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XXX.10 On servitudes

- The Spirit of Law - Book XXX. Theory of feudal laws among the Franks, in the relation they have to the establishment of the monarchy -

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It is said in the law of the Burgundians that when the peoples settled in the Gauls, they received two-thirds of the lands and one-third of the serfs. [1] Villeinage was therefore established in this part of Gaul before the Burgundians came. [2]

The law of the Burgundians, making rules covering the two nations, formally distinguishes in both of them among the nobles, the freeborn, and the serfs. [3] Servitude was therefore not something particular to the Romans, nor were liberty and nobility something particular to the barbarians.

That same law says that if a freed Burgundian had not given a certain sum to his master, nor received a third portion from a Roman, he was still held to belong to his master's family. [4] The Roman landlord was therefore free, since he did not belong to the family of another ; he was free, because his third portion was a sign of freedom.

One has only to open the Salic and Ripuarian laws to see that the Romans no more lived in servitude among the Franks than among the other conquerors of Gaul.

The Count of Boulainvilliers got the crucial point of his system wrong [5] : he has not proven that the Franks made a general rule that placed the Romans in a sort of servitude.

As his work is written artlessly, and as he speaks in it with the simplicity, the frankness, and the candor of the old nobility from which he had sprung, anyone can judge both the fine things he says and the errors into which he falls. Therefore I shall not examine it : I shall say simply that he had more wit than insight, and more insight than knowledge ; but that knowledge of his was not contemptible, for he knew very well the broad strokes of our history and our laws.

The Count of Boulainvilliers and the abbé Dubos have each built a system, one of which seems to be a conspiracy against the third estate, and the other a conspiracy against the nobility. When the sun gave Phæton his chariot to drive, he said to him : "If you go too high, you will burn the celestial abode ; if you drop down too low, you will reduce the earth to ashes ; go neither too far to the right : you would fall into the constellation of the Serpent ; nor too far to the left : you would go into that of Ara : keep to the middle." [6]

[1] Tit. 54.

[2] This is confirmed throughout the title of the code *De agricolis et censitis et colonis*.

[3] *Si dentem optimati Burgundioni vel Romano Nobili excusserit*, tit. 26, §1, and *Si Mediocribus Personis ingenuis tam Burgundionibus quam Romanis*, *ibid.*, §2.

[4] Tit. 57

[5] [Henri de Boulainvilliers, *Histoire de l'ancien gouvernement de la France*, 1727.]

[6] *Nec preme, nec summum molire per æthera currum.*

Altius egressus, coelestia tecta cremabis ;

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Inferius, terras : medio tutissimus ibis.

Neu te dexterioꝛ tortum declinet ad Anguem,

Neve sinisterioꝛ pressam rota ducat ad Aram ;

Inter utrumque tene..... [Ovid, *Metamorphoses*, book II.