

Book XVIII. Of Laws in the Relation They Bear to the Nature of the Soil

1. How the Nature of the Soil has an Influence on the Laws. The goodness of the land, in any country, naturally establishes subjection and dependence. The husbandmen, who compose the principal part of the people, are not very jealous of their liberty; they are too busy and too intent on their own private affairs. A country which overflows with wealth is afraid of pillage, afraid of an army. "Who is there that forms this goodly party?" said Cicero to Atticus; [1] "are they the men of commerce and husbandry? Let us not imagine that these are averse to monarchy -- these to whom all governments are equal, as soon as they bestow tranquillity."

Thus monarchy is more frequently found in fruitful countries, and a republican government in those which are not so; and this is sometimes a sufficient compensation for the inconveniences they suffer by the sterility of the land.

The barrenness of the Attic soil established there a democracy; and the fertility of that of Lacedæmonia an aristocratic constitution. For in those times Greece was averse to the government of a single person, and aristocracy bore the nearest resemblance to that government.

Plutarch says [2] that the Cilonian sedition having been appeased at Athens, the city fell into its ancient dissensions, and was divided into as many parties as there were kinds of land in Attica. The men who inhabited the eminences would, by all means, have a popular government; those of the flat, open country demanded a government composed of the chiefs; and they who were near the sea desired a mixture of both.

2. The same Subject continued. These fertile provinces are always of a level surface, where the inhabitants are unable to dispute against a stronger power; they are then obliged to submit; and when they have once submitted, the spirit of liberty cannot return; the wealth of the

country is a pledge of their fidelity. But in mountainous districts, as they have but little, they may preserve what they have. The liberty they enjoy, or, in other words, the government they are under, is the only blessing worthy of their defence. It reigns, therefore, more in mountainous and rugged countries than in those which nature seems to have most favoured.

The mountaineers preserve a more moderate government, because they are not so liable to be conquered. They defend themselves easily, and are attacked with difficulty; ammunition and provisions are collected and carried against them with great expense, for the country furnishes none. It is, then, a more arduous, a more dangerous, enterprise to make war against them; and all the laws that can be enacted for the safety of the people are there of least use.

3. What Countries are best cultivated. Countries are not cultivated in proportion to their fertility, but to their liberty; and if we make an imaginary division of the earth, we shall be astonished to see in most ages deserts in the most fruitful parts, and great nations in those where nature seems to refuse everything.

It is natural for a people to leave a bad soil to seek a better, and not to leave a good soil to go in search of worse. Most invasions have, therefore, been made in countries which nature seems to have formed for happiness; and as nothing is more nearly allied than desolation and invasion, the best provinces are most frequently depopulated, while the frightful countries of the north continue always inhabited, from their being almost uninhabitable.

We find by what historians tell us of the passage of the people of Scandinavia along the banks of the Danube that this was not a conquest, but only a migration into desert countries.

These happy climates must therefore have been depopulated by other

migrations, though we know not the tragic scenes that happened. "It appears by many monuments of antiquity," says Aristotle, [3] "that the Sardinians were a Grecian colony. They were formerly very rich; and Aristeus, so famed for his love of agriculture, was their law-giver. But they have since fallen to decay; for the Carthaginians, becoming their masters, destroyed everything proper for the nourishment of man, and forbade the cultivation of the lands on pain of death." Sardinia was not recovered in the time of Aristotle, nor is it to this day.

The most temperate parts of Persia, Turkey, Muscovy, and Poland have not been able to recover perfectly from the devastations of the Tartars.

4. New Effects of the Fertility and Barrenness of Countries. The barrenness of the earth renders men industrious, sober, inured to hardship, courageous, and fit for war; they are obliged to procure by labour what the earth refuses to bestow spontaneously. The fertility of a country gives ease, effeminacy, and a certain fondness for the preservation of life. It has been remarked that the German troops raised in those places where the peasants are rich, as, for instance, in Saxony, are not so good as the others. Military laws may provide against this inconvenience by a more severe discipline.

5. Of the Inhabitants of Islands. The inhabitants of islands have a higher relish for liberty than those of the continent. Islands are commonly of small extent; [4] one part of the people cannot be so easily employed to oppress the other; the sea separates them from great empires; tyranny cannot so well support itself within a small compass: conquerors are stopped by the sea; and the islanders, being without the reach of their arms, more easily preserve their own laws.

6. Of Countries raised by the Industry of Man. Those countries which the industry of man has rendered habitable, and which stand in need of the same industry to provide for their subsistence, require a mild and moderate government. There are principally three of this species: the

two fine provinces of Kiang-nan and Tsekiang in China; Egypt, and Holland.

