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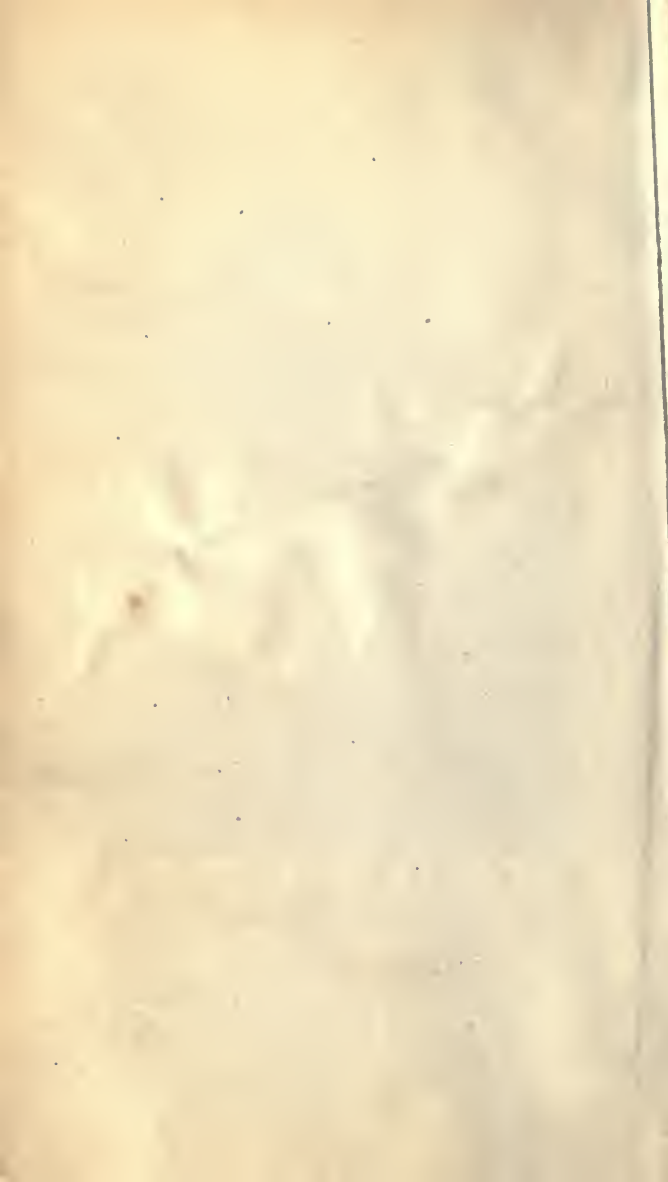
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A  
HISTORY OF THE  
GERMANIC EMPIRE,

BY  
S. A. DUNHAM ESQ. LL.D. &c.

*Author of the History of Spain & Portugal*

VOL. I.



*South of Liberty 1*  
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CALIFORNIA

HENRY MORSE STEPHENS

TO THE  
AMERICAN

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# TABLE,

ANALYTICAL AND CHRONOLOGICAL,

TO THE FIRST VOLUME OF

## THE GERMANIC EMPIRE.

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|--------------------|------------|
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| Charlemagne - -    | - 768—814. |
| Ludovic I. - - -   | - 814—840. |
| Lothar I. - - -    | - 840—855. |
| Ludovic II. - - -  | - 855—875. |
| Charles II. - - -  | - 875—877. |
| Charles III. - -   | - 877—888. |
| Arnulf - - -       | - 888—899. |
| Ludovic IV.* - - - | - 899—910. |

#### II. SAXON DYNASTY.

|                             |              |
|-----------------------------|--------------|
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| Heinric I. (the Fowler) - - | - 919—936.   |
| Otho I. (the Great) - - -   | - 936—973.   |
| Otho II. - - -              | - 973—993.   |
| Otho III. - - -             | - 993—1002.  |
| Heinric II. (St.) - - -     | - 1002—1024. |

#### III. FRANCONIAN DYNASTY.

|                    |              |
|--------------------|--------------|
| Conrad II. - - -   | - 1024—1039. |
| Heinric III. - - - | - 1039—1056. |
| Heinric IV. - - -  | - 1056—1106. |
| Heinric V. - - -   | - 1106—1125. |
| Lothar II. † - - - | - 1125—1137. |

\* Or rather Ludovic III.; but, as there was a French prince of the same name (Louis III.), we will not change the numeral.

† Immediately belonging to the house of Saxony.

## IV. SWABIAN OR HOHENSTAUFFEN DYNASTY.

|                          |   |   | Reigned.     |
|--------------------------|---|---|--------------|
| Conrad III.              | - | - | - 1137—1152  |
| Frederic I. (Barbarossa) | - | - | - 1152—1190. |
| Heinric VI.              | - | - | - 1190—1197. |
| Philip                   | - | - | - 1197—1208. |
| Otho IV.                 | - | - | - 1208—1212. |
| Frederic II.             | - | - | - 1212—1250. |
| Conrad IV.               | - | - | - 1250—1254. |

## V. FOREIGN HOUSES.

|                       |   |   |              |
|-----------------------|---|---|--------------|
| William (of Holland)  | - | - | - 1254—1256. |
| Richard (of Cornwall) | - | - | - 1256—1271. |

VI. DYNASTIES OF HAPSBURG, LUXEMBURG, AND  
BAVARIA.

|              |   |   |              |
|--------------|---|---|--------------|
| Rodolf I.    | - | - | - 1273—1291. |
| Adolf        | - | - | - 1291—1298. |
| Albert I.    | - | - | - 1298—1308. |
| Heinric VII. | - | - | - 1308—1313. |
| Ludovic V.   | - | - | - 1313—1347. |
| Charles IV.  | - | - | - 1347—1378. |
| Wenceslas    | - | - | - 1378—1400. |
| Robert       | - | - | - 1400—1410. |
| Sigismund    | - | - | - 1410—1437. |

HISTORY  
OF  
THE GERMANIC EMPIRE.

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BOOK I.

POLITICAL AND CIVIL HISTORY OF THE EMPIRE DURING  
THE MIDDLE AGES.

752—1437.

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INTRODUCTION.

THE MEROVINGIAN PERIOD.

496—752.

WITH Germany prior to the dissolution of the Roman power, the present compendium has no concern: the history of that period is, or ought to be, familiar to every reader. Our object is to contemplate that celebrated country as an *Empire*; but as its establishment must be traced to an era considerably anterior, a few pages by way of introduction may properly open the main subject.

Germany, prior to the French monarchy, exhibits a perpetual succession of vicissitudes. As we descend the stream of time, from the invasion by Cæsar to the reign of Honorius, we find new nations, or at least new denominations of such as previously existed; and that the boundaries or the location of each is ever changing.

At one time we read of a number of tribes located on the banks of the Elbe, or of the Rhine, or of the Danube; in the revolution of two or three centuries, we perceive names totally different occupying the same regions. The causes of these changes are twofold, — the peculiarly military character of the old Germans, and the frequent arrival of barbaric torrents from the eastern confines of Europe. Of these causes, the latter was the more efficacious; for though the Germanic tribes were always ready to encroach on the boundaries of each other, they were more generally moved from their seats by the resistless torrent of invasion, the course of which was nearly always from east to west. Nor must we overlook the probability — we should be justified in assuming it as a fact — that new combinations of tribes, for the purpose whether of defence or aggression, often changed their distinctive appellation. It has, indeed, been contended, that the various denominations of Alamanni, Suevi, Goths, Franks, Saxons, &c. implied not associations, whether voluntary or compulsory, of different, however kindred, tribes, — kindred in descent, manners, and language, — but that each was a generic term strictly applicable to one great nation. But for such an assertion there is no foundation. That these associations were frequent, may easily be collected from the incidental notices of the Roman historians; and reason tells us that it must have been so. All the great tribes were, in fact, eager to increase their armed defenders, by incorporating with themselves their allies or those whom they subdued. On some occasions, we distinctly read that the option proposed by one tribe to another, was alliance or war. Yet where success must, in the nature of things, have been so variable, these alliances must have been extremely precarious. In most cases, the victor would dictate, and the conquered would *receive* the terms of a new confederation. In a country covered, not with fortresses, but with forests; which contained no strong positions where aggression might be successfully resisted; such mutations, alike of



place and of denomination, were incessant. In general, the struggle on the eastern frontier, between the nations of Teutonic and of Slavonic stock, were felt, by an immediate vibration, in the forests and marshes of the west. If one nation, or confederation of tribes, was impelled in the western direction, its first object was in like manner to dispossess some feebler people; and the impulse was soon communicated throughout the social chain. The location of these confederations at the opening of the fifth century must be understood, or little idea can be formed of the establishment of the French monarchy.—1. Between the mouths of the Elbe and the Meuse, along the sea-coast, yet extending inwards towards the Rhine, were the *Franks*; not perhaps the most numerous, or the most formidable, but, beyond doubt, the most remarkable of the Germanic associations. Sometimes the enemies, more recently the allies of the empire, they were always treated with consideration.—2. The *Alamanni*, a similar confederation of tribes, occupied the eastern bank of the Rhine, from its junction with the Mein to the Lake of Constance, and as far inward as the frontiers, perhaps, of Bohemia.—3. In an obscure angle north of the Elbe, comprising chiefly the duchy of Bremen, and part of Holstein, the *Saxons*, in the fourth century, appeared little formidable to their neighbours: yet in another we find them stretched considerably into the present kingdoms of Saxony and Hanover. They could not, however, be of that nation alone, who, in the fifth century, sufficed to conquer England: associated, or at least acting simultaneously with them, were the Jutes, the Frisians, and other tribes. This expatriation of so many thousand adventurers did not much affect the amount of population left behind; for the extension of the Saxon frontier continued to be progressive, until they bordered on the Franks and the Swabians.—4. Along the southern coasts of the Baltic, comprehending the maritime tracts of Mecklenburg and Pomerania as far as the Oder, lay the *Vandals*.—5. Eastward still, to

the banks of the Vistula, were the *Goths*, generally in alliance with the Vandals. Of this great stock were the *Burgundians*, who, as their name implies, dwelt in cities situated on the confines of Germany and Poland; the *Heruli*, who lay towards the Palus Mæotis; the *Lombards*, who occupied the region between the two, comprising the northern parts of Pannonia; and the *Gepidæ*, who extended farther into that province. Such were the Teutonic tribes, who, at the period in question, hovered on the Roman frontiers. Southern Germany, or Rhætia and Noricum, which nearly correspond to Bavaria and Austria, was inhabited by tribes whom we need not condescend to notice, as they had long been subject to Rome.—6. But in the central parts of Germany, extending from the Mein to the Hartz forest, we perceive the *Thuringians*, evidently composed like the rest of several tribes belonging to the great Teutonic family.—7. Besides these nations, were some tribes of Slavonic descent, inhabiting Monnia, Misnia, Bohemia, Lusatia, and part of Mecklenburg. Were these tribes the tributaries or the allies of the Teutones? Were they now located in these regions for the first time, or had they long been here? These questions cannot be answered. One thing is certain, — that, when in danger of being expelled by their neighbours, they invoked with success the succour of their Polish or Pannonian kindred.\*

409 The changes effected in the location of these tribes  
to by the invasion of the Roman empire, were in some  
534. respects greater, in others less, than we might have expected. On the one side, the Heruli and the Lombards penetrated into Italy; the Suevi, the Alans, and the Vandals traversed Gaul and passed into Spain; the Burgundians settled in the eastern province of Gaul; the Franks extended themselves from the Rhine,

\* Cæsar, De Bello Gallico. Tacitus, Germania, et Annales, in passages too familiar to be cited. Jornandes, De Rebus Geticis, cap. 1—50. Procopius, De Bello Vandalico, lib. i. cap. 293. Luden, Geschichte der Teutschen Volkes, vol. i. Mannert, Geschichte der Alten Deutschen, pp. 1—57. Schmidt, Histoire des Allemands, tom. i.

throughout the Netherlands, to the frontiers of that monarchy. These changes enabled the Saxons, as we have before intimated, to extend themselves farther into the interior ; and the Alamanni, who were joined by a considerable body of the Suevi, to spread themselves partially into Helvetia, Rhætia, and Vindelicia. From this period the united people are distinguished as Swabians ; and the country now seized by the Boii became known as Bavaria. The Thuringians, by the movement of the Franks, extended their frontier to the east bank of the Rhine ; but north of Cologne, that noble river was still possessed by the Franks. The subsequent departure of the Goths into Italy and Spain enabled the nations of Slavonic descent to spread themselves farther into Brandenburg, Bohemia, and towards the Italian frontiers.—Of all these people, the Franks must occupy our chief attention. Subject to many independent reguli, no doubt, all elective, though all professedly descended from a common illustrious ancestor, — they were at peace with one another whenever any common object was to be gained ; but when no foreign enemy was to be resisted or conquered, their intestine quarrels seem to have been frequent. They were arranged under two great confederations, the Salian and the Ripuarian Franks. In 481, we first hear of Clovis, prince of the Salian Franks at Tournay. This man was born to be a hero : with all the vices of the barbarians, he had also the elevated qualities which are necessary in the founder of a kingdom. The steps by which he attained that object are so well known, that we shall relate only the results. From Syagrius, the Roman governor of Gaul, he wrested first the southern provinces, and established his seat at Soissons ; next the central, and even western provinces, and transferring his court to Paris : consequently his dominions to the east, bordered on the state of Burgundy, to the south on the kingdom of the Wisigoths. For much of this success he was, doubtless, indebted to his conversion to the catholic faith. As

orthodox Christians, the inhabitants of all Gaul, who detested the Arian sway of the Burgundians and the Wisigoths, prayed for his success. Besides, his queen, Clotilda, who had been the chief instrument of his conversion, was a princess of the Burgundian house ; so that he had other claims than those of religion on that kingdom. In a single campaign, he rendered the princes of Burgundy tributary to him. In another he broke, on the plains of Vouglé, the force of the Wisigoths; wrested from them several important places in the south of France; and would probably have driven them across the Pyrenees, had not Theodoric the Ostrogoth hastened to their assistance. For the extension of his dignity no less than of his power, he received from the Greek emperor the consular and patrician honours.—Hitherto he had triumphed over his natural enemies only; he now turned his arms against his kindred and friends. By a succession of the most perfidious and odious crimes, he removed one by one all the long-haired princes of the Franks — long hair being the distinction of the family of Merowig, which furnished rulers for the nation — who reigned from the Rhine to the British channel; and he was recognised by the Franks who dwelt beyond the northern bank of that river. He was therefore sole monarch of the nation, and his sway extended from Burgundy to the confines of Armorica, and from the borders of Aquitaine into the marshes of Holland, where his empire was bounded by the Frisian and Saxon possessions. It must not, indeed, be supposed that his new conquests were secure: he had rather over-run than subdued the country; and his frontiers were perpetually harassed by the most active enemies. North, as we have just observed, were the Frisians and Saxons; eastward, on the right bank of the Rhine, were the Thuringians, south of them the Swabians; in Gaul, the Wisigoths, in the west, Armorica, disdained submission. But, after all, his career was most splendid: he humbled both the Thuringians and the Swabians, who, allured by his

success, endeavoured to form settlements in Gaul; and he made the Swabians his dependent allies. The Bavarians, fearful of the yoke, implored the protection of the Ostrogothic king, and their duke became the ally of the Lombard crown. But the Ostrogothic power was declining, and the duke of the Bavarians, like his brother of Swabia, was soon compelled—not, however, during the life of Clovis—to receive the alliance of the Franks.—The successors of this celebrated barbarian were too often at war with each other to permit the consolidation of the new empire. Their divisions were owing to the erroneous, however common, policy of dividing the dominions into as many sovereignties as there were sons of the king. Thus, on the death of Clovis (511), the new conquests were bequeathed to his four sons. With the portions of the princes who reigned in Gaul we have here no concern.\* Austrasia, or the eastern provinces of the Franks, with the Germanic possessions, fell to Thierry, the eldest; while his other brothers reigned at Soissons, Orleans, and Paris, over their respective subjects. Thierry had the most ample share. The Netherlands between the Meuse, the Scheldt, and the Rhine, were his: the duke of Swabia was his vassal; the duke of Bavaria he compelled to become his dependent ally. The Thuringians, indeed, whom his father had defeated, endeavoured to circumscribe his boundaries, and they made a formidable attack on his Rhenish frontier; but, with the aid of his brothers, he completely humbled them, and transplanted to both banks of the Mein considerable colonies of Franks. Hence the new province took the name of Franconia, which it preserved to recent times. This was a politic step: it compelled the Thuringians to throw themselves backwards on the Saxon frontier; it became a strong barrier against the hostilities of both; and it served as a point of departure for succeeding conquests. Hence Thierry may truly be said to have reigned from the

\* See History of Europe during the Middle Ages, vol. ii. pp. 7—9.

banks of the Meuse to the frontiers of Bohemia, and from the confines of modern Thuringia to those of Switzerland.\*

534  
to  
752.

The history of the Merovingian dynasty in France must be sought in the works expressly devoted to the subject.† Adverting, in accordance with our design, to the chief revolutions which, in the regions west of the Rhine, preceded the establishment of the Germanic empire, we may observe, that though sometimes all the kingdoms of the Franks, — Burgundy, Neustria, Austrasia, and subsequently Aquitaine, were the chief, — were twice or thrice under the same sceptre, on the death of the monarch the same fatal division obtained. The sovereigns of Austrasia had, like their more western brethren, various success. By Sigebert, son of Clothaire I., the capital was removed from Rheims to Mentz; but, if we except the submission of the Thuringians, no new conquests signalised the successors of Clovis. Through the never-ceasing revolutions, however, in the Frank kingdoms, Burgundy was frequently under the sceptre of the Austrasian monarch. But the advantage was more than counterbalanced by the imbecility, no less than by the accursed vices, of the Merovingian princes; the one excited the contempt, the other the indignation of the people. In one respect, indeed, these defects were beneficial to them; since, to gratify their licentious propensities, the Austrasian kings shut themselves up from the world, and devolved the cares of government on a prime minister, the mayor of the palace. It may readily be supposed that such a state

\* Authorities: besides the histories of the Roman Empire, S. Gregorius Turonensis, *Historia Eccles. Francor.* lib. i.—iv. Victor Turonensis, *Chronica*, p. 321. &c. Prosperus Aquitanus, *Chronica, cum Chronicon Pithœano*, p. 295—318. (apud Canisium, *Lectiones Antiquæ*, tom. i.). Idatius, *Chronicon*, p. 365. (apud Florez, *España Sagrada*, tom. vi.). Rorico Monachus, *Gesta Francorum (sub annis)*. Regino Monachus, *Chronica*, lib. i. p. 13. (apud Struvium, *Rerum Germanicarum Scriptores*, tom. i.). Mannert, *Geschichte der Alten Deutschen*, pp. 57—120.; necnon Luden, *Geschichte der Teutschen Volkes*, ubi supra, bd. ii. et iii. (in multis paginis).

† See Sismondi, *Histoire des Français*, tom. i. and ii. A notice of the subject, sufficient for any general purpose, may be found in the *History of Europe during the Middle Ages*, vol. ii. chap. i.



of things must have been as favourable to the popularity, and consequently to the influence, of the mayor, as it must have been fatal to those of the king. In fact, from the opening of the seventh century, the former was tacitly regarded as the virtual master of the kingdom. The other kingdoms, indeed, had their mayors; but none to be compared, either for capability or power, with those of Austrasia. For this superiority there are causes sufficiently obvious. Pepin, who, in the reign of Sigebert II. (638—650), held that high dignity, possessed vast estates in the lordship of Ardennes; he had numerous vassals; and, as his talents were equal to his means, and his ambition to both: he succeeded in laying the foundation of the future greatness of his house. In that office he was succeeded by his son Grimoald. The customs of the age favoured this usurpation. The dukes of Swabia, of Franconia, and Thuringia—the three great vassals of the Austrasian crown—were recognised as hereditary; why should not the same law of succession be extended to the mayors? Nay, the same ambition descended to the official dignities,—to the counts and the inferior local magistrates, and the military leaders,—who openly vindicated the new right. To recognise it was for the interest neither of the crown nor of the mayor; and there was long a struggle between the two orders, which, however, was in favour of the nobles. In the reign of Dagobert II. (673—678), we find another Pepin, grandson of the former mayor, in possession of the dignity. Fortunately for his views, Clovis III., the successor of Dagobert (691—695), succeeded by hereditary right or by conquest to the thrones of Neustria and Burgundy; and, as Aquitaine had now no vassal dukes, he was the virtual master of the Franks. From this time forward, indeed, the three crowns were always on the same brow, with one nominal interruption. The same high dignity he held under Childebert III. (695—711), and thus firmly established the influence of his family. That influence, however, was not acquired

without some victories over the insurgent nobles ; nor without some bribes, where open force would have failed ; nor without some concessions to the discontented. It is certain, that, in a treaty with the heads of the nobles, he sanctioned the heritability of *their* lands, offices, and dignities ; but as they recognised the hereditary transmission of *his*, he was the chief gainer by the compact. Nor could his pretensions be withstood ; he wielded at his absolute pleasure the riches, the influence, the forces of the crown,—a crown which was evidently departing from the wretched brows which it adorned. So hopeless, indeed, was the imbecility of these abominable princes, who generally—such were their premature vices—died of old age before thirty, that in modern times much surprise has been caused by his forbearance towards the royal puppets. He might easily have removed them : the world remembered them only to despise them ; they never appeared in public ; they never discharged any function of royalty. But he was satisfied with the power without the title of king. His victories, too, aided his ambition. Over Radbod, duke of Frisia, he signally triumphed ; and he reduced to obedience the rebellious duke of Swabia. Before his death, he removed the seat of government to Cologne, evidently with the view of more effectually repressing the spirit of Germanic insubordination. No less fortunate was it for this aspiring house, that the successor of Pepin was the celebrated Charles, surnamed, from his victories, *Martel*, or the hammer. Neustria, which was chiefly inhabited by descendants of the Gauls, was never well disposed to the supremacy of Austrasia, refused, after Pepin's death, to acknowledge Dagobert III. ; proclaimed Chilperic II., and thereby asserted its independence. But the king and nobles, though aided by the duke of Aquitaine, were vanquished by Charles, who caused them to acknowledge him as mayor of Chilperic. Chilperic succeeded, on Dagobert's death, to Austrasia ; and when he, too, paid the debt of nature, Thierry IV. (720—737.) was permitted to bear



the vain title of king. At the head of the undivided power of the Franks, a genius like that of Charles could not fail to obtain rapid successes. Bavaria, which had never been invaded, though its duke had been compelled to become an ally of the Franks, he invaded and subdued: Swabia he conquered: the Saxons, who were making perpetual irruptions into Franconia, he vanquished: the Frisians, who were no less restless and dangerous, he pursued into the very bosom of their marshes, and compelled them to swear submission. But what more than all other things contributed to the establishment of his power, were his victories over the Arabs, who now poured their vast hordes over the Pyrenees, with the avowed purpose of finishing the conquest of Europe. In 732, he met them on the plains of Poitiers, advancing in the flush of success, and confiding in their prodigious multitude no less than in their valour. His splendid victory rolled back the barbaric tide; it completely broke the Mohammedan power, and as certainly saved Central Europe from the yoke. That this great hero should be regarded as the sovereign of the Franks, was natural: he was invited by Europe to the throne; and though, on the death of Thierry, he did not assume the regal title, he took care not to confer it on any other prince. In his conduct at this period he seems to have been actuated by great policy. Many subjects he doubtless had, who, had he openly assumed the crown, would have joined the excluded race; and he had no wish to add civil war to his other difficulties. The time was, perhaps, not come for the attempt; but he hastened its arrival, not merely by his victories, but by the politic correspondence which he maintained with the popes. As the Lombards were menacing the existence of Rome, the successors of St. Peter cast their eyes on the only orthodox son of the church who could defend them against those fierce Arians. Though he sent no armies to aid the pope, his threats are believed to have arrested the Lombards in the way to the eternal city; and the

service thus rendered, enabled his successors to draw closer the bonds of amity with the great bishop of the West. On his death in 741, he bequeathed the dominions of the Franks to his three sons, with a disposition as absolute as if the crown had been for ages in his family. To Carloman, the eldest, he left Austrasia, Swabia, and Franconia; to Pepin, Neustria, Burgundy, and Provence; to a bastard son, Grifo, several lordships by way of fief. Why did his last testament omit all mention of Aquitaine and Bavaria? The latter, after the death of Thierry, refused to acknowledge the Austrasian mayors: in fact, if it had been over-run, it had never been conquered; and it had regarded itself as the ally, not as the vassal of the Merovingians. The justice of the case seems to have been recognised by Charles, who made no effort to reduce the duchy. Carloman and Pepin, however, overthrew the Bavarians, reducing duke Odilo to vassalage. They found it necessary also to take the field against the Swabians. The same success attended them here as in Bavaria; and Aquitaine was speedily reduced to submission. But these advantages threatened to be rendered abortive by the fatal policy of Charles, in dividing the provinces. Often had the opportunity of uniting them in one compact monarchy been lost; dissension, open war, bloody treachery, were the inevitable consequence. It was reserved for Pepin to establish the foundation of a great empire. In 752, his brother Carloman assumed the cowl; leaving heirs, however, who, on reaching a suitable age, were intended to succeed in the Germanic provinces. But Pepin forced them also into the cloister; and he besought pope Zacharias to sanction his claim to the crown. Fortunately for him, the Lombards were now more formidable than ever: the pope had, consequently, the utmost need of his assistance; and, as the condition of affording it, his claim was fully sanctioned. Childeric II., who a few years before he had consented should bear the regal title—probably with the view of securing the obedience of the Germans—was now

quietly removed to the cloister, and he was solemnly anointed and crowned amidst the unbounded acclamations of the people.\*

But the institutions and character of a people are the only subjects on which the eye of the historic student can rest with pleasure. In the preceding rapid summary, the question perpetually recurs, What were the government, the administration, and the polity of a people thus destined to found a great empire? Into that extensive subject we cannot here fully enter, as on a former occasion we have, for any general purpose, considered it sufficiently.† Our present observations, so far from being intended as a complete treatise on it, are, in fact, intended merely as supplementary or explanatory of what we wrote on that occasion. When the Franks first appeared in Gaul, they had certainly hereditary princes; that is, they had one sovereign family from which alone they elected their future sovereigns,—generally, as it appears, during the lifetime of the reigning monarch; for as to the strict law of succession, this was unknown in every European country. What was the *authority* of these sovereigns? That which was sanctioned by the customs of the people, appears to have been moderate enough. Without the consent of his assembled warriors, the king could not legally undertake any important affair. For the great question of peace or war, this concurrence, we need not doubt, remained unimpaired; but in almost every thing else, except in the exercise of legislation, he continued, and more rapidly than we might have antici-

\* Johannes Bicliariensis, Chronicon, p. 337. &c. (apud Canisium, *Lectioes Antiquæ*, tom. i.). S. Gregorius Turonensis, *Historia Eccles. Francor.* lib. iv.—x. Fredegarius, *Chronicon*, p. 749. &c. Anonymus, *Gesta Domini Dagoberti*, p. 572. &c.; necnon *Vita Beati Pippini*, p. 594. &c. (apud Duchesne, *Rerum Francorum Scriptores*, tom. i.). *Annales Franciel.* necnon *Annales Rerum Francorum* (apud eundem, tom. ii. pp. 3—24.). Flodoardus, *Historia Ecclesie Rhemigiensis*, lib. i. cap. 18—26. Rhegino Monachus, *Chronicon*, lib. i. pp. 16—24. (apud Struvium, *Rerum Germanicarum Scriptores*, tom. i.). Hermannus Contractus, *Chronicon*, pp. 176—216. (apud eundem). Lambertus Schaffhaburgensis, *De Rebus Germanicis*, p. 310. (apud eundem). Mannert, *Geschichte der Teutschen*, necnon Luden, *Geschichte*, ubi supra.

† CAB. CYC. Europe during the Middle Ages, Vol. II. chap. I.

pated, to extend and establish his authority. In the first place, he seems to have possessed ample means of corruption. As the country was won from the original inhabitants, he assumed the right of partitioning it according to his pleasure among those who had helped him to acquire it, — a privilege which must, of necessity, have immeasurably augmented his influence. How such a privilege should have been left to him, is indeed surprising; but that it was an usurpation may fairly be inferred. In the rapidity of conquest, which was sometimes effected with a mere handful of troops, — Clovis does not appear to have commenced with more than 4000 or 5000, and at no period, probably, had the French kings more than three times that number, — it was not always convenient to convoke the great body of the Franks; and as the new domains were to be divided, who so likely to fix the portions as he who had been witness to the valour exhibited by each warrior? Again, on the death of a tenant, the domain naturally reverted to the king; and it could either be intrusted, under the usual condition of military service, to some member of the same family, or to any other individual whom he might select. Whatever circumstances may have placed this privilege in his hands, nothing seems more certain than that he exercised it. He could not, however, at his own pleasure, deprive any tenant of his domain; such deprivation was the unquestionable prerogative of the annual plaids, and one which was retained through every varying change of fortune. Not that the king did not sometimes punish his most powerful followers; but these were exceptions from the rule; they were instances of violence which no man had foreseen, and which became less uncommon in proportion to the augmented influence of the crown. Again, the king had the nomination of the dukes, counts, and other functionaries, whose character appears to have been equally military and civil. Was this, also, an innovation? This question, perhaps, can never be decided. Whether it were an innovation or not, there was a

plausible pretext for its exercise; for, on a vacancy, the necessities of the public service would naturally demand the immediate nomination of a successor. What appears certain is, that such dignities were generally venal, unless the king chose to confer them as a mark of his especial favour. Thus, Gregory of Tours tells us of a man who sent his son with a considerable sum of money to court, to procure the vacant office of count, and that the son bought it for himself. These two facts alone would account for the rapidity with which the royal power was consolidated. There was always a sufficient number of armed warriors at court, in expectation of lands or dignities, and ready to obey any expression of the royal will. It was the manifest interest of the king to augment the number; and we accordingly find that this lawless band was sometimes powerful enough even to crush an insurrection. All, it may be said, could not reasonably expect either dignities or territorial domains; but, for the present wants of all, the king had generally an ample store of gold and silver. When these failed, the church supplied a resource. To the more favoured of their followers, the Merovingian princes of later times sometimes granted the revenues of monasteries, even of cathedrals. They were his unscrupulous instruments so long as he had either the present means or the future prospect of rewarding them; and by their aid it was that he was enabled to triumph over the more powerful dukes or counts who raised the standard of revolt. Again, so long as the great bulk of the armed population attended the annual plaids, they were a check on the royal power. Originally, when the territory was limited, such attendance was frequent, because it was not burdensome; but when the new vassals were scattered over a wide extent of country, from the bosom of Franconia to that of Aquitaine, there were many who had little disposition to undertake a long, a dangerous, and an expensive journey. The official dignitaries, indeed, were bound to be present; but these were not the men most likely to resist the

monarch's will. In fact, as these were long removable at his pleasure, they were in no haste to oppose him. It is certain that, in process of time, these plaids were but indifferently attended ; and that the virtual government of the nation rested with the king and his dependents. Lastly, the spirit of the Roman jurisprudence, which was essentially favourable to despotism in the sovereign, was rapidly displacing that of the Germanic code. If we read the slavish language of the bishops of Gaul during the sixth century, we shall soon perceive that his power was irresponsible. But in the progress and revolution of society, that power decreased as rapidly as it had arisen. The causes are by no means recondite. The personal character of the monarchs was, probably, the most effectual. The functions which they were incompetent to discharge, were intrusted to the mayor of the palace, who, as we have before intimated, soon engrossed the actual powers of the monarchy. Again, when the warriors — now become nobles — insisted that their domains should be hereditarily transmissible to their descendants ; when even the dukes, counts, and other dignitaries, no less insisted that these offices should descend to their heirs ; the influence of the crown was almost annihilated. We have alluded to the compact between the mayor, Pepin, and the nobles of Austrasia, after a struggle which appears to have continued throughout the greater part of a century. As far as regarded the lands, there was justice in it. In all countries, these had been hereditary ; and no man could patiently bear the reflection, that what he himself had won with the sword, should be forcibly transferred from his offspring to a stranger. In fact, there can be no doubt that these fiefs soon ceased to be moveable ; that they were soon regarded as purely hereditary, subject, perhaps, to a nominal confirmation by the crown. Where so many thousands had a direct interest in the question at issue, we need not wonder that they made common cause against the



crown, as regarded not only their fief, but their jurisdictions.\*

The judicial system of the Germanic tribes is worthy of consideration. Our earliest information, derived from Cæsar and confirmed by Tacitus, shows that Germany had anciently as many republics as it had tribes. Except in time of war, there was no chief common to all, or even to any given confederation. In each pagus or canton the inhabitants periodically assembled, elected their magistrates, not for the pagus only, but for each community or colony—towns there were not—of that district. These, Cæsar calls *principes regionum ac pagorum*, Tacitus, *principes pagorum vicorumque*. Those who presided over a pagus were certainly equal in authority to the counts, or even the dukes of a later period, and they were as certainly chosen from the nobles, probably from some particular family; for, that there were hereditary distinctions, even at this period, is incontestable. Under these, were certainly other functionaries: of them was the *tiuphad*, of whom we read in the Wisigothic code; and the magistrates over the *vici* were, doubtless, subordinate to those of the *pagi*. Whether the *principes qui jura per pagos vicosque reddebant*, had official *scabini* or assessors at this early period, may be doubted: it is more probable, that a certain number of householders were chosen for the occasion, to advise and even to concur with the presiding judge. In subsequent times these dignitaries were called dukes and counts. It is impossible to ascertain the number in the dominion of the Franks. The Germanic provinces had, indeed, but one duke each; and there could not be many in Gaul, since his jurisdiction embraced a whole province, and contained several countships. His office was originally military; to lead, at the summons of the king, the armed men of his duchy to the field; but

\* Mably, Observations sur l'Histoire de France, tom. i. S. Gregorius Turonensis, Historia Ecclesiastica, lib. v. cap. 19. lib. vi. cap. 46. lib. vii. cap. 33. (et in aliis locis). Guizot, Histoire de la Civilisation en France tom. i. leçon 8. Schmidt, Histoire des Allemands, tom. i. chap. 6. Sis mondi, Histoire des Français, tom. i. et ii. passim.

that it soon became civil also, is evident from a formula in Marculfus. The same twofold and apparently discordant character distinguished the count. *He*, too, had his district, the forces of which he led to the banner of his duke, and in the tribunal of which he administered justice to the people. Both, too, raised the royal revenues, and transmitted them to the court. In their origin, these offices, as we have already intimated, were conferred for a period only, at the pleasure of the crown; but they were soon held for life, and were, consequently, irrevocable, unless in cases of convicted delinquency. Subsequently, as we have shown, they were declared hereditary. To repress extortion, the dukes appear to have had no interest in the revenues of their provinces. Those of a certain territory were assigned to support the splendour of the dignity, in the immediate vicinity of the place where the duke had his seat of jurisdiction. Thus, the city of Wurtzburg, and its dependencies, was the ancient domain of the duke of Franconia; and in later times, the whole circle of Wittenberg was not thought too ample for the necessities of the dukes of Saxony. In each courtship (*pagus*, *gau*; hence the numerous German words ending in *gau*, as *Risgau*, *Rhingau*) were several *hundreds*, each governed by a hundredary or centenarius, who, like the count and duke, had his tribunal. But, as reliance could not always be placed on the integrity, or competency, or moderation of the military judges, *missi dominici*, or royal commissaries, armed with superior judicial powers, were frequently sent into the provinces, to superintend the administration of justice, to report on the conduct of the ordinary functionaries, and to hold courts themselves, into which they could evoke any cause pending in the inferior tribunals. And the bishops appear to have been invested with a sort of indirect control over the counts of the same city. Appeals, too, could regularly be carried from an inferior to a higher tribunal; even from the decision of the royal judges, there was an appeal to the superior justice



of the monarch. Besides, in the annual plaids, which, under the Merovingian sovereigns, were always held in March, and thence called *Campi Martii*, complaints could be made against any functionary, from the centenary to the duke, who had abused his trust. When the king sat on the seat of judgment, he was always accompanied by the higher officers of his crown; by his marshals, senechals, stewards, cupbearers, &c., and, generally, by one or two bishops. The dukes and counts, too, were not allowed to dispense justice alone: they presided in a court, composed of a certain number of assessors, called *scabini* or *rachimburgii*, who possessed the right of advice and suffrage; and they had vicars to take their places, either when the multiplicity of affairs exceeded the power of one man, or when they were absent on military business. And there was another class of functionaries associated with the *comites* and *rachimburgi*, or *scabini*. These were the *sagibarones*, who appear to have been a sort of syndics or advising magistrates. They were not so numerous as the *scabini*; for, while every open tribunal required seven, there were only three *sagibarones*. Originally these functionaries, the count, and the *scabini* (for the *sagibarones* are of more recent appointment), met in their tribunal, or *mallum*, under the open firmament, to administer justice in presence of the people. The place had some distinguishing mark to warn the people of its sanctity, to repress turbulence and noise, and to inspire a sedate attention. That distinction was sometimes a solitary oak, sometimes a cross, now a statue; and, if none of these were at hand, the upraised shield of the judge might be a sufficient token. These primitive judgments in the open air continued to the days of Charlemagne, and even of his sons. Both he and Louis le Debonnaire, caused buildings to be erected, for the purpose, "that the public service might not suffer either through the heat of the sun, or the rain." But we must never forget that the jurisdiction of the count was as well military

as civil; and as no man could be equal to these two-fold duties, when he was occupied in one he necessarily devolved the care of the other on his vicar, or vice-count. Each vicar had his tribunal, but that tribunal could not suffice either for the multiplicity of affairs or for the extent of a district. Hence the inferior courts of the centenary or hundredary, so called, probably, from his jurisdiction over a district containing 100 families or hamlets; of the *decanus*, or tything man, who was probably something more of a constable than a magistrate. It has, however been said, that he held his tribunal, as well as his superior the centenary; but if he had one, it must assuredly have been for very trifling causes. By some writers he is supposed to have been identical with the *tungin*; but this officer was certainly one of much higher grade. The *tungin* appears to have been independent of the ordinary or royal courts, and to have exercised a territorial jurisdiction by especial grant from the sovereign. From several of the Germanic codes it is evident, that he took cognisance of very important cases, a fact that does not much countenance the notion of his identity with the public tything-man. That there were regular gradations of appeal through these tribunals, is undoubted. The two judges of the king's palace were chiefly occupied in hearing appeals; and it is certain, that they were often carried from the centenary to the count, from the count to the king, and from the king to the annual placita.\*

The society of the German tribes will be found to exhibit features no less striking than the government and administration. That the feudal system had its roots in these times, is, of all facts, the least questionable. Lands were confessedly bestowed and held on the con-

\* Cæsar, De Bello Gallico, lib. vi. cap. 23. Tacitus, De Moribus Germanorum, cap. 12. Capitularia Regum Francorum (in a multitude of places). Lindenbrogius, Codex Legum Antiquarum, especially the laws of the Franks, passim. Ducange, Glossarium ad Scriptores, voc. *Dux*, *Comes*, *Rachimbergus*, *Scabini*, *Sagus-baro*, *Missus*, and many others. Couringius, De Judiciis Reipublicæ Germanicæ, 1—36. Marculfus Formulæ (in multis scriptores) Heineccius, Elementa Juris Germanici, lib. iii. tit. 1. See also Europe during the Middle Ages, vol. ii. p. 19, &c.

dition of military service ; and, except in the event of invasion, that service was limited to a certain number of days every year. And it is certain that lands were not merely held from the monarch ; they were also granted by the great vassals, who may now be called barons, to inferior warriors. As the number of men which every great tenant was compelled to furnish, was proportioned to the extent of his domain, he was of necessity compelled to surround himself with armed men. Some of them, indeed, were the inmates of his abode ; they sat at his table, and were, in fact, his military domestics ; but to the greater number, smaller portions of land were conceded, on the same condition of service. This policy was in other respects useful. It tended to the better cultivation of the ground ; and it fortified the different parts of the domain against aggressions, which in such an age were of perpetual recurrence. The number of armed attendants on the persons of the dukes appears to have been considerable. The German dukes were virtually sovereigns ; and were often able to contend with their superiors of Austrasia. The hostility of the warriors to agricultural pursuits, which they devolved on slaves or domestics, is well known. War and hunting were their constant employment ; so much so, that lance and man were as synonymous as spindle and woman. In the laws of all these people, the life of a dog, of a falcon, or a hawk, is secured by heavy penalties. Buried in the recesses of their vast forests, surrounded by a numerous train of slaves and of armed warriors, occupied in masculine sports, and proudly conscious of their independence, the German barons were little disposed to abide in cities. At their superior's summons, they were always ready to take the field ; but that service performed, they regarded themselves as under no obligation to him, and they hastened to visit their rural abodes. — In their habits of life we perceive a considerable improvement from the time of Tacitus. Their houses were evidently much larger, and provided with apartments appropriated to

distinct offices of the household ; their tables became, not indeed more plentiful, but certainly much less rude. We read even of *cooks*,—a refinement unknown to their lives of old. It is equally clear that, though they took no part in agricultural labours, considerable improvement had been effected in that most useful of the arts. The class of slaves must have greatly multiplied, before the land could be rendered capable of supporting so many free-born warriors. Enfranchisement, however, was not unfrequent, especially that partial sort, which though it broke the more galling chain of servitude, still rendered the freedman dependent on his patron,—subject to certain services or returns of produce. On the whole, it is difficult to determine whether liberty most flourished in Germany or Gaul ; for though in the latter country the influence of religion was incomparably greater during the Merovingian sway, in the former there had always subsisted more individual independence. In Gaul, however, manumission was much more frequent: the slaves were even elevated into liberty, that they might, on any emergency, be able to assist their lords, who, from their location in a foreign country, had not, like the German barons, free-born warriors always at hand to assist them. In Gaul, too, the church had an infinitely greater number of slaves. In fact, Christianity was little known in Germany during the period before us : and under that spirit which has always influenced the ministers of the altar, the worst evils of slavery in the former country were sure to be mitigated. There were other marks of distinction between the people of Gaul and of Germany. In the former, the ecclesiastical dignities and the municipal offices were in the hands of navties, whose influence was a salutary counterpoise to the tyranny of the new proprietors. Again, the proudest tenants paid more attention to the cultivation of the ground, than their trans-rhenish countrymen. Thirdly, the constant intercourse between the two great classes of the people, insensibly led to an approximation. Though originally, the life of a Frank

was rated at twice the amount of a Gauls ; but this obnoxious distinction was soon abolished by the Burgundians, who placed the two nations on an equal footing ; and their example was at length imitated by the Franks.\*

\* Schmidt, *Histoire des Allemands*, tom. i. Guizot, *Histoire de la Civilisation en France*, tom. i. Mably, *Observations sur l'Histoire de France*, tom. i. et ii. Sismondi, *Histoire des Français*, tom. ii. *Europe during the Middle Ages*, vol. i. in pages too numerous to be cited. To none of these works, however, are the preceding paragraphs much indebted. They are chiefly founded on the laws of the several Germanic codes, and on some incidental notices in the chronicles of the times.

## CHAPTER I.

## THE CARLOVINGIAN DYNASTY.\*

752—910.

CHARLEMAGNE RESTORES THE EMPIRE OF THE WEST. — HIS REIGN AND HIS IMMEDIATE SUCCESSORS. — CONVULSIONS OF THE EMPIRE. — CIVIL WARS. — SEPARATION OF THE FRANK AND GERMANIC CROWNS. — GOVERNMENT, LAWS, SOCIETY, AND MANNERS OF THE GERMANS DURING THE DOMINATION OF THIS HOUSE. — LAWS THROWING LIGHT ON THAT SOCIETY. — CODES OF THE FRANKS. — BURGUNDIANS. — SWABIANS. — BAVARIANS. — ANGLES. — SAXONS. — FRISIANS.

752 THE conduct of Pepin was not unworthy of the confidence which had been reposed in him. Like his im-  
771. mediate predecessor, he triumphed over the hostile Frisians and Saxons, and he quelled the insurrections of the Germanic dukes. To the pope he proved that he could be grateful for his elevation to a throne. Being honoured by a personal visit from Stephen III., and informed of the extremity to which the Roman possessions were reduced, he first remonstrated with Astolfus of Lombardy; and when that prince still marched on Rome, he hastened into Italy, and forced him to restore the exarchate of Ravenna, not indeed to the Greek emperor, but to the pope. In his testament, which he took care to see confirmed in a public diet, the year before his death, he left his two sons, Charles and Carloman, joint heirs of his states. To the one he left the West, from Frisia to the Pyrenees; to the other, the Germanic provinces, part of Austrasia, Alsace, Switzerland, Burgundy, and Provence. To us, whom his-

\* As this dynasty was also common to France, we pass over it with celerity, referring the reader for more ample particulars to the histories of that kingdom, and of Europe during the Middle Ages, CAB. CYC.



tory has presented with a wide field of experience, it often seems surprising that such impolitic measures could be adopted by men distinguished for considerable powers of judgment,—for such, assuredly, were Charles Martel and Pepin. Its ruinous effects were before the eyes of both; yet neither they nor any other sovereign of these ages ever thought of deviating from it. It is indeed probable, that to one of the sons,—generally the eldest,—a superiority was awarded over the others; but it was merely feudal,—consequently nominal. The most obvious cause of this policy must be traced to that natural affection, and to those natural feelings of justice, which lay in the paternal breast; yet a more enlightened affection would have shrunk from placing sons in a position where they must inevitably become hostile to one another,—where troubles must, of necessity, agitate both them and their people. But the equality of rights among the children of the same family, the total absence of primogenital advantages, distinguished all the Teutonic, all the Slavonic nations; and custom was too powerful to be eradicated by policy, until it was found, by that most effectual, though most melancholy of teachers, experience, that where primogeniture is not adopted, society will be disorganised. In the present instance, indeed, no serious mischief followed the partition. A civil war was preparing by both brothers, when Carloman died, and though he left children, their claims were disregarded by Charles, who seized the whole inheritance.\*

In estimating the reign and character of Charlemagne, 771  
let us not lose sight of the peculiar advantages which at- to  
tended his accession. 1. He was the undisputed master 814.  
of France, for the Arabs had, in the late reign, been  
driven from Septimania. In Germany he had ample  
possessions, and if he could place little dependence on

\* Eginhardus, *Annales Regum Francorum*, A. D. 741—771. Idem, *Vita Caroli Magni*, cap. 1—18. Monachus Gallensis, *De Gestis ejusdem*, lib. i. *De Gestis Francorum*, p. 136. (apud Duchesne, *Rerum Francorum Scriptores*, tom. ii.). Regino, *Chronicon*, pp. 215—218. (apud Struvium, *Rerum Germanicarum Scriptores*, tom i.). Mannert, *Geschichte den Alten Deutschen*, p. 220, &c. Luder, *Geschichte der Teutschen Volkes*, th. iv.



the attachment of the Bavarians, the Franconians were bound to his government, and the Swabians were not ill affected towards him. His empire, therefore, extended from the Scheldt to the Pyrenees, and from Bohemia to the British Channel. 2. The forces, to the direction of which he also succeeded, had been rendered warlike and confident by the victories of his father and grandfather. 3. He had nothing to fear from the Arabs, whom his great predecessor had taught for ever to respect the territory of the Franks; nor from the Lombards, who could not for a moment contend with him; nor from the Greek empire, which was fast sinking into imbecility. 4. The north had not yet equipped the formidable maritime expeditions which, in another century, were to shake Europe to its foundations. 5. The introduction of Christianity, during the eighth century, into Germany, in some degree, even among the Saxons and the Frisians, opened the way for greater triumphs; since the new converts were taught to pray for the success of the Christian king,—of one who would prostrate the idols of the Pagans, burn the temples so long polluted by bloody rites, and infuse a new spirit, the spirit of harmony, of peace, and happiness, into scenes which had long been disfigured by the tempest of passion and of violence. These were great advantages, the coincidence and concurrence of which nothing short of Omniscience could have foreseen, perhaps which nothing short of Omnipotence could have produced. Yet he had difficulties to remove which would have cooled the ardour of any other prince. The Frisians and Saxons were, in the proportion of nine to ten, pagans, actuated by a fierce hatred of Christianity, and by a quenchless thirst for blood and plunder. These were men to whom war was agreeable as a passtime, and whose predatory incursions had for ages troubled the surrounding tribes. We are astonished to see the territorial progress of the Saxons. At the dissolution of the Western empire, they occupied, as we have before shown, a bounded region near the mouth of the Elbe. Now they bordered

on Franconia to the south, westward with the Frisians, and eastward with the Slavonic tribes, which lay between the Elbe and the Oder. This aggrandisement was the effect, not so much of increase in population,—for barbarous nations do not multiply,—as of conquest. They forced other tribes to amalgamate with them, and their augmented number of warriors enabled them to meditate even greater enterprises than they had yet effected. Again, the Bavarians bore their dependence on the Franks with exceeding impatience; they waited only for a rising in northern Germany, to throw their own swords into the scale of war. Should they and the Saxons combine, it would require all Charlemagne's power to break their force. From the very commencement of his reign he seems to have meditated the subjugation of both. He began with the Saxons, the most formidable and savage of his enemies; and though his operations were often suspended by his campaigns in Spain, Aquitaine, and Italy, he always returned with augmented vigour to the charge. In 772 war was formally declared against them, in the diet of Worms. The immediate cause was, the massacre of some missionaries whom the monarch had sent to reclaim the people from idolatry, but their frequent irruptions in Franconia had no less effect on the resolution. In a rapid campaign, he prostrated these ferocious people; for what could undisciplined, however brave levies effect, in opposition to a veteran army, led by one of the ablest generals that Europe has ever produced? In this campaign he took the strong fortress of Eresberg (now Statbergen, in the bishopric of Paderborn), containing the temple and idol of Irminsul, (statue of Irmin), the object of their peculiar veneration. This Irmin was the celebrated Arminius (Armin), the Cheruscan (a branch of the Saxons) chief, who, eight centuries before, had cut off the Roman army, with its leader Quintilius Varus. That such a hero should long be venerated as the saviour of his country; that in the progress of centuries he should attain the honour of deification, is ex-

ceedingly probable. All the pagan demigods have, at some period, been men, whose fame, magnified through the mist of succeeding ages, has been elevated from human to divine.\* Such was Hercules, such Odin, such Armin. After this triumph, Charlemagne halted on the banks of the Weser, and forced the deputies of the Saxon states — the chiefs of the confederation, — to give hostages for their future obedience. In a short time, however, so far from observing the treaty, they poured their wild hordes into Franconia, burnt every church and monastery that fell in their way, and put every creature to the sword. Another campaign reduced the four great tribes, or rather confederation of tribes, of which they were composed,—the Westphalians, who lay west of the Weser; the Eastphalians, who lay between that river and the Ems; the Angravarians, who bordered the Westphalians; and the Nordalbingians, who dwelt north of the Elbe, the cradle of the Saxon race. As before, however, no sooner was he engaged in a distant war, than they renewed their depredations; and, on his return, were forced to bend before his commanding genius. He soon discovered that these savage people could never be civilised, never be made to forsake their warlike habits, unless they were effectually reclaimed from idolatry. With this view, he dispersed the numerous hostages he received in the cloisters of monasteries, and sent missionaries to labour in the wide field. In 776 Witikind, the most famous chief of the Saxon chiefs, instigated the Westphalians to revolt; and committed ravages which long rendered his name memorable; but the monarch's approach compelled him to seek shelter with the Danish king. Charles had reason enough to be dissatisfied with his two great feudatories, the dukes of Swabia and Bavaria, who during his absence

\* Roland, too, had his statue. That gods could be made without much difficulty, appears from the celebrated passage in the Life of St. Anskar. See History of Europe during the Middle Ages, vol. ii. p. 213. The following is not less remarkable:—

“Colunt et Deos ex hominibus factos; quos pro ingentibus factis immortalitate donant, sicut in vitâ sancti Ansgarii legitur Ericus rex fecisse.”  
— *Adamus Bremensis*, lib. iv.

raised not a lance in defence of the invaded provinces. When, in 778, Witikind returned, duke Tassilo of Bavaria remained inactive: (the troops of Swabia appear to have been absent on the Spanish expedition).\* In this war Witikind had at first the advantage; but, as in all other cases, it fled on the approach of the king. That Charles should be exasperated at these manifold perfidies, and still more at the wanton outrages which accompanied them,—for the Saxon chief was little short of a demon,—was natural; but the coolness with which he massacred, at Verden, 4500 Saxon prisoners, must cover his name with everlasting infamy. It was as impolitic as it was demoniacal, for it roused the whole nation to arms. But though the king had thus created a new and more formidable obstacle, with him victory and battle were words of the same import. This time he humbled the country so completely, that both Witikind and his brother submitted, and received baptism. The alternative of death or Christianity was held out to thousands of the people, who naturally preferred the latter. He now incorporated the region with his empire, and in his subsequent wars drew off some ferocious natives of this extensive province to distant points of his empire. But that conquest cannot be called complete before 803. He was even compelled to adopt a cruel but successful policy,—that of transplanting 10,000 at a time from the bosom of their forests to colonise various parts of his dominions in France and Italy: it broke the force of their confederation; and, joined to the incorporation of the more turbulent spirits with his armies in Italy or Aquitaine, or on other distant points of his empire, rendered them sufficiently pliant during the remainder of his reign; but the most effectual cause of their submission, was doubtless, their adoption of Christianity. So much had they been humbled by their successive disasters, that they consented to pay tithes to the priesthood located among them, utterly to destroy their temples, and to baptise every child that should be born;

\* See History of Spain and Portugal, vol. i.

nay, in the diet of Wurtzburg, the more aged agreed to receive the regenerating rite. Yet, so stout had been their resistance, that the monarch granted them more favourable terms than they could have expected: he extended to them all the privileges of his own Franks, he exempted them from every species of tribute, other than that of tithes; he admitted their chiefs to the diets of the empire, and he exacted nothing from them beyond the usual oaths of fidelity, and the right of nominating their judges and governors, though both were to be chosen from the Saxons themselves. Thus, after numerous campaigns, and the loss of so many brave defenders, after seeing its myriads drawn away to distant settlements, and their place filled by the Obotrites, or Slavonic tribe, this proud nation received the yoke. Some thousands, however, preferring expatriation to submission, repaired to the Danes, whom they joined in the piratical expeditions, which in the reign of Charlemagne's successor began to desolate the maritime provinces of Gaul. Of Witikind we hear no more; he appears to have retired to his ample domains, and to have passed the remainder of his days in tranquillity.\* He left an illustrious posterity; his immediate descendant, count Walbert, was the root of the ancient counts of Oldenburg, and consequently of the now reigning houses of Denmark and Russia. Long before the termination of this war, duke Tassilo was called to account; perceiving the storm that was ready to burst upon him, he invoked the mediation of the pope, but his object being evidently to gain time, until he could bring the Avars of Bohemia, and even a body of Pannonians into the heart of Germany, negotiations were broken off, Bavaria was invaded, and the duke forced to appear at the diet of Ingelheim; there he was deliberately tried by his peers, was found guilty of violating the fidelity which as a vassal he had sworn to his feudal superior, and was condemned to death. But his relationship with the royal family (he had married one daughter

\* He was sainted! His acts are in Mabillon.

of the Lombard king and Charlemagne another) mitigated his fate, and both he and his consort were allowed to pass their days in religious seclusion. In 794 he solemnly renounced all claim to the sovereignty of Bavaria, which was now divided into feudal governments, according to the system established in every other part of the empire. With Tassilo ended the princely house of the Agiolfingians, who had governed Bavaria during two centuries. But if the duke was thus removed, the ferocious barbarians whom he had invoked soon brought desolation into Bavaria. By the Saxons, the Frisians, and the Bavarians, however, these invaders were signally defeated on the banks of the Danube, and were precipitately driven back into Hungary. In this campaign, the boundary of the empire was carried from the Ens to the Raab, while, north of the Danube, his generals carried it from the Elbe to the Oder. Of these conquests, magnificent as they were, we have few details in the ancient chroniclers. To defend them, he colonised the country between the Drave, the Danube, and the Raab, not only with Germans but with such Avars as embraced Christianity: and he placed this important work under the superintendance of a margrave. For the sake of more easy communication with this distant frontier, he formed the gigantic design of joining, by means of a canal, the Rhine with the Danube; but though considerable progress was made in the work, the mechanical knowledge of the age was unequal to it, and it was reluctantly abandoned. The truth is, Charles was much superior to that age; his comprehensive views often urged him to the adoption of measures for which his contemporaries were wholly unprepared, and in the execution of which he could find no co-operators: that his German successes were not his only ones, has been related in several of the historical works embraced in this collection, the *CABINET CYCLOPÆDIA*.\* We shall here content ourselves with observ-

\* See the History of France; the History of Spain and Portugal, vol. i.; the History of Europe during the Middle Ages, vol. i. chap. 1.



ing, that he subdued Catalonia, and all Italy as far as the confines of Beneventum ; he was consequently lord of as many regions in Europe as Rome had ever possessed. From the Ebro to the mouth of the Elbe, from the British Channel to the Oder and the Raab—such was the empire of this great prince. Much of this was his own work. When he ascended the throne, Franconia and Swabia were the only Germanic provinces which owned his sway : it is strange that he should make no effort to subjugate Bohemia, which was inhabited by Slavonic pagans, men ever ready to join the Huns in any depredations. Two motives by which he was almost equally actuated, ambition, and the propagation of the Christian faith, would, we might imagine, suffice to move him ; yet he made no serious attempt to subjugate that wild country. His generals and sons, indeed, appear to have overrun it in their passage to the Oder, and it may be, that the natives, by acting as his allies, averted his hostilities for the time ; but they never recognised him as their sovereign, perhaps they openly defied his power ; nor is it unlikely, that with the aids they were able to receive from the neighbouring provinces of Poland, Brandenburg and Hungary, and with the rugged nature of the country, they might feel confident in their powers of resistance. However this be, enough of military glory remains for Charlemagne, more perhaps than had ever fallen to the lot of any conqueror since the days of Julius Cæsar. Well did he deserve the imperial crown, which, in the year 800, pope Leo III. placed on his brows in the capital of the Christian world. But military glory is not his only, nor his chief claim to the admiration of posterity : never did conqueror labour like him to introduce civilisation among the conquered. This he effected, not only by sending missionaries among them,—by compelling them to receive religious instruction, but by the establishment of monasteries, where youth were taught all the knowledge of the age ; by promulgating laws for their observance ; by furnishing them with a new system of admi-



nistration. Of his activity in this respect, as regarded not only the Saxons and the Bavarians, but the Frisians, the Lombards, and the Franks, we have evidence enough in the various Germanic codes, and the number of diets convoked by him ; he was, beyond all doubt, the greatest legislator of the middle ages. Of his zeal for the diffusion of religion; for the maintenance of discipline, for the restoration of learning; of the allurements which he held out to all who co-operated with him in his extensive reforms, this is not the place to speak ; suffice it to know, that both to the religious and the intellectual character of his age, he gave no less an impulse than to the political and civil,—an impulse which long survived him, which even descended to modern times. In every respect his reign was glorious. In Spain he aimed the first effectual blow at the Mohammedan power, which he precipitated beyond the Ebro. In Lombardy he broke the iron yoke of the most tyrannical people that Italy had yet seen. In Germany he did much more : he humbled the Frisians : the lawless barbarians of Saxony, who for ages had been the curse of their neighbours, he not merely subjugated, but conducted into the career of civilisation and of happiness : the Slavonians he taught to respect the public tranquillity : the Avars and Pannonians he confined within barriers, which he defended by an armed force. In fact, this monarch was the father of European civilisation ; he not only called it into existence, but protected it by barriers which barbarism afterwards in vain assailed. As the founder of the Germanic empire, he has peculiar claims on the gratitude of all posterity ; no genius less commanding than his could have formed the most savage, and the most lawless of men, into a body politic ; could have transformed wild beasts into rational and humane beings. That empire has been the bulwark of European knowledge, morals, and freedom. How often it has rolled back the tide of Asiatic invasion, — how often it has withstood the spiritual despotism of

the popes, need not be mentioned here. Much of the glory must be attributed to this wonderful man, who, to the Christian philosopher, seems to have been raised by Heaven itself for the accomplishment of its own high purpose. He had, indeed, his defects; he was inordinately ambitious; in the promotion of his schemes he subjected his people to incredible sacrifices; in private life he was incontinent, sometimes cruel; and he often pursued the gratification of his own will at the expense of justice; but it may be replied, a strong hand, even a rod of iron was necessary to rule men, grown licentious by immemorial impunity. To the poor he was always clement, and in the frequency with which he convoked, and the solicitude with which he consulted his diets, he evinced his natural love of justice, and surrounded himself with a host of faithful and affectionate advisers. No wonder that his fame should be so widely diffused, even in his own days. "His name was respected with equal reverence by the Arab of the desert, and by the pirate of the deep. The kings of his time, from the caliphs of Bagdat to the Anglo-Saxon reguli, from the sovereigns of Cordova to those of Scandinavia, were eager to obtain his notice, to be honoured by his friendship or alliance." To some of his institutions, to such especially as have survived to more recent times, we shall advert before the conclusion of this chapter; while his zeal for learning and religion will often be mentioned in this compendium. His glory cannot suffer from the attacks of malignity; with all due allowances for the favourable circumstances in which he was placed, and for the defects with which he was sullied, he effected more good, and is more entitled to our admiration, than any other monarch in the whole range of history. Alfred the Great, who has been opposed to him, will not for a moment bear comparison with him.\*

\* Eginhardus, Vita Caroli Magni, cap. 18. to the end. Monachus Gal-  
lensis, de Gestis ejusdem, lib. i. et ii. passim. This book is full of fables,  
—not, however, as respects the hero Charlemagne. Anon Annales de  
Gestis Caroli Magni, lib. i.—v. Fragmenta de Rebus Gestis Caroli M.

It is unfortunate for mankind that the edifice which Charlemagne erected with so much labour, could not be established by his successors; they were all unworthy of the station to which they were called; some of them did little honour to human nature. In this respect, no prince was ever so unfortunate. For many of the disasters which followed he himself is to be blamed. If ever man could be expected to rise above the evil customs of an age, to appreciate the true interests of nations, it was Charlemagne; yet some years before his death he committed the unpardonable, however common, error of dividing his dominions among his sons. To Charles, the eldest, he gave northern France, the Low Countries, and most of Germany; to Pepin, Italy and Bavaria; to Ludovic, Burgundy, Provence, Aquitaine, and the Spanish March. The two eldest, indeed, preceded him to the tomb, so that Ludovic inherited the whole empire. But the evil example was both perpetuated and sanctioned by this policy; and being imitated by others, it led to all the misfortunes of the following reigns. Louis-le-Debonnaire (814—840) lived to see its ill effects: his very children, being dissatisfied with the portions he assigned them, and rendered proud by the kingdoms bestowed on them during his life, rebelled, and dethroned him; and though he was afterwards restored, his reign was inglorious, and his life was one of bitterness. One part of his dominion was laid waste by the Normans, another by the Danes; while his subjects derided his impotence. Who would have believed that such a sovereign could be son of Charlemagne? We will not enter into the recital of troubles which perpetually agitated this and the following reigns, but we must notice such peculiarities as distinguish them from the rest, or throw light

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887,

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cum Hunis et Slavis, p. 220. Eginhardus, *Annales Regum Francorum*, (sub annis; omnes apud Duchesne, *Rerum Francorum Scriptores*, tom. ii.). *Chronicon Reginonis*, pp. 35—59. Hermannus Contractus, *Chronicon*, pp. 213—225. Sigebertus Gemblaccensis, *Chronographia*, pp. 779—788. (omnes apud Struvium, *Rerum Germanicarum Scriptores*, tom. i.). See also Europe during the Middle Ages, vol. ii.

on society. In the diet of Aix-la-Chapelle (held 817), there was a classification of royal abbies, viz. abbies of royal foundation, according to the assistance they were to furnish to the state. The first, or richest class, was rated at a certain number of warriors, and at a certain sum of money, whenever the emperor should go to war; the second was to furnish money only; the third neither money nor troops, but prayers. The empress Judith, being accused of adultery with duke Bernard of Septimania\*, was permitted to clear herself by the ordeal of red hot ploughshares. In this reign we perceive the first traces of the heritability of fiefs: several domains of the crown were alienated in favour of certain courtiers, and were transmissible to heirs, while hitherto, in Germany, they had been conferred for life only. In France, this heritability, as we have before observed, prevailed, but it had been suspended by Charlemagne. *Lothar I.* (840—855), succeeded to the imperial title, yet not to Germany, which fell by partition to his brother Ludovic; nor to France, which was the portion of another brother, Charles the Bald. Lothar's own portion was Lorraine, Burgundy, Switzerland, and Italy; but, with the imperial name, he had some superiority over the others, and he laboured to make it more than nominal. They resisted, and the sword of civil strife was again drawn. In the end he received some augmentation; but king Louis retained the whole of Germany, with the provinces on the left bank of the Rhine. In 850, Ludovic vested the ducal title, which had been suppressed by Charlemagne, in the house of Thuringia. Though Lothar's domains occupied merely a third of the empire before his death, he divided that third between his two sons: to Ludovic II. he left the imperial title, with Italy; to Lothaire, his second son, the country situated between the Scheldt and the Saone, the Meuse and the Rhine, which was thence called Lotharii Regnum, and easily corruptible into Lotharingia and Lorraine. *Ludovic II.* (855—875) being thus confined to Italy, his reign offers few events

\* History of Spain and Portugal, vol. iii. (COUNTS OF BARCELONA).

connected with Germany. The duchy of Saxony was restored ; Alsace was ceded by king Lothar to Ludovic of Germany ; and, on Lothaire's death, the remaining part of the kingdom, which belonged of right to the emperor, was seized by Charles the Bald, king of France ; but it was subsequently divided between the two. On the death of the emperor, *Charles the Bald* (875—877) succeeded to a vain title, and to the more substantial government of Italy. Ludovic of Germany contended for both, but dying in the interim, his states were subdivided. Carloman, the eldest son, had Bavaria, with the Tyrol, and the other provinces dependent on that duchy, and with the claims to the Lombard crown ; Ludovic III. had Saxony and Franconia ; Charles the Fat had Swabia, Alsace, and Switzerland, all with the regal title. As the custom of the age was that every state, however small, should be equally divided, there required only a few more subdivisions to have as many kingdoms as there were cantons, to restore the good old days when the Salian or Ripuarian Franks alone had as many kings as all Europe now has. This endless system of subdivision was rapidly reducing the empire to its primitive barbarism,—was creating a multitude of petty chiefs, whose mutual hostilities would speedily have trampled into the earth the rising fruits of civilisation. But Charlemagne was not to live in vain : circumstances, which no human prudence could have foreseen, rapidly tended to restore the unity of the empire. After the death of Charles the Bald, no chief was immediately nominated ; in fact, the states knew not what to do : there were so many kings, with interests so opposing, that a choice would have been difficult. Besides, with whom was the choice to rest ? Hitherto the reigning emperor had, with the full approbation of the diet, designated his successor ; but this formality had not been observed by Charles the Bald, who died suddenly. The pope openly pretended to the privilege of crowning, in other words, of creating the emperor ; a pretension monstrous enough, but one which would probably have been



recognised by the Germans, had not he shown an open partiality to the French branch of the Carlovingian family. The Germans were naturally resolved to support the claims, which in reality were the most feasible, of king Ludovic's children. The death of the French branches of the family induced the pope to regard their wishes, and, in 881, Charles the Fat was invested with the imperial title. That of his two brothers without issue, left Charles the undisputed master of the empire; and in 884, by the death of Carloman, king of France, his sceptre extended over all the countries possessed by Charlemagne. But his cowardice in war and his imbecility in peace disgusted his people. Instead of fighting the Normans, who were laying siege to Paris itself, and desolating every maritime part of his empire, he adopted the same notable expedient as our Alfred,—he bribed them to depart; and they departed only to return. In 887, the indignant Germans assembled in full diet, deposed their imperial log, and elected in his place, not as emperor, however, but as king, Arnulf duke of Carinthia, a bastard son of Carloman king of Bavaria. There was, in fact, no legitimate scion of the house of Charlemagne remaining, so rapidly had it degenerated in bodily no less than in mental vigour; for though Charles the Simple was the offspring of a marriage between his father Louis-le-Begue and a princess of France, that marriage had been declared invalid by the church. Besides, Charles was yet an infant, while Arnulf was not only in the vigour of manhood, but had distinguished himself in several actions against the Slavonians, who were endeavouring to penetrate through the march formed by Charlemagne into Bavaria. We may add, that the Germans had never been well affected to the French people, who, though of the same origin as themselves, had, by intermixture with the native Gauls, lost the more prominent of their Teutonic qualities. Under these circumstances a wiser choice could not have been made: it was not likely, indeed, to be very agreeable to the other countries who had hitherto submitted to the im-

perial sceptre. In fact, Italy declared for two princes, Berenger duke of Friuli, and Guido duke of Spoleto, both connected on the female side with the imperial family.\* France declared for Eudes, duke of Aquitaine †; and Burgundy chose Rudolph, who might possibly be connected by distant ties with the imperial house. But the diet disregarded these considerations: probably it hoped, with the aid of its new monarch, to reduce the other countries to obedience; or, if this should be impracticable, Germany would still be extensive enough to form the most powerful as well as the most extensive sovereignty in Europe. Charles the Fat survived his deposition only a few months.‡

From this moment the crown of Germany is separate from that of France; and their histories diverge as much as those of any two European states.—Arnulf found that the throne to which he was called was not one of down. During the anarchy which had prevailed during the greater part of the ninth century, the barbaric tribes had been loudly knocking at the gates of the empire; and wherever they could obtain access, they had carried devastation into its heart. In the end, indeed, they were compelled to retreat; but not without ample plunder. That Bohemia, which had for some time had its own dukes, had been rendered in some degree dependent on the empire, is certain; for in the hope of attaching to his interests a faithful ally, it was now conferred on Swentibold, Slavonic king of Moravia, which had hitherto had little intercourse with the Carlovingian monarchs.

888  
to  
910.

\* See Europe during the Middle Ages, vol. i. p. 21.

