

Chapter XXXVIII: Reign Of Clovis.--Part III.

When justice inexorably requires the death of a murderer, each private citizen is fortified by the assurance, that the laws, the magistrate, and the whole community, are the guardians of his personal safety. But in the loose society of the Germans, revenge was always honorable, and often meritorious: the independent warrior chastised, or vindicated, with his own hand, the injuries which he had offered or received; and he had only to dread the resentment of the sons and kinsmen of the enemy, whom he had sacrificed to his selfish or angry passions. The magistrate, conscious of his weakness, interposed, not to punish, but to reconcile; and he was satisfied if he could persuade or compel the contending parties to pay and to accept the moderate fine which had been ascertained as the price of blood. The fierce spirit of the Franks would have opposed a more rigorous sentence; the same fierceness despised these ineffectual restraints; and, when their simple manners had been corrupted by the wealth of Gaul, the public peace was continually violated by acts of hasty or deliberate guilt. In every just government the same penalty is inflicted, or at least is imposed, for the murder of a peasant or a prince. But the national inequality established by the Franks, in their criminal proceedings, was the last insult and abuse of conquest. In the calm moments of legislation, they solemnly pronounced, that the life of a Roman was of smaller value than that of a Barbarian. The Antrustion, a name expressive of the most illustrious birth or dignity among the Franks, was appreciated at the sum of six hundred pieces of gold; while the noble provincial, who was admitted to the

king's table, might be legally murdered at the expense of three hundred pieces. Two hundred were deemed sufficient for a Frank of ordinary condition; but the meaner Romans were exposed to disgrace and danger by a trifling compensation of one hundred, or even fifty, pieces of gold. Had these laws been regulated by any principle of equity or reason, the public protection should have supplied, in just proportion, the want of personal strength. But the legislator had weighed in the scale, not of justice, but of policy, the loss of a soldier against that of a slave: the head of an insolent and rapacious Barbarian was guarded by a heavy fine; and the slightest aid was afforded to the most defenceless subjects. Time insensibly abated the pride of the conquerors and the patience of the vanquished; and the boldest citizen was taught, by experience, that he might suffer more injuries than he could inflict. As the manners of the Franks became less ferocious, their laws were rendered more severe; and the Merovingian kings attempted to imitate the impartial rigor of the Visigoths and Burgundians. Under the empire of Charlemagne, murder was universally punished with death; and the use of capital punishments has been liberally multiplied in the jurisprudence of modern Europe.

The civil and military professions, which had been separated by Constantine, were again united by the Barbarians. The harsh sound of the Teutonic appellations was mollified into the Latin titles of Duke, of Count, or of Præfect; and the same officer assumed, within his district, the command of the troops, and the administration of justice. But the fierce and illiterate chieftain was seldom qualified to discharge the

duties of a judge, which required all the faculties of a philosophic mind, laboriously cultivated by experience and study; and his rude ignorance was compelled to embrace some simple, and visible, methods of ascertaining the cause of justice. In every religion, the Deity has been invoked to confirm the truth, or to punish the falsehood of human testimony; but this powerful instrument was misapplied and abused by the simplicity of the German legislators. The party accused might justify his innocence, by producing before their tribunal a number of friendly witnesses, who solemnly declared their belief, or assurance, that he was not guilty. According to the weight of the charge, this legal number of compurgators was multiplied; seventy-two voices were required to absolve an incendiary or assassin: and when the chastity of a queen of France was suspected, three hundred gallant nobles swore, without hesitation, that the infant prince had been actually begotten by her deceased husband. The sin and scandal of manifest and frequent perjuries engaged the magistrates to remove these dangerous temptations; and to supply the defects of human testimony by the famous experiments of fire and water. These extraordinary trials were so capriciously contrived, that, in some cases, guilt, and innocence in others, could not be proved without the interposition of a miracle. Such miracles were really provided by fraud and credulity; the most intricate causes were determined by this easy and infallible method, and the turbulent Barbarians, who might have disdained the sentence of the magistrate, submissively acquiesced in the judgment of God.

