

o.- Wm Baxter - Richmond 1866

THE
FORMATION AND PROGRESS
OF THE
TIERS ÉTAT,
OR
THIRD ESTATE IN FRANCE.

BY
AUGUSTIN THIERRY,
AUTHOR OF "HISTORY OF THE NORMAN CONQUEST," &c. &c.

Translated from the French,
BY THE REV. FRANCIS B. WELLS,
RECTOR OF WOODCHURCH, KENT

TWO VOLUMES IN ONE.

LONDON:
HENRY G. BOHN, YORK STREET, COVENT GARDEN.

1859.

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HISTORY OF THE FORMATION AND PROGRESS

OF

THE TIERS ETAT,

AN ESSAY

CHAPTER I.

EXTINCTION OF ANCIENT SLAVERY—FUSION OF RACES—RISE
OF THE BOURGEOISIE OF THE MIDDLE AGES.

Summary: Historical Part filled by the *Tiers Etat*—Origin of French Civilization—Gallo-Roman and Barbarian States of Society—Cities and Rural Districts, Decline of the one, Progress in the other—Reduction of ancient Slavery to Serfdom on the Soil—End of the Distinction of Races—Reaction of the Urban Classes against the Seignorial Government—Forms of a free Municipality—Rise of the *Bourgeoisie*—Influence of the Cities upon the Rural Districts

THERE no longer exists a *Tiers Etat* in France: both name and thing disappeared in the reconstruction of our social system in 1789; but this, the latest in date and least in power of the three ancient orders of the nation, has played a part of which the importance, long concealed from the most searching

scrutiny, is clearly perceived at the present day.* Its history, which hereafter can and ought to be written, is neither more nor less in reality than the history of the development and progress of our civil society, since the chaos of manners, laws, and conditions, which followed the fall of the Roman empire, up to the system of order, unity, and liberty of our own times.

Between these two extreme points may be traced through successive ages the long and laborious career by which the inferior and oppressed classes of society—in its various forms of Gallo-Roman, Gallo-Frankish, and French of the Middle Ages—raised themselves step by step till they reached the full enjoyment of civil and political rights; a vast movement, which has successively effaced from the soil on which we live all the hard and unjust inequalities of master and slave, conqueror and conquered, lord and serf—to exhibit at length in their stead an united people, a law the same to all, a free and sovereign nation.

Such is the grand spectacle which our history presents at the point to which Providence has conducted

* I do not mean to say that civil society in France may not have received some element of progress from the two other orders. I merely mean that the series of its improvements is marked above all by the successive changes which took place in the condition of the different classes of those, who, from the fourteenth century to 1789, together bore the collective name of the *Tiers Etat*.

it, and at which we who live in the nineteenth century find noble subjects for reflection and study. Of all the problems of history, the various causes and aspects of that remarkable change form the one which affects us most closely. It has been for the last twenty-five years the object of considerable research; and the collection which I have commenced is intended to prepare the way for its solution;* but its great extent requires a series of efforts too long for the life of one man. Being the first of those who may apply their hands to this work, I have seen but a small portion of the innumerable documents which it is my task to collect. It would be rash on my part to attempt to foretell the degree of importance which the whole of them may assume in the estimation of the learned hereafter; and I shall not do so. I shall confine myself to offer certain provisional sketches to mark, as my peculiar studies and the present state of knowledge enable me, the most distinct epochs and the most prominent points of view of that which will one day form the complete history of the formation, progress, and social influence of the *Tiers Etat*.