The ancient emperors of China were not conquerors. The first thing they did to aggrandise themselves was what gave the highest proof of their wisdom. They raised from beneath the waters two of the finest provinces of the empire; these owe their existence to the labour of man. And it is the inexpressible fertility of these two provinces which has given Europe such ideas of the felicity of that vast country. But a continual and necessary care to preserve from destruction so considerable a part of the empire demanded rather the manners of a wise than of a voluptuous nation, rather the lawful authority of a monarch than the tyrannic sway of a despotic prince. Power was, therefore, necessarily moderated in that country, as it was formerly in Egypt, and as it is now in Holland, which nature has made to attend to herself, and not to be abandoned to negligence or caprice.

Thus, in spite of the climate of China, where they are naturally led to a servile obedience; in spite of the apprehensions which follow too great an extent of empire, the first legislators of this country were obliged to make excellent laws, and the government was frequently obliged to follow them.

7. Of human Industry. Mankind by their industry, and by the influence of good laws, have rendered the earth more proper for their abode. We see rivers flow where there have been lakes and marshes: this is a benefit which nature has not bestowed; but it is a benefit maintained and supplied by nature. When the Persians[5] were masters of Asia, they permitted those who conveyed a spring to any place which had not been watered before to enjoy the benefit for five generations; and as a number of rivulets flowed from Mount Taurus, they spared no expense in directing the course of their streams. At this day, without knowing how they came thither, they are found in the fields and gardens.

Thus, as destructive nations produce evils more durable than themselves, the actions of an industrious people are the source of blessings which last when they are no more.

8. The general Relation of Laws. The laws have a very great relation to the manner in which the several nations procure their subsistence. There should be a code of laws of a much larger extent for a nation attached to trade and navigation than for people who are content with cultivating the earth. There should be a much greater for the latter than for those who subsist by their flocks and herds. There must be a still greater for these than for such as live by hunting.

9. Of the Soil of America. The cause of there being such a number of savage nations in America is the fertility of the earth, which spontaneously produces many fruits capable of affording them nourishment. If the women cultivate a spot of land around their cottages, the maize grows up presently; and hunting and fishing put the men in a state of complete abundance. Besides, black cattle, as cows, buffaloes, &c., thrive there better than carnivorous beasts. The latter have always reigned in Africa.

We should not, I believe, have all these advantages in Europe if the land was left uncultivated; it would scarcely produce anything besides forests of oaks and other barren trees.

10. Of Population in the Relation it bears to the Manner of procuring Subsistence. Let us see in what proportion countries are peopled where the inhabitants do not cultivate the earth. As the produce of uncultivated land is to that of land improved by culture, so the number of savages in one country is to that of husbandmen in another: and when the people who cultivate the land cultivate also the arts, this is also in such proportions as would require a minute detail.

They can scarcely form a great nation. If they are herdsmen and

shepherds, they have need of an extensive country to furnish subsistence for a small number; if they live by hunting, their number must be still less, and in order to find the means of life they must constitute a very small nation.

Their country commonly abounds with forests, which, as the inhabitants have not the art of draining off the waters, are filled with bogs; here each troop canton themselves, and form a petty nation.

11. Of savage and barbarous Nations. There is this difference between savage and barbarous nations: the former are dispersed clans, which for some particular reason cannot be joined in a body; and the latter are commonly small nations, capable of being united. The savages are generally hunters; the barbarians are herdsmen and shepherds.

This appears plain in the north of Asia. The people of Siberia cannot live in bodies, because they are unable to find subsistence; the Tartars may live in bodies for some time, because their herds and flocks may for a time be reassembled. All the clans may then be reunited, and this is effected when one chief has subdued many others; after which they may do two things -- either separate, or set out with a design to make a great conquest in some southern empire.

12. Of the Law of Nations among People who do not cultivate the Earth. As these people do not live in circumscribed territories, many causes of strife arise between them; they quarrel about waste land as we about inheritances. Thus they find frequent occasions for war, in disputes in relation either to their hunting, their fishing, the pasture for their cattle, or the violent seizing of their slaves; and as they are not possessed of landed property, they have many things to regulate by the law of nations, and but few to decide by the civil law.

13. Of the Civil Laws of those Nations who do not cultivate the Earth. The division of lands is what principally increases the civil code.

Among nations where they have not made this division there are very few civil laws.

The institutions of these people may be called manners rather than laws.

Among such nations as these the old men, who remember things past, have great authority; they cannot there be distinguished by wealth, but by wisdom and valour.

These people wander and disperse themselves in pasture grounds or in forests. Marriage cannot there have the security which it has among us, where it is fixed by the habitation, and where the wife continues in one house; they may then more easily change their wives, possess many, and sometimes mix indifferently like brutes.