† Ibid. vol. ii. p. 47.

‡ Eginhardus, *Annales Regum Francorum*, A. D. 814—829. Astronomus, *Vita et Actus Ludovici Pii*, p. 286, &c. Nithardus, *de Dissensionibus Filiorum Ludovici Pii*, p. 359, &c. *Annales Bertiniani*, A. D. 840—852. *Annales Metenses*, A. D. 852—888. *Annales Francorum Fuldenses*, p. 560, &c. (*omnes apud Duchesne, Rerum Francorum Scriptores, tom. ii.*). Rhegim, *Chronicon*, p. 59, &c. *Hermannus Contractus, Chronicon*, p. 225, &c. *Sigebertus Gemblacensis, Chronographia*, p. 788, &c. (*omnes apud Struvium, Rerum Germanicarum Scriptores, tom. i.*). *Ermoldus Nigellus, de Rebus Ludovici Pii*, p. 883, &c. (*apud Menckenium, Scriptores Rerum German. tom. i.*). *Adamus Bremensis, Historia Ecclesiastica, lib. i. (variis capitulis)*. *Anon, Historia Archiepiscoporum Bremensium*, pp. 77—72. *Helmoldus, Chronicon Sclavorum*, cap. 1—6.



As the Bohemians and Moravians were of the same great family, the two states would form a powerful rampart against the assaults of the Hungarians. But Arnulf might have foreseen the danger of making this pagan barbarian more formidable than he already was. The Slavonians were never well affected to their Teutonic neighbours; their language, manners, and religion were divergent; and frequent hostilities had embittered their natural rivalry. The duke of Bohemia, as the vassal of the Moravian king, would certainly join that king whenever there was a war with the emperor. Swentibold soon refused to perform any of the conditions which had been stipulated with Arnulf. In his exasperation, the latter invited the Huns of Transylvania and Moldavia, who were not of Slavonic origin, to turn their arms against Moravia. Here, again, was policy as shortsighted as it was vindictive. They quickly indeed dismembered Moravia, which then stretched far into Hungary; and, by detaching from it the region east of Silesia and modern Austria, and adding to this territory a part of Thracian Dacia, they formed the kingdom of Hungary; but from their contiguity they were now able to pour their wild hordes over the frontier, and to retreat before any force could be collected to oppose them. Though Swentibold was conquered, and compelled to own himself a vassal of the empire, this advantage was small: it could not drive back the Huns to the borders of the Euxine, and it could not be binding on the successors of Swentibold. In Arnulf's reign there seems to have been much less regard for the defence of the empire than might have been expected from its constituted chiefs. The Slavonic tribes who dwelt eastward of the Elbe were virtually independent, however their country might be overrun by the imperial legions. Thus, in 892, they penetrated into Franconia, defeated the frontier troops, and slew the general, the bishop of Wurtzburg, without any molestation from the duke of Thuringia. The duke, however, was punished by deposition, and that important fief was conferred on count

Burkard, source of the present royal house of Saxony. In other wars, however, Arnulf was more successful. Over the Normans he signally triumphed, and he is believed to have been the first continental prince who openly defied and conquered these savage barbarians. His Italian campaigns, and generally those of his successors, we shall not notice, since they have been detailed at sufficient length in other publications connected with the present.\* Suffice it to say that he procured from pope Formosus the imperial crown. It is lamentable to find that this voluntary act of Charlemagne and his sons was so speedily drawn into a precedent; that the respect which they had voluntarily paid to the pope by receiving the regal consecration at his hands, was perverted into an obligation, that though a prince, when elected by the diet, might be *king*, he could not be recognised as *emperor*, of Germany until the ceremony had been preferred by the head of the church. On the death of Arnulf (899), who left an infant son, the diet met to nominate a successor — for the days were past when the reigning monarch could designate his heir. This important revolution was the work of circumstances. During the late reigns, the imperial authority had declined exactly in proportion as the diets became more active, and as the feudal system strengthened the authority of each member. The dukes, margraves, and counts of the empire, and, in virtue of their temporalities, the archbishops, bishops, and abbots, regarded themselves as the legitimate electors of the chief who was to govern them. They were themselves virtual sovereigns within their respective jurisdictions; they could, if they pleased, choose an emperor from among their own order; and if they could thus elect they could surely control him when elected. The custom which had prevailed since the time of Charlemagne, of requesting their sanction of the future heir, even where the right of blood and the ordinary law of succession were indisputable,

\* See Sismondi, History of the Italian Republics under the corresponding years; and the History of Europe during the Middle Ages, vol. i.

made them willing to believe that the imperial qualification depended much more on their approbation than on any other cause. The memorable occasion on which they had been assembled to depose the imbecile Charles the Fat, and to elect another in his room, had so strongly fortified this consciousness of their own privilege, that thenceforth it was admitted as an essential article of the Germanic constitution. On this occasion they were no less called to decide on the choice of emperors. The son of Arnulf was too young to hold the reins of government at a time when the irruptions of the Slavonic and Hungarian tribes kept the empire in alarm, when there was a dispute with France for the possession of Lorraine, when Burgundy and Provence were exposed to the same chances of revolution. On mature deliberation, however, especially on weighing the troubles which in France and Italy had attended the election of a sovereign in any other than the reigning house, they wisely resolved to elect the young Ludovic. They furnished him with two guardians, the archbishop of Mentz, and the duke of Saxony. His reign was unfortunate; for though Lorraine voluntarily submitted, the Huns made terrible depredations in almost every part of the empire. In 907 they signally defeated the Bavarians, whose chief fell on the field of battle, and ravaged with impunity that great province. The following year Thuringia suffered the same fate, many of its noblest chivalry falling with Burkard their chief: in 909 and 910, the Swabians and Franks suffered the same infliction. Anarchy was almost as fatal as the enemy's sword: nothing was more common than for two nobles to raise troops and make war on each other, with as much ceremony as if they had been crowned heads. Thus, the count of Bamberg and the bishop of Würzburg disturbed the tranquillity of the state; the former, though cited to appear at the diet, refused; and though condemned by his peers, and besieged by the young monarch in person, would have persisted in his defiance, had not Hatto, the archbishop, dishonestly allured him to the camp, and put

him to death. His ample domains, which had been formerly confiscated, were annexed to the crown until the eleventh century, when they were applied to the endowment of the new bishopric of Bamberg. The Germans were in consternation when a count of Bamberg could, from his castle, defy the combined force of the nation, and when the savage Hungarians could thus force a way almost to the banks of the Rhine. Unhappy the people, was the cry, which has a child for its king! In 911 their murmurs were silenced by the death of Ludovic IV., with whom ended the Carlovingian line of Germany.\*

The period under consideration exhibits, as we have already intimated, no inconsiderable changes in the Germanic constitution. Of these the most remarkable regards the power of the crown. Nothing can exceed the respect with which Charlemagne and his son Louis were treated by the proudest princes of the empire. Those who were admitted to their presence were constrained to kiss their feet; a few, indeed, had the privilege of kissing the knee only; a privilege which they shared with the empress herself. Yet the dukes and counts who thus condescended to an act of Asiatic debasement, were themselves adorned with rich crowns. But, in after times, when the empire was divided into a multiplicity of states under the Carlovingian princes, this pomp would have been too ridiculous to be sustained. Hence these divisions were the primary cause of the decrease in the imperial authority. A second was the personal character of the emperors themselves, which was more powerful than law. Whatever be the circumscriptions which custom or positive enactments place to the sovereign power, before a master mind they will be useless: and before a feeble one, they

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911.

\* Authorities:—Rhegino, *Chronicon*. pp. 87—101. (apud Struvium, *Rerum Germanicarum Scriptores*, tom. i.). Hermannus Contractus, *Chronicon*, pp. 248—255. (in eodem tomo). Lambertus Schaffnaburgensis, *de Rebus Germanicis*, pp. 312, 313. (in eodem tomo). Cosma Pragensis, *Chronicon Bohemorum*, p. 10. (apud Freherum, *Rerum Bohemicarum Scriptores*). Dubravius, *Historia Bohemica*, lib. ii. Schmidt, *Histoire des Allemands*, tom. ii. liv. iii. chap. 6. See also *Europe during the Middle Ages*, vol. ii. chap. i.

will be drawn more closely than their legitimate construction would warrant. A third and scarcely less powerful reason is to be found in the increased importance, not only of the diet collectively, but of its leading members individually. Under the house of Charlemagne, as under that of Merowig, these assemblies were two in the year; but the first, which was now held, not in March but in May, was the only one attended by the great body of the members, because it was the only one in which the great affairs of the monarchy were transacted; the other, which was held in autumn, chiefly regarded the financial measures which had been decreed at the preceding, and was therefore attended only by the dukes, counts, and the officers of administration. In the *placita majora*, the dukes, counts, bishops, *scabini*, and centenaries—all who were connected with the government or the administration—were officially present; the great and small proprietors, the barons and gentry, were so in virtue of their fiefs; the freemen in virtue of their character as warriors, though undoubtedly there were few freemen obliged to bear arms not provided with some portion of landed property. And, in so extensive an empire, where every man who possessed thirty-six acres was expected to be present, where every thirty-six, however subdivided, was compelled to return a warrior and member, the number must have been prodigious. It appears, however, that these smaller proprietors took no share in the deliberations: they could behold and applaud, but they could not vote. As to the higher members of these diets, the dukes were become so powerful, that it was the policy of Charlemagne to suppress them. Those of the Franks, indeed, as they were originally appointed, could not be dangerous: their jurisdictions had long been purely official, and it expired, more anciently, at the royal pleasure, subsequently, on their own deaths; and in no case could it be transmitted to their descendants, unless through royal favour. But in Germany it was widely different. When the Franks began the conquest of the country,



they formed certain confederations under a head, whom their chronicles called dux, but whose authority was assuredly much more extensive. These were the natural military leaders, the natural judges of the district; and for some ages, at least, their dignity had been hereditary, or, if election had taken place, the choice had been confined to the same family. The dukes of the Franks, those especially who were placed over the new Trans-Rhenish provinces, were not slow to vindicate the same extent of authority,—with what success may be inferred from the conditions which they wrested from the mayor Pepin, and from the jealousy of the first emperor. But if the ducal fief were thus suffered to become extinct with the lives of the nobles who held them, they were restored by Charlemagne's successors eventually, though not immediately, with augmented authority. In reality, they necessarily arose from the very nature of the feudal system, which that monarch himself contributed to strengthen as much as any prince of his family. The military command and the civil jurisdiction must be confided to some hand; and though the dukes were peculiarly trained to the first of these functions, it was conceived, that if the laws were rendered explicit, if they were accompanied by assessors, and by a bishop as official colleague, to serve as a check alike on their tyranny or corruption, they might safely be entrusted with the administration of the laws, at least in cases of appeal from the inferior tribunals. Perhaps the jurisdiction, after the restoration of their dignity, was purely appellant; for with the count, who is called the judge (*κατ' ἐξοχήν*), rested, in conjunction with his assessors, the decision of all important cases. They were, after all, the mere ministers of the legislative power: they were strictly bound by the letter of the statutes in the penalties which they inflicted; and they had nothing whatever to do with the question of guilt or innocence, which rested with the sworn assessors, or perhaps with the verdict of a jury. But it was not foreseen that official would soon acquire personal power.

Unfortunately for the interests alike of liberty and of justice, the duke or count was generally chosen from the local nobles ; and he who had the most influence through his territorial possessions, or his family connections, was generally sure to be chosen. The hope was speciously indulged, that this influence would be exerted in behalf of the sovereign who had conferred the authority. But the aim of these feudal governors was to strengthen their own interest. Such as were rich were anxious still more to extend their possessions or their family consideration, by marriage, or purchase, or judicial forfeiture ; and as their office soon became hereditary, nothing was more common than to see the domains of the ducal family so enormously augmented as to embrace no inconsiderable portion of the province. To expect that the jury, or assessors, or inferior officers of local administration, would be willing to oppose the man on whom they were dependent, whose vassals they generally were, was to expect what universal experience has demonstrated to be impossible. In later ages, when the principles of equity were applied to the improvement of the system, a judge was sometimes annually appointed who had no military jurisdiction, who had no property in the district, and who was forbidden to acquire any, either by marriage or purchase ; but this salutary regulation was never much observed in Germany, and then only in the towns ; in the provinces and inferior lordships the civil jurisdiction was considered inseparable from the military in the family of the duke, or count, or bishop, or abbot. Even where the baron was convicted of judicial delinquency by an appeal to a higher tribunal, nothing was so difficult as to punish him. He was surrounded by his armed vassals ; his castle was almost impregnable ; no force could be sent to oppose him until a diet had pronounced his guilt ; and he could often withstand the attacks of his sovereign until the interest of his kindred and friends procured his pardon. Of this abuse of territorial jurisdiction Charlemagne was not insensible. Like his Merovingian predecessors, he continued to send



his *missi dominici*, the one always a bishop, into the provinces, to superintend the proceedings of the dukes and counts, and to hold their own tribunals, before which they could evoke any cause pending in those of the district. Unfortunately, this policy was not much imitated by the successors of Charlemagne, so that the jurisdiction of the barons was virtually irresponsible,—Such were the chief causes which led to the degradation of the imperial authority. Others might be enumerated; but though effectual in the aggregate, individually they had not much influence, and we will not detail them, as those already assigned will sufficiently prove the proposition we have advanced. The revenues of the emperors seem to have decreased with their authority. In general, they lived on those arising from their own domains; but for the wants of the public service—more correctly, however, for the splendour of the monarch—annual presents, originally voluntary, were soon exacted. These were from the barons and bishops, who would not fail to exact from their own dependants the sums they were thus compelled to offer. Certain taxes, too, went into the royal treasury; a portion of the judicial fines was similarly appropriated; and there were other feudal incidents, even at this early period, no less favourable to the royal exchequer. But such was the profusion of the sovereign, that they were generally inadequate to his support, much less to the public uses for which they were originally designed. We must not omit to mention, that though the right of coining money was anciently the prerogative of the crown, it was at length delegated to some dukes, counts, bishops, and even ecclesiastical bodies. Charlemagne, indeed, who knew that by this practice the current coin was much debased, forbade it; but, like most of his other prohibitions, it was abrogated by his successors.†

\* Authorities:—the histories of the Franks and the Germans. The Codes of the Germanic nations in the collection of Lindenbrog. The *Formulæ* of Marculfus. Heineccius, *Elementa Juris Germanici*. Pfeffel, *Histoire d'Allemagne*. Schmidt, *Histoire des Allemands*; and many others, too numerous to be cited.

752  
to  
911.

But, in contemplating the gradations of society among the Germanic nations, we must not suppose that the feudal jurisdiction was exclusively confined to the dukes, the counts, the bishops, the abbots, and the royal officers. Many of the tenants in capite of the crown had — whether through immemorial custom, or imperial concession — the privilege of holding tribunals within the bounds of their fiefs; and such fiefs took the name of *immunitates*, because they were exempt from the royal justice; because in them no royal judge could hold his tribunal. These were monstrous abuses, but when the *missi dominici* were no longer despatched at regular intervals by the crown into the other districts of the empire, perhaps they were not much greater than those which prevailed in other places. They were, indeed, somewhat mitigated by accompanying regulations. Of these, the chief was the right of appeal to the tribunal of the count; and from the count's to the emperor's: and it is certain that these baronial courts could not take cognisance of capital cases, though they could fine, or imprison, or banish, or reduce to slavery; or, perhaps, mutilate. Thus, if a robber on the highway fled into one of these immunities, he was immediately transferred to the tribunal of the count or duke of the province. On all these feudal superiors, and on their armed vassals, military service was of course obligatory. The same obligation extended to all freemen who held land equivalent, as we have before observed, to thirty-six acres. The smaller proprietors found this a most oppressive ordinance. To provide themselves with clothing and arms, and a horse, and even provisions for a given period, — generally three months in the year, — often exceeded their means; and to undertake long, expensive, and dangerous journeys, to join the army on some distant frontier, was what all naturally endeavoured to avoid. Hence the complaints with which we perpetually meet, that the military duties were neglected; that the armies could scarcely be recruited: hence the severe penalties which we observe in the imperial codes from

the time of Charlemagne downwards. Owing to the interminable system of subdivisions,—the children even of the smallest proprietor having, by the Germanic law, an equal right to the inheritance,—the number of these petty free proprietors was amazingly multiplied. Between them and the crown there soon arose a dispute. They contended that they were only bound to military service within their own country; that their compact did not compel them to leave it, however pressing the occasion. There seems to have been justice in the plea; but it was a plea which no conqueror, no monarch, would be disposed to relish. Hence they were obnoxious to Charlemagne and his successors, who made a great distinction between them and the immediate tenants of the crown, who had received lands from it on the express obligation of service. That monarch endeavoured, and with some success, to convert allodial proprietors into vassals. In fact, those who were averse “to take a lord” —to place themselves and their lands under the protection, and promise suit and service in the hands, of some great baron —were subject to the most vexatious annoyances, often to direct plunder. As the imperial power declined, and anarchy increased, they soon found that security, whether as to their lives or their possessions, could be gained only by voluntarily choosing some powerful lord, whose protection they purchased as the price of service. The small allodial proprietor might be insulted or offended with impunity; the follower of the great baron was too intimately connected with the system, and too sure of redress or revenge, to be wantonly injured. Hence, in a few reigns, the number of these proprietors was insignificant: in fact, they seem to have almost disappeared. They had done personal homage to some superior, from whom they agreed to hold their lands in fee, subject to the usual incidents of the system. As the dukes, counts, and barons were naturally eager to increase their armed force, they were willing enough to observe the terms of their compact: the advantage was therefore reciprocal. This policy

gave immense influence to the feudal system. The sub-vassal knew very little of his sovereign; but to his immediate superior he was bound by the strongest ties of present advantage and of future hope. Hence it was that, in the numerous disputes which their superiors had with the crown, they were sure to take part with the latter: hence, too, their superiors became so powerful as often to defy kings. The sub-vassal, indeed, could leave the service of his lord on surrendering the lands he held, and he could receive them from another. And there were numerous cases in which, the feudal compact being infringed, such changes of service were necessary. But, in general, the vassal and the lord were bound by ties stronger than those of mere compact—by the association, on the one hand, of hereditary service, on the other of hereditary protection.—Below the freemen were the *liberti*, or freedmen, who appear to have followed various callings, generally for their patron's advantage. They filled the meaner parts of his household, and they tilled his ground; and, though it has been denied that they could bear arms, there are several passages in the old chroniclers intimating that some, at least, of them did. When the patron enfranchised them, he dictated his own conditions: nor is it unreasonable to suppose that military service without fief might be one. In many cases, certainly, the freedman was an armed domestic; and, in some, we know that he accompanied his lord to the field. There was, however, a gulf between him and the freeman: he could not depose against one in a court of justice, nor cite one for any offence, however grave. His patron, however, could sue for him. Among them the *leuds* should not, probably, be included, strongly as Mably, Schmidt, and other historians urge to the contrary. That those attendant on the king were *freemen*, is evident from several passages of the Wisigothic and Longobardean codes. Whether they had benefices also, has been much disputed—apparently with little reason: some had, and others had not; in the one case, they were rewards for past, and oblig-

ation to future service ; in the other, there was a prospect of obtaining them. They seem to have been conferred merely for life : often, perhaps, for a definite period. It is certain, however, that persons of inferior station might have their *leuds*, who were mere *liberti*. Thus, in the *Traditiones Fuldenses*, we read of *half leuds* and *whole leuds*, who seem not to have borne arms, but to have been occupied in the humble labours of agriculture. And, in the codes of the Saxons and Frisians, the *litus*, or *leud*, is always classed below the freeman. — Below the *liberti* were the *coloni*, or peasants, who, though capable of acquiring and of enjoying property, were irrevocably fixed to the glebe, so long as their owner did not raise them to a higher grade. And lower still there seems to have been another class, — the serfs, — who had no *peculium*, and were exactly on a level with the beasts. We think the distinction between the *colonus* and the *servus* was this, — that the former could not be sold except with the land which he cultivated, while the latter could be sent to any quarter of the world : the one had certain defined civil rights ; the other depended merely on his master's will : nor does there seem to have been *originally* any penalty for the murderer of his own slave, — we mean *legal* penalty, for there was always a *canonical* penance, which was wisely the same whether the victim were free or enthralled. The distinction we have drawn between the *colonus* and the *servus* we believe to be a just one in substance, though the terms themselves are frequently convertible ; very often both are included under the one term, especially that of *servus*, which was generic : at least, if both were understood to be in the same class, it is certain that there were gradations of condition. “*Si servus,*” says a law of the *Capitularies*, “*suam ancillam concubinam habuerit, potest, illâ dimissâ, comparem suam ancillam tenere.*” In addition we may observe, that there was evidently some diversity in the character and condition of all the classes below the rank of *ingenui* ; for we read of

serfs who were bound to unlimited service, and of others who worked for their masters only four, or three, or even two days a week. The truth is, that the hardships of their condition were often exaggerated or mitigated at his pleasure, without any reference to positive law.<sup>1</sup>

From the preceding pages it is evident that Germanic society consisted of four great classes,—the slaves, the freedmen, the freemen, and the nobles. 1. Slaves were either born so, or they became so by various accidents. For many ages even German captives in war were reduced to that condition<sup>2</sup>, *à fortiori*, Romans, Gauls, and Slavi.<sup>3</sup> And those who were in danger of famishing through want, often voluntarily embraced that deplorable state.<sup>4</sup> Towards the church, a mistaken piety often prompted even the rich, with their whole families, to embrace that condition.<sup>5</sup> Love sometimes produced the same result; for, in many of the Germanic codes, if a freeman married a female slave (*ancilla*), or *vice versâ*, the one was compelled to take the lot of the other.<sup>6</sup> In general, however, neither want, nor piety, nor love, had much effect in this social degradation. Debtors who were unable to meet their engagements<sup>7</sup>, and convicted criminals, who were equally unable to raise the pecuniary mulct, infallibly incurred it.<sup>8</sup> Originally, and for a long period, the slaves were *adscriptitiæ conditionis*; terms sufficiently significant of their wretched state. Hence, if they fled,

<sup>1</sup> *Capitularia Regum Francorum* (in a multitude of places). *Annales Fuldenses*, 870. *Traditiones Fuldenses*, p. 60., necnon Appendix ad eandem, l. p. 331. Schmidt, *Histoire des Allemands*, tom. ii. liv. iii. c. 10.

As the subject of the Germanic constitution has been discussed on former occasions, we are anxious to avoid repetition, and we therefore touch on such points only as have been either omitted or imperfectly noticed. We distinctly intimate that the observations in the text are intended as merely supplementary to what we have before written in the *History of Europe during the Middle Ages*, vol. ii. pp. 19—23, and pp. 38—44.

<sup>2</sup> *Annales Fuldenses*, A. D. 794.

<sup>3</sup> Tacitus *Annales*, xii. 26. Hemoldus *Chronica Slavorum*, lib. i. c. 66.

<sup>4</sup> Tacitus *Annales*, iv. 72. *Lex Baivaricum*, tit. v. l. 6.

<sup>5</sup> Mabillon, *De Re Diplom.* lib. vi. c. 4. Ducange, *Glossarium*, v. *Ib. latus*.

<sup>6</sup> *Lex Baivar.* tit. vi. c. 1. l. 3.

<sup>7</sup> *Codex, Legum Antiquarum*, *passim*.

<sup>8</sup> *Marculfus Formulæ*, lib. ii. c. 36. 53. *Lex Bai.* tit. vi. c. 2. l. 2.



they could be reclaimed<sup>1</sup>; they could be alienated with the land which they cultivated<sup>2</sup>; their masters had power to chastise, even to kill them<sup>3</sup>; until the laws of the empire interfered to prevent either death or mutilation.<sup>4</sup> They were subject to various duties, according to their master's pleasure: sometimes they attended his person, or lived in his household; and these were more honourable than the rest. If located on the soil, their condition admitted of some amelioration. If they were the lowest of their kind, all their labour, all the produce which they raised, that moderate portion excepted which was necessary for the support of nature, went to their lords.<sup>5</sup> But there were others who had certainly a *peculium*, since they could purchase their own freedom<sup>6</sup>, and, in some places, inherit a portion of their paternal property.<sup>7</sup> The passages in the foregoing paragraphs are sufficient to establish this point. 2. The slaves who thus purchased their emancipation, or were enfranchised by their lords, became generally *liberti*, or freedmen. Whether manumission was known in the earliest stages of Germanic society is unknown. In the time of Tacitus, there were *liberti*, who sometimes filled posts of honour<sup>8</sup>; but in the codes we perpetually meet with them as forming a distinct and very numerous class of society, and engrossing no small portion of the legislative care.—In later ages the *forms* of manumission were various: in the open church<sup>9</sup>, before the altar, where often a *tabularius libertinus* was kept<sup>10</sup>; by testamentary declar-

<sup>1</sup> Codex Legum Antiquarum, *passim*.

<sup>2</sup> Traditiones Fuldenses, lib. i. Bochmen, De Jure et Statu Hominum Propriorum, sect. iii. § 2. But no Christian slave could be alienated to a Jew or Pagan. Capitularia Regum Francorum, lib. vi. § 318.

<sup>3</sup> Tacitus de Moribus Germanorum, c. 25.

<sup>4</sup> By pecuniary fines and canonical penance.

<sup>5</sup> Heineccius, Elementa Juris Germanici, lib. i. tit. i. De Primâ Hominum Divisione, §§ 32, 33.

<sup>6</sup> Marculfus Formulæ.

<sup>7</sup> Boehmen, De Statu ad Conditione Hom. Propr. sect. iii. § 17.

<sup>8</sup> De Moribus Germanorum, c. 25.

<sup>9</sup> Lex Burgundica.

<sup>10</sup> Lex Longobardica, lib. ii. tit. xviii. to l. iii. Marculfus, Formulæ Ap. 56.



ation<sup>1</sup>, and by letter<sup>2</sup>, were common to the Germans and Romans, and need not, therefore, be particularly described. But the former had also their peculiar forms. One took place in the presence of the king, by striking the denarius from the slave's hand, who was thence called homo denarialis.<sup>3</sup> This seems to imply that the tribute, or census, brought by the slave was refused by the master, and that, consequently, his servitude was at an end. Sometimes it was effected by opening the door, to indicate that he was at liberty to leave the house<sup>4</sup>, sometimes by placing him where four roads met, to show that he might take which he pleased.<sup>5</sup> Again, it was sometimes effected by the hand of the king or priest<sup>6</sup>, and by the arrow, which appears to have been a favourite with the Lombards, and what betokened the right of the man henceforth to assume arms, — the sign of freedom.<sup>7</sup> The most usual mode, however, seems to have given rise to the word itself, — *manumissione*, to send from the hand, to push away.<sup>8</sup> The effect resulting from these various forms was very different, the emancipation being sometimes entire, generally partial. Thus the enfranchisement at the altar was as complete as if the slave were born from free parents: he did not become a libertus, but an ingenuus.<sup>9</sup> The same effect was produced by the *excussio denarii*<sup>10</sup>, by the *portæ patentés*, by the *quatuor viæ*, and by the imposition of the royal or princely hand.<sup>11</sup> But in a vast majority of cases some service or

<sup>1</sup> Concilium Arelatense, ii. con. 33.

<sup>2</sup> Lex Alamannorum, tit. xvii. xviii. Capitularia Regum Francorum, A. D. 806, 813. S. Gregorius Turonensis, Historia Ecclesiastica, tit. v. c. 27. S. Gregorius Magnus, lib. i. Epist. 53. lib. v. Epist. 12.

<sup>3</sup> Lex Ripuariorum, tit. lviii. l. i., tit. lxii. l. ii. Baluzius, Capitularia Regum Francorum, tom. ii. p. 905. Goldastus, Constitutiones Imperiales, tom. iii. p. 70.

<sup>4</sup> Lex Ripuar. tit. lxi. l. i.

<sup>5</sup> Lex Longobardica, lib. iii. c. iv. l. 1.

<sup>6</sup> Lex Longobardica, lib. ii. tit. 34. l. i.

<sup>7</sup> Paulus Warnefridus, De Gestis Longobardorum, lib. i. c. 13.

<sup>8</sup> Ducange, Glossarium ad Scriptores, v. Manumissio.

<sup>9</sup> Marculfus, Formulæ, App. 56.

<sup>10</sup> Baluzius, Capitularia Regum Francorum, tom. ii. p. 905.

<sup>11</sup> Ibid. p. 947. Lex Longobard. lib. ii. tit. 34. l. i. 3.

right, or tribute, was retained.<sup>1</sup> The condition of the *libertus* varied according to the obligations imposed on him on his elevation from the inferior state of *servus*: sometimes they were very light, consisting of a small census, or personal homage.<sup>2</sup> In general he was subject to the immediate control of his patron: he was to work certain days every week, or bring a portion of produce, or a certain sum to his master. And he was liable to some other prestations; all which, though they involved civil rights, and enabled him to acquire wealth, did not much raise him in the scale of dignity.<sup>3</sup> The most galling of the obligations generally left to the freedman was his dependence on the jurisdiction of his patron; but let us remember that all good is comparative, and that even a great evil, if it remove a greater, is a good. This dependence, often this obligation of service, from rustics to their lords (nor was the obligation destroyed if they removed, as they certainly had the power of removing to any of the numerous municipal confederations which, from the eleventh century at least, began to rise), was the foundation of that *herilis potestas*, that *jurisdictio patrimonialis*, so well known to every student in the feudal law.<sup>4</sup> But this system, though already visible, was not fully established until afterwards. 3. The *ingenui*, or freeman, who possessed liberty without civic dignity, were called *milites* in France, and *gude knechten* in the empire.<sup>5</sup> These names had reference to their sole profession, the military art; the knowledge and practice of which, conjointly with the chase, occupied the whole of their lives: hence their peculiar denomination of *milites agrarii*, *de genere militari nati*<sup>6</sup>, which they naturally prized as their noblest

<sup>1</sup> Ducange, *Glossarium ad Verb. Heineccius, Elementa Juris Germanici*, lib. i. tit. ii. § 55.

<sup>2</sup> Boehmer, *Dissertatio de Imperfecta Libertate Rusticorum per Germaniam*, § § 1—24.

<sup>3</sup> Heineccius, *Elementa*, xi. 58.

<sup>4</sup> Heineccius, *De Origine ac Indole Jurisdictionis Patrimonialis*, passim.

<sup>5</sup> Cæsar, *De Bello Gallico*, lib. vi. c. 4, 5.

<sup>6</sup> Witikind, *Annales*, lib. i. p. 139. Schilter, *Glossarium Teutonicum*, v. *Königshoff*. Ducange, *Glossarium*, voc. *Miles, Eques*.

distinction. They did not assume their arms of their own authority: when arrived at a suitable age, they were solemnly invested with them by some chief or kinsman, in presence of the comitia, or periodical assemblies of the people.<sup>1</sup> And this is clearly the origin of the ceremonies which chivalry exacted at the reception of a knight into its order. The newly appointed warriors offered their swords to some chief, who was flattered by a splendid retinue of martial followers—his pride in peace, his defence in war.<sup>2</sup> The compact between the warrior and his chief, comes et princeps, appears to have been of a much closer nature than we generally suppose. The sustenance, often the lands, vouchsafed by the one, the service performed by the other, led to a connection almost indissoluble. The clientes were often known to sacrifice their lives in the cause of their patrons<sup>3</sup>, and they had many privileges: they assisted their patrons in the administration of justice<sup>4</sup>; in after ages, too, they filled more honourable parts in the republic<sup>5</sup>; and from them the nobles were taken, before nobility became an hereditary distinction, —while it depended on a certain dignity.<sup>6</sup> Hence the jealousy with which they preserved the privileges of their condition; hence their hatred of unequal marriage, and the severe penalty (degradation to slavery) which they inflicted on the free man or woman who married a slave<sup>7</sup>; hence their contempt of commerce, which, as exercised by freedmen only, would have degraded them<sup>8</sup>; their dislike to cities<sup>9</sup>; and the eagerness with

<sup>1</sup> "Tum in ipso concilio, vel principum aliquis, vel pater, vel propinquus, scuto framæque juvenem ornasse." — *Tacitus, De Morib. Germ.* c. 13.

<sup>2</sup> "Hæc dignitas, hæ vires, magno semper electorum juvenum globo circumdari, in pace decus, in bello presidium." — *Tacitus, De Moribus Germ.* c. 13.

<sup>3</sup> *Tacitus, ibid.*

<sup>4</sup> *Ibid.* Centeni singulis comitibus ex plebe comites consilium simul et auctoritas aderat.

<sup>5</sup> *Traditiones Fuldenses, lib. ii. no. 156.*

<sup>6</sup> *Heineccius, Elementa Juris Germanici, lib. i. tit. iii.*

<sup>7</sup> *Lex Salica, tit. i. c. 14. l. ii. Lex Ripuariorum, tit. lviii. l. xv.* The woman who had married a slave was offered a sword and a spindle: if she chose the former, she slew her husband with it; if the latter, she embraced his state. *Ibid. l. xviii.*

<sup>8</sup> *Heineccius, Elementa Juris Germanici, lib. i. tit. iii. § 79.*

<sup>9</sup> *Beyer, Speculum Juris Germanici, lib. i. c. 1. § 21.*

which they entered the service and contended for the rewards of the prince, duke, count, baron, or bishop, whose clients or vassals they had become.<sup>1</sup> 4. The *nobles*, as we have before intimated, were anciently those who, being born from parents long possessed of freedom, were invested with the dignities of the commonwealth.<sup>2</sup> In the middle ages it was applied to the graviones, or counts, in virtue of their birth and offices, and to bishops and abbots in virtue of their dignities.<sup>3</sup> The dukes were not styled nobles, but principes. In subsequent times, the term was applied to barons and territorial gentry, who were not in the service of any superior; finally, to the members of sovereign families.<sup>4</sup> The term *noble* became general, containing several gradations of dignity.<sup>5</sup> Hence the seven military shields of which the order was said to consist: the first shield was the king; the second consisted of the bishops and abbots; the third, of the lay princes; the fourth, of the counts; the fifth, of the *ingenui*, who held no dignities; the sixth, of the great officers of the imperial or ducal courts; the seventh, of those who were not allodial gentry, or officers of the reigning houses, but who held fiefs *in capite* from the emperor.<sup>6</sup> Nor were the nobles distinguished from the *ingenui* only by their civil dignities, or by a pompous train of attendants: they had also certain privileges wrung or obtained by solicitation from the crown.<sup>7</sup> Such were those of being accompanied by banners, generally with arms or devices emblazoned on them: they had forest rights, from which the freemen were excluded; and in a multitude of cases they took precedence of all the *ingenui*. But their

<sup>1</sup> *Ibid.*, ubi *suprà*.

<sup>2</sup> Tacitus, *De Moribus Germanorum*, c. 13, 14. 25. Cæsar, *De Bello Gallico*, lib. vi. c. 23.

<sup>3</sup> Heineccius, *Elementa Juris Germanici*, lib. i. tit. iv. l. 89. *Capitularia Regum Francorum*, tom. i. § 697. Venantius Fortunatus *Carmina*, lib. i. c. 4.

“*Ecclesiæ nunc jura regis, venerande sacerdos,  
Altera nobilitas additur unde tibi.*”

<sup>4</sup> Leibnitz, *Scriptores Rerum Brunsvicarum*, tom. i. p. 798. Heineccius *Elementa*, lib. i. tit. 4. § 90.

<sup>5</sup> Heineccius, ubi *suprà*.

<sup>6</sup> Schilter, *Ins. Feudale*, cap. i.

<sup>7</sup> Heineccius, l. 4. 94.

greater and more numerous honours were not reduced to a system during the period under consideration.\*

The state of society among the Germanic nations, from the foundation of the empire to the extinction of the Carlovingian line, would be a most interesting subject of contemplation, if we had more materials for estimating it. Unfortunately manners and habits were the last things of which the chroniclers thought; and what little knowledge we have on the subject is derived from incidental notices, always so meagre as to excite disappointment. Well could we have spared their accounts of battles, of Christian festivals, of courts and chapters, in return for some information respecting the character of Germanic society. Any information that we have been able to glean is derived from scattered sources, isolated in its nature, and must therefore be communicated in unconnected observations.—As in more ancient times, the heart of the nation was turned to hunting and hawking, to war and drunkenness, to mirth and frolic. Hunting was also the diversion of ladies, who, though they took no part in it, were eager spectators of it. Thus we see, in a scene which took place at the court of Charlemagne, a picture of the daily routine of life, when war or the placita did not interrupt its uniformity. The men, with their dogs and birds, their horses, hunting spears, domestics, hastened to the forest; they were followed by the ladies, also on horseback, who from a distance observed the destruction of the game. When satiated with the exercise, tents were pitched under the shade, and a repast was served, somewhat more distinguished for indulgence than delicacy, for boisterous mirth than innocent recreation. Hence, the extreme attachment of the Germans to rural life—to the forest and the mountain: nor was their aversion to cities much lessened by the reflection, that there they should certainly find equals, probably superiors; and, to the man, who was lord of all around him, there was something so humili-

\* Ducange, *Glossarium ad Scriptores*, v. Nobilis.

ating in kissing the knee \* of a king, and mixing with pert menials. Jesters were common ; and, though forbidden to ecclesiastics, we have evidence enough, that the prohibition was not wholly regarded. And there was certainly a rude species of dramatic entertainment ; for one of the laws of the period forbids any actor to appear on the stage in the habit of an ecclesiastic. But churchmen themselves frequently indulged in such diversions : witness the canons of councils in the eighth and ninth centuries. For their hunting both priests and monks had a good excuse : they wanted parchment for the transcription, and leather for the binding, of books ; but these articles were too dear to be purchased, and could only be obtained by the chase. Then, if a brother were recovering from indisposition, and required game as a nourishment, how procure it, if they were not permitted to hunt it ? One thing is certain, that in the vicinity of every great monastery was an ample forest, more than tolerably stocked with these animals. Of the jovial manners of the people generally, we may form a notion, from the frequent drinking assemblies, which characterised them. That these assemblies were organised, appears from the brotherhood of St. Stephen, which, by a capitulary of 789, Charlemagne abolished. This prohibition would be obeyed only within the precincts of the court ; for what imperial rescript could reach the depths of the forest, or the lonely valley ? That at these entertainments the members drank from the beginning to the end ; while the enjoyment was increased by the witticisms and freaks of the jocular, amidst the din of music, vocal and instrumental, appears from that decree. No people were ever so fond of songs as the ancient Germans : these formed a part, not merely of their festive entertainments, but of their daily amusements. One of the Carlovingian monarchs, with more piety than taste, committed to the flames a huge portion of written songs,—doubtless because they were pervaded by the superstitions of pagan-

\* See before, page 43.



ism. He was incapable of reflecting for future times,—that posterity would wish for these songs chiefly for the light they must of necessity have thrown on opinions and manners. But the Germans were not always thus innocently employed. That they took no small delight in open violence, may be reasonably inferred from the prodigious number of cases on record: not even the rigorous hand of Charlemagne could repress the evil. He could maintain order where he happened to abide; his court, like that of his predecessors and successors, was migratory from one royal domain to another; and he could inflict chastisement when an appeal was brought before him; but vainly could he reach the distant noble, who, embosomed in the vast solitudes of the country, could oppress his feebler neighbour or his vassal with something like impunity. And there were crimes enough, which, though they made the forest and even a whole canton ring, escaped unpunished. The custom of private warfare—a custom warranted by immemorial usage—led to melancholy scenes. The only thing which Charlemagne could do, was to direct that, where two neighbours were at war, the count of the district was to force them to make peace, and to inflict a fine on the man who did the wrong; and that if they refused to be pacified, both should be brought before the emperor, and made to swear that they would live in peace with each other: if one of them violated the oath, he lost the hand which he had perfidiously raised to invoke the attesting power of heaven. Death was decreed against the robber and assassin on the highway, while other thefts and homicides were compensated by money. The inefficiency of these and similar regulations is abundantly proved by the fact, that even the imperial manors were not safe; that during the night fires and guards were placed round them, to discover and to resist the armed prowlers. Could the emperor have succeeded in his efforts to abolish the constant wearing of arms, that from time immemorial had been as inseparable from a German warrior as his clothes, a stop would have been effectually put to



most of the quarrels, which arose from sudden passion or intoxication ; but, in spite of all his power, the men drank and fought much the same as before. After his death, amidst the anarchy which reigned on every side, when duke and count were as lawless as the private noble or freeman, the state of society was often appalling. The representations of the bishops, assembled in 888 at the synod of Mentz, prove that ecclesiastical property was as little respected as the lay. After alluding to the atrocities of the Northmen, who were now as active in Saxony and France as they were in western France, the prelates assert that they were surrounded on all sides by professed robbers ; that the possessions of all men were exposed to daily destruction ; that the country was laid waste ; the sacred buildings robbed or consumed ; the poor massacred before their eyes. Abduction and rape were seen on every side : nor did even ladies of the highest rank escape the disorders of the times. Thus, in 846, a daughter of the emperor Lothaire was carried away by one Giselbert ; in 878, one of Louis II. sustained the same calamity ; in 893, one of Arnulf's was forcibly taken into the march of Austria. Still more common was the practice of capturing the rich, even those of high dignity, and immuring them in dungeons until they agreed to pay a heavy ransom ; often, too, until they had sworn not to enquire into the violence, much less take any measures to revenge it. Nor were excesses confined to laymen. Thus Rudolph, bishop of Wurtzburg, was at deadly feud with two members of the ducal house of Thuringia ; and with his partisans, consisting of his immediate vassals, his kindred, and their followers, he raised a force sufficient to oppose his enemies, whose territories he laid waste with as little scruple as the veriest freebooter in the annals of the empire. In a subsequent combat, one of the young nobles was slain, the other was taken and beheaded. Nor were ecclesiastics, even of the highest dignity, secure against violence. Thus, in 903, Fulco, archbishop of Rheims, was waylaid and murdered in a wood

by an emissary of his powerful enemy, Count Baldwin of Flanders.—A model of ecclesiastical, no less than of royal, delinquency is to be found in prince Carloman, son of Charles the Bald. In his youth he had assumed the tonsure, as the sign of his irrevocable destination to the ecclesiastical state; subsequently, much against his inclination, he had received deacon's orders in his father's presence, and had publicly ministered at the altar. But his was a different vocation. He fled from the church, collected a band of freebooters, and became the terror of the neighbouring country: he robbed and consumed churches and monasteries with as little hesitation as the houses of the gentry. At length the father, finding that admonitions were vain, ordered his eyes to be put out; a punishment by no means uncommon among the detestable princes of this dynasty. This cruelty is related by Regino without any surprise, much less any reprobation: he considers that it was merely a righteous judgment, that he whose inward sight had been destroyed should also lose his outward. In this state Carloman proceeded to his uncle Louis, who placed him in a monastery, where he speedily ended his days.—A brother of Carloman's met his death in a manner sufficiently characteristic of the age. Confiding in his own strength, and anxious to prove it in struggling with a warrior celebrated for valour, Charles one evening fell on the warrior, who was returning from the chase. His object was to unhorse him, and take away his steed. Alboin, ignorant of his quality, prostrated him to the earth at one blow, and, having wounded him sorely, took away his horse and arms. The young prince did not long survive; and the terrified murderer, hearing the rank of his victim, precipitately fled from the country.\*

But the state of Germanic society will be best illus-

\* *Capitularia Regum Francorum*, An. 789. cap. 15. (et sub aliis annis). *Commentarii De Rebus Francorum*, tom. i. pp. 635. 764. Regino, *Chronicon*, lib. ii. p. 73—96. (apud Struvium, *Rerum Germ. Scriptores*, tom. i.). Schmidt, *Histoire des Allemands*, tom. ii. liv. 3. chap. 7. Heineccius, *Elementa Juris Germanici*, passim. With many others, which it would be troublesome to specify.

trated by a reference to its laws. Anciently the country had no laws, because it had not the art of writing; but customs handed down by traditions from time immemorial formed the basis of social protection. Of these, some are specified by Cæsar and Tacitus; but neither of these celebrated men could know much of the subject. What little they could collect must have been exceedingly meagre, since it could only be acquired from the reports of individuals who had dwelt among them. Let, however, this scantiness of information be what it may, that it is substantially correct may be proved by its similarity, often by its positive identity, with several provisions of the codes afterwards promulgated, — codes which confessedly consisted of mere observances. But no society, not even that of the German forests, could wholly be stationary: though ancient habits there subsisted with greater purity, from the isolation of the tribes in regard to the Roman world, yet even in the infancy of man, his vices are as prolific as his wants. New crimes, or the more frequent repetition of old crimes; the aggravated circumstances attending some, the reasons which might be pleaded in mitigation of others, would often perplex the mind of the elder or chief, who, from his “hill of justice,” and in presence of the assembled tribe, applied the provisions of the unwritten observance to the cases brought before him. Here, in the half-yearly meetings of the warriors representing the tribes of any particular confederation, such suggestions would be proposed, and such enactments made, as experience had demanded. Let us not suppose that the customs to which ancient writers allude were universally binding throughout the Germanic tribes. That, though agreeing in their general character, many were yet dissimilar in different confederations, is not only consentient with reason, but is clearly inferrible from the various codes which were published from the fifth to the seventh centuries, — codes which, it is distinctly intimated, had been promulgated at a much earlier period. The written codes were first published for the tribes which had

passed the Rhine: hereditary customs still governed those which remained in their native forests. As the former had forsaken idolatry for Christianity, and as the codes of the latter did not appear until the same religion was received by them, both must of necessity have sustained considerable alteration before a Christian prince would publish, or Christian prelate sanction them.\*

Of the codes to which we have alluded, the most ancient was the *Lex Salica*, or that which was promulgated for the use of the Salian Franks. The origin of this collection has defied the erudition of jurisconsults. Rejecting the hypothesis of the ingenious, we may observe that it was declared, — we do not say originally promulgated, — before the Salian Franks forsook Germany, by four princes of the region afterwards denominated Franconia; that it was, not long afterwards, committed to writing; that it was altered, augmented, and published by Clovis, founder of the monarchy; and that considerable additions were made to it by Childebert, Lothaire, Charlemagne, and Louis. Of this code the most prominent character is its penalties against theft, — penalties so minutely graduated by the circumstances of the crime, as to prove its frequency, and that, whatever may be the virtues of barbarians, they do not easily comprehend the distinction between *meum* and *tuum*. Thus, if a man stole a sucking-pig during the first month, he was mulcted in 3 solidi; if it were older, in 15; if the pig were a year old, the mulct was also 3; if two years, 15: 15 was also the penalty for the swineherd who stole any one of the animals confided to his care. When violence attended the theft, the pecuniary compensation was reasonably augmented; thus, if the pig were abstracted from a place defended by a lock and key, the penalty was 45 sols. In like manner, the theft of a sucking calf was mulcted in 3 sols; of a calf a year old, in 15; of

\* Cæsar, De Bello Gallico, lib. vi. cap. 18. 21. Tacitus, De Moribus Germanorum, passim, præsertim cap. 13, 14. 18, 19. 21. 25. Pomponius Mela, De Situ Orbis, lib. iii. cap. 3. Goldastus, Collectio Legum et Consuetudinum Imperii, passim, a work of rare erudition. Heineccius, De Origine et Progressu Juris Germanici, cap. i. §§ 1—5.

the cow and calf together, in 35. The last named penalty was the ordinary one for an ox, and for a bull non gregem regens, but if he were gregis regnator, 45 sols. But the theft of the king's bull was raised to 90. The penalty for that of sheep and lambs was much lower. Not so, however, in regard to dogs; for so passionately attached were all the Germanic natives to the chase, that they fixed the mulct at a rate enormously high: from 15 to 45 sols was that for hunting dogs, according as the animal was the leader of the pack, or merely one of the common hounds; while the theft of a shepherd's dog was only 3. Again, for the theft of a hawk on a tree the mulct was 3 sols; but if the bird were taken from its perch, 15; if under lock and key, 45. Equally minute are the penalties for the theft of geese, hens, bees, trees, &c. But what was the mulct if any one stole a slave, male or female? It was much the same as for that of an ox or hound; but the composition was regulated by the office filled by the slave, consequently, by the degree of inconvenience his loss must occasion to the owner. Again, a great distinction was made as to the *person* of the thief no less than as to the thing stolen. Thus, if a freeman stole, not in a house, any thing worth two deniers, he was mulcted in 15 sols; but if a slave, in 3 only, or in 120 stripes. But if the thing were taken from a house, the mulct was 30 for the freeman, and the poor slave was castrated. If the theft related to human beings, the punishment varied alike with the quality and number of the thieves, and the condition of the person abducted: the lowest sum for a free woman, one below the class of nobles, was 30, the highest, 62 sols; and if the copula carnalis followed, the mulct varied according as she was willing or unwilling, single, married, or betrothed. Again, the penalties denounced against such as robbed men of their clothes or armour varied according to the *nation* of the parties. The barbarians made a distinction between themselves and the Romans, not over flattering to men who had once been lords of the world. Thus, if a Ro-

man (meaning a Gaul) despoiled a Frank, the mulct was 62 sols; if a Frank a Roman, 30.<sup>1</sup>

Next to theft, the crimes most common in all the barbaric codes are wounding and maiming; and the amount of the damage is carefully graduated by the condition of the parties and the value of the member. If one man struck another with the intent to kill him, the mulct was 62 sols<sup>2</sup>; if on the head so that the blood flowed, 15<sup>3</sup>; so that the bones appeared, 30<sup>4</sup>; so that the skull was laid bare, 45.<sup>5</sup> Men striking, without any danger, was estimated at so much per blow.<sup>6</sup> The loss of a hand, foot, nose, tongue, an eye or ear, was 100 sols<sup>7</sup>; the thumb or big toe, 45<sup>8</sup>; the index finger, 35, because it was used in shooting the arrow<sup>9</sup>; but any other finger 15<sup>10</sup>: it is, however, somewhat odd, that if three fingers were cut off at one blow, the mulct was much less than we should expect. A tooth was valued at 15.<sup>11</sup> *Si quis ingenuus ingenum castraverit aut virilia truncaverit ut mancus fiat, sol c culpabilis judicetur*<sup>12</sup> *si vero ad integrum tulerit, cc sol culp. jud.*<sup>13</sup> When death followed, equally variable and equally minute were the penalties. Where the homicide was a freeman, and the victim a slave, of course nothing was expected beyond the pecuniary value of that slave.<sup>14</sup> On these occurrences, therefore, the law is explicit and brief; and from them we may infer, either that they were rare, or that they produced little sensation in the community. But the earnestness and number of the laws respecting the homicide of freemen and nobles, and the minuteness with which every possible circumstance of the crime is noted, prove its alarming frequency. Men never legislate by anticipation: laws are generated by the wants of society alone; and

<sup>1</sup> *Lex Salica, tit. ii. iii. iv. vi. xi. xii. xiii. xiv. (In multis legibus.) Lindenbrogius, Codex Legum Antiquarum.*

<sup>2</sup> *Tit. xix. De Vulneribus, l. 1.*

<sup>4</sup> *Ibid. l. 3.*

<sup>6</sup> *Ibid. l. 7.*

<sup>8</sup> *Ibid. l. 4.*

<sup>10</sup> *Ibid. l. 8, 9.*

<sup>12</sup> *Ibid. l. 18.*

<sup>14</sup> *De Homicidiis Serverum, tit. xxxvii. l. 1—3.*

<sup>3</sup> *Ibid. l. 2.*

<sup>5</sup> *Ibid. l. 4.*

<sup>7</sup> *Tit. xxxi. De Debilitatibus, l. 1.*

<sup>9</sup> *Ibid. l. 6.*

<sup>11</sup> *Ibid. l. 7.*

<sup>13</sup> *Ibid. l. 19.*



where those of a particular class are so carefully multiplied and defined, they afford the best evidence of the social state. Hence that state can only be understood from a consideration of the crime and the penalty. Melancholy are the lessons taught us by such clauses as the following:— If any freeman killed a Frank, without any of the atrocious circumstances which we may infer to have been very common, the penalty was 200 sols<sup>1</sup>; but if the victim were thrown into a well, or smothered under the water, it was raised threefold, to 600.<sup>2</sup> Threefold also was the ordinary mulct if the victim were burnt or buried alive in his house.<sup>3</sup> The death of a Roman (Gaul), however, did not call for any very angry feeling of justice: 100 sols were sufficient unless the victim happened to be the king's guest<sup>4</sup>: and as to a noble Roman; if the victim was a tributary, 45 sols were as much as he was worth.<sup>5</sup> The disparity of the penalty is not the thing which will here strike any reader: the frequency of the atrocity attending the homicide is lamentably proved by the increased amount of the penalty, and by the earnestness with which it is enforced.—Equally full of instruction are other enactments relative to other circumstances of the murder. If an organised band assailed and murdered a freeman in his own house, mulct 600 sols<sup>6</sup>; if the same violence were committed on a Sunday, the day above all others when it might most easily be committed, and no doubt was most generally so, 1800 sols.<sup>7</sup> If a Roman or a freedman were killed under such circumstances, one half the penalty.<sup>8</sup> Not less melancholy are the laws respecting homicides at convivial entertainments, which, indeed, offered peculiar facilities for the commission of the crime.<sup>9</sup> When a man drank, he was at the mercy of his secret enemy: hence the pledge or protection guaranteed

<sup>1</sup> De Homicidiis Ingenuorum, tit. xliii. l. 1.

<sup>3</sup> Ibid. l. 3.

<sup>4</sup> Ibid. l. 6, 7.

<sup>6</sup> De Homicidiis à Contubernio factis, tit. xlv. l. 1.

<sup>7</sup> Ibid. l. 2.

<sup>8</sup> Ibid. l. 4.

<sup>9</sup> De Homicidiis in Convivio factis, tit. xlv. l. 1, 2, 3.

<sup>2</sup> Ibid. l. 2.

<sup>5</sup> Ibid. l. 3.

by the members, that pledge being fulfilled by the individual holding a drawn weapon behind the seat of the man whose safety he had engaged to defend. The atrocious perfidy against which this custom was levelled was as common among our Anglo-Saxon ancestors<sup>1</sup> as any other people: in none, perhaps, was it wholly unknown—hence the modern custom of drinking healths, which, though now an empty ceremony, was once of importance. Other injuries besides the above were redeemable by money. For instance, all the barbaric nations, we believe, punished terms of reproach, or insult, or contempt, or curses. If one man called another a *hare*,—no doubt alluding to the timidity of that animal, and therefore a heinous reproach among a warlike people,—the mulct was 6 sols.<sup>2</sup> If one woman called another by a name of frequent recurrence in the neighbourhood of Billingsgate, offended chastity demanded 45.<sup>3</sup> That the ancient Jews had also punishments for such terms of reproach is evident from our Saviour's sermon on the mount<sup>4</sup>, where *raca* (empty pate), and *fool* (*moros*), are visited with different penalties.<sup>5</sup>

In contemplating the crimes and penalties of the code before us, an inexperienced reader might be struck with surprise at the absence of such as regard the chastity of free women. In regard to that of female slaves, there are provisions enough. Thus, if a freeman sinned with the handmaid of another, the mulct was 15 sols, which proves that her chastity was valued about as high as the loss of a common hound. But there is nothing whatever relating to the ravishment of free or noble women, married or single. Were the Franks indifferent to female virtue? No people in Europe guarded it with greater jealousy; none, according both to Tacitus and Salvian of Marseilles, were in this respect so worthy of admiration. That they were trem-

<sup>1</sup> See History of Europe during the Middle Ages, vol. iii. p. 82. (note).

<sup>2</sup> De Conviviis, tit. xxxii. l. 4.

<sup>3</sup> Ibid. l. 5.

<sup>4</sup> St. Matthew, v. 8—22.

<sup>5</sup> Lex Salica, passim (apud Lindenbrogium, Codex Legum Antiquarum, p. 327, &c.). Ducange, Glossarium ad Scriptores Med. et Inf. Latinitatis, voc. *Concagatum*, *Vulpicula*, &c.

blingly alive to the honour of their females, is evident from another title of the same code. If any freeman presumed merely to touch the hand of a free woman, he paid 15 sols<sup>1</sup>; if he grasped her arm, 30<sup>2</sup>; if he touched her bosom, 45.<sup>3</sup> The reader, who is acquainted with the laws, society, and character of the Germanic tribes, need not be told that those laws were of two kinds — the written and the unwritten, or, if he will, the statute and the common. From a period immemorial, unwritten observances, as we have already intimated, governed them all. Of these the most prominent one was, that where the injury was personal, where it affected the life or honour of an individual, that individual, aided by his kindred or friends, should have the right to revenge it; that the community should not interfere in a matter which merely concerned one of its members. Hence, in many cases, in those especially of homicide, or fornication or adultery, the party most injured openly armed to exact satisfaction for it; and that satisfaction was always death. But in the fury of passion the measure of natural equity was generally disregarded; one death was followed by another; the connections of each party joined to screen or revenge a companion or a chief; and from one single homicide, or act of dishonour, the feud often extended to hundreds of such crimes. In all such cases, retaliation was loudly demanded; and as the vindication of one injury always gave rise to the commission of another, sometimes, from one single homicide, a whole district was at war. Experience at length showed, that if society were to exist, the sword of justice must be transferred from the individual injured to the community. The elders and chiefs decreed, that, except in a very few cases, every injury should be redeemable by pecuniary composition; and to prevent all dispute, the amount was carefully graduated by the quality of the parties and circumstances of the crime.

<sup>1</sup> De eo qui Mulieri ingenuæ, &c. tit. xxii. l. 1.

<sup>2</sup> Ibid. l. 2.

<sup>3</sup> Ibid. l. 4.

From undoubted authority we know that this change was exceedingly disagreeable to the great body of the people, who could never be made to understand what society had to do with the matter, still less how the loss of honour could be repaired by money. In defiance of the prohibitions to the contrary, powerful individuals still called their kindred and dependents to join them in executing a more severe penalty than was awarded by the new laws. And in certain cases, so strong was the national feeling on this subject, that the earlier legislators did not attempt to change the character of the ancient observances. They fixed no compensation, nor rendered the reception of any binding on the injured party: the alternative was left in his own hands, either to enter into a composition with the kindred of the other aggressor, or to pursue his revenge in whatever way he was able. Among them the violation of chastity was doubtless one. But we must not omit to observe, that there were also many crimes, the satisfaction for which was not left with the plaintiff, and which yet have no place in the code. That satisfaction was wisely left either to the local judge and jury, — and traces of a jury are discernible in all the Germanic codes, — or to the annual diet of the confederation; and its amount varied with the condition of the parties and the circumstances of the offence. It may, in fact, be safely assumed, that where we find no trace of legislation on any particular crime, either the penalty was left to private revenge, or it was reserved for estimation by the constituted authorities. In general, the written law originally applied to those cases only which most directly affected the interests of the community. There were some offences which were judged to be too unimportant for legislation, and which might be left to the discretion of the deemster and his assessors. There were others that were amply provided for by acknowledged custom; and there were a few where to enforce the ordinary pecuniary compensation would have been a vain attempt. These observations do not apply merely

to the Salic, they apply in a greater or less degree to all the ancient codes of the Germanic nation.<sup>1</sup>

The same Salic code incidentally acquaints us with other particulars which may serve to throw light on the state and habits of society. From one title we learn that deer were tamed and employed in deluding the wild ones.<sup>2</sup> When a man resolved to marry a widow, he could not be engaged to her until a *mallum* or judicial meeting were convened; and that it might be a legal meeting the shield of the centenary or of the tungen (thegn, Ang. Sax. who was immediately below the count) was to be present, and three causes despatched before the engagement was formed.<sup>3</sup> Then he presented the *reippus* or widow's spousal gift. This presence of the shield belonging to the judge, held apparently by one of his attendants, and the necessity of trying three causes before a court could be considered legal, is mentioned in other places.<sup>4</sup> The shield denoted his military jurisdiction, and implied that he was authorised to use force, if force were required for the execution of his sentence. If one man lent any thing to another, and the borrower refused to restore it, the lender took his witnesses to the house, and said to the other, *Restore me to-morrow night what thou hast received from me.* On the following night he returned with the same witnesses, and if the thing were not restored on the seven consecutive nights, and if the borrower still refused, the law adjudged him not only to restore the loan, but to pay 15 sols beyond it.<sup>5</sup> If a man were condemned to the loss of his hand, he might redeem it; and if he had not the money, he might produce *juratores* (bail) to engage that it should be furnished within a given time.<sup>6</sup> If a defendant, when cited, refused to appear before the *mallum*, or, when legally convicted, to pay the penalty awarded, he was at once summoned before the king; and, after a short

<sup>1</sup> Lex Salica apud Lindenbrogium, in Codice Legum Antiquarum, p. 323. Goldastus, Collectio Legum et Consuetudinum Imperii (variis locis.)

<sup>2</sup> De Venationibus, tit. xxxv.

<sup>3</sup> Tit. xlvi. De Reippus.

<sup>4</sup> Tit. lix. De Eo qui ad *Mallum*.

<sup>5</sup> Tit. liv. De Re prestatâ.

<sup>6</sup> Tit. lv. De Manu, l. 1

interval, if he still refused satisfaction, all his goods were placed at the king's mercy. Such severity was doubtless most necessary at a period when the new courts and the written laws had not had time to make themselves respected. But suppose the loser in a suit, or any criminal legally convicted before the mallum, had not sufficient money to pay the compensation awarded by the laws? The proceeding was exceedingly curious. He first produced twelve men to swear that neither *on* the earth nor *under* the earth had he the money demanded. He then invited his kindred to his house, to make over to them all his earthly goods, and oblige them to pay the residue. He went to the four corners of the house, gathered as much dust or soil from all the four as he could hold in his fist; then standing on the threshold, and turning his face towards the interior, he threw, with his left hand, the dust on the nearest relatives he had. If he had no father, mother, or brother, or if they had on former occasions been responsible for his deficiency, he cast it on the sister of his mother, or her children, or on any three of his maternal kinsmen. And if there were three also on the paternal side, he did the same. Then stripping himself to his under garment, with bare head and feet, he went with a staff in his hand, to sit down on the edge or boundary of his habitation. He or they on whom the dust fell — for the aim with the left hand could not be very accurate — were obliged to pay the deficiency, if they had the power. This custom has strangely puzzled Selden, Goldast, and all legal commentators. They might, however, have reflected that it is wholly symbolical. The casting of the dust or earth of the house implied the tradition of that house to the kinsmen on whom it fell; and the stripping and sitting with staff in hand on the boundary of the house, denoted that the former inmate had now no house, no property; that he was at liberty to wander wherever he pleased. But suppose the deficiency was too great for the relations on whom the dust fell to raise? In this case any one of



them, or each successively, might throw the dust in a similar manner ; a proof that the sprinkling of the earth by the owner implied the tradition of the house. If all the kindred were unable to pay the composition, the culprit was successively led to four successive malla or judgment meetings, and there exposed ; and if no one consented to redeem his head, he was put to death. This compulsory observance was, as we may readily suppose, very hard on the relatives of a culprit, if they happened, as must have been generally the case, to be poor, especially when there were several repetitions of the crime. Of this fact Childebert was aware, and in his *Decretum* he abolished what he truly called a pagan custom ; leaving the insolvent culprit to be either put to death or reduced to slavery at the option of the kindred of the deceased.<sup>1</sup> Other passages might be extracted from this venerable code, all equally striking, tending to the same point, — to the elucidation of manners. We will instance three more. Any man might renounce his kindred ; so that he should no longer be responsible for their misdeeds, or they for his ; so that neither, in the event of the one party dying intestate, could inherit the property. Appearing on the mallum in presence of the tungin (thegn) or centenary, he walked before them for some time ; then raising four twigs of the alder tree above his head, he broke each into four pieces, and threw them on the ground, at the same time exclaiming that he utterly renounced all right, or obligation, or interest, or connection with his kindred.<sup>2</sup> The four twigs, and their multiplication by fraction into sixteen, were evidently intended to designate both his proximate and more distant relatives, — the capita and the stirpes. The next passage we shall select is mysterious : “ *Si quis alterum hèreburgium clamaverit, hoc est strioportium, aut qui æneum portare dicitur, ubi striæ concinnunt, et convincere non potuerit,*

<sup>1</sup> De Venationibus, tit. lxi. De Chrenechruda, necnon *Decretum Childeberti Regis*, p. 347.

<sup>2</sup> Tit. lxiii. De Eo qui, &c. l. 1.

sols 62 culp. jud.”<sup>1</sup> Did this term of reproach mean a carrier of witches, or of poisoners? *Stria* was certainly a woman conversant with the use of magic herbs, and *strioportium* (or *strio-portum*) may mean a carrier of such women. And *hereburgium* (or *hereburgum*) may also mean an associate of the goddess *Hera*, — the *Juno*, or, perhaps, the *Diana*, of the Saxons.<sup>2</sup> To this day the Swiss call a wizard *herberger*. *Herburgum ad strio-portum* aut qui æneum portare dicitur, are, however, here synonymous; and the literal meaning therefore seems to be that the person thus reproached was indicated as one who carried the brazen caldron to the place where the witches assembled to chant their words of might (*ubi striæ concinnunt*). That *stria* certainly meant a woman of supernatural powers, is clear from a passage in the *Lex Alamannicæ*, where she is designated as one who fed on the entrails of men, — an allusion which will bring to the reader’s mind the sorceress of the *Arabian Nights*, who in the day only ate a few grains of rice, and who nightly left her husband’s bed, when he was wrapt in deep sleep, to meet her sister sorceresses among the tombs of the dead, and feed with them on the corpses they disinterred.<sup>3</sup> The superstition of the Arabian is manifestly that of Germany; both not merely spring from the same source, but are absolutely identical, — a circumstance, however, which has escaped the notice of all the commentators on this obscure law. In this sense the word was known to the Greeks<sup>4</sup>, and to the Latins<sup>5</sup>, and to the writers of the

<sup>1</sup> De Eo qui alterum, &c. tit. lxvii. l. 1.

<sup>2</sup> “Quod *Hera* colebatur a Saxonibus videtur ex eo, quod adhuc quidam vulgares recitant, se audivisse ab antiquis, prout et ego audivi, quod intro festum nativitatis Christi et festum Epiphaniæ Domini, Domina *Hera* volet per æra, quoniam Junoni apud gentiles æer deputabatur. Et quod *Juno* quandoque *Hera* appellatur, et depingebatur cum tintinnabulis et aliis, dicebant vulgares, prædicto tempore *Vrowe Here*, seu corrupto nomine, *Vro Here de vlughet*.” — *Gobelinus apud Schillerum, voc. Cherioburge*.

<sup>3</sup> See the *Arabian Nights’ Entertainments*.

<sup>4</sup> *Callimachus Hymnus in Apol. v. 45.* and many others.

<sup>5</sup> As *strix*, originally signifying a bird of night — by some supposed to be the owl, but manifestly without reason. Thus *Ovid, Fasti, lib. vi. v. 130, &c.*

“Sunt avidæ volucres, non quæ Phineia mensis  
Gutturâ fraudabant, sed genus inde trahunt:

middle ages.<sup>1</sup> Hence, though Ducange and Schilter were not aware of the universality of this superstition, they could not avoid forming a tolerably correct idea of the beings designated by the word. By all the Germanic, probably also by the Slavonic nations, it was believed that there were women who at certain seasons, amidst the silence of night, rode through the air to hold communication with the pagan goddess; that they had supernatural gifts, especially an abundance of worldly things. By the Alamanni and the Franks, as is plainly intimated in their laws, the same witch was believed to feed on the entrails of the dead. Nor was the superstition unknown to the Lombards, who, however, had too much good sense to believe in it. In a law of the code which forbids the destruction of a woman reproached as a strigis, we have these remarkable words: "Quod Christianis mentibus nullatenus est credendum, nec possibile est, ut hominem mulier vivum intrinsecus possit comedere."<sup>2</sup> If this prohibition does honour to the Lombard legislator, it equally proves the strange diffusion of the notion. Allusion, we think, is also made to it in the laws which so severely visit the resurrectionists of those times, the sixth law of the sixty-seventh title of the Lex Salica, inflicting no less a penalty than 200 sols on the criminal.<sup>3</sup> It is unreasonable to suppose that so high a mulct, — the full

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Grande caput, stantes oculi, rostra apta rapinis,  
 Canities pennis, unguibus hamus inest  
 Nocte volant, puerosque petunt nutricis egentes,  
 Et vitiant cunis corpora rapta suis.  
 Carpere dicuntur lactentia viscera rostris  
 Et plenum poto sanguine guttur habent:  
 Est illis *strigibus* nomen, sed nominis hujus  
 Causa, quod horrendo stridore nocte solet."

Still stronger is the well known passage of Petronius: "Quæ striges comederunt nervos tuos?" A passage, however, which commentators have been glad to pass over, or to leave it worse than they found it.

<sup>1</sup> Thus in the Romaunt de Rose, we have *estries* (*strix*) for witches and magicians.

<sup>2</sup> Codex *Legum Longobardum*, lib. i. tit. ii. l. 9.

<sup>3</sup> Lex Salica, ad tit.

compensation for the homicide of a Frank, and twice that of a Roman, — could have been exacted, had not some such consideration been present to the mind of the legislators. Lastly — for we must quit the Salic code — that gallows and gibbets were as rife in the fifth century as in the time of Tacitus, is evident from the penalties against such as dared to remove the corpses thus suspended. The ordinary mulct for such removal — provided it were not done at the command of the judge — was 45 sols.<sup>1</sup> Whoever presumed to remove the head of a malefactor, when exposed, according to custom, on a post, was fined 15 sols.<sup>2</sup> If a malefactor were stolen away before life had left his body, the penalty was 100 sols.<sup>3</sup>

The Salian Franks, after their migration into Gaul, were first located in the western provinces of the Netherlands, and subsequently, after the conquest of their king Clovis, they extended far into the centre of that province, so as to border on Burgundy and Aquitaine. The Lex Salica therefore was obligatory over a wide region, subject, however, to many amendments, alterations, and additions, by the royal successors of Clovis. The Ripuarian Franks — then located between the Rhine, the Scheldt, and the Meuse — had also their code, promulgated not long after that of the Franks, and published by the son of Clovis. This, however, we shall not notice, because of its affinity with the preceding. The *Burgundian* law which was promulgated early in the fifth century, bears a greater affinity to the Roman than any other of the early barbarian codes, yet it frequently betrays the ancient habits of the people during their abode on the eastern confines of Germany. We may briefly advert to a few of its more striking deviations from the kindred codes. The deliberate homi-

<sup>1</sup> Lex Salica, tit. lxxix. l. 1.

