation can change in an instant their manner of thinking and acting. These people in Germany neglected agriculture. It seems by Cæsar and Tacitus that they applied themselves greatly to a pastoral life; hence the regulations of the codes of barbarian laws almost all relate to their flocks. Roricon, who wrote a history among the Franks, was a shepherd.<sup>k</sup>

#### 7.—Different Ways of dividing the Land

After the Goths and Burgundians had, under various pretences, penetrated into the heart of the empire, the Romans, in order to put a stop to their devastations, were obliged to provide for their subsistence. At first they allowed them corn;<sup>l</sup> but afterwards chose to give them lands. The emperors, or the Roman magistrates, in their name, made particular conventions with them concerning the division of lands,<sup>m</sup> as we find in the chronicles and in the codes of the Visigoths<sup>n</sup> and Burgundians.<sup>o</sup>

The Franks did not follow the same plan. In the Salic and Ripuarian laws, we find not the least vestige of any such division of lands; they had conquered the country, and so took what they pleased, making no regulations but among themselves.

Let us, therefore, distinguish between the conduct of the Burgundians and Visigoths in Gaul, of those same Visigoths in Spain, of the auxiliary troops under Augustulus and Odoacer in Italy,<sup>p</sup> and that of the Franks in Gaul, as also of the Vandals in Africa.<sup>q</sup> The former entered into conventions with the ancient inhabitants, and in consequence thereof made a division of lands between them; the latter did no such thing.

<sup>k</sup> Nothing definite is known concerning this Roricon; and his works are rather reveries and fables than anything else. See the article in "Mercurius" for October, 1741.—Ed.  
<sup>l</sup> The Romans obliged themselves to this by treaties. See Zosimus V upon the distribution of corn demanded by Alaric.—Ed.  
<sup>m</sup> "Burgundiones partem Gallie occuparunt, terrasque cum Gallicis sena-

toribus dividerunt."—Marius's "Chronicle" in the year 456.  
<sup>n</sup> Book X. tit. 1, secs. 8, 9, and 16.  
<sup>o</sup> Chap. liv. secs. 1 and 2. This division was still subsisting in the time of Louis the Debonnaire, as appears by his capitulary of the year 829, which has been inserted in the law of the Burgundians, tit. 79, sec. 1.  
<sup>p</sup> See Procopius, "War of the Goths."  
<sup>q</sup> Ibid., "War of the Vandals."

8.—*The same Subject continued*

What has induced some to think that the Roman lands were entirely usurped by the barbarians is, their finding in the laws of the Visigoths and the Burgundians that these two nations had two-thirds of the lands; but this they took only in certain quarters or districts assigned them.

Gundebald says, in the law of the Burgundians, that his people at their establishment had two-thirds of the lands allowed them; *r* and the second supplement to this law notices that only a moiety would be allowed to those who should hereafter come to live in that country.<sup>s</sup> Therefore, all the lands had not been divided in the beginning between the Romans and the Burgundians.

In those two regulations we meet with the same expressions in the text, consequently they explain one another; and as the latter cannot mean a universal division of lands, neither can this signification be given to the former.

The Franks acted with the same moderation as the Burgundians; they did not strip the Romans wherever they extended their conquests. What would they have done with so much land? They took what suited them, and left the remainder.

9.—*A just Application of the Law of the Burgundians, and of that of the Visigoths, in relation to the Division of Lands*

It is to be considered that those divisions of land were not made with a tyrannical spirit; but with a view of relieving the reciprocal wants of two nations that were to inhabit the same country.

The law of the Burgundians ordains that a Burgundian shall be received in an hospitable manner by a Roman. This is agreeable to the manners of the Germans, who, according to Tacitus, were the most hospitable people in the world.

By the law of the Burgundians, it is ordained that the Burgundians shall have two-thirds of the lands, and one-third of the bondmen. In this it considered the genius of two nations, and conformed to the manner in which they procured their sub-

<sup>r</sup> "Licet eo tempore quo populus noster mancipiorum tertiam et duas terrarum partes accepit," etc.—Law of the Burgundians, tit. 54, sec. 1.

