

## Chapter XVII: Foundation Of Constantinople.--Part V.

The introduction of Barbarians into the Roman armies became every day more universal, more necessary, and more fatal. The most daring of the Scythians, of the Goths, and of the Germans, who delighted in war, and who found it more profitable to defend than to ravage the provinces, were enrolled, not only in the auxiliaries of their respective nations, but in the legions themselves, and among the most distinguished of the Palatine troops. As they freely mingled with the subjects of the empire, they gradually learned to despise their manners, and to imitate their arts. They abjured the implicit reverence which the pride of Rome had exacted from their ignorance, while they acquired the knowledge and possession of those advantages by which alone she supported her declining greatness. The Barbarian soldiers, who displayed any military talents, were advanced, without exception, to the most important commands; and the names of the tribunes, of the counts and dukes, and of the generals themselves, betray a foreign origin, which they no longer condescended to disguise. They were often intrusted with the conduct of a war against their countrymen; and though most of them preferred the ties of allegiance to those of blood, they did not always avoid the guilt, or at least the suspicion, of holding a treasonable correspondence with the enemy, of inviting his invasion, or of sparing his retreat. The camps and the palace of the son of Constantine were governed by the powerful faction of the Franks, who preserved the strictest connection with each other, and with their country, and who resented every personal affront as a national indignity. [140] When

the tyrant Caligula was suspected of an intention to invest a very extraordinary candidate with the consular robes, the sacrilegious profanation would have scarcely excited less astonishment, if, instead of a horse, the noblest chieftain of Germany or Britain had been the object of his choice. The revolution of three centuries had produced so remarkable a change in the prejudices of the people, that, with the public approbation, Constantine showed his successors the example of bestowing the honors of the consulship on the Barbarians, who, by their merit and services, had deserved to be ranked among the first of the Romans. [141] But as these hardy veterans, who had been educated in the ignorance or contempt of the laws, were incapable of exercising any civil offices, the powers of the human mind were contracted by the irreconcilable separation of talents as well as of professions. The accomplished citizens of the Greek and Roman republics, whose characters could adapt themselves to the bar, the senate, the camp, or the schools, had learned to write, to speak, and to act with the same spirit, and with equal abilities.

[Footnote 140: Malarichus--adhibitibus Francis quorum ea tempestate in palatio multitudo florebat, erectius jam loquebatur tumultuabaturque. Ammian. 1. xv. c. 5.]

[Footnote 141: Barbaros omnium primus, ad usque fasces auxerat et trabeas consulares. Ammian. 1. xx. c. 10. Eusebius (in Vit. Constantin. 1. iv c.7) and Aurelius Victor seem to confirm the truth of this assertion yet in the thirty-two consular Fasti of the reign of

Constantine cannot discover the name of a single Barbarian. I should therefore interpret the liberality of that prince as relative to the ornaments rather than to the office, of the consulship.]

IV. Besides the magistrates and generals, who at a distance from the court diffused their delegated authority over the provinces and armies, the emperor conferred the rank of Illustrious on seven of his more immediate servants, to whose fidelity he intrusted his safety, or his counsels, or his treasures. 1. The private apartments of the palace were governed by a favorite eunuch, who, in the language of that age, was styled the proepositus, or praefect of the sacred bed-chamber. His duty was to attend the emperor in his hours of state, or in those of amusement, and to perform about his person all those menial services, which can only derive their splendor from the influence of royalty.