<sup>2</sup> Ibid. l. 3.

<sup>3</sup> Lex Salica, variis titulis (apud Lindenbrogium in Codice Legum Antiquarum). Ducange, Glossarium ad Scriptores, voc. *Chrenecruda*, *Chereburgus*, *Stria*, *Striga*, &c. Schilter, Glossarium Teutonicum, v. *Chervioburge*. Heineccius, Elementa Juris Germanici, lib. ii. tit. xxii. l. 105.

cide of a freeman was punished with death.<sup>1</sup> If a slave committed the deed with his owner's privity, both suffered the last penalty<sup>2</sup>; but where the homicide was provoked or accidental, a pecuniary mulct was admitted.<sup>3</sup> That the Burgundians already valued the more liberal arts is apparent from the wide distinction they made between the homicide of a rustic slave and of an artisan. Thus the murder of a ploughman or swineherd was compensated by 30 sols<sup>4</sup>; that of a carpenter by 40<sup>5</sup>; of a common smith by 50<sup>6</sup>; of a silversmith by 100<sup>7</sup>; of a goldsmith by 150.<sup>8</sup> This code rendered hospitality obligatory: whoever refused to the most obscure traveller shelter and fire was mulcted in 3 sols<sup>9</sup>, and higher, if the stranger were of condition.<sup>10</sup> Does this fact speak for the superior humanity of the Burgundians? We think not. Though no such injunction is to be found, for instance, in the two codes of the Franks, let us not suppose that hospitality was disregarded. On the contrary, that it was a virtue held in high estimation among them is incontestable from the whole tenor of their history. The truth probably is, that here ancient custom, the common or unwritten law, was too deeply impressed on the people to require any additional injunction; and in this sense the published law of the Burgundians may not be very honourable to them; perhaps, by constant intercourse with the Romanised inhabitants of Gaul, the fervour of this great virtue had cooled. On the same principle we account for the doom of death awarded against those guilty of adultery<sup>11</sup>; for chastity was assuredly as dear to the Franks, who have no written penalty for the crime, as to the Burgundians.<sup>12</sup>

<sup>1</sup> Lex Burgundionum, tit. ii. l. 1.

<sup>3</sup> Ibid. l. 2.

<sup>5</sup> Ibid. l. 6.

<sup>7</sup> Ibid. l. 4.

<sup>9</sup> Tit. xxxviii. De Hospitalitate, l. 1.

<sup>11</sup> Tit. lxxviii. l. 1.

<sup>2</sup> Ibid. l. 3.

<sup>4</sup> Ibid. tit. x. l. 2.

<sup>6</sup> Ibid. l. 5.

<sup>8</sup> Ibid. l. 3.

<sup>10</sup> Ibid. l. 2—10.

<sup>12</sup> Lindenbrogius Prolegomena in Codicem Legum Antiquarum. Baluzius, Capitularia Regum Francorum, tom. i. p. 989. S. Gregorius Turonensis, Historia Ecclesiastica, lib. ii. cap. 83. Heineccius, Historia Juris Germanici, cap. i. l. 8, 9, 10.

Omitting the laws of the Lombards, which contain little that is peculiarly striking<sup>1</sup>, and those of the Wisigoths<sup>2</sup>, which do not belong to the Germanic empire, we come to a very brief but very ancient code, bearing the name of the *Lex Angliorum et Werinorum*, and supposed to have been also common to the Thuringians. Its origin is wrapt in great obscurity; but from internal evidence there can be no doubt both of its high antiquity, and of its being received by some of the Saxon tribes. Of its affinity with the ancient codes of this country from Ethelbert king of Kent downwards, a slight glance may satisfy any reader<sup>3</sup>; for this reason, and because it is very curious, it may occupy a few moments of our attention. Its most striking characteristic is the distinction it draws between the different classes of society, a distinction insulting enough to form the basis of Anglo-Saxon legislation. Thus in regard to homicide, the murder of an adeling (etheling) was fixed as high as 600 sols<sup>4</sup>, — three times that of a Frank noble, — while that of a slave was reduced to 30<sup>5</sup>: that of a freeman was compensated by 200.<sup>6</sup> There is, however, a peculiarity attending these penalties which deserves serious consideration. If the man accused of murdering either an etheling or a freeman denied the crime, he might purge himself by the oaths of twelve men, who should swear that in their conscience they believed him innocent: if accused of a slave's murder, he might swear with five. This is probably the earliest authority where we meet with compurgation by the oaths of others; but we should not be justified in assigning it to the Angles, the Werins, or the Thuringians alone; it doubtless pervaded all the Germanic codes, though we meet with express mention of it in two or three only. It was, in fact, interwoven into the judicial system

<sup>1</sup> See Europe during the Middle Ages, vol. i. p. 12, &c.

<sup>2</sup> An elaborate analysis of this code has been given in the History of Spain and Portugal, vol. iv.

<sup>3</sup> See Europe during the Middle Ages, vol. iii. chap. 1.

<sup>4</sup> *Lex Angliorum*, tit. i. l. 1.

<sup>5</sup> *Ibid.* l. 4.

<sup>6</sup> *Ibid.* l. 2.



comprised by the ancient unwritten observances. We find it at the same time in Spain <sup>1</sup> and Scandinavia, in England <sup>2</sup> and in Saxony. It is the basis of our trial by jury,—an institution which, though subject to much abuse from popular prejudice, interest, or passion, is the noblest bulwark ever devised by man for the protection of individuals.—From the custom of twelve men swearing in favour of the accused, and in reality being produced by him as his counsel, the transition to these being nominated by the court, and sworn to give an impartial verdict between the two parties, was natural and easy. It is not the least remarkable of historic facts, that this palladium of civil liberty, so wisely framed, that it could scarcely have been conceived by the most enlightened philosopher, so humane, that it would honour the Christian philanthropist, originated not in the boasted wisdom of Greece or Rome, but in the dark forests of Germany, amidst the pagans of a barbarous age. The truth is, that to philosophy human liberty is not much indebted: it has been fostered by that independence which distinguishes the Gothic nations beyond all other people on earth. There is scarcely a penalty in this most extraordinary code (*Lex Angliorum*) which may not be evaded by this form of compurgation. But in some cases it was joined with the alternative of another, — that of compurgation by the duel. Thus when accused of homicide in regard either to an adeling or a freeman, the defendant could legally defy the plaintiff to the field.<sup>3</sup> In after times this ordeal of single combat was perfected into an elaborate system, professed champions being granted to churchmen, to women, and to such as were enfeebled by age. Every reader knows that it was an essential character of chivalry; and chivalry is founded on the customs of the Germanic nations. In this form of compurgation, however, there is little to praise. Ori-

<sup>1</sup> See *History of Spain and Portugal*, vol. iv. p. 110, &c.

<sup>2</sup> See *Europe during the Middle Ages*, vol. iii. p. 57.

<sup>3</sup> *Lex Angliorum*, tit. i. l. 3.

ginally it was, doubtless, a salutary mode, since it often prevented the poor man, whose only defence was his sword, from being overwhelmed by the vengeance of power; but it grew into a monstrous abuse, until the church procured its condemnation. Would that the church had been able to banish it entirely, and that the duel no longer disgraced, we do not say Christian, but rational society!—The same distinction between the homicide of a noble and that of a mere freeman held good in other cases. The blow received by an adeling was rated at three times the amount of that received by a mere ingenuus: in the former case it was 30, in the latter 10 sols<sup>1</sup>; and the same held good when blood flowed from the wound.<sup>2</sup> And if a bone were broken, the same proportion was observed: in the one case 90, in the other 30 sols, being the amount of compensation.<sup>3</sup> In all these, however, the accused could swear with five, or six, or twelve men. Again, if an adeling lost an eye, the mulct was 300 sols<sup>4</sup>; if a free-man, it was 100, unless there were a compurgation by oath.<sup>5</sup> The same sum and the same rule obtained in regard to the nose, the ear, the tongue, the hand, the foot.<sup>6</sup> “*Qui adalingo unum vel ambes testiculos excusserit, ccc sol componat. Si libero, c sol componat, vel juret ut superius.*”<sup>7</sup> Other injuries were subjected to the same mode and the same proportion of compensation.<sup>8</sup> The minuteness with which bodily ones are described and graduated, sufficiently betrays the earnestness of the rude legislators on this subject. It is the best evidence of their alarming frequency. The jealous distinction made between the nobles of the Saxon and those of some other tribes, seems to imply some pre-eminence of birth or of dignity in the former; and at every step the question recurs, were they not thus favoured on account of their descent from some

<sup>1</sup> Tit. ii. l. 1, 2.

<sup>3</sup> Tit. iv. l. 1, 2.

<sup>5</sup> Ibid.

<sup>7</sup> Ibid. l. 6.

<sup>2</sup> Tit. iii. l. 1, 2.

<sup>4</sup> Tit. v. l. 3.

<sup>6</sup> Ibid. l. 4, 5.

<sup>8</sup> Ibid. l. 7—20.

great name—perhaps from Odin? We know with what jealousy that descent was valued in this country; that on it Hengist, and Horsa, Offa, and Ida, equally prided themselves; and we are sure some advantage must have attended it, or the members, whether real or reputed, of that family would not so readily have obtained thrones wherever they drew their victorious swords. — Females could not succeed to landed property: a daughter was set aside in favour of the most distant relation.<sup>1</sup> That theft was not very common, may be inferred from the fact, that three laws only relate to it, and that the composition is fixed at no more than threefold the value of the things stolen.<sup>2</sup> Had the crime been frequent enough to excite the alarm of the community, assuredly we should have had more numerous and more severe penalties. Incendiaries were more dreaded than thieves; for not only was reparation for the damage exacted threefold, but, in addition, a fine of 60 sols went to satisfy the community.<sup>3</sup> And here we may observe, that this *freda* — which was equivalent to the Anglo-Saxon *wite*<sup>4</sup> — is made to accompany many of the pecuniary compensations, — a proof either that the judges were more rapacious, or that society was more enlightened than in some other places. Yet on such a subject we cannot be confident, when we consider the numerous cases which, in all the tribes, were left to the decision of the unwritten customs. In the mulcts annexed to the more violent crimes, we perceive some curious particulars. That for the homicide of a noble virgin was 600 sols<sup>5</sup>; but if the victim were a pregnant woman, or one accustomed to bear children, it was tripled, viz. to 1800 sols<sup>6</sup>; but if she were past the age of bearing, it was reduced to 600.<sup>7</sup> This curious fact proves the care with which population was encouraged. If a woman were accused of having poisoned her husband

<sup>1</sup> Tit. vi. De Alodibus.

<sup>2</sup> Tit. vii. De Furtis.

<sup>3</sup> Ibid. l. 2, 3, 5, &c.

<sup>4</sup> See Europe during the Middle Ages, vol. iii. p. 64.

<sup>5</sup> De Vi, tit. x. l. 3.

<sup>6</sup> Ibid.

<sup>7</sup> Ibid.

by herbs or witchcraft, she might clear herself by a champion, who was to be her nearest kin ; and if she had no champion, by nine red-hot ploughshares.<sup>1</sup> We conclude our brief notice of this code with observing, that its numerous omissions were doubtless supplied by the unwritten law ; that it exhibits an exceedingly simple, we may add rude, state of society ; and that it is pervaded by a spirit of equity not to be found in any other written laws.<sup>2</sup>

That all the Germanic nations, or, to speak correctly, confederations of tribes — whether they remained on the native soil, or had migrated to other countries — had written laws before the time of Charlemagne, is undoubted. In this work, Thierry, the son of Clovis, exerted himself : he caused his most learned men to draw up codes for the Franks, the Alamanni, and the Bavarians ; but that these were not *new* codes, is evident from the whole tenor of the relation. He added, we are told, what he saw fit ; and “ the customs which were according to the manner of the pagans, he altered after the law of Christ.” We are also told that Thierry could not wholly root out the vestiges of idolatry ; but that Childebert, Clothaire, and Dagobert successively perfected his work. According to the unquestionable testimony of Eginhard, Charlemagne made additions to or alterations in the codes of all the nations submitted to his sceptre. The *Lex Alamannica*, as it was originally confirmed by Clothaire II., would have been an interesting subject of contemplation ; but the additions made to it by succeeding monarchs, and incorporated with the rest, renders it impossible to separate the more ancient from the more recent laws, and, consequently, to form any satisfactory notice of the pristine character of the people. From the contiguity of Swabia with Christian Gaul, we find, as we might naturally expect, a more humanised spirit in the code : it exhibits, in fact, a de-

<sup>1</sup> De Beneficiis, tit. xiv.

<sup>2</sup> Lindenbrogius, Prologomena in Codicem Legum Antiquarum. Conringius, De Origine Juris Germanici, cap. 18. Heineccius, Historia Jur. Germ. cap. i. p. 12.

gree of civilisation not to be found at the same period in provinces further removed from communication with the Roman world. Its chief peculiarity regards the struggles which Christianity had to encounter against the lingering, and still powerful, spirit of heathenism. Thus, neither duke nor count could prevent a freeman from devoting himself or his property to the service of the altar<sup>1</sup>; thus sanctuary was solemnly recognised<sup>2</sup>; and if any freeman was killed within the precincts of a church, there was not only the usual composition for homicide, but a fine of 60 sols to the church, and as many to the royal treasury.<sup>3</sup> Hence, too, the severe penalties decreed against all who presumed to touch the substance or the persons of ecclesiastics, amounting in many cases to three, in some to nine, times the sum where laymen only were concerned.<sup>4</sup> These and similar laws were made with a wise purpose; that of inducing the pagans, or, what is the same thing, men but nominally reclaimed from paganism, to regard the church and her ministers with respect. But this code has some other particulars which derive interest from the light they throw on more ancient times. Thus the thirty-sixth chapter enacts, that a *conventus*, or judicial meeting, shall be held *secundum antiquam consuetudinem*, in every canton before the *comes*, in every hundred before the *centenarius*<sup>5</sup>; that if the times be turbulent, it shall be held once every seven days; but in peaceful times, once in fourteen.<sup>6</sup> All crimes in this code were commutable for money.<sup>7</sup> The extreme minuteness with which bodily injuries are recorded, and the careful graduation of the mulct to the damage, prove that, whatever was the frequency of the judicial assemblies, violence reigned on every side.<sup>8</sup> But if some crimes were thus severely punished, there were others of which the punishment was nominal. Thus, in regard to the

<sup>1</sup> Lex Alamannica, cap. 1, 2.

<sup>3</sup> Ibid. cap. 4.

<sup>5</sup> Ibid. cap. 36. l. 1.

<sup>7</sup> Ibid. cap. 40. et alia.

<sup>8</sup> Ibid. cap. 59—65. in multis locis.

<sup>2</sup> Ibid. cap. 3. l. 1.

<sup>4</sup> Ibid. passim.

<sup>6</sup> Ibid. l. 2.

offences against chastity, which, in more ancient times, under the pagans, were visited either with death or a heavy pecuniary mulct, according to the magnitude of the charge, justice was no longer stern. If a man indecently exposed a free virgin, he was fined 6 or 12 sols, according to the degree of exposure: and if he effected the *copula carnalis*, whatever were her unwillingness, 40 was sufficient; or double, if she were married.<sup>1</sup> Again, if a man put away his betrothed, and married another, he was merely obliged to put the second wife away, with 40 sols for the loss she had sustained, and to recal the first.<sup>2</sup> If the victim of man's violence were one degree below the rank of a freewoman, her chastity was valued at the magnificent sum of 6 sols<sup>3</sup>; if a mere slave, at 3!<sup>4</sup> These extraordinary contrasts between the pagan and Christian codes, do not argue much for the latter; in Swabia, chastity had evidently ceased to be held in much respect. But, assuredly, no one will impute this moral laxity to the Christian religion. It was, doubtless, owing to other causes, among which may be ranked the perpetually unsettled state of society, the absence of any direct efficient government, and, still more, of religious sanctions: the inhabitants had thrown off paganism without receiving Christianity. In other cases, we may look in vain for that respect to the fair sex so characteristic of the Germanic tribes. Thus, if any one boxed a freewoman on the ear, so that blood did not issue, the mulct was 2 sols<sup>5</sup>, and one half if a slave; and if the blow were struck by a slave, half of that trifle.<sup>6</sup> Before we dismiss this code we may add, that it contains traces of greater improvement in the system of compurgation by oath; but that it nowhere mentions legal champions.<sup>7</sup>

<sup>1</sup> Lex Alamannica, cap. 58.

<sup>3</sup> Ibid., cap. 80. l. 1.

<sup>5</sup> Ibid. cap. 95. l. 1.

<sup>7</sup> Lindenbrogius, Prologomena in Codicem Legum Antiquarum, necnon Præfatio ad Leges Baivar. p. 399. Eginhardus, Vita Caroli Magni, cap. 29. Conringius, De Origine Juris Germanici, cap. 9. Heincccus, Historia Juris Germ. cap. i. l. 21—23.

<sup>2</sup> Ibid. cap. 53.

<sup>4</sup> Ibid. l. 3.

<sup>6</sup> Ibid. l. 3.



The code of the *Bavarians* is, probably, of equal antiquity with that of the *Swabians*. It is in many respects similar to the latter; and for some of its provisions it is evidently indebted to that of the *Lombards*. On the whole, it exhibits no very favourable view of the social state. Slaves were held in lighter estimation than in any other country: to break the head of one, incurred a penalty of 4 sols only<sup>1</sup>; and you might cut off his nose for  $2\frac{1}{2}$ <sup>2</sup>; his ear for  $1\frac{1}{2}$ <sup>3</sup>; and murder him at once for 20.<sup>4</sup> Chastity was about as valuable in this province as in *Swabia*. The rape of another's wife was 160 sols<sup>5</sup>; of a widow, 80<sup>6</sup>; of a virgin, 40<sup>7</sup>; but if the virgin consented, 12.<sup>8</sup> But these were free born women; for as to the chastity of a female slave, 4 sols was considered a fair equivalent, even if she were married<sup>9</sup>; and 3, if she were not.<sup>10</sup> Other offences, falling short of the main crime, were naturally treated with much more indulgence. An immediate touch by the hand, — no matter in what part, nor whether with a maid, — might be purchased for 6 sols.<sup>11</sup> If, however, *indumenta super genicula elevaverit, quod himilzorum vocat, cum 12 sol. componat.*<sup>12</sup> If such lustful behaviour was shown to one below the rank of freewoman, the penalty was nothing at all.<sup>13</sup>

The *Lex Saxonum*, which is one of the briefest in the range of Germanic jurisprudence, bears the impress of high antiquity. It was confirmed by Charlemagne, the conqueror of this people, who, doubtless, expelled the heathen spirit which pervaded it. It exhibits a very different state of society from that subsisting in *Swabia*, *Bavaria*, or even in *Gaul*; and, in its general features, it approximates closely to the code of the *Angles*. Like the latter, and even in a greater degree,

<sup>1</sup> *Lex Baivariorum*, tit. v. l. 5.

<sup>3</sup> *Ibid.* l. 15.

<sup>5</sup> *Tit.* vii. l. 1.

<sup>7</sup> *Ibid.* l. 6.

<sup>9</sup> *Ibid.* l. 12.

<sup>11</sup> *Tit.* vii. l. 3.

<sup>13</sup> Authorities: Lindenbrog, Conring, Heinck.

<sup>2</sup> *Ibid.* l. 10.

<sup>4</sup> *Ibid.* l. 18.

<sup>6</sup> *Ibid.* l. 7.

<sup>8</sup> *Ibid.* l. 8.

<sup>10</sup> *Ibid.* l. 13.

<sup>12</sup> *Ibid.* l. 4.

it draws the most insulting distinction between the different grades of society ; and like the latter, it exhibits, with great barbarism, great virtues also. The mulct for the murder of a noble was 1440 sols to the kindred, besides a fine to the state<sup>1</sup> ; for that of a freedman, 120<sup>2</sup> ; for that of a slave by a noble, 36<sup>3</sup> ; but by a freedman, an oath of compurgation sufficed.<sup>4</sup> It is remarkable that the murder of a virgin was just double<sup>5</sup> ; a pleasing proof of Saxon gallantry. Compurgation by oath, when the guilt was only presumptive, was common to this as well as to the Anglian code. If a feud, or armed retainer, killed a man by command of his lord, that lord was to pay the mulct, or to support the feud ; which, as we may perceive in any article of this little code, was not wholly discountenanced by the laws. In fact, pecuniary composition was yet in its infancy ; and was not very palatable to a high-spirited savage people. If the crime were committed without the lord's privity, he had to purge himself by the oaths of twelve men ; and not only was the feud put to death by the kindred of the deceased, but, at the same time, seven of the homicide's kin were sacrificed with him.<sup>6</sup> This atrocious law was evidently a remnant of the pagan custom of offering living victims to the manes of the dead. The jealous care with which the life of the nobles was preserved, the extraordinary penalties which protected it among the Saxon tribes, strongly confirms the hypothesis we have started, — that the nobles were of some sacred family — the descendants of some deified legislator or hero. We know that Saxony had two such, Armin and Odin ; nor is it improbable that they had more. A barbarous people easily magnifies the deeds of its celebrated public characters ; nor is the transition from admiration to homage very difficult to be conceived. There are parallel cases nearer to our times.

<sup>1</sup> Lex Saxonum, tit. ii. l. 1.

<sup>3</sup> Ibid. l. 4.

<sup>5</sup> Ibid. l. 5.

<sup>2</sup> Ibid. l. 3.

<sup>4</sup> Ibid. l. 4.

<sup>6</sup> Ibid. l. 5.

We do not see that the deification once in vogue among poor savages is much more irrational than the canonisation of Roman catholics. If the pope has the power of placing a mortal *inter divos*; if the issuing of his mandate authorise invocation, and, consequently, the worship of one, why should we be angry with the worshippers of Armin, or Odin, or Eric.<sup>1</sup> In most other respects, the character of this code is distinguished for severe penalties. Sacrilege and perjury were punished with death.<sup>2</sup> Wounds were rated very high. A slight blow on a noble was 30 sols<sup>3</sup>; if swelling followed the blow, 60<sup>4</sup>; if blood, 120<sup>5</sup>; if the bone appeared, 180<sup>6</sup>; if a bone were broken, 240<sup>7</sup>: compurgation, however, by the oaths of six or twelve men, being allowed in all these cases, where the evidence was circumstantial. The loss of one eye, — we are still speaking of nobles, — was 720 sols<sup>8</sup>; of both, the full widrigild, or composition for life, viz. 1440.<sup>9</sup> The same rule held good in regard to the hands, and feet, and nose. Even a noble's thumb was valued at 240<sup>10</sup>; his little finger at the same<sup>11</sup>; his index finger, however, at 180 only.<sup>12</sup> But the last penalty itself, so foreign to the spirit of Germanic jurisprudence, is often exacted by the Saxon law. Whosoever conspired against the king or kingdom of the Franks<sup>13</sup>; whosoever slew his feudal lord<sup>14</sup>; whosoever slew the son of his lord, or violated the wife, the daughter, or mother of that lord<sup>15</sup>; whosoever killed his deadly foe in his own house<sup>16</sup>; incurred the doom of death: and even the church was forbidden to harbour those who were obnoxious to it.<sup>17</sup> Nay, the same penalty was exacted in regard to minor

<sup>1</sup> See Europe during the Middle Ages, vol. ii. p. 213.

<sup>2</sup> Lex Saxonum, l. 8.

<sup>4</sup> Ibid. l. 2.

<sup>6</sup> Ibid. l. 4.

<sup>8</sup> Ibid. l. 11.

<sup>9</sup> Ibid. And it also held good in regard to other matters. Testiculus, si unus abscessus fuerit, 720 sol.; ambo, 1440.—*Ibid.*

<sup>10</sup> Ibid. l. 2.

<sup>12</sup> Ibid. l. 13.

<sup>14</sup> Ibid. l. 12.

<sup>16</sup> Ibid. l. 4.

<sup>3</sup> Tit. i. l. 1.

<sup>5</sup> Ibid. l. 3.

<sup>7</sup> Ibid.

<sup>11</sup> Ibid.

<sup>13</sup> Tit. iii. l. 1.

<sup>15</sup> Ibid. l. 3.

<sup>17</sup> Ibid. l. 5.

crimes. Whosoever stole a horse<sup>1</sup>; whosoever broke into the dwelling house of another by night to steal<sup>2</sup>; whosoever stole in an adjoining building, whether locked or not<sup>3</sup>; whosoever stole by night an ox four years old<sup>4</sup>; whosoever, by day or night, stole a thing, value 3 solidi<sup>5</sup>; whosoever set on fire, by night or day, the house of another<sup>6</sup>; equally incurred the last penalty. It is impossible to contemplate some of these sanguinary enactments, without a strong feeling of horror; nor, we may add, without one equally strong of surprise. Whence this amazing difference between the codes of Saxony and of Swabia or Bavaria? Here is a curious subject for reflection. Were crimes held in greater detestation in Saxony than in the two last provinces? or were they so common, that to repress them it was found necessary to adopt these extraordinary penalties? We incline to the former supposition. When the conduct of men is lax, they do not think of visiting it with severity. Had crime been generally diffused, it could not possibly have been repressed by such means. To the observation that Charlemagne, their conqueror and legislator, was compelled to restrain their perpetual turbulence by new and unexampled punishments, we might answer, it is only true in part. The law which makes conspiracy against the Frank government, and even sacrilege, a capital offence, was, probably, forced on them by that monarch; who wished a rebellious people to be taught obedience, and a pagan people respect for religion. But that the other laws are of native growth, may be inferred from internal evidence, and from the relation of Charlemagne's biographers. Had not these savage penalties been consentaneous with the ancient customs of the province, could they have been enforced? Would not the whole people—the most high spirited and courageous under heaven—have risen in a mass to destroy the conquerors? Be-

Tit. iv. De Furtis, l. 1.

<sup>3</sup> Ibid. l. 4.

<sup>5</sup> Ibid. l. 6.

<sup>2</sup> Ibid. l. 3.

<sup>4</sup> Ibid. l. 5.

<sup>6</sup> De Incendiis, tit. v. l. 2.

sides, who taught Charlemagne, whose mind was so deeply imbued with the Frank jurisprudence, these sanguinary lessons? He could not learn them from any preceding code or legislator; and we cannot conceive how they could have entered his mind. But it is expressly affirmed, by more than one historian of the period, that he caused the laws of each people subject to his sway to be compiled from their ancient customs — and the Saxons are enumerated among the rest, — a relation which completely establishes the point at issue. To our minds, however, the internal evidence is no less convincing; nor can we divest ourselves of the impression that the laws sprung from Odin. That such a personage existed, and that he was the legislator both of Northern Germany and of Scandinavia, we are prepared to prove from unquestionable historic evidence; but *here* we will not enter into the elaborate investigation; nor ought we, as our subject is the Germanic empire. Assuming the fact of his existence, we must also receive the character given of him as a legislator by writers who lived nearest to his period; whether that period were in the second or first century after Christ, or even prior to the Christian era. Now, he is expressly affirmed to have been a sanguinary law-maker; to have punished slight offences with the same penalty as the heaviest: one writer, indeed (we do not at this moment remember his name), positively asserts that, prior to Odin, capital punishment was unknown to the Germanic tribes. According to Tacitus, indeed, and even to Cæsar, who speak of *potestas vitæ et necis*, death was far from an uncommon punishment; but did Odin precede or follow these writers? Notwithstanding the pretended genealogy of some Anglo-Saxon princes, who are represented, by later writers, as only a few generations distant from Odin, we incline to the former opinion. However, we do not insist on the literal meaning of the assertion, that, prior to him, the punishment of death was unknown. Without that penalty

in the most aggravated cases — in deliberate murder at least — no society can be secure ; and what the historian probably means, was, that before the time of that celebrated legislator, the punishment of death was very uncommon. Of its unhappy frequency at the period under consideration, we have given proof enough. Its prevalence, too, among all the nations of Saxon descent, must be admitted as strong presumption in favour of its internal growth, or, at least, of its reception from time immemorial. In this respect the penal code of England has been a melancholy reflection on our wisdom and humanity. On our wisdom, because the punishment of death has not diminished the amount of crime ; for down to the period of the French revolution, when that nation obtained the supremacy of guilt, England alone has exhibited more numerous and more flagitious violations of every commandment in the decalogue, than all the European nations taken together. As to our *humanity*, it is useless to do more than add, that if the horrid features of all other codes were collected and arranged, they would not form an aggregate so frightful as the English code was some years ago. Even now, much remains to be done ; but, happily, there is a better spirit abroad, from which much may be hoped.\*

The only legal collection which we shall here notice, is the *Lex Frisica*. Yet, in point of antiquity, assuredly it is not the last ; though it was, probably, one of the last promulgated by the Frank monarchs. In many parts it bears the impress of pagan society, and it is generally rude. As the Frisians were so late in receiving Christianity — their conversion not being completed, however long before it might have commenced, until the ninth century — we are prepared for this cha-

\* Authorities: the *Lex Saxonica* in the collection of Lindenbrog ; Conringius, *De Origine Juris Germanici* ; Heineccius, *Elementa Juris Germanici*, necnon *Historia ejusdem* — in places too numerous to be cited.

The efforts to reform our penal code have been deplorably short of what was required. Its rigour has even, in some cases, been increased, and the little good that has been effected has been wrung from our reformers by the irresistible voice of public indignation.



racteristic of barbarians. By whom it was originally promulgated would be vain to enquire ; he could not be earlier than Charles Martel, who seems to have been the first who obtained any signal or general triumph over the wild inhabitants. Partial victories had, indeed, been gained, and the duke of Frisia had sometimes professed himself the vassal of the Franks ; but the country was virtually independent until the time of Charlemagne. Some high legal authorities have contended that this celebrated legislator could not possibly have compiled the code ; yet we should remember that he did not so much compile, as sanction, the laws of the nation submitted to him. He did not, as some modern legislators would have done, employ his ablest jurists to devise a system of law founded on natural equity or philosophical principles : he merely sanctioned such of the ancient customs of each people as were not at variance with the domination he had established, and the religion he was resolved to introduce. Probably he was wise enough to know, that, as all laws are intimately connected with the feelings, no less than the habits, of the people among whom they have grown from infancy to maturity, any sudden or sweeping innovations could only endanger the stability of his empire, and prove most injurious to Christianity. He seems to have been directed by that true philosophy which would prepare a people for certain institutions ; not force these institutions, however wise, on a people reluctant to receive them, and incapable of comprehending them. He softened the harsher feature of the system ; he left to time and circumstances the slow transformation of deformity into beauty.—But let us proceed to the code itself. From the geographical position of the Frisians, we should naturally expect that their laws would be, if not identical, at least kindred, with those of the Saxons. But there is no affinity whatever between the two : each presents a social state so different from the other, that the two people could

scarcely spring from the same stock; or, if they did, their characters, during the lapse of ages, must have been so altered by widely dissimilar institutions, as to render the line of demarcation between them as deep as if they had belonged to races essentially foreign. Thus, in regard to *homicide*, the pecuniary composition for that of a noble is 80 sols only<sup>1</sup>; while among the Saxons, as we have before seen, it was 1440. This proves that the Frisians had no family of noble and sacred descent, the members of which were to be protected by such extraordinary penalties. There could not possibly be any relationship between the nobles of both these people. The murder of a freeman was 54 sols<sup>2</sup>; a small sum, indeed, in comparison with the Saxon mulct, but so nearly approximating to the composition for the noble, that the line of distinction between the two classes (nobles and freemen) in Frisia was not very broad. The more we investigate the subject, the more strongly we find our original impression confirmed,—that in Saxony there was a nobility regarded as sacred—as constituting a family venerable in the eyes of the people—as descended from a deified legislator and king. The murder of a freedman was 27 sols<sup>3</sup>: of a slave, of course, less, but the sum is not fixed; probably, because he was not thought very deserving of legislation, the comparison was loosely left to arbitrary appreciation.<sup>4</sup> That murder was a very frequent crime among this people, is incontestable from the number of laws on this subject; from the minuteness with which the circumstances were specified; from the graduation of the mulct according to these circumstances. In one respect only is there a similarity between the Saxon and the Frisian laws, and that relating not so much to crime as to the judicial process: in both, the accused, where the guilt was merely pre-

<sup>1</sup> Lex Frisionum, tit. i. l. 1.

<sup>2</sup> Ibid. l. 6.

<sup>3</sup> Ibid. l. 54.

<sup>4</sup> Ibid. l. 10.

sumptive, could swear with a certain number,—sometimes with five, at others with twelve, in a few cases with twenty-three, or thirty-five, and forty-eight.<sup>1</sup> This difference in the number of jurors was purely topographical; in one district a few, in another many, were required. And we may add, that in the districts bordering on Westphalia, the country of the Saxons, not only was the number of jurors much greater, but the amount of compensation was much higher. Thus, between the Fli and the Sincfal, the *were* of a noble was 100 sols; of a freeman, 50; of a freedman, 25; or, if the guilt were presumptive only, the accused swore with twenty-three, or eleven, or five.<sup>2</sup> Between the Lanbach and the Weser, the mulct of a noble was 106 sols, the rest in proportion; and if the guilt were not apparent, the accused, according as the deceased were noble, or free, or freed, might swear with forty-seven, or twenty-three, or eleven.<sup>3</sup> This difference affords strong presumption of a radical difference in race among the inhabitants of Frisia: some, certainly, were of the Gothic; some, apparently, of one very dissimilar. The language itself seems to confirm this hypothesis; for, though many words are of the great Teutonic family, there are many, also, from a different source. Rape, theft, burning, and other crimes were equally to be compensated by money. Death was permitted only in six cases: where the champion fell in a duel; where an adulterer was caught *flagrante delicto*; where a thief was apprehended while breaking into a house; where an incendiary was actually applying the torch to burn a house; where a man was breaking into a temple; where one was destroying the infant snatched from the mother's breast.<sup>4</sup> For all other crimes, how heinous soever, the mulct was carefully provided. But the most remarkable title of the Frisian code is that which relates to wounds and maim-

<sup>1</sup> Lex Frisionum, variis legibus.

<sup>3</sup> Ibid. l. 7, 8, 9.

<sup>2</sup> Ibid. variis legibus.

<sup>4</sup> Ibid. tit. v. l. l.

ing. For injuries done to various parts of the body, the composition is so minutely graduated, that experience only could have framed the scale. Such accidents must, in fact, have been of perpetual occurrence. We will give a few examples from the eighty-nine regulations on the subject:— If a man struck another on the head so as to make him deaf, 24 sols<sup>1</sup>; if dumb, 18<sup>2</sup>; if blood merely flowed, 1<sup>3</sup>; if the skull appeared, 2<sup>4</sup>: if an ear were cut off, 12<sup>5</sup>; if the nose, 24<sup>6</sup>: if the upper part of the forehead were cut, 2<sup>7</sup>; if the lower, 4<sup>8</sup>: if one of the inward teeth were knocked out, 2<sup>9</sup>; if an angular tooth, 3<sup>10</sup>; if a grinder, 4<sup>11</sup>: if the hand were cut off by the wrist, 45<sup>12</sup>; if the thumb 13 and a fraction<sup>13</sup>; if the index finger, 7<sup>14</sup>; if the middle finger, a fraction under 7<sup>15</sup>; if the ring finger, 8<sup>16</sup>; if the little finger, 6<sup>17</sup>; if the whole five fingers, 41.<sup>18</sup> And this is not all; for not only the fingers, but the joints of every finger, whether cut off or simply pierced, were valued with a minuteness which fully confirms the inference we have drawn as to the barbarous and violent state of Frisian society. When we add, that wounds, or abscisions, or bruises in every other part of the body are graduated with equal care; and above all, that a new-born infant might be exposed or put to death, provided it had not sucked its mother's breast<sup>19</sup>, we shall have said enough to make the reader sick of this horrid people. They had, indeed, other laws, which some modern writers contend are as ancient as the eighth, or at least the ninth, century, and which betray some faint traces of civilisation; but they have no such antiquity; they are more proba-

<sup>1</sup> Lex Frisionum, tit. xxii., De Dolg., l. 1.

<sup>2</sup> Ibid. l. 2.

<sup>3</sup> Ibid. l. 4.

<sup>4</sup> Ibid. l. 5.

<sup>5</sup> Ibid. l. 9.

<sup>6</sup> Ibid. l. 11.

<sup>7</sup> Ibid. l. 12.

<sup>8</sup> Ibid. l. 19.

<sup>9</sup> Ibid. l. 20.

<sup>10</sup> Ibid. l. 21.

<sup>11</sup> Ibid. l. 21.

<sup>12</sup> Ibid. l. 27.

<sup>13</sup> Ibid. l. 28.

<sup>14</sup> Ibid. l. 29.

<sup>15</sup> Ibid. l. 30.

<sup>16</sup> Ibid. l. 31.

<sup>17</sup> Ibid. l. 32.

<sup>18</sup> Ibid. l. 33.

<sup>19</sup> Vita S. Ludgerii. See Europe during the Middle Ages, vol. ii. p. 206.

bly of the eleventh or twelfth, and consequently could have no place in the present chapter.<sup>1</sup>

A few words on judicial proofs and purgations, and we conclude this brief sketch of the Germanic administration, society, and laws.—1. Though written instruments were not uncommon, as is evident from the collections of Marculf and Sirmond, and from many passages of the laws, the ordinary mode of proving a fact was by witnesses. These could only depose by personally appearing in the court.<sup>2</sup> They were sworn; and before their testimony was given, their ears were always pulled or pinched, as a memento that they must speak the truth,—a custom in our eyes ludicrous, but in theirs solemn.<sup>3</sup> The form of the position varied considerably in different provinces. In more ancient times, the witnesses swore on their arms,—a form peculiarly solemn to all the pagan nations, and not wholly discontinued long after the establishment of Christianity.<sup>4</sup> But in the middle ages, the oath was generally taken on the Gospels, over the altar, over the relics, sometimes over the tombs of saints.<sup>5</sup> When testimonial evidence was inconclusive or wanting, the *actor* and *reus*, or plaintiff and defendant, could, as we have often had occasion to observe, swear either alone, or with a certain number; but it was generally the privilege of the accused to produce his kinsmen or friends to swear for him; viz. to depose that, in their opinion, he had sworn

<sup>1</sup> Lex Frisionum, apud Lindenbrogium, Codex Legum Antiquarum, p. 491. &c. Couingius, De Origine Juris Germanici, cap. 13. Heineceus, Historia Juris Germ. lib. ii. cap. i. § 25.

<sup>2</sup> Capitularia Regum Francorum, lib. vi. § 145.

<sup>3</sup> Lex Baivarica, tit. xvi. cap. 1. & 2. Capitularia, lib. viii. § 207.

<sup>4</sup> Lex Baivarica, tit. xvi. cap. 5. Lex Longobardica, lib. ii. tit. 55. § 1. Lex Saxonum, tit. i. § 8. Fredegarius, Chronicon, cap. 74. Aimonus Floriacensis, Historia, lib. iv. cap. 26. Adamus Bremensis, Historia Ecclesiastica, lib. i. cap. 33. Bartholinus, De Causis Contemptus Mortis, lib. i. cap. 6. Ven. Fortunatus, Carmina, lib. i. car. 7.

“ Utque fidelis ei sit, gens armata *per arma*  
Jurat, jure se quoque jure tegat.”

Ammianus Marcellinus, lib. xvii. cap. 12.

<sup>5</sup> Marculfus, Formulæ, Appen. cap. 29. Ducange, Glossarium ad Scriptores, v. *Juro*. The Franks were fond of swearing over the relics of St. Martin (S. Gregorius Turon. Hist. Ecclesiast. lib. iv. cap. 46., lib. viii. cap. 16.) and over the tomb of St. Denis (Idem, lib. v. cap. 32.).

*in foro conscientiaë.* The *conjuratores* varied exceedingly in number: sometimes they were two<sup>1</sup>, four<sup>2</sup>, five<sup>3</sup>, six<sup>4</sup>, seven.<sup>5</sup> The Frisian code admitted from two to forty-eight<sup>6</sup>; but cases have been adduced, in which 60, 62, 74, 81, 100, and even 300, thus swore together<sup>7</sup>; yet the most usual number was 12.<sup>8</sup> We have alluded to the more ordinary forms of swearing; but there were others, the mention of which may gratify a passing curiosity. There was the oath *in manu comitis*, or head of the court<sup>9</sup>; *in vestimento*, which probably means by touching the garment of the man who administered it<sup>10</sup>; and *in pecunia*, from the image of the king or the sign of the cross engraven on it.<sup>11</sup> Some Germanic tribes had modes of swearing peculiar to themselves. Thus, the Frisians plucked away some hair with the left hand, and placing two fingers of the right hand upon it, made their adjuration. Hence the proverb, "You may believe a Frisian when he touches his hair."<sup>12</sup> Thus, also, the Franks swore with a rod or staff in the right hand.<sup>13</sup> Classes, and even individuals, had also a peculiar mode of swearing. Thus, clergymen often swore not only on the Gospels, but on the missal and the canons.<sup>14</sup> Some were evidently heathen oaths: as, By my father's soul! (*per animam patris*)<sup>15</sup>; By all nations! (*per omnes gentes*)<sup>16</sup>; By the teeth of God! (*per dentes Dei*); By the lance of St. James! (*per lanceam S. Jacobi*)<sup>17</sup>; By the crown<sup>18</sup>! By my salva-

<sup>1</sup> Lex Saxonica, tit. i. l. 1. 6. 9.

<sup>2</sup> Lex Frisica, tit. ii. l. 8.

<sup>3</sup> Lex Alamannica, tit. vi. l. 6.

<sup>4</sup> Lex Saxonum, tit. xiv. l. 2.

<sup>5</sup> Lex Baivarica, tit. iii. l. 2.

<sup>6</sup> Lex Frisica, passim, præsertim, tit. 1.

<sup>7</sup> Heineccius, Elementa Juris Germanici, lib. iii. tit. 6. § 218.

<sup>8</sup> Codex Legum Antiquarum, passim.

<sup>9</sup> Lex Longobardica, lib. ii. tit. 52. l. 15.

<sup>10</sup> Lex Frisica, tit. iii. l. 4.

<sup>11</sup> Ibid. tit. xii.

<sup>12</sup> Heineccius, Elementa. Ibid. l. 221.

<sup>13</sup> Capitularia Regum Francorum, lib. vi. l. 285. The staff was thrown from the hands as soon as the oath was uttered.

<sup>14</sup> Ducange, Glossarium ad Scriptores, ubi supra.

<sup>15</sup> Witikind, Saxonia, lib. iii.

<sup>16</sup> Ordericus Vitalis, Historia, lib. xii. p. 880.

<sup>17</sup> Chronicon Flandricum, cap. 17. Ibid. cap. 8. 16.

<sup>18</sup> Sanuto, Chronicon, lib. iii. part ii. cap. 3.



tion<sup>1</sup>! by the splendour of God<sup>2</sup>! by Mount Sion and Mount Sinai<sup>3</sup>! by the beard of Otho<sup>4</sup>! In taking the oath men raised the right hand on high<sup>5</sup>; the women and priests placed it on the breast.<sup>6</sup> — 2. The forms of compurgation are no less curious. Of these one of the most ancient was cold water. The accused was thrown into it: if he sank, he was guilty; if he swam, he was innocent.<sup>7</sup> Boiling water was more common: the arm was plunged into a caldron, was soon bandaged and sealed; and if at the end of a few hours the member had a healthy appearance, the accused was absolved.<sup>8</sup> The mode of purgation by the cross has puzzled the ingenuity of the learned. That it took place before the cross in the church, is admitted.<sup>9</sup> We think that it consisted in holding the hands crossed over the head; and that, if the arms of the accused dropped before a certain time, he was pronounced guilty.<sup>10</sup> Much more common than this was the ordeal by hot iron.<sup>11</sup> Sometimes it consisted in seizing the red-hot iron with the hand<sup>12</sup>; sometimes in walking with naked feet over a number of burning ploughshares<sup>13</sup>; and, notwithstanding the prohibition of popes and councils, it kept its ground — so difficult is it to extirpate national customs,

<sup>1</sup> S. Gregorius Turon., Hist. Eccles. lib. iii. cap. 15.

<sup>2</sup> Ordericus Vitalis, Ibid. p. 536. The celebrated oath of William the Conqueror.

<sup>3</sup> Baluzius, Formulæ, 15.

<sup>4</sup> Heineccius, Elementa, ubi supra. Ducange, Glossarium ad Scriptores, ubi supra.

<sup>5</sup> S. Gregorius Turon. De Miraculis, lib. i. cap. 20.

<sup>6</sup> Lex Alamannica, tit. lvi. l. 2. This is as ancient as it is an universal mode. Thus Ovid, Amor. lib. iii. : —

“Supposuisse manus ad pectora lubricus amnis  
Dicitur, et socii jura dedisse tori.”

But the gospel was most frequently used; women and boys wore it round their necks as a protection: — *Ουχ ὄρας πως αἱ γυναῖκες, πως τα μικρὰ παιδία ἀντι φυλακῆς μεγάλης εὐαγγελία ἐξάρτωσι τοῦ τραχήλου, καὶ πανταχοῦ περιφέρουσιν, οὗτοι πέραν ἀπώσιν.* S. Chrysostom, Hom. 19. And it was common to the German women. Heineccius, iii. 6. 223.

<sup>7</sup> Ducange, Glossarium, ad verb.

<sup>8</sup> Codex Legum Antiquarum, passim.

<sup>9</sup> Capitularia Regum Francorum, A. D. 803. Hieronimo della Corte, Hist. Veron. p. 178.

<sup>10</sup> Mabillon, De Re Diplom. lib. vi. no. 51.

<sup>11</sup> Eadmer, Historia Novorum, p. 48.

<sup>12</sup> Ducange, Glossarium, ad vocem.

<sup>13</sup> Ibid.

however absurd — until the thirteenth century.<sup>1</sup> There were many other forms of compurgation ; as the purgatio per sortes<sup>2</sup> ; per panem, or corsnid<sup>3</sup> ; and above all by the brabirist<sup>4</sup>, and by single combat<sup>5</sup> : most of which may be found in the invaluable work of Ducange. In the preceding extracts from the Germanic codes, we have often met with the campiones, or judicial champions, who fought for women, priests, and the aged or infirm. But the duel, as a mode of proof in the ordinary tribunals, was at length abrogated, and reserved to knights and women.<sup>6</sup> Of this subject more at the proper period.<sup>7</sup>

<sup>1</sup> Chronicon Colmarense, A. D. 1278. Seldenus, Notæ ad Eadmerum, p. 48.

<sup>2</sup> Lex Frisica, tit. xiv. l. 1.

<sup>3</sup> Ducange, Glossarium ad Scriptores, sub voce. Leges Canuti, cap. 6. Ingulfus Croylandensis, Historia (we have mislaid the reference to the page).

<sup>4</sup> Lambertus Schaffnaburgensis de Rebus Germanicis, A. D. 1077. Annales Metenses, necnon Regino, Chronicon, A. D. 870. Ranulphus Glaber, Historia, lib. v. cap. 1.

<sup>5</sup> Lex Burgundica, tit. xlv. Lex Alamannica, tit. xliii. Lex Baivar. tit. ii. cap. 2. Lex Frisica, tit. xiv. l. 7.

<sup>6</sup> Heineccius, Elementa Juris Germanici, iii. 6. 228. And, above all, Ducange, Glossarium ad Scriptores, v. *Duellium*. We doubt if, for extent as well as depth of erudition, this celebrated man has ever been equalled.

<sup>7</sup> On this and some other subjects, we have been anxious to specify our authorities with more than ordinary minuteness, that the curious reader may at once be directed to the proper sources of information.

## CHAP. II.

## HOUSES OF SAXONY AND FRANCONIA.

911—1138.

MONARCHS OF THE HOUSE OF SAXONY. — THE IMPERIAL DIG-  
 NITY ELECTIVE. — HISTORY OF THE CONSTITUTION. — FIEFS  
 HEREDITARY. — FEUDAL INSTITUTIONS. — STATE OF SOCIETY.  
 — MONARCHS OF THE HOUSE OF FRANCONIA. — ATTEMPTS  
 OF HENRY IV. AND V. TO RENDER RELIGION DEPENDENT ON  
 THE STATE. — INTERNAL DISSENSIONS. — THE CONCORDAT OF  
 1122. — PROGRESS OF THE CONSTITUTION. — INCREASING  
 POWER OF THE DUKES AND OF THE IMPERIAL DIETS. —  
 CONDITION OF SOCIETY. — IGNORANCE AND VICES OF CLERGY  
 AND LAITY.

THE situation of the empire, on the extinction of the 911.  
 Carolingian line, was very different from what it had  
 been on the demise of its great founder. France was  
 irrevocably detached from it; Italy was a prey to in-  
 testine wars\*; and Germany had its troubles, external  
 and internal. The Normans, or Danes, indeed, who  
 had just obtained by their swords a settlement in Neus-  
 tria, were no longer to be dreaded south of the Elbe;  
 but the Slaves and the Huns were perpetually harassing  
 the eastern and northern frontiers. Though the Bohe-  
 mians and the Moravians were regarded as subject to  
 the empire, they were yet but partially humanised by  
 Christianity; in fact, idolatry had numerically the ad-  
 vantage: and those who adhered to the ancient gods  
 were not well affected to the Christian yoke. The Sla-  
 vonians on the Baltic coast, inhabiting Mecklenburg

\* See Europe during the Middle Ages, vol. i. p. 22, as far as Italy is con-  
 cerned: in regard to France, see vol. ii. p. 46, &c.

and Brandenburg, and those of Lusatia, were of a far more warlike character, and actuated by greater hatred towards the Germanic tribes. Witikind, a writer of the time, represents them as a hardy race of men, as patient of fatigue, as regarding merely in the light of recreation labours, which to a German were insupportable, and as pervaded with an indomitable spirit of liberty. Their want of union had, however, made them, though not an easy, a certain prey to the invaders; yet their obedience lasted no longer than while their country was actually occupied by the feudal armies: and their hatred of the Teutonic nation was embittered by something deeper than even the feeling which continued hostilities had engendered: by the victors they had been treated, not merely with cruelty, but with perfidy and insult. Thus Gero, a Saxon count, whose jurisdiction was separated from their territory by the Oder, invited thirty of their most illustrious chiefs to an entertainment, where, having made them all drunk, he deluged the hall of feasting with their blood. For this atrocious act he had the plea that some of them had conspired against him, and he was sure of impunity. The way in which holy bishops speak of these tribes, shows that there was a feeling equally strong, and somewhat less laudable, on the part of the Germans. The only way, says Ditmar of Merseburg, to treat the Poles — most of them, at this time, were nominally, at least, dependent on the empire — is to feed them like oxen, and beat them like asses; nor without such treatment will the sovereign ever derive any advantage from them.\* Christianity from such hands was not likely to be a very welcome gift; and we shall not wonder that its diffusion was so long retarded. Every Pole, says this pious prelate, convicted of eating meat during Lent, has his teeth knocked out of his mouth; a way, he adds, of establishing God's law much prefer-

\* "Populus enim suus more bovis est pascendus, et tardi ritu asini castigandus; et sine pœna gravi non potest cum salute principis tractari."

able to the ordinances of any bishop.\* The poor Pólah, like all his Slavonic brethren, had not much affection for a religion thus propagated, and still less for its propagators; and he was naturally eager to escape from both. The Hungarian frontier, ever since the destruction of the Slavonic kingdom of Moravia †, was perpetually infested by these restless pagans, who often enough penetrated into the heart of the empire; sometimes even to the banks of the Rhine. Such was the frontier situation of Germany; its internal state was equally unsatisfactory. The feudal princes, and even barons, whose power had risen on the ruins of the imperial authority, and who were grown ferocious amidst the anarchy of the late reigns, made war on one another, with the conviction that it was perfectly legal; that within their respective districts they were virtual sovereigns: and when they were not at war they lived by open plunder. Surrounding themselves by troops of banditti, and by vassals equally lawless, they scoured the country, carrying off to their strong-hold whatever money or provisions they could find; but their most valuable captures were ecclesiastics or nobles, whom by the worst usage they compelled to pay a heavy ransom; and young ladies of noble families, whom they forcibly married.—In this critical position of things, while the barbarians were desolating the frontiers, and anarchy the most frightful was destroying all within, had Germany to choose a new ruler. The discordant rival elements of which it was composed, did not appear likely to agree in the choice: the Frank did not wish a Saxon, nor the Saxon a Frank, to obtain the dignity; and apprehensions were entertained that the empire might be dissolved, and split into several monarchies. But the denomination of Saxons and Franks is rather political than real; for, nationally speaking, the empire

\* "Quicumque post Septuagesimam carnem manducasse invenitur, abscisis dentibus graviter punitur. Lex namque divina in his regionibus noviter exorta potestate tali melius quam jejuniis ab episcopis instituta corroboratur."

† See the reigns of Charlemagne and Arnulf.

consisted of five different people, — kindred, indeed, in descent, but long separated by local interests and feelings : these were the Franks, the Saxons, the Bavarians, the Swabians, and the Lorrainers. The Lorrainers and the Franks were one people : the Swabians had so long been united with them, that, politically, they would act together ; and Bavaria had generally adhered to the confederation. These constituted the old provinces of the monarchy, even in the Merovingian times ; and they looked on the Saxons as a barbarous people, who had just been admitted to the same federative rights, and whom they had several times conquered. But the Saxons possessed territory full as extensive as any two of the rest ; and, by the adhesion of Thuringia, they were able to counterpoise the balance. On the death of Louis we have reason to believe that each of these nations had its duke. The dignity had been restored under the reign of Arnulf, and with augmented splendour. Anciently, these functionaries had been satisfied with their ample powers as military heads of the province, and as superintending, if not controlling, the judicial functions of the counts. These powers, in fact, were so ample, that Charlemagne, as we have before related, had abolished the dignity and divided the duties. The judicial superintendence of the counts he had confided to his *missi dominici* ; and the defence of the frontiers to a new species of officers, the margraves. Under his successor, on the disuse of the *missi*, the functions of margrave and count, though essentially different, and, in reality, incompatible, had been frequently united in the same person, under the title of margrave or count, according to local circumstances. This union of the civil and military powers, this usurpation of all authority by the local governor, had lately become general ; and when Arnulf restored, or permitted to be restored, the ducal title, nothing was added to the real power of the office. The dukes at this time had an authority perfectly sovereign within their respective limits ; from one of them the imperial



head was to be chosen ; and the unsuccessful candidates might, in their disappointment, find dynasties for themselves. Of all these tribes the Franks, properly so called, — the inhabitants of Franconia, and the regions on each bank of the Rhine, — were the first in dignity. They were the descendants of those who had conquered and founded the empire : the elections took place among them ; their archbishop (Mentz), who was regarded as its primate, had, on the former occasion, been allowed to regulate the ceremonial of the election ; and he would, doubtless, exercise the same privilege on the present. Hence Conrad, their count or duke, — for there is some doubt whether Franconia had yet assumed the latter title, — might well aspire to the vacant dignity, especially as, on the maternal side, he was closely connected with the last two emperors.\* On the other hand, the Saxons could oppose to him their duke Otho, whose states during the last reign had been considerably augmented by the addition of Thuringia. Besides such extensive states, a numerous army of warlike vassals, and personal qualities which have merited for him the epithet of Great, Otho could boast of a maternal relationship with the Carlovingian house. If Arnulf, duke of Bavaria, who appears to have been elected to that dignity by the Bavarians themselves, as one capable of defending them against the irruptions of the Hungarians, could not boast of equal advantages, yet, from the extent of his state, on which the eastern and southern marches were dependent, and from his mother being a princess of the Carlovingian house, he was not without some pretensions. Whether Burkard, duke of Swabia, had the same advantage of imperial consanguinity, is doubtful ; but it was certainly possessed by Regnier, duke of Lorraine. The two last, however, could not reasonably hope to contend with the three first ; we may rather say with the two ; for the personal qualities

\* He was the grandson of Arnulf, and, consequently, the nephew of Loujs.

of Arnulf were not of a nature likely to promise him success. The struggle would evidently rest with the Franks and the Saxons. Fortunately, however, their chiefs were more moderate than themselves. Otho was old ; so that, if he were chosen, there would soon be an interregnum. Arnulf and Burkard, with their numerous lay and ecclesiastical vassals declared for him ; and the same consideration, no doubt, induced Conrad to follow the example. With much difficulty the Franks were at length induced to run with the stream, and the suffrages fell on Otho. But this celebrated man, whether age had cooled his ambition, or he foresaw the troubles which the dissatisfaction of the Franks would occasion, declined the dignity, and had the extraordinary disinterestedness to vote for his rival, the duke Conrad. The combined states of Saxony and Thuringia, constrained by his authority, gave their suffrages in favour of Conrad ; and as this could not fail to be peculiarly agreeable to the Franks, the concord of these powerful people rendered their expressed will obligatory on the rest. Bavaria and Swabia joined them ; and though Regnier of Lorraine retired in anger to submit his states to Charles the Simple, king of France, the duke of Franconia was solemnly elected.\*

911 *Conrad* I. was worthy of the dignity to which he was  
to raised. Possessed of great valour, of a firm character,  
936. and of enlightened views, he was enabled to struggle with the difficulties of his situation. These difficulties were formidable enough ; arising from the turbulence of vassals too proud to acknowledge obedience, and almost too powerful to be controlled. The year after his election he lost his great support, the duke of Saxony, and he resolved to embrace the favourable moment for reducing the vast domains of the ducal house,—domains

\* Ditmarus Merseburgensis, Chronicon, p. 325, &c. Witikind, Historia, lib. i. Luitprandus Ticinensis, Historia, lib. ii. cap. 7. Regino, Chronicon, lib. ii. p. 99. Lambertus Schaffnaburgensis, De Rebus Germanorum, p. 315. (apud Struvium, Rerum Germanicarum Scriptores, tom. i.). Adamus Bremensis, Historia Ecclesiastica, lib. i. (variis capitulis). Anonymus, Chronicon Vetus, p. 15. (apud Menckenius, Scriptores Rerum Germ. tom. i.)

which rendered it the arbiter of the empire. His object appears to have been the incorporation of Saxony and Thuringia, which ought never to have been united; but Henry, the son of Otho, naturally opposed the measure, and in defence of his paternal rights did not hesitate to draw the sword. In the campaign which followed, the brother of Conrad was defeated; but when the emperor\* himself appeared in the field, Henry retired to a fortress whence he could defy the imperial forces: and whenever they, after devastating the country, retired, in retaliation he inflicted the same evils on Franconia. Nothing can better justify the policy of Conrad than this fact, that he was unable to reduce the vassal who had defied him. Through the intervention of the states, tranquillity was at length restored, but Henry kept his fiefs. In Swabia, the efforts of Conrad to repress anarchy were more successful. In 912 or 913, Burkard I. had been murdered by his subjects; and the duty was now administered by two intendants, with honours not inferior to the ducal. They rebelled, were subdued and exiled; but, returning to resume their turbulent career, they were condemned in a diet of the empire, and publicly executed. Well did they merit their fate; but so also did duke Henry: yet, while they perished, he increased his power. This affords us a practical commentary on the Germanic constitution: the powerful rebel was secure; the inferior one was speedily crushed. In their rebellion the two intendants had been much encouraged by duke Arnulf of Bavaria, who had even outdone them in treason by leaguings with the Hungarians. His motives were, evidently, a personal dislike of Conrad; indignation at the monarch's efforts to control the ducal feudatories, and a wish to

\* We call him *emperor*, though, in the papal phraseology, he was only king, of Germany, until his consecration by the pope. Neither he nor his immediate successors had that honour; neither, in fact, entered Italy at all; for, in the frequent schisms of the church, amidst the vices of St. Peter's successors, they probably regarded such a ceremony in its true light (see Europe during the Middle Ages, vol. i. b. i. chap. 2.): but were they less emperors for that reason?

form an independent sovereignty, or at least one merely tributary like the duke of Bohemia. In the diet of Atheim, he, too, was convicted of high treason; being excommunicated, placed under the ban of the empire, and his duchy invaded by the forces of the other states: he fled with his family and treasures into Hungary. By the states of Swabia, at the instance of Conrad, Burkard II., who appears to have been the son of the preceding, was elected duke; but the government of Bavaria remained in the hands of intendants. On the side of Lorraine, this monarch was equally successful: he defeated the rebels, detached Alsace and Utrecht from the portion which acknowledged the Frank king. He would speedily have annexed the whole to his empire, but for the internal troubles to which we have alluded. The same troubles will sufficiently account for the depredations of the Huns, who pushed their frontier to the very confines of Bavaria. In fighting these ferocious barbarians, he received his mortal wound, at a period when he had triumphed over domestic rebellion, and when his valour held out the prospect of equal success over the foreign enemy. In his last moments he exhibited a wise policy. Knowing the ambition and the power of duke Henry, he represented to his brother Eberhard, and his other relatives, the propriety of renouncing their own views, and of recognising the Saxon duke,—a measure which he truly regarded as necessary to the salvation of the Germanic body. Fortunately, Eberhard had the same moderation; and from the death-bed of Conrad, he himself bore the ensigns of royalty to the individual most worthy to receive them. The Franconian states were, with some difficulty, induced by Eberhard, now their duke, to declare for *Heinric I.*, surnamed *the Fowler*; so called, because when he received the news of his elevation he was occupied in the pursuit of birds. *Heinric* was even a greater prince than the one he succeeded. His personal qualities were of an elevated order; and his vast power—not as emperor, for little was attached to that dignity,

but as duke of Saxony and Thuringia — enabled him to effect more good than any of his predecessors since Charlemagne. Burkard of Swabia, who had not acknowledged him, he visited rather to reason with as a friend, than to command as a sovereign; and the result was the homage of that vassal. In the mean time, Arnulf had returned to Bavaria, and been received with open arms by the people. His object was certainly to establish an independent sovereignty: by some he is said to have meditated the dethronement of Heinric; but how could he hope to prevail against the most powerful monarch in Christendom?—for such assuredly was the Fowler. As in the case of Burkard, Heinric hastened into Bavaria, and having demanded an interview with him, so thoroughly dwelt on the necessity of union among the different members of the Germanic body, and so clearly showed that it was the interest of Arnulf himself to concur in the present order of things, that a reconciliation was soon effected: Arnulf consented to hold Bavaria as a fief of the empire, and to do homage: in return he was gratified with the nomination to the vacant bishoprics, and with the jurisdiction over the margrave of Nordgau and the counts of Eastern Franconia. By similar means he prevailed on Lorraine to join the Germanic confederation; to their duke Giselbert he gave his daughter in marriage; and Charles the Simple, whose sceptre was passing into the house of Capet\*, renounced all claims over that important province. Heinric thus strengthened himself by measures at once wise and vigorous; he prepared to withstand the Hungarians. It is a well known fact, that his immediate predecessors had been constrained to pay them tribute as the price of forbearance. Whether Heinric refused to pay it we know not; but, the Huns having invaded Saxony, he made one of their chiefs captive, and dictated a truce of nine years as the condition of liberation. The interval he

\* See Europe during the Middle Ages, vol. ii. p. 48.

employed in improving the discipline of his people, whom he subjected to rigorous military exercises. He has been generally called the inventor of tourneys; but though these appear to have originated a century later in France, there can be no doubt that he introduced many salutary innovations into the military system of the country. The predatory bands, whom Conrad had been unable to extirpate, he reclaimed from their vicious career; placed them in the newly erected fortress of Marberg; and, by confiding to them the defence of the frontier, transformed them into useful subjects. From the eldest sons of each family subject to service, he formed a permanent militia, causing a decree to be passed that the expense of their equipment should be defrayed from the common heritage of the house. He thus acquired a force on which far more reliance could be placed, than on the hasty levies which had previously been conducted to the field. To join the practice to the theory of discipline, he led his troops against the Slavi, and after some successes he erected the frontier province, now called Misnia, into a margravate. From Alsace he penetrated into Bohemia, the duke of which he compelled to revive the homage which had been discontinued since the days of Arnulf. Further victories enabled him to erect a second margravate in northern Saxony, and a third in Sleswig, which he wrested from the Danish king. To secure these advantages, he resorted to a policy new in Germany, the erection of fortified towns; and granted extraordinary privileges to the warriors who would settle in them. They were so numerous, that a ninth part of the free rural population of Saxony was required to fill them. For their support, he formed immense magazines, to which he appropriated one third of the produce arising from the district in the immediate vicinity. He is the true founder of the Germanic burghs, of the places which, in after-ages, were not only destined to defend the country, but to serve as nurseries of freedom. The repugnance, however, of the free population to walled



places was long an obstacle to the progress of municipal institutions. Though he effected much good, he could do no more than lay a foundation: time was required for the erection of the superstructure. The fortresses, however, which he had built, had one obvious and immediate good—that of resisting the progress of invasion. At the expiration of the nine years, the Huns demanded the renewal of the tribute, which was indignantly refused. In revenge, they penetrated into the heart of the empire, were signally defeated in two successive engagements, and pursued to the confines of their own country. On this occasion, he restored the margraviate of Austria, which since the time of the Carolingian emperors had been in the power of the enemy. In 936 this great prince bade adieu to empire and to life, after one of the most useful as well as splendid reigns of which there is any record in history.\*

That the imperial dignity was, in the strictest sense of the word, elective, was apparent on Heinric's death. Though prince Otho, the eldest *legitimate* son of Henry †, had been declared successor, that recognition, which had been made at the express entreaty of the monarch, had no effect, unless it were confirmed by the proper diet of election. Thus, if the reigning sovereign could prevail on a considerable number to promise that the crown should devolve on his sons, he could have no security that the engagement would be fulfilled. On the present occasion, the German dukes assembled to arrange the preliminaries for the election. Aix-la-Chapelle was selected for the place, both from respect to the memory of Charlemagne, who had generally resided there, and whose magnificent cathedral was the

937  
to  
1024.

\* Regino, *Chronicon*, lib. ii. p. 101—103. Hermannus Contractus, *Chronicon*, p. 255—259. Lambertus Schaffnaburgensis, *De Rebus Germ.* p. 313. Marianus Scotus, *Chronicon*, lib. iii. p. 644. Sigebertus Gemblaccensis, *Chronographia*, p. 807—811. Siffredus Misnensis, *Epitome*, lib. i. p. 1022. (apud Struvium, *Rerum Germanicarum Scriptorum*, tom. i.) Luitprandus Ticinensis, lib. ii. cap. 7. Anonymus Saxo, *Chronicon Vetus* (sub *annis*). Witikind, *Historia*, lib. i. p. 635, &c.

† He was not the son of a concubine. His mother had been the wife of the emperor, and worthy of her station; but the marriage had been declared invalid by the church.

pride of the city, and from a wish to humour the Lorrainers, not yet fully attached to the general confederation. There were three competitors, all three sons of the late monarch ; for, whatever might be the privilege and the latitude of suffrage, there was seldom any wish to transfer the crown from the reigning *family*. Having canvassed the claims of all, the dukes, margraves, counts, bishops, abbots, barons, territorial nobles, and functionaries of the administration, who were always sufficiently disposed to favour the eldest son, provided there existed no legitimate ground of exclusion, made choice of *Otho I.*, now duke of Saxony, and, having placed him on the throne of Charlemagne, did him supreme homage. This diet is especially memorable for two circumstances, which in after-times led to remarkable results. Who was to consecrate the new sovereign ? During the last half century, the privilege had certainly been exercised by the archbishop of Mentz ; but it was now resisted, on the ground that it had been allowed only because the election had taken place at *Mentz*, but that now, as Aix-la-Chapelle was within the metropolitan jurisdiction of the archbishop of Cologne, he had clearly a canonical right to its exercise. But there was another archbishop, that of Trèves, who contended that his was the oldest church of the empire ; that it had been founded by a disciple of St. Peter himself, at the express command of that apostle ; and that, therefore, in dignity as well as antiquity, the privilege was his. After some contestation, the honour was ceded, *for this time*, to the archbishop of Mentz. At this period every compact is interesting, because every one, being invoked as a precedent in future times, will infallibly become a law. Another circumstance, in appearance much more trifling, led to a result of far greater moment. During his coronation feasts, Otho dined with his three archbishops ; and, to do him the greater honour, the duke of Lorraine discharged the functions of grand chamberlain, the duke of Bavaria those of grand marshal, the duke of Swabia those of

grand cup-bearer, and the duke of Franconia, those of grand seneschal. And we may observe from the commencement of this reign the dignity of arch-chancellor was understood as annexed to the metropolitan see of Mentz. To these facts we shall frequently have to allude in the succeeding pages.—The reign of the first Otho was eventful. During the greater part of it he was occupied in quelling the turbulence of his great feudatories,—a fate inseparable from the dignity. On the death of Arnulf, duke of Bavaria, Eberhard, who assumed the government, refused to do homage; the province was invaded, subdued, and placed under Berthold, the brother of Arnulf. Otho's own brother, joined by Eberhard, duke of Franconia, and Gisibert, duke of Lorraine, rose against him, and, in concert with the archbishop of Mentz, whom they had gained, were proceeding even to elect a new sovereign, when his successes over them turned the tide of affairs. Some of the leading rebels met a premature death; the rest submitted. To strengthen his interest, he drew the fiefs of Swabia, Bavaria, and Lorraine into his own family; but the policy was not clear-sighted: a man's own kindred are generally the first to rebel. Ere many years passed, his own son and son-in-law raised the standard of revolt; and though he triumphed over them, as he had done over other rebels, his reign could not be very satisfactory to himself. In other respects, however, it was beneficial to his people. 1. Boleslas, duke of Bohemia, having assassinated his father, St. Wenceslas, abolished Christianity, threw off his allegiance to the empire, and during fourteen years maintained a desultory warfare with the imperial generals. In the end, however, he was compelled to submit. 2. Over the rebellious Slavi of the region bordering on the Oder this monarch also triumphed, and founded two bishoprics—Havelburg and Brandenburg—which might furnish missionaries for their conversion. No less signal, though less enduring, was his success over the Danes, to hasten whose

conversion he also founded bishoprics in Sleswig and Holstein. 3. Far more useful, however, were his exploits against the Huns, over whom, in 955, he obtained the most splendid victory Europe had recently seen. It enabled him to extend and to consolidate the margravate of Austria. 4. His transactions in Italy are too interminable to be recorded here; nor need they, as they are already sufficiently known to the readers of the Cabinet Cyclopædia.\* We will only observe, that, though the late sovereigns of Germany had been deterred from invading Lombardy, they regarded themselves as the superiors of that province in virtue of the right they had received from Charlemagne; that Otho took advantage of the troubles which agitated it to reduce it to his sway; and that he not only won the iron, but procured the imperial, crown from John XII. His policy, indeed, was to reduce the holy see — then filled neither by the wisest nor the best of bishops † — to as much dependence on his throne as Cologne or Mentz. The Greek emperors had once exercised considerable influence in the election of popes; the same privilege had been granted to his own predecessors, the Carlovingian emperors; and he loudly proclaimed it as an integral part of his prerogatives. During his life he ruled Rome as he pleased, and even procured the coronation of his son Otho as his imperial successor. Western Europe, however, had not long two emperors; the father died in 973. By posterity he has been styled *the Great*: but if greatness be founded on wisdom, moderation, or patriotism, he had little claim to the distinction: if it depend on success in battle, and still more on a certain degree of splendour, both the result rather of accident than of ability, he may deserve it. *His* acquisition of a new crown might be dazzling, but it proved a curse to Germany. *Otho II.* (973—983) had a short and troubled reign. He had to subdue his

\* See Sismondi, *History of the Italian Republics*, passim; and Europe during the Middle Ages, vol. i. pp. 26, 144, &c.