It is from the last form which was given to the civil and political institutions of the empire, and of which Constantine was the author, that all that is

* *Le Recueil des Monuments inédits de l'Histoire du Tiers Etat*, forming part of the *Collection de Documents inédits sur l'Histoire de France*, published under the direction of the Minister of Public Instruction. See below Appendix I

Roman in our ideas, our manners, and our legislation is derived: to this may be traced the first germs of our modern civilization. That era of decline and ruin for the society of the ancient world was the cradle of the great part of the social principles or elements, which, maintaining their existence under the dominion of the German conquerors, and combining themselves with their national traditions and customs, created the society of the Middle Ages, and from thence were transmitted to us. We there behold the sanction of Christianity joining itself to the sanction of the law to give a new vigour to the idea of the imperial power—the type of the regal power of subsequent times;* slavery attacked in its principles, and secretly undermined or transformed by Christianity; lastly, the municipal form of government, oppressive though it became, impregnated with a sort of democracy by the popular election of the protector and the bishop. When the sway of the Barbarians overspread Gaul, when the political order of the Western empire crumbled to pieces, three things still maintained their position: the institutions of Christianity, the

* According to the Roman law, the sovereignty of the Emperors was derived from the people by a perpetual delegation; according to Christianity, it proceeded from God. It is this last principle which, since the reign of Constantine, has made the hereditary succession to the empire obtain. See the *Mémoire* of my brother, Amédée Thierry, on the *Administration centrale dans l'empire Romain*. *Revue de Législation et de Jurisprudence*; Septembre, 1843

Roman law in the form of custom, and the municipal administration. Christianity imposed its influence on the new rulers; the law of custom preserved the manners and usages of civil life among the native inhabitants; and the municipality, as the guardian of those usages, threw a shield round them by lending, as a guarantee of their continuance, the strength of its own organization.

After the conclusion of the great struggles which took place in the fourth and fifth centuries, whether between the German conquerors and the last forces of the empire, or between the nations which had occupied different portions of Gaul, until the Franks remained sole masters of the country, two races, two populations, which had nothing in common but religion, appear forcibly brought together, and, as it were, face to face with each other, in one political community. The Gallo-Roman population presents under the same law very different and very unequal conditions; the barbarian population comprises, together with its own peculiar classifications of ranks and conditions, distinct laws and nationalities. In the first we find citizens absolutely free, *coloni*, or husbandmen belonging to the lands of a proprietor, and domestic slaves deprived of all civil rights; in the second, we see the Frankish race divided into two tribes, each having its own peculiar law;* the Burgundians, the Goths, and the

* The law of the Salic Franks or Salic law, and the law of the Ripuarian Franks or Ripuarian law.

rest of the Teutonic races, who became subjected, either of their own accord or by force, to the Frankish empire, governed by other and entirely different laws; but among them all, as well as among the Franks, we find at least three social conditions—two degrees of liberty, and slavery. Among these incongruous states of existence, the criminal law of the dominant race established, by means of the scale of damages for crime or personal injury, a kind of hierarchy—the starting-point of that movement towards an assimilation and gradual transformation, which, after the lapse of four centuries, from the fifth to the tenth, gave rise to the society of the feudal times. The first rank in the civil order belonged to the man of Frankish origin, and to the Barbarian who lived under the law of the Franks; in the second rank was placed the Barbarian, who lived under the law of his own country; next came the native freeman and proprietor, the *Roman possessor*, and, in the same degree, the *Lidus* or German *colonus*; after them, the Roman *tributary*—i. e., the native *colonus*; and, last of all, the slave, without distinction of origin.*

* Si quis ingenuus hominem Francum aut Barbarum occiderit, qui lege salicâ vivit; viii. m. den., qui faciunt sol. cc. culpabilis judicetur. (*Leg. Salic.*, tit. xliii., sec. i, apud *Script rer. gallic. et francic.*, t. iv., p. 220.)—Si quis ingenuus hominem ingenuum Ripuarium interfecerit, cc. sol. culp. jud. (*Leg. Ripuar.*, tit. vii.; *Ibid.*, p. 237.)—Si quis Ripuarius advenam Francum interfecerit, cc. sol. culp. jud.—Si quis Ripuarius advenam Alamannum seu Fresionem vel Bajuvarium aut

These various classes, separated on the one hand by distance of rank, on the other by difference of laws, manners, and language, were far from being equally distributed between the cities and the rural districts. All that was elevated in the Gallo-Roman population, of whatever character it might be, was found in the cities, where its noble, rich, and industrial families dwelt, surrounded by their domestic slaves; and, among the people of that race, the only constant residents in the country were the half-servile *coloni* and the agricultural slaves. On the contrary, the superior class of the German population established itself in the country, where each family, independent and proprietary, was maintained on its own domain by the labour of the *Lidi* whom it had brought thither, or of the old race of *coloni* who belonged to