<sup>s</sup> "Ut non amplius a Burgundionibus qui infra venerunt requiratur quam ad præsens necessitas fuerit, mediæ ter-  
ræ."—Art. 11.

sistence. As the Burgundians kept herds and flocks, they wanted a great deal of land and few bondmen, and the Romans from their application to agriculture had need of less land and of a greater number of bondmen. The woods were equally divided, because their wants in this respect were the same.\*

We find in the code of the Burgundians,<sup>t</sup> that each barbarian was placed near a Roman. The division, therefore, was not general; but the Romans who gave the division were equal in number to the Burgundians who received it. The Roman was injured least. The Burgundians as a martial people, fond of hunting and of a pastoral life, did not refuse to accept of the fallow grounds; while the Romans kept such lands as were properest for culture: the Burgundian's flock fattened the Roman's field.

10.—*Of Servitudes*

The law of the Burgundians notices <sup>u</sup> that when those people settled in Gaul, they were allowed two-thirds of the land, and one-third of the bondmen. The state of villanage was, therefore, established in that part of Gaul before it was invaded by the Burgundians.<sup>v</sup>

The law of the Burgundians, in points relating to the two nations, makes a formal distinction in both, between the nobles, the free-born and the bondmen.<sup>w</sup> Servitude was not, therefore, a thing peculiar to the Romans; nor liberty and nobility to the barbarians.

This very same law says,<sup>x</sup> that if a Burgundian freed-man had not given a certain sum to his master, nor received a third share of a Roman, he was always supposed to belong to his master's family. The Roman proprietor was therefore free, since he did not belong to another person's family; he was free, because his third portion was a mark of liberty.

We need only open the Salic and Ripuarian laws to be satisfied, that the Romans were no more in a state of servitude among the Franks than among the other conquerors of Gaul.

The Count de Boulainvilliers <sup>a</sup> is mistaken in the capital

\* "De Moribus Germanorum."  
<sup>t</sup> And in that of the Visigoths.

<sup>u</sup> Tit. 54.  
<sup>v</sup> This is confirmed by the whole title of the code "de Agriculis et Censitis et Colonis."

<sup>w</sup> "Si dentem optimati Burgundioni vel Romano nobili excusserit." Tit. 26, sec. 1, "et si mediocribus personis ingenuis tam Burgundionibus quam Romanis."—Ibid. sec. 2.

<sup>x</sup> Tit. 57.  
<sup>a</sup> See "Mercure," March, 1784.—Ed.

point of his system: he has not proved that the Franks made a general regulation which reduced the Romans into a kind of servitude.

As this author's work is penned without art, and as he speaks with the simplicity, frankness, and candor of that ancient nobility whence he descends, every one is capable of judging of the good things he says, and of the errors into which he has fallen. I shall not, therefore, undertake to criticise him; I shall only observe, that he had more wit than enlightenment, more enlightenment than learning; though his learning was not contemptible, for he was well acquainted with the most valuable part of our history and laws.

The Count de Boulainvilliers and the Abbé du Bos<sup>b</sup> have formed two different systems, one of which seems to be a conspiracy against the commons, and the other against the nobility. When the sun gave leave to Phaëton to drive his chariot, he said to him, "If you ascend too high, you will burn the heavenly mansions; if you descend too low, you will reduce the earth to ashes; do not drive to the right, you will meet there with the constellation of the Serpent; avoid going too much to the left, you will there fall in with that of the Altar: keep in the middle."<sup>c</sup>

II.—*The same Subject continued*

What first gave rise to the notion of a general regulation made at the time of the conquest was our meeting with an immense number of forms of servitude in France, towards the beginning of the third race; and as the continual progression of these forms of servitude was not perceived, people imagined in an age of obscurity a general law which was never framed.

Towards the commencement of the first race we meet with an infinite number of freemen, both among the Franks and the Romans; but the number of bondmen increased to that degree, that at the beginning of the third race, all the husbandmen and almost all the inhabitants of towns had become bond-

<sup>b</sup> See M. Thierry in the Introduction to the "Récits Mérovingiens."—Ed.