Under a prince who deserved to reign, the great chamberlain (for such we may call him) was a useful and humble domestic; but an artful domestic, who improves every occasion of unguarded confidence, will insensibly acquire over a feeble mind that ascendant which harsh wisdom and uncomplying virtue can seldom obtain. The degenerate grandsons of Theodosius, who were invisible to their subjects, and contemptible to their enemies, exalted the praefects of their bed-chamber above the heads of all the ministers of the palace; [142] and even his deputy, the first of the splendid train of slaves who waited in the presence, was thought worthy to rank before the respectable proconsuls of Greece or Asia. The jurisdiction of the chamberlain was acknowledged by the counts, or superintendents, who regulated the two important provinces

of the magnificence of the wardrobe, and of the luxury of the Imperial table. [143] 2. The principal administration of public affairs was committed to the diligence and abilities of the master of the offices. [144] He was the supreme magistrate of the palace, inspected the discipline of the civil and military schools, and received appeals from all parts of the empire, in the causes which related to that numerous army of privileged persons, who, as the servants of the court, had obtained for themselves and families a right to decline the authority of the ordinary judges. The correspondence between the prince and his subjects was managed by the four scrinia, or offices of this minister of state. The first was appropriated to memorials, the second to epistles, the third to petitions, and the fourth to papers and orders of a miscellaneous kind. Each of these was directed by an inferior master of respectable dignity, and the whole business was despatched by a hundred and forty-eight secretaries, chosen for the most part from the profession of the law, on account of the variety of abstracts of reports and references which frequently occurred in the exercise of their several functions. From a condescension, which in former ages would have been esteemed unworthy the Roman majesty, a particular secretary was allowed for the Greek language; and interpreters were appointed to receive the ambassadors of the Barbarians; but the department of foreign affairs, which constitutes so essential a part of modern policy, seldom diverted the attention of the master of the offices. His mind was more seriously engaged by the general direction of the posts and arsenals of the empire. There were thirty-four cities, fifteen in the East, and nineteen in the West, in which regular companies of workmen were

perpetually employed in fabricating defensive armor, offensive weapons of all sorts, and military engines, which were deposited in the arsenals, and occasionally delivered for the service of the troops. 3. In the course of nine centuries, the office of quaestor had experienced a very singular revolution. In the infancy of Rome, two inferior magistrates were annually elected by the people, to relieve the consuls from the invidious management of the public treasure; [145] a similar assistant was granted to every proconsul, and to every praetor, who exercised a military or provincial command; with the extent of conquest, the two quaestors were gradually multiplied to the number of four, of eight, of twenty, and, for a short time, perhaps, of forty; [146] and the noblest citizens ambitiously solicited an office which gave them a seat in the senate, and a just hope of obtaining the honors of the republic. Whilst Augustus affected to maintain the freedom of election, he consented to accept the annual privilege of recommending, or rather indeed of nominating, a certain proportion of candidates; and it was his custom to select one of these distinguished youths, to read his orations or epistles in the assemblies of the senate. [147] The practice of Augustus was imitated by succeeding princes; the occasional commission was established as a permanent office; and the favored quaestor, assuming a new and more illustrious character, alone survived the suppression of his ancient and useless colleagues. [148] As the orations which he composed in the name of the emperor, [149] acquired the force, and, at length, the form, of absolute edicts, he was considered as the representative of the legislative power, the oracle of the council, and the original source of the civil jurisprudence. He was sometimes invited

to take his seat in the supreme judicature of the Imperial consistory, with the Praetorian praefects, and the master of the offices; and he was frequently requested to resolve the doubts of inferior judges: but as he was not oppressed with a variety of subordinate business, his leisure and talents were employed to cultivate that dignified style of eloquence, which, in the corruption of taste and language, still preserves the majesty of the Roman laws. [150] In some respects, the office of the Imperial quaestor may be compared with that of a modern chancellor; but the use of a great seal, which seems to have been adopted by the illiterate barbarians, was never introduced to attest the public acts of the emperors. 4. The extraordinary title of count of the sacred largesses was bestowed on the treasurer-general of the revenue, with the intention perhaps of inculcating, that every payment flowed from the voluntary bounty of the monarch. To conceive the almost infinite detail of the annual and daily expense of the civil and military administration in every part of a great empire, would exceed the powers of the most vigorous imagination.