Nations of herdsmen and shepherds cannot leave their cattle, which are their subsistence; neither can they separate themselves from their wives, who look after them. All this ought, then, to go together, especially as living generally in a flat open country, where there are few places of considerable strength, their wives, their children, their flocks, may become the prey of their enemies.

The laws regulate the division of plunder, and give, like our Salic laws, a particular attention to theft.

14. Of the political State of the People who do not cultivate the Land. These people enjoy great liberty; for as they do not cultivate the earth, they are not fixed: they are wanderers and vagabonds; and if a chief should deprive them of their liberty, they would immediately go and seek it under another, or retire into the woods, and there live with their families. The liberty of the man is so great among these people that it necessarily draws after it that of the citizen.

15. Of People who know the Use of Money. Aristippus, being cast away, swam and got safely to the next shore, where, beholding geometrical figures traced in the sand, he was seized with a transport of joy, judging that he was among Greeks, and not in a nation of barbarians.

Should you ever happen to be cast by some adventure among an unknown people; upon seeing a piece of money you may be assured that you have arrived in a civilised country.

The culture of lands requires the use of money. This culture supposes many inventions and many degrees of knowledge; and we always see ingenuity, the arts, and a sense of want making their progress with an equal pace. All this conduces to the establishment of a sign of value.

Torrents and eruptions have made the discovery that metals are contained in the bowels of the earth.[6] When once they have been separated, they have easily been applied to their proper use.

16. Of Civil Laws among People who know not the Use of Money. When a people have not the use of money, they are seldom acquainted with any other injustice than that which arises from violence; and the weak, by uniting, defend themselves from its effects. They have nothing there but political regulations. But where money is established, they are subject to that injustice which proceeds from craft -- an injustice that may be exercised in a thousand ways. Hence they are forced to have good civil laws, which spring up with the new practices of iniquity.

In countries where they have no specie, the robber takes only bare movables, which have no mutual resemblance. But where they make use of money, the robber takes the signs, and these always resemble each other. In the former nothing can be concealed, because the robber takes along with him the proofs of his conviction; but in the latter it is quite the contrary.

17. Of political Laws among Nations who have not the Use of Money. The greatest security of the liberties of a people who do not cultivate the earth is their not knowing the use of money. What is gained by hunting, fishing, or keeping herds of cattle cannot be assembled in such great quantity, nor be sufficiently preserved, for one man to find himself in a condition to corrupt many others: but when, instead of this, a man has a sign of riches, he may obtain a large quantity of these signs, and distribute them as he pleases.

The people who have no money have but few wants; and these are supplied with ease, and in an equal manner. Equality is then unavoidable; and hence it proceeds that their chiefs are not despotic.

If what travellers tell us be true, the constitution of a nation of Louisiana, called the Natches, is an exception to this. Their chief disposes of the goods of all his subjects, and obliges them to work and toil, according to his pleasure.[7] He has a power like that of the grand signior, and they cannot even refuse him their heads. When the presumptive heir enters the world, they devote all the sucking children to his service during his life. One would imagine that this is the great Sesostris. He is treated in his cottage with as much ceremony as an emperor of Japan or China.

18. Of the Power of Superstition. The prejudices of superstition are superior to all others, and have the strongest influence on the human mind. Thus, though the savage nations have naturally no knowledge of despotic tyranny, still they feel the weight of it. They adore the sun; and if their chief had not imagined that he was the brother of this glorious luminary, they would have thought him a wretch like themselves.

19. Of the Liberty of the Arabs and the Servitude of the Tartars. The Arabs and Tartars are nations of herdsmen and shepherds. The Arabs find themselves in that situation of which we have been speaking, and are therefore free; whilst the Tartars (the most singular people on earth)

are involved in a political slavery.[8] I have already given reasons for this[9] and shall now assign some others.

They have no towns, no forests, and but few marshes; their rivers are generally frozen, and they dwell in a level country of an immense extent. They have pasture for their herds and flocks, and consequently property; but they have no kind of retreat, or place of safety. A khan is no sooner overcome than they cut off his head; his children are treated in the same manner,[10] and all his subjects belong to the conqueror. These are not condemned to a civil slavery, for in that case they would be a burden to a simple people, who have no lands to cultivate, and no need of any domestic service. They therefore add to the bulk of the nation; but instead of civil servitude, a political slavery must naturally be introduced among them.

It is apparent that in a country where the several clans make continual war, and are perpetually conquering each other; in a country where, by the death of the chief, the body politic of the vanquished clan is always destroyed, the nation in general can enjoy but little freedom; for there is not a single party that must not have been often subdued.

A conquered people may preserve some degree of liberty when, by the strength of their situation, they are in a state that will admit of capitulating after their defeat. But the Tartars, always defenceless, being once overcome, can never be able to obtain conditions.