<sup>c</sup> "Nec premé, nec summum molire per æthera currum; Altius gressus, cœlestia tecta cremabis;

Inferius, terras: medio tutissimus ibis.

Neu te dexterio tortum declinet ad Anguem;

Neve sinisterio pressam rota ducat ad Aram;

Inter utrumque tene."—Ovid, "Metam." lib. II.

men: <sup>d</sup> and whereas, at the first period, there was very nearly the same administration in the cities as among the Romans, namely, a corporation, a senate, and courts of judicature; at the other we hardly meet with anything but a lord and his bondmen.

When the Franks, Burgundians, and Goths made their several invasions, they seized upon gold, silver, movables, clothes, men, women, boys, and whatever the army could carry; the whole was brought to one place, and divided among the army.<sup>e</sup> History shows, that after the first settlement, that is, after the first devastation, they entered into an agreement with the inhabitants, and left them all their political and civil rights. This was the law of nations in those days; they plundered everything in time of war, and granted everything in time of peace. Were it not so, how should we find both in the Salic and Burgundian laws such a number of regulations absolutely contrary to a general servitude of the people?

But though the conquest was not immediately productive of servitude, it arose nevertheless from the same law of nations which subsisted after the conquest.<sup>f</sup> Opposition, revolts, and the taking of towns were followed by the slavery of the inhabitants. And, not to mention the wars which the conquering nations made against one another, as there was this peculiarity among the Franks, that the different partitions of the monarchy gave rise continually to civil wars between brothers or nephews, in which this law of nations was constantly practised, servitudes, of course, became more general in France than in other countries: and this is, I believe, one of the causes of the difference between our French laws and those of Italy and Spain, in respect to the right of seigniories.

The conquest was soon over, and the law of nations then in force was productive of some servile dependences. The custom of the same law of nations, which obtained for many ages, gave a prodigious extent to those servitudes.

Theodoric,<sup>g</sup> imagining that the people of Auvergne were not faithful to him, thus addressed the Franks of his division:

<sup>d</sup> While Gaul was under the dominion of the Romans they formed particular bodies; these were generally freed-men, or the descendants of freed-men.  
<sup>e</sup> See Gregory of Tours, book II. chap. xxvii. Aimoin, book I. chap. xii.

<sup>f</sup> See the "Lives of the Saints."  
<sup>g</sup> See Gregory of Tours, book III., for Montesquieu's deviation from the actual sense of the writer.—Ed.

"Follow me, and I will carry you into a country where you shall have gold, silver, captives, clothes, and flocks in abundance; and you shall remove all the people into your own country."

After the conclusion of the peace between Gontram and Chilperic the troops employed in the siege of Bourges, having had orders to return, carried such a considerable booty away with them, that they hardly left either men or cattle in the country.<sup>h</sup>

Theodoric, King of Italy, whose spirit and policy it was ever to distinguish himself from the other barbarian kings, upon sending an army into Gaul, wrote thus to the general: <sup>i</sup> "It is my will that the Roman laws be followed, and that you restore the fugitive slaves to their right owners. The defender of liberty ought not to encourage servants to desert their masters. Let other kings delight in the plunder and devastation of the towns which they have subdued; we are desirous to conquer in such a manner, that our subjects shall lament their having fallen too late under our government." It is evident that his intention was to cast odium on the kings of the Franks and the Burgundians, and that he alluded in the above passage to their particular law of nations.

Yet this law of nations continued in force under the second race. King Pepin's army, having penetrated into Aquitaine, returned to France loaded with an immense booty, and with a number of bondmen, as we are informed by the Annals of Metz.<sup>j</sup>

Here might I quote numberless authorities;<sup>k</sup> and as the public compassion was raised at the sight of those miseries, as several holy prelates, beholding the captives in chains, employed the treasure belonging to the church, and sold even the sacred utensils, to ransom as many as they could; and as several holy monks exerted themselves on that occasion, it is in the "Lives of the Saints" that we meet with the best explanations on the subject.<sup>l</sup> And, although it may be objected to the

<sup>h</sup> See Gregory of Tours, book VI. chap. 31.

<sup>i</sup> Letter 43, lib. iii. "in Cassiod."