Saxonem interfecerit, clx. sol. culp. jud. (Ibid, tit. xxxvi., sec. i, ii., et iv., p. 241)—Si Romanus homo possessor, id est qui res in pago ubi commanet proprias possidet, occisus fuerit, is qui eum occidisse convincitur, iv., m. den., qui faciunt sol c., culp. jud. (*Leg. Salic.*, t. xlii., sec. vii.; Ibid, p. 220)—Si quis Ripuarius advenam Romanum interfecerit, c. sol. multetur. (*Leg Ripuar.*, tit. xxxvi., sec. iii.; Ibid, p. 241.)—Si vero Romanus vel Lidus . . . occisus fuerit . . . (*Leg. Salic.*, tit. xliii., sec. iv.; Ibid, p. 220.)—Qui Lidum occiderit c. sol. componat . . . (*Caroli Magni Capitul.*, anni dcccxlvi.; Ibid, t. v., p. 688.)—Si quis Romanum tributarium occiderit, mdccc den., qui faciunt sol xlv., culp. jud. (*Leg. Salic.*, tit. xliii., sec. viii.; Ibid, t. iv., p. 220.)—Si quis servum alienum occiderit, aut vendiderit vel ingenuum dimiserit, mcccc. den., qui faciunt sol. xxxv., culp. jud. (Ibid., tit. xi., sec. iii., p. 209.)

the soil. The only Germans who resided in the cities were a small number of officers in the service of the Crown, and of individuals without family and patrimony, who, in spite of their original habits, sought a livelihood by following some employment.

The social superiority of the dominant race rooted itself firmly in the localities inhabited by them, and passed, as has been already remarked, from the cities to the rural districts.* By degrees, also, it came to pass that the latter drew off from the former the upper portion of their population, who, in order to raise themselves still higher, and to mix with the conquerors, imitated, as far as they were able, their mode of life. This high native class, with the exception of that part of it which followed the ecclesiastical profession, was in some measure lost to all purposes of civilization; it tended more and more towards the habits of barbarism, idleness, and turbulence, the abuse of power, the hatred of all discipline and restraint. Advancement in art and wealth was no longer possible in the cities of Gaul; all that could be done was to collect and preserve what remained of them. The labour of this preservation, the pledge of a future civilization, was from this moment the common task of the clergy, and the middle and inferior classes of the municipal inhabitants.

* *Histoire de la Civilisation en France*, by M. Guizot, third edit., t. iv., p. 224

While Barbarism was thus occupying or usurping all the vantage points of the social state, and civil life in the intermediate classes was arrested in its progress, and sinking gradually to the lowest condition, even to that of personal servitude, an ameliorating movement, already commenced before the fall of the empire, still continued, and declared itself more and more loudly. The dogma of a common brotherhood in the eyes of God, and of one sole redemption for all mankind, preached by the Church to the faithful of every race, touched the heart and awakened the mind in favour of the slave, and, in consequence, enfranchisements became more frequent, or a treatment more humane was adopted on the part of the masters, whether Gauls or Germans by origin. The latter, moreover, had imported from their country, where the mode of life was simple and without luxury, usages favourable to a modified slavery. The rich barbarian was waited upon by free persons—by the children of his relatives, his clients, and his friends; the tendency of his national manners, different from that of the Roman, induced him to send the slave out of his house, and to establish him as a labourer or artisan on some portion of land to which he then became permanently attached, and the destination of which he followed, whether it were inherited or sold.*

* See the report of M. Michelet on the competition for the prize of history, having as its subject this question: *Causes qui ont amené l'Abolition de l'Esclavage*. (Mémoires de l'Académie

The imitation of German manners by the Gallo-Roman nobles made them also transfer many of their domestic slaves from the city to the country, and from the service of the family to the labour of the field. Thus domiciled (*casés*), as the acts of the eighth and ninth centuries express themselves,* their condition became analogous, though still always inferior, to that of the German *Lidus* on the one hand, on the other, to that of the Roman *colonus*.

