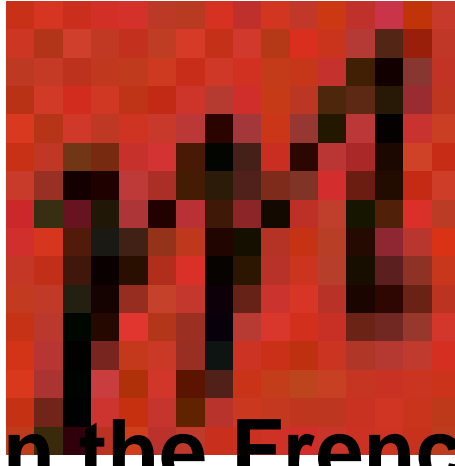


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XXX.25 On the French nobility

- 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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The abbé Dubos maintains that in the early days of our monarchy there was but one order of citizens among the Franks. This pretension, insulting to the blood of our first families, would be not less so to the three great houses which have successively reigned over us. The origin of their greatness would not therefore disappear into oblivion, the night, and time. History would illuminate centuries where they were common families ; and in order for Childeric, Pépin, and Hugues Capet to be gentlemen, we would have to go look for their origin among the Romans or the Saxons, in other words among the subjugated nations.

The abbé Dubos bases his opinion on the Salic law. [1] It is clear, he says, from that law that there were not two orders of citizens among the Franks ; it allocated two hundred sous in composition for the death of any Frank at all, [2] but distinguished, among the Romans, the king's guest, for whose death it allocated three hundred sous in composition, from the Roman proprietor to whom it allocated one hundred, and the Roman tributary to whom it allocated but forty-five. And as the difference of compositions constituted the principal distinction, he concludes that, among the Franks, there was but one order of citizens, and that there were three among the Romans.

It is surprising that his error did not itself make him discover his error. Indeed, it would have been quite extraordinary for the Roman nobles who were living under the domination of the Franks to have had a higher composition, and been more important personages, than the most illustrious of the Franks and their greatest captains. How plausible is it that the conquering people should have had so little respect for itself, and so much for the vanquished people ? Besides, the abbé Dubos cites the laws of the other barbarian nations, which prove that among them there were various orders of citizens. It would be quite extraordinary had this general rule been wanting precisely among the Franks. That ought to have made one think that he was misunderstanding, or misapplying, the texts of the Salic law, which is indeed what happened.

We find when we open that law that the composition for the death of an antrustion, [3] in other words a fidèle or vassal of the king, was six hundred sous, and the composition for the death of a Roman guest of the king [4] was but three hundred. We find there [5] that the composition for the death of a simple Frank [6] was two hundred sous, and for the death of a Roman [7] of ordinary station but one hundred. They further paid for the death of a tributary Roman, a sort of serf or freed man, a composition of forty-five sous [8] ; but I shall not speak of this, nor of the composition for the death of the Frankish serf or freed man : there can be no question here of this third order of persons.

What does the abbé Dubos do ? He passes in silence over the first order of persons among the Franks, that is, over the item concerning the antrustions, and then, comparing the ordinary Frank, for whose death they would pay two hundred sous in composition, with those of what he calls the three orders among the Romans, and for whose death different compositions were paid, he finds that there was but one order of citizens among the Franks, and that there were three among the Romans.

Since according to him there was but one order of persons among the Franks, it would have been helpful had there been but one also among the Burgundians, because their kingdom formed one of the principal pieces of our monarchy. But in their codes there are three kinds of compositions, one for the Burgundian or Roman noble, another for the Burgundian or Roman of middling station, the third for those who were of inferior station in the two nations. [9] The abbé Dubos has not cited this law.