<sup>j</sup> In the year 763. "Innumerabilibus spoliis et captivis totus ille exercitus ditatus, in Franciam reversus est."

<sup>k</sup> See the "Annals" of Fuld, in the year 739; Paulus Diaconus, "de Gestis

Longobardorum," lib. III. cap. xxx., and lib. IV. cap. i., and the "Lives of the Saints" in the next quotation.

<sup>l</sup> See the lives of St. Epiphanius, St. Eptadius, St. Caesarius, St. Fidolus, St. Porcian, St. Treverius, St. Eusichius; and of St. Leger, the miracles of St. Julian, etc.

authors of those lives that they have been sometimes a little too credulous in respect to things which God has certainly performed, if they were in the order of his providence; yet we draw considerable light thence with regard to the manners and usages of those times.

When we cast an eye upon the monuments of our history and laws, the whole seems to be an immense expanse, a boundless ocean;<sup>m</sup> all those frigid, dry, insipid, and hard writings must be read and devoured in the same manner as Saturn is fabled to have devoured the stones.

A vast quantity of land which had been in the hands of freemen<sup>n</sup> was changed into mortmain. When the country was stripped of its free inhabitants; those who had a great multitude of bondmen either took large territories by force, or had them yielded by agreement, and built villages, as may be seen in different charters. On the other hand, the freemen who cultivated the arts found themselves reduced to exercise those arts in a state of servitude; thus the servitudes restored to the arts and to agriculture whatever they had lost.

It was a customary thing with the proprietors of lands, to give them to the churches, in order to hold them themselves by a quit-rent, thinking to partake by their servitude of the sanctity of the churches.

12.—*That the Lands belonging to the Division of the Barbarians paid no Taxes*

A people remarkable for their simplicity and poverty, a free and martial people, who lived without any other industry than that of tending their flocks, and who had nothing but rush cottages to attach them to their lands,<sup>o</sup> such a people, I say, must have followed their chiefs for the sake of booty, and not to pay or to raise taxes. The art of tax-gathering was invented later, and when men began to enjoy the blessings of other arts.

The temporary tax of a pitcher of wine for every acre,<sup>p</sup> which was one of the exactions of Chilperic and Fredegonda, related only to the Romans. And, indeed, it was not the Franks that tore the rolls of those taxes, but the clergy, who in those days

<sup>m</sup> "Deerant quoque littora ponto."—Ovid, lib. I.  
<sup>n</sup> Even the husbandmen themselves were not all slaves: see the 18th and 23d law in the code "de Agriculis et

Censitis et Colonis," and the 20th of the same title.  
<sup>o</sup> See Gregory of Tours, book II.  
<sup>p</sup> Ibid. book V.

were all Romans.<sup>q</sup> The burden of this tax lay chiefly on the inhabitants of the towns; <sup>r</sup> now these were almost all inhabited by Romans.

Gregory of Tours relates,<sup>s</sup> that a certain judge was obliged, after the death of Chilperic, to take refuge in a church, for having under the reign of that prince ordered taxes to be levied on several Franks who in the reign of Childebert were *ingenui*, or free-born: "*Multos de Francis, qui tempore Childeberti regis ingenui fuerant, publico tributo subegit.*" Therefore the Franks who were not bondmen paid no taxes.

There is not a grammarian but would turn pale to see how the Abbé du Bos has interpreted this passage.<sup>t</sup> He observes, that in those days the freedmen were also called *ingenui*. Upon this supposition he renders the Latin word *ingenui*, by the words "freed from taxes"; a phrase which we indeed may use in French, as we say "freed from cares," "freed from punishments"; but in the Latin tongue such expressions as *ingenui a tributis libertini a tributis, manumissi tributorum*, would be quite monstrous.<sup>u</sup>

Parthenius, says Gregory of Tours,<sup>v</sup> had like to have been put to death by the Franks for subjecting them to taxes. The Abbé du Bos finding himself hard pressed by this passage <sup>w</sup> very coolly assumes the thing in question; it was, says he, a surcharge.