The actual account employed several hundred persons, distributed into eleven different offices, which were artfully contrived to examine and control their respective operations. The multitude of these agents had a natural tendency to increase; and it was more than once thought expedient to dismiss to their native homes the useless supernumeraries, who, deserting their honest labors, had pressed with too much eagerness into the lucrative profession of the finances. [151] Twenty-nine provincial receivers, of whom eighteen were honored with the title of

count, corresponded with the treasurer; and he extended his jurisdiction over the mines from whence the precious metals were extracted, over the mints, in which they were converted into the current coin, and over the public treasuries of the most important cities, where they were deposited for the service of the state. The foreign trade of the empire was regulated by this minister, who directed likewise all the linen and woollen manufactures, in which the successive operations of spinning, weaving, and dyeing were executed, chiefly by women of a servile condition, for the use of the palace and army. Twenty-six of these institutions are enumerated in the West, where the arts had been more recently introduced, and a still larger proportion may be allowed for the industrious provinces of the East. [152] 5. Besides the public revenue, which an absolute monarch might levy and expend according to his pleasure, the emperors, in the capacity of opulent citizens, possessed a very extensive property, which was administered by the count or treasurer of the private estate. Some part had perhaps been the ancient demesnes of kings and republics; some accessions might be derived from the families which were successively invested with the purple; but the most considerable portion flowed from the impure source of confiscations and forfeitures. The Imperial estates were scattered through the provinces, from Mauritania to Britain; but the rich and fertile soil of Cappadocia tempted the monarch to acquire in that country his fairest possessions, [153] and either Constantine or his successors embraced the occasion of justifying avarice by religious zeal. They suppressed the rich temple of Comana, where the high priest of the goddess of war supported the dignity of a sovereign prince; and

they applied to their private use the consecrated lands, which were inhabited by six thousand subjects or slaves of the deity and her ministers. [154] But these were not the valuable inhabitants: the plains that stretch from the foot of Mount Argaeus to the banks of the Sarus, bred a generous race of horses, renowned above all others in the ancient world for their majestic shape and incomparable swiftness. These sacred animals, destined for the service of the palace and the Imperial games, were protected by the laws from the profanation of a vulgar master. [155] The demesnes of Cappadocia were important enough to require the inspection of a count; [156] officers of an inferior rank were stationed in the other parts of the empire; and the deputies of the private, as well as those of the public, treasurer were maintained in the exercise of their independent functions, and encouraged to control the authority of the provincial magistrates. [157] 6, 7. The chosen bands of cavalry and infantry, which guarded the person of the emperor, were under the immediate command of the two counts of the domestics. The whole number consisted of three thousand five hundred men, divided into seven schools, or troops, of five hundred each; and in the East, this honorable service was almost entirely appropriated to the Armenians. Whenever, on public ceremonies, they were drawn up in the courts and porticos of the palace, their lofty stature, silent order, and splendid arms of silver and gold, displayed a martial pomp not unworthy of the Roman majesty. [158] From the seven schools two companies of horse and foot were selected, of the protectors, whose advantageous station was the hope and reward of the most deserving soldiers. They mounted guard in the interior apartments, and were occasionally despatched into



the provinces, to execute with celerity and vigor the orders of their master. [159] The counts of the domestics had succeeded to the office of the Praetorian praefects; like the praefects, they aspired from the service of the palace to the command of armies.

[Footnote 142: Cod. Theod. l. vi. tit. 8.]

[Footnote 143: By a very singular metaphor, borrowed from the military character of the first emperors, the steward of their household was styled the count of their camp, (*comes castrensis*.) Cassiodorus very seriously represents to him, that his own fame, and that of the empire, must depend on the opinion which foreign ambassadors may conceive of the plenty and magnificence of the royal table. (*Variar. l. vi. epistol. 9.*)]

[Footnote 144: Gutherius (*de Officiis Domus Augustae, l. ii. c. 20, l. iii.*) has very accurately explained the functions of the master of the offices, and the constitution of the subordinate *scrinia*. But he vainly attempts, on the most doubtful authority, to deduce from the time of the Antonines, or even of Nero, the origin of a magistrate who cannot be found in history before the reign of Constantine.]

