

Book XXXI. Theory of the Feudal Laws among the Franks, in the Relation They Bear to the Revolutions of their Monarchy

1. Changes in the Offices and in the Fiefs. The counts at first were sent into their districts only for a year; but they soon purchased the continuation of their offices. Of this we have an example in the reign of Clovis' grandchildren. A person named Peonius was count in the city of Auxerre; [1] he sent his son Mummolus with money to Gontram, to prevail upon him to continue him in his employment; the son gave the money for himself, and obtained the father's place. The kings had already begun to spoil their own favours.

Though by the laws of the kingdom the fiefs were precarious, yet they were neither given nor taken away in a capricious and arbitrary manner: nay, they were generally one of the principal subjects debated in the national assemblies. It is natural, however, to imagine that corruption crept into this as well as the other case; and that the possession of the fiefs, like that of the counties, was continued for money.

I shall show in the course of this book, [2] that, independently of the grants which the princes made for a certain time, there were others in perpetuity. The court wanted to revoke the former grants; this occasioned a general discontent in the nation, and was soon followed by that famous revolution in French history, whose first epoch was the amazing spectacle of the execution of Brunehault.

That this queen, who was daughter, sister and mother of so many kings, a queen to this very day celebrated for public monuments worthy of a Roman ædile or proconsul, born with an admirable genius for affairs, and endowed with qualities so long respected, should see herself of a sudden exposed to so slow, so ignominious and cruel a torture, [3] by a king whose authority was but indifferently established in the nation, [4] would appear very extraordinary, had she not incurred that nation's displeasure for some particular cause. Clotharius reproached her with

the murder of ten kings; but two of them he had put to death himself; the death of some of the others was owing to chance, or to the villainy of another queen; [5] and a nation that had permitted Fredegunda to die in her bed, [6] that had even opposed the punishment of her flagitious crimes, ought to have been very different with respect to those of Brunehault.

She was put upon a camel, and led ignominiously through the army; a certain sign that she had given great offence to those troops. Fredegarius relates that Protarius, [7] Brunehault's favourite, stripped the lords of their property, and filled the exchequer with the plunder; that he humbled the nobility, and that no person could be sure of continuing in any office or employment. The army conspired against him, and he was stabbed in his tent; but Brunehault, either by revenging his death, or by pursuing the same plan, [8] became every day more odious to the nation. [9]

Clotharius, ambitious of reigning alone, inflamed moreover with the most furious revenge, and sure of perishing if Brunehault's children got the upper hand, entered into a conspiracy against himself; and whether it was owing to ignorance, or to the necessity of his circumstances, he became Brunehault's accuser, and made a terrible example of that princess.

Warnacharius had been the very soul of the conspiracy formed against Brunehault. Being at that time mayor of Burgundy, he made Clotharius consent that he should not be displaced while he lived. [10] By this step the mayor could no longer be in the same case as the French lords before that period; and this authority began to render itself independent of the regal dignity.

It was Brunehault's unhappy regency which had exasperated the nation. So long as the laws subsisted in their full force, no one could grumble at having been deprived of a fief, since the law did not bestow it upon him

in perpetuity. But when fiefs came to be acquired by avarice, by bad practices and corruption, they complained of being divested, by irregular means, of things that had been irregularly acquired. Perhaps if the public good had been the motive of the revocation of those grants, nothing would have been said; but they pretended a regard for order while they were openly abetting the principles of corruption; the fiscal rights were claimed in order to lavish the public treasure; and grants were no longer the reward or the encouragement of services. Brunehault, from a corrupt spirit, wanted to reform the abuses of the ancient corruption. Her caprices were not owing to weakness; the vassals and the great officers, thinking themselves in danger, prevented their own by her ruin.

We are far from having all the records of the transactions of those days; and the writers of chronicles, who understood very nearly as much of the history of their time as our peasants know of ours, are extremely barren. Yet we have a constitution of Clotharius, given in the council of Paris,[11] for the reformation of abuses,[12] which shows that this prince put a stop to the complaints that had occasioned the revolution. On the one hand, he confirms all the grants that had been made or confirmed by the kings his predecessors;[13] and on the other, he ordains that whatever had been taken from his vassals should be restored to them.[14]

This was not the only concession the king made in that council; he enjoined that whatever had been innovated, in opposition to the privileges of the clergy, should be redressed; and he moderated the influence of the court in the election of bishops.[15] He even reformed the fiscal affairs, ordaining that all the new censuses should be abolished,[16] and that they should not levy any toll established since the deaths of Gontram, Sigebert, and Chilperic;[17] that is, he abolished whatever had been done during the regencies of Fredegunda and Brunehault. He forbade the driving of his cattle to graze in private people's grounds;[18] and we shall presently see that the reformation

was still more general, so as to extend even to civil affairs.

2. How the Civil Government was reformed. Hitherto the nation had given marks of impatience and levity with regard to the choice or conduct of her masters; she had regulated their differences and obliged them to come to an agreement among themselves. But now she did what before was quite unexampled; she cast her eyes on her actual situation, examined the laws coolly, provided against their insufficiency, repressed violence, and moderated the regal power.

The bold and insolent regencies of Fredegunda and Brunehault had less surprised than roused the nation. Fredegunda had defended her horrid cruelties, her poisonings and assassinations, by a repetition of the same crimes; and had behaved in such a manner that her outrages were rather of a private than public nature. Fredegunda did more mischief: Brunehault threatened more. In this crisis the nation was not satisfied with rectifying the feudal system; she was also determined to secure her civil government. For the latter was rather more corrupt than the former; a corruption the more dangerous as it was more inveterate, and connected rather with the abuse of manners than with that of laws.

The history of Gregory of Tours exhibits, on the one hand, a fierce and barbarous nation; and on the other, kings remarkable for the same ferocity of temper. Those princes were bloody, iniquitous and cruel, because such was the character of the whole nation. If Christianity appeared sometimes to soften their manners, it was only by the circumstances of terror with which this religion alarms the sinner; the church supported herself against them by the miraculous operations of her saints. The kings would not commit sacrilege, because they dreaded the punishments inflicted on that species of guilt: but this excepted, either in the riot of passion or in the coolness of deliberation, they perpetrated the most horrid crimes and barbarities where divine vengeance did not appear so immediately to overtake the criminal. The Franks, as I have already observed, bore with cruel kings, because they

were of the same disposition themselves; they were not shocked at the iniquity and extortions of their princes, because this was the national characteristic. There had been many laws established, but it was usual for the king to defeat them all, by a kind of letter called precepts, [19] which rendered them of no effect; they were somewhat similar to the rescripts of the Roman Emperors; whether it be that our kings borrowed this usage from those princes, or whether it was owing to their own natural temper. We see in Gregory of Tours, that they perpetrated murder in cool blood, and put the accused to death unheard; how they gave precepts for illicit marriages; [20] for transferring successions; for depriving relatives of their right; and, in fine, marrying consecrated virgins. They did not, indeed, assume the whole legislative power, but they dispensed with the execution of the laws.

Clotharius' constitution redressed all these grievances: no one could any longer be condemned without being heard; [21] relatives were made to succeed, according to the order established by law; [22] all precepts for marrying religious women were declared null; [23] and those who had obtained and made use of them were severely punished. We might know perhaps more exactly his determinations with regard to these precepts, if the thirteenth and the next two articles of this decree had not been lost through the injury of time. We have only the first words of this thirteenth article, ordaining that the precepts shall be observed, which cannot be understood of those he had just abolished by the same law. We have another constitution by the same prince, [24] which is in relation to his decree, and corrects in the same manner every article of the abuses of the precepts.

True it is that Baluzius, finding this constitution without date and without the name of the place where it was given, attributes it to Clotharius I. But I say it belongs to Clotharius II, for three reasons: 1. It says that the king will preserve the immunities granted to the churches by his father and grandfather. [25] What immunities could the churches receive from Childeric, grandfather of Clotharius I, who was

not a Christian, and who lived even before the foundation of the monarchy? But if we attribute this decree to Clotharius II, we shall find his grandfather to have been this very Clotharius I, who made immense donations to the church with a view of expiating the murder of his son Cramne, whom he had ordered to be burned, together with his wife and children.

2. The abuses redressed by this constitution were still subsisting after the death of Clotharius I and were even carried to their highest extravagance during the weak reign of Gontram, the cruel administration of Chilperic, and the execrable regencies of Fredegunda and Brunehault. Now, can we imagine that the nation would have borne with grievances so solemnly proscribed, without complaining of their continual repetition? Can we imagine she would not have taken the same step as she did afterwards under Childeric II, [26] when, upon a repetition of the old grievances, she pressed him to ordain that law and customs in regard to judicial proceedings should be complied with as formerly. [27]

In fine, as this constitution was made to redress grievances, it cannot relate to Clotharius I, since there were no complaints of that kind in his reign, and his authority was perfectly established throughout the kingdom, especially at the time in which they place this constitution; whereas it agrees extremely well with the events that happened during the reign of Clotharius II, which produced a revolution in the political state of the kingdom. History must be illustrated by the laws, and the laws by history.

3. Authority of the Mayors of the Palace. I noticed that Clotharius II had promised not to deprive Warnacharius of his mayor's place during life; a revolution productive of another effect. Before that time the mayor was the king's officer, but now he became the officer of the people; he was chosen before by the king, and now by the nation. Before the revolution Protarius had been made mayor by Theodoric, and Landeric by Fredegunda; [28] but after that the mayors [29] were chosen by the

nation.[30]

We must not therefore confound, as some authors have done, these mayors of the palace with such as were possessed of this dignity before the death of Brunehault; the king's mayors with those of the kingdom. We see by the law of the Burgundians that among them the office of mayor was not one of the most respectable in the state;[31] nor was it one of the most eminent under the first Kings of the Franks.[32]

Clotharius removed the apprehensions of those who were possessed of employments and fiefs; and when, after the death of Warnacharius,[33] he asked the lords assembled at Troyes, who is it they would put in his place, they cried out they would choose no one, but suing for his favour committed themselves entirely into his hands.

Dagobert reunited the whole monarchy in the same manner as his father; the nation had a thorough confidence in him, and appointed no mayor. This prince, finding himself at liberty and elated by his victories, resumed Brunehault's plan. But he succeeded so ill that the vassals of Austrasia let themselves be beaten by the Sclavonians, and returned home; so that the marches of Austrasia were left to prey to the barbarians.[34]

He determined then to make an offer to the Austrasians of resigning that country, together with a provincial treasure, to his son Sigebert, and to put the government of the kingdom and of the palace into the hands of Cunibert, Bishop of Cologne, and of the Duke Adalgisus. Fredegarius does not enter into the particulars of the conventions then made; but the king confirmed them all by charters, and Austrasia was immediately secured from danger.[35]

Dagobert, finding himself near his end, recommended his wife Nentechildis and his son Clovis to the care of Æga. The vassals of Neustria and Burgundy chose this young prince for their king.[36] Æga

and Nentechildis had the government of the palace;[37] they restored whatever Dagobert had taken;[38] and complaints ceased in Neustria and Burgundy, as they had ceased in Austrasia.

After the death of Æga, Queen Nentechildis engaged the lords of Burgundy to choose Floachatus for their mayor.[39] The latter dispatched letters to the bishops and chief lords of the kingdom of Burgundy, by which he promised to preserve their honours and dignities for ever, that is, during life.[40] He confirmed his word by oath. This is the period at which the author of the Treatise on the Mayors of the Palace fixes the administration of the kingdom by those officers.[41]

Fredegarius, being a Burgundian, has entered into a more minute detail as to what concerns the Mayors of Burgundy at the time of the revolution of which we are speaking, than with regard to the mayors of Austrasia and Neustria. But the conventions made in Burgundy were, for the very same reasons, agreed to in Neustria and Austrasia.

The nation thought it safer to lodge the power in the hands of a mayor whom she chose herself, and to whom she might prescribe conditions, than in those of a king whose power was hereditary.