We find in the law of the Visigoths,<sup>x</sup> that when a barbarian had seized upon the estate of a Roman, the judge obliged him to sell it, to the end that this estate might continue to be tributary; consequently the barbarians paid no land taxes.<sup>y</sup>

The Abbé du Bos,<sup>z</sup> who would fain have the Visigoths subjected to taxes,<sup>a</sup> quits the literal and spiritual sense of the law, and pretends, upon no other indeed than an imaginary founda-

<sup>q</sup> See Gregory of Tours, book VIII.  
<sup>r</sup> "Quæ conditio universis urbibus per Galliam constitutis summopere est adhibita."—*Life of St. Aridius.*

<sup>s</sup> Book VII.  
<sup>t</sup> "Establishment of the French Monarchy," tom. iii. chap. xiv. p. 515.

<sup>u</sup> See Baluzius, ii. p. 187.

<sup>v</sup> Book III. chap. cxxxvi.

<sup>w</sup> Tom. iii. p. 514.

<sup>x</sup> "Judices atque præpositi terras Romanorum, ab illis qui occupatas tenent, auferant, et Romanis suâ exactione sine aliquâ dilatione restituant, ut nihil fisco debeat deperire."—Lib. X. tit. 1, cap. xiv.

<sup>y</sup> The Vandals paid none in Africa.—Procopius, "War of the Vandals," lib. I. and II. "*Historia Miscella.*" lib. XVI. p. 106. Observe that the conquerors of Africa were a mixture of Vandals, Alans, and Franks. "*Historia Miscella.*" lib. XIV. p. 94.

<sup>z</sup> "Establishment of the Franks in Gaul," tom. iii. chap. xiv. p. 510.

<sup>a</sup> He lays a stress upon another law of the Visigoths, book X. tit. 1, art. 11, which proves nothing at all; it says only that he who has received of a lord a piece of land on condition of a rent or service ought to pay it.

tion, that between the establishment of the Goths and this law, there had been an augmentation of taxes which related only to the Romans. But none but Father Harduin are allowed thus to exercise an arbitrary power over facts.

This learned author <sup>b</sup> has rummaged Justinian's code,<sup>c</sup> in search of laws to prove, that among the Romans, the military benefices were subject to taxes. Whence he would infer that the same held good with regard to fiefs or benefices among the Franks. But the opinion that our fiefs derive their origin from that Institution of the Romans is at present exploded; it obtained only at a time when the Roman history, not ours, was well understood, and our ancient records lay buried in obscurity and dust.

But the abbé is in the wrong to quote Cassiodorus, and to make use of what was transacting in Italy, and in the part of Gaul subject to Theodoric, in order to acquaint us with the practice established among the Franks; these are things which must not be confounded. I propose to show, some time or other, in a certain work, that the plan of the monarchy of the Ostrogoths was entirely different from that of any other government founded in those days by the other barbarian nations; and that so far from our being entitled to affirm that a practice obtained among the Franks because it was established among the Ostrogoths we have on the contrary just reason to think that a custom of the Ostrogoths was not in force among the Franks.

The hardest task for persons of extensive erudition is, to seek their proofs in such passages as bear upon the subject, and to find, if we may be allowed to express ourselves in astronomical terms, the position of the sun.

The same author makes a wrong use of the capitularies, as well as of the historians and laws of the barbarous nations. When he wants the Franks to pay taxes, he applies to freemen what can be understood only of bondmen; <sup>d</sup> when he speaks of their military service, he applies to bondmen what can never relate but to freemen.<sup>e</sup>

<sup>b</sup> Book III. p. 511.

<sup>c</sup> Leg. iii. tit. 74. lib. XI.

<sup>d</sup> "Establishment of the French Monarchy," tom. iii. chap. xiv. p. 513.

where he quotes the 28th article of the Edict of Pistes. See farther on.

<sup>e</sup> Ibid. tom. iii. chap. iv. p. 298.

## 13.—Of Taxes paid by the Romans and Gauls in the Monarchy of the Franks

I might here examine whether, after the Gauls and Romans were conquered, they continued to pay the taxes to which they were subject under the emperors. But, for the sake of brevity, I shall be satisfied with observing, that if they paid them in the beginning, they were soon after exempted, and that those taxes were changed into a military service. For, I confess, I can hardly conceive how the Franks should have been at first such great friends, and afterwards such sudden and violent enemies, to taxes.