Domestic slavery made the man a chattel, a mere piece of moveable property. The slave, settled on a spot of land, from that time entered into the category of real property. At the same time that this last class, which properly bore the name of serfs, was increased at the expense of the first, the classes of the *coloni* and *Lidi* would naturally multiply simultaneously, by the very casualties of ruin and adverse circumstances which, at a period of incessant commotions, injured the condition of the freemen. Moreover, these two classes, which were separated not only by legal distinctions, but also by a difference of origin, were tending towards a mutual approximation, and a gradual blending together of their essential characteristics. This, together with the approximation

des Sciences morales et politiques, t. iii., p. 655)—See also the Dissertations annexed by M. Pardessus to his *Recueil des Textes de la Loi Salique*, dissertations iv. and vii.

* See the new edition of the Glossary of Du Cange, by M. Henschel, t. ii., p. 214, on the word "Casati."

which had taken place between the Gauls and the Germans in the high ranks of society, was the first step towards the fusion of races, which was destined, after five centuries, to produce a new nation.

In the very heart of the Barbarian society, the class of small proprietors, which had originally formed its strength and glory, decreased, and finally became extinct by sinking into vassalage, or a state of still more ignoble dependence, which partook more or less of the character of actual servitude. By an opposite movement, the slaves domiciled on some portion of an estate, and incorporated with it as a fixture, raised themselves by means of this fixity of position, and of an indulgence which after a time grew into a right, to a condition nearly approaching the position of the *Lidus* and the *colonus*, who were themselves become almost identical under different names. At this point the freeman depressed towards servitude met the slave who had reached a sort of half liberty. Thus, through the whole extent of Gaul, was formed a vast body of agricultural labourers and rural artisans, whose lot, though never uniform, was brought more and more to a level of equality; and the creative wants of society produced a new sphere of industry in the country, while the cities remained stationary, or sank more and more into decay. This gradual and imperceptible revolution was connected in its onward march with those extensive clearances of the vast forest and waste lands which had passed

from the imperial treasury into the possession of the Frankish kings, and of which a large part had been made over by those kings as property to the Church, and in beneficial tenure to their adherents.

The Church initiated the revival of this movement of life and progress; the depository of the noblest remains of ancient civilization she did not think it beneath her to collect, together with science and the intellectual arts, the traditional knowledge of mechanical and agricultural processes. An abbey was not merely a place of prayer and meditation, it was also an asylum opened against the encroachments of barbarism under every form. This retreat of learning and knowledge fostered beneath its shelter workshops of every kind, and its dependencies formed what we call at the present day a model farm; in it might be seen examples of industry and activity for the labourer, the workman, the proprietor. It was, to all appearance, the school where information was obtained by those of the dominant race, who were prompted by a knowledge of their own interest to make upon their own domains efforts in cultivation and colonization—two things in which the first at that time implied the necessity of the second.*

* See the paper of M. Mignet on this question, *Comment l'ancienne Germanie est entrée dans la Société civilisée de l'Europe occidentale*. Mémoires de l'Académie des Sciences morales et politiques, t. iii., p. 673.

On every large estate where improvement flourished, the cabins of those employed, *Lidi, coloni* or slaves, grouped as necessity or convenience suggested, were multiplied and peopled more numerous, till they assumed the form of a hamlet. When these hamlets were situated in a favourable position, by a water-course or a junction of roads, they continued to increase till they became villages, where all the trades necessary for the common purposes of life were carried on under the same protection. The building of a church soon raised the village to the rank of a parish; and, as a consequence, the new parish took its place among the rural *circonscriptions*.* Its inhabitants, both serfs and demi-serfs, being attached to the same domain, found themselves bound to one another by neighbourhood and community of interests; thence sprung, altogether spontaneously, under the sanction of the *intendant*, joined to that of the priest, rude outlines of a municipal organization, in which the church became the depository of the acts which, in accordance with the Roman law, were inscribed on the registers of the city. It is in this way that beyond the towns, the cities, and the boroughs, where the remains of the old social condition lingered in an increasing state of degradation, elements of future improvement were formed by the value given to large districts of uncultivated land, by

* See three dissertations of M. le Comte Beugnot on the *Municipalités rurales en France*. *Revue Française*, Août, Septembre, et Octobre, 1838.

the multiplication of colonies of labourers and artisans, and by the gradual modification of the ancient state of slavery into bondage on the soil.