4. Of the Genius of the Nation in regard to the Mayors. A government in which a nation that had an hereditary king chose a person to exercise the regal authority seems very extraordinary; but, independently of the circumstances of the times, I apprehend that the notions of the Franks in this respect were derived from a remote source.

The Franks were descended from the Germans, of whom Tacitus says[42] that in the choice of their king they were determined by his noble extraction, and in that of their leader, by his valour. This gives us an idea of the kings of the first race, and of the mayors of the palace; the former were hereditary, the latter elective.



No doubt but those princes who stood up in the national assembly and offered themselves as the conductors of a public enterprise to such as were willing to follow them, united generally in their own person both the power of the mayor and the king's authority. By the splendour of their descent they had attained the regal dignity; and their military abilities having recommended them to the command of armies, they rose to the power of mayor. By the regal dignity, our first kings presided in the courts and assemblies, and enacted laws with the national consent; by the dignity of duke or leader, they undertook expeditions and commanded the armies.

In order to be acquainted with the genius of the primitive Franks in this respect, we have only to cast an eye on the conduct of Argobastes, [43] a Frank by nation, on whom Valentinian had conferred the command of the army. He confined the emperor to his own palace, where he would suffer nobody to speak to him, concerning either civil or military affairs. Argobastes did at that time what was afterwards practised by the Pepins.

5. In what Manner the Mayors obtained the Command of the Armies. So long as the kings commanded their armies in person, the nation never thought of choosing a leader. Clovis and his four sons were at the head of the Franks, and led them on through a series of victories. Theobald, son of Theodobert, a young, weak, and sickly prince, was the first of our kings who confined himself to his palace. [44] He refused to undertake an expedition into Italy against Narses, and had the mortification of seeing the Franks choose for themselves two chiefs, who led them against the enemy. [45] Of the four sons of Clotharius I, Gontram was the least fond of commanding his armies; [46] the other kings followed this example; and, in order to entrust the command without danger into other hands, they conferred it upon several chiefs or dukes. [47]

Innumerable were the inconveniences which thence arose; all discipline was lost, no one would any longer obey. The armies were dreadful only to

their own country; they were laden with spoils before they had reached the enemy. Of these miseries we have a very lively picture in Gregory of Tours.[48] "How shall we be able to obtain a victory," said Gontram,[49] "we who do not so much as keep what our ancestors acquired? Our nation is no longer the same." ... Strange that it should be on the decline so early as the reign of Clovis' grandchildren!

It was therefore natural they should determine at last upon an only duke, a duke invested with an authority over this prodigious multitude of feudal lords and vassals who had now become strangers to their own engagements; a duke who was to establish the military discipline, and to put himself at the head of a nation unhappily practised in making war against itself. This power was conferred on the mayors of the palace.

The original function of the mayors of the palace was the management of the king's household. They had afterwards, in conjunction with other officers, the political government of fiefs; and at length they obtained the sole disposal of them.[50] They had also the administration of military affairs, and the command of the armies; employments necessarily connected with the other two. In those days it was much more difficult to raise than to command the armies; and who but the dispenser of favours could have this authority? In this martial and independent nation, it was prudent to invite rather than to compel; prudent to give away or to promise the fiefs that should happen to be vacant by the death of the possessor; prudent, in fine, to reward continually, and to raise a jealousy with regard to preferences. It was therefore right that the person who had the superintendence of the palace should also be general of the army.

6. Second Epoch of the Humiliation of our Kings of the first Race. After the execution of Brunehault, the mayors were administrators of the kingdom under the sovereigns; and though they had the conduct of the war, the kings were always at the head of the armies, while the mayor and the nation fought under their command. But the victory of Duke Pepin

over Theodoric and his mayor[51] completed the degradation of our princes;[52] and that which Charles Martel obtained over Chilperic and his mayor Rainfroy confirmed it.[53] Austrasia triumphed twice over Neustria and Burgundy; and the mayoralty of Austrasia being annexed as it were to the family of the Pepins, this mayoralty and family became greatly superior to all the rest. The conquerors were then afraid lest some person of credit should seize the king's person, in order to excite disturbances. For this reason they kept them in the royal palace as in a kind of prison, and once a year showed them to the people.[54] There they made ordinances, but these were such as were dictated by the mayor;[55] they answered ambassadors, but the mayor made the answers. This is the time mentioned by historians of the government of the mayors over the kings whom they held in subjection.[56]

The extravagant passion of the nation for Pepin's family went so far that they chose one of his grandsons, who was yet an infant, for mayor;[57] and put him over one Dagobert, that is, one phantom over another.

7. Of the great Offices and Fiefs under the Mayors of the Palace. The mayors of the palace were little disposed to establish the uncertain tenure of places and offices; for, indeed, they ruled only by the protection which in this respect they granted to the nobility. Hence the great offices continued to be given for life, and this usage was every day more firmly established.

But I have some particular reflections to make here in respect of fiefs: I do not question but most of them became hereditary from this time.

In the treaty of Andeli,[58] Gontram and his nephew Childebert engage to maintain the donations made to the vassals and churches by the kings their predecessors; and leave is given to the wives, daughters, and widows of kings to dispose by will, and in perpetuity, of whatever they hold of the exchequer.

Marculfus wrote his formularies at the time of the mayors.[59] We find several in which the kings make donations both to the person and to his heirs:[60] and as the formularies represent the common actions of life, they prove that part of the fiefs had become hereditary towards the end of the first race. They were far from having in those days the idea of an unalienable demesne; this is a modern thing, which they knew neither in theory nor practice.

In proof hereof we shall presently produce positive fact; and if we can point out a time in which there were no longer any benefices for the army, nor any funds for its support, we must certainly conclude that the ancient benefices had been alienated. The time I mean is that of Charles Martel, who founded some new fiefs, which we should carefully distinguish from those of the earliest date.

When the kings began to make grants in perpetuity, either through the corruption which crept into the government or by reason of the constitution itself, which continually obliged those princes to confer rewards, it was natural they should begin with giving the perpetuity of the fiefs, rather than of the counties. For to deprive themselves of some acres of land was no great matter; but to renounce the right of disposing of the great offices was divesting themselves of their very power.

8. In what Manner the Allodial Estates were changed into Fiefs. The manner of changing an allodial estate into a fief may be seen in a formulary of Marculfus.[61] The owner of the land gave it to the king, who restored it to the donor by way of usufruct, or benefice, and then the donor nominated his heirs to the king.

In order to find out the reasons which induced them thus to change the nature of the allodia, I must trace the source of the ancient privileges of our nobility, a nobility which for these eleven centuries has been enveloped with dust, with blood, and with the marks of toil.

They who were seized of fiefs enjoyed very great advantages. The composition for the injuries done them was greater than that of freemen. It appears by the formularies of Marculfus that it was a privilege belonging to a king's vassal, that whoever killed him should pay a composition of six hundred sous. This privilege was established by the Salic law,[62] and by that of the Ripuarians;[63] and while these two laws ordained a composition of six hundred sous for the murder of a king's vassal, they gave but two hundred sous for the murder of a person freeborn, if he was a Frank or Barbarian, or a man living under, the Salic law;[64] and only a hundred for a Roman.

This was not the only privilege belonging to the king's vassals. We ought to know that when a man was summoned in court, and did not make his appearance nor obey the judge's orders, he was called before the king;[65] and if he persisted in his contumacy, he was excluded from the royal protection,[66] and no one was allowed to entertain him, nor even to give him a morsel of bread. Now, if he was a person of an ordinary condition, his goods were confiscated;[67] but if he was the king's vassal, they were not.[68] The first by his contumacy was deemed sufficiently convicted of the crime, the second was not; the former for the smallest crimes was obliged to undergo the trial by boiling water,[69] the latter was condemned to this trial only in the case of murder.[70] In fine, the king's vassal could not be compelled to swear in court against another vassal.[71] These privileges were continually increasing, and the Capitulary of Carloman does this honour to the king's vassals, that they should not be obliged to swear in person, but only by the mouth of their own vassals.[72] Moreover, when a person, having these honours, did not repair to the army, his punishment was to abstain from flesh-meat and wine as long as he had been absent from the service; but a freeman[73] who neglected to follow his count was fined sixty sous,[74] and was reduced to a state of servitude till he had paid it.

It is very natural, therefore, to believe that those Franks who were not

the king's vassals, and much more the Romans, became fond of entering into the state of vassalage: and that they might not be deprived of their demesnes, they devised the usage of giving their allodium to the king, of receiving it from him afterwards as a fief, and of nominating their heirs. This usage was continued, and took place especially during the times of confusion under the second race, when every man being in want of a protector was desirous of incorporating himself with the other lords, and of entering, as it were, into the feudal monarchy, because the political no longer existed.[75]

This continued under the third race, as we find by several charters;[76] whether they gave their allodium, and resumed it by the same act; or whether it was declared an allodium, and afterwards acknowledged as a fief. These were called fiefs of resumption.

This does not imply that those who were seized of fiefs administered them as a prudent father of a family would; for though the freemen grew desirous of being possessed of fiefs, yet they managed this sort of estates as usufructs are managed in our days. This is what induced Charlemagne, the most vigilant and considerate prince we ever had, to make a great many regulations in order to hinder the fiefs from being demeaned in favour of allodial estates.[77] It proves only that in his time most benefices were but for life, and consequently that they took more care of the freeholds than of the benefices; and yet for all that, they did not choose rather to be the king's vassals than freemen. They might have reasons for disposing of some particular part of a fief, but they were not willing to be stripped of their dignity likewise.

I know, likewise, that Charlemagne laments in a certain capitulary, that in some places there were people who gave away their fiefs in property, and redeemed them afterwards in the same manner.[78] But I do not say that they were not fonder of the property than of the usufruct; I mean only, that when they could convert an allodium into a fief, which was to descend to their heirs, as is the case of the formulary above-mentioned,

they had very great advantages in doing it.

9. How the Church Lands were converted into Fiefs. The use of the fiscal lands should have been only to serve as a donation by which the kings were to encourage the Franks to undertake new expeditions, and by which, on the other hand, these fiscal lands were increased. This, as I have already observed, was the spirit of the nation; but these donations took another turn. There is still extant a speech of Chilperic, [79] grandson of Clovis, in which he complains that almost all these lands had been already given away to the church. "Our exchequer," says he, "is impoverished, and our riches are transferred to the clergy; [80] none reign now but the bishops, who live in grandeur while we are quite eclipsed."

This was the reason that the mayors, who durst not attack the lords, stripped the churches; and one of the motives alleged by Pepin for entering Neustria [81] was his having been invited thither by the clergy to put a stop to the encroachments of the kings, that is, of the mayors, who deprived the church of all her possessions.

The Mayors of Austrasia, that is the family of the Pepins, had behaved towards the clergy with more moderation than those of Neustria and Burgundy. This is evident from our chronicles, [82] in which we see the monks perpetually extolling the devotion and liberality of the Pepins. They themselves had been possessed of the first places in the church. "One crow does not pull out the eyes of another"; as Chilperic said to the bishops. [83]

Pepin subdued Neustria and Burgundy; but as his pretence for destroying the mayors and kings was the grievances of the clergy, he could not strip the latter without acting inconsistently with his cause, and showing that he made a jest of the nation. However, the conquest of two great kingdoms and the destruction of the opposite party afforded him sufficient means of satisfying his generals.

Pepin made himself master of the monarchy by protecting the clergy; his son, Charles Martel, could not maintain his power but by oppressing them. This prince, finding that part of the regal and fiscal lands had been given either for life, or in perpetuity, to the nobility, and that the church by receiving both from rich and poor had acquired a great part even of the allodial estates, he resolved to strip the clergy; and as the fiefs of the first division were no longer in being, he formed a second.[84] He took for himself and for his officers the church-lands and the churches themselves; thus he remedied an evil which differed from ordinary diseases, as its extremity rendered it the more easy to cure.