[Footnote 145: Tacitus (*Annal. xi. 22*) says, that the first quaestors were elected by the people, sixty-four years after the foundation of the republic; but he is of opinion, that they had, long before that period, been annually appointed by the consuls, and even by the kings. But this

obscure point of antiquity is contested by other writers.]

[Footnote 146: Tacitus (*Annal.* xi. 22) seems to consider twenty as the highest number of quaestors; and Dion (*l.* xliii. p 374) insinuates, that if the dictator Caesar once created forty, it was only to facilitate the payment of an immense debt of gratitude. Yet the augmentation which he made of praetors subsisted under the succeeding reigns.]

[Footnote 147: Sueton. in *August.* c. 65, and *Torrent.* ad loc. *Dion. Cas.* p. 755.]

[Footnote 148: The youth and inexperience of the quaestors, who entered on that important office in their twenty-fifth year, (*Lips. Excurs. ad Tacit.* l. iii. D.,) engaged Augustus to remove them from the management of the treasury; and though they were restored by Claudius, they seem to have been finally dismissed by Nero. (*Tacit Annal.* xiii. 29. *Sueton.* in *Aug.* c. 36, in *Claud.* c. 24. *Dion,* p. 696, 961, &c. *Plin. Epistol.* x. 20, et alibi.) In the provinces of the Imperial division, the place of the quaestors was more ably supplied by the procurators, (*Dion Cas.* p. 707. *Tacit.* in *Vit. Agricol.* c. 15;) or, as they were afterwards called, *rationales.* (*Hist. August.* p. 130.) But in the provinces of the senate we may still discover a series of quaestors till the reign of Marcus Antoninus. (See the *Inscriptions of Gruter,* the *Epistles of Pliny,* and a decisive fact in the *Augustan History,* p. 64.) From *Ulpian* we may learn, (*Pandect.* l. i. tit. 13,) that under the government of the house of *Severus,* their provincial administration was abolished; and in the

subsequent troubles, the annual or triennial elections of quaestors must have naturally ceased.]

[Footnote 149: Cum patris nomine et epistolas ipse dictaret, et edicta conscriberet, orationesque in senatu recitaret, etiam quaestoris vice. Sueton, in Tit. c. 6. The office must have acquired new dignity, which was occasionally executed by the heir apparent of the empire. Trajan intrusted the same care to Hadrian, his quaestor and cousin. See Dodwell, Praelection. Cambden, x. xi. p. 362-394.]

[Footnote 150: Terris edicta daturus; Supplicibus responsa.--Oracula regis Eloquio crevere tuo; nec dignius unquam Majestas meminit sese Romana locutam.----Claudian in Consulat. Mall. Theodor. 33. See likewise Symmachus (Epistol. i. 17) and Cassiodorus. (Variar. iv. 5.)]

[Footnote 151: Cod. Theod. l. vi. tit. 30. Cod. Justinian. l. xii. tit. 24.]

[Footnote 152: In the departments of the two counts of the treasury, the eastern part of the Notitia happens to be very defective. It may be observed, that we had a treasury chest in London, and a gyneceum or manufacture at Winchester. But Britain was not thought worthy either of a mint or of an arsenal. Gaul alone possessed three of the former, and eight of the latter.]

[Footnote 153: Cod. Theod. l. vi. tit. xxx. leg. 2, and Godefroy ad

loc.]

[Footnote 154: Strabon. Geograph. l. xxii. p. 809, [edit. Casaub.] The other temple of Comana, in Pontus, was a colony from that of Cappadocia, l. xii. p. 835. The President Des Brosses (see his Saluste, tom. ii. p. 21, [edit. Causub.]) conjectures that the deity adored in both Comanas was Beltis, the Venus of the east, the goddess of generation; a very different being indeed from the goddess of war.]

[Footnote 155: Cod. Theod. l. x. tit. vi. de Grege Dominico. Godefroy has collected every circumstance of antiquity relative to the Cappadocian horses. One of the finest breeds, the Palmatian, was the forfeiture of a rebel, whose estate lay about sixteen miles from Tyana, near the great road between Constantinople and Antioch.]