I have said, in chapter 2, that the inhabitants of cultivated plains are seldom free. Circumstances have occurred to put the Tartars, who dwell in uncultivated plains, in the same situation.

20. Of the Law of Nations as practised by the Tartars. The Tartars appear to be mild and humane among themselves; and yet they are most cruel conquerors: when they take cities they put the inhabitants to the sword, and imagine that they act humanely if they only sell the people,

or distribute them among their soldiers.

They have destroyed Asia, from India even to the Mediterranean; and all the country which forms the east of Persia they have rendered a desert.

The law of nations is owing, I think, to the following cause. These people having no towns, all their wars are carried on with eagerness and impetuosity. They fight whenever they hope to conquer; and when they have no such hope, they join the stronger army. With such customs, it is contrary to the law of nations that a city incapable of repelling their attack should stop their progress. They regard not cities as an association of inhabitants, but as places made to bid defiance to their power. They besiege them without military skill, and expose themselves greatly in the attack; and therefore revenge themselves on all those who have spilled their blood.

21. The Civil Law of the Tartars. Father Du Halde says that amongst the Tartars the youngest of the males is always the heir, by reason that as soon as the elder brothers are capable of leading a pastoral life they leave the house with a certain number of cattle, given them by their father, and build a new habitation. The last of the males, who continues at home with the father, is then his natural heir.

I have heard that a like custom was also observed in some small districts of England; and we find it still in Brittany, in the duchy of Rohan, where it obtains with regard to ignoble tenures. This is doubtless a pastoral law conveyed thither by some of the people of Britain, or established by some German nation. By Cæsar and Tacitus we are informed that the latter cultivated but little land.

22. Of a Civil Law of the German Nations. I shall here explain how that particular passage of the Salic law which is commonly distinguished by the term "the Salic law" relates to the institutions of a people who do not cultivate the earth, or at least who cultivate it but very little.

The Salic law ordains[11] that, when a man has left children behind him, the males shall succeed to the Salic land in preference to the females.

To understand the nature of those Salic lands, there needs no more than to search into the usages or customs of the Franks with regard to lands before they left Germany.

Mr. Echard has very plainly proved that the word Salic is derived from Sala, which signifies a house; and therefore that the Salic land was the land belonging to the house. I shall proceed further, and examine into the nature of the house, and of the land belonging to the house, among the Germans.

"They dwell not in towns," says Tacitus, "nor can they bear to have their habitations contiguous to those of others; every one leaves a space or small piece of ground about his house, which is enclosed." [12] Tacitus is very exact in this account, for many laws of the Barbarian codes have different decrees against those who threw down this enclosure, as well as against such as broke into the house. [13]

We learn from Tacitus and Cæsar that the lands cultivated by the Germans were given them only for the space of a year, after which they again became public. They had no other patrimony but the house and a piece of land within the enclosure that surrounded it. [14] It was this particular patrimony which belonged to the males. And, indeed, how could it belong to the daughters? They were to pass into another habitation.

The Salic land was then within that enclosure which belonged to a German house; this was the only property they had. The Franks, after their conquests, acquired new possessions, and continued to call them Salic lands.

When the Franks lived in Germany their wealth consisted of slaves, flocks, horses, arms, &c. The habitation and the small portion of land

adjoining it were naturally given to the male children who were to dwell there. But afterwards, when the Franks had by conquest acquired large tracts of land, they thought it hard that the daughters and their children should be incapable of enjoying any part of them. Hence it was that they introduced a custom of permitting the father to settle the estate after his death upon his daughter, and her children. They silenced the law; and it appears that these settlements were frequent, since they were entered in the formularies.[15]

Among these formularies I find one of a singular nature.[16] A grandfather ordained by will that his grandchildren should share his inheritance with his sons and daughters. What then became of the Salic law? In those times either it would not be observed, or the continual use of nominating the daughters to an inheritance had made them consider their ability to succeed as a case authorised by custom.

The Salic law had not in view a preference of one sex to the other, much less had it a regard to the perpetuity of a family, a name, or the transmission of land. These things did not enter into the heads of the Germans; it was purely an economical law, which made the house and the land dependent thereon to the males who should dwell in it, and to whom it consequently was of most service.

We need here only transcribe the title of the Allodial Lands of the Salic law; that famous text of which so many have talked, and which so few have read.

"1. If a man dies without issue, his father or mother shall succeed him. 2. If he has neither father nor mother, his brother or sister shall succeed him. 3. If he has neither brother nor sister, the sister of his mother shall succeed him. 4. If his mother has no sister, the sister of his father shall succeed him. 5. If his father has no sister, the nearest relative by the male side shall succeed. 6. Not any part of the Salic land shall pass to the females; but it shall belong to the males;

that is, the male children shall succeed their father." [17]

It is plain that the first five articles relate to the inheritance of a man who dies without issue; and the sixth to the succession of him who has children.