10. Riches of the Clergy. So great were the donations made to the clergy that under the three races of our princes they must have several times received the full property of all the lands of the kingdom. But if our kings, the nobility, and the people found the way of giving them all their estates, they found also the method of getting them back again. The spirit of devotion established a great number of churches under the first race; but the military spirit was the cause of their being given away afterwards to the soldiery, who divided them among their children. What a number of lands must have then been taken from the clergy's mensalia/ The kings of the second race opened their hands, and made new donations to them; but the Normans, who came afterwards, plundered and ravaged all before them, wreaking their vengeance chiefly on the priests and monks, and devoting every religious house to destruction. For they charged those ecclesiastics with the destruction of their idols, and with all the oppressive measures of Charlemagne by which they had been successively obliged to take shelter in the north. These were animosities which the space of forty or fifty years had not been able to obliterate. In this situation, what losses must the clergy have sustained! There were hardly ecclesiastics left to demand the estates of which they had been deprived. There remained, therefore, for the religious piety of the third race, foundations enough to make, and lands to bestow. The opinions which were spread abroad and believed in those



days would have deprived the laity of all their estates, if they had been but virtuous enough. But if the clergy were actuated by ambition, the laity were not without theirs; if dying persons gave their estates to the church, their heirs would fain resume them. We meet with continual quarrels between the lords and the bishops, the gentlemen and the abbots; and the clergy must have been very hard pressed, since they were obliged to put themselves under the protection of certain lords, who granted them a momentary defence, and afterwards joined their oppressors.

But a better administration having been established under the third race gave the clergy leave to augment their possessions; when the Calvinists started up, and having plundered the churches, they turned all the sacred plate into specie. How could the clergy be sure of their estates, when they were not even safe in their persons? They were debating on controversial subjects while their archives were in flames. What did it avail them to demand back of an impoverished nobility those estates which were no longer in possession of the latter, but had been conveyed into other hands by different mortgages? The clergy have been long acquiring, and have often refunded, and still there is no end of their acquisitions.

11. State of Europe at the Time of Charles Martel. Charles Martel, who undertook to strip the clergy, found himself in a most happy situation. He was both feared and beloved by the soldiery; he worked for them, having the pretext of his wars against the Saracens. He was hated, indeed, by the clergy, but he had no need of their assistance.[85] The Pope, to whom he was necessary, stretched out his arms to him. Every one knows the famous embassy he received from Gregory III.[86] These two powers were strictly united, because they could not do without each other: the Pope stood in need of the Franks to assist him against the Lombards and the Greeks; Charles Martel had occasion for the Pope, to humble the Greeks, to embarrass the Lombards, to make himself more respectable at home, and to guarantee the titles which he had, and those

which he or his children might take. It was impossible, therefore, for his enterprise to miscarry.

St. Eucherius, Bishop of Orleans, had a vision which frightened all the princes of that time. I shall produce on this occasion the letter written by the bishops assembled at Rheims to Louis, King of Germany, who had invaded the territories of Charles the Bald; [87] because it will give us an insight into the situation of things in those times, and the temper of the people. They say [88] that "St. Eucherius, having been snatched up into heaven, saw Charles Martel tormented in the bottom of hell by order of the saints, who are to sit with Christ at the last judgment; that he had been condemned to this punishment before his time, for having stripped the church of her possessions and thereby charged himself with the sins of all those who founded these livings; that King Pepin held a council upon this occasion, and had ordered all the church-lands he could recover to be restored; that as he could get back only a part of them, because of his disputes with Vaifre, Duke of Aquitaine, he issued letters called precaria [89] for the remainder, and made a law that the laity should pay a tenth part of the church-lands they possessed, and twelve deniers for each house; that Charlemagne did not give the church-lands away; on the contrary, that he published a capitulary, by which he engaged both for himself and for his successors never to make any such grant; that all they say is committed to writing, and that a great many of them heard the whole related by Louis the Debonnaire, the father of those two kings."

King Pepin's regulation, mentioned by the bishops, was made in the council held at Leptines. [90] The church found this advantage in it, that such as had received those lands held them no longer but in a precarious manner; and moreover that she received the tithe or tenth part, and twelve deniers for every house that had belonged to her. But this was only a palliative, and did not remove the disorder.

Nay, it met with opposition, and Pepin was obliged to make another

capitulary,[91] in which he enjoins those who held any of those benefices to pay this tithe and duty, and even to keep up the houses belonging to the bishopric or monastery, under the penalty of forfeiting those possessions. Charlemagne renewed the regulations of Pepin.[92]

That part of the same letter which says that Charlemagne promised both for himself and for his successors never to divide again the church-lands among the soldiery is agreeable to the capitulary of this prince, given at Aix-la-Chapelle in the year 803, with a view of removing the apprehensions of the clergy upon this subject. But the donations already made were still in force.[93] The bishops very justly add that Louis the Debonnaire followed the example of Charlemagne, and did not give away the church-lands to the soldiery.

And yet the old abuses were carried to such a pitch, that the laity under the children of Louis the Debonnaire preferred ecclesiastics to benefices, or turned them out of their livings[94] without the consent of the bishops. The benefices were divided among the next heirs,[95] and when they were held in an indecent manner the bishops had no other remedy left than to remove the relics.[96]

By the Capitulary of Compiègne[97] it is enacted that the king's commissary shall have a right to visit every monastery, together with the bishop, by the consent and in presence of the person who holds it; and this shows that the abuse was general.

Not that there were laws wanting for the restitution of the church-lands. The Pope having reprimanded the bishops for their neglect in regard to the re-establishment of the monasteries, they wrote to Charles the Bald that they were not affected by this reproach, because they were not culpable;[98] and they reminded him of what had been promised, resolved and decreed in so many national assemblies. In point of fact, they quoted nine.

Still they went on disputing; till the Normans came and made them all agree.

12. Establishment of the Tithes. The regulations made under King Pepin had given the church rather hopes of relief than effectually relieved her; and as Charles Martel found all the landed estates of the kingdom in the hands of the clergy, Charlemagne found all the church-lands in the hands of the soldiery. The latter could not be compelled to restore a voluntary donation, and the circumstances of that time rendered the thing still more impracticable than it seemed to be of its own nature. On the other hand, Christianity ought not to have been lost for want of ministers, churches, and instruction.[99]

This was the reason of Charlemagne's establishing the tithes,[100] a new kind of property which had this advantage in favour of the clergy, that as they were given particularly to the church, it was easier in process of time to know when they were usurped.

Some have attempted to make this institution of a still remoter date, but the authorities they produce seem rather, I think, to prove the contrary. The constitution of Clotharius says[101] only that they shall not raise certain tithes on church-lands;[102] so far then was the church from exacting tithes at that time, that its whole pretension was to be exempted from paying them. The second council of Mâcon,[103] which was held in 585, and ordains the payment of tithes, says, indeed, that they were paid in ancient times, but it says also that the custom of paying them was then abolished.

No one questions but that the clergy opened the Bible before Charlemagne's time, and preached the gifts and offerings in Leviticus. But I say that before that prince's reign, though the tithes might have been preached, they were never established.

I noticed that the regulations made under King Pepin had subjected those

who were seized of church lands in fief to the payment of tithes, and to the repairing of the churches. It was a great deal to induce by a law, whose equity could not be disputed, the principal men of the nation to set the example.

Charlemagne did more; and we find by the capitulary de Villis[104] that he obliged his own demesnes to the payment of the tithes; this was a still more striking example.

But the commonalty are rarely influenced by example to sacrifice their interests. The synod of Frankfort furnished them with a more cogent motive to pay the tithes.[105] A capitulary was made in that synod, wherein it is said that in the last famine the spikes of corn were found to contain no seed,[106] the infernal spirits having devoured it all, and that those spirits had been heard to reproach them with not having paid the tithes; in consequence of which it was ordained that all those who were seized of church lands should pay the tithes; and the next consequence was that the obligation extended to all.

Charlemagne's project did not succeed at first, for it seemed too heavy a burden.<sup>107</sup> The payment of the tithes among the Jews was connected with the plan of the foundation of their republic; but here it was a burden quite independent of the other charges of the establishment of the monarchy. We find by the regulations added to the law of the Lombards[108] the difficulty there was in causing the tithes to be accepted by the civil laws; and as for the opposition they met with before they were admitted by the ecclesiastic laws, we may easily judge of it from the different canons of the councils.

The people consented at length to pay the tithes, upon condition that they might have the power of redeeming them. This the constitution of Louis the Debonnaire[109] and that of the Emperor Lotharius, his son, would not allow.[110]

The laws of Charlemagne, in regard to the establishment of tithes, were a work of necessity, not of superstition -- a work, in short, in which religion only was concerned. His famous division of the tithes into four parts, for the repairing of the churches, for the poor, for the bishop, and for the clergy, manifestly proves that he wished to give the church that fixed and permanent status which she had lost.

His will shows that he was desirous of repairing the mischief done by his grandfather, Charles Martel.[111] He made three equal shares of his movable goods; two of these he would have divided each into one-and-twenty parts, for the one-and-twenty metropolitan sees of his empire; each part was to be sub-divided between the metropolitan and the dependent bishoprics. The remaining third he distributed into four parts; one he gave to his children and grandchildren, another was added to the two-thirds already bequeathed, and the other two were assigned to charitable uses. It seems as if he looked upon the immense donation he was making to the church less as a religious act than as a political distribution.

13. Of the Election of Bishops and Abbots. As the church had grown poor, the kings resigned the right of nominating to bishoprics and other ecclesiastic benefices.[112] The princes gave themselves less trouble about the ecclesiastic ministers; and the candidates were less solicitous in applying to their authorities. Thus the church received a kind of compensation for the possessions she had lost.

Hence, if Louis the Debonnaire left the people of Rome in possession of the right of choosing their popes, it was owing to the general spirit that prevailed in his time;[113] he behaved in the same manner to the see of Rome as to other bishoprics.

14. Of the Fiefs of Charles Martel. I shall not pretend to determine whether Charles Martel, in giving the church-lands in fief, made a grant of them for life or in perpetuity. All I know is that under

Charlemagne[114] and Lotharius I[115] there were possessions of that kind which descended to the next heirs, and were divided among them.

I find, moreover, that one part of them was given as allodia, and the other as fiefs.[116]

I noticed that the proprietors of the allodia were subject to service all the same as the possessors of the fiefs. This, without doubt, was partly the reason that Charles Martel made grants of allodial lands as well as of fiefs.

15. The same Subject continued. We must observe that the fiefs having been changed into church-lands, and these again into fiefs, they borrowed something of each other. Thus the church-lands had the privileges of fiefs, and these had the privileges of church-lands. Such were the honorary rights of churches, which began at that time.[117] And as those rights have ever been annexed to the judiciary power, in preference to what is still called the fief, it follows that the patrimonial jurisdictions were established at the same time as those very rights.

16. Confusion of the Royalty and Mayoralty. The Second Race. The connection of my subject has made me invert the order of time, so as to speak of Charlemagne before I had mentioned the famous epoch of the translation of the crown to the Carlovingians under King Pepin; a revolution, which, contrary to the nature of ordinary events, is more remarked perhaps in our days than when it happened.

The kings had no authority; they had only an empty name. The regal title was hereditary, and that of mayor elective. Though it was latterly in the power of the mayors to place any of the Merovingians on the throne, they had not yet taken a king of another family; and the ancient law which fixed the crown in a particular family was not yet erased from the hearts of the Franks. The king's person was almost unknown in the

monarchy; but royalty was not. Pepin, son of Charles Martel, thought it would be proper to confound those two titles, a confusion which would leave it a moot point whether the new royalty was hereditary or not; and this was sufficient for him who to the regal dignity had joined a great power. The mayor's authority was then blended with that of the king. In the mixture of these two authorities a kind of reconciliation was made; the mayor had been elective, and the king hereditary; the crown at the beginning of the second race was elective, because the people chose; it was hereditary, because they always chose in the same family.[118]

Father le Cointe, in spite of the authority of all ancient records[119] denies that the Pope authorised this great change; and one of his reasons is that he would have committed an injustice.[120] A fine thing to see a historian judge of that which men have done by that which they ought to have done; by this mode of reasoning we should have no more history.