[Footnote 156: Justinian (Novell. 30) subjected the province of the count of Cappadocia to the immediate authority of the favorite eunuch, who presided over the sacred bed-chamber.]

[Footnote 157: Cod. Theod. l. vi. tit. xxx. leg. 4, &c.]

[Footnote 158: Pancirolus, p. 102, 136. The appearance of these military domestics is described in the Latin poem of Corippus, de Laudibus Justin. l. iii. 157-179. p. 419, 420 of the Appendix Hist. Byzantin. Rom. 177.]

[Footnote 159: Ammianus Marcellinus, who served so many years, obtained only the rank of a protector. The first ten among these honorable soldiers were Clarissimi.]

The perpetual intercourse between the court and the provinces was facilitated by the construction of roads and the institution of posts. But these beneficial establishments were accidentally connected with a pernicious and intolerable abuse. Two or three hundred agents or messengers were employed, under the jurisdiction of the master of the offices, to announce the names of the annual consuls, and the edicts or victories of the emperors. They insensibly assumed the license of reporting whatever they could observe of the conduct either of magistrates or of private citizens; and were soon considered as the eyes of the monarch, [160] and the scourge of the people. Under the warm influence of a feeble reign, they multiplied to the incredible number of ten thousand, disdained the mild though frequent admonitions of the laws, and exercised in the profitable management of the posts a rapacious and insolent oppression. These official spies, who regularly corresponded with the palace, were encouraged by favor and reward, anxiously to watch the progress of every treasonable design, from the faint and latent symptoms of disaffection, to the actual preparation of an open revolt. Their careless or criminal violation of truth and justice was covered by the consecrated mask of zeal; and they might securely aim their poisoned arrows at the breast either of the guilty or the innocent, who had provoked their resentment, or refused to purchase their silence. A faithful subject, of Syria perhaps, or of Britain, was

exposed to the danger, or at least to the dread, of being dragged in chains to the court of Milan or Constantinople, to defend his life and fortune against the malicious charge of these privileged informers. The ordinary administration was conducted by those methods which extreme necessity can alone palliate; and the defects of evidence were diligently supplied by the use of torture. [161]

[Footnote 160: Xenophon, *Cyropaed.* l. viii. Brisson, *de Regno Persico*, l. i No 190, p. 264. The emperors adopted with pleasure this Persian metaphor.]

[Footnote 161: For the *Agentes in Rebus*, see *Ammian.* l. xv. c. 3, l. xvi. c. 5, l. xxii. c. 7, with the curious annotations of Valesius. *Cod. Theod.* l. vi. tit. xxvii. xxviii. xxix. Among the passages collected in the *Commentary of Godefroy*, the most remarkable is one from *Libanius*, in his discourse concerning the death of *Julian.*]

The deceitful and dangerous experiment of the criminal quaestion, as it is emphatically styled, was admitted, rather than approved, in the jurisprudence of the Romans. They applied this sanguinary mode of examination only to servile bodies, whose sufferings were seldom weighed by those haughty republicans in the scale of justice or humanity; but they would never consent to violate the sacred person of a citizen, till they possessed the clearest evidence of his guilt. [162] The annals of tyranny, from the reign of *Tiberius* to that of *Domitian*, circumstantially relate the executions of many innocent victims; but, as

long as the faintest remembrance was kept alive of the national freedom and honor, the last hours of a Roman were secured from the danger of ignominious torture. [163] The conduct of the provincial magistrates was not, however, regulated by the practice of the city, or the strict maxims of the civilians. They found the use of torture established not only among the slaves of oriental despotism, but among the Macedonians, who obeyed a limited monarch; among the Rhodians, who flourished by the liberty of commerce; and even among the sage Athenians, who had asserted and adorned the dignity of human kind. [164] The acquiescence of the provincials encouraged their governors to acquire, or perhaps to usurp, a discretionary power of employing the rack, to extort from vagrants or plebeian criminals the confession of their guilt, till they insensibly proceeded to confound the distinction of rank, and to disregard the privileges of Roman citizens. The apprehensions of the subjects urged them to solicit, and the interest of the sovereign engaged him to grant, a variety of special exemptions, which tacitly allowed, and even authorized, the general use of torture. They protected all persons of illustrious or honorable rank, bishops and their presbyters, professors of the liberal arts, soldiers and their families, municipal officers, and their posterity to the third generation, and all children under the age of puberty. [165] But a fatal maxim was introduced into the new jurisprudence of the empire, that in the case of treason, which included every offence that the subtlety of lawyers could derive from a hostile intention towards the prince or republic, [166] all privileges were suspended, and all conditions were reduced to the same ignominious level. As the safety of the emperor was avowedly preferred to every