But the trials by single combat gradually obtained superior credit and

authority, among a warlike people, who could not believe that a brave man deserved to suffer, or that a coward deserved to live. Both in civil and criminal proceedings, the plaintiff, or accuser, the defendant, or even the witness, were exposed to mortal challenge from the antagonist who was destitute of legal proofs; and it was incumbent on them either to desert their cause, or publicly to maintain their honor, in the lists of battle. They fought either on foot, or on horseback, according to the custom of their nation; and the decision of the sword, or lance, was ratified by the sanction of Heaven, of the judge, and of the people. This sanguinary law was introduced into Gaul by the Burgundians; and their legislator Gundobald condescended to answer the complaints and objections of his subject Avitus. "Is it not true," said the king of Burgundy to the bishop, "that the event of national wars, and private combats, is directed by the judgment of God; and that his providence awards the victory to the juster cause?" By such prevailing arguments, the absurd and cruel practice of judicial duels, which had been peculiar to some tribes of Germany, was propagated and established in all the monarchies of Europe, from Sicily to the Baltic. At the end of ten centuries, the reign of legal violence was not totally extinguished; and the ineffectual censures of saints, of popes, and of synods, may seem to prove, that the influence of superstition is weakened by its unnatural alliance with reason and humanity. The tribunals were stained with the blood, perhaps, of innocent and respectable citizens; the law, which now favors the rich, then yielded to the strong; and the old, the feeble, and the infirm, were condemned, either to renounce their fairest claims and possessions, to sustain the dangers of an unequal conflict, or

to trust the doubtful aid of a mercenary champion. This oppressive jurisprudence was imposed on the provincials of Gaul, who complained of any injuries in their persons and property. Whatever might be the strength, or courage, of individuals, the victorious Barbarians excelled in the love and exercise of arms; and the vanquished Roman was unjustly summoned to repeat, in his own person, the bloody contest which had been already decided against his country.

A devouring host of one hundred and twenty thousand Germans had formerly passed the Rhine under the command of Ariovistus. One third part of the fertile lands of the Sequani was appropriated to their use; and the conqueror soon repeated his oppressive demand of another third, for the accommodation of a new colony of twenty-four thousand Barbarians, whom he had invited to share the rich harvest of Gaul. At the distance of five hundred years, the Visigoths and Burgundians, who revenged the defeat of Ariovistus, usurped the same unequal proportion of two thirds of the subject lands. But this distribution, instead of spreading over the province, may be reasonably confined to the peculiar districts where the victorious people had been planted by their own choice, or by the policy of their leader. In these districts, each Barbarian was connected by the ties of hospitality with some Roman provincial. To this unwelcome guest, the proprietor was compelled to abandon two thirds of his patrimony, but the German, a shepherd and a hunter, might sometimes content himself with a spacious range of wood and pasture, and resign the smallest, though most valuable, portion, to the toil of the industrious husbandman. The silence of ancient and

authentic testimony has encouraged an opinion, that the rapine of the Franks was not moderated, or disguised, by the forms of a legal division; that they dispersed themselves over the provinces of Gaul, without order or control; and that each victorious robber, according to his wants, his avarice, and his strength, measured with his sword the extent of his new inheritance. At a distance from their sovereign, the Barbarians might indeed be tempted to exercise such arbitrary depredation; but the firm and artful policy of Clovis must curb a licentious spirit, which would aggravate the misery of the vanquished, whilst it corrupted the union and discipline of the conquerors. The memorable vase of Soissons is a monument and a pledge of the regular distribution of the Gallic spoils. It was the duty and the interest of Clovis to provide rewards for a successful army, settlements for a numerous people; without inflicting any wanton or superfluous injuries on the loyal Catholics of Gaul. The ample fund, which he might lawfully acquire, of the Imperial patrimony, vacant lands, and Gothic usurpations, would diminish the cruel necessity of seizure and confiscation, and the humble provincials would more patiently acquiesce in the equal and regular distribution of their loss.