Be that as it may, it is very certain that immediately after Duke Pepin's victory, the Merovingians ceased to be the reigning family. When his grandson, Pepin, was crowned king, it was only one ceremony more, and one phantom less; he acquired nothing thereby but the royal ornaments; there was no change made in the nation.

This I have said in order to fix the moment of the revolution, that we may not be mistaken in looking upon that as a revolution which was only a consequence of it.

When Hugh Capet was crowned king at the beginning of the third race, there was a much greater change, because the kingdom passed from a state of anarchy to some kind of government; but when Pepin took the crown, there was only a transition from one government to another, which was identical.

When Pepin was crowned king there was only a change of name; but when



Hugh Capet was crowned there was a change in the nature of the thing, because by uniting a great fief to the crown the anarchy ceased.

When Pepin was crowned the title of king was united to the highest office; when Hugh Capet was crowned it was annexed to the greatest fief.

17. A particular Circumstance in the Election of the Kings of the Second Race. We find by the formulary of Pepin's coronation that Charles and Carloman were also anointed, [121] and blessed, and that the French nobility bound themselves, on pain of interdiction and excommunication, never to choose a prince of another family. [122]

It appears by the wills of Charlemagne and Louis the Debonnaire, that the Franks made a choice among the king's children, which agrees with the above-mentioned clause. And when the empire was transferred from Charlemagne's family, the election, which before had been restricted and conditional, became pure and simple, so that the ancient constitution was departed from.

Pepin, perceiving himself near his end, assembled the lords, both temporal and spiritual, at St. Denis, and divided his kingdom between his two sons, Charles and Carloman. [123] We have not the acts of this assembly, but we find what was there transacted in the author of the ancient historical collection, published by Canisius, and in the writer of the annals of Metz, [124] according to the observation of Baluzius. [125] Here I meet with two things in some measure contradictory; that he made this division with the consent of the nobility, and afterwards that he made it by his paternal authority. This proves what I said, that the people's right in the second race was to choose in the same family; it was, properly speaking, rather a right of exclusion than that of election.

This kind of elective right is confirmed by the records of the second race. Such is this capitulary of the division of the empire made by

Charlemagne among his three children, in which, after settling their shares, he says, [126] "That if one of the three brothers happens to have a son, such as the people shall be willing to choose as a fit person to succeed to his father's kingdom, his uncles shall consent to it."

This same regulation is to be met with in the partition which Louis the Debonnaire made among his three children, Pepin, Louis, and Charles, in the year 837, at the assembly of Aix-la-Chapelle; [127] and likewise in another partition, made twenty years before, by the same emperor, in favour of Lotharius, Pepin, and Louis. [128] We may likewise see the oath which Louis the Stammerer took at Compiègne at his coronation. "I, Louis, by the divine mercy, and the people's election, appointed king, do promise" [129] ... What I say is confirmed by the acts of the Council of Valence, held in the year 890, for the election of Louis, son of Bo-on, to the kingdom of Arles. [130] Louis was there elected, and the principal reason they gave for choosing him is that he was of the imperial family, [131] that Charles the Fat had conferred upon him the dignity of king, and that the Emperor Arnold had invested him by the sceptre, and by the ministry of his ambassadors. The kingdom of Arles, like the other dismembered or dependent kingdoms of Charlemagne, was elective and hereditary.

18. Charlemagne. Charlemagne's intention was to restrain the power of the nobility within proper bounds, and to hinder them from oppressing the freemen and the clergy. He balanced the several orders of the state, and remained perfect master of them all. The whole was united by the strength of his genius. He led the nobility continually from one expedition to another, giving them no time to form conspiracies, but employing them entirely in the execution of his designs. The empire was supported by the greatness of its chief; the prince was great, but the man was greater. The kings, his children, were his first subjects, the instruments of his power and patterns of obedience. He made admirable laws; and, what is more, he took care to see them executed. His genius diffused itself through every part of the empire. We find in this

prince's laws a comprehensive spirit of foresight, and a certain force which carries all before it. All pretexts for evading the duties are removed, neglects are corrected, abuses reformed or prevented.[132] He knew how to punish, but he understood much better how to pardon. He was great in his designs, and simple in the execution of them. No prince ever possessed in a higher degree the art of performing the greatest things with ease, and the most difficult with expedition. He was continually visiting the several parts of his vast empire, and made them feel the weight of his hand wherever it fell. New difficulties sprang up on every side, and on every side he removed them. Never prince had more resolution in facing dangers; never prince knew better how to avoid them. He mocked all manner of perils, and particularly those to which great conquerors are generally subject, namely, conspiracies. This wonderful prince was extremely moderate, of a very mild character, plain and simple in his behaviour. He loved to converse freely with the lords of his court. He indulged, perhaps, too much his passion for the fair sex; a failing, however, which in a prince who always governed by himself; and who spent his life in a continual series of toils; may merit some allowance. He was wonderfully exact in his expenses, administering his demesnes with prudence, attention, and economy. A father might learn from his laws how to govern his family; and we find in his capitularies the pure and sacred source whence he derived his riches.[133] I shall add only one word more: he gave orders that the eggs in the bartons on his demesnes, and the superfluous garden-stuff, should be sold;[134] he distributed among his people all the riches of the Lombards, and the immense treasures of those Huns that had plundered the whole world.

19. The same Subject continued. Charlemagne and his immediate successors were afraid lest those whom they placed in distant parts should be inclined to revolt, and thought they should find more docility among the clergy. For this reason they erected a great number of bishoprics in Germany and endowed them with very large fiefs.[135] It appears by some charters that the clauses containing the prerogatives of those fiefs

were not different from such as were commonly inserted in those grants, [136] though at present we find the principal ecclesiastics of Germany invested with a sovereign power. Be that as it may, these were some of the contrivances they used against the Saxons. That which they could not expect from the indolence or supineness of vassals they thought they ought to expect from the sedulous attention of a bishop. Besides, a vassal of that kind, far from making use of the conquered people against them, would rather stand in need of their assistance to support themselves against their own people.

20. Louis the Debonnaire. When Augustus Cæsar was in Egypt he ordered Alexander's tomb to be opened; and upon their asking him whether he was willing they should open the tombs of the Ptolemies, he made answer that he wanted to see the king, and not the dead. Thus, in the history of the second race, we are continually looking for Pepin and Charlemagne; we want to see the kings, and not the dead.

A prince who was the sport of his passions, and a dupe even to his virtues; a prince who never understood rightly either his own strength or weakness; a prince who was incapable of making himself either feared or beloved; a prince, in fine, who with few vices in his heart had all manner of defects in his understanding, took into his hands the reins of the empire which had been held by Charlemagne.

At a time when the whole world is in tears for the death of his father, at a time of surprise and alarm, when the subjects of that extensive empire all call upon Charles and find him no more; at a time when he is advancing with all expedition to take possession of his father's throne, he sends some trusty officers before him in order to seize the persons of those who had contributed to the irregular conduct of his sisters. This step was productive of the most terrible catastrophes. [137] It was imprudent and precipitate. He began with punishing domestic crimes before he reached the palace; and with alienating the minds of his subjects before he ascended the throne.

His nephew, Bernard, King of Italy, having come to implore his clemency, he ordered his eyes to be put out, which proved the cause of that prince's death a few days after, and created Louis a great many enemies. His apprehension of the consequence induced him to shut his brothers up in a monastery; by which means the number of his enemies increased. These two last transactions were afterwards laid to his charge in a judicial manner, [138] and his accusers did not fail to tell him that he had violated his oath and the solemn promises which he had made to his father on the day of his coronation. [139]

After the death of the Empress Hermengarde, by whom he had three children, he married Judith, and had a son by that princess; but soon mixing all the indulgence of an old husband, with all the weakness of an old king, he flung his family into a disorder which was followed by the downfall of the monarchy.

He was continually altering the partitions he had made among his children. And yet these partitions had been confirmed each in their turn by his own oath, and by those of his children and the nobility. This was as if he wanted to try the fidelity of his subjects; it was endeavouring by confusion, scruples, and equivocation, to puzzle their obedience; it was confounding the different rights of those princes, and rendering their titles dubious, especially at a time when there were but few fortresses, and when the principal bulwark of authority was the fealty sworn and accepted.

The Emperor's children, in order to preserve their shares, courted the clergy, and granted them privileges till then unheard. These privileges were specious; and the clergy in return were made to warrant the revolution in favour of those princes. Agobard [140] represents to Louis the Debonnaire his having sent Lotharius to Rome, in order to have him declared emperor; and that he had made a division of his dominions among his children, after having consulted heaven by three days fasting and praying. What defence could such a weak prince make against the attack

of superstition? It is easy to perceive the shock which the supreme authority must have twice received from his imprisonment, and from his public penance; they would fain degrade the king, and they degraded the regal dignity.

We find difficulty at first in conceiving how a prince who was possessed of several good qualities, who had some knowledge, who had a natural disposition to virtue, and who in short was the son of Charlemagne, could have such a number of enemies.[141] so impetuous and implacable as even to insult him in his humiliation and to be determined upon his ruin: and, indeed they would have utterly completed it, if his children, who in the main were more honest than they, had been steady in their design, and could have agreed among themselves.

21. The same Subject continued. The strength and solidity for which the kingdom was indebted to Charlemagne still subsisted under Louis the Debonnaire in such a degree as enabled the state to support its grandeur, and to command respect from foreign nations. The prince's understanding was weak, but the nation was warlike. His authority declined at home, though there seemed to be no diminution of power abroad.

Charles Martel, Pepin, and Charlemagne were in succession rulers of the monarchy. The first flattered the avarice of the soldiers: the other two that of the clergy. Louis the Debonnaire displeased both.

In the French constitution, the whole power of the state was lodged in the hands of the king, the nobility, and clergy. Charles Martel, Pepin, and Charlemagne joined sometimes their interest with one of those parties to check the other and generally with both; but Louis the Debonnaire could gain the affection of neither. He disobliged the bishops by publishing regulations which had the air of severity, because he carried things to a greater length than was agreeable to their inclination. Very good laws may be ill-timed. The bishops in those days,

being accustomed to take the field against the Saracens and the Saxons, had very little of the spirit of religion.[142] On the other hand, as he had no longer any confidence in the nobility, he promoted mean people,[143] turning the nobles out of their employments at court to make room for strangers and upstarts.[144] By this means the affections of the two great bodies of the nobility and clergy were alienated from their prince, the consequence of which was a total desertion.

22. The same Subject continued. But what chiefly contributed to weaken the monarchy was the extravagance of this prince in alienating the crown demesnes.[145] And here it is that we ought to listen to the account of Nitard, one of our most judicious historians, a grandson of Charlemagne, strongly attached to Louis the Debonnaire and who wrote his history by order of Charles the Bald.

He says, "that one Adelhard for some time gained such an ascendant over the Emperor, that this prince conformed to his will in everything; that at the instigation of this favourite, he had granted the crown lands to everybody that asked them,[146] by which means the state was ruined." [147] Thus he did the same mischief throughout the empire as I observed he had done in Aquitaine; [148] the former Charlemagne redressed, but the latter was past all remedy.

The state was reduced to the same debility in which Charles Martel found it. upon his accession to the mayoralty; and so desperate were its circumstances that no exertion of authority was any longer capable of saving it.

The treasury was so exhausted that in the reign of Charles the Bald, no one could continue in his employments, nor be safe in his person without paying for it.[149] When they had it in their power to destroy the Normans, they took money to let them escape:[150] and the first advice which Hincmar gives to Louis the Stammerer is to ask of the assembly of the nation a sufficient allowance to defray the expenses of his

household.

23. The same Subject continued. The clergy had reason to repent the protection they had granted to the children of Louis the Debonnaire. This prince, as I have already observed, had never given any of the church-lands by precepts to the laity;[151] but it was not long before Lotharius in Italy, and Pepin in Aquitaine, quitted Charlemagne's plan, and resumed that of Charles Martel. The clergy had recourse to the Emperor against his children, but they themselves had weakened the authority to which they appealed. In Aquitaine some condescension was shown, but none in Italy.