† Europe during the Middle Ages, vol. i. p. 145, &c.

vassal, Henry duke of Bavaria, whose fief he conferred on another kinsman, the duke of Swabia; and with the king of France he had to contend for Lorraine, which had been divided into two provinces, the Upper and the Lower. Though he ultimately restored tranquillity, the Italian mania was to seal his fate. He had long meditated the expulsion of the Greeks from the maritime places of that peninsula; nor did his connection with the imperial family of Constantinople — his consort Theophania being a princess of that house — deter him from his purpose; perhaps it only strengthened his ambitious projects. But the Greeks invoked the aid of the Saracens; and the emperor was signally defeated in Calabria, whence he found it difficult to escape with life. On his return to Lombardy, he had the satisfaction, at Verona, to see his infant son elected by the united states of that province and of the empire; but at the same time he received intelligence that the Slavonic tribes had universally revolted, and that the Danes were pouring their predatory hordes into Saxony. The first event had been chiefly caused by the tyranny of the margrave of Northern Saxony; the latter, by the hostility of Sweno king of Denmark to the Christian religion, which he abolished. Otho I. had stood his godfather; and on this occasion he had sworn fealty to the German head; but, with the pagan religion, he resumed the independence of his fathers. At this critical period the emperor died at Rome; and *Otho III.* (983—1002), in a diet at Aix-la-Chapelle, was consecrated, by the hands of the primate, the archbishop of Mentz. In such a country the reign of a minor could not fail to be disastrous. The regency being usurped by Henry the Turbulent, a member of the imperial family, who, by Otho II., had been deposed from the ducal dignity of Bavaria, that ambitious prince openly aspired to the crown; and, to support his pretensions, allied himself with the Slavonic tribes of Mecklenburg, Bohemia, and Poland. But they were not approved by the great vassals, who, in a public diet, compelled him

to surrender the young monarch, and the regency too. Yet he received the duchy of Bavaria. Under the guidance of his able counsellors, at the head of whom was the archbishop of Mentz, the young emperor triumphed over the Slavi, and forced duke Micislas of Poland to do him homage. On the successor of Micislas, duke Boleslas, he conferred the regal title. But, like his two predecessors, the Italian mania blinded him to his own interests, and to those of his people. To establish his domination over the fickle Romans, and thence to spread it, if possible, over the south of Italy, he thrice hastened into that country, which in 1002 became his tomb. Had he lived, he would, probably, have attempted to restore the Western empire in a fuller sense than had been done by Charlemagne: he wished, we are told, to transfer his capital from the banks of the Rhine to those of the Tiber. The dislike which he evidently had to the language and customs of his native country; his admiration of every thing Roman; his eagerness, however unsuccessful, to gain the applause of the populace of that corrupted capital; and the ceremonial which, in imitation of the Roman and Greek emperors, he introduced into his palace; strongly confirm the relation.—With Otho III. ended the male posterity of Otho the Great; but a scion of the house of Saxe still remained in Henry duke of Bavaria, who, in 995, had succeeded his father Henry the Turbulent. This prince had two competitors, Herman duke of Swabia, and Eckard margrave of Misnia. Of Bavaria he was sure; through the efforts of his kindred he was soon joined by the states of Saxony; but notwithstanding these advantages, he would not, probably, have gained his object, had not his more formidable rival, the margrave Eckard, been removed by assassination,—a crime of daily occurrence in an age so lawless. After all, his election could not be called legal: for though, having gained the Franconians, he secretly repaired to Mentz, where, from the archbishop of that see, he received the crown, yet Swabia had no deputies, and Saxony but four, pre-



sent on the occasion. And the archbishop of Cologne murmured loudly, saying that Aix-la-Chapelle, and not Mentz, was the legal place of election. The truth, however, is, that the Germanic states had never appointed either city for the ceremony, and custom was as much in favour of the one as of the other. But there was illegality enough in the constitution of the diet which had assembled to elect him; and Henry, feeling that his throne was in danger, hastened to reduce his remaining rival. He succeeded; persuaded the Saxons to approve what had been done; and won the states of Lorraine as well as the archbishop of Cologne, by submitting to receive the crown a second time in a diet assembled at Aix-la-Chapelle. The reign of *Heinric II.* (1002—1024), like that of his predecessors, was full of troubles. Yet few princes have better deserved a throne. Exceedingly moderate in his conduct, affable in his manners, swayed by a strict sense of justice, and in all things more ruled by conscience than any other prince of his age, St. Heinric — for he has been canonised — in any other country would have been a blessing to the people. One of the most troublesome of his enemies was Boleslas king of Poland, a valiant, ambitious man, who was evidently determined not to pay the tribute which his immediate predecessors had yielded to the empire. An opportunity of interfering in the affairs of Bohemia afforded him the means of mortifying his suzerain. The duke of that province, like him named Boleslas, after usurping the government, proved so great a tyrant, that the people rose and expelled him, substituting in his place a brother, Vladimir, whom he had dethroned. On Vladimir's death, they placed another brother, Jaromir, in the same dignity; but the Polish king restored his namesake, who consented to reign as his vassal; yet, for reasons not very clear, he soon deposed and blinded the work of his own hands, and retained that important province for himself. Hence the war between him and the empire, which was protracted for years, but which, in general,

must have been favourable to the Pole ; for though he withdrew his forces from Bohemia, he received most of Silesia as a fief from Heinric.—But the Germanic vassals of Henry were his most troublesome enemies. Agreeably to the custom of his immediate predecessors, on accepting the crown he had been compelled to resign his fief ; for the princes of the empire feared, that if the ducal and imperial powers were suffered to meet in the same person, despotism might soon be established. His duchy of Bavaria he had conferred on his brother-in-law, Henry of Luxemburg, and by so doing had made all who had hoped for the brilliant prize his enemies. One of them, the margrave of Schweinfurt, raised the standard of revolt ; but was at length forced to invoke his clemency. This necessity of arming, to reduce a turbulent vassal to obedience, is the best comment on the political constitution of the country. It was Heinric's constant entreaty that his dukes and barons would live at peace with each other, and refrain from plunder. This state of things was incompatible with social happiness ; now was the empire of violence, when the bandit no longer blushed for his profession. “ These provinces,” says Ditmar of Merseburg, speaking of Lorraine and the Netherlands in general, “ are, indeed, the Low Countries ; for every thing like justice or obedience to the laws, or love of one's neighbour, is fallen as *low* as it possibly can be. Here the preachers can do no good ; both king and priest are disregarded ; none have any power, except banditti and persecutors of innocence.” Unfortunately, Heinric was too pacific for the times : averse to civil war, his policy was to govern by conciliation. He was thrice in Italy. During his first visit he received the iron crown of Lombardy ; but a quarrel between his troops and the inhabitants of Pavia, in which that magnificent city was reduced to ashes, so disgusted him with the people, that he left them with the resolution never to return.\* In a few

\* See Sismondi, History of the Italian Republics (Cab. Cyc.), and Europe during the Middle Ages, vol. i. p. 30.

years, however, the anarchy of that province, and the entreaties of Benedict VIII., who had need of his aid, induced him to revisit that country of revolutions. From that pontiff, both he and his empress, St. Cunegund, received at Rome the imperial crown, — a vain ceremony, which added nothing either to his dignity or his power, but which gratified his devotion to the head of the church. Prior to his coronation by the pope, he never styled himself emperor, but merely *king of the Romans*, — an example unhappily followed by his successors. In a third journey he pacified Southern Italy, and, to defend it against the incessant attacks of the Saracens, he conferred some important fiefs on certain Norman adventurers, who were ultimately destined to prove enemies far more formidable than the Saracens.\* In a peaceful state St. Heinric would have made an excellent monarch; perhaps he would have been a still better bishop. By abstaining from the bed of his imperial consort, he must excite our pity, or even a stronger sentiment, as with him the male posterity of Henry the Fowler became extinct. By founding and splendidly endowing the bishopric of Bamberg, — four princes of the empire being the hereditary servants of the new spiritual dignity †, — he showed his magnificence no less than his devotion. With some defects of the head, he had the best disposition of heart. Perhaps, with the single exception of St. Louis, there was no other prince of the middle ages so uniformly swayed by justice. ‡

\* See either of the preceding works under the proper date.

† Thus, in after-times, the elector of Bohemia was his grand cupbearer; of Bavaria, his seneschal; of Saxony, his marshal; of Brandenburg, his chamberlain.

‡ Adamus Bremensis, *Historia Ecclesiastica*, lib. ii. et iii. (variis capitulis). Cosmo Pragensis, *Chronicon Boemorum*, lib. i. passim. *Chronica Reginonis*, lib. ii. p. 103—112. Hermannus Contractus, *Chronicon*, p. 258—276. Lambertus Schaffnaburgensis, *De Rebus German.* p. 314—317. Marianus Scotus, *Chronicon*, lib. iii. p. 645. Sigebertus Gemblacensis, *Chronographia*, p. 812—829. Siffredus Misnensis, p. 1033, &c. Anonymus, *Chronicon Vetus*, p. 15, &c. *Magnum Chronicon Belgicum*, p. 80—108. Witikind, *Historia*, lib. ii. p. 643. ad finem. Ditmarus Merseburgensis, *Chronicon*, p. 340—398. (sub annis). Helmoldus, *Chronica Slavica*, lib. i. *Annales Hildesheimensis* (sub annis). Bollauidistæ, *Acta Sanctorum*, die Aprilis 5.

911 In contemplating the period over which we have  
 to passed—that occupied by the house of Saxony—it is  
 1024. impossible not to perceive, that, whatever were the turbulence, the insubordination, the civil wars of the sovereign princes, whatever the successes of the Slavonic tribes, the progress of the empire towards improvement was on the whole conspicuous. It acquired both extent and strength. The margravates of Sleswic, Brandenburg, Lusatia, Misnia, were called into existence; that of Austria was restored and extended; Bohemia was humbled; Lorraine, Provence, and Burgundy, were declared, the first an integral, the two last a vassalitic, portion of the empire; the duchies of Frisia and Holland, both in possession of the same feudatory, stood in the same relation to the empire; Lombardy and Tuscany, to say nothing of Rome and Beneventum, and the southern parts of Italy, were no less dependent. Though some of their conquests were less solid than splendid, they were not wholly useless, since they raised the name of the empire high in the scale of nations, and made even the proud rulers of Constantinople consent to unite their blood with the Western Cæsars. This world is strangely governed by appearances: probably, the successes of the first Otho were more imposing, and tended to keep the rest of Europe in more respect, than the wise policy of the first Heinric, who by his excellent internal regulations laid the foundation of future greatness.—The *political* constitution of the period is not one of the clearest subjects. In the first place, what were the prerogatives of the emperor? and, consequently, what were the rights of the dukes and of the provincial states? These questions have been fiercely debated; but oftener, we fear, in the zeal of party than in that of truth. The fact is, that the limits of the imperial, the ducal and the federative powers were undefined; that, though the emperors aspired to the authority which had been exercised by their Carlovingian predecessors, they were thwarted not

merely by the dispositions of their great vassals, but by the altered circumstances of the times. The feudal system was now in all its glory. The ducal fiefs were generally regarded as hereditary; and the territorial nobles, the most valiant, the most numerous, and by far the most influential portion of the community, were no longer immediately dependent on the crown, but on the dukes. The domains of the latter are no longer direct movable fiefs of the crown, but *arrière fiefs* of the great vassals. Hence the indissoluble union between the head and the members of the same state; the readiness with which the latter entered into the views, however rebellious, of the former; and the formidable opposition which could at any time be displayed before the sovereign. Fortunately for the emperor, he had seldom more than one duke to oppose at the same time; and when any one was convicted of treason against the confederation, the other members, in diet assembled, were not backward to furnish him with troops for the reduction of the rebel; for if rebellion was the whim of one, it was not the interest of the body. Hence the success with which the most powerful were reduced,—the duke of Bavaria no less than the margrave of Schweinfurt, the duke of Swabia no less than the count of Bamberg. Whenever the duke of Bohemia, who was merely a tributary vassal, and was not a member of the confederation, rebelled, all the great feudatories ranged themselves on the side of order; and the case was the same in regard to other Slavonic tribes. And if the emperor's prerogatives were often at variance with the rights of his feudal vassals, he had still considerable influence. He conferred to all honours, all dignities, except such as were confessedly hereditary. He created dukes, counts, margraves; conferred territorial jurisdiction, or granted exemptions from it; and had the undoubted right of collating to vacant benefices,—vacant, whether from judicial conviction, or in default of lawful heirs. And as every heir had to receive investiture from him before the fief could be administered, he could avail

himself of the interminable provisions in the feudal laws, to prove before the diet that forfeiture had been incurred. In general, however, he remitted the extreme penalty for a heavy fine. Nor must we forget to mention, that he had many immediate vassals even in the domains of the dukes. It was a privilege of the barons and territorial nobles; whose ancestors had not received their fiefs from the local dignitaries, that they could transfer their homage from him to the lord paramount. If this privilege were rarely, still it would sometimes be used, and every augmentation of the imperial power was a positive advantage. Again, if the emperor was not the supreme legislator, he was the supreme judge; not only did he receive appeals, but his presence in any duchy or county suspended the functions of the local judges. From the moment he placed his foot in any feudal district, the tribunals, in cases at least where the *merum imperium* or high jurisdiction was concerned, were silent, and the dukes, counts, margraves, bishops, or abbots, became his assessors. Again, he could confer municipal charters, and by so doing remove any city or town from the feudal jurisdiction, and place it immediately under his own. Add, that to diminish the power of the local rulers, he appointed as their coadjutors, often with a concurrent, sometimes with a sole jurisdiction, *counts palatine*, whose functions were more extensive than those of the ancient *missi dominici*. Yet the office was different. Under the Carlovingian emperors, there had been one dignitary with that title, who received appeals from all the secular tribunals of the empire. The *missi dominici* were more than his mere colleagues, since they could convoke any cause pending before the ordinary judges, and take cognisance of more serious cases even in the first instance. As the *missi* were disused, and as the empire became split among the immediate descendants of Louis le Debonnaire, the count palatine (*comes palatii*) was found inadequate to his numerous duties; and coadjutors were provided him for Saxony,



Bavaria, and Swabia. After the elevation of Arnulf, however, most of these dignities ceased; and we read of one count palatine only—the count or duke of Franconia, or Rhenish France. Though we have reason to believe that this high functionary continued to receive appeals from the tribunals of each duchy, he certainly could not exercise over them a sufficient control; nor, if his authority were undisputed, could he be equal to his judicial duties. Yet to restrain the absolute jurisdiction of his princely vassals, was no less the interest of the people than the sovereign; and in this view Otho I. restored, with even increased powers, the provincial counts palatine. He gave them not only the appellant jurisdiction of the ancient *comes palatii*, but the primary one of the *missi dominici*. Hence their attributions may be correctly defined. 1. Within their respective districts they were the hereditary supreme judges, in the first and last resort, in all causes which related to the rights, the interest, or the exchequer of the sovereign; in those especially which regarded the public tranquillity. 2. They were also the proper judges of a class of persons who, for the sake of the social interest, ought to have been more numerous, — the immediate vassals of the crown, and those who, by royal charter, or immemorial usage, had been exempted from the jurisdiction of the feudal governor. 3. In the absence of the dukes, they presided over the provincial states and in the ducal tribunal. 4. On them devolved the superintendence of the royal domains, and that of the royal revenues. These domains were in number considerable, and were reserved for the accommodation of the sovereign in his frequent journeys from one part to another of his dominions. They had each a castle, the wardenship of which was intrusted to officers named burgraves, dependent on the count palatine of the province. In the sequel, some of these burgraves became princes of the empire. Finally, the emperors were the sovereigns, *jure proprio*, of Lombardy, the revenues of which were perfectly at their disposal: throughout their

dominions they received all fines, forfeitures, and sequestrations; and they had the undoubted prerogative of summoning at any time the great vassals to their standard, without the formality of convoking a diet. That summons was denominated a *ban*; and that it could be published in Italy as well as in Germany, appears from many instances. Thus Otho II. summoned the Swabians and Bavarians to join him in Lombardy.\*

911 We have observed, that during this period *fiefs* were  
to beginning to be regarded as hereditary; and of this  
1024. fact every reign affords us abundant proof. Often, too  
— perhaps we might say generally — in default of  
male issue, the fief was renewed to the husband of the  
sister or daughter. Thus, Heinric the Young obtained,  
through his marriage with a daughter of Arnulf the  
Bad, the ducal crown of Bavaria; Ludolf that of  
Swabia, through his consort, daughter of duke Her-  
man I.; and the margrave Ernest of Austria succeeded  
to the Swabian duchy on the death of his brother-in-  
law, duke Herman III. Yet, though this was appa-  
rently the rule, there were occasionally exceptions from  
it, even when there were male heirs. Thus, Otho I.  
refused to his step-brother Tancmar a countship, of  
which the latter was the next heir; and Heinric II. con-  
ferred the duchy of Carinthia on a stranger, to the ex-  
clusion of the late Conrad's son. Yet, most, if not all,  
of these exceptions may be traced to the feudal law of  
the period. Where a particular fief, from its frontier  
situation, or from other causes, required the constant  
residence of the vassal, the monarch might purposely  
withhold it from one, however near by the rule of in-  
heritance, who had vassalitic duties to discharge in  
some other district; from one who was too young to  
fulfil the compact on which the fief was originally  
granted; from one who had charges enough already,

\* Founded on the authorities last cited, with the addition of Pfeffel, *Histoire d'Allemagne*, tom. i. (*Remarques Particulières*), Putter (*History of the German Constitution*, vol. i. book 2), and Schmidt (*Histoire des Allemands*, lib. iv. *passim*).

and whom an additional charge would either embarrass, or elevate too high above his fellow vassals. There is, indeed, reason to infer that every apparent deviation from the rule might, if the circumstances were known, be referred to some other clear and acknowledged principle. There are, however, some cases for which it is less easy to account. Sometimes, on the absolute extinction of the reigning house, the emperor, instead of nominating, as by his acknowledged prerogative he might have done, to the vacant *ducal* fief, permitted the states to elect a chief. Originally, as we have more than once intimated, every Germanic dignity was elective; and down to the Carlovingian period, such elections were frequent, though they were always confined to the family, generally to the direct heir, of the last duke. In the tenth, and even eleventh century, we meet with several instances where the right was exercised. Thus, in 916, Burkard II. was elected duke of Swabia by the states of that province; and a century afterwards, Heinric II. declared that, from time immemorial, Bavaria had, in virtue of its own laws, enjoyed this right of election; and that no innovation could be made on this usage without the express consent of the diet. The same held good in regard to Lorraine; but not in respect either to Franconia or Saxony: in the former, the duke was originally appointed by the crown, and when the male line became extinct, the fief was renewed without any formality of election; in the latter, though the dignity was certainly elective prior to its conquest by Charlemagne, under his successors it became hereditary; and when vacant by forfeiture or in default of issue, it was conferred at the sovereign pleasure. In regard to the *margraves*, the case was not exactly similar; for though, in some instances, as in that of Merseburg, we read that they were elected *communi totius populi consensu*, in many more they are merely said to have been appointed by the emperor, without any allusion to the consent, much less the suffrage, of the inferior vassals. Perhaps that suffrage was an ex-

traordinary concession granted] to the people as an inducement for them to settle in the marches,—the most exposed, the most precarious, the most dangerous of situations,—where, without such inducements, few would be willing to abide. On the whole, then, it appears, that, in respect to the ducal and margravian fiefs, there was not a uniform system in all the provinces; that, while they were generally hereditary, in some the emperor, in others the states themselves, could choose a successor. The counts palatine and the royal counts were more closely dependent on the crown; for though the same hereditary law prevailed, on their forfeiture or extinction there was no question that the imperial prerogative was competent to decide in whose hands the succession could continue. And here we may observe, that the counts below the rank of the palatines were not strictly of the same class; that there was a distinction between the *comitatus fisci* and the *comitatus terræ*; but in what did it consist? The opinion of Williman, which has been adopted by most antiquarians, is, that the counts fiscal were the only effective counts; that they alone received investiture, held the high jurisdiction, and sat in the states of the empire; while the counts territorial consisted of the landed nobility, who, however vast their domains, had no such jurisdiction or privileges, yet who, belonging to families which ranked such dignitaries among its members, were unwilling to be without some more pompous title than the generic one of *nobilis*. We do not mean to deny, though we have nothing like evidence to prove it, that even so early as the tenth century there might be counts of honour and not of jurisdiction, counts titular and not effective; and this may explain why we meet with so many individuals whose names are followed by the title *comes*, without reference to any countship. We certainly meet with *dukes* who had no feudal governments; the title was often assumed by members of the imperial family who had no fiefs; and when a duke was deposed, or his son was not appointed

his successor, the distinction descended to his heirs. Probably, too, the same titular usurpation might obtain in regard to the margraves, since there are instruments remaining where *marchiones* are used in the same doubtful sense as the *comites*. Still the alleged distinction between the *comites fisci* and the *comites terræ* will not, we think, stand the test of criticism. The former were rather the dignitaries, who (whether hereditary, or elective, or merely nominated by the crown) presided, in the ancient sense of the word, over the administration of justice, the military and the fiscal affairs, of a given district; and who, as the learned German supposes, alone held the high jurisdiction, received their investiture immediately from the crown, and sat by right in the diets of the empire. The latter seem to have been the hereditary owners of domains, who, by imperial grant, or gradual usurpation, or tacit consent, exercised judicial power over their own vassals, similar in kind, but inferior in degree, to that of the counts fiscal. Whether *these* received investiture from the monarch may well be doubted; probably some of them might from the local duke; but there appears to have been many who acknowledged no feudal superior whatever, though all were subject to the feudal laws: they sat in the provincial states, but not in the general diets, if we except the diet of election, where every freeman had a right to be present.—Such, we apprehend, will be found the true distinction between these controverted classes of feudatories. But we must observe, that the tendency of the system was manifestly towards the territorial character. The immediate vassals of the crown were anxious to convert their fiefs into allodial property, subject, however, to the usual burdens of the state; and many, we know, succeeded. Thenceforth they no longer received investiture from any hands; they no longer feared the escheats, wardships, the reliefs, the sequestrations, and other incidents, which the feudal laws placed in the power of the sovereign: they became

the *comites terræ*, subject, indeed, in a military sense, to the duke of the province, and in a judicial one to the provincial states, or the count palatine, and forced to sanction appeals from their local tribunals to higher judges ; but in other respects independent of emperor or duke. Their jurisdiction was confined to their own vassals ; nor do they seem to have possessed the power of inflicting any heavier punishment than temporary imprisonment or slight fines on their free vassals (over slaves, their authority was much more extensive) : of grave offences, they could take no cognisance whatever. But it must not be supposed, that at any time, much less during the period before us, every territorial baron had even the low jurisdiction over his vassals. Originally, it was granted to a few only, as a mark of imperial favour ; subsequently, it was extended to others in whose vicinity there was no regular tribunal ; and it is possible that the number was multiplied by concession of the dukes or of the provincial states. We know that some of the dukes arrogated sovereign power ; that they coined money, had exchequers separate from those of the king, and were often attended with royal pomp ; that they published the ban for the assembling of the military forces within their respective districts ; nor is there any thing absurd in the belief that local tribunals could be held at their mandate, especially with the concurrence of the provincial states. But the jurisdiction thus conceded to a territorial lord, could extend no farther than an enforcement of the obligations which were due to that lord, and which many vassals would be willing to resist or to evade. It was, therefore, the very lowest species of jurisdiction ; and in no instance would it involve the forfeiture of a fief. That which was conceded by imperial instruments varied in degree according to the tenour of these instruments : in some places it was more, in others less, extensive ; in some it was controlled by the ducal, in others by the palatinal, tribunals ; in some it took cognisance of most causes in the first instance ;



in others it merely received the charge, and sent the case before a higher court; in all, except in trifling cases, an appeal lay from the decision of the territorial judge: in fact, the baron himself was as much subject to the tribunal of the duke or the count palatine as the meanest of his free vassals; and by the meanest could he be sued in the court of either. There is, indeed, reason to believe that his judicial authority was chiefly confined to the enslaved class — to those who were *glebæ vel personæ adscriptitii*; and it is certain that, though he could decide between two of his free vassals, he could not take cognisance of any cause in which he himself was a party interested. But we must not forget that slaves were by far the most numerous portion of the population, and that much tyranny might be exercised with impunity. In regard, indeed, to the lowest class, life and limb were safe: but though authority fall short of enforcing capital punishment, it may be as vexatious as if the power of inflicting such penalties were recognised.\*

The condition of the *freemen* and of the *serfs* during 911  
the tenth century somewhat differed from that of the to  
ninth. The former were no longer so influential as in 1024.  
earlier times; they did not form so conspicuous a part  
of the legislative power, which, in virtue of the feudal  
institutions, devolved on the princes and barons of the  
empire; and though they could attend a diet of election,  
they do not appear to have exercised the right of suf-  
frage: it was their duty to applaud the choice of their  
superiors. Many of them were sub-vassals; they owed  
suit and service to their immediate lords; and, in re-

\* Conringius, De Origine et Progressu Juris Germanici. Goldastus, Constitutiones Imperii (in a multitude of places). Carpzovius, De Lege Regia Germanorum, cap. 1—9. Beroldus, Tractatus de Comitibus et Baronibus S. R. Imperii, p. 1—355. Engelbrecht, De Successione in Electoratus ex Jure Primogenituræ (in Nucleo Juris, p. 679, &c.). Sithmannus, Speculum Imperii, cap. 1—15. Severinus de Mozambano, De Statu Germaniæ (variis capitulis). Conradus Peutingerus, p. 207, &c. De Jure Publico in Imperio Rom. German. p. 15—73. Heineccius, Elementa Juris Germanici, lib. i. tit. i. ii. iii.

gard to the momentous affairs of the monarchy, had no will of their own. In the provincial states they had some influence, since their concurrence was always necessary before any regulation would have the force of law. On the other hand, as the freemen gradually fell, the slaves gradually arose, in the social scale. Slavery still existed; but it was mitigated by advantages unknown to former times. There was, in fact, a constant progressive ascent from the state of the *adscripti glebæ vel personæ* to that of the *liberti*, or freedman; necessarily, however, with some intervening gradations of condition. We find that the great body of those called slaves had now a *peculium*; from their labour, whether agricultural, mechanical, or commercial, a portion only was the acknowledged right of the lord; and with the rest they could purchase their entire release from the remaining obligations of feudality. But those bonds it was rather their wish to weaken than to remove. In returning, from the profits of their industry, a certain portion to the proprietor of the soil, they felt no grievance; and even the more degraded were compelled only to work so many days a week for their superior; their remaining time was their own, and might be employed to their own advantage. In short, the slaves were rising to the rank of peasants; the peasants to those of freedmen; the freedmen to comparative independence. Of this change, the causes are partly hidden and partly obvious. In Germany, as every where else, Christianity, when once established, had its inevitable effect: it narrowed the gulf between man and man, by disposing the pious to mitigate the condition of their dependants, and by terrifying even the guilty, when lingering on the bed of death, into similar concessions. Innumerable are the instances now extant, of conditional emancipation, dictated sometimes by pity, sometimes by remorse, and often by sound policy. As the population increased, new wants arose; commerce was found necessary; and the feudal lords quickly discovered that

their own benefit would be better consulted by allowing their less enslaved vassals to exercise the mechanical arts, to form domestic manufactures, to attend fairs and merchants with the productions of their labour, to open wine shops and magazines, than by confining them to the cultivation of the soil, especially when agricultural produce was already sufficiently abundant. Again, a prodigious number of domains successively passed into the hands of the church; and every reader knows that the church has always been favourable to partial enfranchisement. The privileges conferred on its vassals and priests soon passed to those of temporal proprietors. When one class is raised in the scale of society, there is a corresponding advance in the next inferior; and the motion descends to the lowest link in the chain. In the tenth, and still more in the eleventh century, as we are incidentally informed, many proprietors complained that the change was in some respects prejudicial to their interests; that there was no longer unmitigated thralldom among the German slaves; that all had new rights sanctioned alike by custom and authority. We have evidence enough that the change was considerable, in the eagerness with which the proprietors of the soil sought for Slavonic captives. They often made partial irruptions into the regions on the Oder, for the purpose of making prisoners, whom they transferred to their estates, and whom they were allowed to rule with all the despotism of former ages.—But what, more than all these considerations, favoured the improvement of Germanic society, was the foundation of cities, and of fortified towns. This policy, which, as we have before observed, was originally introduced by Heinric the Fowler, produced in time the most signal consequences. At first these towns were founded chiefly, if not wholly, on the domains of the crown, and were called *imperial*, to distinguish them from those which were afterwards built by the dukes; and from those also which, since the Roman times, had been subject to the jurisdiction of the duke

or count, and governed by their local laws. But a new class of cities arose—those which were founded by and for the church, and were attached to episcopal sees. Over these, neither count nor duke had any jurisdiction; it was exercised by the bishop or his vicars, the chief inhabitants being admitted as assessors; and that their condition was far superior to that of the ducal towns is confirmed by many acts of the period. The imperial towns were different from the rest. Of their internal constitution at this period we know little; but that they were governed by royal officers, and enjoyed much more liberty than the rest, is undoubted. Those founded by the dukes with the same purpose—the defence of the district—were ruled by *his* deputies; and the same held good in regard to such as were kept on the domains of inferior feudatories, of the counts, barons, and other territorial nobles. The custom was general, that the new foundation should follow the fate of the domain on which it lay; that it should be subject to the same superior, were he emperor, duke, margrave, count, baron, bishop, or abbot. In all these cities more liberty was left to the inhabitants than to the rural population: it was necessary to people them; and unless inducements were held out to free settlers, they could not be obtained, both from the repugnance which the Germans entertained to such places, and from the greater danger to which they were exposed; for they were usually the first, and often the only, places assailed by an invading enemy. Besides, the circumstances of life in a crowded population are evidently different from those of a rural community; and it was necessary that new wants and new duties should be met by new regulations and new privileges. To this subject we shall revert on a future occasion, when there will no longer be a dearth of monuments to illustrate the condition of the rising municipalities. In the present place, we mention it only to show that a new class of society had arisen, essentially different from the rest, and des-

ted at a future period to exercise no small influence over them.\*

So much for the gradations of society. If we turn to the rights possessed by the great powers of the state, we shall have a clearer idea of the relative position of each towards the other, than we could possibly have from mere historic testimony. Most of the imperial privileges we have already noticed; by way, however, of summary, we may observe, that the sovereign nominated to the greater benefices, and during the vacancy received their revenues; that he had considerable influence in the election of the popes; that he convoked national councils, and directed their deliberations; that he could confer the regal title on his vassals, and all vacant fiefs in his own domains, but whether he could confer those dependent on the dukes may reasonably be doubted; that he received the imperial revenues, consisting, besides the usual feudal sources, of the produce of the mines, with that arising from his own domains, and from all mines in the empire; of the Jewish capitation tax, and of the tribute paid by the Venedes and the Slavi; that he established fairs and markets; that he convoked diets; that he coined money, and often bestowed the privilege of coining it on others; and that the high jurisdiction was administered in his name, and by his officers, throughout the empire. The rights of the general diets were sufficiently ample: with them lay the election of emperors, the nomination of guardians or regents, the enactment of laws, the sanction of all territorial alienations, a voice in the establishment of all new principalities, the power of peace and war, the trial of all the privileged classes, the condemnation of any state with its head, whether count, margrave, or duke, and the placing them under the ban of the empire. Again, the states assembled in each province, and consisting, beyond doubt, of every feudatory and

\* Founded on the same authorities, with the addition of Pfeffel, *Histoire d'Allemagne (Remarques Particulières)*, of Putter, *Historic Development*, vol. i., and of Schmidt, *Histoire des Allemands*, tom. ii. liv. 4. (variis capitulis).

every allodial proprietor, however small his domain, were convoked by their governor, and were allowed to exercise powers not much inferior to those recognised in the general diets. It is said that they could make peace or war, of their own authority, with foreign princes. But though we certainly read of occasions where one state armed against another — when the duke of Bavaria, for instance, led his troops into Lombardy to conquer a county which he considered *his* through his relation to the Carlovingian family — we may doubt if, from the tenth century, such wars were permitted by the diet. It is certain, however, that they could erect fortresses, judge all below the rank of those who sat in the general diet, coin money, establish fairs, exact certain contributions (the nature and amount of which are not well ascertained), authorise Jews to settle in the district, possess mines, and in some cases exercise the high justice. But most of these privileges emanated from the imperial authority, and were not naturally inherent in the states; nor do we know whether they were revocable or not at pleasure. In general, the affairs brought before the provincial states regarded the internal administration, the conduct of vassals, the enforcement and appropriation of the local revenues, the construction of bridges and roads, and other matters, which, as every state was a little sovereignty, were interminable enough.\*

911 to 1024. In a feudal monarchy — in one, especially, which had so many wars to maintain with its neighbours — military service, from the duke to the lowest freeman, was compulsory. Under the Carlovingians, the *arrière ban*, consisting of the allodial proprietors, had been with difficulty summoned to the field: the vassals of the crown as well as those of the dukes, with their immediate sub-vassals, were compelled to obey the call; but it was not easy to force the man who owned or held thirty or forty acres only, still less several men who in the

\* Authorities, Pfeffel, Putter, Schmidt, and the contemporary chroniclers. Especially, however, are we indebted to the *Statuta Burkardi*, No. 24. 33. &c.; to Pfeffinger, *Libri Feudorum*, tom. i. passim.



aggregate possessed no more than that number — for a certain extent of land, into whatever number of hands it had fallen, was expected to return an armed horseman — to incur the expense of an equipment, unless the province itself were invaded by a foreign enemy. To render those who composed the *arrière ban* available for the common defence, Henry the Fowler adopted several regulations, which, in his own hereditary states at least, those of Saxony, were successful. One of them — the abstraction of one ninth of the armed population from the rural districts, and their location in the walled towns which he erected for them — was the best that could have been devised. There was now a continuous succession of strong positions, where the force of the invaders might be broken or discouraged ; and an easy refuge for the peasantry and slaves, their cattle, and the produce of the ground, whenever the country was ravaged by the Slavonic, or Hungarian, or Danish bands. His policy was evidently as obligatory on the allodial proprietors as on the vassals ; but, as it was equally the interest of both to observe it, little compulsion would be necessary. It was only where the war was removed to a distance from their own frontier, that the former sought to evade the summons to arms. Wherever might be its seat, all who held lands by the invariable tenour of military service, were compelled a certain number of days to be present. On bishops and abbots it was as obligatory as on the rest ; *their* lands were not, as in some other countries, exempted from the burdens of the state ; and they were to be seen at the head of their vassals as often as the temporal barons of the realm. We may, however, observe, that on the ecclesiastical superiors alone — on bishops and abbots — was military service obligatory ; the rest were never abstracted from the duties of the altar ; but church lands were sub-infeudated to laymen, that the requisite number of horsemen might always be ready whenever the ban was proclaimed by the emperor or the duke of the province. In general, the term of service was forty days, — a time

sufficient for the defence of the country, but inadequate to the prosecution of a war in Poland, Hungary, or Italy. Feudal institutions were excellently adapted to the fostering of a military spirit; but were they favourable to domestic tranquillity? The reverse is the fact. The freemen who, in accordance with the regulations of Henry the Fowler, hastened at certain periods to the new fortified places to display their feats of arms, and indulge in festive entertainments, would not always be disposed to respect the peace of society. Under the walls, single combats often led to fatal results; there was the insolence of triumph, the shame of defeat; and though both parties might be kept in check in presence of the constituted authorities of the place, who could prevent the collision of rival factions in the depths of the forest? That such collisions were of perpetual recurrence, is evident from the literary monuments of the period—especially from the acts of councils and the lives of saints. Ecclesiastics were as much inclined to them as laymen; and their example was naturally imitated by their own vassals, even by their serfs. Thus Burkard, the celebrated bishop of Worms, tells us that, in one year, there were thirty-five homicides among the people of his church. That theft was no less common, is decidedly clear from the same authorities. Hence the increased severity of the penalties decreed by councils and diets;—for pecuniary compensation, which formed the basis of the Germanic codes, was no longer adequate to the repression of the evil. The laws of the Saxons, being much more favourable to capital punishments and to mutilation, gradually superseded those of the Franks; increased rigour was given to the Capitularies; and thus was laid the foundation of a different system of jurisprudence, — a system to which we shall advert when it has grown into notice. In their infancy, human institutions elude our observation; their origin is not related, their rise is silent; and it is only when the plant rears its summit on high, and occupies a distinguished place among the trees of the same forest, that

its existence becomes visible. In reality, the state of the administration and of the laws, during the period of the Saxon emperors, is a very obscure subject of enquiry ; and, for this reason, we defer it until historic truth disperses the gloom. We may, however, notice a few such peculiarities as throw light on the social character.—Ecclesiastics, like laymen, had their prisons for the coercion not only of their own members, but of all the secular inhabitants of the domains subjected to them. In the earlier times, the jurisdiction of the bishop had embraced only his own clergy ; it was subsequently, rather by usage than by positive law, extended to laymen, in cases where the duties of religion, the rights or discipline of the church, were concerned ; and the execution of his decrees was confided to the care of the local courts. The next stage was the association of the bishop with the count, or the concurrent jurisdiction of the two, in the administration of the laws ; and this continued during the Carlovingian period. The progress of the feudal system, the conversion of ecclesiastical into secular vassals, the gradual extension of the territorial tribunals, soon made them, like the baronial feudatories, judges. In fact, they were temporal barons themselves ; and were liable, like the merest layman, to military service, to the jurisdiction *herilis*, and the other obligations of the dignity. But no ecclesiastic could sit on judgments of blood : he could not pronounce, much less execute, sentences of death ; so that the more heinous cases must always have devolved to the tribunal of the count ; and, in general, we find that wherever laymen only were concerned, the judicial functions were not often exercised by the bishop or abbot in person ; in such cases, they devolved on his vicars, who were always laymen. Where the evidence was presumptive only, recourse was had to “the judgment of God,” — especially to ordeals by red-hot iron, by boiling water, and by the duel. The duel, however, as a judicial proof in the ordinary tribunals, appears to have been abolished ; from the tenth century, it was seldom allowed to others than nobles or

ladies of rank. Thus Otho I. vindicated the honour of his only daughter by the duel: her champion was the victor, and she was consequently declared innocent. This mode of judicial proof was sometimes attended by revolting circumstances: one, related by the historian Ditmar, evidently inspired with disgust even the savage warriors of the day. A count, named Waldo, accused another, named Gero, to Otho II. The accused was committed to close custody; and, as the case could only be tried by their equals, the princes of the empire were convoked at Magdeburg. The duel was ordered, and the two parties were compelled to engage in mortal combat on a little island in the river. Waldo, after receiving two severe wounds in his head, at length threw his adversary to the earth; and Gero, being asked if he was able to continue the battle, replied that he was not. By the emperor and the noble judges the latter was declared guilty, and beheaded on the spot by a common executioner. But Waldo had received his death wound; for, after drinking a cup of water, he fell backwards, and expired. Though Otho was reproached by some of his nobles for hazarding the lives of individuals so useful to the state, the duel continued in force.\*

1024 But to resume our historical summary. On the ex-  
to  
1056. tinction of the house of Saxony, the archbishop of  
Mentz convoked a diet of election,—the regency, in  
virtue of Heinric's will, being confided to St. Cune-  
gund, the widowed empress. The scene which followed  
is well worthy of consideration. At the time ap-  
pointed, the Germanic nation, under its feudal rulers,  
hastened to the vast plains lying on both banks of the  
Rhine from Mentz to Worms. The Rhenish Franks  
came under duke Conrad; the Upper Lorrainers under  
Frederic, and the Lower under Goslic; the Saxons  
under Bernard, or Benno; the Bavarians under

\* Ditmarus Mersebergensis, *Historia*, p. 339. 343. &c. Codex Prol. Hist. Episcop. Wormatiæ, No. 51. p. 44—48. Witikind, *Historia*, p. 644. Pfeffinger, *Libri Feudorum*, lib. i. tit. 15. Pfeffel, *Histoire*, tom. i. Schmidt, *Histoire*, tom. ii. liv. 4.

Henry ; the Swabians under Ernest. These were the great feudatories, or rather sovereigns, who, from time immemorial, had ruled over their respective people ; but we also find the Carinthians present under duke Adalbert, the Bohemians under duke Udalric, and several tributary Slavonic tribes under their respective leaders. This fact proves that the Bohemians, like the Carinthians, though not admitted to the dignity of separate states, were now regarded as an integral portion of the empire. The approach of so many nations, or tribes, in military array, — not together, but in separate bodies, — each taking its station as it arrived under the banner of the duke, was a picturesque sight. The number assembled appears to have been about 50,000, comprised in six different classes : the higher clergy ; the feudatories, or dukes, any one of whom might be elected ; the princes, comprising the margraves, counts palatine, and the great officers of the crown ; the territorial nobles, possessed of extensive fiefs, and the feudal jurisdiction ; the ordinary nobles, some with, some without fiefs, but none possessing judicial rank ; and the great body of the freemen. The Lorrainers and the Rhenish Franks were on the left ; the Swabians, Bohemians, Carinthians, Saxons, &c. on the right bank of the Rhine. The same or a similar collection of states, and about the same number of persons, had been at prior elections ; but this is the first time the chroniclers descend to particulars. The number, however, was too great to take part in the deliberations ; and the chiefs, consisting of the bishops, abbots, dukes, counts, and probably a few of the territorial nobles, met in an island between the two banks, to deliberate rather what princes should be proposed, than who should be chosen. Probably these *primates*, as they are styled by Wippo, a writer of the time, had previously consulted with the other nobles of their state ; or, perhaps, they were chosen by the rest to deliberate for them. Whether the same preliminary form had been adopted on former occasions, we know not ; but it is worth bearing in re-

membrance, from the influence it had in subsequent elections. After much deliberation,—“*cum diu centaretur qui regnare deberet,*”—when some candidates had been rejected from their age, others from their youth, some from their temper, others from their merits being untried, two were selected from the rest as most worthy to obtain the suffrages of the nation. Both were named Conrad, both of the Franconian province, and kinsmen. By the archbishop of Mentz, both were immediately proposed to the assembly; and when required, according to his rank, to give the first vote, he declared for the elder Conrad, who was instantly acknowledged by the rest of the clergy. As a better choice could not have been made, the eyes of the multitude proclaimed their satisfaction; and the younger Conrad himself fixed the choice, by advancing with his nobles to repeat the usual words. The dukes and counts of the different states followed the example; and the remaining nobles and freemen, drawn up around their respective standards, testified their consent by their acclamations. From this relation, it is evident that the choice lay with the chiefs of each state, not with the great body of nobles, much less of freemen. When the oath of allegiance was taken, the people advanced in classes, or, as they were subsequently called, in *bucklers*, or *shields*, in the order we have already described; and this is said to be the first recorded instance of this sixfold distribution.—The reign of *Conrad II.* (1024—1039) does not exhibit much to strike the attention. He annexed Burgundy to the empire, the revocability of which had been guaranteed by the king of that province to St. Henry. Thus all Switzerland and Provence, besides Burgundy Proper, was added to the confederation. Conrad forced the Polish king to do homage for Silesia; he established his superiority over the Lombards\*, who, according to custom, endeavoured to evade the German domination; and he kept the Hungarians

\* See Europe during the Middle Ages, vol. i. p. 30.



in check. To Canute of Denmark and England, however, he ceded the duchy of Sleswig as a fief, for which homage was to be done, and service performed, by each succeeding Danish king. In other words, this was a cession of the province; for the Danish monarchs, who by their position were inaccessible to the forces of the empire, had no intention of continuing the homage. In regard to Burgundy, also, the policy of Conrad was not wise. To secure the favour of the native nobles, and maintain the crown in his family, he conferred on them so many privileges, that he virtually changed them from vassals into sovereigns; and to many even of the prelates he granted privileges, which rendered them, as well as the lay dignitaries, almost independent of the crown. To make a subject powerful, is not the way to command obedience: the new feudatories owed him no gratitude; and most of their successors gradually became the vassals of the French crown. If Conrad had great qualities, he seems to have been more than duly attentive to the interests of his house. One of his sons he caused to be elected his successor, and presented him successively with the ducal fiefs of Bavaria and Swabia; to another prince of his family he gave Carinthia; to a third, another fief. Yet he was an able and a valiant ruler; the greatest, with the exception of Henry the Fowler, Germany had seen since Charlemagne. — Heinric III. (1039—1056) had the good fortune not only to be elected, but to be crowned, during his father's life; and he met no obstacle in ascending the throne. He, too, was worthy of his dignity. His first exploit was to reduce the Bohemians, whose duke had refused the accustomed tribute. If the German historians are to be believed — and there is no reason to doubt their statement — he also established his superiority over Hungary; it is certain that he obtained several victories over the inhabitants, and that he wrested from that kingdom some districts beyond his frontier, incorporated them with Lower Austria, and elevated the

whole into a margraviate. Of his transactions in Italy we shall not speak: the efforts of a people so fickle and so changeable, rebelling to-day, submitting to-morrow, do not deserve relating; and if they did, we should content ourselves with referring the reader to works expressly devoted to the subject.\* Henry died prematurely at the age of thirty-nine, with the respect of all Europe. To his zeal for justice, all the historians of the time bear testimony: his valour is evinced by the signal victories which he obtained over the Hungarians, the Bohemians, and the count of Flanders; and his piety, by the fact that he would never wear his crown in public until he had lamented and atoned for his sins.†

1056 to 1106. *Heinric IV.*, though only in his sixth year on his father's death, had already been recognised successor; and no obstacle was opposed to his proclamation. It seemed, indeed, as if the imperial dignity were making rapid strides towards hereditary succession; nor were the people much satisfied with the prospect. Never had the imperial power been so strong as under the two preceding princes of the house of Franconia; yet this was not owing to any change in the principles of the constitution; it was the result of the personal character of the two monarchs. In vain had the nobles endeavoured to withstand either; and a few rigorous examples had kept the whole body in check. But now, when the sovereign was a minor, and the regency in the hands of a woman (the empress mother), the dissatisfaction which had been so long smothered, broke out with increased fury. The Saxons, who had always detested the Franconians, and who beheld with morti-

\* See Europe during the Middle Ages, vol. i. p. 30.

† Adamus Bremensis, *Historia Ecclesiastica*, lib. iii. (varii capitulis). Helmoldus, *Chronica Slavica* (sub annis). Anon. *Historia Archiepiscoporum Bremenensium*, p. 85, &c. Wippo, *Vita Chunradi Salici Imperatoris*, p. 463—483. *Annalista Saxonicus*, A. D. 1024—1040. Hermannus Contractus, *Chronicon*, p. 274—297. Lambertus Schaffnaburgensis, *De Rebus Germanorum*, p. 317—321. Marianus Scotus, *Chronicon*, p. 648—650. Sigebertus Gemblacensis, *Chronographia*, p. 830—835. Siffredus Misnensis, *Epitome*, lib. i. p. 1036. Langius, *Chronicon Citizense*, n. 1138, &c.

fication the crown on the brows of the third prince of that house, immediately espoused the part of a rival candidate ; and, though they were quelled for a time, their failure only served to sharpen their appetite for revenge. And they had better cause for discontent. To keep them in bounds, fortresses had been erected among them ; but every one of them was garrisoned by banditti, who, though in the service of the crown, committed with impunity every possible excess. To plunder the people and violate the women were their constant employment ; nor did the king, when informed of their conduct, so much as disapprove it. The weak and vicious conduct of Heinric's ministers and counsellors served to heighten the existing discontent. By the archbishop of Cologne, a formidable conspiracy was organised ; the young prince was decoyed from his mother ; and the regency formally transferred from her hands to the archbishop's. In a short time, the influence of this prelate was supplanted by that of another, the archbishop of Bremen, whose conduct was exceedingly unpopular. He was charged with selling all ecclesiastical benefices, and with flattering the passions of the young monarch : both might be true ; but they were not so uncommon as to raise much indignation : if, as was also asserted, and as there is some ground to believe, he laboured to infuse high notions of the imperial prerogative into the mind of his ward, we may easily account for the ill-will towards him. It is, however, more probable that this ill-will was caused by his good fortune rather than by his alleged abuse of trust. In this feeling, the archbishops of Mentz and Cologne convoked, of their own authority, a diet at Tribut, and plainly informed Heinric that he must either dismiss the prelate or renounce the crown. He naturally chose the former alternative ; and no sooner was the removal of Adalbert known, than the Saxons, who mortally hated him, openly plundered his cathedral of Bremen. Such was the regard paid to the laws in an age when there was no authority to enforce them.

In a short time, however, Adalbert returned; and, though compelled at first to share the public authority with the rival prelates of Mentz and Cologne, ere long he regained his wonted ascendancy. The conduct of Heinric soon showed that the school in which he had been instructed, was not one of the best. His passions had no check. He had just married an Italian princess; but being disgusted with her, he sought a divorce, and persuaded the archbishop of Mentz to espouse his views. The offer of all the tithes of Thuringia—a province which, like Saxony, had not yet paid them—had easily induced Hanno to sacrifice conscience to interest; but the people, instead of submitting, made common cause with the Saxons, and an extensive conspiracy was framed. An act of some injustice,—the proscription of Otho duke of Bavaria, and the appointment of another duke, Guelf marquis of Este, without so much as consulting the states of that duchy,—gave deep offence to the Bavarians. Otho joined the Saxons, and the standard of revolt was quickly raised. The result was, that Heinric was compelled not only to abandon the tithe, but to consent that the fortresses which he had erected to keep the Saxons in check should be demolished,—a work which was speedily effected. He was thus beset with mortifications; for we must not omit to state, that the consort whom he so cordially hated, he was compelled, under the menace of excommunication by the pope, to retain; and that, if not by name, he was virtually, included in the ban pronounced by Alexander II. and Gregory VII. against all who had encouraged simony. Into these interminable transactions we cannot enter; but they may be found in other works connected with the present.\* Suffice it to repeat, that he had the misfortune to quarrel with Gregory, and to be excommunicated by that extraordinary man; that, to procure absolution, he submitted to the most humiliating penance †; that his princes rebelled, deposed

\* See Sismondi, *History of the Italian Republics*; and *Europe during the Middle Ages*, vol. i. p. 154, &c.

† The latter work, p. 158.

him, and elected in his place his brother-in-law, Rudolf duke of Swabia ; that though, after several battles, Rudolf was defeated and slain, the opposition of the pope could not be shaken ; that at Gregory's instigation a new anti-Cæsar was soon elected, and the civil war renewed, which raged with greater fury than before ; and that Gregory's death made little difference in the hostile sentiments of the papal see towards the emperor. That hostility, indeed, was natural ; for Heinric, on his side, had deposed Gregory in a national council ; had committed great disorders in the pontifical states ; had laboured to make the chair of St. Peter as dependent on his throne as the see of Bamberg ; and had dispensed the patrimony of the church in so scandalous a manner, as to merit the execration of every honest mind.\* But these facts, and others of a similar character, do not exculpate the monstrous pretensions of the popes themselves, who openly aspired to the temporal, no less than the spiritual, government of the world — to reduce the emperors to the same level of obedience as the veriest knight of their household. After a twenty years' war, however, Heinric triumphed over the Saxons ; but the Swabians refused to submit, and they even elected his eldest son Conrad in his place. Again the veteran emperor was victorious ; he forced all Germany to be pacified ; his son was declared guilty of high treason, and deprived of the privileges of primogeniture ; but, as if a fatality were to attend him, as if his days were to be made bitter by the ingratitude of his nearest connections — the result, however, of his own vices — his second son, Heinric, who, on Conrad's deposition had been declared his successor, also rebelled, wrested the sceptre from his hands, and forced him to retire to Liège, where he died the very year after his deposition. It has been confidently asserted that in his last days he wanted the necessaries of life ; but though this relation is exceedingly improbable, as he had still many attached

\* See Europe during the Middle Ages, vol. i. p. 155.

friends, and as even the city of Cologne declared for him, his fate is one of the most memorable in the annals of royalty. To be engaged during many years with his rebellious subjects, has been the lot of some other princes ; but none, like him, ever passed the whole of his life in a struggle against them ; none, like him, had ever to encounter two sons, successively instigated by the popes ; none ever displayed so much firmness amidst difficulties unequalled and unexampled. Often did he lay the whole power of Rome at his feet, and compel the highest of his vassals to bend before him. Even at the last he would have conquered, had not deception been allied to force : in the assurance that a reconciliation was guaranteed by the states, he was persuaded to dismiss his troops, and thus defenceless he was compelled to abdicate. He died excommunicate ; and five years elapsed before the papal absolution could be obtained, or he could be interred in the magnificent church which he had founded at Spire. That Henry was a great prince, is admitted by his enemies. His valour was unequalled ; his strength of character bore him through every storm of life ; his generosity was commensurate with his extent of intellect ; in some cases, perhaps, he was criminally indulgent. Thus, when some men who had combined to assassinate him, and were on the point of perpetrating the deed, were seized and brought before him, he dismissed them unpunished ; and the most bitter of his enemies had only to submit, to obtain forgiveness. To the poor he was a munificent friend : he always maintained a certain number at each of his manors ; and was known to admit them to his own apartment, where, if they were sick as well as poor, he could more effectually minister to their wants. Yet he was a monster of immorality : if he was sometimes generous, let us remember that generosity is the virtue of a barbarous age — that it often exists without any other. He could be mean as well as noble, cruel as well as clement, perfidious as well as open. Rapacious, tyrannical, lawless, he incurred the hatred of every class of his people.



His licentious amours carried dishonour and indignation into the bosom of noble families, and tended in no small degree to swell the tide of hostility he encountered : at his court every dignity was venal ; his manner was stern, his behaviour violent, and he had the singular ill-fortune to make enemies of those he most enriched and even most loved. It must not be forgotten, that one prince was faithful to him in every vicissitude,—the duke of Bohemia, in whose favour, as a signal proof of his gratitude, he restored in fact, though not in title, the ancient kingdom of Moravia : at Prague, he caused the duke to be crowned king of Bohemia, Moravia, and Lusatia.\*

With Henry IV. commenced the interminable wars of the investitures, which, during above two centuries, convulsed the Christian world. Into it we cannot enter ; nor need we ; as on a former occasion † we have detailed its causes and consequences at some length.

That the pope was perfectly justified in seeking to deprive the emperor of an usurped right, of filling, through corruption or court favour, ecclesiastical dignities with the weakest and most vicious of men, will not be denied. Had not the Holy See interposed, religion itself would for ever have been attached to the imperial car, and, from a ruling power, converted into a slave. All the princes of Europe would have imitated the conduct of Henry ; in fact, by some, by our William Rufus among the rest, it *was* imitated ; and others were only waiting for the discomfiture of the pope, to seize on the revenues and entire administration of the church. Had he triumphed, the regal and sacerdotal characters would at length have been united ; and Christianity would not have been at all superior to the religion of pagan Rome or Thibet. The readiness with which the German bishops entered into his views, assuming the power even of deposing the pope at his pleasure, and declaring their willingness to enter into the wild-

\* Founded chiefly on the same authorities."

† See Europe during the Middle Ages, vol. i. p. 155, &c.

est of his schemes, is among the most memorable lessons of history. Most of them, if any faith is to be had in a writer of the period (Lambert of Schaffnaburg) had obtained their dignities by unblushing simony; their principles were lax, their morals impure; nor would they have hesitated at the destruction of the church itself, so that their worldly views were gratified. It is melancholy to see with what ease, not merely individuals, but national councils, could be drawn into the worst vices of the monarch. Well is it for Europe, that the chair of St. Peter was at this time filled by a man of such commanding talents, of such unbending character, as Gregory VII.; well is it for religion, that, in the tremendous struggle, he conquered. Yet most of the German, the French, and even the English historians — some through ignorance, others through design — have wholly misrepresented the memorable transactions of this period, and contrived to throw the undivided odium on the pope. The real points at issue they have industriously concealed: Henry has been represented as wholly justifiable; as contending only for his acknowledged regalian rights; while the papal views have been confined, not to the removal of ecclesiastical abuses, of which we find little mention in these *impartial* writers, but to the arrogation of temporal sovereignty over the princes of the earth. This, alas! is not the only instance in which truth has been deliberately perverted to serve a purpose. Whoever will take the pains to open the original historians of any period where a collision of principles appears, and compare them with modern writers, will be sickened at the contrast. If he extend his researches, he will find that in ninety-nine cases out of a hundred — an investigation of many years has earned us the right to make the assertion — the aim of the latter has manifestly been to pervert the testimony of the former; to make history the organ of present opinions; to render turbid the whole current of truth. And, — we make the additional observations under the same feeling of responsibility, —

in no country under heaven has this abominable dishonesty been so prevalent as in England. But, while praising Gregory and his immediate successors for their noble stand against the most formidable dangers that ever threatened religion and even morals, let us not forget to execrate, in some other respects, both their pretensions and their conduct. Their aim, to render the temporal subservient to the spiritual power, to destroy the independence of nations by transforming sovereigns into their vassals, is so monstrous, that, were it not attested by the whole tenour of history, we should not believe it. Yet, whatever its monstrosity, it might and did seem reasonable to Gregory and his successors, who conscientiously believed that, in advocating it, they were defending the cause of God. But no charity can exculpate them from fomenting internal rebellion ; for placing brother against brother, son against father, and bidding the bloody strife be continued without pity or intermission. Thus must historic justice condemn both parties ; but not in an equal degree. If compelled to draw the line between shades of guilt, every eye must see that Gregory's, striking as it is when viewed alone, is almost lost in the glaring hue of the emperor's. This condemnation regards the *quality* and *magnitude* of the action : if that action be weighed by its *motives*, the result must be still more favourable to the pope. *His*, however erroneous, and in some respects monstrous, were still conscientious ; those of the emperor must of necessity have been the reverse.\*

From this time to the reign of Rodolf I., the leading 1106  
characteristic of German history is a struggle between to  
1125.

\* Authorities : — Hermannus Contractus, Chronicon, p. 298. Otho Frisingensis, Chronicon, lib. i—vi. Lambertus Schaffnaburgensis, de Rebus Germanorum, pp. 321—424 ; a valuable but prejudiced guide. Anon. Ad- ditiones ad eundem, p. 425. Marianus Scotus, Chronicon, pp. 651—656. Dodechinus, Appendix ad eundem, pp. 657—666. Sigebertus Gemblacensis, Chronographia, pp. 838—855. Siffredus Misnensis, Epitome, lib. i. p. 1037, &c. Langius, Chronicon Citizense, pp. 1140—1148. Adamus Bre- mensis, Historia, lib. iii. (variis capitulis). Magnum Chronicon Belgicum, pp. 117—156. passim. Schmidt, Histoire des Allemands, tom. iii. liv. 5. Pfeffel, Abrégé Chronologique, tom. i. (sub annis). We refrain from quoting the interminable Italian authorities of the period.

the emperors and the popes : by the former to extend their influence, as well over the Germanic church as over Italy ; by the latter, to prevent both. The whole tenour of public events is a commentary on this policy. In virtue of pretensions which the temporal heads of Christendom now began to advance,—that they were the successors, not merely of Charlemagne, but of the Roman Cæsars, and were entitled to all the privileges of their predecessors,—Rome itself, the object of so much veneration to the rest of mankind, and with it the whole of Italy, was associated with their ambition. In what sense, indeed, could they claim universal dominion, unless the capital of the world were theirs? Hence, as the temporal authority of the popes was an obstacle to their magnificent design, it must previously be removed, the Roman states incorporated with the empire, and the successors of St. Peter reduced to the same dependence on them as the patriarchs of Constantinople on the Greek emperors. The popes, aware of this design, dreaded nothing so much as the extension of the imperial power in Italy. Hence the eagerness with which, to weaken their formidable adversaries, they encouraged the municipalities of Italy in their efforts for independence ; hence the frequent rebellions which they fomented in the empire itself ; hence, when none of these things were sufficiently effectual, they called in, first the Normans \*, next the French †, to establish a power in southern Italy capable of withstanding the leviathan of the north. Historic events, as we have before observed, are a practical commentary on this policy. — *Heinric V.* (1106—1125) soon found that the throne he had so basely usurped was not likely to reward him for the sacrifice of duty and of conscience. Pope Pascal, in a council at Troyes, renewed the declarations against investiture, absolutely prohibiting every ecclesiastic, of whatever grade, to do homage to a layman. At this synod Heinric had his ambassadors, who

\* See Europe during the Middle Ages, vol. i. p. 113.

† Ibid. p. 124.

appealed to a general council, and declared that the cause of investiture must not be decided here, but at Rome. The menace was disregarded; but Henry meditated open violence. At the head of the most formidable army which for ages had passed the Alps, and accompanied by many learned doctors, whose duty it was to justify by the pen what he was resolved to effect by the sword, he hastened to Rome. Before his arrival, he received a solemn embassy from Pascal, with a proposal so rational and so disinterested, that it may perhaps surprise readers, who have been taught to regard the Roman court as solicitous only for its temporal aggrandisement. "If the emperor," said that excellent man, "has only in view what he professes to have,—his regalian rights,—let him resume the donations on which those rights are founded,—his duchies, margraviates, countships, towns, manors, fortresses, with all the rights and jurisdictions belonging to them,—let him resume every thing which the church has received from him and his predecessors. Sufficient for the church will be its tithes, with the donations it has derived from private bounty. By all laws, divine and ecclesiastic, churchmen are prohibited from devoting themselves to worldly affairs: they are even forbidden to approach a court, unless on some work of mercy—such as to deliver a captive, or to obtain succour for some one in necessity. But, in opposition to their proper calling, they are now, from the multitude of their civil occupations, generally either there, or in a worse place, the field of battle. From ministers of the altar, they are become ministers of the court. Let Heinric renounce the right of investiture, and the church will immediately restore all that it has received from secular princes since the time of Charlemagne." This proposal went at once to the root of the evil: of the pope's sincerity in making it, there can be no doubt, as he had already procured its sanction by a synod. What follows has been so wilfully misrepresented, by the historians of Germany, France, and England, that we are anxious to

relate it, from the original authorities alone, more at length than we should otherwise do. Did Heinric accept the proposal? Unquestionably he did; the arrangements to that effect were made between his deputies and those of the pope; and, when he advanced to Sutri, he himself swore to renounce all claim to the investiture, if, by the Sunday following, Pascal followed his own agreement, of causing the ecclesiastics to surrender the feudal possessions, jurisdictions, and honours, which had been received from the crown. That his object was merely to procure his coronation by the pope, will be abundantly evident from the sequel. By Pascal he was received with great honour, and, in presence of the Roman inhabitants, designated emperor,—a step preparatory to the coronation. At this moment, Pascal, being in conversation with the emperor, demanded the renunciation of the regalian rights, offering, at the same time, to fulfil *his* part of the convention. Heinric drew his counsellors, among whom were several bishops, aside, to confer with them. The result was what might have been expected: the bishops, and all who hoped to attain ecclesiastical dignities, persuaded him to refuse compliance with a demand which they artfully represented as a renunciation of the imperial prerogatives, and a diminution of the imperial dignity. That he was previously resolved not to surrender the empire which nominative election and investiture enabled him to exercise over the church, is evident from his whole conduct. His delays arose from his inability to discover any pretext by which he might colour his refusal to execute the convention, yet secure his coronation. Urged by repeated messages from the pope, that, as the day was fast wearing away, and the ceremony would be a long one, an immediate decision was necessary, it was at length resolved that Pascal should be summoned to perform the ceremony without any conditions whatever, and that, if he demurred, he should be compelled to do so. To this ruffian determination the pope returned a dignified refusal; and, at the suggestion of two German



prelates, the archbishop of Mentz and the bishop of Saxony, he was immediately surrounded by armed men. A tumult followed, in which many excesses are said, probably with great truth, to have been committed by the German troops. They who could ill-treat an unoffending old man, venerable alike from his age and dignity, were not likely to hesitate at plunder, or even murder. His situation was not an enviable one; anxious for ever to end the contest between the spiritual and temporal thrones, yet convinced, from the opposition he encountered among his own people, that the surrender of the feudal honours was more unpalatable to them than even to the Germans, he remained in a state,—not of irresolution, for he was resolved to do *his* part, to excommunicate any prelate who should refuse to make the surrender,—but of doubt as to the issue. From the concurrent testimony of Italian, German, and French writers, it is evident, that the higher orders of the church were exceedingly corrupt; that their only serious object was their worldly aggrandisement. Knowing the difficulties with which the pope had to contend, yet without giving him the opportunity of removing them, the ruffians proclaimed, that his detention was caused by his failing to perform his part of the convention. The pretext did not deceive the Romans; who, incensed at seeing their chief a prisoner, and instigated by revenge, collected, and fell on the German soldiery; whom, after a long struggle, they forced back to the camp. Towards evening, the bishop of Tusculum harangued the inhabitants: he bade them remember that they were fighting for liberty, and even for existence; that their fellow-citizens were in arms; that the venerable church of St. Peter, hitherto the abode of peace and sanctity, was defiled with blood; that the princes of the church and its sacred head were in fetters; and he exhorted them to strain every nerve for the deliverance of their common brother. The harangue, falling like a spark on materials prepared for combustion, produced its effect. Hearing this determination,

the emperor drew all his troops from the plain, and encamped at a farther distance. The pope was dragged with the army, and, after two days, we are told, stripped of his pontifical ornaments, and, like the vilest malefactor, tied with cords. It is certain that Heinric threatened to kill him, unless he unconditionally submitted—unless he performed the coronation ceremony, removed all opposition to the investitures, and sanctioned the empire which he had resolved to restore in Italy. At length, moved by the murmurs of many even among his own people, he proposed to release the pope on the fulfilment of the two former conditions; engaging, in return, never again to interfere in elections; to confer neither the rights nor the functions of the church, but simply to have the power, inherent in his imperial character, of conferring the temporalities on the prelate elect. Pascal long resisted; but, in the end, overcome by the lamentations of his numerous fellow-prisoners, the entreaties of his ecclesiastics, and, perhaps, fearful of further consequences, he consented to concede the investitures: he was even forced to swear that he would never excommunicate the emperor. Heinric, on his side, swore to respect the independence, privileges, and immunities of the church: but with him an oath consisted merely of words, and words were air. The coronation was performed, and he returned triumphant to Germany. But the struggle was not at an end: several cardinals repaired to Rome, and condemned the concessions of their chief, as contrary not merely to the rights of the church, but to the policy which, during the greater part of a century, had been pursued. After what had passed, Pascal, who could not decently interfere in the affair, absented himself from Rome; but he wrote to moderate their zeal, and to exculpate himself, by that best of all pleas, necessity. To submit his conduct to the judgment of the church, he convoked a numerous council of bishops, before whom he exposed his transactions with Heinric, recommended them to take whatever measures they judged expedient, but declared

that, though the emperor had already broken his oath, *he* would not break his, by either excommunicating or molesting him: he even proposed to abdicate his dignity, as one who through fear had betrayed his trust; but allowance was made for him, and he was forced to retain it. After much deliberation, his bull was solemnly condemned; and, in four months afterwards, a council of French bishops being assembled at Vienne, not only were the proceedings of the Lateran council approved, but it was declared that the investiture of churchmen by lay hands was a heresy, and Heinric was solemnly excommunicated by the council. The prelates, in their application to the pope for the confirmation of their decrees, menaced him with open resistance to his authority, if he refused. The prelates of Italy and France, who might well be called the representatives of the Christian world, having thus loudly condemned the papal concessions, some of the most eminent doctors of the church now entered the field, while some of its saints—among others, Hugh of Grenoble, and Ives of Chartres—beset the papal throne with remonstrances and reproaches. The tempest which was now collected fell on the head of Heinric: his great vassals seldom wanted any inducement to rebellion; a portion of his ecclesiastics condemned his violence towards the pope: even a council of German prelates, presided by the papal legate, renewed the excommunication of their Italian and French brethren; and a revolt, originating in Saxony, soon spread through all Germany. Deserted by all his feudatories except two, the count palatine of the Rhine, and his nephew the duke of Swabia, he created from the domains lying between Bavaria and Saxony a new principality, which, under the title of duchy of Franconia, he conferred on another nephew, Conrad of Hohenstauffen. With the aid of his three vassals, Heinric, who had great valour, kept the field, and even returned to Italy, to wreak his vengeance on the pope; but Pascal fled, and soon died. To his successor, Gelasius II., was opposed an antipope, a creature

of Heinric. Gelasius died in exile; and Calixtus II., who succeeded, though a relation of the emperor, renewed the excommunication. In 1122, however, a compromise was effected between the empire and the priesthood. On the one hand, Heinric entirely renounced the right of nomination to benefices, and of influencing elections, which thenceforward were to be conducted in the canonical forms. On the other, he was allowed to be present whenever elections were made, and even to invest with a *sceptre*,—not with the cross and ring, to which a mysterious signification seems to have been attached. This concordat mitigated, but did not remove, the evil. If the emperor could no longer nominate, he could influence the choice of a prelate; while, substantially, his right of investiture remained the same. Yet he agreed to it with reluctance, and then only because rebellion had shaken his throne to its foundation. Vindictive in his resentments, he was preparing to march into France, and lay Rheims, which had excommunicated him, in ashes, when Worms revolted. He scarcely survived the reduction of the latter city. As he left no legitimate offspring, the domains of his house descended to his nephews, Conrad duke of Franconia, and Frederic duke of Swabia. With him ended the male line of the house of Franconia, which had occupied the throne a full century.\*

1125 The extinction of the Franconian family rendered  
to the election of a new dynasty indispensable; and by the  
1138. archbishop of Mentz, who acted in virtue of former precedents, a diet was convoked in that city. The number who attended, and who comprised the six bucklers of the state, was about equal to that which had been assembled in 1024. The mode of proceeding, too, was nearly the same: ten princes were chosen from

\* *Annalista Saxo*, necnon *Chronicon Witbergense* (sub *annis*). *Otho Frisingensis*, *Chronicon*, lib. vii. (*variis capitulis*). *Additiones ad Lambertus Schaffnaburgensis*, p. 426. *Dodechinus*, *Appendix ad Marianum Scotum*, pp. 667—671. *Sigebertus Gemblacensis*, *Chronographia*, pp. 875—871. *Siffredus Misnensis*, *Epitome*, lib. i. p. 1033. *Langius*, *Chronicon Citizense*, pp. 1148—1154. The Italian authorities for this important period may be found in *Muratori*, *Rerum Italicarum Scriptores*, and the substance in his *Annali d'Italia* (sub *annis*).

the three nations of Saxons, Franconians, Bavarians — for the Swabians, constrained by their duke, were not present — to serve as a commission for exercising the right of *pretaxation*, viz. of selecting from the number of candidates those whom they considered most worthy of being proposed to the suffrages of the assembly. To these suffrages several princes appeared to have an equal claim. There was — 1. Frederick of Hohenstauffen, duke of Swabia, and Conrad duke of Franconia, nephews of the late emperor; 2. Leopold margrave of Austria, brother-in-law of that emperor; 3. Henry the Proud, duke of Bavaria, a Guelph; 4. Lothar duke of Saxony. But from this *pretaxation*, Conrad, as the younger brother of Frederic, was excluded; and Henry the Proud, for what reason we are not informed, was not put into nomination; but, to make a fourth candidate, Charles the Good, count of Flanders, was added. It is, however, certain that in the eyes of all thinking men the dignity had ceased to be an object of ambition. During the late reigns it had been so encompassed by cares, and difficulties, and dangers, and the minds of the Germanic princes were grown so averse to obedience, that Lothar and Leopold earnestly besought the electors that they might be permitted to decline the unwelcome post. Frederic of Hohenstauffen would probably have been chosen, had he not given umbrage to the electors, by hinting that his consanguinity gave him a claim. Resolved to show him that the dignity was purely elective, and influenced by the example of the primate, who bore no good will to the house of Hohenstauffen, the dignitaries made choice of Lothar. On this occasion, Lothar swore to the concordat of 1122; but, owing to the influence of the papal legate, a clause was introduced, which not only forbade the emperor to be present at future ecclesiastical elections, but virtually changed the homage into a mere oath of fidelity and obedience. Another innovation was no less remarkable: the diet sent the prelates to request the papal confirmation of the election. In these times, as we have before observed,

every concession becomes a precedent. Strange was the contrast now exhibited, both by the temporal and spiritual powers. Under the house of Saxony, as under that of Charlemagne, the popes had been sometimes chosen, and always confirmed, by the emperors; *now*, the sovereign was no longer to have a voice in the election of the humblest prelate, while *his own* confirmation was to be sought from the see of Rome. Frederic of Hohenstauffen refused to acknowledge the now king of the Romans, who, in fact, appears to have been his personal enemy, and who lost no time in placing him under the ban of the empire. A civil war followed, which might soon have turned the scale, had not the king of the Romans detached from Frederic his own ally, Henry of Bavaria, by conferring on the latter the hand of his daughter. Though his place was supplied by Conrad of Franconia, who returned from a crusade about a year after the election; though, in the struggle which ensued, Conrad was acknowledged by most of Lombardy, and even elected by a party in Germany, in the end Lothar triumphed, forced his rival to submission, and procured the imperial crown from the hands of Innocent II. His transactions in Italy were numerous, but not very important; they chiefly regarded the schism which agitated the church\*, and his hostilities with the Normans; and it may truly be said of him, that he courageously defended the interests of the empire; that if, at his elevation, he had made some dangerous concessions, he now demanded the restoration of his imperial rights over the church; and that, though he could not obtain the full extent of his wishes, he yet effected a species of compromise, by which he was allowed to exercise a veto on the prelate elect, by withholding the investiture. Far more important is the fact, that in this reign began the greatness of the house of Brandenburg. He conferred the margraviate, then comprising no more than the old march of that name, on Albert the Boar, a descendant of the ancient Saxon dukes. In a few years, Albert, by

\* See Sismondi, History of the Italian Republics.



his valour, greatly extended the margraviate, at the expense of the Slavonic tribes lying beyond the Elbe; tribes which, though nominally subject to the empire, were seldom disposed to pay tribute. These regions, however, were not formally raised to the dignity of a principality during the reign of Lothar.\*

During the period under consideration, the bounds of the empire do not seem to have materially varied. On the south were the Alps; on the west, the Rhone, the Saône, the Meuse, and the Scheldt; on the north, the German Sea and the Eyder; but the eastern limits are not so well defined. Though the Slavonic tribes east of the Oder were tributary to the empire, their frequent wars against the margraves on the frontier prove that they were not portions of it. Towards the end of Lothar's reign, indeed, the conquests of Albert the Boar were preparing the entire subjugation of these wild regions; but during the period to which our observations extend, a commencement only was made. As to the dependencies of the empire, their possession was extremely precarious. Bohemia, indeed, was generally submissive; but the Danish and Polish kings were as often enemies as vassals; Burgundy, through the enormous privileges granted to its hereditary houses, was virtually independent; Lombardy required reconquering in almost every reign; and the provinces south of Rome were now beginning to acknowledge the Norman sway. In regard to the imperial power, we find that it was considerably on the decrease. It was opposed by the popes, who were resolved to rescue the church from its exercise; and by the dukes, no less eager to extend their authority at its expense. A common sense of danger, no less than a common bond of interest, naturally drew the popes and the dukes into closer relation with each other. What the latter were ambitious to procure, they could not, with any justice, deny to their associates, the ecclesiastical feudatories.