When a man dies without children, the law ordains that neither of the two sexes shall have the preference to the other, except in certain cases. In the first two degrees of succession, the advantages of the males and females were the same; in the third and fourth, the females had the preference; and the males in the fifth.

Tacitus points out the source of these extravagances. "The sister's children," says he, "are as dear to their uncle as to their own father. There are men who regard this degree of kindred as more strict, and even more holy. They prefer it when they receive hostages." [18] Hence it proceeds that our earliest historians speak in such strong terms of the love of the kings of the Franks for their sisters and their sisters' children. [19] And, indeed, if the children of the sister were considered in her brother's house as his own children, it was natural for these to regard their aunt as their mother.

The sister of the mother was preferred to the father's sister; this is explained by other texts of the Salic law. When a woman became a widow, [20] she fell under the guardianship of her husband's relatives; the law preferred to this guardianship the relatives by the females before those by the males. Indeed, a woman who entered into a family joining herself with those of her own sex, became more united to her relatives by the female than by the male. Moreover, when a man killed another, and had not wherewithal to pay the pecuniary penalty, the law permitted him to deliver up his substance, and his relatives were to supply the deficiency. [21] After the father, mother, and brother, the sister of the mother was to pay, as if this tie had something in it most tender: now the degree of kindred which imposes the burdens ought also

to confer the advantages.

The Salic law enjoins that after the father's sister, the succession should be held by the nearest relative male; but if this relative was beyond the fifth degree, he should not inherit. Thus a female of the fifth degree might inherit to the prejudice of a male of the sixth; and this may be seen in the law of the Ripuarian Franks (a faithful interpreter of the Salic law), under the title of Allodial Lands, where it closely adheres to the Salic law on the same subject.[22]

If the father left issue, the Salic law would have the daughters excluded from the inheritance of the Salic land, and determined that it should belong to the male children.

It would be easy for me to prove that the Salic law did not absolutely exclude the daughters from the possession of the Salic land, but only in the case where they were debarred by their brothers. This appears from the letter of the Salic law; which, after having said that the women shall possess none of the Salic land, but only the males, interprets and restrains itself by adding, "that is, the son shall succeed to the inheritance of the father."

2. The text of the Salic law is cleared up by the law of the Ripuarian Franks, which has also a title on allodial lands very conformable to that of the Salic law.[23]

3. The laws of these barbarous nations who all sprang from Germany interpret each other, more particularly as they all have nearly the same spirit. The Saxon law enjoined the father and mother to leave their inheritance to their son, and not to their daughter; but if there were none but daughters, they were to have the whole inheritance.[24]

4. We have two ancient formularies[25] that state the case in which, according to the Salic law, the daughters were excluded by the males;

that is, when they stood in competition with their brother.

5. Another formulary[26] proves that the daughter succeeded to the prejudice of the grandson; she was therefore excluded only by the son.

6. If daughters had been generally debarred by the Salic law from the inheritance of land, it would be impossible to explain the histories, formularies, and charters which are continually mentioning the lands and possessions of the females under the first race.

People have been wrong in asserting that the Salic lands were fiefs.[27]

1. This head is distinguished by the title of allodial lands. 2. Fiefs at first were not hereditary, 3. If the Salic lands had been fiefs, how could Marculfus treat that custom as impious which excluded the women from inheriting, when the males themselves did not succeed to fiefs? 4. The charters which have been cited to prove that the Salic lands were fiefs only show that they were freeholds. 5. Fiefs were not established till after the conquest, and the Salic customs existed long before the Franks left Germany. 6. It was not the Salic law that formed the establishment of fiefs, by setting bounds to the succession of females; but it was the establishment of fiefs that prescribed limits to the succession of females, and to the regulations of the Salic law.

After what has been said, one would not imagine that the perpetual succession of males to the crown of France should have taken its rise from the Salic law. And yet this is a point indubitably certain. I prove it from the several codes of the barbarous nations. The Salic law,[28] and the law of the Burgundians,[29] debarred the daughters from the right of succeeding to the land in conjunction with their brothers; neither did they succeed to the crown. The law of the Visigoths,[30] on the contrary, permitted the daughters to inherit the land with the brothers:[31] and the women were capable of inheriting the crown.[32] Among these people the regulations of the civil law had an effect on the political.

This was not the only case in which the political law of the Franks gave way to the civil. By the Salic law, all the brothers succeeded equally to the land, and this was also decreed by a law of the Burgundians. Thus, in the kingdom of the Franks, and in that of the Burgundians, all the brothers succeeded to the crown, if we except a few murders and usurpations which took place amongst the Burgundians.