The civil wars with which the life of Louis the Debonnaire had been embroiled were the seed of those which followed his death. The three brothers, Lotharius, Louis, and Charles, endeavoured each to bring over the nobility to their party and to make them their tools. To such as were willing therefore to follow them they granted church-lands by precepts; so that to gain the nobility, they sacrificed the clergy.

We find in the Capitularies[152] that those princes were obliged to yield to the importunity of demands, and that what they would not often have freely granted was extorted from them: we find that the clergy thought themselves more oppressed by the nobility than by the kings, It appears that Charles the Bald[153] became the greatest enemy of the patrimony of the clergy, whether he was most incensed against them for having degraded his father on their account, or whether he was the most timorous. Be that as it may, we meet with continual quarrels in the Capitularies,[154] between the clergy who demanded their estates, and the nobility who refused or deferred to restore them; and the kings acting as mediators.

The situation of affairs at that time is a spectacle really deserving of pity. While Louis the Debonnaire made immense donations out of his demesnes to the clergy, his children distributed the church-lands among



the laity. The same prince with one hand founded new abbeys and despoiled old ones. The clergy had no fixed state; one moment they were plundered, another they received satisfaction; but the crown was continually losing.

Toward the close of the reign of Charles the Bald, and from that time forward, there was an end of the disputes of the clergy and laity concerning the restitution of church-lands. The bishops indeed breathed out still a few sighs in their remonstrances to Charles the Bald, which we find in the Capitulary of the year 856, and in the letter they wrote to Louis, King of Germany, in the year 858, [155] but they proposed things, and challenged promises, so often eluded, that we plainly see they had no longer any hopes of obtaining their desire.

All that could be expected then was to repair in general the injuries done both to church and state. [156] The kings engaged not to deprive the nobility of their freemen, and not to give away any more church-lands by precepts, [157] so that the interests of the clergy and nobility seemed then to be united.

The dreadful depredations of the Normans, as I have already observed, contributed greatly to put an end to those quarrels.

The authority of our kings diminishing every day, both for the reasons already given and those which I shall mention hereafter, they imagined they had no better resource left, than to resign themselves into the hands of the clergy. But the ecclesiastics had weakened the power of the kings, and these had diminished the influence of the ecclesiastics. In vain did Charles the Bald and his successors call in the church to support the state, and to prevent its ruin; in vain did they make use of the respect which the commonalty had for that body, [158] to maintain that which they should also have for their prince; [159] in vain did they endeavour to give an authority to their laws by that of the canons; in vain did they join the ecclesiastic with the civil punishments; [160] in

vain to counterbalance the authority of the count did they give to each bishop the title of their commissary in the several provinces; [161] it was impossible to repair the mischief they had done; and a terrible misfortune, which I shall presently mention, proved the ruin of the monarchy.

24. That the Freemen were rendered capable of holding Fiefs. I said that the freemen were led against the enemy by their count, and the vassals by their lord. This was the reason that the several orders of the state balanced each other, and though the king's vassals had other vassals under them, yet they might be overawed by the count, who was at the head of all the freemen of the monarchy.

The freemen were not allowed at first to do homage for a fief; but in process of time this was permitted: [162] and I find that this change was made during the period that elapsed from the reign of Gontram to that of Charlemagne. This I prove by the comparison which may be made between the treaty of Andelot, [163] by Gontram, Childebert, and Queen Brunehault, and the partition made by Charlemagne among his children, as well as a like partition by Louis the Debonnaire. [164] These three acts contain nearly the same regulations with regard to the vassals; and as they determine the very same points, under almost the same circumstances, the spirit as well as the letter of those three treaties in this respect are very much alike.

But as to what concerns the freemen, there is a vital difference. The treaty of Andelot does not say that they might do homage for a fief; whereas we find in the divisions of Charlemagne and Louis the Debonnaire express clauses to empower them to do homage. This shows that a new usage had been introduced after the treaty of Andelot, whereby the freemen had become capable of this great privilege.

This must have happened when Charles Martel, after distributing the church-lands to his soldiers, partly in fief, and partly as allodia,

made a kind of revolution in the feudal laws. It is very probable that the nobility who were seized already of fiefs found a greater advantage in receiving the new grants as allodia; and that the freemen thought themselves happy in accepting them as fiefs.

#### THE PRINCIPAL CAUSE OF THE HUMILIATION OF THE SECOND RACE

25. Changes in the Allodia. Charlemagne in the partition[165] mentioned in the preceding chapter ordained that after his death the vassals belonging to each king should be permitted to receive benefices in their own sovereign's dominion, and not in those of another;[166] whereas they may keep their allodial estates in any of their dominions.[167] But he adds[168] that every freeman might, after the death of his lord, do homage in any of three kingdoms he pleased, as well as he that never had been subject to a lord. We find the same regulations in the partition which Louis the Debonnaire made among his children in the year 817.

But though the freeman had done homage for a fief, yet the count's militia was not thereby weakened: the freeman was still obliged to contribute for his allodium, and to get people ready for the service belonging to it, at the proportion of one man to four manors; or else to procure a man that should do the duty of the fief in his stead. And when some abuses had been introduced upon this head, they were redressed, as appears by the constitutions of Charlemagne,[169] and by that of Pepin, King of Italy, which explain each other.[170]

The remark made by historians that the battle of Fontenay was the ruin of the monarchy, is very true; but I beg leave to cast an eye on the unhappy consequences of that day.

Some time after the battle, the three brothers, Lothairius, Louis, and Charles, made a treaty,[171] wherein I find some clauses which must have altered the whole political system of the French government.

1. In the declaration[172] which Charles made to the people of the part of the treaty relating to them, he says that every freeman might choose whom he pleased for his lord,[173] whether the king or any of the nobility. Before this treaty the freeman might do homage for a fief; but his allodium still continued under the immediate power of the king, that is, under the count's jurisdiction; and he depended on the lord to whom he vowed fealty, only on account of the fief which he had obtained. After that treaty every freeman had a right to subject his allodium to the king, or to any other lord, as he thought proper. The question is riot in regard to those who put themselves under the protection of another for a fief, but to such as changed their allodial into a feudal land, and withdrew themselves, as it were, from the civil jurisdiction to enter under the power of the king, or of the lord whom they thought proper to choose.

Thus it was that those who formerly were only under the king's power, as freemen under 'the count, became insensibly vassals one of another, since every freeman might choose whom he pleased for his lord, the king or any of the nobility.

2. If a man changed an estate which he possessed in perpetuity into a fief, this new fief could no longer be only for life. Hence we see, a short time after, a general law for giving the fiefs to the children of the present possessor:[174] it was made by Charles the Bald, one of the three contracting princes.

What has been said concerning the liberty every freeman had in the monarchy, after the treaty of the three brothers, of choosing whom he pleased for his lord, the king or any of the nobility, is confirmed by the acts subsequent to that time.

In the reign of Charlemagne,[175] when the vassal had received a present of a lord, were it worth only a sou, he could not afterwards quit him. But under Charles the Bald, the vassals might follow what was agreeable

to their interests or their inclination with entire safety; [176] and so strongly does this prince explain himself on the subject that he seems rather to encourage them in the enjoyment of this liberty than to restrain it. In Charlemagne's time, benefices were rather personal than real; afterwards they became rather real than personal.

26. Changes in the Fiefs. The same changes happened in the fiefs as in the allodia. We find by the Capitulary of Compiègne, [177] under King Pepin, that those who had received a benefice from the king gave a part of this benefice to different bondmen; but these parts were not distinct from the whole. The king revoked them when he revoked the whole; and at the death of the king's vassal, the rear-vassal lost also his rear-fief: and a new beneficiary succeeded, who likewise established new rear-vassals. Thus it was the person and not the rear-fief that depended on the fief; on the one hand, the rear-vassal returned to the king because he was not tied for ever to the vassal; and the rear-fief returned also to the king because it was the fief itself and not a dependence of it.

Such was the rear-vassalage, while the fiefs were during pleasure; and such was it also while they were for life. This was altered when the fiefs descended to the next heirs, and the rear-fiefs the same. That which was held before immediately of the king was held now mediately; and the regal power was thrown back, as it were, one degree, sometimes two; and oftentimes more.

We find in the books of fiefs [178] that, though the king's vassals might give away in fief, that is, in rear-fief, to the king, yet these rear-vassals, or petty vavasors, could not give also in fief; so that whatever they had given, they might always resume. Besides, a grant of that kind did not descend to the children like the fiefs, because it was not supposed to have been made according to the feudal laws.

If we compare the situation in which the rear-vassalage was at the time

when the two Milanese senators wrote those books, with what it was under King Pepin, we shall find that the rear-fiefs preserved their primitive nature longer than the fiefs.[179]

But when those senators wrote, such general exceptions had been made to this rule as had almost abolished it. For if a person who had received a fief of a rear-vassal happened to follow him upon an expedition to Rome, he was entitled to all the privileges of a vassal.[180] In like manner, if he had given money to the rear-vassal to obtain the fief, the latter could not take it from him, nor hinder him from transmitting it to his son, till he returned him his money: in fine, this rule was no longer observed by the senate of Milan.[181]

27. Another change which happened in the Fiefs. In Charlemagne's time they were obliged, [182] under great penalties, to repair to the general meeting in case of any war whatsoever; they admitted of no excuses, and if the count exempted any one, he was liable himself to be punished. But the treaty of the three brothers [183] made a restriction upon this head which rescued the nobility, as it were, out of the king's hands; they were no longer obliged to serve him in time of war, except when the war was defensive.[184] In others, they were at liberty to follow their lord, or to mind their own business. This treaty relates to another, [185] concluded, five years before, between the two brothers, Charles the Bald and Louis, King of Germany, by which these princes release their vassals from serving them in war, in case they should attempt hostilities against each other; an agreement which the two princes confirmed by oath, and at the same time made their armies swear to it.

The death of a hundred thousand French, at the battle of Fontenay, made the remains of the nobility imagine that by the private quarrels of their kings about their respective shares, their whole body would be exterminated, and that the ambition and jealousy of those princes would end in the destruction of all the best families of the kingdom. A law

was therefore passed that the nobility should not be obliged to serve their princes in war unless it was to defend the state against a foreign invasion. This law obtained for several ages.[186]

28. Changes which happened in the great Offices, and in the Fiefs. The many changes introduced into the fiefs in particular cases seemed to spread so widely as to be productive of general corruption. I noticed that in the beginning several fiefs had been alienated in perpetuity; but those were particular cases, and the fiefs in general preserved their nature; so that if the crown lost some fiefs it substituted others in their stead. I observed, likewise, that the crown had never alienated the great offices in perpetuity.[187]

But Charles the Bald made a general regulation, which equally affected the great offices and the fiefs. He ordained, in his capitularies, that the counties should be given to the children of the count, and that this regulation should also take place in respect to the fiefs.[188]

We shall see presently that this regulation received a wider extension, insomuch that the great offices and fiefs went even to distant relatives. Thence it followed that most of the lords who before this time had held immediately of the crown, held now mediately. Those counts who formerly administered justice in the king's placita, and who led the freemen against the enemy, found themselves situated between the king and his freemen; and the king's power was removed farther off another degree.

Again, it appears from the capitularies,[189] that the counts had benefices annexed to their counties, and vassals under them. When the counties became hereditary, the count's vassals were no longer the immediate vassals of the king; and the benefices annexed to the counties were no longer the king's benefices; the counts grew powerful because the vassals whom they had already under them enabled them to procure others.

In order to be convinced how much the monarchy was thereby weakened towards the end of the second race we have only to cast an eye on what happened at the beginning of the third, when the multiplicity of rear-fiefs flung the great vassals into despair.