It is singular to see how he evades [10] the passages that press him on all sides. If you mention grandees, lords, and nobles : these are, he says, simple distinctions, and not distinctions of order ; they are matters of courtesy and not prerogatives of law ; or else, he says, the men in question were in the king's council, they could even be Romans, but there was still only one order of citizens among the Franks. On the other hand, if mention is made of some Frank of inferior rank, [11] these are serfs ; and this is the manner in which he interprets the decree of Childebert. I must pause on this decree. The abbé Dubos has made it famous, because he has used it to prove two things : first, that all

compositions which we find in the laws of the barbarians were just civil interest added to corporal punishments, [12] which overturns from top to bottom all the ancient documents ; the other, that all free men were judged directly and immediately by the king, [13] which is contradicted by countless passages and authorities which inform us on the judicial order of those times. [14]

It is said in this decree, issued in an assembly of the nation, that if the judge finds a notorious thief, he shall have him bound to be sent before the king if he is a Frank (*Francus*) ; but if he is a weaker person (*debilior persona*) he shall be hanged on the spot. [15] According to the abbé Dubos, *francus* is a free man and *debilior persona* is a serf. I shall ignore for a moment what the word *francus* can mean here, and shall first examine what one can understand by the words *a weaker person*. I say that, in whatever language, any comparative necessarily supposes three terms : the biggest, the less big, and the smallest. If this were only about free men and serfs, they would have said *a serf* and not *a man of less authority*. Thus *debilior persona* does not mean a serf there, but a person beneath whom the serf must be. That assumed, *francus* will not mean a free man but a powerful man, and *francus* is taken here in that sense : because among the Franks there always were those who had a greater authority in the state, and whom it was more difficult for the judge or the count to admonish ; this explanation concurs with a large number of capitularies that list cases in which the criminals could be remanded before the king, and those where they could not. [16]

We find in the life of Louis the Debonaire written by Tegan that the bishops were those principally responsible for that emperor's humiliation, especially those who had been serfs and those who were born among the barbarians. [17] Tegan apostrophizes in this way Hebo, whom the prince had lifted from servitude and made archbishop of Reims : "What recompense has the emperor received for so many benefits ? He has made thee free, and not noble ; he could not make thee noble after giving thee thy freedom." [18]

This discourse, which so formally proves two orders of citizens, does not disconcert the abbé Dubos. Here is his reply : "This passage does not mean that Louis the Debonaire could not have opened the order of nobles to Hebo. As archbishop of Reims, Hebo would have been of the first order, above that of the nobility." [19] I leave the reader to decide whether this passage does not mean what it says ; I leave him to decide whether the issue here is a precedence of the clergy over the nobility. "This passage proves only," continues the abbé Dubos, "that citizens born free were qualified as noble-men : in worldly usage, noble-man and man born free long had the same meaning." [20] What ? Because in our modern times some bourgeois have assumed the quality of noble-men, a passage from the life of Louis the Debonaire will apply to those sorts of persons ? "Perhaps also," he further adds, Hebo had not been a slave in the nation of the Franks, but in the Saxon nation, or in another Germanic nation, where the citizens were divided into several orders." [21] Therefore, because of the abbé Dubos's *perhaps*, there was no nobility in the Frankish nation. But he never made worse use of a *perhaps*. We have just seen that Tegan distinguishes the bishops who had been opposed to Louis the Debonaire, some of whom had been serfs, and the others were from a barbarian nation. [22] Hebo was one of the former and not one of the latter. Besides, I do not know how one can say that a serf like Hebo would have been a Saxon or a German : a serf has no family, nor, consequently, any nation. Louis the Debonaire freed Hebo ; and as freed serfs assumed the law of their master, Hebo became a Frank and not a Saxon or German.

I have just attacked ; I must now defend myself. I will be told that the corps of antrustions indeed constituted an order in the state distinct from that of free men ; but that, as the fiefs were at first revocable, and later were for life, that could not constitute a nobility by descent, since the prerogatives were not attached to an hereditary fief. This is the objection which has doubtless caused M. de Valois to think that there was but a single order of citizens among the Franks, an opinion which the abbé Dubos has borrowed from him, and absolutely spoiled by dint of bad evidence. However that may be, it is not the abbé Dubos who could have made that objection. For having given three orders of Roman nobility, and the quality of king's guest as the first, he could not have said that this title indicated a nobility by descent more than that of antrustion. But a direct reply is called for. Men were not antrustions or *fidèles* because they had a fief ; they were given a fief because they were antrustions or *fidèles*. The reader will recall what I have said in the first chapters of this book : they did not then have, as they subsequently did, the same fief ; but if they did not