23. Of the regal Ornaments among the Franks. A people who do not cultivate the land have no idea of luxury. We may see, in Tacitus, the admirable simplicity of the German nations: they had no artificial elegances of dress; their ornaments were derived from nature. If the family of their chief was to be distinguished by any sign, it was no other than that which nature bestowed. The kings of the Franks, of the Burgundians, and the Visigoths wore their long hair for a diadem.

24. Of the Marriages of the Kings of the Franks. I have already mentioned that with people who do not cultivate the earth, marriages are less fixed than with others, and that they generally take many wives. "Of all the barbarous nations the Germans were almost the only people who were satisfied with one wife, [33] if we except," says Tacitus, "some persons who, not from a dissoluteness of manners, but because of their nobility, had many." [34]

This explains the reason why the kings of the first race had so great a number of wives. These marriages were less a proof of incontinence than a consequence of dignity: and it would have wounded them in a tender point to have deprived them of such a prerogative. [35] This also explains the reason why the example of the kings was not followed by the subjects.

25. Childeric. "The laws of matrimony amongst the Germans," says Tacitus, "are strictly observed. Vice is not there a subject of ridicule. To corrupt or be corrupted is not called fashion, or the custom of the age: [36] there are few examples in this populous nation of

the violation of conjugal faith."[37]

This was the reason of the expulsion of Childeric: he shocked their rigid virtue, which conquest had not had time to corrupt.

26. Of the Time when the Kings of the Franks became of age. Barbarians who do not cultivate the earth have, strictly speaking, no jurisdiction, and are, as we have already remembered, rather governed by the law of nations than by civil institutions. They are, therefore, always armed. Thus Tacitus tells us "that the Germans undertook no affairs either of a public or private nature unarmed." [38] They gave their vote by the sound of their arms. [39] As soon as they could carry them, they were presented to the assembly; [40] they put a javelin into their hands; [41] and from that moment they were out of their minority: they had been a part of the family, now they became a part of the republic. [42]

"The eagles," said the king of the Ostrogoths, [43] "cease to feed their young ones as soon as their wings and talons are formed; the latter have no need of assistance when they are able themselves to seize their prey: it would be a disgrace if the young people in our armies were thought to be of an age unfit for managing their estates or regulating the conduct of their lives. It is virtue that constitutes full age among the Goths."

Childebert II was fifteen years old when Gontram, his uncle, declared that he was of age, and capable of governing by himself. [44] We find in the Ripuarian laws that the age of fifteen, the ability of bearing arms, and majority, went together. It is there said [45] "that if a Ripuarian dies, or is killed, and leaves a son behind him, that son can neither prosecute, nor be prosecuted, till he has completely attained the age of fifteen; and then he may either answer for himself or choose a champion." It was necessary that his mind should be sufficiently formed to be able to defend himself in court; and that his body should have all the strength that was proper for his defence in single combat. Among the Burgundians, [46] who also made use of this combat in their judiciary

proceedings, they were of age at fifteen.

Agathias tells us that the arms of the Franks were light: they might, therefore, be of age at fifteen. In succeeding times the arms they made use of were heavy, and they were already greatly so in the time of Charlemagne, as appears by our capitularies and romances. Those who had fiefs, [47] and were consequently obliged to do military service, were not then of age till they were twenty-one years old. [48]

27. The same Subject continued. We have seen that the Germans did not appear in their assemblies before they were of age; they were a part of the family, but not of the republic. This was the reason that the children of Clodomir, king of Orleans, and conqueror of Burgundy, were not proclaimed kings, because they were of too tender an age to be present at the assembly. They were not yet kings, but they had a right to the regal dignity as soon as they were able to bear arms; and in the meantime, Clotildis, their grandmother, governed the state. [49] But their uncles Clotarius and Childebert assassinated them, and divided their kingdom. This was the cause that in the following ages princes in their minority were proclaimed kings immediately after the death of their fathers. Thus Duke Gondevald saved Childebert II from the cruelty of Chilperic, and caused him to be proclaimed king when he was only five years old. [50]

But even in this change they followed the original spirit of the nation; for the public acts did not pass in the name of the young monarch. So that the Franks had a double administration: the one which concerned the person of the infant king, and the other which regarded the kingdom; and in the fiefs there was a difference between the guardianship and the civil administration.