It was a custom of the kingdom[190] that when the elder brothers had given shares to their younger brothers, the latter paid homage to the elder; so that those shares were held of the lord paramount only as a rear-fief. Philip Augustus, the Duke of Burgundy, the Counts of Nevers, Boulogne, St. Paul, Dampierre, and other lords declared[191] that henceforward, whether the fiefs were divided by succession or otherwise, the whole should be always of the same lord, without any intermediation. This ordinance was not generally followed; for, as I have elsewhere observed, it was impossible to make general ordinances at that time; but many of our customs were regulated by them.

29. Of the Nature of the Fiefs after the Reign of Charles the Bald. We have observed that Charles the Bald ordained that when the possessor of a great office or of a fief left a son at his death, the office or fief should devolve to him. It would be a difficult matter to trace the progress of the abuses which thence resulted, and of the extension given to that law in each country. I find in the books of fiefs, [192] that towards the beginning of the reign of the Emperor Conrad II, the fiefs situated in his dominions did not descend to the grandchildren: they descended only to one of the last possessor's children, who had been chosen by the lord:[193] thus the fiefs were given by a kind of election, which the lord made among the children.

In the seventeenth chapter of this book we have explained in what manner the crown was in some respects elective, and in others hereditary under the second race. It was hereditary, because the kings were always taken from that family, and because the children succeeded; it was elective, by reason that the people chose from among the children. As things proceed step by step, and one political law has constantly some relation



to another political law, the same spirit was followed in the succession of fiefs, as had been observed in the succession to the crown.[194] Thus the fiefs were transmitted to the children by the right of succession, as well as of election; and each fief became both elective and hereditary, like the crown.

This right of election[195] in the person of the lord was not subsisting at the time of the authors[196] of the book of fiefs, that is, in the reign of the Emperor Frederick I.

30. The same Subject continued. It is mentioned in the books of fiefs, that when the Emperor Conrad set out for Rome, the vassals in his service presented a petition to him that he would please to make a law that the fiefs which descended to the children should descend also to the grandchildren; and that he whose brother died without legitimate heirs might succeed to the fief which had belonged to their common father.[197] This was granted.

In the same place it is said (and we are to remember that those writers lived at the time of the Emperor Frederick I)[198] "that the ancient jurists had always been of opinion[199] that the succession of fiefs in a collateral line did not extend farther than to brothers-german, though of late it was carried as far as the seventh degree, and by the new code they had extended it in a direct line in infinitum." It is thus that Conrad's law was insensibly extended. All these things being supposed, the bare perusal of the history of France is sufficient to demonstrate that the perpetuity of fiefs was established earlier in this kingdom than in Germany. Towards the commencement of the reign of the Emperor Conrad II in 1024, things were upon the same footing still in Germany, as they had been in France during the reign of Charles the Bald, who died in 877. But such were the changes made in this kingdom after the reign of Charles the Bald, that Charles the Simple found himself unable to dispute with a foreign house his incontestable rights to the empire; and, in fine, that in Hugh Capet's time the reigning family, stripped of

all its demesnes, was no longer in a condition to maintain the crown.

The weak understanding of Charles the Bald produced an equal weakness in the French monarchy. But as his brother, Louis, King of Germany, and some of that prince's successors were men of better parts, their government preserved its vigour much longer.

But what do I say? Perhaps the phlegmatic constitution, and, if I dare use the expression, the immutability of spirit peculiar to the German nation made a longer stand than the volatile temper of the French against that disposition of things, which perpetuated the fiefs by a natural tendency, in families.

Besides, the kingdom of Germany was not laid waste and annihilated, as it were, like that of France, by that particular kind of war with which it had been harassed by the Normans and Saracens. There were less riches in Germany, fewer cities to plunder, less extent of coast to scour, more marshes to get over, more forests to penetrate. As the dominions of those princes were less in danger of being ravaged and torn to pieces, they had less need of their vassals and consequently less dependence on them. And in all probability, if the Emperors of Germany had not been obliged to be crowned at Rome, and to make continual expeditions into Italy, the fiefs would have preserved their primitive nature much longer in that country.

31. In what Manner the Empire was transferred from the Family of Charlemagne. The empire, which, in prejudice to the branch of Charles the Bald had been already given to the bastard line of Louis, King of Germany, [200] was transferred to a foreign house by the election of Conrad, Duke of Franconia, in 912. The reigning branch in France, being hardly able to contest a few villages, was much less in a situation to contest the empire. We have an agreement entered into between Charles the Simple and the Emperor Henry I, who had succeeded to Conrad, It is called the Compact of Bonn. [201] These two princes met in a vessel which

had been placed in the middle of the Rhine, and swore eternal friendship. They used on this occasion an excellent middle term. Charles took the title of King of West France, and Henry that of King of East France. Charles contracted with the King of Germany, and not with the Emperor.

32. In what Manner the Crown of France was transferred to the House of Hugh Capet. The inheritance of the fiefs, and the general establishment of rear-fiefs, extinguished the political and formed a feudal government. Instead of that prodigious multitude of vassals who were formerly under the king, there were now a few only, on whom the others depended. The kings had scarcely any longer a direct authority; a power which was to pass through so many other and through such great powers either stopped or was lost before it reached its term. Those great vassals would no longer obey; and they even made use of their rear-vassals to withdraw their obedience. The kings, deprived of their demesnes and reduced to the cities of Rheims and Laon, were left exposed to their mercy; the tree stretched out its branches too far, and the head was withered. The kingdom found itself without a demesne, as the empire is at present. The crown was, therefore, given to one of the most potent vassals.

The Normans ravaged the kingdom; they sailed in open boats or small vessels, entered the mouths of rivers, and laid the country waste on both sides. The cities of Orleans and Paris put a stop to those plunderers, so that they could not advance farther, either on the Seine, or on the Loire.[202] Hugh Capet, who was master of those cities, held in his hands the two keys of the unhappy remains of the kingdom; the crown was conferred upon him as the only person able to defend it. It is thus the empire was afterwards given to a family whose dominions form so strong a barrier against the Turks.

The empire went from Charlemagne's family at a time when the inheritance of fiefs was established only as a mere condescendence. It even appears

that this inheritance obtained much later among the Germans than among the French; [203] which was the reason that the empire, considered as a fief, was elective. On the contrary, when the crown of France went from the family of Charlemagne, the fiefs were really hereditary in this kingdom; and the crown, as a great fief, was also hereditary.

But it is very wrong to refer to the very moment of this revolution all the changes which happened, either before or afterwards. The whole was reduced to two events; the reigning family changed, and the crown was united to a great fief.

33. Some Consequences of the Perpetuity of Fiefs. From the perpetuity of fiefs it followed that the right of seniority or primogeniture was established among the French. This right was quite unknown under the first race; [204] the crown was divided among the brothers, the allodia were shared in the same manner; and as the fiefs, whether precarious or for life, were not an object of succession, there could be no partition in regard to those tenures.

Under the second race, the title of emperor, which Louis the Debonnaire enjoyed, and with which he honoured his eldest son, Lotharius, made him think of giving this prince a kind of superiority over his younger brothers. The two kings were obliged to wait upon the emperor every year, to carry him presents, and to receive much greater from him; they were also to consult with him upon common affairs. [205] This is what inspired Lotharius with those pretences which met with such bad success. When Agobard wrote in favour of this prince, [206] he alleged the emperor's own intention, who had associated Lotharius with the empire after he had consulted the Almighty by a three days' fast, by the celebration of the holy mysteries, and by prayers and almsgiving; after the nation had sworn allegiance to him, which they could not refuse without perjuring themselves; and after he had sent

Lotharius to Rome to be confirmed by the Pope. Upon all this he lays a

stress, and not upon his right of primogeniture. He says, indeed, that the emperor had designed a partition among the younger brothers, and that he had given the preference to the elder; but saying he had preferred the elder was saying at the same time that he might have given the preference to his younger brothers.

But as soon as the fiefs became hereditary, the right of seniority was established in the feudal succession; and for the same reason in that of the crown, which was the great fief. The ancient law of partitions was no longer subsisting; the fiefs being charged with a service, the possessor must have been enabled to discharge it. The law of primogeniture was established, and the right of the feudal law was superior to that of the political or civil institution.

As the fiefs descended to the children of the possessor, the lords lost the liberty of disposing of them; and, in order to indemnify themselves, they established what they called the right of redemption, whereof mention is made in our customs, which at first was paid in a direct line, and by usage came afterwards to be paid only in a collateral line.

The fiefs were soon rendered transferable to strangers as a patrimonial estate. This gave rise to the right of lord's dues, which were established almost throughout the kingdom. These rights were arbitrary in the beginning; but when the practice of granting such permissions became general, they were fixed in every district.

The right of redemption was to be paid at every change of heir, and at first was paid even in a direct line.[207] The most general custom had fixed it to one year's income. This was burdensome and inconvenient to the vassal, and affected in some measure the fief itself, It was often agreed in the act of homage that the lord should no longer demand more than a certain sum of money for the redemption, which, by the changes incident to money, became afterwards of no manner of importance.[208] Thus the right of redemption is in our days reduced almost to nothing,

while that of the lord's dues is continued in its full extent. As this right concerned neither the vassal nor his heirs, but was a fortuitous case which no one was obliged to foresee or expect, these stipulations were not made, and they continued to pay a certain part of the price.

When the fiefs were for life, they could not give a part of a fief to hold in perpetuity as a rear-fief; for it would have been absurd that a person who had only the usufruct of a thing should dispose of the property of it. But when they became perpetual, this was permitted.[209] with some restrictions made by the customs, which was what they call dismembering their fief.[210]

The perpetuity of feudal tenures having established the right of redemption, the daughters were rendered capable of succeeding to a fief, in default of male issue. For when the lord gave the fief to his daughter, he multiplied the cases of his right of redemption, because the husband was obliged to pay it as well as the wife.[211] This regulation could not take place in regard to the crown, for as it was not held of any one, there could be no right of redemption over it.

The daughter of William V, Count of Toulouse, did not succeed to the county. But Eleanor succeeded to Aquitaine, and Matilda to Normandy; and the right of the succession of females seemed so well established in those days, that Louis the Young, after his divorce from Eleanor, made no difficulty in restoring Guienne to her. But as these two last instances followed close on the first, the general law by which the women were called to the succession of fiefs must have been introduced much later into the county of Toulouse than into the other provinces of France.[212]

The constitution of several kingdoms of Europe has been directed by the state of feudal tenures at the time when those kingdoms were founded. The women succeeded neither to the crown of France nor to the empire, because at the foundation of those two monarchies they were incapable of

succeeding to fiefs. But they succeeded in kingdoms whose foundation was posterior to that of the perpetuity of the fiefs, such as those founded by the Normans, those by the conquests made on the Moors, and others, in fine, which were beyond the limits of Germany, and in later times received in some measure a second birth by the establishment of Christianity.

When these fiefs were at will, they were given to such as were capable of doing service for them, and, therefore, were never bestowed on minors; but when they became perpetual, the lords took the fief into their own hands, till the pupil came of age, either to increase their own emoluments, or to train the ward to the use of arms.[213] This is what our customs call the guardianship of a nobleman's children, which is founded on principles different from those of tutelage, and is entirely a distinct thing from it.

When the fiefs were for life, it was customary to vow fealty for a fief; and the real delivery, which was made by a sceptre, confirmed the fief, as it is now confirmed by homage. We do not find that the counts, or even the king's commissaries, received the homage in the provinces; nor is this ceremony to be met with in the commissions of those officers which have been handed down to us in the Capitularies. They sometimes, indeed, made all the king's subjects take an oath of allegiance;[214] but so far was this oath from being of the same nature as the service afterwards established by the name of homage, that it was only a cere-money of less solemnity, occasionally used, either before or after that act of obeisance; in short, it was quite a distinct thing from homage.[215]

The counts and the king's commissaries further made those vassals whose fidelity was suspected give occasionally a security, which was called firmitas,[216] but this security could not be an homage, since kings gave it to each other.[217]

And though the Abbot Suger[218] makes mention of a chair of Dagobert, in which according to the testimony of antiquity, the kings of France were accustomed to receive the homage of the nobility, it is plain that he expresses himself agreeably to the ideas and language of his own time.