The wealth of the Merovingian princes consisted in their extensive domain. After the conquest of Gaul, they still delighted in the rustic simplicity of their ancestors; the cities were abandoned to solitude and decay; and their coins, their charters, and their synods, are still inscribed with the names of the villas, or rural palaces, in which they successively resided. One hundred and sixty of these palaces, a title

which need not excite any unseasonable ideas of art or luxury, were scattered through the provinces of their kingdom; and if some might claim the honors of a fortress, the far greater part could be esteemed only in the light of profitable farms. The mansion of the long-haired kings was surrounded with convenient yards and stables, for the cattle and the poultry; the garden was planted with useful vegetables; the various trades, the labors of agriculture, and even the arts of hunting and fishing, were exercised by servile hands for the emolument of the sovereign; his magazines were filled with corn and wine, either for sale or consumption; and the whole administration was conducted by the strictest maxims of private economy. This ample patrimony was appropriated to supply the hospitable plenty of Clovis and his successors; and to reward the fidelity of their brave companions who, both in peace and war, were devoted to their persona service. Instead of a horse, or a suit of armor, each companion, according to his rank, or merit, or favor, was invested with a benefice, the primitive name, and most simple form, of the feudal possessions. These gifts might be resumed at the pleasure of the sovereign; and his feeble prerogative derived some support from the influence of his liberality. But this dependent tenure was gradually abolished by the independent and rapacious nobles of France, who established the perpetual property, and hereditary succession, of their benefices; a revolution salutary to the earth, which had been injured, or neglected, by its precarious masters. Besides these royal and beneficiary estates, a large proportion had been assigned, in the division of Gaul, of allodial and Salic lands: they were exempt from tribute, and the Salic lands were equally shared among

the male descendants of the Franks.

In the bloody discord and silent decay of the Merovingian line, a new order of tyrants arose in the provinces, who, under the appellation of Seniors, or Lords, usurped a right to govern, and a license to oppress, the subjects of their peculiar territory. Their ambition might be checked by the hostile resistance of an equal: but the laws were extinguished; and the sacrilegious Barbarians, who dared to provoke the vengeance of a saint or bishop, would seldom respect the landmarks of a profane and defenceless neighbor. The common or public rights of nature, such as they had always been deemed by the Roman jurisprudence, were severely restrained by the German conquerors, whose amusement, or rather passion, was the exercise of hunting. The vague dominion which Man has assumed over the wild inhabitants of the earth, the air, and the waters, was confined to some fortunate individuals of the human species. Gaul was again overspread with woods; and the animals, who were reserved for the use or pleasure of the lord, might ravage with impunity the fields of his industrious vassals. The chase was the sacred privilege of the nobles and their domestic servants. Plebeian transgressors were legally chastised with stripes and imprisonment; but in an age which admitted a slight composition for the life of a citizen, it was a capital crime to destroy a stag or a wild bull within the precincts of the royal forests.

According to the maxims of ancient war, the conqueror became the lawful master of the enemy whom he had subdued and spared: and the fruitful cause of personal slavery, which had been almost suppressed by the

peaceful sovereignty of Rome, was again revived and multiplied by the perpetual hostilities of the independent Barbarians. The Goth, the Burgundian, or the Frank, who returned from a successful expedition, dragged after him a long train of sheep, of oxen, and of human captives, whom he treated with the same brutal contempt. The youths of an elegant form and an ingenuous aspect were set apart for the domestic service; a doubtful situation, which alternately exposed them to the favorable or cruel impulse of passion. The useful mechanics and servants (smiths, carpenters, tailors, shoemakers, cooks, gardeners, dyers, and workmen in gold and silver, &c.) employed their skill for the use, or profit, of their master. But the Roman captives, who were destitute of art, but capable of labor, were condemned, without regard to their former rank, to tend the cattle and cultivate the lands of the Barbarians. The number of the hereditary bondsmen, who were attached to the Gallic estates, was continually increased by new supplies; and the servile people, according to the situation and temper of their lords, was sometimes raised by precarious indulgence, and more frequently depressed by capricious despotism. An absolute power of life and death was exercised by these lords; and when they married their daughters, a train of useful servants, chained on the wagons to prevent their escape, was sent as a nuptial present into a distant country. The majesty of the Roman laws protected the liberty of each citizen, against the rash effects of his own distress or despair. But the subjects of the Merovingian kings might alienate their personal freedom; and this act of legal suicide, which was familiarly practised, is expressed in terms most disgraceful and afflicting to the dignity of human nature. The example of the poor, who