28. Of Adoption among the Germans. As the Germans became of age by the wielding of arms, so they were adopted by the same sign. Thus Gontram, willing to declare his nephew Childebert of age and to adopt him for his

son, made use of these words: "I have put this javelin into thy hands as a token that I have given thee all my kingdom." [51] Then, turning towards the assembly, he added, "You see that my son Childebert is grown a man; obey him." Theodoric, king of the Ostrogoths, intending to adopt the king of the Heruli, wrote to him thus: [52] "It is a noble custom of ours to be adopted by arms; for men of courage alone deserve to be our children. Such is the efficacy of this act, that whoever is the object of it had rather die than submit to anything ignominious. Therefore, in compliance with the national usage, and because you are a man of courage, we adopt you for our son by these bucklers, these swords, these horses, which we send you as a present."

29. Of the sanguinary Temper of the Kings of the Franks. Clovis was not the only prince amongst the Franks who had invaded Gaul. Many of his relatives had penetrated into this country with particular tribes; but as he had met with much greater success, and could grant considerable settlements to such as followed him, the Franks flocked to him from all parts, so that the other chiefs found themselves too weak to resist him. He formed a design of exterminating his whole race, and he succeeded. [53] He feared, says Gregory of Tours, [54] lest the Franks should choose another chief. His children and successors followed this practice to the utmost of their power. Thus the brother, the uncle, the nephew, and, what is still worse, the father or the son, were perpetually conspiring against their whole family. The law continually divided the monarchy; while fear, ambition, and cruelty wanted to reunite it.

30. Of the national Assemblies of the Franks. It has been remarked above that nations who do not cultivate the land enjoy great liberty.

This was the case of the Germans. Tacitus says that they gave their kings, or chiefs, a very moderate degree of power; [55] and Cæsar adds further that in times of peace they had no common magistrates; but their princes administered justice in each village. [56] Thus, as Gregory of

Tours[57] sufficiently proves, the Franks in Germany had no king.

"The princes," says Tacitus, "deliberate on matters of no great concern; while affairs of importance are submitted to the whole nation, but in such a manner that these very affairs which are under the cognizance of the people are at the same time laid before the princes." [58] This custom was observed by them after their conquests, as may be seen in all their records. [59]

Tacitus says that capital crimes might be carried before the assembly. [60] It was the same after the conquest, when the great vassals were tried before that body.

31. Of the Authority of the Clergy under the first Race. The priests of barbarous nations are commonly invested with power, because they have both that authority which is due to them from their religious character, and that influence which among such a people is the offspring of superstition. Thus we see in Tacitus that priests were held in great veneration by the Germans, and that they presided in the assemblies of the people. [61] They alone were permitted [62] to chastise, to bind, to smite; which they did, not by order of the prince, or as his ministers of justice, but as by an inspiration of that Deity ever supposed to be present with those who made war.

We ought not, therefore, to be astonished when, from the very beginning of the first race, we meet with bishops the dispensers of justice, [63] when we see them appear in the assemblies of the nation; when they have such a prodigious influence on the minds of sovereigns; and when they acquire so large a share of property.

1. Book vii. 7.

2. Solon.

3. Or he who wrote the book *De Mirabilibus*.

4. Japan is an exception to this, by its great extent as well as by its slavery.

5. Polybius, x. 25.

6. It is thus that Diodorus, v. 35, tells us the shepherds found gold in the Pyrenean mountains.

7. *Edifying Letters*, coll. xx.

8. When a khan is proclaimed, all the people cry that his word shall be as a sword.

9. Book xvii. 5.

10. We ought not therefore to be astonished at Mahomet, the son of Miriveis, who, upon taking Ispahan, put all the princes of the blood to the sword.

11. Tit. 62.

12. Nullas Germanorum populis urbes habitari satis notum est, ne pati quidem inter se junctas sedes; colunt discreti, ut nemus placuit. Vicos locant, non in nostrum morem connexis et coharentibus ædifidis: suam quisque domum spatio circumdat. -- *De Moribus Germanorum*, 16.

13. The Law of the Alemans, 10, and the Law of the Bavarians, tit. 10, §§ 1, 2.

14. This inclosure is called *curtis* in the charters.

15. See Marculfus, ii, form. 10, 12. Appendix to Marculfus, form. 49, and the ancient formularies of Sirmondus, form. 22.

16. Form. 55, in Lindembroch's collection.

17. De terra vero Salica in mulierem nulla portio hereditatis transit, sed hoc virilis sexus acquirit, hoc est filii in ipsa hereditate succedunt. -- Tit. 68, § 6.

18. Sororum filiis idem apud avunculum quam apud patrem honor. Quidam sanctiorem arcti-oremque hunc nexum sanguinis arbitrantur, et in accipiendis obsidibus magis exigunt, tanquam ii et animum firmiter et domum latius teneant -- De Moribus Germanorum, 20.