When the fiefs descended to the heirs, the acknowledgment of the vassal, which at first was only an occasional service, became a regular duty. It was performed in a more splendid manner, and attended with more formalities, because it was to be a perpetual memorial of the reciprocal duties of the lord and vassal.

I should be apt to think that homages began to be established under King Pepin, which is the time I mentioned that several benefices were given in perpetuity, but I should not think thus without caution, and only upon a supposition that the authors of the ancient annals of the Franks were not ignorant pretenders,[219] who in describing the fealty professed by Tassillon, Duke of Bavaria, to King Pepin, spoke according to the usages of their own time.[220]

34. The same Subject continued. When the fiefs were either precarious or for life, they seldom bore a relation to any other than the political laws; for which reason in the civil institutions of those times there is very little mention made of the laws of fiefs. But when they became hereditary, when there was a power of giving, selling, and bequeathing them, they bore a relation both to the political and the civil laws. The fief, considered as an obligation of performing military service, depended on the political law; considered as a kind of commercial property, it depended on the civil law. This gave rise to the civil regulations concerning feudal tenures.

When the fiefs became hereditary, the law relating to the order of succession must have been in relation to the perpetuity of fiefs. Hence this rule of the French law, estates of inheritance do not ascend,[221] was established in spite of the Roman and Salic laws.[222] It was



necessary that service should be paid for the fief; but a grandfather or a great-uncle would have been too old to perform any service; this rule thus held good at first only in regard to the feudal tenures, as we learn from Boutillier.[223]

When the fiefs became hereditary, the lords who were to see that service was paid for the fief, insisted that the females who were to succeed to the feudal estate, and I fancy sometimes the males, should not marry without their consent; insomuch that the marriage contracts became in respect to the nobility both of a feudal and a civil regulation.[224] In an act of this kind under the lord's inspection, regulations were made for the succession, with the view that the heirs might pay service for the fief: hence none but the nobility at first had the liberty of disposing of successions by marriage contract, as Boyer[225] and Aufreerius[226] have observed.

It is needless to mention that the power of redemption, founded on the old right of the relatives, a mystery of our ancient French jurisprudence I have not time to unravel, could not take place with regard to the fiefs till they became perpetual.

Italiam, Italiam . . .[227]

I finish my treatise of fiefs at a period where most authors commence theirs.

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1. Gregory of Tours, iv. 42.

2. Chapter 7.

3. Fredegarius, Chronicle, 42.

4. Clotharius II, son of Chilperic, and the father of Dagobert.
5. Fredegarius, Chronicle, 42.
6. See Gregory of Tours, viii. 31.
7. Fredegarius, Chronicle, 27, in the year 605.
8. Ibid., 28, in the year 607.
9. Ibid., 41, in the year 613.
10. Ibid., 42, in the year 613.
11. Some time after Brunehault's execution, in the year 615. See Baluzius's edition of the Capitularies, p. 21.
12. Ibid., art. 16.
13. Ibid.
14. Ibid., art. 17.
15. Ibid., art. 1.
16. Ibid., art. 8.
17. Ibid., art. 9.
18. Ibid., art. 21.
19. They were orders which the king sent to the judges to do or to tolerate things contrary to law.

20. See Gregory of Tours, iv, p. 227. Both our history and the charters are full of this; and the extent of these abuses appears especially in Clotharius' constitution, inserted in the edition of the Capitularies made to reform them. Baluzius's edition, p. 7.

21. Ibid., art. 22.

22. Ibid., art 6.

23. Ibid., art. 18.

24. In Baluzius's edition of the Capitularies, i. p. 7.

25. In the preceding book I have made mention of these immunities, which were grants of judicial rights, and contained prohibitions to the regal judges to perform any function in the territory, and were equivalent to the erection or grant of a fief.

26. He began to reign towards the year 670.

27. See the Life of St. Leger.

28. Instigante Brunihault, Theodorico jubente, &c. -- Fredegarius, 27, in the year 605.

29. Gesta regum Francorum, 36.

30. See Fredegarius, Chronicle, 54, in the year 626, and his anonymous continuator, 101, in the year 695, and 105, in the year 715. Aimoin, iv. 15, Eginhard. Life of Charlemagne, 48. Gesta regum Francorum, 45.

31. See the Law of the Burgundians, pref., and the second supplement to this law, tit. 13.

32. See Gregory of Tours, ix. 36.
33. Fredegarius, Chronicle, 44, in the year 626.
34. Fredegarius, Chronicle, 68, in the year 630.
35. Fredegarius, Chronicle, 75, in the year 632.
36. Fredegarius, Chronicle, 79, in the year 638.
37. Ibid.
38. Ibid., 80, in the year 639.
39. Fredegarius, Chronicle, 89, in the year 641.
40. Ibid.
41. De Majoribus Domus Regiæ.
42. De Moribus Germanorum, 7.
43. See Sulpicius Alexander, in Gregory of Tours, ii.
44. In the year 552.
45. Agathias, i. Gregory of Tours, iv. 9.
46. Gontram did not even march against Gondovald, who styled himself son of Clotharius, and claimed his share of the kingdom.
47. Sometimes to the number of twenty. See Gregory of Tours, v. 27, viii. 28 and 30, x. 3. Dagobert, who had no mayor in Burgundy, observed the same policy, and sent against the Gascons ten dukes and several

counts who had no dukes over them. -- Fredegarius, *Chronicle*, 78, in the year 636.

48. Gregory of Tours, viii. 30, and x. 3.

49. *Ibid.*, viii. 30.

50. See the second supplement to the law of the Burgundians, tit. 13, and Gregory of Tours, ix. 36.

51. See the *Annals of Metz*, years 687 and 688.

52. *Ibid.*, year 695.

53. *Ibid.*, year 719.

54. *Ibid.*

55. *Ex chronico Centulensi*, ii.

56. *Annals of Metz*, year 691. *Annals of Fulda*, or of Laurishan, Pippinus dux Francorum obtinuit regnum Francorum per annos 27, cum regibus sibi subjectis.

57. The anonymous continuator of Fredegarius, 104, in the year 714.

58. Cited by Gregory of Tours, ix. See also the edict of Clotharius II, in the year 615, art. 16.

59. See the 24th and the 34th of the first book.

60. See the 14th formula of the first book, which is equally applicable to the fiscal estates given direct in perpetuity, or given at first as a benefice, and afterwards in perpetuity. See also the 17th formula, *ibid.*

61. Book i, form. 13.

62. Tit. 44. See also tit. 66, §§ 3, 4; and tit. 74.

63. Tit. 11.

64. See also the law of the Ripuarians, tit. 7; and the Salic law, tit. 44, art. 1 and 4.

65. Salic law, tit. 59 and 76.

66. Ibid.

67. Ibid., tit. 59, § 1.

68. Ibid., tit. 76, § 1.

69. Ibid., tit. 56 and 59.

70. Ibid., tit. 76, § 1.

71. Ibid., § 2.

72. *Apud vernis palatium*, in the year 883, art. 4 and 11.

73. Capitulary of Charlemagne, second of the year 812, art. 1 and 3.

74. *Heribannum*.

75. *Non infirmis reliquit hæredibus*, says Lambert d'Ardres in Du Cange, on the word *alodis*.

76. See those quoted by Du Cange, in the word *alodis*, and those produced by Galland, in his *Treatise on Allodial Lands*, p. 14, ff.

77. Second Capitulary of the year 802, art. 10; and the seventh Capitulary of the year 803, art. 3; the first Capitulary, incerti anni, art. 49; the fifth Capitulary of the year 806, art. 7; the Capitulary of the year 779, art. 29; the Capitulary of Louis the Pious, in the year 829, art. 1.

78. The fifth of the year 806, art. 8.

79. In Gregory of Tours, vi. 46.

80. This is what induced him to annul the testaments made in favour of the clergy, and even the donations of his father; Gontram re-established them, and even made new donations. -- Gregory of Tours, vii. 7.

81. See the Annals of Metz, year 687.

82. See the Annals of Metz.

83. In Gregory of Tours.

84. From Chronica Centulensi, ii.

85. See the Annals of Metz.

86. Ibid., year 741.

87. Year 858, in Carisiacus; Baluzius's edition, ii, p. 101.

88. Ibid., ii, art. 7, p. 109.

89. Precaria, quod precibus utendum conceditur, says Cujas, in his notes upon the first Book of Fiefs. I find in a diploma of King Pepin, dated the third year of his reign, that this prince was not the first who established these precaria; he cites one made by the Mayor Ebroin, and

continued after his time. See the diploma of the king, in the *Historians of France by the Benedictines*, v, art. 6.

90. In the year 743, see the 5th book of the *Capitularies*, art. 3, Baluzius's edition, p. 825.

91. That of Metz, in the year 736, art. 4.

92. See his *Capitulary*, in the year 803, given at Worms; Baluzius's edition, p. 411, where he regulates the precarious contract, and that of Frankfort, in the year 794, p. 267, art. 24, in relation to the repairing of the houses; and that of the year 800, p. 330.

93. As appears by the preceding note, and by the *Capitulary of Pepin, King of Italy*, where it says, that the king would give the monasteries in fief to those who would swear allegiance for fiefs: it is added to the law of the Lombards, iii, tit. 1, § 30; and to the *Salic Law*, *Collection of Pepin's Laws* in Echard, p. 195, tit. 26, art. 4.

94. See the constitution of Lotharius I, in the law of the Lombards, iii. Leg. 1, § 43.

95. *Ibid.*, § 44.

96. *Ibid.*

97. Given the 28th year of the reign of Charles the Bald, in the year 868. Baluzius's edition, p. 203.

98. *Concilium apud Bonoilum*, the 16th year of Charles the Bald, in the year 856, Baluzius's edition, p. 78.

99. In the civil wars which broke out at the time of Charles Martel, the lands belonging to the church of Rheims were given away to laymen; "the



clergy were left to shift as well as they could," says the life of Remigius, Surius, i, p. 279.

100. Law of the Lombards, iii, tit. 3, §§ 1 and 2.

101. It is that on which I have descanted in the 4th chapter of this book, and which is to be found in Baluzius's edition of the Capitularies, i, art. 11, p. 9.

102. The Capitulary of Charlemagne in the year 800, Baluzius's edition, p. 336, explains extremely well what is meant by that sort of tithe from which the church is exempted by Clotharius; it was the tithe of the swine which were put into the king's forests to fatten; and Charlemagne enjoins his judges to pay it, as well as other people, in order to set an example: it is plain that this was a right of seigniory or economy.

103. Canone 5, ex tomo 1, conciliorum antiquorum Galliæ opera Jacobi Sirmundi.

104. Art. 6, Baluzius's edition, p. 332. It was given in the year 800.

105. Held under Charlemagne, in the year 794.

106. Baluzius's edition, p. 267, art. 23.

107. See among the rest the capitulary of Louis the Debonnaire in the year 829, Baluzius's edition, p. 663; against those who, to avoid paying tithes neglected to cultivate the lands, &c., art. 5.

108. Among others, that of Lotharius, iii, tit. 3, cap. vi.

109. In the year 829, art. 7, in Baluzius, i, p. 663.

110. In the law of the Lombards, iii, tit. 3, § 8.

111. It is a kind of codicil produced by Eginhard, and different from the will itself, which we find in Goldastus and Baluzius.

112. See the Capitulary of Charlemagne in the year 803, art. 2, Baluzius's edition, p. 379; and the edict of Louis the Debonnaire in the year 834, in Goldast, *Constit. Impérial.*, i.

113. This is mentioned in the famous canon, *ego Ludovicus*, which is a palpable forgery; it is Baluzius's edition, p. 591, in the year 817.

114. As appears by his Capitulary, in the year 801, art. 17, in Baluzius, i, p. 360.

115. See his constitution, inserted in the code of the Lombards, iii, tit. 1, § 44.

116. See the above constitution, and the Capitulary of Charles the Bald, in the year 846, cap. xx. in Villa Sparnaco, Baluzius's edition, ii. p. 31, and that of the year 853, cap. iii and v, in the Synod of Soissons, Baluzius's edition, ii, p. 54; and that of the year 854, apud Attiniacum, cap. x. Baluzius's edition, ii, p. 70. See also the first Capitulary of Charlemagne, *incerti anni*, art. 49 and 56. Baluzius's edition, i, p. 519.

