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XXX.11 Continuation of the same subject

- 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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What gave the notion of a general statute made in the time of the conquest is that a prodigious number of servitudes were seen in France toward the beginning of the third dynasty ; and as the continual progression which was made with those servitudes had not been noticed, in an obscure time a general law was imagined that never was.

At the beginning of the first dynasty there were infinite numbers of free men, both among the Franks and among the Romans ; but the number of serfs grew so that at the beginning of the third dynasty all the plowmen and almost all the inhabitants of the cities [1] were serfs ; and whereas at the beginning of the first there was approximately the same administration in the cities as among the Romans - bodies of bourgeoisie, a senate, courts of judicature - about all we find towards the beginning of the third is a lord and serfs.

When the Franks, the Burgundians, and the Goths made their invasions, they would take the gold, the silver, the furniture, the clothing, the men, the women, the boys the army could take with it : it was all taken in common and the army divided it up. [2] The whole body of history proves that after the initial settlement, which is to say after the first ravages, they accepted the inhabitants by agreement, and left them with all their political and civil rights. That was the right of nations of those times : you took everything in war, and granted everything in peacetime. If it had not been so, how would we find in the Salic and Burgundian laws so many provisions contradictory to the general servitude of men ?

But what the conquest did not do, the same right of nations that subsisted after the conquest did [3] : resistance, revolt, and the taking of cities brought in their wake the servitude of the inhabitants ; and since, besides the wars which the different conquering nations waged amongst themselves, there was that particularity among the Franks, that the various divisions of the monarchy constantly gave rise to civil wars between brothers or nephews, in which this right of nations was always practiced, servitudes became more general in France than in other countries ; and that, I believe, is one of the causes for the difference there is between our French laws and those of Italy and Spain on the rights of lords.

The conquest was but the matter of a moment, and the right of nations which was applied there produced some servitudes. The practice of the same right of nations over several centuries caused the servitudes to be prodigiously extended.

Theodoric, believing that the peoples of Auvergne were not loyal to him, said to the Franks about his division : "Follow me : I will lead you to a country where you will have gold, silver, captives, clothing, and herds in abundance ; and you will transfer all the men to your country." [4]

After the peace that was made between Gotram and Chilperic, [5] those who were laying siege to Bourges having been ordered to return, they brought so much booty that they scarcely left any men or herds in the country. [6]

I could cite numberless authorities [7] ; and as in these misfortunes the bowels of charity were stirred ; as several holy bishops, seeing the captives chained in pairs, used the silver of the churches and even sold holy vessels to redeem as many as they could ; many holy monks took part ; it is in the *Lives of the Saints* [8] that we find the best explanation of this matter. Although we can reproach the authors of these *Lives* for being sometimes a bit too credulous about things that God has certainly done, if they were in the order of his designs, still one does not fail to draw great insights from them on the ways and the practices of those times.

When we cast our eyes on the records of our history and our laws, it seems that all is sea, and the seas even want shores [9] : all these cold, dry, insipid, hard writings have to be devoured, as the fable says that Saturn devoured the stones.

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An infinite number of lands that free men were exploiting [\[10\]](#) changed to potential mortmains when a country was suddenly divested of the free men who were living there ; those who had many serfs took or made others cede large territories and built villages there, as we see in various charters. On the other hand, the free men who cultivated the arts turned out to be serfs who were to practice them ; servitudes restored to the arts and to tillage what they had lost.

It was a common practice for owners of land to give it to the churches to lease it back themselves, thinking to partake by their servitude of the holiness of the churches.

[\[1\]](#) While Gaul was under Roman domination, they constituted separate bodies ; they were usually freed men or descendants of freed men.

[\[2\]](#) See Gregory of Tours, [book II, ch. xxvii](#) ; Aimoin, book I, ch. xii.

[\[3\]](#) See *Lives of the Saints*, above.

[\[4\]](#) Gregory of Tours, book III.

[\[5\]](#) Gregory of Tours, [book VI, ch. xxxi](#).

[\[6\]](#) [In the edition of 1758, this paragraph is followed by [Annex 22](#).]

[\[7\]](#) See *Chronicle of Fredegar* for the year 600 and its continuation for the year 741. *Annales de Fulde*, year 739, and *Lives of the Saints*, cited below.

[\[8\]](#) See the lives of St. Epiphane, St. Eptadius, St. Césaire, St. Fidole, St. Porcien, St. Treverius, St. Eusichius and St. Leger, the miracles of St. Julian, etc.

[\[9\]](#) ...*Deerant quoque littora Ponto*. Ovid, book I.

[\[10\]](#) Even the colonists were not all serfs : see laws XVIII and XXIII in Codex, *De agricolis censitis vel colonis*, and law 20 of the same title.