consideration of justice or humanity, the dignity of age and the tenderness of youth were alike exposed to the most cruel tortures; and the terrors of a malicious information, which might select them as the accomplices, or even as the witnesses, perhaps, of an imaginary crime, perpetually hung over the heads of the principal citizens of the Roman world. [167]

[Footnote 162: The Pandects (l. xlviii. tit. xviii.) contain the sentiments of the most celebrated civilians on the subject of torture. They strictly confine it to slaves; and Ulpian himself is ready to acknowledge that *Res est fragilis, et periculosa, et quae veritatem fallat.*]

[Footnote 163: In the conspiracy of Piso against Nero, Epicharis (libertina mulier) was the only person tortured; the rest were intacti tormentis. It would be superfluous to add a weaker, and it would be difficult to find a stronger, example. Tacit. Annal. xv. 57.]

[Footnote 164: Dicendum... de Institutis Atheniensium, Rhodiorum, doctissimorum hominum, apud quos etiam (id quod acerbissimum est) liberi, civesque torquentur. Cicero, Partit. Orat. c. 34. We may learn from the trial of Philotas the practice of the Macedonians. (Diodor. Sicul. l. xvii. p. 604. Q. Curt. l. vi. c. 11.)]

[Footnote 165: Heineccius (Element. Jur. Civil. part vii. p. 81) has collected these exemptions into one view.]



[Footnote 166: This definition of the sage Ulpian (Pandect. l. xlvi. tit. iv.) seems to have been adapted to the court of Caracalla, rather than to that of Alexander Severus. See the Codes of Theodosius and ad leg. Juliam majestatis.]

[Footnote 167: Arcadius Charisius is the oldest lawyer quoted to justify the universal practice of torture in all cases of treason; but this maxim of tyranny, which is admitted by Ammianus with the most respectful terror, is enforced by several laws of the successors of Constantine. See Cod. Theod. l. ix. tit. xxxv. majestatis crimine omnibus aequa est conditio.]

These evils, however terrible they may appear, were confined to the smaller number of Roman subjects, whose dangerous situation was in some degree compensated by the enjoyment of those advantages, either of nature or of fortune, which exposed them to the jealousy of the monarch. The obscure millions of a great empire have much less to dread from the cruelty than from the avarice of their masters, and their humble happiness is principally affected by the grievance of excessive taxes, which, gently pressing on the wealthy, descend with accelerated weight on the meaner and more indigent classes of society. An ingenious philosopher [168] has calculated the universal measure of the public impositions by the degrees of freedom and servitude; and ventures to assert, that, according to an invariable law of nature, it must always increase with the former, and diminish in a just proportion to the

latter. But this reflection, which would tend to alleviate the miseries of despotism, is contradicted at least by the history of the Roman empire; which accuses the same princes of despoiling the senate of its authority, and the provinces of their wealth. Without abolishing all the various customs and duties on merchandises, which are imperceptibly discharged by the apparent choice of the purchaser, the policy of Constantine and his successors preferred a simple and direct mode of taxation, more congenial to the spirit of an arbitrary government. [169]

[Footnote 168: Montesquieu, *Esprit des Loix*, l. xii. c. 13.]

[Footnote 169: Mr. Hume (*Essays*, vol. i. p. 389) has seen this importance with some degree of perplexity.]