have that one, they had another one, both because fiefs were granted at birth, and because they were frequently granted in the assemblies of the nation ; and finally because, as it was in the nobles' interest to have one, it was also in the king's interest to give them one. These families were distinguished by their dignity as *fidèles* and by the prerogative of being able to petition for a fief. I shall show in the next book [23] how, by the circumstances of the times, there were free men who were allowed to enjoy that great prerogative, and consequently to enter into the order of the nobility. It was not so in the time of Gontram and his nephew Childebert, and it was so in the time of Charlemagne. But although beginning in the time of that prince free men were not ineligible to possess fiefs, it appears from the passage in Tegan cited above that freed serfs were absolutely excluded. Will the abbé Dubos, [24] who goes to Turkey to give us an idea of what the ancient French nobility was like, tell us that anyone ever complained in Turkey that men of low birth were being raised to honors and dignities, as they did in the reigns of Louis the Debonaire and Charles the Bald ? Such complaints were not heard in the time of Charlemagne, because that prince always distinguished the ancient families from the new ones, which Louis the Debonaire and Charles the Bald did not.

The public must not forget that we owe several excellent compositions to the abbé Dubos. It is on these fine works that he should be judged, and not on this one. Here the abbé Dubos has fallen into grave errors, because he had his eyes fixed more on the Count of Boulainvilliers [25] than on his subject. I shall draw from all my criticisms only this observation : if a great man has erred, what must I not fear ?

[1] See *Établissement de la monarchie française*, vol. III, book VI, ch. iv, [p. 304](#).

[2] He cites tit. 44 of this law, and *Lex Ribuaría*, tit. 7 and 36.

[3] *Qui in truste dominica est*, tit. 44, §4, and that relates to formula 13 of Marculfus, *De regis antrustione* ; see also tit. 66 of the Salic law, §3-4, and tit. 74, and the law of the Ripuarians, tit. 11, and capitulary of Charles the Bald, *apud Carisiacum*, of the year 877, ch. xx.

[4] *Lex Salica*, tit. 44, §6.

[5] *Ibid.* §4.

[6] *Ibid.* §1.

[7] *Lex Salica*, tit. 44, §15.

[8] *Ibid.*, §7.

[9] *Si quis quolibet casu dentem optimati Burgundioni vel Romano nobili excusserit, solidos viginti quinque cogatur exsolvere ; de mediocribus personis Ingenuis tam Burgundionibus quam Romanis si dens excussus fuerit, decem solidis componatur ; de inferioribus personis, quinque solidos* (art. 1, 2, and 3 of tit. 26 of the *Law of the Burgundians*).

[10] *Établissement de la monarchie française*, vol. III, book VI, ch. iv-v.

[11] *Établissement de la monarchie française*, vol. III, ch. v, [p. 319-320](#).

[12] *Ibid.*, book VI, ch. iv, [p. 307-308](#).

[13] *Ibid.*, [p. 309https://reader.digitale-sammlungen....](#), and in the following chapter, [p. 319-320](#).

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[14] See book XXVIII of this work, chapter xxviii, and book XXXI, ch. viii.

[15] *Itaque colonia convenit and ita bannivimus, ut unusquisque judex crimosum latronem ut audierit, ad casam suam ambulet, and ipsum ligare faciat ; ita ut si Francus fuerit, ad nostram præsentiā dirigatur ; and si debilior persona fuerit, in loco pendatur* (capitulary, Baluze ed., vol. I, p. 19).

[16] See book XXVIII of this work, ch. xxviii, and book XXXI, ch. viii.

[17] Ch. xliii and xlv.

[18] *O qualem remunerationem reddidisti ei ! fecit te liberum, non nobilem, quod impossibile est post libertatem* (*ibid.*).

[19] *Établissement de la monarchie française*, vol. III, book VI, ch. iv, [p. 316](#).

[20] *Établissement de la monarchie française*, vol. III, book VI, ch. iv, [p. 316](#).

[21] *Ibid.*

[22] *Omnes episcopi molesti fuerunt Ludovico, and maxime ii quos e servili conditione honoratos habebat, cum his qui ex barbaris nationibus ad hoc fastigium perducti sunt* (*De gestis Ludovici Pii*, ch. xliii and xlv).

[23] Ch. xxiii.

[24] *Histoire de l'établissement de la monarchie française*, vol. III, book VI, ch. iv, [p. 302](#).

[25] [Henri de Boulainvilliers (1658-1722) was a prolific historian of early France, author notably of *Histoire de l'ancien gouvernement de la France* in 3 vols., 1727.]