19. See, in Gregory of Tours, viii. 18, 20 and ix, 16, 20, the rage of Gontram at Leovigild's ill-treatment of Ingunda, his niece, which Childebert her brother took up arms to revenge.

20. Salic Law, tit. 47.

21. Ibid., tit. 61, § 1.

22. Et deinceps usque ad quintum genuculum qui proximus fuerit in hereditatem succedat. -- Tit. 56, § 6.

23. Tit. 56.

24. Tit. 7, § 1: Pater aut mater defuncti, filio non filiæ hereditatem relinquunt; § 4, qui defunctus, non filios, sed filias reliquerit, ad eas omnis hereditas pertineat.

25. In Marculfus, ii, form. 12, and in the Appendix to Marculfus, form. 49.

26. Lindembroch's collection, form. 55.

27. Du Cange, Pithou, &c.

28. Tit. 62.

29. Tit. 1, § 3; tit. 16, § 1; tit. 51.

30. Book iv, tit. 2, § 1.

31. The German nations, says Tacitus, *De Moribus Germanorum*, 22, had common customs, as well as those which were peculiar to each.

32. Among the Ostrogoths, the crown twice devolved to the males by means of females; the first time to Athalaricus, through Amalasantha, and the second to Theodat, through Amalafreda. Not but that the females of that nation might have held the crown in their own right; for Amalasantha reigned after the death of Athalaricus; nay, even after the election of Theodat, and in conjunction with that prince. See Amalasantha's and Theodat's letters, in Cassiodorus, x.

33. *Prope soli Barbarorum singulis uxoribus contenti stint.* -- *De Moribus Germanorum*, 18.

34. *Exceptis admodum paucis qui non libidine, sed ob nobilitatem, plurimis nuptiis ambiuntur.* -- *Ibid.*

35. See Fredegarius, *Chronicle of the year 628.*

36. *Severa matrimonia . . . nemo illic vitia ridet, nec corrumpere et corrumpi sæculum vocatur.* -- *De Moribus Germanorum*, 19.

37. *Paucissima in tam numerosa gente adulteria.* -- *Ibid.*

38. Nihil neque publicæ neque privatæ rei nisi armati agunt. -- Ibid., 13.

39. Si displicuit sententia, fremitu aspernantur; sin placuit, frameas concutiunt. -- Ibid., 11.

40. Sed arma sumere non ante cuiquam moris, quam civitas suffectorum probaverit. -- Ibid., 13.

41. Tum in ipso concilia vel principum aliquis, vel pater, vel propinquus, scuto, frameaque juvenem ornant.

42. Hæc apud illos toga, hic primus juventæ honos; ante hoc domni pars videntur, mox reipublicæ.

43. Theodoric in Cassiodorus, i. 38.

44. He was scarcely five years old, says Gregory of Tours, v. 1, when he succeeded to his father, in the year 575. Gontram declared him of age in the year 585; he was, therefore, at that time no more than fifteen.

45. Tit. 81.

46. Tit. 87.

47. There was no change in the time with regard to the common people.

48. St. Louis was not of age till twenty-one; this was altered by an edict of Charles V in the year 1374.

49. It appears from Gregory of Tours, iii, that she chose two natives of Burgundy, which had been conquered by Clodomir, to raise them to the see of Tours, which also belonged to Clodomir.

50. Ibid., v. 1: Vix lustro ætatis uno jam peracto qui die Dominicæ Natalis regnare coepit.
51. See Ibid., vii. 23.
52. In Cassiodorus, iv. 2.
53. Gregory of Tours, ii.
54. Ibid.
55. Nec Regibus libera aut infinita potestas. Cæterum neque animadvertere, neque vincere, neque verberare, &c. -- De Moribus Germanorum, 7.
56. In pace nullus est communis magistratus, sed principes regionum atque pagorum inter suos jus dicunt. -- De Bello Gall., vi. 22.
57. Book ii.
58. De minoribus principes consultant, de majoribus omnes; ita tamen ut ea quorum penes plebem arbitrium est, apud principes pertractentur. -- De Moribus Germanorum, 11.
59. Lex consensu Populi fit et constitutione Regis. -- Capitularies of Charles the Bald, year 864, art. 6.
60. Licet apud Concilium accusare et discrimen capitis intendere. -- De Moribus Germanorum, 12.
61. Silentium per sacerdotes, quibus et coercendi jus est, imperatur. -- Ibid., 11.
62. Nec Regibus libera aut infinita potestas. Cæterum neque

animadvertere, neque vincire, neque verberare, nisi sacerdotibus est
permissum, non quasi in poenam, nec Ducis jussu, sed velut Deo
imperante, quem adesse, bellatoribus credunt. -- Ibid., 7.

63. See the Constitutions of Clotarius, year 560, art. 6.