purchased life by the sacrifice of all that can render life desirable, was gradually imitated by the feeble and the devout, who, in times of public disorder, pusillanimously crowded to shelter themselves under the battlements of a powerful chief, and around the shrine of a popular saint. Their submission was accepted by these temporal or spiritual patrons; and the hasty transaction irrecoverably fixed their own condition, and that of their latest posterity. From the reign of Clovis, during five successive centuries, the laws and manners of Gaul uniformly tended to promote the increase, and to confirm the duration, of personal servitude. Time and violence almost obliterated the intermediate ranks of society; and left an obscure and narrow interval between the noble and the slave. This arbitrary and recent division has been transformed by pride and prejudice into a national distinction, universally established by the arms and the laws of the Merovingians. The nobles, who claimed their genuine or fabulous descent from the independent and victorious Franks, have asserted and abused the indefeasible right of conquest over a prostrate crowd of slaves and plebeians, to whom they imputed the imaginary disgrace of Gallic or Roman extraction.

The general state and revolutions of France, a name which was imposed by the conquerors, may be illustrated by the particular example of a province, a diocese, or a senatorial family. Auvergne had formerly maintained a just preeminence among the independent states and cities of Gaul. The brave and numerous inhabitants displayed a singular trophy; the sword of Cæsar himself, which he had lost when he was repulsed before the walls of Gergovia. As the common offspring of Troy, they

claimed a fraternal alliance with the Romans; and if each province had imitated the courage and loyalty of Auvergne, the fall of the Western empire might have been prevented or delayed. They firmly maintained the fidelity which they had reluctantly sworn to the Visigoths, out when their bravest nobles had fallen in the battle of Poitiers, they accepted, without resistance, a victorious and Catholic sovereign. This easy and valuable conquest was achieved and possessed by Theodoric, the eldest son of Clovis: but the remote province was separated from his Austrasian dominions, by the intermediate kingdoms of Soissons, Paris, and Orleans, which formed, after their father's death, the inheritance of his three brothers. The king of Paris, Childebert, was tempted by the neighborhood and beauty of Auvergne. The Upper country, which rises towards the south into the mountains of the Cevennes, presented a rich and various prospect of woods and pastures; the sides of the hills were clothed with vines; and each eminence was crowned with a villa or castle. In the Lower Auvergne, the River Allier flows through the fair and spacious plain of Limagne; and the inexhaustible fertility of the soil supplied, and still supplies, without any interval of repose, the constant repetition of the same harvests. On the false report, that their lawful sovereign had been slain in Germany, the city and diocese of Auvergne were betrayed by the grandson of Sidonius Apollinaris. Childebert enjoyed this clandestine victory; and the free subjects of Theodoric threatened to desert his standard, if he indulged his private resentment, while the nation was engaged in the Burgundian war. But the Franks of Austrasia soon yielded to the persuasive eloquence of their king. "Follow me," said Theodoric, "into Auvergne; I will lead you into

a province, where you may acquire gold, silver, slaves, cattle, and precious apparel, to the full extent of your wishes. I repeat my promise; I give you the people and their wealth as your prey; and you may transport them at pleasure into your own country." By the execution of this promise, Theodoric justly forfeited the allegiance of a people whom he devoted to destruction. His troops, reënforced by the fiercest Barbarians of Germany, spread desolation over the fruitful face of Auvergne; and two places only, a strong castle and a holy shrine, were saved or redeemed from their licentious fury. The castle of Meroliac was seated on a lofty rock, which rose a hundred feet above the surface of the plain; and a large reservoir of fresh water was enclosed, with some arable lands, within the circle of its fortifications. The Franks beheld with envy and despair this impregnable fortress; but they surprised a party of fifty stragglers; and, as they were oppressed by the number of their captives, they fixed, at a trifling ransom, the alternative of life or death for these wretched victims, whom the cruel Barbarians were prepared to massacre on the refusal of the garrison. Another detachment penetrated as far as Brivas, or Brioude, where the inhabitants, with their valuable effects, had taken refuge in the sanctuary of St. Julian. The doors of the church resisted the assault; but a daring soldier entered through a window of the choir, and opened a passage to his companions. The clergy and people, the sacred and the profane spoils, were rudely torn from the altar; and the sacrilegious division was made at a small distance from the town of Brioude. But this act of impiety was severely chastised by the devout son of Clovis. He punished with death the most atrocious offenders; left their secret accomplices to the

vengeance of St. Julian; released the captives; restored the plunder;
and extended the rights of sanctuary five miles round the sepulchre of
the holy martyr.