\* Chiefly the same authorities, with the addition of Schmidt, *Histoire*, tom. iii.; and of Pfeffel, *Abrégé Chronologique*, tom. i. (sub annis).

That such a combination should be too powerful for the crown was to be expected ; and concessions were sometimes wrung as inconsistent with the spirit of monarchy as they were favourable to local despotism. By Henry V. and Lothar II., especially, mortal blows were given, however compulsively, to the grandeur of the crown. Even in the time of St. Henry the dukes had been styled *cooperatores regis*, by the historian Ditmar ; in that of the fourth Henry, Lambert of Schaffenburg, though an ardent and prejudiced supporter of the imperial dignity, does not hesitate to affirm, that nothing great was undertaken without their consent and authority :—“ *Ducum consilio et auctoritate summam publicorum negotiorum disponi oportet.*” In accordance with this universally acknowledged principle, we find—

1. That the emperor could no longer confer a ducal fief, or elevate a vassal to the dignity of prince or count, without the consent of the states.
2. That his jurisdiction was extremely narrowed, since, at the close of this period, the states which exercised the high justice refused to allow any other tribunal than his own when he was personally present, and would not consent that he should pardon any criminal whom they had condemned.
3. That he could no longer appropriate to himself the property of convicted offenders, unless those offenders were his immediate vassals ; and, even in this case, the property was inalienably attached to the domain of the crown, not to his own *peculium*.
4. That over that domain itself, which had hitherto been at the absolute disposal of the emperor, his authority was beginning to be circumscribed. It must not, indeed, be concealed, that occasions might be enumerated in which the sovereign disregarded every one of these limitations : but this only proves that, for the moment, he was powerful enough to dictate the law to the people whom he had conquered. In the flush of victory, with some of his rebellious vassals at his feet, he was not likely to pay much regard to the odious shackles imposed on himself or his immediate predecessor. But, on the other hand,

he was as frequently vanquished as victorious ; and on these latter occasions was compelled to sanction the least welcome innovations on his prerogative. The truth is that great constitutional principles must be drawn, not from times of violence, but from those of internal tranquillity ; and from the latter, we are sure, there is evidence enough to establish the limitations we have mentioned.—To those devised by the popes, we have already adverted. The concordat of 1122 absolutely prohibited the emperor from exercising the least influence over elections, and compelled him to grant the temporalities without delay to the prelate elect. By a subsequent regulation, as we have already seen, the imperial prerogative was still farther circumscribed ; but Lothar procured its abrogation, from the gratitude of the pontiff, whom he maintained on the throne of St. Peter. It is, indeed, true that the two last emperors were always disposed to violate the concordat, and that when they had the power they never failed to do so. Secretly, if not openly, they endeavoured to influence the election ; and from an obnoxious prelate they could at any time withhold the temporalities. The ecclesiastic thus excluded could indeed appeal to a national council ; but one was seldom sitting, and none could be convoked for the interests of a mere individual. And if there was a similar appeal to the sovereign pontiff, the great conservator of discipline, it frequently happened that *he* had too much need of the imperial assistance to quarrel with the empire. After all allowances, however, for violence and political encroachments, the German ecclesiastics had reason enough for congratulation. By Henry V. it was truly observed of them, that they possessed the finest cities and strongest fortresses of Germany ; that they had many duchies, margraviates, and countships ; that they coined money, received feudal taxes, exercised the high and low jurisdiction, established fairs and markets, and could convoke a formidable army of vassals. — Nor must we omit to notice that the imperial wealth declined as much as the imperial power. The revenues, indeed,

remained nominally on the same footing,—1. In the produce of the Germanic domain, extending on both banks of the Rhine, from Basle to below Cologne; 2. In the revenues of Lombardy, the *regnum proprium imperatoris*; 3. In the tribute of the Slavonic tribes, especially of the Bohemians and Poles; 4. In the produce of the wines, the tolls on travellers and merchandise; 5. In the contributions from the Jews, who were then called *servi domaniales*; 6. In the subsidies exacted, for the maintenance of the court, from the inferior states, especially the ecclesiastics, and ranked with other *servitia regalia*; 7. In the duties arising from the highways and ports of the sea. And to these permanent sources of revenue we may add such as were accidental, consisting,—1. In all the effects of malefactors condemned by the states; 2. In the returns arising from vacant fiefs and benefices, which in Germany, as elsewhere, it was the interest of the sovereign to keep vacant as long as he could; 3. In the property of the vassals who died without heirs; 4. In the movable property belonging to deceased bishops and abbots; 5. In the returns arising from shipwrecks; 6. In all conquests, which, by a conventional fiction, were made by and for the emperor. At the first glance, these various sources of income would seem to be ample enough for the support of any dignity; yet nothing is more certain than that the conclusion would be exceedingly fallacious. The Rhenish domain was often laid waste by the great vassals, and in peaceful times it yielded very little; Lombardy required more money to maintain it in obedience than it produced; the Slavonic tribes frequently brought the sword instead of gold; the *regalia servitia* were often resisted, and by the states the resistance was generally sanctioned; and confiscations or judicial forfeitures were very frequently placed beyond his reach, by those who pronounced the sentence. In many parts of the empire there were, indeed, domains which belonged, or had belonged, to the crown, and such as had been alienated Henry III. endeavoured to revoke.

But these revocations were very partial, and they excited an opposition which, though *he* was able to subdue, was one of the causes that shook the throne of his son, the fourth Henry. And even in regard to those of which the emperor was the acknowledged superior, they refused to yield some of the ordinary presentations. That of purveyance, in particular, was denied by the Saxons, who complained that Henry IV. was always amongst them, and who thereby reduced him to the necessity of purchasing every thing he required for his table. From the preceding observations, then, we may estimate the degree in which the imperial prerogatives, revenues, and consequently influence, had declined. Well might the same monarch, when speaking of the dukes and bishops, observe,—“These men, who possess the riches of my crown, have reduced both me and all connected with me to poverty.”\*

Inevitably proportionate with the decrease of the imperial authority was the augmentation of that usurped by the diets and the dukes. The diets, which were convoked by the emperor, or, in his default, by the archbishop of Mentz, as primate of the Germanic church and arch-chancellor of the empire, were frequent, and their sessions short. They were, in fact, so frequent, that some of the minor states applied for a dispensation from the necessity of attending all. To them, no doubt, the expense of such attendance was oppressive; nor need we be surprised that many, like the abbot of St. Maximin, should obtain permission to vote by proxy whenever the subject for which the diet was convoked was not deemed sufficiently important to require his presence in person. But this conduct of

\* Founded on the historians of the Franconian period. Add Pfeffel, *Histoire*, tom. i. p. 253, &c.; Schmidt, *Historia*, tom. iii. liv. 5. chap. 10.; Conringius, *De Origine Juris Germanici*; *Diplomata Imperatorum*; Scharnat, *Historia Episcop. Bamberg.*; *Nucleus Juris Publici*; Onuphrius Panvinius, *De Comitibus*; Beuthen, *Animadversiones, seu Disceptationes Historiæ et Chronologicæ*; Petrus de Andle, *De Imperio Romano Germanico*; *Notitia S. R. Imperii*; *De Juribus Regni et Imperii Romanorum*; *De Auctoritate Principum in Populum*; Conringius, *De Finibus Imperii Germanici*; Goldastus, *Monarchia Romana*; with many others, to specify whose pages would not be possible in a single foot-note. Our authorities are boundless; and many of them we are constrained to pass over.

the inferior dignitaries was highly impolitic, since it augmented the authority of men who had already too much influence, the dukes, the bishops, and other great feudatories. On the pretext—often, no doubt, a just one—that the affair under consideration was too trifling for the convocation of a regular diet, the emperor called into deliberation with him such of those chief dignitaries as happened to be at court, or in its immediate vicinity. By degrees, as we shall hereafter perceive, the honour was claimed as a right, and considered to be inherent in the dignity. This, added to the celebrated privilege of *pretaxation*\*, gave an alarming power to great feudatories, and prepared the way for an innovation, which in the ensuing chapter we shall have occasion to record; the assumption of the whole elective and most of the executive power, by seven or eight individuals. But for the more important affairs of the empire the diets were the only legitimate tribunal. The letters of convocation prove how necessary was the presence of the members, and how unwilling were some of them to attend. “Our trusty counsellors,” says one, “inform us that now is the favourable time for deliberating on the affairs of the Roman see and the Roman commonwealth; and for this purpose we necessarily convoke our princes, that we may avail ourselves, as we ought, of their advice and assistance. Of thy faithful presence and prudent counsel we have special need. Wherefore we beseech thee with equal earnestness and confidence to meet us at Spires, the first Friday after the approaching feast of St. Mary; and there, by thy advice and that of our other princes, we will treat concerning these things to the honour of God and our kingdom, and the preservation of peace in Christendom. And we entreat thee to come willingly, assuring thee that we shall soon dismiss thee, and that we would gladly spare thee this trouble unless the necessity of the case impelled us.” These mandates were addressed to the princes only;

\* See before, page 160.



the rest of the nobles were not convoked, unless on extraordinary occasions, as when some great war was to be undertaken, or some national affair decided. When the diet assembled, the emperor had no influence beyond that which, as the fountain of honour, and the disposer of much patronage, he might possess: as head of the Germanic constitutions he had scarcely more than any individual prince: in this respect he was but *primus inter pares*, though he was invested with much outward pomp, and hailed as the legitimate successor, not merely of Charlemagne, but of the Cæsars.— This preponderance of the ducal, episcopal, and princely power, and this consequent levity of the imperial, are owing to causes at which we have already glanced,—the progress of feudality; the union of nobles anxious for independence, with the dignitaries and head of the church; the success of their combined arms; and to the circumstances of the times. Of the progress in feudal institutions, we need no other proof than the absolute heritability of fiefs, which the Franconian emperors were constrained to recognise. And this heritability regarded not merely the ducal fief, and the *beneficia majora*; it descended to the least benefice in the state. And as every fief, great or small, descended inalienable to the eldest son, or, in default of sons, to the nearest male heir, the influence of the vassal was not weakened by the partitions which prevailed in the nations of Slavonic race, which in earlier times had no less prevailed in Germany, and which, as we shall perceive at the proper period, did afterwards prevail in that empire. We must, however, observe, that the eldest might not necessarily inherit. Not only if he were a bastard, but if he were the issue of an unequal marriage, of a prince with a private lady, of a freeman with a slave, his claim was forfeited. The first effect of this acknowledged right of succession was, that the count, like the margrave or duke, took his title from the domain which he governed, or from the castle which he inhabited; and that from the counts the ex-

ample descended to the lowest territorial nobles. A second effect, that of simultaneous investiture, is much more remarkable. Often several vassals, denominated co-vassals, were at the same time invested with the same fief, on the condition that they should succeed in the order of their seniority, as their respective houses became extinct. And such extinction was not uncommon at an age when possessors of fiefs frequently entered the cloister; when civil war raged on every side; when private assassination and predatory violence reigned from one end of the empire to the other; when unequal marriages must frequently have been celebrated; and, above all, when so many expeditions were undertaken into Italy, a country described by historians as peculiarly fatal to the German soldiers.\*

The nobles who attended the diets were comprehended, as in preceding times, under six classes, called shields:—1. The dukes. 2. The ecclesiastical princes; consisting of bishops and abbots. 3. The secular princes; comprising the landgraves, margraves, and counts. 4. The dynasties or territorial nobles, some with, others without, jurisdiction, and independent of the great feudatories. 5. The ministeriale, or noble functionaries, attached not only to the imperial court, but to that of the dukes, margraves, landgraves, and counts. 6. The great body of ingenui, or freemen, the lowest link in the noble chain. Yet though all these could, on extraordinary occasions, assemble in diet, the three last classes had certainly no deliberative voice, probably no suffrage.—On all, military service was obligatory. As the ecclesiastical princes were compelled to produce a number of lances commensurate with the extent of their fiefs, by subinfeudation they became the superiors of lay vassals. It is probably as

\* Founded on Rhegino, Chronicon; Hermannus Contractus, Chronicon; Lambertus Schaffhaburgensis, De Rebus Germanorum; Chronicon Urspergense, necnon Annalista Saxo (sub annis); Anselmus Gemblacensis, Chronographia; Siffredus Misnensis, Epitome; Chronicon Montis Sereni; Magnum Chronicon Belgicum; Libri Feudorum; Conringius, De Origine Juris; Heineccius, Elementa Juris Germanici; Pfeffel and Schmidt, in places too numerous to be cited.

much from this circumstance as from respect to religion that they took precedence of all secular princes, excepting the dukes, whose authority was more sovereign than feudal. Of the privileges usurped by these dukes, we have before spoken. Some of them openly aspired to royal pomp. Thus Welf (Guelph) of Bavaria caused, on public occasions, a sword to be carried before him; and, while at table, the duke of Saxony was surrounded by prelates. The counts, as we have already observed, now assumed, after their own names, the name of the district they hereditarily governed, or the castle they had constructed. Both these districts or countships, and their castles, were, in virtue of the hereditary succession, soon regarded as patrimonial. With much greater justice could the territorial dynasties, or free proprietors whose domains were allodial, aspire to the same independence; and we accordingly find that from the twelfth century they too assumed a title from their possessions, and qualified themselves, sometimes as counts, sometimes as barons. These dynasties, who held fiefs of no one, are mentioned by the chronicles and in ancient instruments as *milites primi ordinis capitanei*. Each had his banner, and was followed by his vassals, by the *milites secundi ordinis*; and if they, too, as was sometimes the case, were the superiors of vassals, the latter were styled *milites mediæ nobilitatis*, doubtless to distinguish them from the mere *ingenui*, who had no fief, and were the lowest grade in the scale of nobles. We may here observe that during the Franconian period we no longer read of the *arrière ban*. Yet allodial proprietors there certainly were. Whether they had conventionally agreed to follow the banner of the local duke, or they were exempted from the military service, has been much disputed. The truth seems to be, that the *arrière ban* comprised only the smallest allodial proprietors, as the obligation of service at their own cost would have been not only oppressive, but ruinous; and that they were, in consequence, tacitly exempted from it. Whenever a campaign was resolved

in the diets,—for the declaration of war no longer depended on the emperor,—an oath from each prince was required, that at the appointed time and place he would be present with the number of lances he was bound to furnish. This precaution sufficiently evinces the repugnance — no doubt from a consideration of the expense — which the great vassals entertained to the service, whenever their individual or family interests, or their privileges as a class, were not concerned. By a contemporary writer they are truly said to have lost all regard for the general interests of the empire, and to have been intent only on mere selfish objects. When the campaign was long, no vassal would move without an advance of money. There was some justice in the demand, for as the time (forty days) usually fixed for the duration of a campaign would expire before any decisive operations could be made, often before the troops could reach the seat of war, and as the period must of necessity be extended, some remuneration might justly be expected for the excess of time, and for the more expensive preparations required for long journeys. In regard to Italy, this general repugnance was much greater, not merely from the length of the campaign, but from the pestilential marshes, so fatal to the northern troops. Without ten pounds in gold, five changes of horse accoutrements, two goatskins for wine, two portmanteaus filled with other necessaries, and a sumpter beast led by two attendants, no knightly vassal of the crown could be induced to undertake the journey; and even then, his provisions, after he had crossed the Alps, were to be provided for him at the emperor's expense. For other campaigns, five pounds in gold, a sumpter beast without baggage, five pair of horseshoes, and two goatskins, sufficed. Gratuities similar in kind, but less considerable, were given by the dukes, bishops, abbots, and secular princes to *their* vassals. Thus for the Italian expedition, the bishop of Bamberg furnished each of his knights with a horse, a suit of armour, and three pounds in gold. From these examples we may

correctly estimate the reluctance with which military service beyond the bounds of the empire was undertaken. Towards the close of their career, the Franconian sovereigns had learned enough to be convinced that, except for the defence of the country against foreign invaders, — who, in fact, scarcely ever appeared, — there was no reliance to be placed on a feudal army. In this conviction they began to raise mercenary troops, soldiers properly so called, consisting not merely of freemen without fiefs, but of the burgher inhabitants from the imperial and other towns.\*

Hitherto these inhabitants were not formed into municipal bodies, but, by successive privileges, they were rapidly approaching that state. During the greater part of the Franconian period they were divided into three classes, according to the distinction of ranks in the first settlers. 1. To defend the new community, encouragement was naturally given to the only classes authorised to bear arms, and the only ones consequently acquainted with the art of war, to take up their abodes within the walls. To a noble without fief, whose sole possessions were his arms, the opportunity of being thus located, — of enjoying, with a few equals and some inferiors, the usufruct of a considerable domain, and of being the acknowledged head of a community, — in other words, of possessing wealth and influence, — was too advantageous not to be eagerly embraced. Of the rural nobility in Saxony, one ninth were, by Henry the Fowler, thus transferred from the fields to the cities. The example, as we have before observed, was imitated by the local sovereigns, especially by the dukes and bishops. Thus the dukes of Saxony and Bavaria established many of these fortresses; and though the privileges *they* conferred on the noble inhabitants were not equal to those which had been conceded by the crown, they were still sufficient to attract men whose only fortune was the sword. 2. The ingenui, or free burghers, who pos-

\* Chiefly the same authorities.

sessed lands within the jurisdiction of the city ; and, as in number they had greatly the superiority over the nobles, they soon obtained a voice in the local administration. Like the former, their only profession was that of arms ; they could not engage in commercial pursuits, which were universally abandoned to serfs and freedmen, without forfeiting the privileges of their order ; and, if they married below their condition, their offspring became slaves. Time, indeed, at length destroyed these absurd prejudices ; but not until, through repeated imperial concessions and favourable circumstances, municipal dignities were associated with commerce, and, above all, until commerce was perceived to be the most rapid step towards wealth. In a few reigns the free burghers were numerous and important enough to constitute a distinct order in the state, and to be styled the seventh buckler of the empire. 3. On the serfs and freedmen thus devolved the labours of agriculture, the mechanical arts, and the cares of commerce, — occupations which the prejudices of the age universally regarded as servile. To understand their progressive condition, let us observe that in their infancy they were under the protection (*advocatus*) of bishops appointed by the emperors. As, however brave their defenders, they had no powerful name to defend them, and as they were constantly exposed to the hostilities or insults of the turbulent rural nobles, the institution of *advocati* was undoubtedly a boon ; and the office was delegated to some bishop who could have no hostility towards them, and who, as a prince of the empire, had influence enough to watch over their interests. But by the Franconian emperors they were relieved from this episcopal protection, and made immediately dependent on the emperors, — a change which they certainly hailed with satisfaction. Probably the bishops were not sufficiently warlike for such an office in times of more than ordinary commotion : undoubtedly, they partook of the haughty prejudices of the age, which confounded *negotiatores* with the servile class, while by the emperors the new



communities were treated with considerable respect. The good-will so evident between the emperor and these communities is easy to be explained. They had been called into existence by him ; to him they were indebted for many successive edicts in their favour ; his appellat jurisdiction was seldom invoked in vain : in return, during the troubles which incessantly agitated the country, they uniformly took his part. The first occasion on which they rushed to arms was when Henry IV., abandoned by the princes of the empire, was received with great solemnity into the city of Worms : the inhabitants, after expelling their bishop, his personal enemy, unanimously offered him the use of their arms and fortunes, and promised to sustain him against all his adversaries. Henry was probably surprised to see such an array of armed merchants and mechanics thus enthusiastically hasten to his standard ; but the sentiment must have been inferior to his pleasure, since he unexpectedly found that, however adverse his circumstances, he had a sure place of refuge, and that, if the example were followed by other cities, he should have a power at his disposal capable of embarrassing the hereditary enemies of his throne. That example was immediately imitated : the communities at once comprehended the importance of the crisis ; and, by rushing to the defence of the crown, they obtained not only a powerful friend, but a far greater object, — permission to use the weapons of war ; a permission which at one blow demolished the barrier between freedom and slavery. Henry V., who had no less need of their support, won a greater claim to their gratitude by raising the lowest class of the people to the dignity of *cives opifices*. They were now a free class, and were distributed into corporations, according to their usual trades or branches of industry. This innovation was far from agreeable to the two higher classes of the inhabitants, the nobles and the free burgesses, who, eager to preserve some line of demarcation, insisted on a distinction of name. From this

period to the fourteenth century, most imperial charters distinguish the *familiæ*, or *nobiles*, from the *liberi cives*, and the latter from the *cives opifices*. From this period, too, the prosperity of the towns was amazingly rapid. The freedom which had been conferred by the emperors, and the wealth which industry and commerce could not fail to procure, soon weakened, if it could not banish, the absurd prejudices of the aristocracy. Not merely freemen, but nobles themselves, finding that there was more advantage, as well as more independence, in serving these rich and enterprising communities than their own haughty superiors, applied for the privilege of citizenship. Let it not be supposed, however, that, during the period under present consideration, the enfranchisement of the artisans was complete. They had not yet the choice of their own magistrates: in the imperial cities, in which their condition was the most liberal, they still depended on the advocates, bailiffs, and judges nominated by the crown; and in those of which the superiors were the princes of the empire, they were subject to some feudal exactions, which were felt to be more galling than ever, yet which time only could remove. But the good, both direct and incidental, effected by the policy of the emperors, was prodigious. Slaves and freedmen were encouraged to desert their tyrannical masters, and take refuge in the towns; knowing that, if they were not discovered and claimed within a given time, their emancipation was secure. Industry gave birth to some arts, and perfected others; a taste not merely for the comforts, but for the elegancies, of life was rapidly diffused; civilisation marched hand in hand with social enterprise; and its influence, which was at first confined within the walls, at length penetrated the recesses of the forest.\*

\* *Sachsenspiegel*, lib. i. (variis articulis). Putter, *Vollständiges Handbuch der Deutschen Reichs Historie*, p. 150—248. *passim*. Ludwig, *Scriptores Rerum Bambergensium*, tom. i. p. 815. *Codex Bambergense* (in multis numeris). *Diplomata Variorum Imperatorum* (apud Lehman, *Speyrische Chronika*, lib. i.—iv. (multis capitulis). Gudenus, *Codex Diplomatum*, tom. i. *Chronicon Urspergense*, p. 281. Heineccius, *Elementa Juris Germanici*, lib. i. tit. 5. Pfeffel and Schmidt, *ubi supra*.

During the same period the natural condition of Germanic society has little to excite our admiration. Now, as in former times, the national characteristics, drunkenness and fighting, were universally conspicuous. “Over their cups,” says Donizo, the Italian biographer of the countess Matilda, “the Germans always indulge in excesses: when drunk, they love to dispute and to quarrel; they draw their weapons, and cut off one another’s limbs for trifles, which, in any other country, would be settled by the tongue.” So prevailing was the vice, that it found its way into the halls of majesty; and it is a fact no less singular than amusing, that at his coronation every emperor was solemnly obliged to engage that, through the grace of God, he would, if possible, live soberly.\* That drunkenness is the prolific parent of other crimes, we know by universal experience; and we, therefore, need not refuse our credence to the instances so frequently recorded in the chroniclers of Italy and France. The *impetus* and *furor Teutonicus* are acknowledged even by the native writers, and are indelibly traced on the monuments of the times. We have before alluded to the predatory habits of the Germanic nobles; and never, perhaps, were they so conspicuous as during the Franconian period. The castles which were built on almost every eminence, and which, in reality, were necessary for self preservation when private war could not possibly be put down, were garrisoned with men who were obliged to procure their subsistence from the surrounding country. Those which the emperors themselves had built among the Saxons, had the same permission; and the excesses committed by these imperial banditti were one of the causes which led to the frequent revolts of that large province. That their example was imitated by the inferior lords; that robbers, under the name of knights, laid waste the surrounding country, especially the towns and the serfs of ecclesiastics †; that

1024  
to  
1138.

\* Vis sobrietatem cum auxilio Dei custodire.—*Cenni Monumenta*, as quoted by Schmidt.

† Prædones quippe qui sub nomine equitum abundabant, villas et agros ecclesiarum invadabant, colonos domi forisque spoliabant.—*Chronicon Urspergense*, p. 280.

the professed bandits who served a particular chief were not more licentious than the legitimate defenders of the place, are facts which meet us at every stage. To convince the reader that this is no exaggeration, we will exhibit a few from the many instances on which we have founded the assertion. 1. Adalbert, archbishop of Bremen, built a fortress for the defence of the frontier against the Slavonic irruptions; but the garrison which he placed in it, immediately began to pillage the people whom they were appointed to protect.\* 2. Again, the imperial troops who garrisoned the castles in Saxony and Thuringia, "made," says the monk Lambert†, "daily irruptions into the neighbourhood: they laid waste every thing which they could find in town or country; they levied contributions on the inhabitants of the fields and of the woods, and often drove away whole flocks. They forced the people, even those of respectable families, to serve them as slaves; they violated the wives and daughters under the very eyes of the husbands and fathers; some they carried away to their retreats, and, having detained them "quanto tempore libido suggestisset," returned them, with expressions of insult, to their nearest connections: and whoever presumed to complain, either that his substance was plundered, or his wife dishonoured, was called an enemy of the king, was cast into a dungeon, nor suffered to leave it until he procured his release by the surrender of his movable property. These excesses took place in the reign of the fourth Henry, who openly encouraged his followers to commit them. 3. For the truth of the following story we shall not vouch, though we can for its antiquity:—A bandit chief of some note was Adalbert of Trèves, who, from his strong-hold, frequently issued with a numerous band, pillaged the bishop's domain, and returned in triumph. Nothing can better exhibit the state of the towns than the fact, that, though St. Henry was on the throne, Peppo (the bishop) did not dream of

\* Adamus Bremensis, *Historia Ecclesiastica*, lib. 3.

† Lambertus Schaffnaburgensis, *De Rebus Germanorum*, p. 355.

complaining to the monarch, but only to his own kindred, friends, and vassals. Though experienced, like all the prelates of his age, in the use of martial weapons, he knew not how to reach the bandit behind his formidable bulwarks ; and as the insult weighed more and more on his mind, one of his vassals, at length, undertook to revenge him. As stratagem, not open force, was to prevail, Tycho (the vassal) one day went to the castle of Adalbert, and, loudly knocking, demanded a cup of something to drink. The readiness with which the demand was complied with—“quod (poculum) cum celeriter allatum fuisset”—is a pleasing illustration of the hospitality of the age. “Thank thy master,” said Tycho to the bearer of the cup, “and tell him that I will certainly render him some service for his good will !” The vassal returned to his lord ; and, after deliberating with his fellows, formed a resolution which may fairly bear comparison with that of the bandit chief in the Arabian tale of the Forty Thieves. He prepared thirty wine casks \* of capacious size ; in each he concealed a select warrior, fully armed with cuirass, shield, helmet, and sword ; covered each with a linen cloth, and applied ropes to each for the facility of the carriers. He then chose sixty other men, two for each cask, who, though habited as peasants, were warriors, and had each a sword in the same vessels. When these preparations were completed, Tycho, accompanied by the sixty carriers with their casks, and by a few other knights, proceeded to the fortress, and struck the door. To the demand who and what he was, he replied that he came to recompense the chief for the cup of wine which he had received on a former occasion. The domestic related the message to Adalbert, who ordered the men to be admitted. As the casks were placed before him, Tycho besought the chief to accept them as a present ; and, at the same time, ordered the porters to remove the covering. In an instant they seized their

\* *Onas, Ona, dolii vinearii species.*—*Ducange, ad voc.*

swords ; their thirty comrades rose from their hiding-place ; Adalbert, with his men, fell the easy victims of the stratagem, and the fortress was rased to the ground.\* 4. These excesses were not confined to mere military adventurers, or to simple knights. Thus, when duke Ernest fell into disgrace with Conrad II., he hastened to the Black Forest, from the depths of which he continually issued, to spread desolation through the neighbouring country. Being pursued by a body of imperial troops, though he and his followers could easily escape, his horses, while quietly grazing, were surprised and taken by his enemies. This was a misfortune which could not be repaired ; for though he plundered the peasantry of as many as his people required, the beasts were unfit for knightly use. In this emergency, though aware that the issues of the forest were watched by men in ambush, he said that an honourable death was preferable to a timid life, and left his retreat. He was able, however, to maintain an obstinate combat with count Manegold, the emperor's vassal, which was fatal both to them and many of their followers.† 5. In the time of the same Conrad, Lombardy was infested by a famous freebooter, named Thesselgart the Lion, who had defied the whole power of his predecessor St. Henry. The strength, indeed, of the bandit's retreats, which were among the rocks on the seashore, and approachable only at low water, rendered his apprehension even to an army — and no force inferior to that of an army dared to contend with him — no easy task. At length, however, parties of troops being posted in ambush at different points, the outlaw was taken. Though Conrad was a hundred miles distant, the intelligence was important enough to bring him to the place ; nor, in the fear that Thesselgart would, as usual, escape, did he rest day or night on his journey. “ Art thou,” demanded Conrad, “ that lion

\* *Magnum Chronicon Belgicum*, p. 106. It is extracted from a more ancient authority, the *Chronica Pontificum Trevirensium*, A. D. 1016.

† *Wippo, Vita Conradi Salici*, p. 476.



which hath made such havoc among the flocks of Italy? By the holy rood! but Lion as thou art thou shalt have no more prey." The freebooter had not the philosophy of the Thracian; nor if he had, would Conrad have equalled the magnanimity of Alexander; and a gallows soon restored peace to the harassed region.\* 6. But the manners of the times will be still better illustrated by an anecdote from Lambert of Schaffenburg. "It was a custom in Flanders," says the monk, "for the count, when he had more sons than one, to choose which of them should succeed him; and for the other brothers to seek a more shining fortune out of their native province. Count Baldwin the Elder had two sons, — one named like himself, his designated heir; the other named Robert. When Robert arrived at a suitable age, he received from the old count a few vassals, some money, provisions and arms; was told that if he had a man's spirit he might win himself a lordship, or even a kingdom; and was dismissed from his paternal palace. At a time when the Normans, by bravery alone, were winning kingdoms in Naples and Sicily †, and with the example of Rollo and other successful adventurers, who had obtained sovereign fiefs by the sword ‡, the project was not so absurd as we might suppose; in fact, the policy of the old count was that of his Scandinavian or Frisian sires. The design of Robert was to gain Galicia — a province which had been frequently ravaged by his piratical predecessors, and where, amidst the revolutions which agitated Spain, he might even hope to win, from Christian or Moor, some reputable principality. But Galicia he was not to see. The winds forced him on a coast, which, from the chronicler's description, we may suppose to have been Ireland. There he landed, and began to plunder in the true spirit of the times; but the natives, not much liking this mode of ruling

\* Wippo, *Vita Conradi Salici*, p. 473.

† See Europe during the Middle Ages, vol. i. p. 111, &c.

‡ Ibid. vol. ii. p. 47. Russia had previously been won by Ruric, another prince of the nation.

them, collected in great numbers, assailed him with vigour, and scarcely allowed him to regain his ships, with, perhaps, a tithe of his followers. Discouraged at his ill-success, the youth returned to his father ; but was sternly repulsed, as one who had no valour or enterprise in him, and as every way unworthy of his sires. To wipe out this stain on his character, he equipped a new fleet, and again put to sea. But his evil star prevailed : he lost his vessels and most of his companions in a storm, and with difficulty gained the shore, destitute of every thing. His first impulse was to join the hundreds of his nation, who served as a body-guard to the Constantinopolitan emperors ; but hearing that there were difficulties and even dangers in the way, he resolved to try his fortune in Frisia, a province bordering on Flanders. In two engagements he was vanquished ; but seeing that he was resolved to conquer or die, the natives, harassed by his depredations, consented, as the price of peace, to receive him. But, in the mean time, his father was no more ; and his brother, Baldwin, the superior of Flanders, viewing with much anger, and more jealousy, his contiguity to that province, marched against him. In this dilemma Robert sent messengers to his brother, whom he besought, by the closeness of the ties which bound them, and by his past misfortunes, not to molest him, but leave him to enjoy in tranquillity the obscure angle of territory that was now his : he protested, however, that rather than be again exposed to the caprice of fortune, he would resist even a brother, and either preserve his domain, or find a grave. Baldwin, however, who had cast an ambitious eye on Frisia, and was evidently insensible of fraternal love, continued to advance ; and a battle ensued, in which he was defeated and slain. Robert improved his success by invading Flanders, and expelling his young nephew ; nor, though that nephew complained first to the king of France, and next to the emperor, could he be driven from his acquisition. By

consenting to become a vassal of Philip I., he at length firmly established his dominion.\*

That in these savage times the ties of blood were utterly disregarded, is evident from the preceding anecdote, and from the rebellions which, in the historic summary of the present chapter, we have had occasion to notice. Another memorable example will show not only how little influence they exercised, but from what trivial causes the most deadly feuds could arise. In 1126, one broke out between Conrad count of Withan, and Henry margrave of Misnia, his kinsman. Henry was a posthumous child. On the death of the old margrave, the widow's pregnancy was apparent to all; but the count, who, in the event of his dying without a son, was heir to the fief, maintained that it was not real, that it was feigned to exclude him. To disprove the dangerous report the lady assembled all the kinsmen and vassals of her husband's house; and standing on high, with a freedom to modern delicacy somewhat revolting, asked all present to judge whether her pregnancy was real or feigned.† In time she was delivered of a son; but the count was still rancorous. He allowed that she had indeed given birth to a child, but maintained that it was a female, exchanged at the moment of birth for a male infant, of which the wife of her cook was at the same time delivered. Though the child was now a man, and in possession of his father's fief, the malignity of the count remained undiminished. The name of the margrave, *his kinsman*, being one day mentioned in conversation, he hastily observed, "The cook's son is no kinsman of mine!" In the true spirit of dependants, Heldolf, a vassal of the count, went farther, and swore before the altar that to his know-

\* Lambertus Schaffnaburgens's, De Rebus Germanorum, p. 344. Pistorius, Rerum Germanicarum Scriptores, tom. i. & iii. Menckenius, Scriptores Rerum Germ. tom. i. Adamus Bremensis, Historia Ecclesiastica, ubi suprâ. Magnum Chronicon Belicum, ubi suprâ.

† Devoluto ex humeris usque ad natos pallio, nudam se ostendit, dicens ut ipsi, an vere gravida esset, judicarent. The German ladies, however, were never viciously immodest: from the time of Tacitus to the present, the females of no nation have exceeded them in chastity.

ledge the margrave had been exchanged, wishing that if it were not so, he might lose the use of his limbs. Both the conversation and the oath reached the ears of Henry, who vowed a signal revenge. His vassals, as in duty bound, eagerly embraced his quarrel; and two of them lying in ambush for Heldolf, at length caught him, and deprived him of eyes, ears, nose, tongue, and lips—a fate which, as they alleged, he had incurred by his false oath. The margrave, however, was not satisfied with this vengeance; he declared war against the count, whom he defeated, captured, consigned to the dungeons of his castle, fed on bread and water, and on whom for a bed he forced a couch of iron. But the following year this captivity ended with the death of the margrave. Conrad, as the next heir, succeeded to all the possessions and honours of the deceased feudatory.\*

Had religion possessed any influence over the minds of the Germanic nobles, such outrages as we have described could never have been frequent. But the ecclesiastics themselves were little, if at all, superior to the laity. Chosen merely for their birth, the dignitaries had neither learning, nor regard for the decencies of their station. High and low, instead of dispensing peace, were among the foremost to swell the current of strife wherever a feud divided two powerful neighbours. Nor did they want feuds among themselves. In former times, the abbots of Fulda, the most magnificent and celebrated of the German monasteries, had possessed the privilege of sitting on all public occasions at the right hand of the emperors, next to the archbishops of Mentz. In 1063, when the festivities of Christmas were celebrated by Henry IV. at Goslar, and seats were placed for the spiritual princes, a struggle for the precedence arose between the domestics of the abbot and those of the bishop of Hildesheim: the former could

\* Anon. *Chronicon Montis Sereni*, p. 168. (Apud Menckenium, *Scriptores Rerum Germanicarum*, tom. ii.).

plead a custom of three centuries ; the latter would not allow himself to be dishonoured in his own diocese. Both flew to arms ; but the powerful duke of Bavaria espousing the pretensions of the abbot, the bishop's domestics were forced to yield. The following Christmas, however, the court being held at the same place, as the seats were arranging for the guests in the monastic church of Goslar, the contention was renewed. This time the bishop, who was resolved to defend his rights, had placed his chief vassal, count Egbert, with a band provided with staves, behind the high altar. No sooner did the words of strife arise, than the men in ambush arose, fell on the abbot's attendants, wounded some, and expelled the rest from the church. But other vassals of that princely dignitary soon collected in greater numbers, seized swords instead of staves, and rushed into the choir. The songs of praise were instantly drowned in the clang of arms, the shouts of the assailants, and the groans of the dying. Amidst the horrors of the scene, the bishop of Hildesheim ascended some steps, and encouraged his followers to disregard the sanctity of the place, and fight his battle manfully. In vain did the king of the Romans endeavour to allay the animosity : he spoke to the winds ; and as the battle increased, he found that his own life was in danger ; nor was it without much difficulty that he could gain a place of refuge. At length the armed partisans of the abbot were expelled, and the gates were bolted. But they were still numerous ; and as they were every moment joined by new comers, they drew up before the vestibule of the church, in the resolution of awaiting the issue of their opponents. Fortunately, however, the latter remained in the place until night sent the abbot's domestics to their hostels : in reality, mischief enough had been effected ; for the floor of the choir was covered with the dead and the dying. The following morning the king and his princes were able to take cognisance of the affair. But it was treated with notorious partiality. The blame evidently rested with

the bishop ; yet as count Egbert was a relative of the king, it was wholly thrown on the abbot, who was compelled to promise a heavy pecuniary composition to the king, the councillors, and the bishop. The principle, or rather the absence of all principle, which governed the times, may be inferred from this abominable convention. The abbot had nothing of his own : with what face could he engage to alienate the property of his community ? Fearful of the intelligence reaching Rome, whence an inhibition to the monastery would speedily have been addressed, the mulct was kept secret. But the worst was yet to come : the abbot's haughtiness had long offended his monks, who, now that he had lost the royal favour, and was humbled by circumstances, resolved to shake off his tyrannical authority, if not to kill him. With piteous accents he implored them to spare his life ; and promised to make twofold satisfaction to the community for the money of which he had plundered it, and the domains which he had alienated in favour of his knights. The more aged and reflecting monks, contented with the pledge, endeavoured to save him from the fury of their younger brethren, and with some difficulty they succeeded. But the treasury of the monastery was insufficient to satisfy the rapacity of the courtiers ; and the abbot being summoned to the king's presence, besought the elders to allay, by some means, the fury of the young monks. But no sooner was he departed, than the latter broke out into open insurrection ; professed their determination to follow him, and upbraid him with his vices before the king. They insisted that all who were able to accompany them should prepare for the journey ; and that all who were not should sign an instrument, approving the object they had in view. With a crucifix borne before them, sixteen of the most presumptuous issued from the cloisters, followed by the elders ; but to save their reputation, perhaps their lives — for while rebellion to the king was regarded as a venial offence, that against a religious superior was considered



the most atrocious of crimes — they sent one of their body before them to acquaint the king that they were acting by constraint. As the rebellion was chiefly caused by the robbery of the monastic treasury, — a robbery made for the sole advantage of the court, — the king, on this occasion, testified becoming horror at the conduct of the young monks, and a most zealous respect for the ecclesiastical discipline — the only time, perhaps, when he treated either it or religion itself with regard. Four of the ringleaders were sentenced to confinement for life in the dungeons of different monasteries; and the abbot was provided with a military force to overawe the rest. On his return, the vindictive dignitary proceeded to punish the rest: two of the more obnoxious were publicly whipt and expelled; many others were dispersed in other religious houses, and subjected to penalties, graduated not so much by the comparative enormity of their offence, as by the nobleness or obscurity of their birth.\* Neither in ancient nor in modern times will the Germanic clergy, as a body, be found to possess much claim to our respect. The dignitaries were chosen only for their birth, and were almost uniformly ignorant and licentious; the lower ranks were equally ignorant, and no less plunged into the worst vices of barbarism. Their ferocity, in fact, was not much inferior to that of the laity. Thus in 1123, Benno, a monk, was so exasperated with the reproaches of his abbot and bishop — probably he had stripes as well as reproaches to revenge — that he stabbed the latter at the high altar. What became of the assassin? According to the monastic chronicles, he was carried bodily away by the devil.† That he was buried alive is much more probable. He deserved any fate; and we notice the subject, not through compassion for him, but from a suspicion that though ecclesiastics were by the canons forbidden to sit “in

\* De singulis tamen, non pro modo culpæ, sed pro natalium suorum claritate aut obscuritate, mitius vel atrocius sumptum supplicium est.

† Mox vivus a dæmone raptus, nusquam comparuit.

judgment of blood," they sometimes evaded the prohibition.\*

1073

to

1097.

If to depress as low as possible the morals of the people had been the sole object of both the temporal and ecclesiastical powers, they could not have acted with more effect. A knight was but another word for bandit; a count, or duke, or even king, for the chief of bandits. The only consolation of the sufferers lay in their belief of a retributive justice. They held, that after death every robber knight was compelled to wander over the earth enveloped in burning flames; and superstition gravely affirmed, that fiery horsemen might be nocturnally seen flying through the gloom of the forest. But open violence was not the only evil which society had to lament; a greater, perhaps, was the disregard, not only of all principle, but of all decency which characterised the fourth Henry. A few anecdotes, extracted from the chroniclers of the times, will exhibit the dreadful state of morals more completely than any description. We have alluded to the aversion which Henry entertained towards his virtuous consort, and to his fruitless efforts to obtain a divorce from her. With the view of procuring his release from her by death, he instigated his creatures to tempt her chastity. But Bertha, however incensed by *his* shameful debaucheries, had too much virtue to be allured from her duty. To one courtier, indeed, who in the event of success had been promised extraordinary rewards, and who, in consequence, was indefatigable in his attentions, she appointed the place and hour of meeting, but only to inflict on him such correction as he deserved. The intelligence of an assignation, however, was sufficiently welcome to Henry, who, to convict her the more completely, attended it himself. But though admitted into the queen's apartment, instead of an amorous mistress, he encountered the cudgels of a score of female domestics, who

\* Lambertus Schaffnabergensis, De Rebus Germanorum, p. 327. (apud Pistorium, Rerum Germ. Scriptores, tom. i.). Magnum Chronicon Belgicum, p. 116. (apud eundem, tom. iii.). Langius, Chronicon Citizense, p. 1150. (apud Struvium, Rerum Germ. Scriptores, tom. i.).

laid on him with such hearty good-will, that his life was in danger. In vain did he cry out that he was the king; they could not or would not believe him, nor did they give him any respite until, tired of their office, they had thrust him from the palace. On the death of Bertha, he married Adelaide, a Russian princess. The treatment which she too was doomed to experience, made life intolerable to her. Whether he caused her to be violated by others, and still more whether he urged his (by Bertha) son Conrad to defile his bed, may reasonably be doubted; but if exaggerations, they prove the reputation in which he was held by his contemporaries. Adelaide must have had extraordinary provocations. We know that she was detained during four years in prison; that the usage she received was intended to shorten her life; but she had the good fortune to escape, and to reach the countess Matilda, who introduced her and her wrongs to the notice of the pope. By Urban he was solemnly excommunicated — a doom which was never more righteously inflicted. He had incurred it for his abuse of church patronage; but in a German emperor that was so common a crime, that he might have evaded it, had not his personal vices been in array against him, and called loudly for his chastisement. The indignation of the papal see was, doubtless, augmented by the report which daily reached it — that in his unbridled lust he made no distinction between women of the world and virgins consecrated to God. But though of his conduct in this respect there is abundant proof, very probably some of his actions may have been exaggerated by hostile writers, — in fact, all are hostile to him. That he violated his own sister, under circumstances unutterable, is asserted by the historians of the age. The subsequent conduct of this princess, nun as she was, would seem to confirm the relation. One thing at least is certain, that through her frequent visits to, we may add her residence at, her brother's court, her principles were corrupted. The following anecdote may or may not be true; it may

or may not be founded on the well-known story of Charlemagne's daughter and of his favourite secretary Eginhard; but it is not inconsistent with the moral state of the times: —

In the winter, Henry undertook an expedition against the Slavonic tribes, and pitched his tent on his eastern frontier. And he had with him his sister, a nun of great fairness, whom a certain canon loved too much, and whom he at length persuaded to receive him at midnight into her chamber. While they thus slept, a deep snow suddenly fell, and the morning beams dispelled the shades of darkness. Most anxious was the canon how to regain his own tent without betraying himself by his footmarks; and it was agreed that the nun should carry him on her shoulders, and re-tread her steps in the same track. At that very hour, the cares of war keeping the emperor awake, he perceived this extraordinary spectacle from the window of his tent, and he smiled at it. When the sun arose, he ordered the canon to fulfil the deacon's office at mass; but the latter, whose conscience pricked him, could neither be persuaded nor threatened into compliance. Wherefore, perceiving his conscientious scruples, he forgot his anger; and at the very time, it happened that a deanery and the dignity of abess, both in the gift of the crown, were vacant. Sending for the canon and his sister, Cæsar spoke enigmatically: "Beloved *brother!* be henceforth a true dignitary; for behold a vacant deanery which we bestow upon thee: but let us advise thee never again to ride a nun!" Then turning to the other: "Dearest sister! from this time forward be chaste! By the present ring we confer on thee a nunnery with the care of Christ's virgins; but, we admonish thee never again to be ridden by a canon!" Hearing these words, both blushed and were silent; and, reformed by this gentle reproof, both atoned for their crime by perpetual continence.\*

The preceding extracts will show that during the Franconian period morals were at a low pitch. Where the nobles were freebooters; where churchmen were warriors; where contempt was exhibited by both for the obligations of law and the sanctions of religion, how, in fact, could they be otherwise? Such a state of things,

\* The same anecdote is related by Becker, *Chronicon Traject.* p. 39.; by Diceto, p. 470.; by Knighton, lib. i. cap. 6., and by others. Probably it is merely a distorted version of the anecdote in the Monk of St. Gall.

however, is not, as we have before remarked, incompatible with generosity and sincerity, which probably exist in greater perfection among barbarous than among refined nations.\*

\* Hermannus Contractus, *Chronicon*, A. D. 1054. *Chronicon Urspergense*, p. 281, &c. Anon. *Historia Imperatorum*, p. 100. Torquatus, *Series Pontificum Ecclesie Magdeburgensis*, p. 376. (apud Menckenium, *Scriptores Rerum Germanicarum*, tom. iii.). Dodechinus, *Appendix ad Mariani Scoti Chronicon*, p. 661. (apud Struvium, *Rerum Germ. Scriptores*, tom. i.). *Magnum Chronicon Belgicum*, p. 115. (apud eundem, tom. iii.). *Chronicon Montis Sereni*, ubi supra.

## CHAP. III.

## HOUSE OF SWABIA OR HOHENSTAUFFEN, ETC.

1138—1271.

CONRAD III. — FREDERIC BARBAROSSA. — HENRY, VI. — PHILIP. — FREDERIC II. — CONRAD IV. — WILLIAM OF HOLLAND. — RICHARD OF CORNWALL, &C. — STATE OF THE EMPIRE DURING THIS PERIOD. — THE IMPERIAL PREROGATIVES. — ASCENDANCY OF THE STATES. — FALL OF THE DUKES. — PROGRESS OF THE TERRITORIAL PRINCES. — THE ELECTORAL COLLEGE. — THE COLLEGE OF NOBLES. — THE IMPERIAL CITIES. — THE SERFS. — LAMENTABLE STATE OF SOCIETY FROM THE TIME OF THE SECOND FREDERIC TO THE DEATH OF RICHARD.

1138. THE unexpected death of Lothar II. without male issue, again opened a door to ambition, and, what is worse, to internal disorders. The same ceremonies would have been observed in the diet of election as on the former occasions had that diet been attended by all the states. But the Saxons and Bavarians were not present. There was a vacancy in the see of Mentz, and the archbishop of Treves, a creature of the Hohenstauffen family, hastily convoked a diet of the Swabian and Franconian nobles at Coblentz, with the resolution of electing Conrad duke of Franconia, who, in the late reign, had been proclaimed king of Italy. As the nephew and heir of the emperor Henry V., Conrad could rely on the suffrages of all who favoured that family, as well as on the numerous vassals of his house; but then his rival, Henry the Proud, duke of Saxony and of Bavaria had married the daughter of Lothar II., and had more vassals still. It was the power of Henry, already so enormous, that procured his exclusion. As the head of two vast duchies, his sway extended from



the Baltic to the confines of Lombardy ; if he obtained the empire, he could easily crush the liberties of his country. Yet if his vassals were present at the diet, their suffrage would inevitably preponderate ; and in this apprehension the archbishop had no difficulty in procuring from his fellow partisans the election of Conrad. *Conrad III.* (1138—1152) was immediately crowned king of the Romans by the papal legate, who attended the diet, with the approbation of Innocent II. It was evident, however, that the election was illegal ; as such it was properly condemned by the Saxons and Bavarians, who had thus been robbed of their undoubted right ; but an aversion from civil war at length induced them to acknowledge him. Yet Henry was to be dreaded ; and he was pursued with jealous animosity by the monarch. He knew that if the diet had been legally constituted, he should have been placed at the head of the empire ; and he had soon a more grievous cause of offence : he was summoned to restore one of the two duchies which he had received from the late emperor. There was, doubtless, danger in allowing any subject to be thus powerful ; yet there was evident injustice in the demand. Had there been due moderation on the part of Conrad, some compromise might have been effected ; but eager to ruin his rival, whom he exasperated into an enemy, he procured the condemnation of the latter in the diet of Wurtzburg. In that assembly, Saxony was conferred on Albert the Bear, descended from the ancient dukes of that province ; and Bavaria on Leopold V. margrave of Austria, whose mother was daughter of Henry IV. A civil war was the result. Henry preserved Saxony ; but dying in the midst of success, his rights descended to his infant son, Henry the Lion, who was immediately acknowledged by the Saxon states. And the house of Guelf, to which Henry belonged, had also its partisans in Bavaria. A prince named Guelf, brother of Henry the Proud, having obtained aid from the kings of Sicily and Hungary, rose against Leopold, whom he speedily expelled. Guelf

now measured his arms with the king of the Romans at Winsberg in Swabia. This battle is memorable from the origin of the terms *Guelf* and *Ghibelin*, doomed to a melancholy notoriety in the annals of Italy and of the empire. The war-cry of the Guelfs was that of their leader; of the imperial troops that of *Ghiblingen*, a town of Wurtemberg, the patrimonial seat of the Hohenstauffen family. The names *Guelf* and *Ghibelin* were originally applied merely to the adherents of the duke and to those of the emperor; the former was soon extended to all the disaffected or rebellious; and the Italians, adopting the distinction, named the Guelfs as the opponents, the Ghibelins as the defenders, of the imperial authority. Guelf lost the battle of Winsberg, nor did the subsequent death of Leopold benefit him. Henry the Lion, however, was acknowledged lawful duke of Saxony, and in return he ceded Bavaria to the margrave of Austria, Henry the brother of Leopold. Albert the Boar was recompensed for the loss of Saxony by the erection of Brandenburg into a margravate, enfranchised from all dependence on the dukes of Saxony. The talents of Albert, who obtained great successes over the Slavonic tribes bordering on the Baltic, sufficed to raise Brandenburg to the dignity of a state, which thenceforth ranked with Swabia, Bavaria, and Saxony. Having pacified Germany, Conrad was induced by the preaching of St. Bernard to assume the cross, and to depart with the flower of Teutonic chivalry for the Holy Land. His exploits must be sought in the histories of the crusades. Suffice it to say, that owing to the perfidy of his Greek allies, the licentiousness of the crusaders themselves, the quarrels of their chiefs, the nature of the climate, and the valour of the enemy, the expedition was most disastrous; it disproved, in a melancholy manner, the confident predictions of St. Bernard. Conrad returned to behold Germany convulsed by the ambition of Guelf. Though he again triumphed over his antagonist, he died as he was preparing an expedition into Italy, both to receive the imperial crown from the hands

of the pope, and to punish Roger of Sicily, who had fermented the troubles of the empire.\*

Conrad was preceded to the tomb by his eldest son <sup>1152</sup> Henry, whom the states had recognised as his successor. <sup>to</sup> He left, indeed, another son; but as the prince was <sup>1190.</sup> too young for the weight of empire at such a crisis — when the Guelfs were actively opposing his family both in Germany and in Lombardy — he himself recommended that the crown should pass to his nephew, Frederic Barbarossa, duke of Swabia. Besides the possession of great personal valour, and mental distinctions far more valuable, Frederic was maternally connected with the duke of Saxony and the margrave of Austria. The diet of election was held for the first time at Frankfort; the celebrated privilege of pretaxation was now acknowledged, by tacit consent, in the dukes, the margraves of Brandenburg, and the archbishops of the empire, and Frederic was unanimously chosen. Why Frankfort was thus chosen, and why Frederic was crowned by the archbishop of Cologne instead of the primate, we are not informed: but, probably, the latter archbishop was at the time suspended from his functions; for the following year he was deposed by two cardinals, legates of the pope.—The reign of *Frederic I.* (1152—1190) was one of great splendour; for though the difficulties which he encountered would have overwhelmed a prince of less vigour, they only served to display in its full light a character fitted for empire. 1. His transactions in Germany deserve our first notice. That the crown of Denmark was considered feudally dependent on the imperial, is evident from Frederic

\* Otho Frisingensis, *Chronicon*, lib. vii. (variis capitulis). Additiones ad Lambertum Schaffnabergensum, p. 428. Dodechinus, Appendix ad Mariani Scoti *Chronicon*, p. 674—676. Robertus de Monte, Appendix ad *Chronographiam* Sigeberti Gemblacensis, p. 876—883. Auctarium Anselmi Gemblacensis, p. 958—966. Siffredus Misnensis, *Epitome*, lib. i. p. 1039. (apud Struvium, *Rerum Germanicarum Scriptores*, tom. i.). *Chronicon S. Petri*, p. 216. (apud Menckenium, *Scriptores Rerum Germ.*, tom. iii.). Anon. *Historia Imperatorum*, p. 106. *Chronicon Montis Sereni*, necnon *Chronicon Urspergense* (sub annis). Felix Monachus Ulmensis, *Historia Suevorum*, lib. i. p. 31. (apud Guldastum, *Rerum Suevicarum Scriptores*). Raumer, *Geschichte der Hohenstauffen*, vol. i.

citing the three candidates for it before the diet of Merseburg, and from the decision in favour of Sweyn. The investiture of Sweyn was made by means of the royal sword of Denmark, while the symbol for the duchies and margravates was always a banner. To pacify Guelf of Bavaria, he conferred on him the fiefs which had descended from the countess Matilda—the marquisate of Tuscany, the duchy of Spoleto, and the march of Ancona; possessions, however, which virtually belonged to the popes, and the superiority over which was long destined to trouble the temporal and spiritual heads of Christendom. But Bavaria itself, though in the possession of the margrave Leopold, was eagerly claimed by Henry the Lion: it had belonged to his father; and he threatened to wrest it by force of arms from the margrave. In the diets held for the pacification of the two vassals, Frederic, with an impolicy that must surprise us, leaned towards the duke of Saxony. It was probably this evident tendency which deterred Leopold from obeying the citation to appear. His absence enabled his competitors to obtain judgment by default; and Bavaria was awarded to Henry the Lion. To reconcile him, however, Upper Austria, his hereditary fief, was exempted from the jurisdiction of Bavaria, and was erected into a duchy patrimonial, immediately subject to the empire. Thus, Leopold was the first duke of Austria, as Albert the Boar was the first margrave of Brandenburg; but Austria was not, like Brandenburg, raised to the dignity of the states, whose dukes had the privilege of pre-taxation. Yet Leopold reserved for himself and his successors many that were remarkable. They were to exercise local sovereignty; they were not compelled to attend any imperial diet, unless it were held in some city of Bavaria; and they ranked immediately after the *elective princes*—above all the other dukes and princes of the empire. This is the first occasion in which the elective princes are mentioned; and it shows that a few precedents had already converted into an

hereditary right the celebrated privilege of pretaxation. But though Henry the Lion was under the strongest obligations to the emperor, he refused to aid him in reducing the Italians to obedience, even though he well knew that his desertion must cause the ruin of the imperial power beyond the Alps. He met Frederic, indeed, at Chiavenna, near the lake of Como ; yet, though Frederic knelt before him to prevail on him to furnish his contingent, he sullenly refused, and returned to his domains. This desertion, which led to a disastrous peace, could not be forgiven. In 1178, he was summoned to three consecutive diets ; but he refused to obey the citation. He was evidently too powerful for a subject : he appears even to have indulged the belief, that in the event of a struggle with his imperial kinsman, he should triumph, and to have awaited the result with confidence. But he did not sufficiently reflect that his very influence was umbrageous to the other princes, and that Frederic was not a monarch to be openly braved. By the diet of Wurtzburg, he was declared guilty of high treason, and deprived of his vast states, which by two subsequent diets were thus divided : —Saxony was conferred on Bernard of Anhalt, a second son of Albert the Boar ; Westphalia and Angrivaria fell to the archbishop of Cologne ; Holstein, which had hitherto been dependent on the dukes of Saxony, was immediately subjected to the empire ; Bavaria returned into the family of Arnulf the Bad (deprived of it by Otho I.), and was conferred on Otho of Wittelspach, count palatine of that province ; the margravate of Styria, and the countship of the Tyrol, were in like manner transferred from their dependency on Bavaria to direct dependency on the empire ; the cities of Lubeck and Ratisbon were declared imperial ; Eichsfeldt fell to the archbishop of Mentz ; to the archbishops of Bremen and Magdeburg other territories were apportioned ; the bishoprics founded in Mecklenburg and Pomerania by Henry the Lion were created principalities of the empire : of the Slavonic princes who had hitherto been

the vassals of Saxony, some as dukes of Pomerania became princes of the Germanic body ; others, chiefly the local counts of Schwerin and Mecklenburg, continued dependent on duke Bernard. It is impossible to read the catalogue of these vast states, without feeling surprise that they should ever have been entrusted to the government of one subject. Yet Henry did not tamely submit to the sentence ; during three years he maintained a contest with the whole force of the empire. But if, while at the head of above half Germany, he had been unable to resist his opponents, he was not likely to succeed when deprived of his princely vassals. He then applied for pardon ; but he could not obtain it, except on the condition of a few years' exile in England ; nor would he have been allowed to revisit his country, but for the interference of the emperor, who, throughout this painful case, appears to have acted with considerable magnanimity. Through the favour of his injured kinsman, he was permitted to retain the allodials of his house — the duchies of Brunswick and Lunenburg. In one respect, however, the fall of so valiant a prince was disastrous. Saxony was now too weak to oppose the hostile irruptions of the Danes ; duke Bernard could not aspire to the surname of Lion ; the very next year Canute of Denmark not only threw off his allegiance to the empire, but seized Holstein, and obtained some successes in Mecklenburg and Pomerania.—2. For Frederic's interminable transactions with Italy, into which he undertook no fewer than six expeditions, we refer to two historic works connected with the present.\* We shall only observe, that though he exhibited great conduct and great valour, and obtained some splendid successes, he was unable to contend with enemies so formidable as the pope and the Italian republics combined, aided, too, as they were, by the kings of Sicily. In the field, indeed, he could conquer them ; but no

\* See Sismondi, *History of the Italian Republics* ; and *Europe during the Middle Ages*, vol. i. chap. 1.



sooner had he returned across the Alps, than those whom he had forced to submit, were again in arms. The marriage of his son Henry, with Constanza, heiress of the Sicilian throne, brought that kingdom into his family ; but this acquisition was the greatest misfortune that could have befallen either his house or his country. It rendered him and his successors more attentive to the affairs of Italy than those of Germany ; in a proportionate degree it lost him and them the attachment of the latter over the empire ; it made the popes their natural enemies ; and it ended in their expulsion from the sovereignty in both kingdoms. 3. Like Conrad, Frederic was a crusader. In 1188, influenced by the infectious mania of the times, he and the flower of his nobles, with a multitude of freemen, assumed the cross, and proceeded into Palestine. Notwithstanding the difficulties of the expedition, Frederic overran Cilicia and Armenia ; and he would probably have recovered Jerusalem, had not death surprised him while bathing in a river near Seleucia.—The reign of this great monarch proves, that however limited the imperial prerogatives, the dignity might be made respectable. Though he undertook nothing *sine assensu principum*, though, as he himself observed, *ministerium imperii apud nos, auctoritas penes optimates est* ; yet he generally swayed the diets at his pleasure. In all governments, the personal character of a great prince will have more influence than his prerogatives. Some of this deference might possibly have been owing to the maxims of the Roman jurisprudence, which was now making progress in Germany. Before his coronation by the pope, he took the title of *Imperator Electus*, instead of *Rex Romanorum*. And among other peculiarities of the period, we observe that the title of *prince* began to be applied *personally* ; that free burgesses might obtain the knightly dignity ; that the archbishop of Mentz is termed *Supremus imperii consiliarius* ; that at the reception of his two sons into the order of knighthood, the great offices of his household were

exercised by the great dignitaries of the empire.\* During their absence, the duty is, by many writers, believed to have devolved on hereditary deputies. Deputies there doubtless were; but that the office either of deputy or of principal was definitely fixed in certain families, is more easily asserted than proved.†

1910 Long before the death of Frederic, his son *Henry VI.*  
to (1190—1197) had been elected king of the Romans,  
1212. and had exercised the lieutenancy of the empire during his father's absence. Scarcely had the new monarch grasped the sceptre, when Henry the Lion returned from England, to renew the contest for the duchy of Saxony. But success on the present, as on the former occasions, failed him; nor could he without much difficulty preserve the patrimonial domains of his house. The character of Henry was stern; as a judge he was more dreaded than the laws; but that this disposition was a blessing amidst the anarchy of such an age may readily be inferred. In Naples and Sicily, however, to which he succeeded in right of his wife *Constanza*‡, his conduct is said to have been savage. His severity certainly degenerated into tyranny; and that he was incapable of generosity is proved by his behaviour to our *Richard I.*, who was arrested by *Leopold*, duke of Austria, and transferred to his custody. It was the aim of Henry

\* See the commencement of the Franconian period.

† *Otho Frisingensis*, *De Gestis Frederici I. Imperatoris*, p. 629, &c. (apud *Muratorium*, *Rerum Italicum Scriptores*, tom. vi.). *Conradus Urspergensis*, *Chronicon*, p. 282. &c. *Albertus Stadensis*, *Chronicon*, A. D. 1152, &c. *Radevicus*, *Continuatio Othonis Frisingensis*, lib. i. and ii. (variis capitibus). *Otho de Sancto Blasio*, *Chronicon*, cap. 1—23. *Arnoldus Lubecensis*, *Chronicon Slavonum*, lib. iii. cap. 1—15. *Radulphus Mediolanensis* (*Sire Raoul*), *De Rerum Gestis Friderici I. in Italia*, p. 1167, &c. *Godefridus Coloniensis*, *Chronicon* (sub annis). *Additiones ad Lambertum Schaffnab.* pp. 428—431. *Dodechimus*, *Appendix ad Marianum Scot.* p. 675. *Robertus de Monte*, *Appendix ad Chronographiam Sieberti Gemb.* pp. 884—937. *Auctarium ad Chronicon Anselmi Gemb.* pp. 966—988. *Chronicon Citizense* (sub annis). *Felix Ulmensis*, *Historia Suevorum*, lib. i. cap. 12. *Chronicon Montis Sereni*, passim. *Anon. Saxo.* *Historia Imperatorum*, p. 108—114. *Das Leben Kayser Friederich*, ab initio ad finem. *Guntherus Ligurinus*, *De Rebus Gestis Frederici I.* lib. i. and ii. (multis capitulis). *Gondemus*, *Historia Erfurdense*, lib. i. *Muratorii*, *Annali d'Italia* (sub annis). *Baronius*, *Annales Ecclesiasticæ*, tom. xii. (sub annis). *Raumer*, *Geschichte der Hohenstauffen*, vol. iii.