A Capitulary *f* of Louis the Debonnaire explains extremely well the situation of the freemen in the monarchy of the Franks. Some troops of Goths or Iberians, *g* flying from the oppression of the Moors, were received into Louis's dominions. The agreement made with them was that, like other freemen, they should follow their count to the army; and, that upon a march they should mount guard and patrol under the command also of their count; *h* and that they should furnish horses and carriages for baggage to the king's commissaries, *i* and to the ambassadors in their way to or from court; and that they should not be compelled to pay any further impost, but should be treated as the other freemen.

It cannot be said, that these were new usages introduced at the commencement of the second race. This must be referred at least to the middle or to the end of the first. A capitulary of the year 864 *j* says in express terms that it was the ancient custom for freemen to perform military service, and to furnish likewise the horses and carriages above mentioned; duties particular to themselves, and from which those who possessed the fiefs were exempt, as I shall prove hereafter.

This is not all; there was a regulation which hardly permitted the imposing of taxes on those freemen. *k* He who had

*f* In the year 815, chap. i., which is agreeable to the Capitulary of Charles the Bald, in the year 844, arts. 1 and 2.  
*g* "Pro Hispanis in partibus Aquitaniae, Septimaniae, et Provinciae consistentibus."—*Ibid.*  
*h* "Excubias et explorationes quas Wactas dicunt."—*Ibid.*  
*i* They were not obliged to furnish any to the count.—*Ibid.* art. 5. See Marc. form. VI. lib. I.

*j* "Ut pagenses Franci, qui caballos habent, cum suis comitibus in hostem pergant." The counts are forbidden to deprive them of their horses, "ut hostem facere, et debitos paraveredos secundum antequam consuetudinem exsolvere possint."—Edict of Pistes in Baluzius, p. 186.  
*k* Capitulary of Charlemagne, in the year 812, chap. i. Edict of Pistes in the year 864, art. 27.

four manors was always obliged to march against the enemy: *l* he who had but three was joined with a freeman that had only one; the latter bore the fourth part of the other's charges, and stayed at home. In like manner, they joined two freemen who had each two manors; he who went to the army had half his charges borne by him who stayed at home.

Again, we have an infinite number of charters, in which the privileges of fiefs are granted to lands or districts possessed by freemen, and of which I shall make further mention hereafter. *m* These lands are exempted from all the duties or services which were required of them by the counts, and by the rest of the king's officers; and as all these services are particularly enumerated without making any mention of taxes, it is manifest that no taxes were imposed upon them.

It was very natural that the Roman system of taxation should of itself fall out of use in the monarchy of the Franks; it was a most complicated device, far above the conception, and wide from the plan of those simple people. Were the Tartars to overrun Europe, we should find it very difficult to make them comprehend what is meant by our financiers.

The anonymous author of the "Life of Louis the Debonnaire," *n* speaking of the counts and other officers of the nation of the Franks, whom Charlemagne established in Aquitania, says, that he intrusted them with the care of defending the frontiers, as also with the military power and the direction of the demesnes belonging to the crown. This shows the state of the royal revenues under the second race. The prince had kept his demesnes in his own hands, and employed his bondmen in improving them. But the indictions, the capitations, and other imposts raised at the time of the emperors on the persons or goods of freemen had been changed into an obligation of defending the frontiers, and marching against the enemy.

In the same history, *o* we find that Louis the Debonnaire, having been to wait upon his father in Germany, this prince asked him, why he, who was a crowned head, came to be so poor; To which Louis made answer, that he was only a nom-

*l* "Quatuor mansos." I fancy that what they called "mansus" was a particular portion of land belonging to a farm where there were bondmen; witness the Capitulary of the year 853, "apud Sylvacum," tit. xiv., against

those who drove the bondmen from their mansus.  
*m* See below, chap. 20 of this book.  
*n* In Duchesne, tom. ii. p. 287.  
*o* *Ibid.*, p. 89.