117. See the Capitularies, v. art. 44, and the edict of Pistes in the year 869, art. 8 and 9, where we find the honorary rights of the lords established, in the same manner as they are at this very day.

121. *Historians of France by the Benedictines*, v, p. 9.

122. *Ibid.*, p. 10.

123. In the year 768.

124. Tom. ii, lectionis antiquæ.

125. Edition of the Capitularies, i, p. 188.

126. In the 1st Capitulary of the year 806. Baluzius's edition, p. 439, art. 5.

127. In Goldast, Constit. Impérial., ii, p. 19.

128. Baluzius's edition, p. 574, art. 14.

129. Capitulary of the year 877. Baluzius's edition, p. 272.

130. In Father Labbe's Councils, ix, col. 424; and in Dumont's Corp. Diplomat., i, art. 36.

131. By the mother's side.

132. See his third Capitulary of the year 811, p. 486, art. 1, 2, 3, 4, 5, 6, 7, and 8; and the first Capitulary of the year 812, p. 490, art. 1; and the Capitulary of the year 812, p. 494, art. 9 and 11, etc.

133. See the Capitulary de Villis in the year 800; his second Capitulary of the year 813, art. 6 and 19; and the fifth book of the Capitularies, art. 303.

134. Capitulary de Villis, art. 39. See this whole Capitulary, which is a masterpiece of prudence, good administration, and economy.

135. See among others the foundation of the Archbishopric of Bremen, in the Capitulary of the year 789. Baluzius's edition, p. 245.

136. For instance, the prohibition of the king's judges against entering upon the territory to demand the freda, and other duties. I have said a

good deal concerning this in the preceding book, 20, 21, 22.

137. The anonymous author of the Life of Louis the Debonnaire in Duchesne's Collection, tom. ii, p. 295.

138. See his trial and the circumstances of his deposition, in Duchesne's Collection, tom. ii, p. 333.

139. He directed him to show unlimited clemency (*indeficientem misericordiam*) to his sisters, his brothers, and his nephews. Tegan in the collection of Duchesne, ii, p. 276.

140. See his letters.

141. See his trial and the circumstances of his deposition, in Duchesne's Collection, ii, p. 331. See also his life written by Tegan: "*Tanto enim odio laborabat, ut tæderet eos vita ipsius,*" says this anonymous author in Duchesne, ii, p. 307.

142. The anonymous author of the Life of Louis the Debonnaire in Duchesne's Collection, ii, p. 298.

143. Tegan says that what seldom happened under Charlemagne was a common practice under Louis.

144. Being desirous to check the nobility, he promoted one Bernard to the place of chamberlain, by which the great lords were exasperated to the highest pitch.

145. Tegan, *De Gestis Ludovici pii*.

146. Nitard, iv, *prope finem*.

147. *Ibid.*

148. See book xxx. 13.

149. Hincmar, let. 1, to Louis the Stammerer.

150. See the fragment of the Chronicle of the Monastery of St. Sergius of Angers, in Duchesne, ii, p. 401.

151. See what the bishops say in the synod of the year 845, apud Teudonis villam, art. 4.

152. See the synod in the year 845, apud Teudonis villam, art. 3 and 4, which gives a very exact description of things; as also, that of the same year, held at the palaces of Vernes, art. 12, and the synod of Beauvais, also in the same year, art. 3, 4, and 6, in the Capitulary in villa Sparnaco, in the year 846, art. 20, and the letter which the bishops assembled at Rheims wrote in 858, to Louis, King of Germany, art. 8.

153. See the Capitulary in villa Sparnaco, in the year 846. The nobility had set the King against the bishops, insomuch that he expelled them from the assembly; a few of the canons enacted in council were picked out, and the prelates were told that these were the only ones which should be observed; nothing was granted them that could be refused. See art. 20, 21 and 22. See also the letter which the bishops assembled at Rheims wrote in the year 858 to Louis, King of Germany, art. 8, and the edict of Pistes, in the year 864, art. 5.

154. See this very Capitulary in the year 846, in villa Sparnaco. See also the Capitulary of the assembly held apud Marsnam in the year 847, art. 4, wherein the clergy reduced themselves to demand only the restitution of what they had been possessed of under Louis the Debonnaire. See also the Capitulary of the year 851, apud Marsnam, art. 6, and 7, which confirms the nobility and clergy in their several possessions, and that apud Bonoilum, in the year 856, which is a

remonstrance of the bishops to the king, because the evils, after so many laws, had not been redressed; and, in fine, the letter which the bishops assembled at Rheims wrote in the year 858, to Louis, King of Germany, art. 8.

155. Art. 8.

156. See the Capitulary of the year 851, art. 6 and 7.

157. Charles the Bald, in the Synod of Soissons, says, that he had promised the bishops not to issue any more precepts relating to church-lands. Capitulary of the year 853, art. 11, Baluzius's edition. ii, p. 56.

158. See the Capitulary of Charles the Bald, apud Saponarias, in the year 859, art. 3. "Venilon, whom I made Archbishop of Sens, has consecrated me; and I ought not to be expelled the kingdom by anybody."

159. See the Capitulary of Charles the Bald, De Carisiaco, in the year 857, Baluzius's edition, ii, p. 88, §§ 1, 2, 3, 4, and 7.

160. See the synod of Pistes in the year 862, art. 4, and the Capitulary of Lewis II, apud Vernis palatium, in the year 883, art. 4 and 5.

161. Capitulary of the year 876, under Charles, the Bald, in synodo Pontigonensi, Baluzius's edition, art. 12.

162. See what has been said already, book xxx, last chapter, towards the end.

163. In the year 587, in Gregory of Tours, ix.

164. See the following chapter, where I shall speak more diffusely of those partitions; and the notes in which they are quoted.

165. In the year 806, between Charles, Pepin, and Louis, it is quoted by Goldast, and by Baluzius, ii, p. 439.

166. Art. 9, p. 443, which is agreeable to the treaty of Andelot, in Gregory of Tours, ix.

167. Art. 10, and there is no mention made of this in the treaty of Andelot.

168. In Baluzius, i, p. 174, art. 9. See also the division made by the same emperor in the year 837, art. 6, Baluzius's edition, p. 686.

169. In the year 811, Baluzius's edition, i, p. 486, art. 7 and 8, and that of the year 812, *ibid.* p. 490, art. 1. See also the Capitulary of the year 807, Baluzius's edition, i, p. 458.

170. In the year 793, inserted in the law of the Lombards, iii, tit. 9, cap. ix.

171. In the year 847, quoted by Aubert le Mire, and Baluzius, ii, page 42.

172. Adnunciatio.

173. Art. 2, of the Declaration of Charles.

174. Capitulary of the year 877, tit. 53, art. 9 and 10, apud Carisiacum, *similiter et de nostris vassallis faciendum est, &c.* This Capitulary relates to another of the same year, and of the same place, art. 3.

175. Capitulary of Aix la Chapelle, in the year 813, art. 16, and the Capitulary of Pepin, in the year 783, art. 5.

176. See the capitulary de Carisiaco, in the year 856, art. 10 and 13. Baluzius's edition, tom. ii, p. 83, in which the king, together with the lords spiritual and temporal, agreed to this.

177. In the year 757, art. 6, Baluzius's edition, p. 181.

178. Book i, 1.

179. At least in Italy and Germany.

180. Book i, of fiefs, 1.

181. Ibid.

182. Capitulary of the year 802, art. 7, Baluzius's edition, p. 365.

183. Apud Marsnam, in the year 847, Baluzius's edition, p. 42.

184. Art. 5, *ibid.*, p. 44.

185. Apud Argentoratum, in Baluzius, *Capitularies*, ii, p. 39.

186. See the law of Guy, King of the Romans, among those which were added to the Salic law, and to that of the Lombards, tit. 6, § 2 in Echard.

187. Some authors pretend that the County of Toulouse had been given away by Charles Martel, and passed by inheritance down to Raymond, the last count; but, if this be true, it was owing to some circumstances which might have been an inducement to choose the Counts of Toulouse from among the children of the last possessor.

188. See his Capitulary of the year 877, tit. 53, art. 9 and 10, apud Carisiacum. This Capitulary bears relation to another of the same year



and place, art. 3.

189. The third Capitulary of the year 812, art. 7, and that of the year 815, art. 6, on the Spaniards. The collection of the Capitularies, book 5, art. 288, and the Capitulary of the year 869, art. 2, and that of the year 877, art. 13, Baluzius's edition.

190. As appears from Otho of Frissingue, *Of the Actions of Frederic*, ii. 29.

191. See the ordinance of Philip Augustus in the year 1209, in the new collection.

192. Book i, tit. 1.

193. *Ibid.*

194. At least in Italy and Germany.

195. Book i, of fiefs, tit. 1.

196. Gerardus Niger and Aubertus de Orto.

197. Book i, of fiefs, tit. 1.

198. Cujas has proved it extremely well.

199. *Ibid.*

200. Arnold and his son Louis IV.

201. In the year 926, quoted by Aubert le Mire, *Cod. donationum piarum*, 27.

202. See the Capitulary of Charles the Bald, in the year 877, apud Carisiacum, on the importance of Paris, St. Denis, and the castles on the Loire, in those days.

203. See above, chapter 30.

204. See the Salic law, and the law of the Ripuarians, in the title of Allodia.

205. See the Capitulary of the year 817, which contains the first partition made by Louis the Debonnaire among his children.

206. See his two letters upon this subject, the title of one of which is De Divisione imperii.

207. See the ordinance of Philip Augustus, in the year 1209, on the fiefs.

208. We find several of these conventions in the charters, as in the register book of Vendôme, and that of the abbey, in St. Cyprian in Poitou, of which Mr. Galland has given some extracts, p. 55.

209. But they could not abridge the fiefs, that is, abolish a portion of it.

210. They fixed the portion which they could dismember.

211. This was the reason that the lords obliged the widow to marry again.

212. Most of the great families had their particular laws of succession. See what M. de la Thaumassière says concerning the families of Berri.

213. We see in the Capitulary of the year 817, apud Carisiacum, art. 3,

Baluzius's edition, ii, p. 269, the moment in which the kings caused the fiefs to be administered in order to preserve them for the minors; an example followed by the lords, and which gave rise to what we have mentioned by the name of the guardianship of a nobleman's children.

214. We find the formula thereof in the second Capitulary of the year 802. See also that of the year 854, art. 13, and others.

215. M. Du Cange in the word *hominium*, p. 1163, and in the word *fidelitas*, p. 474, cites the charters of the ancient homages where these differences are found, and a great number of authorities which may be seen. In paying homage, the vassal put his hand on that of his lord, and took his oath; the oath of fealty was made by swearing on the gospels. The homage was performed kneeling, the oath of fealty standing. None but the lord could receive homage, but his officers might take the oath of fealty. -- See Littleton, §§ 91, 92, faith and homage, that is, fidelity and homage.

216. Capitularies of Charles the Bald, in the year 860, *post reditum a Conftuentibus*, art. 3, Baluzius's edition, p. 145.

217. *Ibid.*, art. 1.

218. Suger, *Lib. de administratione sua*.

219. Year 757, cap. xvii.

220. One would think that here was an homage and an oath of fealty. See note 6, p. 314.

221. Book iv, *de fendis*, tit. 59.

222. In the title of *Allodia*.

223. *Somme Rurale*, i, tit. 76, p. 447.

224. According to an ordinance of St. Louis, in the year 1246 to settle the customs of Anjou and Maine; those who shall have the care of the heiress of a fief shall give security to the lord, that she shall not be married without his consent.

225. Decision 155, No. 8; and 204, No. 38.

226. In *Capell. Thol.*, decision 453.

227. *Æneid*, iii, 523.