‡ See *Europe during the Middle Ages*, vol. i. p. 120.

to render the crown hereditary in his family. To obtain the consent of the states he offered to incorporate Naples and Sicily with the empire, and to render all the fiefs of the crown allodial and hereditary in the families of the vassals. In this aim he failed; yet, to soften his disappointment, the states elected his infant son Frederic king of the Romans. On his death the regency was entrusted to Philip, duke of Swabia, uncle of the young prince; but the party of the Guelfs, which now ventured to rear its head, elected Berthold, duke of Zehringen. But Berthold declined a dignity which, against the power of Philip, he would have been unable to sustain; and, in another diet, *Philip* himself (1198—1208) was raised to the throne. But Innocent III. remembering the persecutions which the church had sustained from the Franconian and Swabian emperors, refused to recognise either Frederic or Philip, and prevailed on the Guelf party to proceed to another election. The archbishop of Cologne, and the other heads of the party chose Otho of Brunswick, son of Henry the Lion. A civil war was the inevitable result. The king of Bohemia, though at first favourable to Philip, joined the banner of Otho, whose party was further strengthened by the adhesion of the Danish king. But success attended the wars of Philip, who, in 1204, was again crowned by the archbishop of Cologne, and acknowledged even by Innocent. Yet Otho scorned to submit; he was supported by the other chiefs of the Guelf party; and in 1208 his hopes were raised on the assassination of Philip by Otho of Wittelspech, count palatine of Bavaria. Nor were these hopes unfounded: even the princes most zealously attached to the Hohenstauffen family, had suffered too much from civil war to perpetuate it by electing another; and *Otho IV.* (1208—1212) was unanimously chosen: but he was obliged to swear that he would not seek to render the crown hereditary in his family; that he would discourage the use of the Roman laws; and enforce the observances of the various provincial codes promulgated by Charlemagne. By the

same diet, Otho of Wittelspach was placed under the ban, degraded from his honours, and condemned to death; and the execution of the sentence was entrusted to the hereditary marshal of the empire, who overtook and slew him on the banks of the Danube. To connect the Guelf with the Ghibelin party, a marriage was resolved between the new king of the Romans and Beatrix daughter of Philip. But though the appearance of things was thus promising, and Otho received the imperial crown from the hands of Innocent, he was not long permitted to retain it. At his consecration by the pope, he promised to restore the domains bequeathed to the church by the countess Matilda, and to undertake nothing against Frederic king of Sicily, son of Frederic Barbarossa, and ward of the pope.\* But both engagements he speedily broke; the first by expelling the papal troops from Ancona and Spoletò; the second by citing — doubtless with an insidious purpose — Frederic to do homage for the duchies of Calabria and Apulia, and when that prince wisely refused to appear, by declaring those fiefs forfeited. He did more: he marched on Rome, and commanded Innocent to annul the celebrated concordat of 1122, and to recognise in the imperial crown the right of nominating to all vacant benefices. Whether the man who made such extravagant demands could be really sane, may well be doubted. They sealed his fate. The German prelates, already incensed at the manner in which the concordat had been violated by the crown, combined to preserve the privileges which remained to them, and formed, among the secular princes, a party strong enough to hasten the return of Otho. There were other causes of discontent: instead of wasting his time in Italy, and exasperating the pope, it was his first duty to defend the northern provinces of the empire against Waldemar of Denmark, who had rendered himself master of the whole Baltic coast from Holstein to Livonia. In this state of things, Otho was

\* See Europe during the Middle Ages, vol. i. p. 162.

deposed, and Frederic of Sicily invited to ascend the throne of his ancestors. But Otho had still a considerable party: he caused the defiles of the Alps to be narrowly watched for his rival; and most of Lombardy was no less willing to intercept that adventurous heir of the Hohenstauffens. The hair-breadth escapes of Frederic, in Lombardy, amidst the Alps, and on his way to Constance, equal the fictions of romance. Constance declared for him, and by degrees most of the states followed the example, until 1215, when Otho, hopeless of success, retired from the contest, and Frederic was solemnly proclaimed.\*

The reign of *Frederic II.*, which may be dated from 1212 the year of his appearance in Germany, was more remarkable than that of his three predecessors. For some years he lived on good terms with the church. He not only confirmed the concordat of 1122, but surrendered the domains of Matilda, renounced the odious claim to the personalties of deceased prelates, and sanctioned the right of appeal from the ecclesiastical princes to the pope; and when, in 1222, he received the imperial crown from the hands of Honorius III., he also engaged that the crown of Sicily should never be united with that of Germany — that it should never adorn the same brow; and he resigned it in favour of his son Henry, whom he caused to be elected king of the Romans: but this was an evasion; for the prince could be no more than his puppet, and he exercised his dominion over the kingdom as absolutely as before. The early years of his reign were every way fortunate. From the Danish king, Holstein, Mecklenburg, and Pomerania were rescued; not so much, however, by the valour of the German troops, as by the hatred which the people bore to the Danish yoke, and by the vices of the Danish king. But he was doomed to be as unfortunate as

\* Authorities. — Otho de Sancto Blasio, *Chronicon Citizense*; Felix Ulmensis; Robertus de Monte; Auctorium Anselmi Gemblacensis; Siffredus Misnensis; *Chronicon Urspergense*; *Chronicon Thuringicum*; *Chronicon Sleswicense*; Arnoldus Lubecensis; *Chronicon Montis Sereni*; Raumer; Pfeffel; Schmidt; and others in places too numerous to be cited.



most of his predecessors. On the very day of his coronation, at Mentz, he was so rash as to assume the cross; and, subsequently, he promised to sail for the Holy Land. But in regard to this expedition, as to the Sicilian crown, he eagerly sought evasions. Nine years had elapsed from his assumption of the cross, when Gregory IX. ascended the chair of St. Peter; yet the emperor showed no disposition to hasten his departure. Gregory had succeeded to the principles, and almost to the talents, of Hildebrand. To an intimate conviction that all earthly things should be submitted to Christ's vicar, he added a profound knowledge of the canon law, and a burning zeal for ecclesiastic discipline. That such a man should long continue on even civil terms with an emperor who was seeking to evade every engagement, was impossible. Being summoned to fulfil his vow, he again sought for a pretext, until he was excommunicated by the rigid pontiff. Yet ecclesiastical censures would scarcely have induced him to embark, had not personal ambition had considerable influence on the determination. He had married, as his second wife, the daughter of John de Brienne, the expelled king of Jerusalem; and, in virtue of this connection, he aspired to the crown of Palestine. The manifesto in which he replied to the anathema was not very respectful to the papal dignity; and when he embarked, he did not condescend to apply for absolution. But the religious notions of the age were not to be braved with impunity, even by the temporal head of Christendom. On disembarking at Ptolemais, he found the clergy, the crusaders from Europe, and the three military orders\*, indisposed against him; so that he was compelled to open the campaign with the troops alone which had accompanied him. Those troops were few—merely 100 knights: they were compared rather to the expedition of a pirate than to that of an emperor; and doubts were seriously entertained whether he had

\* The knights of St. John, the Templars, and the Teutonic knights.



the intention, or even the wish, to aid the common cause. However this be, it is certain that the inactivity of the military orders, and the hostility of the clergy, rendered success by arms impossible. But, that he might not return wholly inglorious, instead of fighting, he negotiated a truce of ten years with the sultan of Egypt, and obtained the surrender of Bethlehem, Nazareth, and partially of Jerusalem — all but the temple, built on the ruins of Solomon's, which the Mohammedans regarded with as much veneration as the Christians. By most of the German historians this success of Frederic, which they represent as effected by the mere terror of his arms, has been extravagantly praised.\* It deserves not even the name of success: it was conceded by the policy of the sultan, who, though he well knew that Frederic could do nothing in the field, and was eager to return, was yet not averse, by a vain concession—the value of which could not fail to be estimated by every reflecting mind—to remove him from Syria: in fact, it was asserted by contemporary writers, that the emperor and the sultan perfectly understood each other; that the former opened a correspondence, by stating that he had not left Europe for the purpose of conquest, but merely to procure the holy places for the use of the Christians; and that, after mutual messages, the tenour of which was kept secret, both monarchs were on the most friendly terms. It is certain, that many valuable presents passed between them; that Frederic imitated not merely the state, but the vices, of his Mohammedan ally; that the articles of the treaty were purposely so loose as to be binding on neither; and that the sultan of Damascus, nephew of the Egyptian potentate, was not included in it. Unless, as contemporary historians unanimously assert, there was a secret understanding between the two, it is impossible to account for the forbearance of the sultan towards one whom he could have crushed at any moment.

\* And also by English historians, who, without consulting the original authorities, have repeated the praise.

With a retinue hardly sufficient for a simple count, the emperor leisurely proceeded to Jerusalem, and, as the patriarch refused to crown an excommunicated person, placed the crown on his own head, and immediately returned to the coast, whence he embarked for Italy. To account for his precipitate departure, his partisans—such are nearly all the historians of Germany and France—report that it was caused by the unexpected invasion of Apulia by the papal troops. This is partially true; but they forget to inform us that Gregory did not resort to arms until Spoleto had been invaded by one of the imperial vassals, Raynaldo, duke of Spoleto, who, doubtless, acted from the orders of the emperor. Though Raynaldo was expected to retire, and, on his refusal, was excommunicated, he no less persevered: his object was not merely to advance the cause of his master, but to recover the duchy, from which he had been removed. From the commencement of his career, he had been a terrible enemy to the church; and on the present occasion, by mutilating or hanging the priests, and plundering the churches, he procured for himself a still more melancholy reputation. Seeing that spiritual thunders were despised, the pope ordered a small army to march against Raynaldo, which subsequently, by way of a diversion, invaded Apulia, and made some conquests. On the arrival of Frederic, however, the imperial fortunes took a turn; and, as he professed unconditional submission to the church, the sentence of excommunication was raised, and an interview between the temporal and spiritual heads of Christendom seemed to promise future peace. But, however much Frederic may have been praised for his magnanimity, there could be no peace with him; for scarcely had he obtained the object of his submission, than he renewed his intrigues with the Italians, especially with the citizens of Rome, for the expulsion of Gregory, who, in reality, was soon expelled. Yet all this time he professed great devotion to the holy see, the interests of which he pre-

tended to espouse with zeal. Throughout his transactions with the popes, his conduct was a tissue of perfidy, or violence, as best suited his immediate advantage. One day, to prove his fidelity to the world, he sent his knights to defend Gregory against the storm which he himself had raised; another, his Saracen subjects, by his positive orders, laid waste the papal territories. In 1238, the irritated pope renewed the excommunication in a public instrument, in which he minutely detailed the crimes of the emperor. That the latter had excited seditions in Rome; that in the two Sicilies he retained twenty prelacies vacant; that he suffered the Saracens to rob even the churches of his dominions; that by his orders they had plundered all the commanderies of the Templars; that enormous sums had been wrung from ecclesiastical bodies, especially the monastic communities; that he had seized the domains bequeathed for the support of the poor and the fatherless; were indeed notorious to the world. Perhaps, too, as was generally reported, he was at heart an infidel, and actuated by the most vindictive feelings towards religion and the church. Yet impartial history cannot exculpate the pope from the charge of rashness—even of injustice. The sums which he wrung from most Christian countries, to prosecute the war against one who was reputed at least a Christian monarch; his worldly policy, no less than his rapacity, called forth the indignation of the honest and the patriotic—none more severe or well-merited than that of Grossetête, bishop of Lincoln.\* Though Frederic was by far the more censurable, he had, perhaps, more of sympathy, since men are always disposed to condemn without mercy the errors of ecclesiastics. As on the former occasion, the emperor published an apology, in which, while vindicating the orthodoxy of his opinions and his actions, in the order of time, he did not spare the sanctity of the holy see. He declared that such a pontiff was un-

\* See Europe during the Middle Ages, vol. iv. ..

worthy of St. Peter's chair ; that, by his duplicity, his corruption, and his tyranny, he had forfeited his dignity ; that to recognise him henceforth was a crime ; and that a general council should be convoked to depose him. Lest this apology, which was addressed to all Christian princes, should have any effect, Gregory replied with equal violence, and in a manner equally unbecoming his station. Then followed a rejoinder from Frederic, who called the pope the great dragon of the Revelations, the antichrist, another Balaam, a prince of darkness. In the same spirit, he ordered the orders of St. Francis and St. Dominic to be banished from the two Sicilies ; that a heavy subsidy should be raised from the cathedral churches, from the secular clergy of each parish, from every monastic community of that kingdom ; that all intercourse with the Roman court should be suspended ; and that any ecclesiastic discovered with letters or mandates from the pope should at once be hung without formality. From the tenour of Frederic's language, not merely in his memorials, but in his conversations ; from the epistles of his courtiers, and, still more, from the evident tendency of his acts, there can be no doubt that he was resolved to abolish the papal government. These transactions, in which neither party listened to justice, reason, or moderation, scandalised the Christian world, and called forth the grief or the indignation of every unbiassed individual.—For the interminable transactions which followed, we refer to accessible sources.\* Suffice it to say that, though Gregory was soon succeeded by Innocent IV., a personal friend of Frederic, who was sincerely desirous of peace, the emperor refused the very moderate conditions proposed ; that Innocent, feeling that his person was in danger, fled to Lyons ; that the excommunication was renewed ; and that, in the council of Lyons, a sentence of deposition was solemnly pronounced by Innocent. This was not a brutum fulmen : it stirred up many of the eccle-

\* See Sismondi, History of the Italian Republics.

siastical and secular princes of Germany to revolt ; and an anti-Cæsar was soon found in Henry, landgrave of Thuringia, who, in the diet of Stockheim, was elected king of the Romans. Some years before, Frederic's tranquillity had been disturbed by the revolt of his eldest son ; but Gregory had taken his part — a fact suppressed by most of the Ghibelin historians — and he had been able to consign the undutiful prince to perpetual seclusion. But now, the king of the Romans being supported by the whole power of the church, — a church which had many princely vassals, with a vast array of military followers — a civil war began to rage with fury. The immediate vassals of the emperor naturally aided their lord ; the states in general declared for him ; and by his son Conrad the rebel was defeated, and mortally wounded. But Innocent soon provided another antagonist in William, count of Holland ; and Lombardy was speedily in revolt. If Frederic had observed little moderation under ordinary provocations, he was not likely to regard it now. He vowed an exterminating war against the chief of the church ; and, though an interdict had been imposed on the places where he might happen to abide, he hung the priests who refused to celebrate the divine offices. In revenge, Innocent, who knew as little of moderation as himself, proclaimed a crusade against him, promising the same indulgences to those who engaged in it as to those who fought in the Holy Land. As ecclesiastical censures were despised by the emperor, and a numerous body of vassals, who constantly adhered to him, and as both parties were actuated by the worst passions, the war, both in Germany and Lombardy, assumed a vindictive and ferocious character. In 1250, however, Frederic breathed his last ; and with him ended the glory of the empire, until its restoration by the house of Austria. Whether, in his last moments, he assumed the Cistercian habit, is doubtful ; but he certainly received absolution from the archbishop of Tarento ; and in his last will be ordered some reparation to be made to the

churches which he had plundered. Of his character there can scarcely be a second opinion.\* That he had some great qualities; that he was a munificent patron of letters, and cultivated them with success; that he founded the university of Naples, besides many schools; that he built splendid palaces, encouraged artists, commerce, and manufactures; that he was the great patron of the imperial cities, on which he conferred many new privileges, and which, in return, constantly adhered to his fortunes; that his views were extensive, his courage indomitable, his activity as a ruler incessant; that he was not merely liberal, but magnificent, both in his habits and his sentiments; that he was a poet and a legislator, an antiquary and a statesman; are incontestible, from the numerous histories of his reign. But if he was, in some respects, a great, he was in many a most pernicious, sovereign. Never were talents so uselessly or so viciously employed. His exploits in Palestine are not of a kind to reflect much lustre on his name: in his chimerical project of reducing the Lombards to perpetual submission, he wasted his strength and that of his empire; in his attempts to make the holy see dependent on his crown—his invariable policy from the commencement to the close of his career—he recklessly provoked an opposition which inflicted the severest misfortunes on his country and his house; the subsidies which he exacted, and the burdens which he imposed on his people, for the prosecution, not of honourable war, but of his own ambitious or vindictive schemes, procured him their cordial hatred. “As he cared little for Germany,” says a national historian, “so Germany cared little for him or his house.” He was, in fact, the most mischievous sovereign with whom the country had ever yet been cursed. Nor in his private character does he deserve much respect: his amours were notorious, and his frequent debaucheries degraded his majesty. Whether he was really a Christian at

\* See Europe during the Middle Ages, vol. i. p. 125.



heart, until conscience, on his death-bed, roused the feelings of his youth, may be doubted. He was, however, superstitious: he was much addicted to judicial astrology; and is believed to have been led into some wild enterprises through a persuasion that the stars called him to a destiny superior to that which had been granted to the most renowned of his predecessors, or was reserved for his successors.\*

The time which elapsed from the death of Frederic II. 1254 to the accession of Rodolf I. may be regarded as an interregnum; for though *Conrad IV.*, had many years been elected king of the Romans, and was acknowledged by the Ghibelins, he had still to oppose the anti-Cæsar, William of Holland, and the influence of the church. Italy was doomed to be the grave of Conrad, as it had been to other princes of his house: his Sicilian dominions evidently lay nearer his heart than Germany; or he would not, at so critical a period, have abandoned the latter to his rival. The cause of that rival was fortified from day to day, while *he* remained in Southern Italy, both to oppose Innocent and his bastard brother Manfred who evidently aspired to the crown.† His premature death destroyed the fortunes of his house. The duchy of Franconia soon emancipated itself from subjection; and though Swabia was reluctantly left to his only son Conradin, then an

to  
1271.

\* Raynaldas, *Annales Ecclesiasticæ*, tom. i. (sub annis). Matthæus Parisiensis, *Historia*, pp. 320—670. Langius, *Chronicon Citizense*, pp. 1169—1177. Anselmi Gemblacensis *Continuatio*, p. 1014. Siffridus Misnensis, *Epitome*, lib. ii. pp. 1042—1045. Felix Ulmensis, *Historia Suevorum*, pp. 37, 38. Mntius, *Chronicon Germanorum*, lib. xx. pp. 812—836. *Fasciculus Temporum*, p. 555, &c. Conradus Uspersgensi, *Chronicon* (sub annis). Anon. Saxo, *Historia Imperatorum*, p. 120, &c. *Chronicon S. Petri*, pp. 241—265. Gassarus, *Annales Augustburgensis*, p. 1440, &c. (sub annis). Richardus de S. Germano, *Chronicon*, pp. 561—624. *passim*. Anonymus et Sabas Malaspina, *De Rebus Gestis Frederici*, p. 677, &c. (apud Carusium, *Bibliotheca Historia Regni Siciliae*, tom. ii.). Matthæus Spinellus, *Ephemerides Neapolitanæ*, p. 1055, &c. (apud Muratorium, *Rerum Italiae Scriptores*, tom. vii.). Maurisius, *Historia de Rebus Gestis Ecelino de Romano*, p. 47, &c. (apud eundem, tom. viii.). Nicolas de Jamsilla, *Historia de Rebus Gestis Friderici II.* p. 489, &c. (in eodem tomo). Ricobaldus Ferrariensis, *Historia* (sub annis). Muratori, *Annali d'Italia* (sub annis). Godefridus Colonensis, *Chronicon* (sub annis). Raumer, *Geschichte der Hohenstauffen*, vol. iv.

† See Sismondi, *History of the Italian Republics; and Europe during the Middle Ages*, vol. i. p. 122.

infant, *it* too soon departed from his family. Conradin, before reaching years of discretion, invaded Naples to expel the papal feudatory, Charles of Anjou ; but being defeated and made prisoner, he perished ingloriously on the scaffold. The fall of this youthful duke\* enabled the vassals of Swabia, like those of Franconia, to become independent patrimonial proprietors. This splendid house fell without one tear of pity from the world. It had so exasperated the church, that the popes had endeavoured to exclude Conradin even from the duchy of Swabia ; and by its sacrifice of German to Sicilian interests, it had rendered the empire indifferent to its fate. Leaving this anticipation, the death of Manfred, in 1254, was hailed as an event likely to restore peace to the empire : it left *William* the undisputed head of the Germanic body ; yet his fleeting reign of ten years was full of troubles, occasioned partly by the Ghibelins, but in a greater degree by the anarchy to which the absence of Frederic and Conrad had given rise. In 1256, his death, by the hands of the West Friesland rebels, replunged the empire into the gulf from which it was beginning to emerge. Who was now to fill the vacant dignity ? The princes were too jealous of one another to agree in conferring it on one of their own body. They resolved to elect a candidate who had wealth enough to sustain it with splendour ; but who, having no patrimonial possessions in the states, could not possibly encroach on their liberties. From the accession of Frederic II. the privilege of pre-taxation had risen into the right of suffrage, inherent in a certain number of princes, who are thenceforth called the electoral college, and the *lumina imperii*. The number of these dignitaries, who had thus by gradual precedents usurped the rights of the German nobles, appears not to have exceeded seven or eight ; the three archbishops and four or five secular princes. A party formed by the archbishop of Cologne (the primate hap-

\* See Europe during the Middle Ages, vol. i. p. 129.

pened at this time to be a prisoner) cast their eyes on Richard earl of Cornwall, brother-in-law of Frederic II. But Richard was at the same time distinctly informed that the suffrages of the electors were not to be gratuitous ; that each must be assured a considerable sum, or some more liberal prince would outbid him. The abominable venality of these men does not appear to have excited much surprise at a period when no dignity, civil or ecclesiastical, could be procured without purchase. Richard had the folly to accept a crown, which since the earlier years of Frederic II. was a brilliant bauble, unattended with even the shadow of power. But in choosing him, the electors were so far from unanimous, that another party offered their suffrages to Alfonso X. of Castile, who with equal infatuation consented to waste his treasures for an object unattainable ; and which, if attainable, could not have been worth acceptance even as a gift. On the day fixed for the opening of the diet, there was consequently a double election. Hence the troubles which during several years again afflicted this unfortunate country ; unfortunate, because the passions of its princes were opposed to its prosperity. Richard had one advantage over his rival—his proximity to the empire, and his disentanglement from cares which long occupied the whole attention of Alfonso. Both electors appealed to pope Alexander IV., who at first refused to decide between them ; such a decision, without the power to enforce it, was manifestly unwise ; yet at a subsequent period Alexander leaned to Richard, whom he acknowledged as king of the Romans. But the recognition led to no effect ; a party adhered to Alfonso so long as that monarch had money to distribute among the rapacious princes ; and Richard found, when his treasures were exhausted, that he had little influence. During this gloomy period, indeed, every great feudatory was merely intent on his own aggrandisement. Richard of Cornwall, who was generally in England, assisting his brother Henry III. in repressing

the barons, bade adieu, in 1271, to ambition and to life.\*

1138 The period over which we have passed, affords ample  
to materials for tracing the progress of the Germanic con-  
1271. stitution. The first peculiarity regards the alarming  
decline of the imperial authority. 1. From the time of  
Frederic II., the crown no longer possessed the right of  
deciding even in litigated ecclesiastical elections. The  
popes had found that this privilege, exacted from  
them by the concordat of 1122, had uniformly led to  
abuse; that it enabled the sovereign to exercise his in-  
fluence as effectually as if he possessed the undisputed  
right of nomination. But to remonstrate with princes  
so powerful as those of the Hohenstauffen dynasty, was  
vain, and they were compelled to await a more favour-  
able opportunity of vindicating the independence of  
elections. It was presented by the fall of the second  
Frederic: they refused to favour any candidate who  
hesitated to surrender the obnoxious privilege; and  
they accordingly succeeded in transferring from the  
crown to themselves the right of deciding whenever  
there was a division among the electors. 2. Again,  
even Frederic II. was compelled to publish two prag-  
matic sanctions, by one of which he renounced, for him-  
self and successors, the right of inheriting the movable  
effects of deceased ecclesiastics, and of demanding other  
subsidies than those fixed by feudal custom; by another  
he extended a similar indulgence to the secular princes,  
in renouncing all claim to purveyance. 3. The im-  
perial jurisdiction was still further circumscribed for  
the aggrandisement of the states. By the ancient laws  
of Germany, the sovereign was forbidden to revoke  
any cause to a tribunal held beyond the confines of the  
province where the defendant resided. If, therefore,  
he would exercise his judicial prerogative, he was com-  
pelled to travel from province to province to hear and  
decide causes. So long as the institution of counts

\* Chiefly the same authorities, the pages of which it is useless to specify, as they may be easily found from the last citations.

palatine was in its full vigour, much of this laborious duty devolved on these deputies ; but these offices gradually fell into insignificance, probably because they were too dependent on the local dukes to have any voice of their own. It is certain that they ceased to be the slightest check on those great feudatories ; so that in 1231, when Frederic abolished the jurisdiction of the royal judges over the vassals of those princes, he merely abolished a vain formality. Owing to the anarchy of the times, however, it was found, that if the public tranquillity were to be maintained, there must be some tribunal to take cognizance of the endless private wars and other disorders which rendered individual and even social security a mere name. Hence, in 1235, the same emperor was authorised to create a new judge, who should sit daily, but who, however, should hold no tribunal beyond the precincts of the court, and in no degree interfere with the local jurisdiction of the dukes. Yet he took cognizance throughout the empire of all cases which, by the Roman law, now spreading its roots widely in the Teutonic soil, were the peculiar province of the monarch. Still a vast majority of cases lay within the competency of the ducal tribunals, who thus exercised a jurisdiction in other countries inherent in the crown, or delegated to royal judges. 4. In an equal degree the imperial revenues were diminished. Of these, the reception of mortuary and purveyance fines, considerable in amount, ceased ; but the loss was small in comparison with the usurpations of most fiscal and regalian rights by the states. The exercise of the judicial functions placed at the disposal of the dukes all such fines as were levied by their courts. During three centuries they had possessed the privilege,—originally a concession from the crown,—of coining and fixing the value of money : now, by means which no contemporary historian condescends to explain, they obtained two thirds of the returns from all gold and silver mines.—Anciently the Jews were the exclusive serfs of the emperor ; and as the price of pro-

tection they paid him a capitation tax : now, though on the imperial domain they still stood in the same relation to him, within the jurisdiction of the dukes they began to be regarded as subject to the local treasury. Again, several of the imperial cities, which had hitherto paid some annual revenue to the emperor, procured, probably in consequence of express stipulations to that effect—as the express condition of joining the imperial cause—exemptions from the obligation, and were henceforth styled *free* as well as imperial. We may add, that the Germanic domain, which extended on both banks of the Rhine from Cologne to Bâle, was invaded by the four electors of Franconia, viz. by the three archbishops and the count palatine of the Rhine. It is, indeed, manifest, that had not the late emperors possessed immense patrimonial domains, they could not have sustained the dignity of the station. William of Holland had little patrimony : he was consequently so poor as to be compelled to borrow money for his ordinary expenses ; a necessity which virtually annihilated what little influence the constitution had left him. At this period, however, neither the jurisdiction nor the revenues of the crown were well defined. There was evidently a struggle between it and the great dukes—the former to retain, the latter to usurp, the rights which had hitherto been inherent in the sovereignty. In some cases, too, there appears to have been a compromise between the two parties. Thus, though the civil and criminal jurisdiction was engrossed and valued by the states, on account of the advantage they derived from pecuniary compositions or fines, there were some cases in which appeals to him were permitted, and some of which he took cognizance even in the first instance. These cases, however, were generally decided by the new judge of the court : when the parties implicated were of high dignity, the sovereign was expected to preside ; but even then he was compelled to act with seven assessors of equal or higher rank than the parties themselves. It has been contended by some writers, that the Swabian emperors conferred



vacant duchies and other princely fiefs of their own authority. To us this appears a rash assertion; for though the chroniclers intimate the mere fact, unaccompanied by any observation, the instruments which remain of that period distinctly express the consent of the nobles, or of the states. Germany has its party writers, and writers, too, as dishonest as any other country. Some are for the exaltation of the imperial, others of the ducal, prerogatives; each distort or suppress facts which oppose their favourite views; but both unite whenever the interests or abuses of emperor or prince are assailed by the church.—In some other respects the dignity rather than the authority of the sovereign remained unimpaired. He convoked and presided over the diets; he rendered bastards legitimate; he conferred nobility by letters patent. It has been also asserted that he could declare war or make peace at his own pleasure. This is very partially true. As king of Lombardy, which was his *regnum proprium*, he could certainly commence hostilities against any potentate; but he could not force his ducal and princely vassals to take part in them. On such occasions he could summon to his standard the vassals who immediately held of him, those who were dispersed over his still considerable domains; but he could undertake no war for the general interests of the empire without the consent of his states. Thus, though Frederic I. urged them to join him in declaring war against the Hungarians, they refused, and no campaign took place. The wars which that monarch undertook were conducted at his own expense. Frederic II. had the gold of the two Sicilies to assist him. Nothing, indeed, was so difficult as to prevail on the states to sanction any war: they often regarded the irruptions of the Danes with an apathy which seems irreconcilable with patriotism: they left all to the frontier margraves, and the military authorities of the particular district invaded; they saw Poland gradually emancipate itself from fealty to the empire, Arles become virtually in-

dependent, Friesland choose, as its sovereign head, William of Holland, the imperial dignity decline so as to become degraded in the eyes even of second rate princes, and the house of Hohenstauffen gradually perish in attempting to preserve the connection of Italy with the empire. All were eager to aggrandise themselves at the expense of their chief. So jealous were they of imperial influence, that the duke whom they elected to that dignity, they always forced to surrender his hereditary fief to some member of his family. In this there was good policy; for had such powerful princes as the dukes of Saxony or Bavaria been allowed to retain those provinces, in time despotism would assuredly have been established. Yet still there was a family interest which was sometimes dangerous, always umbrageous, to the states. Thus the Swabian emperors, through their connections and their personal qualities, obtained a preponderancy which we should not have expected to find under such a constitution. To guard against the possible consequences of the system, the electors began to select as candidates such princes only as, having no considerable domains, at least in Germany, could not give rise to apprehension; but yet who should have gold enough to pay dearly for so sterile an honour. Hence the landgrave of Thuringia, William of Holland, Richard of Cornwall, and Alfonso of Castile, allowed themselves to become the tool of their contemporaries, the pity of posterity. One privilege, however, the emperors had, which we should not omit. In the imperial cities they could marry the children of the chief citizens according to their pleasure. When the parties were provided, a herald paraded the public places of the city, proclaiming that the Kaiser had betrothed the daughter of such a citizen to the son of such a one; and the marriage always followed that day twelve months. In 1232, however, the citizens of Frankfort obtained an exemption from it.\*

\* Otho Frisingensis, *De Gestis Frederici I.* lib. i. et ii. passim. *Chronicon Urspergense* (sub annis). *Diplomata varia Imperatorum* (apud Senkenberg, *Reichsabscheide*, ch. i. No. 8. et 12.). *Schwachischs Lan-*

1. The most remarkable peculiarity during the period before us is, the conversion of the privilege of pretaxation into the right of election. That privilege had existed for many reigns; this right does not appear to have been fully established before the reign of Frederic I. On this subject we borrow our own words on a former occasion.\*

From this right of pretaxation, or of deciding which of the candidates should be proposed for the crown, the transition to that of absolute nomination was natural and easy; hence we now find them denominated the *Electoral College*. Soon after the time of Lothaire II. these great dignitaries were seven, three ecclesiastical and four secular princes: the former being the archbishops of Mentz, Cologne, and Treves; the latter, the dukes of Franconia, Bavaria, Saxony, and Swabia. It is certain that Conrad IV. was elected by these dignitaries, and that the rest of the princes had no other privilege than that of *consenting* — of *suffrage* not one word is said. A fifth secular prince is said to have been added to the electoral college. This was the count palatine of the Rhine, who preserved *his* jurisdiction when the office was every where else abolished, probably by annexing it to his hereditary duchy, Franconia. It may, however, be doubted whether he originally voted as count palatine; whether he did not enjoy his suffragan right merely as duke of Bavaria. In this case the number was still *seven*. Other changes followed, the knowledge of which is necessary towards a clear conception of the Franconian constitution. The count palatine soon succeeded to the duchy of Bavaria; but as in these days no elector was allowed to possess *two* votes, the suffragan privilege of Bavaria was transferred to the crown of Bohemia. Again, when one of the great dukes was elected to the throne of Germany, he was compelled to confide the right of voting inherent in his duchy to some margrave not already an elector. Thus, when Frederic of Hohenstauffen assumed the reigns of empire, he intrusted the suffragan right of Swabia to the margrave of Brandenburg, the only margravate not an elector who was not dependant on some one of the four duchies.

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drecht, cap. 34. 40. 60, &c. Olenschlager, Urkundenbuch zur Goldenen Bulle (variis numeris, præsertim 48.). Gebaver Leben des Kaisers Richards, Drittes Buch, Urkunden, No. 6. p. 344. und 1. buch, § 115. p. 108. Schmidt, Histoire des Allemands, tom. iv. liv. 6. chap. 14. Pfeffel, Abrégé Chronologique, tom. i. pp. 304—368. Putter, Historical Development of the German Constitution, vol. i. book ii. chap. 9, 10.

\* Europe during the Middle Ages, vol. ii. p. 107. We make a few slight verbal changes.

By this arrangement, which appears to have been the growth of accident, Bavaria and Swabia lost the electoral right, — the former being united with the palatinate; the latter being lent, never to be revoked, to the aspiring house of Brandenburg. The former, indeed, might be consoled with the reflection that its suffrage was virtually retained, since it continued to rest in its hereditary duke, as count palatine; but the latter was unjustly deprived of it, if the term *injustice* can be applied in a case where the original privilege was an usurpation. There is reason enough for this exclusion of the Hohenstauffens; they were at once obnoxious to the church and the empire; and by both it was agreed, that they should never again be permitted to obtain their ancient preponderance. And in further illustration of the preceding extract, we may show that the rights of these electors were recognised much before the time of Conrad IV. Thus, in the diploma which, in 1156, called into existence the duchy of Austria, we have express mention of the *principes electores*, after whom the new feudatory was to rank. The same margravates elected Philip; they are styled in a letter of Innocent III. as *principes ad quos specialiter spectat electio*; and by Otho IV., in the diet of Frankfort (1208), they were admitted as a legally constituted body. In subsequent elections they exercised the suffrage undisputed. It is, however, believed by most historical critics, that the electors exercised this suffrage, not as archbishops or dukes, but as holding some office in the imperial court or household. But we do not know that this hypothesis will stand the test of investigation. In regard to the three spiritual electors, though they were all arch-chancellors of the empire and of the kingdom of Italy, they might sit there as spiritual princes, as the acknowledged heads of the Germanic church. And as to the four secular electors, it is equally probable that they voted in virtue of their ducal fiefs. Though in the eleventh century they exercised, at the royal entertainment, certain functions of the household,

those functions appear to have been arbitrarily assumed, and assumed for the first time, with the mere view of honouring their new sovereign. The diet of 1184, when the duke of Saxony fulfilled the duties of grand marshal, the count palatine those of grand steward, the king of Bohemia those of grand cup-bearer, the margrave of Brandenburg those of grand chamberlain, has been adduced in corroboration of the statement that the official was inseparable from the elective dignity. But though the fact is certain, the inference is assumed. In the absence of any authority for the assumption that these functionaries were necessarily electors, it is too much to assert that they were so, because, being electors, they were found to have discharged the great offices of the palace. Much more rational would it be to infer — what, indeed, the chroniclers seem to intimate — that on the first occasion — the election of Otho I. — the office was voluntarily assumed purely to honour the sovereign ; and that on subsequent ones\* the precedence was perpetuated, partly for the same purpose, and partly because there is some reason for believing that the sovereign himself, flattered by the homage, stipulated for its observance. We remember, though we have mislaid the reference to the passage, an incidental remark in some old chronicler, the tenour of which led us to infer that the four dukes received the investiture of certain lands in the imperial domain on the express obligation of discharging, at all public entertainments, the official duties we have mentioned. What confirms this inference is the fact, that when, at a subsequent period, the king of Bohemia, the margrave of Brandenburg, the duke of Saxony, and the count palatine fulfilled, on ordinary occasions at least, their respective offices by deputy, these deputies received from them certain fiefs as obligations to the service. Hence, by parity of reasoning, if even express authority should not be found for the opinion, we might infer that if the deputies held

\* On the coronation of Otho III. for instance, in 983.

fiefs, so did the principals ; that the latter only sub-infeudated in favour of the former, a portion of what they had received from the crown. The office seems, in fact, not to have been essential, but incidental, to the elective dignity. From the thirteenth century, however, probably from the twelfth, perhaps even from the eleventh, we find certain offices inseparable from it.

“ It is not easy to account,” says Mr. Hallam, “ for all the circumstances that gave to seven spiritual and temporal princes this distinguished pre-eminence. The three archbishops, Mentz, Treves, and Cologne, were always, indeed, at the head of the German church. But the secular electors should naturally have been the dukes of four nations, Saxony, Franconia, Swabia, and Bavaria. We find, however, only the first of these in the undisputed exercise of a vote. It seems probable, that when the electoral princes came to be distinguished from the rest, their privilege was considered as peculiarly connected with the discharge of one of the great offices in the imperial court. These were attached, as early as the diet of Mentz, in 1184, to the four electors who ever afterwards possessed them: the duke of Saxony having then officiated as arch-marshal, the count palatine of the Rhine as arch-steward, the king of Bohemia as arch-cupbearer, and the margrave of Brandenburg as arch-chamberlain of the empire. But it still continues a problem why the three latter offices, with the electoral capacity as their incident, should not rather have been granted to the dukes of Franconia, Swabia, and Bavaria. I have seen no adequate explanation of this circumstance.” \*

We believe, however, that the explanation we have already given, will sufficiently elucidate this controverted subject. We have shown that originally the “ dukes of Franconia, Swabia, and Bavaria” *did* possess the offices in question ; that Bavaria being merged in the county palatine, its office passed to Bohemia ; and that the right of Swabia was lent to Brandenburg, and could not be revoked. For the deprivation of Franconia, we have not yet accounted. Let us, however, remember that, from the reign of Henry V., both Franconia and Swabia were in the house of Hohenstauffen ;

\* Hallam, *State of Europe during the Middle Ages*, vol. ii. p. 109.



and that from the time of Henry VI. they were in the hands of the same individual, that individual being the emperor himself as head of the house. This retention of two important states after acceding to the empire — this open violation of a custom universally sanctioned and long established — gave serious umbrage to the nation, and tended more than any other thing to the downfall of the Hohenstauffen family. It was resolved to deprive them, not merely of the empire, but of the suffragan rights inherent in their states. Hence, Franconia would follow the fate of its kindred state, Swabia, for the extinction of which as an elective power we have endeavoured to account on the same principle. And the more we examine the subject, the more we are inclined to the opinion, that it will eventually be found to be the only true hypothesis. The diet of 1184, when the house of Hohenstauffen was in all its glory, and when neither Swabia nor Franconia performed its ancient official functions, does not at all affect the inference we have drawn. Frederic, at his accession, had conferred the right of Swabia on the margrave of Brandenburg, who was naturally in no haste to surrender it ; and both Swabia and Franconia were in his own hands, though nominally held by his two sons. In other respects, we may observe that the mode of electing the emperors was assimilated to that of electing the popes. The seven elective princes resembled the seven cardinal bishops, who had the chief voice in the choice of a pontiff. As the latter deliberated on the choice of candidates, so did the former, as we are expressly informed by Otho of Freysingen, on the election of Frederic I. : it was only after these preliminary deliberations, that in the one case the nobles, in the other the bishops and clergy, were permitted to take any part in the proceedings. And there was another point of resemblance—the usurpations of the two ; for as anciently the whole body of the people were allowed to elect an emperor, so also were the great body of the clergy and people to choose a successor to St. Peter. In both cases,

however, the innovation was an improvement, since it averted popular turbulence and divisions.\*

II. Nor is this period much less remarkable for another college;—*that of princes*. Its formation and history is one of the most interesting circumstances relating to Germany during the middle ages. The result of the proscription of Henry the Lion was the dismemberment of the great duchies of Saxony and Bavaria. This called into existence a number of feudatories, who, with domains from portions of those great fiefs, assumed the designation of princes of the empire, and obtained jurisdictions independent of the electors and of each other. Among these were the dukes of Austria, Styria, and Pomerania; the margrave of Misnia; the landgrave of Meiningen; and the counts of Mecklenburg and Holstein. The political existence of the duchy of Swabia expired on the execution of Conradin, the last male of the Hohenstauffen dynasty†; and the counts of Wurtemberg, Furstenburg, Hohenzollem, with several others, made their appearance on the scene of German history. By this deprivation of one man of the power of withstanding the emperor or diet, the dissolution of these great duchies was certainly a good. But not content with the divisions of territory already made, these newly created princes, at their deaths, subdivided their dominions among their sons, by which means the number of the order was much increased. The house of Saxony, though it had lost its sovereignty over half of Germany, had considerable patrimonial estates remaining, which, according to this partitioning policy, were split between the dukes of Lunenburg and the princes of Anhalt.

\* Arnoldus Lubecensis, Chronicon, cap. 9. Albertus Stadensbergensis, Chronicon, A. D. 1240. Olenschlager, Urkundenbuch zur Guldenen Bulle, Nos. 12, 18, &c. Struvius, Historia Germanica, i. 357, &c. Pfeffel, Abrégé Chronologique, tom. i. p. 399. Schmidt, Histoire des Allemands, tom. iii. liv. 5. tom. iv. liv. 6. Putter, Historical Development, vol. i. book 2. chap. ii. Hallam, State of Europe, ubi supra.

Mr. Hallam is not nearly so well acquainted with the constitution of Germany as with that of France. The former, he seems to have very imperfectly studied.

† Conradin, the son of Conrad IV., beheaded in Naples by Charles of Anjou. See Europe during the Middle Ages, vol. i. p. 129.

Bavaria was divided into two dukedoms, the upper and the lower ; while, with the margrave of Baden, Zehringen divided its possessions. On condition of being recognised as members of the college, many of the princes who thus succeeded to their domains by family compact or testamentary bequest, agreed to hold them as fiefs of the empire.

The college of princes, thus called into existence, made a thorough revolution in the territorial jurisdiction of the country. Before the dismemberment of the duchies of Saxony and Bavaria, and the annihilation of the imperial influence, the chief princes, though next in rank to the sovereign dukes, had exercised a very limited feudal jurisdiction. They were themselves vassals of the emperor ; and they had no authority over either the allodial proprietors, or the inferior vassals who held immediately from the same source. But now that the only bulwark which could defend the great body of the untitled nobility was thrown down ; now that the number of princes was augmented so as to form an imposing body in the state, they began to usurp the privileges formerly possessed by the dukes, and aim at more. We must not forget that the ancient duchies were dissolved, some wholly, others, if not nominally, virtually. With the Hohenstauffen dynasty, both Swabia and Franconia fell as ducal states ; never afterwards could they boast of a single chief : they were divided among many princes, who aimed at the jurisdiction formerly held by the dukes. Saxony and Bavaria, indeed, remained ; but so circumscribed in extent, compared with what they ever had been, that the ducal jurisdiction could not possibly be restored. Hence, the princes who, as we have already related, arose on the dismemberment of these two duchies, had little difficulty in procuring from Frederic II. a recognition of their territorial authority. As the heads of new states were admitted into the Germanic confederation, the ecclesiastical princes, by a pragmatic sanction of 1220, obtained full sovereign jurisdiction within their respective

domains ; and by another, of 1232, the secular princes were equally favoured. Henceforth, the emperor could not build fortresses, nor coin money, nor exact fiscal duties, nor exercise the judicial functions through his judges, within any of the new states. It is, therefore, evident, that they succeeded to more than the power of the extinct ducal sovereignties. We might be surprised that sovereign prerogatives were thus entrusted to so many new magnates, if we lost sight for a moment of the peculiar circumstances of the period. From the time when the first Frederic sanctioned the creation of the new states from the vast spoils of Henry the Lion, they had rapidly consolidated their power. They were no longer afraid of their neighbours the dukes, whose possessions and privileges were so<sup>o</sup> much circumscribed by that event. Franconia and Swabia, indeed, subsisted unimpaired ; but these formed a small portion of the empire, and were fast tending to dissolution. Thus being removed from the jurisdiction of the dukes, as counts palatine were no longer in use, as the imperial authority was declining every day ; we cannot be surprised that the new princes were successful in their efforts to appropriate to themselves the floating wrecks of the ducal and imperial powers. It might, indeed, be expected, that the great body of the nobles in each of the new states, whether by the disruption of the ties which formerly bound them to the dukes, transferred from vassals to allodial proprietors, or allodial proprietors as many were from time immemorial, would resist the efforts of the princes for their subjugation. In many cases, no doubt, such resistance was offered and was successful ; but in more the degradation was complete. Some were bribed by pensions and offices, others were terrified by menaces or open violence, into submission ; and of those who retained for a time their ancient or newly acquired independence, most were eventually reduced to the same condition. The nobles and abbots not invested with the princely dignity, now constituted an *equestrian body*, ranking among the provincial orders, which were re-

tained by the princes as a sort of shadow of the ancient local states. This subjection of a numerous class to the will of the princes confirmed, in process of time, a maxim exceedingly useful to their views—that whatever lands are situated *in* a territory, belong *to* that territory; that whatever lies within a given boundary of jurisdiction, is necessarily subject to that jurisdiction—*quicquid est in territorio, etiam est de territorio*. Hence the expression *territorium clausum*, invented by writers on public law to designate states which admitted of no independent restrictions, and the princes of which were presumed to hold sovereign rights over all the domains without distinction contained in such province or lordship. The consolidation of the territorial government in each state caused the princes soon to regard it almost as patrimonial; and in their last dispositions, acting on an ancient maxim of Germanic law, they divided it equally among their sons; and the sons themselves, in the order of things, effected similar partitions among *their* heirs: thus prodigiously increasing the number of territorial lords; for we must bear in mind that the individual who succeeded to the smallest portion of domain, succeeded also to all the rights attached to that domain. He sat in the provincial diets, and exercised all the feudal privileges of his caste. Nor was this custom confined to the inferior princes and nobles: it was adopted by the most powerful of the reigning houses. The first example on record appears to have been the division of the ducal sovereignty of Bavaria in 1255. On the death of Otho, at once duke and count palatine—we have before shown that both were united in the same prince—one of his sons, Ludowig the Stern, took the palatine and most of Upper Bavaria; the other, Henry, the rest or Lower Bavaria. In some cases, however, the partition was not entire: the revenues, indeed, and domains were equally apportioned; but the government of the principality was exercised by all conjointly. This we know to have been the case on the death of Albert II., margrave of Brandenburg.

In time, however, the sovereign houses themselves took the alarm, and agreed that principalities should no longer be divided, whatever appanage might be awarded to the younger sons. Still the good was to a certain extent effected; the great duchies and principalities were considerably lessened in magnitude, and were no longer dangerous to the rest. In all cases, this policy of partition had been approved by the emperors; and though it was soon disused in reference to the greater states, it continued to flourish among the secondary and still inferior houses. It inevitably reduced the greatest families to insignificance; for insignificant and powerless every one became, whose members by interminable subdivision were thus reduced to poverty. Had the agnates of each family combined in aid of individual interests, they would still have been numerically strong; but the separate views and the passions of human nature, rendered such combination impossible—and well for Germany that it was so.— But in tracing the progress of territorial usurpation, we have omitted to mention one important fact, which facilitated the success of the princes more than the anarchy of the times or the feebleness of the emperors:—on the dismemberment of the duchies, the domains which those princes acquired were held by the feudal tenure, subject to the usual obligations towards the empire and its head; but many of them had also patrimonial lands, over which their influence was not circumscribed by law or custom. Their object was eventually to place the two descriptions of land on the same footing. In fact, a few generations, perhaps even a few years, in such times of anarchy, sufficed utterly to confound the distinction between feudal and patrimonial possessions. Of the unbounded power which was usurped over all, we need no other proof than the fact, that when there was a family in danger of extinction, females were allowed to inherit; a custom derived from France and Italy, and foreign to Germanic jurisprudence. We know that the palatinate



of the Rhine passed successively by marriage into the house of Saxony and into that of Wittelsbach.\*

III. The condition of the *nobles* immediately inferior to the princes no less deserves attention. On the extinction of the great duchies of Swabia and Franconia, the nobles of those duchies who had hitherto been vassals of the house of Hohenstauffen became allodial proprietors, and succeeded to a territorial jurisdiction within their respective domains. The revolution was equally favourable to the officers of the duchies no less than to the vassals :—

“ They could never, indeed, obtain admission into a general diet, or the recognition of their existence as an independent body ; but their numbers, their possessions, their valour, made amends for the disappointment, and rendered their support, whether to emperor or electors, a matter of no trifling importance : into whatever scale they threw their arms, it was sure to preponderate. They chiefly resided in Franconia, the palatine, and Swabia, the local administration of which, being divided into cantons, remained in their own hands. We may add that these nobles imitated the example of the towns by confederating, whenever the privileges of their order were at stake, or even when any individual member was liable to injury by the crown, the princes, or the municipal corporations. Their head, in a certain district, was denominated the burgrave, just as the head of a municipal town was the burgomaster.”†

Had the vassals of other states, who formerly held of the crown, and were now become proprietors, imitated the example of those who had held from the house of Hohenstauffen, the territorial despotism of the new princes would never have been established. But the ascendancy of these princes in Bavaria, Austria, Saxony, Brandenburg, Misnia, and other provinces, was the grave of freedom to the vast body of nobles. Hence those of Franconia and Swabia had reason to applaud the spirit of their forefathers. Uninfluenced by fear of

\* Chronicon Augustinense, A. D. 1251. Hacherlins, Reichsgeschichte, ii. passim. Schwabisch, cap. 20. Putter, Historical Development, vol. i. book 2. chap. ii. Pfeffel, Abrégé Chronologique, tom. i. p. 401, &c. Schmidt, Histoire des Allemands, tom. iv. p. 64, &c.

† Europe during the Middle Ages, vol. ii. p. 111.

revenge from local superiors, they were generally ready to espouse the cause of the crown, which has, in all ages, been a barrier against aristocratic tyranny. Sensible of the advantages resulting from their support, it watched, with jealous care, over their interests as a body. Through its influence in after times, and from their own union, they were defended from the blows aimed at their privileges by the electors, by the duke of Wurtemberg, by the margraves of Anspach and Bareith; the heads of the Germanic confederation. There were bishops, too, with sovereign jurisdiction; not in these provinces only, but in most of the states, and they were not friendly to the progress of noble liberty.\*

IV. Equally interesting is the progress of the *Germanic municipalities*, the existence of which we have noticed from their origin under Henry the Fowler to the extinction of the Franconian dynasty. While the electors and the princes not electors were extending and consolidating their power under the shade of anarchy, the cities were not idle: —

“ Originally, in each city there was a wide distinction in the condition of the inhabitants. The nobles were those to defend the walls, the free citizens to assist them, and the slaves to supply the wants of both. By the two first classes all the offices of magistracy were filled, even after the enfranchisement of the last by Henry V. But as the last class was by far the most numerous; as their establishment into corporations, subject to their heads, gave them organisation, union, and strength; they began to complain of the wall of separation between them. That wall was demolished, not, indeed, at once, but by degrees; the burgesses gained privilege after privilege, access to the highest municipal dignities, until marriages between their daughters and the nobles were no longer stigmatised as ill-assorted or unequal. The number of imperial cities, — of those which, in accordance with imperial charters, were governed either by a lieutenant of the emperor, or by their own chief magistrate, — was greatly augmented after the death of Conradin; those in the two escheated duchies of

\* The same authorities, with the addition of Schannat, *Corpus Juris Publici*, passim.

Franconia and Swabia lost no time in securing their exemption from feudal jurisdiction. The next step in the progress of these imperial cities was *confederation*, which was formed, not only for the protection of each other's rights against either feudal or imperial encroachments, but for the attainment of other privileges, which they considered necessary to their prosperity. The league of the Rhine, which was inspired by William of Holland, appears to have been the first; it was soon followed by that of the Hanse towns. The latter confederation, which ultimately consisted of above fourscore cities, the most flourishing in Germany, had no other object beyond the enjoyment of a commercial monopoly — of their own advantage, to the prejudice of all Europe. Of this confederation, or copartnership, Lubeck set the example before the middle of the thirteenth century: her first allies were the towns on the Baltic, then infested by pirates; and to trade without fear of these pirates was the chief motive to the association. So rapidly did the example succeed, that on the death of Richard of Cornwall, all the cities between the Rhine and the Vistula were thus connected. The association had four chief emporia, — London, Bruges, Novogorod, and Bergen; and the direction of its affairs was intrusted to four great cities, Lubeck, Cologne, Dantzic, and Brunswick. The consequence was, not only a degree of commercial glory unrivalled in the annals of the world, but a height of power which no commercial emporium, not even Tyre, ever reached. The Hanse towns were able, on any emergency, not only to equip a considerable number of ships, but to hire mercenaries, who, added to their own troops, constituted a formidable army. They were powerful enough to place their royal allies — and their alliance might well be sought by kings — on the thrones of Sweden and Denmark.”\*

But the prosperity at which we have glanced was, though rapid, often retarded by obstacles, nor did it attain the elevation just described until the fourteenth century. Originally four of the cities were imperial; the greater number were called into existence by some temporal or ecclesiastical prince, and continued long dependent on him; a dependence which circumstances only could loosen. It was not, for instance, without many struggles that they procured an exemption from sending their military force to fight the battles of their

\* Europe during the Middle Ages, vol. ii. p. 109.

superior. In 1244, the burgesses of Mentz compelled their archbishop to agree that they should not serve him in the field contrary to their own wishes. By degrees many of these communities not merely refused to undertake any war for their superior's sake, but openly struck off his authority, expelled his deputies, and elected magistrates of their own. Even in the imperial cities which were situated on the domains of the crown, and during the glory of the Swabian dynasty, one magistrate only, the advocatus or bailli, was nominated by the crown; the rest were chosen by the people; and without their concurrence he could undertake nothing of moment. In the other cities, those submitted to the bishops appear first to have won their enfranchisement. Gradually they withheld all the feudal obligations, and annihilated all the vassalitic rights to which they had been subject. In vain did the ecclesiastics apply to Frederic II. for the suppression of all the magistracies created by the people; that emperor knew his own interests too well to transform his best friends into enemies. In many cases, however, perhaps even in a majority, these municipalities, whether subject to temporal or ecclesiastical princes, procured their exemption from feudal obligations by purchase rather than by open force. Innumerable are the charters in the archives of the German cities, placing this fact beyond dispute. The increasing dignity of these places, and the encouragement they held out to military adventurers, naturally allured the more indignant rural nobles within the walls. The members thus admitted knew that the confraternity contained names as noble as their own; and the prospect of civic dignities, those which regarded the administration of the law and the police, was always a powerful inducement. Others, again, instead of entering the municipality, were contented with obtaining the privileges of citizenship, still remaining on their former lands, and connected with their former lords. But this custom of the noble vassals of princes, dukes, or counts, so eagerly claiming

the privileges in question, would have been fatal to those magnates, had not authority intervened to limit it. The men thus received as members of the municipalities contended that they were no longer subject to the jurisdiction of their lords ; and if the latter chose to enforce it, the former speedily summoned the aid of their brethren. If one single member was in peril, or insulted, it was the duty of the rest to fly to his assistance ; and formidable bands might often be seen issuing from the gates to resist some local baron. On the other hand, these *falburgers*, or external burgesses, were bound to lend their service to the municipality whenever it was at war with another power. In both respects, this custom was hostile to the rights of the territorial princes and barons, who prevailed on Frederic II. to issue a decree that their vassals should not be received into the cities ; and that those who were already *falburgers* should be expelled from them. But in the latter case, Frederic had not the power, probably not the wish, to enforce the mandate ; in the former, he could not extirpate, though he doubtless circumscribed, the abuse. A more effectual check, however, was found in the territorial lords themselves, who were compelled to combine for the maintenance of their rights, who frequently defeated their municipal enemies, intercepted their merchandise, and laid waste their domains to the very gates of the city. Yet, on the whole, the progress of events was exceedingly favourable to the corporations. If the nobles could combine, so could they ; and leagues were formed capable of bidding defiance not merely to an elector, but to the whole empire. Thus, in 1256, about seventy cities, great and small, entered into a league to resist the newly enfranchised nobles of Franconia and Swabia, who were so many banditti, and whose attacks were peculiarly directed against the carriers of merchandise. As, in a degree almost equal, the rural churches suffered, the archbishops, bishops, and abbots were induced to join the confederation. After the death of Richard king of the Romans, another

was formed, for supporting the electors in the choice of an emperor. — There were other confederations; but the Hanseatic league could scarcely be said to exist during the period under consideration.\*

V. Descending in the social chain we come to the cultivators of the ground, *the serfs or peasantry*, whose condition, though sufficiently onerous, was yet considerably ameliorated. At the close of the last period we had occasion to remark, that servitude, in its more odious acceptation, was beginning to disappear; that there was a progressive elevation of the class, however split into distinctions; that the freedmen were rising into ingenui, the less degraded into freedmen, and the lowest into a political existence. Now, we perceive that corporeal servitude had ceased throughout a great part of the empire. This was, doubtless, owing to a variety of causes, of which many are apt to elude our observation. Assuredly one of these was not the increased humanity of the lords: the German mind has not been favourable to abstract notions of right, whenever that right has opposed aristocratic preponderancy. In the view of a German noble, liberty means no more than an emancipation from the despotism of the territorial princes; in that of citizen, exemption from the jurisdiction of emperor or prince; in that of a prince, perfect independence of the emperor. The grades of society below the rank of freemen were not thought worth the trouble of legislation; or if their condition was noticed, it was only to secure their continued dependence on their superiors. But human circumstances are more powerful than conventional forms, or the pride of man. From causes which we before enumerated, policy and interest demanded that the relation of the serfs should

\* Olenschlager, *Urkundenbuch zur Goldenen Bulle (variis numeris)*. Schannat, *Codex Prob. Wormtiæ*, No. 120. 71, &c. Putter, *Constitution of Germany*, vol. i. book 3. chap. i. Pfeffel, *Abrégé Chronologique*, tom. i. p. 405. Schmidt, *Histoire des Allemands*, tom. iv. p. 95, &c. Heineccius *Elementa Juris Germanici*, lib. i. tit. 5 (*De Jure Municipum*). Above all, Sartorius Freybergn von Wattershausen *Urkundliche Geschichte des Ursprunges der Deutschen Hanse*, vol. i. Introduction.



undergo considerable modification ; that they should be placed in situations where their industry should be most productive to their masters. But the same industry benefited themselves : it could not be provoked without some allurements ; for the galley-slave will drop the oar when his taskmaster is not present. The encouragement thus afforded completely answered its purpose ; and as the serfs gained property of their own, they became half enfranchised, not by conventional formalities, but by tacit consent, and by the influence of custom. The inevitable effect of this system was the rapid increase of the population ; and this increase, in its turn, tended to the support and prosperity of the whole order. To such consideration indeed did they arrive, that they were sometimes furnished with arms to defend the cause of their master. This innovation tended more than all other causes to the enfranchisement of the rural population ; for whoever is taught to use, and allowed to possess, weapons, will soon make himself respected. The class thus favoured was certainly not that of the mere cultivators of the ground ; but of the mechanics, the tradesmen, the manufacturers, and the chief villeins, who, holding land on the condition of a certain return in produce as rental, were little below free tenants. The agricultural districts had many gradations of society ; and in respect to those over whom the generic appellation was the same, much would depend on the disposition of the proprietor, — on the nature of the obligations which he introduced into the verbal contract between him and his vassal. Nor must it be forgotten, that, though the great aristocratic body, whether ecclesiastic or secular, were, *as a body*, indifferent to the welfare of their dependants, though they preferred slaves to tenants half free, or peasants, or liberti, the benign influence of Christianity on individuals was not wholly without effect. The doctrine, that by nature all men are equal, and equally entitled to the expectations of another world ; that the only distinction in a future state will be between those who have exercised, and those who have neglected, works of mercy and

other social duties ; could not fail to influence the hearts of some, and dispose them to ameliorate the evils of their dependants. Of this feeling the clergy would be the most susceptible ; and we accordingly find that their vassals were, generally, in a superior state. Nor was the sentiment confined to the clergy alone ; if it was not uttered, it was sanctioned, by some temporal princes. Thus the *Jus Provinciale Suevicum*, in a spirit which would do honour to the most enlightened times, asserts that there is nothing in Scripture to sanction slavery ; and prays God to pardon the man who first imposed it on his fellows. But with all willingness to allow its due weight to this circumstance, we cannot shut our eyes to the fact, that enfranchisement, which, after all, was but partial, since even at the present day it is not complete, was the result rather of policy than of liberality, rather of interest than of an abstract sense of justice. It was, indeed, so obviously the interest of the domanial proprietor to make his dependants industrious, and to stimulate their exertions by a participation in the profits, that we may feel surprised only that the system was no sooner adopted. In this, as in all other cases, the philosopher can easily discover that there is a reciprocal re-action between services and benefits ; that philanthropy is true policy ; that humanity is true wisdom : nor can the Christian observer fail to admire the eternal and indissoluble connection which God's providence has established between the duties and the enjoyments, the obligations and the interests of man. That some of the German princes were alive to the means by which agriculture may be best improved, is evident from many instances. Thus, Albert the Boar brought a considerable number of serfs from Holland to colonise and drain the marshes of Brandenburg ; a service in which the Dutch were always more experienced than any other people : and the church always showed considerable indulgence to the men on whom it depended for its tithes. We must not, however, omit to state, that in certain provinces there was no amelioration whatever in

the condition of the serfs. Thus, in Mecklenburg, Pomerania, and Lusatia, that condition was one of exceeding rigour. This was owing to the prevalence of Slavonic habits in those provinces; a race which has always been distinguished for its oppression of dependants.\*

In regard to the great object of the institutions of the age, military service, we have little to add to what we have said on preceding occasions. Domains were estimated by the number of men at arms they were capable of furnishing. These were, in the language of feudal law, styled *homines*; they were the men of some superior; and to become the *man* of any one implied the receiving a fief from him on the usual obligations. It was a generally received rule, that no one could become the *man* of an equal without degrading his shield. In favour of ecclesiastics, however, there was an exception, for princes, nay, even the emperors, might hold of a bishop; but no bishop could, without dishonour, hold of any one beneath the dignity of emperor. Yet Henry the Lion proceeded to make the bishops of the sees he had founded do homage to him on receiving their temporalities. The attempt produced a considerable sensation; nor could men conceive how any bishop could become the vassal of a duke. The new prelates, in some trouble at the precipitancy with which they had degraded their order, consulted the chapter of Bremen: and the chapter replied that the innovation was highly censurable; that hitherto bishops had been, not the vassals, but the superiors of dukes and princes. But Henry was little moved by these absurd pretensions; and so long as he held the reins of government he insisted that no temporalities should be delivered where homage had not been previously performed. The obligations between superior and vassal are detailed with

\* Boehmen, Exercitationes in Pandectas, tom. i. ex. 19. De Libertate Imperfecta Rusticorum. Jus Provinciale Suevicum, cap. 52. Helmoldus, Chronicon Slavorum, lib. i. cap. 89. Ditmar Merseburgensis, Historia, p. 419. Albertus Crantzius, Metropol. lib. vi. cap. 39. Heineccius, Elementa Juris Germanici, lib. i. tit. 1. Schmidt, Histoire des Allemands, tom. iv. p. 103, &c.

sufficient minuteness in the feudal codes of the period. But, besides the great military obligations, in which all feudal institutions agree, attempts were made to define the respect due from the vassal to his lord, in cases that, to us, must appear amusing. In the *Jus Feudale Alamannicum*, for instance, it is gravely agitated whether a vassal may sneeze, blow his nose, cough, or spit in the presence of his superior. We have already observed, that, during the period under consideration, burgesses were not merely permitted, but encouraged, to bear arms. But, even before their enfranchisement, they did not willingly fight the battles of their territorial lord; and as the nobles themselves sought for every pretext to escape the onerous obligation, no emperor or prince could undertake a long or an important campaign without mercenaries. But where was the money to pay them? It must of necessity be raised from the vassals, whether rural or urban; but in all cases the demand was met by open murmuring or smothered discontent. Generally, there can be no doubt, that demand was exorbitant. Besides, in the more rigid definition of a vassal's duty, it was contended that, as he was not compelled to serve in person beyond the frontiers of the state, so neither was he bound to contribute towards the maintenance of wars which were waged beyond them. The nobles soon spurned the shackles that would have been imposed upon them; and the cities were not slow in profiting by the example. The struggle was attended for a time with various success, according to the strength of the respective parties; but in the end, as we have already observed, the cities threw off every sign of vassalage, and became the enemies of the men whose dependants they had been. Hence, the only class of men which remained, that on which all the burdens of society ultimately rest, were the rural population, — the freedmen, the half-tenants, the peasantry located in the villages and plains.\*

The progress of the *territorial jurisdiction* in Ger-

\* *Sachsenspiegel*, buch i. art. 3. Helmoldus, *Chronicon Slavorum*, lib. i. cap. 70. *Olenschlager, Urkundenbuch zur Guldenen Bulle*, No. 24.

many, is one of the most remarkable features of its history. How much of the supreme jurisdiction was wrested from the emperors ; how their frequent decrease enabled the princes, with some show of reason, to arrogate to themselves the cognizance of causes within their respective domains ; how the royal assizes gradually declined in proportion as the imperial domains were circumscribed by grant or usurpation ; how the abolition of the provincial palatinian authority left these princes undisturbed chiefs of the tribunals within their territorial boundaries ; and how, of all his ancient authority in this respect, the emperor retained only a court judge, to take cognizance of certain defined cases in the first instance, have already been shown in the present and preceding chapters. We must, however, add that the emperor himself could decide, not only the cases brought before his judge, but some others which were considered too high for the competency of that functionary. These chiefly regarded the preservation of the public peace, where the offenders were of rank ; but the emperor, while hearing and deciding such cases, was compelled to have with him seven or eight assessors of the same rank as the accused ; nor without their sanction could he pronounce any sentence ; nor was any one bound to appear before his tribunal without three consecutive citations. And though the proper tribunal of princes was the general diet, yet we find several instances where the emperor, in conjunction with seven princely assessors, exercised the judicial office in regard even to the reigning dukes. It may, however, be concluded that this mode of proceeding was illegal ; for not only did the emperors themselves, in several instruments, acknowledge that unless with the concurrence of a diet he had no jurisdiction over them, but when Henry, duke of Bavaria and Saxony, was cited to appear before the emperor and a

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18, &c. *Jus Feudale Alamannicum*, cap. 126. *Godenus, Diplomata* tom. i. No. 211., tom. iii. No. 326. *Schmidt, Histoire des Allemands*, tom. iv. p. 84, &c.

few princes, he denied the competency of the court : and though that court placed him under the ban of the empire, we must certainly regard the whole proceeding as invalid. Conrad took advantage of the jealousy felt by other princes to crush his dangerous rival ; whether by legal or violent means gave him little concern. Nor must we forget that appeals, in cases equally defined, were open to the imperial tribunal. That there were still many judicial functions to fulfil by the emperors, and that, in general, they were indifferent to the duty, appears from the promise extorted from one of them—that in future he would preside four times every month in the tribunal of his court, wherever that court happened to be. In such cases his deputy, the court judge, could not preside for him ; for, as we have already observed, the dukes insisted that within their respective jurisdictions no imperial tribunal should be held, unless presided over by him in person ; and in the imperial cities, no less than the territories of some bishops, he could not even exercise this privilege longer than a week before and after the assembling of a general diet in that particular city. Before the time of the Swabian emperors, it had been a universally received principle, that wherever the monarch happened to be, his presence closed the local tribunals, while now, his jurisdiction was more bounded than that of any prince in the empire. This transfer of the judicial power from the emperor to the princes was attended with two evils—the one necessary and invariable, the other accidental. In the first place, the prince might be tyrannical or corrupt, without much fear of punishment ; virtually he was subject to no responsibility ; and we know that the best men, to say nothing of the lawless, will transgress the bounds of their authority. But even if the reigning prince were disposed to enforce the laws against the everlasting turbulence, the bloody strife, of the nobles, where was the power by which he was to affect the formidable territorial nobles, who having once been vassals of the emperor, were now transferred into allodial proprietors, and



who scorned submission to the mandates of the dukes and margraves? And there were many nobles whose possessions, lying beyond the range of the electoral or even princely domination, were as much sovereigns as any monarch in Europe. These men recognised no authority beyond the general diets; and even from them little good was to be expected. Violence took the place of order; arms were used both to commit injustice and to revenge it; one crime produced retaliation, and retaliation, which in reality was seldom, and, in the excited feelings of men, never, confined to the due measure, gave birth to new aggressions, until the original subject of offence was lost under a mass of injuries. Private wars, which were regarded as justifiable in theory, were thus sanctioned by practice, until, in certain districts, there was no such thing as social security. The condition of society, indeed, was so horrible, that states were obliged to confederate—to form a league for mutual aid in repressing domestic disturbances. Where two states were at variance, the rest were constituted arbiters; and if the award were disregarded, an armed force from the different states of the confederation was ordered to enforce it. This conventional tribunal must, one would suppose, have fallen with the cessation of the circumstances which created it; but though it was merely intended to meet the anarchy of the period following the death of Frederic II., it continued, as we shall see hereafter, to modern times. The interruption to the ordinary course of justice, involved in the irresponsibility of so many princes and nobles, produced another innovation well worthy of our attention, since it casts so clear a light on the barbarism of the times,—we mean that of *hostages*.

“ The word *hostage* seems, for want of a more precise term, to designate two usages essentially distinct from each other. The first usage was founded on the right of reprisals; it consisted in arresting, whenever there were the right and the power to arrest, any countrymen, or subjects of the adverse party, and of retaining them in prison until satisfaction was

received. Hence, by this whimsical species of jurisprudence, a Suabian,—a citizen of Ulm, for instance,—who had an action against a citizen of Liege, did not give himself the trouble to prosecute the cause before the tribunals of Liege; he summarily laid his hands on the first citizen he could find, and led him away captive to Ulm: in Ulm the cause was tried; nor was the hostage, thus involuntarily made, released until the sentence was executed. Both history and the public archives abound with several singular forms of process; and in Lehmann we find, among other instances of the kind, letters patent obtained by the citizens of Spire, to testify that they were not subjects of their bishop, and that they neither could nor ought to be seized as hostages in causes concerning that prince and those who really were his subjects. Another kind of hostages, which we may term *voluntary*, and of whom traces may yet be found in Holstein, regarded the fulfilment of precise contracts, promises, or engagements. For this purpose, the contract itself often stipulated that if the party failed in his promise, he should be bound to surrender himself as a hostage in a certain city; that he should repair thither with a certain number of horses and attendants; and that he should reside in a certain hostel, at his own expense, until he was willing or able to fulfil his engagement. What strikes us as more singular is, that the man who in every thing else would have derided his own promises, never failed to surrender himself as a hostage; nor would he, on any consideration, have quitted the place designed him for a prison."

Much as the Swabian emperors were occupied in the affairs of Italy, in the crusades, and other chimerical projects, we must not be so unjust to their memory as to leave on the reader's mind an impression that they were wholly negligent of their imperial duties. In regard to private war, for instance, they, as well as their predecessors of the Franconian and Saxon dynasties, endeavoured to extirpate the abuse. Thus, Frederic I. renewed, against all disturbances of the public peace, the ancient penalty of the *harnessar*—by which any one convicted was compelled to carry, in public, some badge of ignominy for a few hours or miles; generally in the very place where his crime had been committed. Sometimes the badge was a saddle, sometimes a dog. Thus, in 1156, the count palatine, with eleven other counts and many other nobles, were condemned to the

same punishment : he and they were compelled to carry, the distance of two leagues, in presence of the assembled princes and nobles, a dog on their shoulders ; but, through consideration for his age and character, the archbishop of Mentz, who was equally implicated, escaped the ignominy of the exposure.\* Unfortunately, Frederic did not persevere in this salutary severity ; for so engrossed was he by other objects, that the internal tranquillity was perpetually disturbed. In a subsequent instrument, he himself so far recognises duels, as to decree that no man should make war on another without a previous warning and defiance of three days. To circumscribe, however, the distractions that prevailed on every side, he published another decree, in which all incendiaries were placed under the ban of the empire ; and the power of imposing that ban he delegated to the territorial princes. Thus, if, in conformity with ancient custom, blood might be shed with impunity ; as stone houses were yet uncommon, incendiarism, which might prove fatal to a whole district, was a capital offence. These provisions were perfectly in accordance with the spirit of ancient Germanic jurisprudence ; which, while it was satisfied with a pecuniary composition for homicide, exacted the last penalty for wilful burning.† The same punishment was decreed against all who laid waste orchards and vineyards ; but not against the destroyers of corn : because, in the latter case, the damage could be repaired in a few months ; in the former, not for years. — Nor did the second Frederic, in the earlier part of his reign, act unworthily of his station as the successor of the first. In several diets he renewed and even augmented the penalties already in force against “ public enemies.” He decreed that every plaintiff should prosecute his cause before the judge of the accused ; but, with a clause which virtually confirmed the abuse, he allowed private defiance in cases where justice could not be obtained. This was to constitute the plaintiff his own arbiter as to

\* This punishment, however, was confined to France and Swabia.

† See the first chapter of this volume.

what was or was not the due measure of justice. The same ordinance, indeed, commanded all judges to receive and to prosecute charges, from whatever quarter they might come; and all were farther directed to decide equitably, and according to law and custom. But when the heaviest denunciations had been insufficient, little good could be expected from a mere verbal mandate, issued, too, by one whose authority was so rapidly declining.\*

Under Frederic II., another decree was passed, which gives us the most unfavourable impression of the times. It establishes penalties against the son who made war on his father, who wasted that father's lands, or put him in prison. But what, indeed, could be hoped in an age when all restraint was removed? The chronicle of bishop Conrad informs us, that after the excommunication of Frederic by Gregory IX. the bandits rejoiced; that ploughshares were turned into swords, and pruning-hooks into lances; that every body carried flint and steel about him for the purpose of setting fire to the property of his enemy. Under William of Holland, and Richard of Cornwall, the public safety was not likely to be much regarded. In the expressive language of the Chronicle of Thuringia, every body wished to domineer over his followers. During this melancholy period, fortresses arose on every side,—some for the habitation of bandits, others for resistance; the former, however, in greater proportion. And, as in former times, though undoubtedly in a degree more fatal, the fortresses which had been erected for the defence of the country were converted to its desolation. An anecdote will illustrate the fearful condition of society at this period, better than the most laboured description. A

\* Pfeffel, *Abrégé Chronologique*, tom. i. p. 415, &c. Olenschlager, *Urkundenbuch zur Guldenen Bulle*, p. 126, &c. *Literæ Pacis Frederici I.* (apud eundem, p. 127.). Otho Frisingensis, *De Rebus Gestis Frederici I.*, necnon Radevicus, *Continuatio ejusdem* (sub annis). Senkenburg, *Reichsabschiede*, th. i. p. 20. and 21. Conradus, *Chronicon*, p. 574. For the meaning of *harnessar*, see Ducange, *Glossarium ad Scriptores*, voce *Harniscara*; and Schilter, *Glossarium Teutonicum*, ad voc. Schmidt, *Histoire des Allemands*, tom. iv. p. 108, &c.

gentleman named Schott,—whether a Franconian or Belgian is not very clear,—began to build the castle of Schottnau, on the domain of the Banz convent, with the purpose of making it the centre of his predatory excursions. Though he was excommunicated, spiritual censures were disregarded; and though he did not live to finish the edifice, it was continued by his son Heinric, the heir of his profession and projects. The duke of the province, the advocate or protector of the monastery, proceeded to build another on a mountain near at hand,—less for the security of the monastery itself, than for sharing in the plunder of Heinric, whether that plunder were derived from the possessions of the monks or from other quarters. As the new fortress of the duke would effectually overcome the establishment, Otho bishop of Bamberg, who had conferred the domain on the community, had excommunicated by anticipation any one who should presume to erect a castle on that hill. The abbot, in alarm, remonstrated with the duke, acquainting him with the penalty he was incurring; but the latter, who treated church censures as lightly as Schott, replied, that such a castle was necessary for the discharge of his duties as advocate; and that, if he did not erect one, the diocesan would, and with more injury to the community. This fact proves the truth of the complaints so common in the monastic chronicles, epistles, and synods, of the period—that, under the pretext of protecting, the advocates uniformly oppressed, the churches and convents. Hence the poor abbot of Banz was between two fires, as he himself expressed it,—“what escaped the wolves of Schottnau, fell to those of the duke; whatever the locusts spared, became the prey of the caterpillars.” At length, however, the two bishops of Bamberg and Wurtzberg were induced to demolish the two castles. The construction of both proves how little imperial decrees, any more than ecclesiastical anathemas, affected the nobles; for, some time before (in 1220), Frederic II. had promulgated severe penalties against all who, whether ad-

vocates or others, should, on any pretext, build fortresses on the domain of any church or community; and had ordered the demolition of such as were already standing. This is a remarkable illustration of a fact which meets us in almost every page,—that no estimate whatever is to be formed from the imperial edicts, concerning the administration of law, though such edicts afford the most incontestible evidence of the state of society. The number of castellated ruins which now frown from the summits of the German mountains, and the construction of which may be satisfactorily referred to the former half of the thirteenth century, prove how little the decrees of Frederic were regarded.—Nor were the towns themselves without such fortresses. Ostensibly to guard against the turbulence of the inhabitants, but really to plunder them with impunity, the princes and counts fortified their own houses within the walls. Nothing, at this day, can seem more extraordinary than the eagerness with which the bishops, for instance, erected such castles. But though many of them were wolves instead of shepherds, we have evidence enough to show that the flocks were often to be feared. In fact, no authority, temporal or spiritual, moral or religious, was respected, unless it had the means necessary to enforce respect. It may be said, that whatever were the disorders of the times, they must have been chiefly confined to princes and the chief nobles, since none but they could be powerful or rich enough to erect fortresses. Such an inference, however specious, is not just; for simple knights often united their means for the same purpose, and rendered the structure their common abode: they became copartners in the honourable profession of bandits. But in the everlasting vicissitude of human things, good is often educed from evil. These very men, whose chief object was to plunder, were often useful as escorts to merchants and travellers. The highways were so notoriously insecure, that nobody thought of undertaking a journey, or of transmitting valuable commodities, without such an escort; and these half-nobles, half-bandits,



were the only men capable of furnishing one. The merchant could not bring a guard from his own city, since it was sure to be stripped on entering the domains of another power: in such times, no territorial prince would willingly allow armed bands to pass through his jurisdiction; but the bandit confraternities cared not for the permission, and for a stipulated reward they never failed to discharge the trust with fidelity. No proverb is truer than that some portion of honour is to be found even among thieves. But if good spring from evil, the converse of the proposition is more universally true. Frequently the escort encroached on the domain of another band; and as the latter band was, in general, willing enough to continue its protection on the same terms of advantage, a quarrel was sure to follow for the right of escort; and if the former band were worsted, the merchandise and travellers were equally at the mercy of the victors. But, in most instances, these were satisfied with obtaining their reputed right; since escorts, as much as any other source of profit, replenished their coffers, and honour was necessary for their employment.\*

Such a state of society as that exhibited in the preceding pages could scarcely be expected from the institutions of chivalry, which were now engrafted on the great trunk of feudality. That it was the peculiar duty of a knight to protect the people—to succour the innocent and oppressed—may be true in theory; and in practice there were, doubtless, some who proved themselves true to their vocation: but if the institution itself be divested of the romance with which we invest it, it will probably be found to have produced as much evil as good. This, at least, was the case in Germany, where the enthusiastic beau ideal of knighthood

\* Senkenburg, *Reichsabschiede*, tom. i. p. 30. *Ins. Provinciale Alamannicum*, cap. 189, &c. (apud Schilterum, *Thesaurus Antiquitatum Teutonicarum*, tom. ii. p. 113.). *Chronicon Thuringicum*, 127<sup>r</sup>—1299. (apud Menckenium, *Scriptores Rerum Germanicarum*, tom. iii.). "Munimenta Hessiæ," tom. i. p. 408. *Gudenus, Diplomata*, tom. i. p. 471.580. 674, &c. *Speculum Suevicum* (variis capitulis, præsertim cap. 107.). Schmidt, *Histoire des Allemands*, tom. iv.

was little understood. The imagination of a German is less subject to such impulses; though, to do him justice, his heart is generous, and his word more to be trusted than those of the Franks or Italians, — the very exemplars of chivalric fidelity. At his initiation, indeed, the German knight, though he did not formally devote himself to the cause of beauty, or of helpless innocence, promised not to injure the widow or the orphan; not to plunder the feeble, or to aggravate the evils of the oppressed: but when removed from the eye of the world, he seldom, we fear, remembered his obligation. Nor was he more attentive to the religious sanctions which he had self-imposed, or even to the ordinary decencies of life. “The order of chivalry,” says Peter of Blois, “consists in following no order or rule whatever. Even of the knights who have most reputation — who are the most brave and true — many plunge into every species of debauchery; swear without the slightest remorse; have no fear of God, but abuse his servants, and plunder his churches. Now, though new-made knights receive their arms from the altar, in token that they receive them for the service of the church, for the honour of the priesthood, to protect the poor, to punish evil doers, and to fight for the liberty of one’s country, yet they do the contrary of all this: no sooner do they receive the baldric, than they turn their arms against the anointed of the Lord, and their fury against the patrimony of Jesus Christ; they pilage and lay waste the substance of the poor; and mercilessly torment the unfortunate, to satiate themselves with the barbarous pleasure of witnessing the sufferings of others.” The words of this writer might have been peculiarly applied to Germany: their truth is confirmed by the monuments extant of that period. To say nothing of tournaments, which were so frequent in the time of the Swabian emperors, and in which some knights were sure to be left dead on the field; homicide and violence, as we have already observed, were so common, that they excited little sensation.

The following extracts will give a faithful but melancholy picture of the age.

“ Engelbert archbishop of Cologne, a man noble both by blood and in mind, and a great column of the church, on the seventh ides of November (1200), was slain by a certain kinsman of his, Frederic count of Isenberg, because he had been removed from the advocacy of a certain nunnery, which, instead of defending, he had destroyed; wherefore, Frederic, fleeing, was excommunicated in all quarters by the authority of my lord cardinal Conrad; and by the king's authority he was diligently sought on every side, a great reward being offered for his apprehension; and in about a year, returning from Rome in the disguise of a merchant, he was recognised by some inhabitants of Liege.”

The culprit was taken and broken on the wheel, to the great joy of the Liegers, who lustily chanted *Te Deum*, that they were thus enabled to avenge their archbishop.—The following account of the bishop of Utrecht is also a good picture of the times.

“ Heinric, being consecrated bishop, endeavoured, with pious solicitude, to refine all ecclesiastical usages; nor did he neglect to govern his temporal matters with equal probity. But he vehemently incurred the indignation and hate of the lords of Aemstel and Woerden, because, in a general chapter, Goswin, a kinsman of theirs, had been deposed from the same see. So, allying themselves with the count of Gelria, they laid waste the whole bishopric by their frequent incursions, which Heinric, however, manfully opposed with some of his domestics. After many depredations, both sides agreed that on a certain day there should be a pitched battle in the green meadows, and that it should then be seen which of the two deserved the crown of victory. Accordingly, they of Aemstel and Woerden being assembled, their vassals in every quarter advanced with great triumph towards the place of combat; and on the other hand, the bishop, having exhorted his followers to do their duty manfully, prepared to humble the arrogance of these lords. And when the day arrived for the trial of strength, the archbishop of Cologne, being at Utrecht, gave a precious ring to bishop Heinric, saying, in the presence of a great number of people, ‘ My son, be courageous and confident; for this very day, through the intercession of the holy confessor St. Martin, and through the virtue of this ring, thou shalt surely subdue the pride of thine adversaries, and obtain a renowned victory over them: in the mean time I will faithfully defend for thee

this city with its priests and canons, and will offer up a devout prayer to the Lord of Hosts for thy success.' And hearing these words, bishop Heinric, being comforted in the Lord, issued from the gates amidst the sound of warlike trumpets, accompanied by a band of comely warriors; and arriving on the field, he drew them up sagaciously in rank and file. While these things were passing at Utrecht, William king of the Romans, through a speedy messenger, learned that the bishop and the said lords had assembled a considerable army, to exercise forbidden war in the green meadows: wherefore in great haste he collected some ready knights and comely foot soldiers, and passed to Utrecht, to arrest this tumult, and effect peace on both sides; and the royal army entered the northern gate just as the bishop had left by the gate in the south. And the archbishop of Cologne, accompanied by the canons and priests, went about the city, looking into every corner, telling the porters to lock and fasten the gates, and bring the keys to him; for he knew not that the royal army had just entered, and was now within the walls. So the king, wishing to pursue the bishop's army, found no issue; and after waiting a short time seeing that nobody brought him the keys, he tried in great indignation to wrench the bars from the gates and to break the locks, that he might overtake the bishop's men, and prevent the fight. Hearing this, the archbishop of Cologne was much afflicted, believing that the city was taken by the king, and that he had been introduced through the carelessness of the porters; wherefore, accompanied by the parochial clergy and the canons, he went to the place, and recognising the king, thus spoke:—"Let your greatness listen to my brief words. It becomes a king to govern his people in tranquillity; to do right, equity, and justice on earth. Now, to speak plainly (saving your grace), I much fear lest with your armed bands you have obtained the city, and have ordered the locks to be broken, for this end,—that you may expel the inhabitants from their abodes, and by the introduction of others subject it to your power. If so,—which God forbid!—you presume to act against justice, utterly do you confound me, your chancellor, and much do you lessen the kingly honour. In conclusion, I exhort your benignity to restore me this city, and free the inhabitants from violence!' The king, having heard these words, thus spoke in the presence of the people:—"Venerable pastor and bishop! well does thy industry know that it indeed becomes a king to repress wars on every side, and to punish with a severe hand disturbers of the public peace. Thou knowest also how discreditable it must be to us, if our people were allowed to fight in the neighbourhood of our presence.

We have collected our armed followers and entered this city, to reconcile the bishop with his vassals.’\* ‘Imagine not that we bear any anger towards bishop Henry or to the city; to convince thee that we speak without guile, we restore thee this city, which we could easily keep, and we will cause proclamation to be made that our men repair to their hostels, lay down their arms, and pass the day in festivity!’ In the mean time my lord the bishop was waging a fierce war with his enemies; many he killed, more he put to flight; and having taken the lords of Aemstel and Woerden prisoners, he tied them with ropes, and led them at his right to Utrecht; and at vesper bell he entered the gates victorious, and was graciously received both by the king and the archbishop, at whose request he pardoned his captives and released them from their fetters.”†

In these days it was, indeed, necessary, that if a prelate would belong to the church triumphant, he must first serve in the church militant. Numerous are the instances in which no baron could show more valour than these doughty churchmen, who laid on their blows with such good will, as to prove that their hearts were in the work. Nor were private wars or open violence wanting even between those most closely joined by the ties of blood. Of brother against brother, the instances are numerous; and there are some of father against son, and son against father. We have already mentioned the decree which the second Frederic was compelled to promulgate against those who wasted the lands, or imprisoned the persons, of their fathers. The following will prove that aggressions were not confined to sons:—

“At this time (the thirteenth century) flourished Albert landgrave of Thuringia, a powerful and great man, whose wife was Margaret, daughter of the emperor Frederic. By her he had two sons, Frederic and Theodoric, who by some is called Titzman. And he had a brother named Heinric ‡, who reigned in Misnia and Lusatia. And when the latter was on

\* We abridge this reply.

† Beker, *Chronicon Ultrajectinum* (sub annis). Petrus Blesensis, *Epistola* 94. *Chronicon Urspergense*, p. 326, &c. *Chronicon Montis Sereni* (apud Menckensium, *Scriptores Rerum Germanicum*, tom. ii.). *Magnum Chronicon Belgicum*, p. 272. (apud Struvium, *Rerum Germ. Script.* tom. iii.). *Chronicon Trevirense* (sub annis).

‡ There appears to be some trifling errors as to *names* in this relation; but the circumstances are correct enough.

his death-bed, he sent for his two nephews, and, in the presence of many princes and nobles, resigned and gave to them, since he had no other heir, the government of his states: and his worldly affairs being settled, the pious prince slept in peace. But Albert, the father, hearing of this, was wroth with his sons, asserting that he was the lawful successor of his brother, and the true heir; and unless they surrendered these possessions, he would pursue them with fire and sword. But the two brothers despised the menace; for they were brave and true, and were much beloved by all the princes, nobles, and people of the land. Through this universal good will, and a brave body of followers, they had in many battles the advantage over their father Albert, with his ally, the margrave of Brandenburg, whom he had sent against them; but yet great damage was done to the villages and fields. Seeing that he was unable to contend with his sons, Albert, resolving to disinherit them, sold the sovereignty of Misnia and Lusatia to the emperor, and constituted his bastard son, Ludowig, heir of Thuringia."

We need not enter into the wars which followed for the possession of these domains.\*

Another anecdote illustrative of the social state of Germany must conclude the present subject. There was, we are told, a count of Holland, Florence by name, who, about the middle of the thirteenth century, obtained great celebrity by his deeds of arms. His fame reached the countess of Claremont, who at length longed to see him. Whether her motives were of the purest description — her husband was advanced in years — may be doubted; but, perhaps, she herself was unconscious that her heart, or, more correctly, her imagination, was engaged. Whether for good or evil, a lady will find some means of gratifying her curiosity. She persuaded the count her husband to proclaim a tournament, well knowing that Florence would be there to dispute the palm of victory with the veteran knights of Germany and France. Her expectation was verified — the count was present, and his feats of arms corresponded with his fame. During the tourney, the lady and her husband surveyed the scene from the summit

\* *Historia Landgravorum Thuringiæ*, cap. 72. Langius, *Chronicon Citizense*, p. 1191. (apud Struvium, *Germanicarum Scriptorum*, tom. i.).



of a tower; and she eagerly demanded which of the combatants was count Florence. The manner in which the question was put roused the jealousy of her husband, who, surveying her with a frown, replied in a surly tone, — “ Out of the fulness of the heart the mouth speaketh. Behold thy beloved prince is he whose banner is a red lion; but before evening thou shalt see him a corpse.” Knowing the revengeful disposition of her husband, she caused count Florence to be secretly warned of his danger. But her caution was vain: hastily putting on his armour, the count of Claremont assembled a few knights and men at arms, and led them out as if to join in the martial sports. In an unguarded moment they fell on him, and dealt him a mortal blow. In revenge, the count of Cleves, an intimate friend of count Florence, despatched the count of Claremont. The death of her husband had little effect on the lady; but that of count Florence affected her so much, that, had she not been prevented, she would have thrown herself from the top of the tower, and in a few days she died of grief.\*

\* *Magnum Chronicon Belgicum*, p. 249. The above tragedy is extracted by the chroniclers ex *Gestis Comitum Hollandiæ*. We neither vouch for nor deny its truth; but, whether true or false, it harmonises with the manners of the times.

## CHAP. IV.

THE HOUSES OF HAPSBURG, LUXEMBURG, AND BAVARIA.

1273—1437.

## SECTION I.

STATE OF THE COUNTRY. — REIGNS OF RODOLF I. — ADOLF — ALBERT I. — HEINRIC VII. — LUDOVIC V. — CHARLES IV. — WENCESLAS — SIGISMUND. — IMPERIAL AUTHORITY. — PRIVILEGES OF THE ELECTORS — OF THE TERRITORIAL PRINCES — OF THE NOBLES.

IN the sober age of reason, the crown of such a country as Germany, so far from being an object of desire, required no ordinary inducements to accept it. But mankind have yet to learn the distinction between utility and splendour. The mere words "Roman Empire," though allowed by all to involve a fiction, was still a magnificent fiction; and to it there were many willing to sacrifice the substantial enjoyments of life. The anarchy of the last twenty years had indisposed the nation to foreign candidates: the general feeling was for a native; and accordingly the great princes, especially the electors, began to covet the dignity. Among these electors, the first in rank and in power was Otho king of Bohemia, who ruled in addition over Austria, Styria, Carinthia, and Carniola. Yet the extent of his dominions rather injured than favoured his views, since it inspired the other princes with alarm. In Bavaria were two brothers, who had divided the duchy between them: the elder, Ludovic the Stern had Upper Bavaria, with the palatinate of the Rhine; the younger had Lower Bavaria: both, as might be expected from their position towards each other, were enemies. Brandenburg was in the possession of two local sovereigns,

and Saxony of three — all descendants of Albert the Boar. The electoral dignity was understood to descend in the order of primogeniture ; yet there are instances in which the younger brothers claimed a share in its exercise conjointly with the eldest. The other great provinces, Brunswick, Misnia, Hesse, and Lorraine, were under the government of men as powerful as the electors, if we except the king of Bohemia ; for the partition of the electorates inevitably reduced them to a level with the rest. Arles, or Burgundy, which had formerly acknowledged the superiority of the empire, was now much more dependent on France, and was evidently verging to an incorporation with that monarchy.—In 1273, the diet of election was assembled at Frankfort ; the chief candidates were Ottocar, and Alfonso of Castile, whom no arguments could persuade to desist from his pretensions. To the surprise of Europe, the suffrage fell on Rodolf count of Hapsburg ; a prince who, in an inferior station, had acquired much local celebrity, but who was wholly unknown, not merely to Europe, but to the empire. If Rodolf was descended from an ancient princely family, — among his ancestors was certainly Gontram the Rich, count of Alsace, and perhaps Etico duke of Alamannia or Swabia, who flourished three centuries before Gontram, — his territorial domains were far from considerable. These, which were chiefly scattered in Argau, Brisgau, and Alsace, had been divided among different members of the family, until Rodolf, by his valour, and still more by his policy, re-united them. But some of his early exploits will scarcely bear examination in these days, however they might be palliated by the circumstances of the times. He did not, indeed, like many other nobles, openly exercise the profession of bandit ; but, with his handful of followers, he made war with impunity on his obnoxious equals, whose lands and fortresses he certainly diminished for his own advantage. Among these were two of his uncles ; one of whom, Hartman count of Kyburg, in the view of finding a

protection against the encroachments of his nephew, changed his allodial domains into fiefs, for which he did homage to the bishop of Strasburg. In revenge, Rodolf took the part of the citizens against their bishop, defeated the latter, and rescued their domains from all vassalitical dependence on the see. In 1263, Hartman dying without issue, Rodolf succeeded to the lordship of Kyburg, and the other domains of that house; and being the constituted guardian of Anne, the heiress of another uncle, he had also the uncontrolled administration of *her* states. Yet these, even adding his influence over Schweitz, Uri, and Unterwalden, and the imperial city of Zurich, gave him little chance of coping with the sovereigns of the empire: he was yet merely a prince of the second order, whose influence was much too bounded for his ambition. At this period he is believed to have entered the service of the Bohemian king, and to have distinguished himself in the war against the Slavi of the frontier and the Hungarians. But whether he ever possessed the favour of Ottocar may be doubted: perhaps he only joined the crusade against the Prussians, as a means of propitiating the church, which had laid him under its censures for his violence towards a nunnery.\* He would have lived and died count of Hapsburg and Kyburg, had not an unexpected circumstance introduced him to the notice of the archbishop of Mentz. On the way to Rome, that prelate, conceiving that in times so turbulent his own escort was insufficient for his protection, applied, on reaching Strasburg, to Rodolf, for a band of horsemen as far as the Italian frontier. The count readily furnished him with one, which escorted him to the eternal city and back to Strasburg. The nobleness of this conduct made a deep impression on archbishop Werner; and his admiration was increased when he learned the

\* It is astonishing that modern writers should be found so little acquainted with the elaborate disquisitions of the German critics, as possibly to assert that Rodolf was cup-bearer to Ottocar — (see Russell's *History of Modern Europe*, vol. i. p. 413.). There is not one syllable on the subject in any author prior to the fifteenth century.

success with which this valiant noble had cleared the highways in these provinces from the banditti which infested them. Such valour and generosity, indeed, were qualities which, though they would have adorned any country, were peculiarly popular in this. From this period an intimate friendship must have united the primate and the count; for the service which we have mentioned would not, alone, have induced Werner to espouse his interests so warmly in the diet of Frankfort. The primate first gained his two colleagues, the archbishop of Cologne and Treves. Fortunately for his views, three of the secular electors were unmarried, and Rodolf had several marriageable daughters. If the count's hereditary domains were too small to provide these daughters with suitable marriage portions, as emperor he would have a chief voice in the disposal of forfeited or lapsed fiefs. The promise of three, to the dukes of Upper Bavaria and of Saxony, and to the margrave of Brandenburg, secured those powerful electors. There were, doubtless, other inducements, the nature of which was secret; but certain conditions were sanctioned by the margrave of Nuremberg, a prince of Rodolf's family. Nor must we omit another consideration: though the count of Hapsburg was just such a man as was required for the defence of the empire, his hereditary possessions were too bounded to give umbrage to the princes; he might be a useful general or judge, he could scarcely become a master. All were consequently gained, except the king of Bohemia, whose ambassadors vainly protested against the election. When the unexpected and scarcely credible news arrived, Rodolf was besieging the city of Basle, the bishop of which had murdered some nobles of his family. The citizens were the first to hail his elevation, and swear allegiance to him; and he lost no time in repairing to Aix-la-Chapelle, where, in 1273, he was crowned king of the Romans by the archbishop of Mentz, two years after the death of Richard.\*

\* *Origines Habsburgo-Austriacæ*, p. 7, &c. *Genealogia Diplomatica Gentis Habsburgicæ*, passim. *Vitoduranus, Chronica*, p. 7. *Chronicon*

1273 Had not Rodolf possessed abilities equal to his valour,  
 to he must have fallen before the obstacles he was sum-  
 1291. moned to assail. 1. The papal see had for centuries  
 been in hostility to the empire : during the late reigns the  
 animosity had, as we have seen, led to the most disas-  
 trous results ; and though, with the extinction of the  
 Swabian house, one cause of the hostility had been  
 removed, much remained to be done before a good un-  
 derstanding could be established. Fortunately for the  
 peace of Christendom, Gregory X. was as wise and  
 moderate as the new king of the Romans. The latter  
 renounced all right to the succession of bishop ; all ju-  
 risdiction over Rome, all feudal superiority over the  
 march of Ancona, the duchy of Spoleto, the kingdom of  
 Naples ; all interference in ecclesiastical elections ; he  
 confirmed the privilege of appeal to the supreme pontiff ;  
 and, except in so far as the right of investiture was  
 concerned, the independence of the Germanic church on  
 the crown. These, it has been contended, were re-  
 markable concessions ; a criminal renunciation of the  
 most valuable rights in favour of a power necessarily  
 hostile to the empire ; treason against the empire itself.  
 We should however, remember, that all of them had  
 been repeatedly sanctioned by his predecessors previously  
 to their assumption of the imperial crown ; that all were  
 equally demanded by the interest of Germany, no less  
 than that of Italy ; and that the only difference between  
 him and those predecessors is, that, while they promised  
 what they were previously resolved to revoke, *he* acted  
 with sincerity. Sincerity was so novel a virtue in a  
 chief of the empire, that, in this instance, it has called  
 forth the surprise of posterity, and has afforded the  
 Ghibelin writers a convenient pretext for assailing the  
 popes. But sober impartiality will for ever praise the  
 conduct of Rodolf. The independence which he se-

Colmarensis, pp. 37—40. Albertus Argestor, Historia, p. 99. Langius, Chronicon Citizense, p. 1186. Historia de Langraviis Thuringiæ, p. 1333. Mutius, Chronicon Germanorum, lib. 21. Schmidt, Histoire des Allemands, tom. v. p. 273, &c. Conringius, De Finibus Imperii, lib. ii. cap. 24. Annales Colmarenses, xv.



cured to the German church was an unmixed good: his renunciation of all jurisdiction over Rome was, in fact, the renunciation of a shadow; since its exercise, originally delegated as a personal favour to the Carolingian emperors, could be enforced only by an army. To the long-disputed domains of Matilda, the successors of Arnulf had never had a well-founded claim: by violence only had they obtained the temporary homage of the inhabitants. As the successors of Charlemagne, they advanced many other pretensions equally insulting: but if the article in question was good for any thing, it proved too much; it asserted their right to France, to Catalonia, to all Italy, no less than to the domains in question. But, in reality, these domains, at the time of their concession by Matilda, were strictly allodial: they had never been received from the German emperor, but had been held by her predecessors ever since the Lombard domination, undisturbed and undisputed, until the Saxon, the Franconian, and, above all, the Swabian emperors, claimed the superiority over, not only them, but all Europe, in virtue of that monstrous though magnificent fiction — their succession to the empire of the Cæsars. Wisely, therefore, did Rodolf resign these vain and insulting pretensions; since by so doing he strengthened, instead of weakening, the empire, and laid the foundation of his own greatness and the greatness of his house. The complaints of his rival Alfonso were received by the pope and the council of Lyons with marked indifference; the influence of another rival, much more to be dreaded, Charles of Anjou, was much circumscribed by the efforts of the papal see; and, through the same mediation, he preserved, for a time, Provence as a fief of his crown. But great as were these advantages, a far greater was the peace which this compact with the holy see procured to Italy, to Germany, to Europe. The dissensions between the spiritual and temporal chiefs had long shaken the most distant kingdoms of Christendom: they had compelled the popes to oppress the church of every European

country ; had engendered, in consequence, murmurs, and even civil wars ; had inflicted a fatal blow, not only on discipline, but on religion ; and had fearfully diminished the reverence due, not only to ecclesiastical, but to civil, authority. 2. This harmony with the papal see was no less useful to Rodolf in his pacification of Germany. From the first, Ottocar of Bohemia, and Heinric duke of Lower Bavaria, opposed his elevation ; and they refused to attend his first diet, to swear allegiance to him, and to do homage for the particular fiefs which they held from the monarch. Instead of aiding the Bohemian king, as would have been the policy of preceding popes, Gregory and his successors advised him to submit ; but he was too rash to profit by the warning ; in fact, he was blinded by his passions. He well knew that his claims to Austria, and the provinces dependent on it, were liable to dispute ; and he had reason to know that timely submission would have confirmed him in the possession of those important fiefs. From his refusal to appear, they were forfeited ; and he could not be surprised when messengers arrived to demand their restitution. Instead of submitting, he treated the citations with contumely, and prepared for war ; but war he could not wage with any prospect of success : he had offended the pope by prohibiting the bishops of Bohemia from communicating with a pontiff who had recognised Rodolf ; he had irritated the members of the diet by representing their choice of that sovereign as invalid ; he now exasperated the Austrians by his rapacity and tyranny. Yet though, in addition to these threatening circumstances, he saw his only ally, Heinric of Bavaria, submit to Rodolf, he persevered in his obstinacy. He seems to have indulged the hope, that few of the Germanic princes would join the standard of their new chief ; nor was the hope without foundation. Nothing, indeed, had been more difficult than for the emperors to congregate a military force sufficient for the occasion : during the last century, they had been compelled, as we have before related, to hire mer-

cenaries. Scarcely a tenth of the princes now joined the king of the Romans. Yet Rodolf was not a man to be defied: he collected the vassals of his house, those subject to the imperial crown, those of his kindred and friends; and, joining them to the troops furnished by some of the states, he invaded Austria, which he quickly reduced; while Meinhard, count of the Tyrol, whose daughter was the wife of his son Albert, was equally successful in Carinthia, Carniola, and Styria. Still Vienna held out; and, on the opposite bank of the Danube, the Bohemian king, hoping that the river would serve him as an insurmountable barrier, continued to brave the Germanic chief. But this sense of security was soon dissipated by the facility with which the latter constructed a bridge of boats,—a proceeding regarded with perfect astonishment,—and enabled his troops to pass over. Ottocar, alarmed at his situation, now submitted, and found that he had a generous adversary.\* If he was compelled to surrender Austria and its dependent provinces, they were regions to which he had a feeble right, and which he could not possibly have retained; while he was confirmed in the possession of Bohemia and Moravia; and, to preserve the new relations of amity, a double matrimonial alliance was resolved,—the prince of Bohemia being affianced to a daughter of Rodolf, and a son of the latter to a princess of Bohemia. But the king of the Romans had little faith in this treaty, and he remained in Austria to watch the progress of events. This distrust was speedily justified by the rebellion of Ottocar, whom he again defeated, and who fell in the battle. The removal of so turbulent a prince led to the pacification of the kingdom, the marriages which had been arranged were celebrated; and Wenceslas, the young king, was henceforth the peaceful subject, or, to speak correctly, ally, of his father-in-law. 3. These successes enabled Rodolf

\* Criticism has exploded the tale, related by Æneas Sylvius, of Ottocar's homage on an island of the Danube, exposed to the gaze of his Bohemian subjects. (See Struvius, Schmidt, Muller, and Coxe (House of Austria, vol. i. p. 42. note).

to effect an object evidently close to his heart, — the aggrandisement of his family. On his two sons, Albert and Rodolf, he conferred, with the consent of the diet, the duchies of Austria, Styria, and Carniola ; reserved to the elder the undivided administration ; and Carinthia, with the title of duke, he gave to his son-in-law Meinhard, count of the Tyrol, with this proviso, however, that if the masculine posterity of Meinhard should become extinct, the duchy should revert to his own family. Nor did he neglect the interests of his son-in-law the Bohemian king : in a diet, he decided that the suffragan right, no less than the office of grand cup-bearer, should belong, not to Bavaria, but to Bohemia ; yet Louis the Stern continued, as palatine of the Rhine, an elector of the empire. 4. But for nothing is Rodolf so much celebrated as for the vigour with which he repressed internal rebellion, and for the harmony which he introduced into the internal administration. From the first to the last year, he showed great zeal in the discharge of this paramount of duties. In successive diets, he compelled or persuaded the princes to submit their differences to arbitration, to swear to the observance of the public peace, and to consent to the demolition of the fortresses which had been erected by the nobles, as well for plunder as for war. In one year he rased seventy of these mischievous strongholds, and condemned to death no fewer than twenty-nine nobles of Thuringia who still presumed to disturb the public peace ; nor could the entreaties of their friends avert from them the fate which they had so well deserved. The number of charters which he granted to several imperial cities, and to rising municipalities, is very great : they attest his zeal for the internal prosperity, and the extraordinary activity with which he hastened from province to province to watch over the local administration. With equal success did he demand the restoration of the imperial domains from the electors and princes by whom they had been usurped ; and that of the superiority of the empire over the provinces,

which, during the troublesome period of his predecessors, had been usurped by the dukes of Saxony and Burgundy. We may add, that he restored, in all its lustre, the office of imperial grand judge, or judge of the court, which had been allowed to fall into disuse. Yet, great and enduring as were the benefits which he conferred on the empire, the states evaded his request that his son Albert should be elected king of the Romans. They appear, indeed, to have watched with extreme jealousy the steps which he had taken to aggrandise his house ; and to have been apprehensive that, if the crown passed to his son, it might be rendered hereditary in his posterity. — In 1291, this great prince breathed his last, in a good old age. In almost every respect, he is entitled to the admiration of posterity. No man had ever such difficulties to encounter ; and none, perhaps, ever encountered them with so much success. In him were happily combined great caution with surpassing valour, great wisdom with an unexampled spirit of enterprise. In the affairs of Italy he took so little interest, that he would not visit it even to receive the imperial crown ; he compared it to the lion's den, whitened with the bones of the emperors his predecessors. His reign exhibited a remarkable novelty, — internal tranquillity. He not only preserved peace with his neighbours, but with a firm hand he suppressed private war in every quarter, rased the bandit fortresses to the earth, and hung the inmates by scores. His probity became a proverb. Of his piety, or rather, of his respect for religion, some interesting anecdotes are related. While hunting, he one day met a priest carrying the host to a sick person. Though the path was exceedingly dirty, and the mountain torrents almost impassable through the heavy rains, he quickly dismounted, and gave his horse to the poor priest, observing, that for him to ride while the bearer of the consecrated host walked on foot, was an unseemly spectacle. The magnanimity with which he forgot personal wrongs, and the gratitude with which he rewarded services, especially such as had been ren-

dered him in his early life, are mentioned equally to his honour. One day, while seated amidst his court at Mentz, he perceived an humble citizen of Zurich, who, long before his elevation, rescued him in the midst of battle from imminent danger. He arose; treated the man with the utmost friendship; and conferred on him, what in those days was, indeed, both a privilege and an honour — the rank of knighthood. It was his boast that the emperor could not forget the obligations of the count. During the Bohemian campaign, while he and his troops were suffering from thirst, though a jug of water was brought him, he would not drink it; he would not enjoy a gratification denied to them. He was accessible to the humblest of his people. Seeing one day that his guards were preventing the approach of some poor men, he cried out, "Let them approach! I was not made emperor to be excluded from my fellow-creatures!" But his highest eulogy is to be found in his conduct as a sovereign. He illustrates, in a striking manner, the truth of an observation we have before made — that more depends on the personal character of a ruler, than on the laws by which he is bound. Limited as was the imperial power, he knew how to make the dignity respected. "His very name," says a cotemporary chronicler, "spread terror among the turbulent barons, joy among the people; as light springs from darkness, so peace arose from desolation. The peasant returned to his plough; the merchant, whom the fear of bandits had confined to his home, now traversed the country with confidence." He has truly been called the second restorer of the empire; none of his predecessors, except Charlemagne, ever procured such benefits for it. That he who rose from the condition of an humble territorial count, to that of a great emperor, *must* have been an extraordinary man, cannot be disputed. If to his good fortune he owed much, to his merit he was still more indebted. Accident might introduce him to the archbishop of Mentz; but accident could not have won the



admiration and esteem of that prelate. Well may the house of Austria — indisputably the noblest in Europe — glory in its founder.\*

Great as was the jealousy entertained by the Ger- 1291  
manic princes towards a candidate who had much here- to  
ditary influence, Albert, the only surviving son of 1308.  
Rodolf, would probably have been elected, but for the intrigues of the archbishop of Mentz. Under the pretext of averting disturbances, if not civil war, this wily prelate, having persuaded the electors to confide their votes to him, impudently proclaimed king of the Romans *Adolf of Nassau* (1291—1298), a prince of his own family. Adolf had the meanness to purchase the dignity by extraordinary concessions, called capitulations, which were exacted by his patron the primate, — an example too alluring not to be followed in the sequel. To repeat them is needless: suffice it to say, they regarded the aggrandisement of the archbishop and his friends, and were deeply injurious both to the interests of the empire and the dignity of its chief. Many of them, however, he was unwilling — some of them, perhaps, unable — to fulfil; so that the archbishop was eager to undo his own work. The conduct of Adolf himself was not of a character to inspire respect, or to afford the prospect of much good to the people. Feeble, yet corrupt; intent on the enriching of his family, but regardless of his sovereign duties; without dignity in his public, vicious in his private, conduct; he soon became, if not odious, indifferent to his subjects. What not a little tended to his unpopularity, was the fact, that though from Edward I. of England he received a considerable subsidy on the condition of his commencing hostilities with Philip of France, he neither went to

\* *Annales Colmarenses* (sub annis). Calles, *Annales Austrisæ*, cap. i. *Chronicon*, tom. ii. p. 235, &c. Lambacher, *Demonstratio Juris*, passim. Vitoduranas, *Chronicon*, p. 8, &c. Albertus Argentinensis, *Annales*, p. 99, &c. *Historia Australis Plenior* (apud Freherum, *Scriptores*, tom. i.). *Aeneas Sylvius*, *Historia Bohemica*, cap. 27. *Dubravius*, *Historia Bohemica*, lib. 17. Raynaldus, *Annales Ecclesiastici*; necnon Muratori, *Annali d'Italia* (sub annis). Pfeffel, *Histoire d'Allemagne*, tom. i. (sub annis). *Academia Græcensis*, *Historia Ducum Styriæ*, pp. 103—112.

war nor returned the money. Of this general dissatisfaction, Albert duke of Austria was not slow to avail himself. The primate was soon in his interests; and the remaining electors were persuaded to depose their present chief. By some modern historians, it has been asserted that pope Boniface VIII., corrupted by a present of money from Albert, authorised a new election: it is, however, certain, that so far from wishing to overturn the established throne, he declared, not only that he would have no part in the transaction, but that, if Adolf would proceed to Rome, he would place the imperial crown on his head. But the approval or censure of the pope would have weighed little in the scale of ambition. By the electors, Adolf, as if he were merely one of their body, was thrice cited to appear before them; and though he disregarded the citations, his trial proceeded; he was condemned for contumacy, and deposed; and in his place was elected *Albert I.* (1298—1308), son of the great Rodolf. Adolf naturally refused to sanction these extraordinary measures; the rivals flew to arms; and, in a battle near Worms, Adolf lost empire and life. Albert, like his predecessor, had been compelled to sign capitulations little worthy of his family or dignity. That he should submit to a new election was right enough; since the former one could scarcely be called valid, even if it were not opposed by the archbishop of Treves and the count palatine; but that he should alienate the domains and revenues of the crown in favour of the three archbishops, especially of the primate; that he should forbid any cause to be transferred from the tribunals of Cologne to his own; that he should renounce, in all the electorates, both for himself and his judges, his concurrent jurisdiction with the princes — none, in future, being obliged to obey his citations; that he should promise four considerable districts to the king of Bohemia, his brother-in-law, and virtually make that prince independent of the crown, by exempting him from military service, and even from the obligation of *personally* appearing at the diets; proves

that his was one of those little minds over which ambition is more powerful than the good of mankind. What makes his meanness more conspicuous is the eagerness with which he sought to evade his engagements. He refused to surrender the imperial domains to the archbishops, or his imperial rights to any one ; nor would he allow the king of Bohemia to discharge his duty of cup-bearer by deputy, whenever a general diet was sitting ; and some concessions, which he had already executed, he resolved to recover either by treaty or violence. The rage of the electors was extreme ; they proclaimed their intention of sending Albert after his predecessor ; and the primate was heard to boast, that so long as he lived there should be no lack of sovereigns, for he had several more in his sleeves. Like his predecessor, Albert was cited before the tribunal of the count palatine, and pope Boniface summoned him to appear in six months at Rome, to answer the charge of high treason. Never was any situation so extraordinary as his : on the one side his own subjects, on the other a foreign bishop, proclaimed themselves his judges and his superiors ; so that the Germanic crown was in greater jeopardy than it had ever been since the foundation of the empire. But Albert was not an Adolf ; he flew to arms, defeated the three archbishops and the count palatine, occupied their seats, and dictated whatever conditions he pleased. Fortunately, too, Boniface, who was then pressed by the king of France, so far from executing his threats, was compelled to apply to him for support. In return, he was recognised as lawful king of the Romans ; and was offered, by way of present, the kingdom of France : but as this was on the condition that he should conquer it from Philip, whom the pope had excommunicated : he wisely declined it. Though Boniface was soon assassinated by the emissaries of Philip, Albert profited by his reconciliation with the papal see, and by his successes over four of the electors, to reduce the proud king of Bohemia. In 1305, Wenceslas IV. died, and his youthful son, the

nephew of Albert, in the following year. With Wenceslas V. expired the male line of the Slavonic princes, which had possessed the government from the first establishment of the state; and though two sisters remained — the one married to Heinric duke of Carinthia, the other a maiden — it may be doubted whether the crown could *legally* pass to either: *conventionally*, in virtue of an agreement between Rodolf and Wenceslas IV., it was the inheritance of the Hapsburg family. Accordingly, Albert invested his eldest son, Rodolf duke of Austria, with this royal fief; but the immediate death of the young prince arrested the progress of his ambition. He had, indeed, another son, Frederic, now duke of Austria, whom the Bohemian states themselves had acknowledged, in default of issue by Rodolf; but the duke of Carinthia had many partisans, who, resorting to arms, overpowered those of Austria, and elected Heinric as their king. Probably, however, Bohemia would have been established in the Austrian family, had not two other affairs demanded the presence of Albert in other parts. 1. From the accession of Adolf, there had been a dispute as to the possession of Misnia and a great part of Thuringia. The old margrave, as we have before seen, had attempted to disinherit his two sons, and had sold his right to the crown.\*. But the two princes had defended their rights with various success; the power of Adolf had been unable to expel them; and now they signally defeated Albert, who had hoped to erect these provinces into a principality for one of his sons. 2. Disappointed in his views, he still hoped to form another from the domains of his house in Swabia, Alsace, and Helvetia. But the oppression of his magistrates whom he had placed over the three towns, Schweitz, Uri, and Unterwalden, and the well-founded apprehensions of those free mountaineers that he intended to reduce the whole country to subjection, to crush the territorial nobility, and to annex the imperial

\* See before, page 251.

cities to the meditated principality, raised a spirit of resistance which he had not expected. The three places we have mentioned, formed themselves into a confederacy for the defence of their undoubted rights. Yet Albert had cause for complaint: the members of the league, not satisfied with renouncing for themselves all dependence on the empire, endeavoured to seduce the vassals of the house of Hapsburg from their allegiance, and afforded a ready asylum to the rebels. Hence there were faults on both sides; a fact unhappily characteristic of most human transactions. Whether Albert was preparing, as the Swiss historians assert to penetrate into these mountainous regions, may perhaps be doubted; but his days were cut short by the conspiracy of his nephew, to whom the domains of the house of Kyburg belonged, but whom he refused to invest. The historians of Austria uniformly assert, that this refusal was entirely owing to the minority of prince John; while others maintain, and with far greater probability, that John was to be dispossessed in favour of Albert's son. That the nephew was convinced of the latter fact is evident from his atrocious conduct;—with four associates he waylaid the monarch not far from the castle of Hapsburg, and dealt the first blow; and they soon finished the deed. The victim expired in the arms of a poor woman of frail virtue, who happened to be a spectator of the tragedy. The scene, too, was witnessed by the royal attendants, and by Leopold, son of Albert, from the opposite banks of the river Reoss.\* It is some con-

\* This scene is thus described by Coxe (House of Austria, vol. i. p. 93.):—

“On the arrival of Albert on the banks of the Reoss, opposite Windich, the conspirators first passed over the ferry, and were followed by Albert, who crossed with a single attendant, leaving his son Leopold and the rest of his suite on the other side of the river. As he rode slowly through the fields at the foot of the hills crowned by the castle of Hapsburg, familiarly conversing with his attendant, he was suddenly assailed by the conspirators, one of whom seized the bridle of his horse. His nephew, exclaiming, ‘Will you now restore my inheritance?’ wounded him in the neck; Balm pierced him in the body, and Eschenbach clove his head with a sabre. Wart, the other conspirator, stood aghast; the attendant fled; and the king, falling from his horse, was left weltering in his blood. His son Leo-

solution to read that the conspirators, and John himself, had little reason to congratulate themselves on the deed. Wart, indeed, was the only one taken, and he was soon broken on the wheel; but the rest died in obscurity and misery. Though we have condemned the baseness of Albert, in consenting to receive the Germanic crown on terms so ignominious; and, in an equal degree, the constancy with which he procured the aggrandisement of his family; we must do justice to his character both as a man and a sovereign. In the former capacity he was almost faultless: tender husband and parent; faithful to his engagements, except in the case of the electors; a worshipper of truth, and hostile to flattery as much as to open lying; simple in his habits, decorous in his conduct; he was beloved by his household and friends. As a sovereign, he was distinguished for great firmness of purpose, for superior military talents, and for the zeal with which he enforced the peace of the empire. On the whole, though he must necessarily suffer by the comparison with his great father, he was one of the monarchs of whom Germany has most reason to be proud.\*

1308 On the tragical death of Albert, the eyes of many  
to princes were turned to Frederic duke of Austria, his  
1313. eldest son, who had virtues worthy of any throne: but the father had never been popular; and the cruelty with which some members of the family,—especially Agnes, daughter of Albert, and widow of Andrew III. king of Hungary—revenged the murder of that monarch, in-

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pold and his attendants were the terrified spectators of the atrocious deed; and when they had passed the river, they found the king just expired, in the arms of a poor woman who had hastened to his assistance."

\* *Annales Colmarcenses*, p. 59, &c. *Continuatio Cosmæ Prægensis*, cap. 16 19. 27, &c. *Albertus Argentinensis, Annales*, pp. 101—115. *Gode-mus, Codex Diplom.* tom. i. (*multis instrumentis*). *Langius, Chronicon Citizense*, p. 1335. *Latomus, Catalogus Archiepiscoporum Moguntinensium*, p. 522, &c. *Chronicon S. Petri*, pp. 302—316. *Dubravius, Historia Bohemica*, lib. 18. *Mutius, Chronicon Germanorum*, lib. 22. *Magnum Chronicon Belgicum (sub annis)*. *Pffefel, Histoire d'Allemagne*, tom. i. pp. 440—462. *Schmidt, Histoire*, tom. iv. liv. 7. cap. 2. and 3. *Coxe, House of Austria*, vol. i. pp. 72—94. *Academia Græcensis Historia Ducum Styriæ*, pp. 122—155.



creased the feeling of dissatisfaction. But the electors themselves, averse, as indeed they had always been, to the hereditary succession of the crown, had no intention of choosing Frederic; in stipulating advantages for themselves, they would have prolonged the interregnum for some time, had not an event happened to accelerate their decision. One of the candidates was Charles de Valois, brother to Philip king of France; and Philip, to ensure his brother's success, ordered Clement V., who was seated at Avignon, and who was a creature of France, to recommend the electors to choose Charles only. When the pope proceeded too slowly for his impatience, he was preparing to send Charles with 6000 men to Avignon, to force the execution of his design, but Clement privately acquainted the electors with the situation of affairs, and urged them to precipitate their choice. Though a partisan of France, and a Frenchman himself, the pope felt that the royal house of that kingdom was already too powerful; and he might reasonably fear, that if Germany were added to Naples and France, that house would have the papal see at its mercy. Through the intrigues of Peter archbishop of Mentz, the election fell on Heinric count of Luxemburg, brother of Baldwin archbishop of Treves.—*Heinric VII.* (1308—1313) was obliged to sign a capitulation presented to him by the electors of Mentz, no less mischievous than that which had been sanctioned by his immediate predecessors. It rendered that prelate completely the sovereign of Mentz. Nor was Clement inattentive to his own interests; for, as the condition of acknowledging the new king of the Romans, he drew that prince, by several demands, into a close connection with the church: *his* enemies were to be those of Henry; who, in fact, was to do nothing beyond the bounds of the empire without the concurrence of his holiness. But Heinric consoled himself for these submissions by an unexpected opportunity of raising his own family to the highest rank in that country. Heinric duke of Carinthia, as we have already seen, was received by the Bohemians,

to the exclusion of the Austrian princes ; but his conduct soon gave so much dissatisfaction to the people, that a third party was formed, hostile to both houses. The younger sister of Wenceslas V. was still unmarried ; she was drawn from the cloister in which she had been immured, and sent to Spire to receive the hand of prince John, son of the German king, who eagerly embraced the opportunity of securing the Bohemian crown in his family. History is little more than the triumph of violence over right. By compact certainly, probably also by the laws, the Austrian princes were the true heirs to the throne ; and even if it were adjudged to the female offspring of Wenceslas, the elder, the duchess of Carinthia, must exclude the younger. To remove one competitor, Heinric of Carinthia was declared, on some trifling pretexs, to have forfeited his claim ; and the Austrian princes were alarmed into submission by the menace, that if they did not recognise John of Luxemburg, the fiefs of Austria, Styria, and Carniola, should be reclaimed as dependent on the Bohemian crown. On that crown, however, these provinces had been dependent only for a short season, through the usurpation of a former king ; yet, as justice was not likely to be more regarded in this than in other cases, the Austrian princes wisely submitted ; and received in return the investiture of the three provinces as *patrimonial* fiefs. —The reign of the seventh Heinric was destined to be short. His predecessors, during half a century, had wisely refrained from interfering in the affairs of Italy ; and had thereby avoided the unhappy fate of many whose bones, as Rodolf truly observed, whitened that den of wild beasts. But, dazzled by his unexpected elevation, and that of his son, he resolved, in a fatal hour, to restore the supremacy of the empire over Lombardy and Tuscany. His transactions in Italy must be sought in the histories of that country.\* Here we need only observe, that, though for a moment Lombardy sub-

\* See Sismondi, History of the Italian Republics ; and Europe during the Middle Ages, vol. i. p. 63.

mitted, and he received the imperial crown at Rome from the hands of three cardinals, to whom Clement V. (still at Avignon) delegated the necessary powers, he suddenly died at Buonconventi, near Sienna.\*

The death of Heinric replunged Germany into horrors to which, since the extinction of the Swabian line of emperors, it had been a stranger. The Austrian princes, who had never forgiven the elevation of the Luxemburg family, espoused the interests of Frederic, their head; the Bohemians as naturally opposed them. From the accession of John, the two houses were of necessity hostile; and it was evident that there could be no peace in Germany until one of them was subjected to the other. The Bohemians, indeed, could not hope to place their king on the vacant throne, since their project would have found an insurmountable obstacle in the jealousy of the electors; but they were at least resolved to support the pretensions of a prince hostile to the Austrians. The secular electors were generally favourable to Frederic; but, unfortunately, the partition of the electorates had introduced considerable doubt, whether the suffrage which, in cases of unanimity, was generally exercised by the heads of the branches conjointly, should, in case of difference of opinion, be decided by the representative of the house. Every vote was essentially entire; it could not be split: and if unanimity could not be procured, reason certainly dictated that the decision should be left to him, who, but for such partition, would have possessed the undivided suffrage. But in this respect there was no established rule; for while, in general, this primogenital right was recognised, in some cases the members of the house refused to be bound by the act of their chief; in whose name, however, every vote was of necessity re-

\* Authorities:—The continuation of *Cosma Prægensis*; *Annales Erfurtenses*; *Annales Colmarenses*; *Olenschlager, Geschichte des XIV. Jahr*; *Raynaldus, Annales Ecclesiastici*; *Muratori, Annali d'Italia*; *Lan- gius, Chronicon Citizense*; *Mutius, Chronicon Germanorum*; *Pfeffel; Schmidt; Coxe and others (sub annis)*; *Giovanni Vallani, Istoria, lib. viii. ix.*; *Vecerius, De Rebus Gestis Henrici VII.*; *Rebdorf, Annales; cum aliis.*

corded. Hence the votes of the secular electors were not so influential as those of the ecclesiastical, whose example almost invariably decided the choice. On the present occasion, the diet being convoked at Frankfort, the electors repaired thither ; but with very different views ; for, as their suffrages were already engaged, while the more numerous party proclaimed the duke of Bavaria as *Ludowic V.*, another no less eagerly proclaimed Frederic. Although Ludowic was a member of the Austro-Hapsburg family — his mother being a daughter of Rodolf I. — he had always been the enemy of the Austrian princes, and in the same degree the ally of the Luxemburg faction. The two candidates being respectively crowned kings of the Romans ; Ludowic at Aix-la-Chapelle, by the archbishop of Mentz — Frederic at Bonn, by the metropolitan of Cologne ; a civil war was inevitable : neither had virtue enough to sacrifice his own rights to the good of the state. As both had great military talents, equal enterprise and resolution, the contest could not fail to be severe and protracted. Fortunately for Ludowic, the Austrian forces were defeated by the hardy natives of Helvetia, who, from hatred to the memory of Albert and his rapacious officers, had declared for the Bavarian and Bohemian faction. Yet, after all, the contest would have ended in favour of the Austrians, but for the rashness of Frederic, who, in September 1322, without waiting for the arrival of his brother Leopold, assailed Ludowic between Mahldorf and Ettingen in Bavaria. With his usual magnanimity, Frederic, considering that the pre-eminence of danger was his proper duty, arrayed himself in splendid armour, on which was emblazoned the cognizance of his house ; and on his head he wore a helmet surmounted by a crown ; thus exhibiting himself on the one hand as the rallying point of his followers, on the other as a mark to the enemy. Ludowic, who was more prudent, though no less brave, placed himself in the centre ; but distrusting his own talents as a general, he left the command to Schwepperman, one of

the most experienced captains of the age. The battle was maintained with equal valour from the rising to the setting sun ; and was evidently in favour of the Austrians, when an unexpected charge in flank by a body of cavalry under the margrave of Nuremburg decided the fortune of the day. Henric of Austria was first taken prisoner ; and Frederic himself, who disdained to flee, was soon in the same condition. To his everlasting honour, Ludowic received Frederic with the highest assurances of esteem ; and though the latter was conveyed to the strong fortress of Trapnitz, in the Upper Palatinate, he was treated with every indulgence consistent with his safe custody. But the contest was not yet decided ; the valiant Leopold was still at the head of a separate force ; and pope John XXII., the natural enemy of the Ghibelins, incensed at some succours which Ludowic sent to that party in Lombardy, excommunicated the king of the Romans, and declared him deposed from his dignity. Among the ecclesiastics of the empire this iniquitous sentence had its weight ; but had not other events been disastrous to the king, he might have safely despised it. By Leopold he was signally defeated ; he had the mortification to see the inconstant king of Bohemia join the party of Austria ; and the still heavier misfortune to learn that the ecclesiastical and two or three secular electors were proceeding to another choice — that of Charles de Valois, whose interests were warmly supported by the pope. In this emergency, his only chance of safety was a reconciliation with his enemies ; and Frederic was released on condition of his renouncing all claim to the empire. But though Frederic sincerely resolved to fulfil *his* share of the compact, Leopold and the other princes of his family refused ; and their refusal was approved by the pope. With the magnanimity of his character, Frederic, unable to execute the engagements which he had made, voluntarily surrendered himself to his enemy. But Ludowic, who would not be outdone in generosity, received him, not as a prisoner, but a friend. “ They

ate," says a contemporary writer, "at the same table, slept on the same couch;" and when the king left Bavaria, the administration of that duchy was confided to Frederic. Two such men could not long remain even politically hostile; and by another treaty, it was agreed that they should exercise conjointly the government of the empire. When this arrangement was condemned both by the pope and the electors, Ludowic proposed to take Italy as *his* seat of government, and leave Germany to Frederic. But the death of the war-like Leopold—the great support of the Austrian cause—and the continued opposition of the states to any compromise, enabled Ludowic to retain the sceptre of the kingdom; and in 1329, that of Frederic strengthened his party. But his reign was destined to be one of troubles. Invading Italy to support the Ghibelin faction, which was in armed opposition to the pope and the Guelfs, he seems to have lost his former prudence, and to have disgusted the men whose favour it was his interest to secure. His open warfare against the head of the church did not much improve his affairs; the vindictive pope, in addition to the former sentence, placing all Germany under an interdict, so long as obedience should be yielded to him. To strengthen himself, he declared the dukes of Austria princes of the empire during the absence of the emperors; conferred on them sovereign powers in their own states; and aided them to gain Carinthia, on the death of duke Heinric without male issue. Though the duchy was contested by the Bohemian king, the Austrian princes triumphed, and by the death of the last heir of the Tyrol, they succeeded also to that mountainous region. Ludowic had need of their support, and of the support of his whole empire, against the hostility of the popes. And to do that empire justice, it generally despised the papal thunders. In 1338, the diet of Frankfort issued a declaration for ever memorable in the annals of freedom. That the imperial authority depended on God alone; that the pope had



no temporal influence, direct or indirect, within the empire ; that the sovereign chosen by the electors became, *ipso facto*, the legitimate emperor, without any need of confirmation by the papal see, who neither by law nor justice had the power to approve or condemn the choice ; and that all persons who maintained the reverse should be declared guilty of high treason ; and it concluded by empowering the emperor (Ludowic while in Italy had received the imperial crown from the anti-pope whom he had created in opposition to John XXII.) to raise, of his own authority, the interdict which, during four years, had oppressed the country. Another diet, held the following year, ratified this bold declaration ; and added, that from the moment of his election, the sovereign virtually became emperor as well as king ; and that in regard to the title, if the pope refused to crown him, the duty might be performed by any catholic bishop. That such a declaration was not made four years preceding, may surprise us : never was a wiser one issued : it was, in fact, become necessary ; for the independence of the nation, and the dictatorial rights of the princes, were openly invaded by the monstrous pretensions of the Roman see. But the popes of Avignon were the mere tools of France, the natural enemy of the empire : they and the cardinals were alike French ; and the church universal continued, during several pontificates, attached to the car of the French monarchy. This sufficiently accounts for the hostility of that church towards Germany, and for its criminal condescension towards France. But this conduct of the diet was above the comprehension of the vulgar, who still regarded Ludowic as under the curse of God and the church ; and time was necessary to sanction the principles it involved. We may add, it had so little effect on Clement VI., that he renewed the sentence of deposition, and ordered a new election. Unfortunately for the national independence, Ludowic himself contradicted the tenor of his hitherto spirited conduct, by mean submissions, by humiliating applications for ab-

solution. They were unsuccessful; and he had the mortification to see the king of Bohemia, who had always acted an unaccountable part, become his bitter enemy. His favour, or rather let us say strict justice, to the Austrian princes in the affair of Carinthia and the Tyrol, had offended that king, and the whole house of Luxemburg, beyond the possibility of reconciliation. From this moment the fate of Ludowic was decided. In conjunction with the pope and the French king, Charles of Bohemia, who in 1346 succeeded to his father's kingdom and antipathy, commenced a civil war; and in the midst of these troubled scenes the emperor breathed his last.\*

1347 Twelve months before the decease of Ludowic,  
 to Charles of Bohemia, assisted by Clement VI., was  
 1378 elected king of the Romans. But, in return, he had signed a shameful capitulation with the pope — one by which the state, no less than the church of Germany, were placed at the feet of that haughty and corrupt pontiff. For this and other reasons, many of the princes were now unwilling to confirm the election. Four of them called Edward III. of England to the vacant throne; but, though for a moment dazzled by the offer, he prudently declined it. An Anticæsar, however, was found in Gonther count of Schwartzenburg, a prince of great military reputation, and the unshaken friend of the deceased sovereign. This opposition was inevitable in a country where the two rival families of Luxemburg and Austria were pursuing each other with deadly animosity; where the one was sure

\* Ohlenschlager, Geschichte des XIV. Jahr (variis numeris). Vitoduramus, Chronicon, p. 1778, &c. Petrus, Chronicon Aulæ Regis, cap. 14—27. Chronicon S. Petri, p. 323—328. Albertus Argentinensis, Annales, p. 120—130. Anon. Chronicon. Raynaldus, Annales Ecclesiastici (sub annis). Academia Græcensis, Historia Ducum Styriæ, p. 160, &c. Mutius, Chronicon Germanorum, lib. 24. Dubravius, Historia Bohemica, lib. 19, 20. Langius, Chronicon Citizense, p. 1202, &c. Latomus, Catalogus Archiepiscoporum Moguntinensium, p. 528, &c. Pfeffel, Histoire, tom. i. (sub annis). Schmidt, Histoire, tom. iv. liv. 7. (variis capitulis). Coxe, House of Austria, vol. i. passim. Rebdorf, Annales, A. D. 1333, &c. Muratori, Annali d'Italia, A. D. 1313—1347. Sismondi, Histoire des Républiques Italiennes du Moyen Age, tom. v. For the Italian authors of the period, see the great collection of Muratori, *Rerum Italicarum Scriptores*.

to disapprove the acts of the other ; and where, if the submission of the one party was enforced, it was of very short duration. This and most other evils with which the nation was cursed, may be traced to the elective character of the sovereignty : now one family, now another, unexpectedly found itself in possession of the throne ; and as it was the object of each to perpetuate the possession, and, consequently, to weaken or remove every rival, we are prepared beforehand for whatever may arise. Gunther was soon removed by death, — whether unfairly cannot be decided, though Charles is accused by several historians of employing poison : what has given confirmation to the rumour is, his notorious want of principle. By intrigues, money, and the investiture of fiefs, Charles at length found himself as firmly seated on the throne as any German sovereign could be.— I. In his internal administration he is noted for some remarkable things. In 1349, he issued letters patent in favour of the duke of Brabant, by which the subjects of the duke were exempted from the jurisdiction of all the imperial tribunals. This unrestricted renunciation of the sovereign authority in favour of a subject, was a most mischievous act ; but Charles, provided he obtained his own ends, was not very solicitous about the interests of the community. He might, indeed, allege that the same sovereignty was already in the power of the German electors, and that it might as well be exercised by the duke of Brabant as by them. In 1356, he decreed that the suffragan vote, which had been held conjointly by the elector palatine of the Rhine and the duke of Bavaria, should belong to the former alone ; thus punishing Bavaria for the opposition which it had shown to the elevation of his family. But this was only a prelude to the publication of the famous Golden Bull, — so called from the golden seal appended to it, — which definitely fixed the number and prerogatives of the electors, and has ever since been a fundamental law of the empire. 1. The number of electors was fixed, in conformity with ancient custom, at seven,

who were to represent the seven candlesticks of the Apocalypse, and the seven gifts of the Holy Ghost. Of these, three were to continue ecclesiastics — the archbishops of Mentz, Trèves, and Cologne; and four secular princes, — the king of Bohemia, the count palatine of the Rhine, the duke of Saxony, and the margrave of Brandenburg. 2. The right of suffrage was recognised as inseparable from the high offices of the imperial state and household. To the archbishopric of Mentz was attached the arch-chancellorship of the empire; to the archbishopric of Cologne, that of Italy; to the archbishopric of Trèves, that of Arles. 3. In establishing this principle, there could be no opposition, since, from time immemorial, it had been recognised in practice; but the secular electorates could not be touched with the same satisfaction to all parties. We have before alluded to the dissensions between the heads of different branches in the same family, whether the suffrage should in all cases be exercised conjointly, and whether, in case of disagreement, the acknowledged representative of the house should have the power of deciding. On this subject there was no uniformity; for while in some houses the right was thus conjoint, in one or two it was exercised alternately by the reigning chiefs of each branch. This arrangement had sometimes been made by private agreement; sometimes in virtue of an imperial decree. Thus, Rodolf I. had ordained that the two heads of the Bavarian family — the dukes of Upper and Lower Bavaria — should be governed by this alternating rule; and, after the transfer of the vote from Bavaria to Bohemia, Ludovic had decided that the duke and the count palatine, as heads of the same house, should have the alternate privilege. The object of Charles was to connect this right of suffrage, not with the house, so much as the government of each secular state: hence, whatever might be the reigning house, the right was henceforth irrevocably attached to the kingdom of Bohemia, to the palatinate, to the duchy of Saxony, to the margraviate of Brandenburg. And, in regard to the offices

from which the right was inseparable, that of grand cup-bearer was declared inherent in the first, that of grand seneschal in the second, that of grand marshal in the third, that of grand chamberlain in the fourth. 4. But, during many reigns, it had been found necessary for each office, during the absence of the principal, — who, in fact, was always absent except on great occasions, — to be performed by deputy. As this latter office was become no less hereditary in certain families, and as the system was approved by experience, to prevent any possible misunderstanding, these families were carefully confirmed in the office. Thus, the count of Limburg was the hereditary deputy of the Bohemian king, the lord of Fürstemberg that of the count palatine, the baron of Pappenheim that of the Saxon duke, the count of Falkenstein that of the margrave. 5. But it was no less necessary to fix the mode of proceeding prior to every election. In one month from the demise of the sovereign, the elector of Mentz was to summon each of the electors individually to meet at Frankfort within three months; if possible personally, otherwise by a representative armed with the necessary credentials. The election was henceforth to depend on the plurality of votes; and the consecration to take place at Aix-la-Chapelle, by the hands of the archbishop of Cologne; and the first diet to be held at Nuremberg. 6. During the vacancy of the throne, or the absence of the sovereign, troubles had been almost invariable in a country where there was no recognised authority to repress them. To remedy this serious evil, the immediate predecessors of Charles had constituted imperial vicars over certain principalities. Thus, the duke of Austria had been declared, by Ludowic, imperial hereditary vicar in that duchy and the provinces dependent on it: before this period, too, the duke of Saxony had been awarded the same jurisdiction over that extended country; and, with the count palatine, that over the regions in the vicinity of the Rhine. But to the Austrian duke, who was virtually a sovereign, who ruled his states with far greater power

than the Germanic hand had ruled the empire, the title was merely one of honour ; it could add nothing to his influence. The same may be said of the Bohemian kings and the margraves of Brandenburg, who would not even recognise the authority of the emperor (we mean within their respective territories), much less that of an imperial vicar ; nor would they themselves have consented to bear a title, which would imply a greater dependence on the Germanic head than had ever existed since the Franconian emperors. Hence the vicariat of the empire was understood to extend only over the following provinces : — Franconia, Swabia, Bavaria, and Rhenish France, which were now declared to comprise the vicarial jurisdiction of the count palatine ; and the provinces subject to the *law of Saxony*, — a very loose expression, but still comprehending an extensive circuit, — was placed under the vicarial authority of the Saxon duke. Neither of these dignitaries had any more authority over the Low Countries, or over the electorate of Mentz, than they had over Austria, Bohemia, Misnia, or Brandenburg. The vicariat of the Low Countries was understood to be essentially inherent in the duchy of Brabant.

7. In addition to his other dignities, the elector palatine was confirmed in the privilege of deciding in all judicial cases where the emperor was a party. 8. The succession and privileges of the other secular electors are no less clearly defined. In no case could the glebe on which the electoral title was founded, be alienated or partitioned : both the domain and the title descended to the eldest son, or, in his default, to the nearest heir male. 9. Their majority was fixed at eighteen years ; and during their minority, the administration of the electorate and the suffrage were to be held by the nearest agnate in the order of primogeniture. 10. They were confirmed in their rank above all the princes of the empire ; were declared equal to the emperors ; and crimes committed against them were defined as high treason. 11. Within their respective jurisdictions, they decided without appeal, both in civil and criminal mat-



ters ; nor henceforth, at any stage of its progress, was a cause to be convoked before any other than the local tribunal. 12. Within these jurisdictions, too, they were confirmed in their sovereign rights, — of opening mines, of receiving the ordinary revenues, of regulating the conditions and capitations of the Jews, of coining money, of acquiring imperial domains, &c. It is impossible not to admit that these regulations were exceedingly beneficial to the empire, however they might hurt the ambition, or even the rights, of certain houses. Some of them bore the impress of the monarch's passions. In two or three cases, where there was a dispute between the heads of two agnate family branches, as to the right of primogenital representation, he decided in favour of the one who had been attached to his interests ; and by depriving Bavaria of its very ancient right of suffrage in favour of Bohemia, which had exercised none before the thirteenth century, he more glaringly displayed his partiality. But the only object which he steadily pursued was the aggrandisement of his house, — an object to which he would willingly have sacrificed the empire itself. Nor is this to surprise us. As head of that empire, he had an influence little more than nominal, and even that he could not hope to transmit to his posterity ; while in Bohemia, and his other hereditary states, his authority was despotic, and was sure to be preserved in his family so long as any of his descendants remained. This reason will sufficiently account both for his policy, and that of all the emperors from the thirteenth century to the period when the crown of Germany became hereditary in the house of Hapsburg. Actuated by the same policy, Charles negotiated with the dukes of Austria a treaty of reciprocal succession, by which, in the event of his family becoming extinct, their heirs would succeed to the Bohemian crown ; while, in the failure of such heirs, *his* would, in like manner, succeed to the fair provinces south of the Danube. By this treaty his house might gain ; it could not possibly lose. Though he hated the

house of Austria ; though, in his intemperate anger, he persuaded the electors to promise that they would not find him a successor in that house, and left a curse to any of his Bohemian posterity who should even vote for an Austrian prince ; the interest of Charles was superior to his passions. By a similar treaty, joined, however, to some violence and more corruption, he brought the margraviate of Brandenburg into his house ; (such family compacts at this period were common in the empire :) and, avaricious as he notoriously was, he would sacrifice a present advantage for a future good. Thus, he actually purchased from the electors, — *each* vote, as we are told, at the enormous cost of 100,000 florins, — the nomination of his son Wenceslas as king of the Romans, and, consequently, as his successor. But how was so prodigious a sum to be raised ? Though he was as rich as any European monarch, he could not possibly possess one half of that sum. He had, therefore, no other alternative than to surrender the domains and revenues of the crown ; and, when even these were found insufficient, he added some of the imperial cities. He would, probably, have sold or pledged the revenues and jurisdiction of all, had not those of Swabia taken the alarm, and entered into a confederation, called the Swabian league, for the defence of their liberties. It soon extended beyond the confines of that province, and became too powerful for the emperor to resist. His object, however, was gained ; his son, in 1377, being elected king of the Romans.—II. Of Charles's foreign policy we have little to say. He observed treaties with France or England just so long as suited his interests. Into Italy he twice descended ; once, to receive the imperial crown, the second time under the pretext of restoring the supremacy of the empire. In both expeditions he sold its rights to the highest bidder ; and returned to Germany, followed by the curses or the contempt, not merely of Italy, but of Europe. Cowardly in his nature, he carefully avoided the field of battle ; avaricious beyond example, he made every thing

venal; faithless in his engagements, he sacrificed his most devoted adherents every moment he could do so with advantage; incapable of justice, or humanity, or any good principle, he hesitated at no means by which his ends could be attained. In his opinion, the only use of the empire was the power to pillage it; of the imperial crown, to exchange its dignity for something more substantial. Though wholly destitute of comprehensive views, he must have had talent of some kind, or he could never have brought Brandenburg, Silesia, Lusatia, and a portion of the Upper Palatinate into his family; and that, too, without shedding one drop of blood. Nor must it be forgotten that he extended the commerce, encouraged the industry, and promoted the prosperity of Bohemia, — of the empire he was utterly regardless, — and that he founded the university of Prague. But if his memory be dear to his own kingdom, it is odious to any right-minded German.\*

In the last will of Charles, Wenceslas, the eldest son, had Bohemia and Silesia; Sigismund, the second, had the march of Brandenburg; John, the youngest, had Schweidnitz, Goerlitz, and Lusatia. In virtue of the preceding election, *Wenceslas* also succeeded to the Germanic throne. The reign of this prince is the most remarkable in the annals of the empire; and as most of the events depended on his personal character, we will first introduce it to the reader. 1. That Wenceslas should have little affection for the empire, where his influence was null, and should prefer a frequent

\* Æneas Sylvius, *Historia Bohemica*, cap. 33. *Vita Caroli IV.* p. 86—107. Dubravius, *Historia Boiémica*, lib. 22. Langius, *Chronicon Citizense* (sub annis). Trithemius, *Cronicon Hirsaugensis*, A. D. 1347, &c. Albertus Argentinensis, *Annales*, p. 150, &c. Latomus, *Catalogus Archiepiscoporum*, p. 535, &c. Ohlenschlager, *Urkundenbuch zur Guldenen Bulle* (variiis numeris). *Aurea Bulla*, cap. 1—15. Gudenus, *Codex Diplom.* tom. iii. p. 410—458. Putter, *Historical Development*, vol. i. book 3. chap. 3. & 4. Mutius, *Chronicon Germanorum*, lib. 25. Pfeffel, *Histoire d'Allemagne*, tom. i. p. 512—536. Schmidt, *Histoire des Allemands*, tom. iv. p. 536, &c. Coxe, *House of Austria*, vol. i. passim. Rebdorf, *Annales*, A. D. 1347—1363. Datti, *De Pace Publica*, lib. i. (variiis capitulis). For the Italian historians of the period, see the great collection of Muratori, *Rerum Italicarum Scriptores*, tom. xiv.—xx. For the ecclesiastical affairs, see Raynaldus *Annales Ecclesiastici* (sub annis).

residence in Bohemia, where it was unbounded, was to be expected. But not satisfied with utterly neglecting his duties as chief of the empire, he turned them into a joke. Thus, to the deputies whom the German princes despatched into Bohemia, requesting that he would return and transact some urgent affair, he replied, that he did not see what affairs he had to transact; that, in accepting the crown, he had done all that could be expected from a king of the Romans; but that, if any of the princes required his aid, it was more fit that the prince should come to the king, than that the king should go to the prince. There was some wit in the reply, but it must have been accidental; for Wenceslas was seldom sufficiently master of himself to speak with reason, more rarely still with wit, never with discretion. Sunk in the lowest sensuality,—“*semper edendo ac bibendo*,” says a chronicler,—he seems to have dissipated the few mental powers which nature had given him. Nor was this his only vice: that he frequented the public stews, is positively asserted by contemporary and even Bohemian writers; and when reproved by his queen for conduct which at once degraded the sovereign and the man, he threatened, if she ever renewed her complaint, to take her to the same place. To gluttony, drunkenness, and whoredom, he soon added murder. Sending for the ghostly confessor of his queen, he insisted on knowing what were the peccadilloes she had disclosed; and when promises, threats, even imprisonment, were employed in vain to shake the fidelity of the priest, he caused him to be thrown from the bridge of Prague into the river. A solitary murder, even though the victim was a priest, would have led to no consequences either in Bohemia, which had been used to such tragedies, or at the papal court; since the Christian world was now distracted by the schism. But the number of victims is said to have been great. He is even reported to have kept constantly near him a butcher to execute his sentences, at which he was always present with delight. Though this ac-

count may be safely rejected, it proves the degree of estimation in which he was held ; and we may certainly admit that a butcher was one of his boon companions, — who were always chosen from the dregs of society. There must have been extraordinary provocations on his part, or a people so patient of despotism as the Bohemians would never have risen against him. That after the wanton murder of two citizens and two nobles, the inhabitants of Prague arose, seized and consigned him to one of the public dungeons of the city, where, during four months, they kept him on bread and water, without allowing him any change of dress, or any indulgence not granted to other malefactors, is, perhaps, the most extraordinary fact in all history. It is certain, however, that they would not have proceeded to such an extremity, had they not been sure of the approbation of his brother Sigismund, margrave of Brandenburg, who had succeeded to the throne of Hungary. The way in which he effected his escape is not less singular than his imprisonment. Having with some difficulty obtained permission to cleanse himself in a public bath, he was conducted by four guards to one in the vicinity of Prague, and in his prison garb, like the vilest malefactor : two of them watched his garments, while the other two stood on the margin of the bath. There was a woman in the water ; “ for,” says Dubraf, “ it is the custom of the Bohemians, men and women, to bathe together ;” and she appears to have been one of his former acquaintance. Fortunately for him — probably the whole had been previously arranged — there was a fisherman’s boat on the bank of the river near the bath ; and after a moment’s conversation with the woman, they both, though *in puris naturalibus*, stepped into the boat, and Susan rowed him to the other side. Near the opposite bank was a fortress, which he himself had constructed as a place of refuge against the fury of the mob ; and it still held out for him. Here being welcomed by the garrison, Cæsar and his mate — now his favourite — forgot the dan-

gers of their escape.\* A stronger fortress, farther distant from the turbulent capital, soon received the pair. In the mean time, the conspirators were not dismayed : they knew that he would resort to his old habits ; and that, when the popular indignation was again raised, they might attempt his re-capture. The circumstances of the kingdom were such that any deed might safely be meditated. The Hussites, to whom Wenceslas was not unfavourable, were contending not merely for the toleration, but for the ascendancy, of their religion : under such a prince there could not, in the proper sense of the word, be any government ; and the whole country was infested by banditti. Doubtless with the full connivance of his brother, the imbecile Wenceslas was retaken, as he was incautiously diverting himself in the neighbourhood of the fortress, and was re-consigned to the citadel of Prague. From thence, however, for greater security, he was secretly transferred to a prison in Austria, the duke of which (Albert) was confederated with the discontented Bohemians. But he was soon enlarged, — according to one account by an old fisherman, who contrived to effect his escape, and accompanied him into Bohemia ; according to another, through the demand of his youngest brother, John of Luxemburg ; but in either case, probably, with the full connivance of duke Albert. 2. How fitted such a man as Wenceslas was for the throne of the empire, may easily be conceived. In fact, the circumstances of the times were such, that the ablest and most valiant of sovereigns could scarcely have held with honour the reins of government : one half of the population was in open hostility to the other, the imperial cities to the territorial princes and nobles. The success of the Swiss towns in throwing off the domination of the house of Hapsburg, and even resisting the efforts of the empire to reduce them ; the encroachments which Charles IV. had made on the privileges of the impe-

\* “ Illam (Susannam) non ad mensam solum, verum etiam ad lectum sibi adjunxit.”



rial cities in Swabia ; roused, as we have before intimated, these flourishing municipalities to their common defence. If, singly, they were unable to contend with the martial princes, the formation of a league, consisting of above sixty cities in Swabia and the Rhenish provinces, enabled them to defy the squadrons of their enemies. Nor had they merely their privileges to defend : their very existence was menaced by the perpetual assaults of the nobles, who formed themselves into confederations for no other object than their destruction. If their walls might bid defiance to the attacks of the cavalry, their ruin would be no less effected by the plunder of their merchandise, and by the interception of all supplies. All the cities, indeed, were not imperial ; but all had griefs to remedy, since those which were feudally subject to the territorial princes were frequently oppressed ; and even those which were founded on the ancient domains of the crown, and by charter recognised as free and imperial, had to complain of a grievance imposed on them by the late emperor. To secure the observance of the public peace, Charles, in imitation of his immediate predecessors, in times of anarchy, had confided certain districts to imperial baillies, — officers who exercised a jurisdiction too ample to be trusted to other than the most moderate hands. And by what right was this jurisdiction delegated ? It was certainly contrary to the usage of two centuries ; perhaps, also, to the spirit of municipal incorporations ; and we have evidence enough that the trust was outrageously abused by the new functionaries. What else, indeed, could happen where the office was always sold — generally for a heavy sum — to the prince who undertook it ? To indemnify himself was only an introduction to his object, which was notoriously to enrich his family with the least possible delay, since, in the anarchy of the period, his tenure was exceedingly frail. Hence the design of the league which the cities formed among themselves was the defence of all and each, against not

only the noble banditti of the Rhenish provinces and Swabia, but their provincial tyrants. Charles, as we have before related, was unable to resist these confederations; and prudence would have suggested the removal of the obnoxious baillies. But one of the first acts of Wenceslas was to sell to Leopold of Austria, for 40,000 florins in gold, the bailliage over Upper and Lower Swabia, including Augsburg. Leopold could have no very good feeling towards communities which had so circumscribed the domains of his house in Helvetia; but though he was doubtless guilty of great rapacity, still greater blame appears to rest on his deputies. By some means he pacified for a moment the imperial cities within his jurisdiction; but it was only that he might have leisure to annihilate the rising confederations of Helvetia. In an attack on Sempach, he and his noblest chivalry fell. This victory secured the independence of the Helvetic confederacy; nor could the undivided force of the house of Austria, aided by the alliance of other princes, make any impression on it. This success was not lost on the confederated cities of Swabia and the Rhenish provinces, which were soon joined by several of the territorial nobles, who hoped by this means not only to avert the hostility of the cities, but to obtain protection against the encroachments even of their own order. But from defenders the cities of the league are said to have become aggressors; to have sworn interminable war against the whole body of nobles; to have issued from their walls at the head of formidable bodies, and rased the castles of the nobles, without regard to the representation that many of them were not the strong-holds of robbers. And it is certain that, to strengthen themselves, while they perpetually weakened their enemies, they encouraged the peasantry to flee from their feudal lords and settle among them. From the alacrity with which the nobles formed themselves into counter leagues, — not in these provinces only, but even in Saxony and Bavaria, — and from the adhesion of the

whole body to the confederation, there must have been ample provocation from the municipalities. What is certain is, that, through this mutual spirit of confederation, one half of the empire was arrayed against the other. The feeble Wenceslas favoured one or the other according to the views, or, we ought rather to say, the caprice, of the moment. At length, to counterbalance the mischief of both, he himself formed a confederation, consisting alike of princes and cities, the object of which was to restore the public peace; and from the deputies of both he exacted an oath that no hostilities should be undertaken before the expiration of a certain period. Thus in 1387, Stephen duke of Bavaria, Albert duke of Austria, and Frederic burgrave of Nuremberg, on the part of the princes and nobles; and deputies from the three imperial cities, Ulm, Augsburg, Nuremberg, on the part of the cities, met at Nuremberg, and agreed to prolong the public peace to St. George's day, 1390; and, for the more convenient attainment of this object, the country occupied by the members of the confederation was divided into four cantons or circles:—1. Saxony, Upper and Lower; 2. The Rhenish Provinces, from Basle to Holland; 3. Austria, Bavaria, and Swabia; 4. Thuringia and Franconia. But in one year the peace was broken by the duke of Bavaria, who took prisoner the archbishop of Salzburg, a member of the municipal league. To punish this act of violence, Wenceslas himself encouraged the cities to take up arms, and the war became general. In it, however, owing to the universal combination of the military classes, the municipal league was defeated, and at length forced to purchase peace. This was followed by an imperial edict, declaring the confederation dissolved; and, to ensure the continuation of tranquillity during six years, four deputies were returned by the nobles, and four by the cities, who, in conjunction with a president nominated by the sovereign, were to form a permanent tribunal, with power to decide in any dispute that might arise between any

city or district, any noble or citizen. These measures, which Wenceslas was compelled to adopt, and which, with two or three other regulations regarding the uniformity of the public currency, and the taxes, constituted the whole of his experience as emperor, were sadly annoying to him. Nothing could equal the reluctance with which he left Bohemia for Germany, except, on the dissolution of a diet, the eagerness with which he resumed his habits of low debauchery. Under such circumstances, we cannot feel surprise that the Germanic nation should wish his deposition and effect it. The result was hastened by the hostility of Boniface IX., whom, no less than his rival Benedict XIII., Wenceslas had offended by suggesting, that a new election might be made, and an end put to the schism which distracted the church. In 1400, a diet of princes, convoked by the three ecclesiastical electors and the count palatine, who had vainly cited him to appear before them, declared the throne vacant. The grounds on which this declaration was founded were elaborately displayed; and their conduct might deserve approbation, had we less reason to suspect the purity of their motives. To depose a king implied a plenitude of power extremely agreeable to their ambition; and to exact from a new candidate the most advantageous conditions for their votes, equally gratified their avarice.\*

1400 In the choice of a successor, two of the electors, Wenceslas himself as king of Bohemia, and his brother  
to  
1410. Sigismund as margrave of Brandenburg, could not possibly concur; since the one would never sanction

\* Æneas Sylvius, *Historia Bohemica*, cap. 34. Dubravius, *Historia Boemica*, lib. 23. Mutius, *Chronicon Germanorum*, lib. 26. *Magnum Chronicon Belgicum* (sub annis). Ebendorf de Huselbach, *Chronicon*, p. 811, &c. Langius, *Chronicon Citizense* (sub annis). Muratori, *Annali d'Italia* (sub annis). *Academia Græcensis, Historia Ducum*, pars ii. p. 47, &c. Putter, *Historical Development*, vol. i. book iii. Pfeffel, *Histoire d'Allemagne*, tom. i. (sub annis). Schmidt, *Histoire*, tom. v. liv. 7. chap. 10. *Historia de Langraviis Thuringiæ* (variis capitulis). Trithemius, *Chronicon*, A. D. 1378, &c. Denina, *Rivoluzione della Germania*, tom. iii. lib. 8 cap. 8, 9.

his own degradation ; nor was the other willing to see the exclusion of his house. A third, the duke of Saxony, refused to take any part in these proceedings ; not from respect to Wenceslas, but because he perceived that the choice of the other electors was already determined in favour of a candidate obnoxious to him. And, to secure *his* neutrality, if not concurrence, he was taken prisoner by an armed band in the interest of the rest. The suffrages of the electors fell on one of their number, *Robert*, count palatine, a prince who had neither the talents nor the influence necessary for the support of the dignity. His administration, whether in Italy or Germany, was unfortunate. 1. One of the causes alleged for the deposition of Wenceslas was, that he had virtually dissevered Lombardy from the empire by creating the celebrated Giovanni Galeazzo Visconti duke of Milan. To settle the affairs of that perpetually distracted country, Robert passed the Alps, and summoned the duke to resign both the title and the domain ; but, instead of an obedient vassal, he found an open enemy, who signally defeated him. By favouring the league of the Guelfs, he excited the hostility of the Ghibelines, which, in this case, was the more bitter, as the emperors were the natural allies of the latter party. In return, he might, indeed, expect to secure the adherence of the Guelfs with pope Boniface at their head ; but the assistance which he received was so feeble, and the hostility excited so formidable, that he ingloriously retraced his steps. His conduct in regard to the schism was no less impolitic. Instead of abetting the council of Pisa, which deposed both popes, — the only measure that could give peace to the church, — he zealously espoused the interests of Gregory XII., and thereby gave offence not only to the council, but to such of his subjects as approved the decision of the council. 2. Nor in Germany itself was his conduct more approved. Attempting to restore the exercise of his undoubted prerogative, he was opposed by a league of the princes, who assumed, as a pretext, the necessity of watching over the

rights of the order against the encroachments of the crown. Such a league could not constitutionally be formed without his sanction; and no sovereign could be expected to approve what was directly levelled at his authority: but his opposition only confirmed the evil, and he was forced to treat with the confederates as an independent power. Equally ineffectual were his efforts to destroy the union of the cities. Surrounded by these formidable associations, which were so many independent bodies of the state; which were always in a state of hostility, either to him or to each other; of which any one was more powerful than himself, the emperor reigned merely by sufferance: he had been elected by seven princes; by a majority of the seven he might at any time be deposed. That doom Robert very narrowly escaped. Dissatisfied with his government, — indeed, they would have been equally so with that of any other man, — one party turned their attention towards Wenceslas; another towards some other quarter: but his unexpected death preserved Germany from another spectacle of successful rebellion. The talents of Robert were not of a high order; but that he was well-intentioned, and that he laboured to promote the best interests of the empire, cannot be doubted. But against the real sovereigns of the country, neither his patriotism nor his virtues could avail. He was, indeed, but a phantom of royalty: most of the territorial princes were even more powerful than he; and it was remarked by a contemporary writer, that his revenues as emperor — the same is equally true of his two predecessors — did not exceed one half that of most bishops.\*

1410 The death of Robert seemed to favour the preten-  
to sions of Wenceslas; but the partisans of his house pre-  
1437. ferred the choice of his brother Sigismund king of  
Hungary. At Frankfort, Sigismund was illegally elected  
by two only of the seven; while five, who assembled

\* Founded chiefly on the same authorities.



later, gave their suffrages in favour of the margrave of Moravia, cousin-german of Wenceslas and of Sigismund. Thus Germany had three kings of the Romans, two of whom were resolved to defend their rights with the sword. But the horrors of civil war were averted by the death of the margrave, whose partisans, combining with those of Sigismund, proceeded to a new election; and *Sigismund* (1410—1437) was unanimously recognised king of the Romans, Wenceslas himself renouncing his own rights in favour of his brother. The reign of this prince, whether external or internal, is well deserving of our consideration. 1. The foreign transactions of Sigismund chiefly regarded Italy and the church. Though Gregory XII. had been deposed, and John XXIII. elected by the council of Pisa, the schism was not ended, since Gregory was still acknowledged by a part of Christendom. Though the new sovereign declared for pope John, he knew that there could be no peace in Europe until one or both of the rivals were deposed, and a pontiff acknowledged by the unanimous voice of Christendom; results which could be produced only by another general council. In the hope that another would be attended by representatives from all the churches of Europe, he prevailed on John to issue the necessary bulls of convocation. The proceedings of the celebrated council of Constance must be sought in the histories expressly devoted to ecclesiastical affairs. That John and Gregory XII. were deposed; that Martin V. was elected successor; that Benedict XIII., however, refused to obey the church universal, and thus perpetuated the schism unto his death; that John Huss, the Bohemian reformer, and Jerome of Prague\*, notwithstanding the safe-conduct given to the former by Sigismund, were condemned and burnt at the stake by this intolerant assembly; that whatever reforms were meditated by the fathers of the council, they were prevented by the intrigues of Martin, and by the jea-

\* To the doctrines and actions of these celebrated men we shall advert in the proper place — the religious history of the empire.

lously entertained of Sigismund, who certainly claimed over the council an authority, the admission of which would have been fatal to the independence of the church ; are among the best known facts of history. In 1433, Sigismund was crowned emperor by pope Eugenius IV. ; but over Italy he had no influence. Lombardy was governed by the duke of Milan, the nominal vassal of the empire ; and by the Venetians, its natural enemies, whose conquests now began to menace Northern Italy.\* A few local nobles, indeed, both of that province and of Tuscany, were willing to purchase from the avarice, or to solicit from the pride, of the emperors, the title of imperial lieutenants, which gave them a little consideration in the eyes of the Ghibelines ; but all idea of subjection to the empire was vain at a period when every one knew that even the German princes were virtually independent of the crown. 2. Internally, this emperor's reign exhibits many melancholy proofs of the nullity into which the sovereign authority was fallen. In the first place, the excommunication of the duke of Austria by the council of Constance, for plundering churches, and still more for favouring the interests of John XXIII., enabled the Swiss cantons to throw off the last bonds of allegiance, not only to the house of Hapsburg, but to the empire. In the second, he was unable to enforce, even for a season, the observance of peace. Private war raged on every side ; the tribunals of the electors and of the territorial princes were silent. Much of the anarchy that prevailed may be referred to the frequent absence of the emperor. The affairs of the church and of Italy ; those of Hungary, especially the war with the Turks, which engrossed so much of his attention, inevitably neutralised his efforts to benefit Germany. But Bohemia, to the crown of which he succeeded in 1419, on the death of his brother Wenceslas, opposed the greatest obstacles to his government. The intolerance which he showed in re-

\* See Sismondi, *History of the Italian Republics* ; and Europe during the Middle Ages, vol. i. p. 70.

gard to the reformers ; his shameful violation of the safe-conduct which he had given to Huss ; his compliance with the most atrocious measures of the persecuting catholics, naturally irritated a people, of whom one half were friendly to the new opinions. The Hussites, positively refusing to acknowledge him, took possession of the capital, Prague, and declared the throne vacant. In revenge, Sigismund, who was recognised by a part of the kingdom,—by all the catholics,—grew more severe with the dissidents. Nor must it be concealed that he had other causes of irritation. The Hussites had not only insulted the dominant religion ; but had commenced an active war on the catholics, whose lands they had laid waste, and whose leaders they had massacred. They might, indeed, allege that similar violence had been used towards them ; but, in their character of reformers they should have remembered, that example is no excuse for evil, and that it was their duty, no less than their policy, to prove that the purer the faith the better the works. Unfortunately however, they were so far from regarding this truth, that in violence they exceeded the catholics themselves. Hence both parties had wrongs to avenge ; and neither was at all influenced by the genuine spirit of Christianity. That Sigismund was perfectly justifiable in attempting to reduce those who were rebels to his authority, cannot be doubted ; but the means which he adopted were exceedingly censurable. Had he used mildness, instead of unrelenting persecution, he would have established his throne without bloodshed, and probably have restored uniformity of belief. To reduce the dissidents by his own forces was hopeless : he, therefore, recurred to the empire and the church ; and, in conjunction with the papal legate, he proclaimed a crusade against them. This is not the place to relate the wars which followed \* ; we can merely observe, that the dissidents defended themselves with remarkable

\* To these wars we shall revert in the history of religion in Germany.

success ; that they not only defeated the most formidable armies of the empire, but made terrible irruptions into Austria, Bavaria, Franconia, Misnia, and Lusatia ; that, though they sustained a signal reverse, — the effect of their own dissensions, — and were induced to acknowledge Sigismund, they yet wrung some civil privileges from him, and from the church permission to celebrate the communion under both kinds. The successful resistance, the open defiance, of these Bohemian dissidents, impress us with a poor idea of the military force of the empire. It consisted only of hasty feudal levies, without discipline, and averse to the service. In fact, they exhibited such shameful cowardice, — on two occasions fleeing even without waiting for the onset of the Bohemians, — that a proposition was soon made to establish a permanent standing army, to consist of mercenaries alone, and that all who chose might join it. It was at first rejected though the interested opposition of those who would have to support the new army. All that the diets agreed to sanction was, that, in future wars, each state should furnish a certain contingent of troops, armed at its own expense. But the repeated victories of the Bohemians at length made the empire blush for itself, and consent was reluctantly given for the levy of a standing army to be supported by each state in proportion to its contingent, and by each individual in proportion to his rank and means. Hence the first pecuniary taxation in the annals of the empire ; every inhabitant of each state, from the elector down to the lowest inhabitant, furnishing his quota, which was transmitted by the collectors to the general treasury at Nuremberg. — In regard to the electorates, the reign of Sigismund offers some revolution. In 1422, the ancient house of Saxony, in its eldest branch, that of Saxe-Wittenburg, was extinct in its male line ; but there remained the branch of Saxe-Lauenburg, descended from the same stock, which, if the ordinary laws of succession were to be regarded, had an undoubted right to the vacant fief ; and the elector of

Brandenburg had a son, who had married the niece of the late elector of Saxony. Yet the decision of Sigismund — for it was left to him alone — was in favour of neither : he conferred it on the margrave of Misnia, Frederic the Warlike, who had no claim by blood. The reason assigned for this investiture was, that, the duchy in default of issue having lapsed to the crown, the emperor had a right to confer it, with the approbation of the electoral college, on the prince most likely to discharge the duties it involved, — on him most able to govern the state and to serve the empire. The pretensions of the margrave of Brandenburg were renounced through two considerations ; first, that father and son ought not to possess two voices in the electoral college, but chiefly through a considerable sum of money offered by the margrave of Misnia to his most dreaded rival. In vain did the prince of Saxe-Lauenburg exclaim against the decision ; in vain appeal to diet and pope : the emperor, and, indeed, the electors, who seem to have been gained by the margrave, fully approved the elevation of the new house ; from which the present royal family of Saxony is descended. Again, the margravate of Brandenburg, which, through the cares of Charles IV., had been brought into the house of Luxemburg, was sold by the emperor to Frederic of Hohenzollern, burgrave of Nuremberg, for 400,000 ducats. To this transaction the other electors offered no resistance, since any measure that weakened the influence of a reigning family was sure to be well received. From this Frederic the royal house of Prussia is descended. In regard to another principality, that of Lower Bavaria, vacant by the extinction of one line in the ancient ducal house, Sigismund was not so successful. He claimed, indeed, the duchy as a fief lapsed to the crown ; and it was equally claimed by his son-in-law, Albert the Wise of Austria, whose mother was the sister of the deceased duke. But it was at length adjudged to the four dukes of Upper Bavaria, who formed another branch of that house, to be equally divided among

them. This decision was honourable to the emperor, whose moderation, however, was probably caused rather by his own weakness than by any consideration of justice. Yet Sigismund was not without good qualities. Brave, indefatigable, enlightened, liberal, a patron of learning, and anxious for the prosperity of the empire, he seemed qualified for his station. Still his reign, as we have seen, was disastrous. Though much of this is, doubtless, owing to the circumstances of the times, and to the unmanageable nature of the Germanic constitution, an equal share must be attributed to defects of his own character. That he was vindictive, may be inferred from his conduct to the Bohemians; that he was faithless, from the violation of his safe-conduct to Huss: nor were these the only instances. He had a considerable share of duplicity, which, though it never obtained him any great advantage, averted from him what his love of pleasure rendered most intolerable — present evils.\*

1273 In regard to the power of the crown, the period over  
 1437. which we have passed exhibits no great difference from the one immediately preceding. In estimating it, nothing is more usual than to make some particular reign the basis of deduction, but at the same time nothing can be more erroneous; since the personal character of the sovereign will have much greater influence than we generally imagine. Though this is true of all countries, it is peculiarly so of Germany, where he had only to invoke the acknowledged prerogatives of his predecessors: if he had learned to make himself respected, the

\* Æneas Sylvius, *Historia Bohemica*, cap. 38. Dubravius, *Historia*, lib. 25. Mutius, *Chronicon Germanorum*, lib. 27. Bonfinius, *Rerum Hungaricarum Decades*, dec. iii. cap. 3. Vander Hardt, *Acta Concilii Constantiensis*, tom. i. passim. L'Enfant, *Histoire du Concile de Constance*, lib. i.—vii. (multis capitulis). Windeck, *Historia Imperatoris Sigismundi*, cap. 1—220. Gassarus, *Annales Augstburgenses*, p. 1551, &c. Raynaldus, *Annales Ecclesiastici* (sub annis). Putter, *Historical Development*, vol. i. book iii. chap. 4. Pfeffel, *Abrégé Chronologique*, tom. i. (sub annis). Muratori, *Annali d'Italia* (sub annis). Schmidt, *Histoire des Allemands*, tom. v. p. 81—203. Coxe, *House of Austria*, vol. i. passim. Datti, *De Pace Publica*, lib. i. (variis capitulis). Denina, *Delle Rivoluzione della Germania*, tom. iii. lib. 8. cap. 12, 13; lib. 9. cap. 1, 2.



claim was reluctantly allowed ; if weak or inconstant, he was sure to be resisted with success. Thus, Rodolf I., through the ascendancy of his personal qualities alone, exercised more influence, and that constitutionally, over the affairs of the empire, than many of his predecessors. He found the imperial authority a wreck, its shattered fragments the sport of the states ; and he commenced the task of collecting and replacing them, with a caution which inspired no alarm, with a perseverance which nothing could arrest. One of his measures, however, though based on feudal law, caused considerable surprise. On the accession of a new sovereign, all the imperial vassals were required to do homage, within six months and a day, for their fiefs ; but, as these fiefs were become hereditary and patrimonial, and still more, as the great vassals themselves were in power superior to the lord, the act had been considered as one of mere formality, — as obligatory only on the minor feudatories. The readiness with which the king of the Romans undertook to punish Ottocar of Bohemia, whom he deprived of Austria, Styria, Carinthia, and ultimately of life, made a salutary impression on the states. It must not, indeed, be concealed that to the jealousy entertained by the Teutonic princes concerning a power which had long sighed for independence, and still more to the defective title by which Ottocar held those provinces, he was indebted for much of his success. We may add, that the princes of the empire generally refused to join his standard, and that he undertook the war with the vassals of his house, of his friends and allies. This circumstance alone, though it rendered his enterprise the more arduous, was of the highest advantage to him, since it proved that, even without the aid of the princes, he could make his authority respected. And, from the tenour of history it is no less clear that open fiefs were regarded as within the disposal of the crown, though not without the sanction of the diet. Uniformly as that sanction was afforded, the influence of the sovereigns must have

been considerable, or they could not have brought so many provinces into their own families. Thus the house of Hapsburg procured the Austrian provinces; that of Luxemburg, Bohemia; that of Brandenburg, Bavaria. In these cases it was not necessary, nor perhaps usual, that the consent of the electors should be given *vivá voce*: it was expressed in written instruments signed by each. Nothing can better exhibit the policy of Rodolf than this precaution. On the electors assembled he could probably have made no impression; separately, he could work on the hopes or passions of each; and by entreaties, or reasoning, or promises, he was generally successful. Nor did the emperors always wait for the vacancy of a fief. Where, through default of succession, it was likely sometime to be open, they frequently granted *letters expectative*, — whether with or without the consent of the electors, has been disputed. It is, however, probable that their concurrence was necessary to the disposal of every open fief; as without it such promises could not be absolute. In regard to the great fiefs of the empire, the ceremonial of investiture was remarkable. Usually it took place on a scaffold, erected in the open plain. On it was the emperor seated, arrayed in all the pride of majesty, surrounded by electors and princes. Before the scaffold appeared the prince destined to receive the honour, mounted generally on a horse, sometimes on a mule, accompanied by his kindred and friends, and by a numerous suite of vassals and officers of his court. The whole party then galloped three times round the scaffold; the first time without banners; the second with one; the third time with a different banner, which the prince held in his hand, and on which were represented the arms of the state he was about to govern. Dismounting, he advanced with his suite to the scaffold, was met by two princes, who, placing themselves one on his right hand, the other on his left, ascended the steps with him, and stood by him while he knelt before the throne. One of the princes

then solicited the investiture, and his words were repeated by the candidate. Having received his oaths of homage and fealty, the sovereign delivered him the banners, varying in number according to the fiefs and arrière-fiefs contained in the province or district he was to govern. No sooner had he returned his thanks to the monarch, than the banners which he had received were thrown among the multitude before the scaffold, and were torn to pieces with strange vociferations. All princes were not compelled to receive the investiture on the domains of the empire. Thus, the dukes of Austria were allowed to do homage on their own territories, with the ducal coronet on their brows. — In regard to the judicial prerogatives of the crown, the reign of Rodolf, likewise, offers a striking distinction from that of his predecessors. Wherever he happened to be, he held his tribunal, contending that the cognizance of causes, even in the first instance, was an essential attribute of his dignity. The maxims of the Roman jurisprudence, which in his age were beginning to pervade the legislation of the country, were favourable to his claim ; but we must not forget that the prince in whose territory he happened to be was his assessor, and even his colleague. Without the presence of that prince even Rodolf could not hold a judicial court. And, notwithstanding the assertions of the imperial writers, we may justly doubt whether he could, *as a matter of right*, sit in any tribunal beyond the bounds of his hereditary district, or of the three provinces, Swabia, Franconia, and the Palatinate, which were long the domains of the crown. It is equally certain that, as no emperor could be always making the tour of the provinces, or could spare much time for judicial purposes, the administration of the laws was almost exclusively in the hands of the territorial sovereigns. Within a very circumscribed limit, indeed, courts could be held by his judges ; but their decisions were seldom obligatory : the appeal lay to him. In the electorates, however, and in many of the principalities, the imperial jurisdic-

tion was unknown ; or, if it were occasionally exercised during the emperor's accidental presence, it was at the request, or by the permission, of the local sovereign. That even appeals from the decision of these sovereigns were prohibited, is evident from the Golden Bull. Yet, to watch over the preservation of the public peace, Sigismund restored the office of judge of the court, with even extended authority. A new tribunal, called the Imperial Chamber, from which the Aulic Council is legitimately descended, and made to depend entirely on the emperor, was suffered to be established. In fact, its chief duty being to secure the public tranquillity, it inspired no distrust: no one could foresee that in time it would considerably encroach on the usurped privileges of the territorial sovereigns. But its influence was slowly acquired, and during the period before us was virtually null. Where, in any civil or criminal cause, one of the parties was an elector or prince of the empire, or the cause could not be decided by himself, or within his own jurisdiction, the tribunal of the emperor was the proper court. There, assisted by seven assessors, all of the same rank as the plaintiff or defendant, he heard and decided. Yet even in this case it was easier to decide than to enforce the execution of the decision. The convicted party was often too powerful to be punished ; and all that the sovereign could do, was either to employ mediators, or to lay the affair before a diet. Neither measure was of necessity availing ; and, to escape the odium of pronouncing against either party, or the folly of decreeing what he had not power to enforce, often, even where the direct principles of justice were involved, did he suffer them to settle the dispute by private war. When one or both was so weakened that they ceased for the moment to be formidable, he could safely interfere to defend the violated majesty of the laws. Again, the throne was the fountain of honour : it alone could confer letters of nobility, or elevate a noble to the rank of prince, — a privilege which could not fail to be attended with some

degree of influence at a period when precedence of rank was more than a personal distinction. And in a multitude of other cases even its positive control was necessary ; yet generally both were restricted to the three provinces we have mentioned, as under its more immediate influence. After all, however, even in the time of Rodolf, the imperial authority was exceedingly limited. If the diet authorised him to declare war, it did not furnish him with the means of waging it ; these he must find how or where he could. Unless there was money advanced, the troops would not march ; and money was seldom to be raised. Anciently the imperial domains, which, as we have more than once intimated, consisted of the territories on both banks of the Rhine, and of vast estates scattered throughout all the provinces, were ample enough for the support of the dignity. They were, indeed, so ample, that it was usual, we think strictly obligatory on the emperor, to relinquish, immediately after his election, the government of his hereditary state. But by Frederic II. they were greatly impaired : during the troubles which followed his death, some were usurped by the princes in the vicinity ; while, of those who held or administered these estates, many were not slow to convert them to their own use, and to transmit them as patrimonial possessions to their heirs. The means by which the vassals of the crown transformed their fiefs into allodial estates\* will equally account for the usurpation in question. And as to Italy, the *regnum proprium* of the emperors, it was divided among a number of local families, and was, consequently, lost to him. The alarming diminution of the imperial revenues rendered it impossible for the sovereign any longer to resign patrimonial domains, especially after Charles IV. had alienated the pitiful remnants of those revenues. In every respect this was an evil. It enabled none but sovereign princes to support

\* See before, p. 222.

the dignity ; it diminished their influence over the Germanic provinces ; it compelled them to reside chiefly in their hereditary states ; and it inevitably rendered them more solicitous for their own interests, or those of their family and people, than for the interests of the empire. In fact, from the time of Ludovic V. we perceive that they discharged their duties with apathy. In these circumstances, no emperor could be expected to carry on war, for the benefit of the confederation, at his own expense. Hence the innovation which we have before mentioned, — the levying of a general tax for the hire of mercenary soldiers. It was, indeed, necessary to the very existence of the confederation. Without money troops could not be put in motion ; without an expedition, on a large scale, Bohemia must have been lost ; and the example of successful rebellion would have been too attractive to the other countries not to be eagerly followed. From these observations, some idea may be formed of the amazing difference between the authority of the Saxon and that of the Luxemburg emperors. The sterile privilege of the initiative in regard to laws, with the certainty that the measures proposed would be modified, or perhaps rejected ; the imperial treasury reduced to the collection of certain judicial fines ; the loss of the civil and criminal jurisdiction other than in the circumstances we have detailed ; that of the general administration, in favour not merely of the territorial princes, but even of the imperial cities, which gradually purchased or wrested the judicial powers from the crown, made the imperial dignity an object of contempt — whatever the mock solemnity with which it was invested — to the meanest prince of Germany.\*

\* Müller, *Theatrum Romano-Teutonicum*, ii. 58. ; v. 85, &c. Martene, *Thesaurus Anecdotorum*, i. 1153. Aventinus, *Annales Boiiorum*, lib. iv. p. 366. Cusanus, *De Concordantiâ Catholicâ*, lib. iii. cap. 30. 39. Putter, *Historical Development*, i. 298, &c. Schmidt, *Histoire des Allemands*, tom. v. p. 529, &c. Pfeffel, *Abrégé Chronologique*, tom. i. p. 595. To these must be added the chronicles of the respective reigns.



During the period before us, the *electoral dignity*<sup>1273</sup> was, as we have related, declared inherent in three ecclesiastical and four secular princes. That in this respect the celebrated Golden Bull of Charles IV. was of great benefit to the empire, is evident ; but in others it was mischievous, since, in defining, it augmented the privileges of the seven. Their privileges were often fatal to the country. The suffrage was seldom gratuitous, however required for the public weal : to them the interest of the community was a foreign object ; their own aggrandisement alone being the end of all their actions. The merits of a candidate were never considered. He who offered the most for each vote was sure to be preferred ; and if he were feeble in understanding, and powerless by position, he had an additional recommendation. The shameless venality of the electoral college is a stain on the character of those magnates, which no time can cleanse. Yet let us not suppose that the Germans were more avaricious or less patriotic than other nations, — that the electors were worse than the parliamentary constituency of Great Britain. The evil lay first in human nature, and next in the total absence of all securities against the encroachments of the selfish principle. Nor did it merely display itself at an election. The monarch had frequent need of the letters to which we have alluded, — letters signed by each elector authorising him to confer a fief, or to exercise some other act of sovereignty, in which the states had a concurrent share. Now these were seldom gratuitous : they had to be purchased by money or promises. — But the most dangerous of their usurpations regarded their privilege of deposing emperors. Whatever were the merits or character of the reigning sovereign, he could not please all : the refusal of a grace solicited, and still more the preference of one prince to another, was sure to make the one his enemy, the other ungrateful. That the offended party had little difficulty in procuring the support of other electors, is a

mélancholy fact, but easily explicable ; since, apart from the love of change which characterises human nature, every one had a great and an immediate advantage in the capitulations signed by the successful candidate, and every one was willing to display, as frequently as possible, his power of making and deposing emperors. Among those who were always ready for such revolutions, the electoral archbishops were generally the most prominent. As heads of their respective sees, they had, no doubt, reason enough to complain of the injuries sustained by their churches ; as the immediate servants of the pope, they were not averse to embrace their master's quarrels ; but in a majority of cases their opposition to the reigning sovereign arose from his inability to fulfil the pledges he had given in " the capitulations." To curtail the usurped privileges either of temporal or of spiritual electors, was a hopeless task ; since on the slightest aspect of danger, they formed themselves into a league, ostensibly for their own defence, but in reality for the purpose of still farther circumscribing the power of the crown. Of these leagues we have several examples in history ; but that of 1424 was rendered permanent, by the resolution that, on the commencement of his reign, every elector should swear fidelity to it.—In regard to the diets, whose voice was preponderating, in the period before us they were neither so numerous nor so efficient as in former times. Rodolf, indeed, held many ; but his successors, especially those of the house of Luxemburg, were too much occupied with their private affairs, and too constantly resident in their own territories, to have either leisure or inclination for those of the empire. In general they were satisfied with sending representatives, of whom one was always a doctor in laws ; but, as the powers of the latter were limited, they did little good. To remedy those evils of uncertainty and irresolution, it was agreed that, whenever the emperor could not attend the diet, there should be a communication by

writing ; but the only effect of this innovation was to protract the business of the state : often months elapsed, even where the pending affair was most urgent, before a final decision was taken. From diet to diet the most important affairs were postponed ; both because the different arms of the state had not a sufficient number of representatives present, and because of the jealousy which reigned among those who had. If something, for instance, were proposed by the nobles, the proposition itself was enough to excite the suspicions of the deputies from the imperial cities ; and *vice versâ*. Nor was this mutual jealousy unfounded : it was the aim of each to relieve itself at the expense of the rest. Of balanced duties and obligations, men had no notion ; *self* absorbed every other sentiment ; patriotism and public spirit were not so much as professed. Let not the severity of this remark be considered as peculiarly and exclusively merited by the German legislators alone : it might be applied with even greater justice to the legislators of England, not in the middle ages only, but in times which we are apt to regard as those of social perfection. As the German felt no patriotism, he professed none ; nor will his honesty fail to be doubly appreciated, when contrasted with the conduct of those who merely regard the profession of the public good as the necessary passport to private advantage.—We have alluded to the deputies from the imperial cities as present in the diets, and deciding on the most important affairs of the empire. Their introduction may be traced to the close of the thirteenth century ; but we may doubt whether they ever reached the dignity of a third estate. The *imperial* cities, which were exceedingly few, — scarcely constituting a twentieth of the whole number, — were the only ones invested with the privilege. That their voice should balance that of the two higher orders of the state, — of the electors and the territorial princes (the mere nobles had no longer a seat in the *general* diets), — would be an absurd supposition. In Germany, as in other places,

their introduction was allowed for one reason only, — that they might contribute the more largely to the support of the administrative government ; and that, consequently, they might relieve the other classes of a load very unwillingly borne. But in other countries there were no imperial cities, possessing this exclusive privilege or burden — for it was as much the one as the other — since all the municipal corporations were allowed to return representatives. But it may be asked, why not admit in Germany, as everywhere else, all the municipalities to a seat in the national assemblies ? That such a measure would have increased the general resources of the state, is undoubted ; but in the same degree it would have diminished those of the provinces. We must not forget that the cities which were not imperial, and which were situated on the domains of the electors and territorial princes, were, though exempted from general contributions, compelled to contribute towards the support of the local administration. They had both to support their own municipal establishment, and to aid that of the province. Hence, they were subject to certain duties and to occasional levies, payable into the provincial treasury ; an obligation from which the imperial cities were exempt. No less than the imperial, indeed, they had their leagues ; and in the same league both were frequently joined. But if their interests were often common, — as when the combination of all was necessary to resist the encroachments of the aristocracy, — they were also frequently divergent. The inferior cities had to struggle with feudal oppressions from which the others were happily relieved ; and in a more particular sense against the exactions of their territorial lords. Singly, a walled town of a few hundred or even a few thousand inhabitants, could not withstand the local aristocracy, assembled in the provincial states ; but the league of several became as formidable in the same district, as that of the imperial cities to the empire at large. In revenge, the aristocracy, as we have before observed,

had also *their* leagues. The struggles of the two were always fatal alike to social and individual happiness. Hence, the efforts of the emperors, and generally of the diets, to enforce the public peace ; but efforts which, as they were unsupported by the necessary authority, as they were, in fact, opposed to whatever was worth the name of authority, were almost uniformly unavailing. Beyond the bounds of the imperial domain, the influence of the electors and of the territorial princes was generally predominant.\*

The second branch of the state, ranking in the diet immediately below the electors, was formed by the *territorial princes*. By the first of their privileges, they could sit in judgment on their equals, and could be cited by princes only before any tribunal. By the second they exercised judicial authority over the knights, squires, burgesses, peasantry, and other subjects within their jurisdiction : to their tribunal, every one of these classes was subject in the first instance ; and it was only when they denied justice, that the case could be carried beyond the bounds of the district. But, as no prince could be equal to the administration of a province, he had not only his own tribunal, but several bailiffs, who, in particular cantons, exercised justice in his name, and from whose decisions appeals could be brought before him. And in some other respects they held an authority virtually sovereign. By a thoughtless concession of Charles IV.,—a monarch whose only object was his own private advantage, and that of Bohemia,—the landgraves, who constituted the largest class of the princes, were invested with dominion over the mines of their districts. Whether he intended to favour the landgraves only ; or whether the other princes had the same privilege already, and he wished to make

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\* Pfeffel, Histoire d'Allemagne, tom. i. p. 595, &c. Putter, Historical Development, vol. i. book iii. chap. 2. Gewoldus, De Septemviratu, cap. 6. Gudenus, Codex Diplomatum, tom. ii. & iii. (variis instrumentis). Schmidt, Histoire des Allemands, tom. vi. cap. 41. But more than all these the chronicles of the period.

them equal, is not very clear. We know, indeed, that, in his reign, princes of a different rank from the land-graves possessed it; but, in the history of this nation, we often find that, by imperial concession, some exercised rights not conceded to the other members of the body. In a state, however, where the members are constitutionally equal, every thing tends to the same level; and the same distinctions which are only odious, merely when held by our equals, become soon common to the whole body. In a country, where such violence reigned that social security could only be found by confederation, the princes were compelled to unite just like the electors and the cities. Both were their natural enemies: the former endeavouring to curtail their privileges in the diets; the latter, if imperial, by being at open hostilities with them; if situated within their districts, by disturbing the feudal bonds which connected them with the local system of government. Nothing could be more fatal to individual happiness than this endless system of confederation. It inevitably led to war: both parties were prompt to violence, and no less prompt to retaliate; and even when no violence was contemplated, the interests or pretensions of both were too conflicting to allow of tranquillity. But let us not imagine that the princes possessed *all* the authority within their respective states: they were obliged to share it with the provincial, just as the emperor in regard to the general diet. If, like him, they received the accustomed homage on their accession to the electorate or principality, without the consent of their estates they could not grant the privileges of citizenship, nor the jurisdiction over markets, nor the right of convoy: without it they could not prevent the erection of fortresses, nor impose taxes, nor make regulations for the local administration of justice, or for the prevention of local war. That, even with such consent, they could be allowed to exercise prerogatives so remarkable, forcibly indicates the relation which monarch and prince held to the com-



munity, the degradation to which the imperial *office* (for such it virtually was) had sunk, and the preponderating influence of the aristocracy. But there was retribution in the Germanic system: if the princes—(in the remainder of the paragraph, unless otherwise expressed, we use the term *prince* in its general sense, as comprehending electors, margraves, and the heads of states)—were jealous of every measure proposed or adopted by the emperor, they were equally exposed to the same busy scrutiny on the part of their territorial nobles, who constituted the baronial diet. Every encroachment on the privileges of the inferior aristocracy, probably every act of just severity, called forth a spirit of discontent, which required some dexterity to assuage, and which was sometimes fatal to the territorial prince. The defiance which he threw in the face of the emperor was frequently returned to him by *his* nobles. If any member of his order proposed contributions for the necessary support of the local administration, the proposition was, in some degree, modified, or even rejected; while the most strict account was exacted from *him*, in regard to the smallest item of expenditure. Nor could he, as head of his state,—as an *individual*, he was no more restricted than other nobles,—declare war on any other power. Strictly speaking, no one state of the Germanic confederation could commence hostilities without the sanction of the rest: yet we have numerous instances in which this fundamental principle of all union was violated; in which state warred against state, even in direct opposition to the injunctions of the emperor and of the imperial diet.—Opposition from the nobles, the princes were not surprised to encounter; but they could not bear with much patience that of the enclosed towns, which their ancestors had founded; which were inhabited chiefly by persons of plebeian descent; and which, as lying within their jurisdiction, were, by the feudal laws, subject to their control. That the citizens

should disregard the obligations imposed by those laws, was to be expected, from their fortified positions, from their numerical strength, and from the spirit which pervaded the whole range of municipal corporations. So far did they carry their jealousy of their feudal lord, that, sometimes, they refused to admit him within their gates, unless he dismissed the greater part of his suite; and they have been known to remain under arms night and day during his visit. Sometimes, for the sake of greater security, he found it necessary to take up his abode in the city during certain periods; but he could not be attended by many of his knights, nor could he fortify his house. Thus, when Heinric duke of Mecklenburg applied for permission to build a residence in his own city, Wismar, the burgomaster and the municipal council granted it as a matter not of right, but of respect—*ob reverentiam specialem*—and they charged it with the condition that, if he wished to surround his courtyard with a wall, it must not be more than ten feet high, nor thicker than a foot and a half. Nor must we forget that, as the imperial cities sent deputies to the general diet, so these feudal towns had their representatives in the provincial states. No contribution could be levied on them without their own consent, and they claimed the privilege of concurring with the nobles, before any regulation could be binding throughout the state. If the princes were powerful within their respective domains, *they* were equally so within their walls. Omitting their privileges of representation, and of concurrent legislation, they allowed none of the higher orders to interfere in their own municipal institutions.—These rights were common to all; but many of them purchased from their feudal superiors other privileges, which placed them far above the nobles. Among these was a total exemption from his tribute and that of his bailiff; the power of selecting their own magistrates, no less than their own municipal officers; the right of choosing by what laws they would be

governed; that of coining money with the effigies not of the prince, but of their own arms. How could such citizens be persuaded that they owed any service or homage to the head of the province? Not unfrequently they refused to send deputies to the diet; and when they did, they enjoined them not to vote a single florin. To repress their growing independence, the prince often called on the nobles, whose hatred to the citizens was uniform, to join him in making war on some one of the more obnoxious: but though they could intercept the convoys, and lay waste the vicinity of a community, they could seldom make any impression on the place. Very often they were unable to obtain even this advantage: their own example had taught the towns to confederate; and the smallest aggression on the feeblest member was punished by the formidable efforts of the whole league. These dissensions particularly distinguished one class of princes, the bishops and mitred abbots, in relation to the towns and cities dependent on them. Not that ecclesiastics were the worst sovereigns, for the reverse of the proposition is true; but that they were less warlike, and less able to repress the encroachments of their subjects. In estimating the diminution of authority sustained by the princes, we must not lose sight of another error, which, though in them not a voluntary one, had not the less influence, — that of *partition*. From the beginning of the thirteenth century, at least, we find that equal division among the sons, with the reserve of certain honours to the eldest, distinguished all the first families: but in two centuries several began to feel that they were sadly declining from their ancient splendour; that if, through the increase of the collateral branches, there was less fear of extinction, the influence of the family was feeble; that branch was often at war with branch; and that some of the younger members were simple knights, obliged, for support, to lend their sword to any employer. To remedy this

evil, some of the more ambitious fathers destined their younger sons to the ecclesiastical state; and the dignity of bishop, or abbot, amply compensated for the loss of their patrimonial inheritance. But this policy had its evil also, since it evidently tended to the extinction of a family. As, in failure of issue, the fief reverted to the empire, some houses entered into a compact of *reciprocal succession*; viz. that, if one became extinct, the other should succeed to the titles and estates. And, what is still more curious, it often happened that, when a fief was conferred, three or four houses were co-invested at the same time; the second to succeed on the extinction of the first; the third on that of the second. Hence the conflicting interests of the great families. The head—he who held the titles and estates—could do nothing affecting either without the written consent of all the agnates, and of all the branches of the families which had received the investiture at the same time with his own. Nay, marriages could not be contracted, nor alliances made, without the same sanction. This, too, was felt to be an evil; and, from the middle of the fourteenth century downwards, we find that not only was primogeniture resuming the empire which it anciently held, and that co-investiture was less common, but that compacts of succession, unless there was imminent danger of extinction, were very rare. This restoration of an old feeling rapidly strengthened the territorial families; but it could not undo the mischief which had been already effected; it could not recover their once vast possessions. The allodial domains of the princely houses were now moderate; for over the territory to which they succeeded they merely exercised a limited jurisdiction. And, before we dismiss the present subject, we may observe, that the period under consideration exhibits as great change in *titles*, as in extent of authority and family influence. Originally, as we have more than once observed, titles were inseparable from jurisdiction, but

were frequently assumed within certain limitations by nobles who had none. Thus the duke, or margrave, or count, who had been deposed, not only preserved his title, but transmitted it to his eldest son. The next stage in the progress of inheritance was, that when the eldest son inherited the title of duke, the second would assume the merely nominal one of count, the third that of baron. But, after the introduction of partition, the distinction was as often real as nominal; for, when the eldest son ruled one district with the title of duke, the second exercised an equal sovereignty over another as margrave or count. And as the system was strengthened by custom, the original title descended to the co-heirs: all the sons of a duke were equally called dukes; of a count, counts. And when the law of primogeniture was again recognised, though the domain was deemed indivisible, the title remained common to all the sons. Hence the number of poor princes, counts, and barons, who in Germany and Poland absolutely swarm, and who, in influence at least, and often in education, are greatly below the lowest class of English gentry. Originally, too, all territorial princes were *pares*; the duke was not higher in the social scale than the margrave, the margrave than the count. But in the diets there was certainly a graduated precedence; and those who were lowest in the scale endeavoured to procure an elevation of rank by the conversion of their titles from mere lordships to duchies. Thus the counts of Guelderland, Luxemburg, Bar, Juliers, Berg, &c. became, by imperial concessions, dukes of their respective territories. But the counts and barons who, since the custom of partition, had often no more than a small estate, perhaps merely a fort on the summit of some hill, were still numerous; and had they been allowed to vote *personally* in the diets, their suffrage must have overwhelmed those of the margraves, dukes, and princes. But, notwithstanding their strenuous opposition, it was at length resolved that the votes of *all*

in the same district should be counted as *one only*. Ambition, however, still operated over individuals, who, as the emperor was the fountain of honour, applied for a higher grade; or for superadding to their present grade the right of a personal vote. That such concessions were granted, is evident from charters till extant; but at length the states took the alarm, and by their own authority circumscribed this imperial prerogative.\*

1273  
to  
1437. Descending in the social scale, we come to the *nobles without territorial jurisdiction*. Of these, some were allodial; others were vassals of the electors or the princes; others had no lands, but subsisted by the sword, or were attached to the service or household of some prince. In a country where partition so long prevailed, there would be necessarily many whose inheritance was inadequate to their support; many who had no other inheritance than a horse, a suit of armour, and a noble name. But where every prince was anxious to increase the number of his followers, since he thereby increased his power; where duke, margrave, bishop, abbot, burgrave, count, were compelled, not from motives of ambition or of pomp, but from self-defence, to maintain constantly on foot a certain number of armed men; where not only the imperial cities, but the inferior walled towns, readily received into their confederation and pay any horseman who presented himself, there were resources enough for every individual of the privileged class. When feudal levies were gradually replaced by mercenary troops, these adventurers were found necessary in every war, whether of a public or a private nature. Nothing can exceed the eagerness with which

\* Ohlenschlager, *Urkundenbuch zur Goldenen Bull*, N. 13, 14. 43. (cum multis alijs). Hæberlin, *Collectio*, tom. viii. p. 724—755. (multis instrumentis). Müller, R. T. *Theatrum*, th. ii. vorst. iv. cap. 2, &c. Pfeffinger, *Codex Diplom.*, tom. iii. p. 146. (et in alijs locis). Senkenberg, *Selecta Juris et Historiarum*, il. 480, &c. *Geschichte von Bayern* Beylager, N. 28. 30, &c. Strubens, *Nebenstunden*, ii. 664.; i. 421, &c. Lunig, *Speculum*, cap. 22. Gudenus, *Diplomata* (in multis instrumentis). Rupertus, *De Statu eorum qui Fürstenmässige*, &c. p. 27, &c. Meibomius, *Scriptores Rerum Germanicarum*, iii. 208. Linnæus, *Jus Publicum*, lib. ii. cap. 9. Putter, *Historical Development*, tom. i. book iii. chap. 4. Schmidt, *Histoire des Allemands*, tom. vi. cap. 1. Goldastus, *Constitutiones Imperiales*, passim.



they rushed to any standard, where pay was offered. "Little do they care," says a contemporary writer, "whether the cause be good or bad; were the devil to offer them good wages, they would swarm around him like summer flies!" But these were the *poor* nobles: the *rich* ones — those, especially, who had comfortable hereditary domains — might be expected to live in tranquillity. Yet no men were more restive: if they refused to hire their swords to the territorial prince, the elector, or even the emperor, they had still private quarrels to pursue; and their obligations, as members of some particular league, allowed little leisure for the cultivation of peace. On every side the rural noble found or made enemies: besides his private ones, and those of his kindred, and those even of his league, he had, as belonging to an order, narrowly to watch, often openly to resist, the proceedings of prince or diet. For the support of the mercenary troops, the permanent militia of the state, new imposts were unavoidable. Was *he* to bear a portion of the burden? So said the electors, the princes, the monarch, and, more than all, reason and equity; but he resisted wherever he could do so with effect. And we have proof that, in many places, the simple nobles — those without territorial jurisdiction or office — aimed at complete independence of both crown and prince. But, except in times of anarchy, their resistance was vain; they resided within a certain jurisdiction; and they were generally amenable to the tribunal of the prince. Yet there were a considerable number who enrolled themselves in some municipality, and who could, consequently, bid defiance to the aristocracy. Also the nobles who held lands, however small, in future could attend the provincial diets; and there is reason to infer, that even simple knights, without fiefs or allodial possessions, were sometimes convoked with the rest.\*

\* Chiefly the same authorities.

1273 Amidst the revolutions which agitated Germany  
to during this period, the *rustic population* were not with-  
1437. out benefit. In the former chapters we have seen  
their condition to be progressively improving; that one  
by one their more galling chains were loosened. The  
first from which they were freed was their absolute de-  
pendence on their lord, who had possessed over them  
the power of life and death: their lives were now pro-  
tected by a heavy fine, and by the penance inflicted on  
the homicide. The next step exempted them from bodily  
servitude; and, though they were still attached to the  
glebe, they were not compelled to labour for their lords  
longer than a given number of days in each week; often  
they were not expected to labour for them at all, but to  
yield, in lieu of service, a certain portion of the pro-  
duce. At this stage they had arrived during the last  
period, viz., prior to the accession of Rodolf. The  
fourteenth and fifteenth centuries witnessed an improve-  
ment no less salutary. By the subdivision of estates  
consequent on the system of partition, many proprietors  
were reduced to great poverty. The inheritance was  
too small to render continued residence either necessary  
or advisable; and they often made over the land to the  
cultivator on such terms as they could command. As  
that cultivator was some one of the peasants, or a vassal  
of the house, the act involved an absolute emancipation  
from the yet lingering bonds of slavery, from the serfage  
which had superseded the old evil. The conditions of  
this transfer varied according to the compact: some-  
times there was an annual return in produce; more  
frequently in a fixed rent; and we have many instances  
in which the property was absolutely sold, the money to  
be paid by certain annual instalments. Often, too, it  
was let to the tenant on so long a lease as to be equiva-  
lent to a freehold; nor are there instances wanting in  
which the farm was to be hereditarily held by the  
heirs of the tenant, subject to an annual acknowledg-  
ment. From a rescript of the emperor Sigismund,

issued in the Nuremberg diet of 1431, we recognise the existence of a class of "poor freemen, resident on their own land, without superiors, because they had redeemed themselves from vassalage." Had not the number been considerable, their existence would not have been thus formally indicated. And the condition of the serfs was ameliorated, or rather, they were raised from the state of serfs to that of free tenants, by other means, which are well worthy of attention. The expenses accompanying the interminable private wars of the period inevitably plunged the allodial proprietor, small or large, into debt; and, to relieve himself of the obligation, he made over, during a certain number of years, or during his natural life, all interest in the produce of the ground, for a given sum of money, — often much below the value. If the tenant to whom the proposal was thus made, had not the money at disposal, he could borrow from the Jews, who were always ready to advance it, on terms, indeed, sufficiently rapacious, yet not ruinous to the borrower. Generally, however, the proposal was made to a vassal who had saved, or inherited, a considerable portion, at least, of the sum demanded; and that there were many such may be inferred from the revolution we have before noticed, — the elevation of serfs to the dignity of tenants; their capability of acquiring and of transmitting property. Again, where the domain was extended, the effect was the same as when it was circumscribed. Though, by the partitions which we have so often mentioned, the possessions of families were subdivided *ad infinitum*, yet, from the fourteenth century, the family contracts relating to mutual succession amplified the domains of several; and, by the ordinary laws of succession, where no such compacts existed, especially after the restoration of the primogenital rule, property often accumulated into masses, and passed into the same hands. Add to this the fact, that the ecclesiastical domains were constantly increasing, whether by bequest,

or purchase, or concession ; and we can have no difficulty in believing that a very considerable number of domains were too extensive to be superintended by one or even several individuals. When the eye of authority was removed, the more remote peasant would be little anxious for the growth of produce beyond what was necessary for the support of his family. Idleness is natural to man ; it is necessarily so to the man who feels that industry cannot much avail him ; that a certain degree of labour only is requisite for his wants ; and that all beyond is for the benefit of a superior. He soon regards whatever exceeds a given modicum as purely a work of supererogation. Hence the inadequate cultivation of the more isolated domains, and the little profit accruing from them. Experience proved that if, in consideration of an annual rent, the land were abandoned to the cultivator, that rent would be cheerfully and punctually paid. Hence, the transformation of villeins into tenants, who gained in even a greater proportion than their masters. In different places, and even in the same place under different circumstances, the conditions of the compact varied, but in all it had a tendency to elevate the labourer. Though the best feelings of humanity and the progressive influence of religion had generally something to do in the amelioration of his lot, the chief cause was the interest or the necessities of the landowner. Abstract notions of justice, unaccompanied by present or the prospect of future advantage, may favourably dispose the heart, but they seldom exercise a permanent influence on the conduct. It is only when the duties harmonise with the interests of man, that we can reasonably hope for their fulfilment. The Christian philosopher, indeed, knows that the relation between the two is immutable and inseparable ; but such knowledge is obtained only by the few ; and the bulk of mankind will prefer a present and tangible to a future and less apparent good. We may, therefore, conclude, that the emancipation of the

rural population — an emancipation in Germany purely conditional — was a result produced by the natural tendency of events, by causes exclusively human.\*

\* Sammlung der Reichsabschiede, i. 148. Heineccius, *Elementa Juris Germanici*, lib. i. tit. 1. Schmidt, *Histoire des Allemands*, &c., 83.

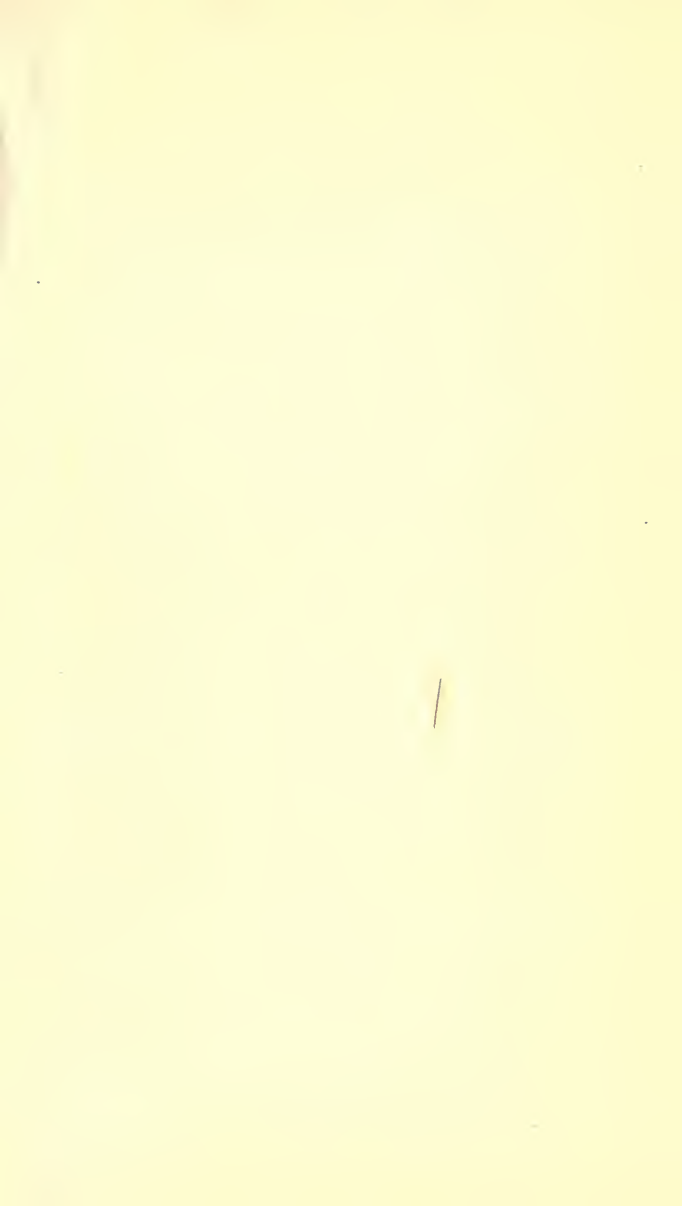
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