This modification, already considerably advanced in the ninth century, was completed in the course of the tenth. At that period, the last class of the Gallo-Frankish society disappeared—viz., that of persons held as chattels, bought, exchanged, transferred from one place to another, like any other kind of moveable goods. The slave now belonged to the soil rather than to the person; his service, hitherto arbitrary, was changed into customary dues and regulated employment; he had a settled abode, and, in consequence, a right of possession in the soil on which he was dependent.* This is the earliest form in which we distinctly trace the first impress of the modern world upon the civil state. The word *serf* henceforward took its definite meaning; it became the generic name of a mixed condition of servitude and freedom, in which we find blended together the states of the *colonus* and *Lidus*—two names which occur less and less frequently in the tenth century, till they entirely disappear. This century, the point to which all the social efforts of the four preceding ones which had elapsed since the Frankish conquest had been tending, saw the intestine struggle between the Roman and German manners

* See the paper of MM Wallon and Yanoské *Sur les Causes qui ont amené l'Abolition de l'Esclavage*—a work approved in 1839 by the Academy of Moral and Political Sciences.

brought to a conclusion by an important revolution. The latter definitively prevailed, and from their triumph arose the feudal system ; that is to say, a new form of the state, a new constitution of property and domestic life, a parcelling out of the sovereignty and jurisdiction, all the public powers transformed into demesnil privileges, the idea of nobility devoted to the profession of arms, and that of ignobility to industry and labour.

By a remarkable coincidence, the complete establishment of this system is the epoch when the distinction of races terminates in Frankish Gaul—when all the legal consequences of diversity of origin between Barbarians and Romans, conquerors and subjects, disappear. The law ceases to be personal, and becomes local ; the German codes and the Roman code itself are replaced by custom ; it is the territory and not the descent which distinguishes the inhabitant of the Gallic soil ; finally, instead of national distinctions, one mixed population appears, to which the historian is able henceforward to give the name of *French*. This new form of society, the offspring of the preceding one, detached itself forcibly from it by its form and spirit ; its character was a tendency to endless subdivision in its political relations, and to simplification in its social relations. On the one side, the seignories, states formed in the bosom of the State, were multiplied ; on the other, there was an attempt, unintermitting and in some sort systematic, to reduce all the ranks to two

classes : the first, free, idle, altogether military, having the right of government, administration, and justice over their fiefs, whether large or small ; the second, bound to obedience and labour, subject with more or less rigour, short of slavery, to the restraints of dependence on an individual.* If human affairs always reached the point marked out for them by logical inference, every trace of civil life would have become extinct by the invasion of a system which had for its type demesial servitude. But that system, originated in the rural districts under the influence of German customs, encountered in the cities, where the tradition of the Roman customs still obscurely lingered, a degree of insuperable repugnance, and a power which at a later period by its own reaction burst out into revolutions.

The long social crisis, which was terminated by the introduction of feudality, changed, in all the affairs of civil and political government, precarious enjoyment into permanent possession ; revenues of an estate into property ; delegated power into personal prerogative ;

* Lex humana duas indicit conditiones
Nobilis et servus simili non lege tenentur.

* * * * *

Hi bellatores, tutores ecclesiarum,
Defendunt vulgi majores atque minores,
Cunctos et sese parili sic more tuentur.
Altera servorum divisio conditionum,
Hoc genus afflictum nil possidet absque labore. . .

(*Adalberonis carmen ad Robertum regem,*
apud Script. rer. gall. et francic., t. x , p. 69.)

life interest into hereditary right. It was the case with dignities and offices, as well as with possessions of every kind; and the rule which applied to the tenure of the noble held good at the same time with that of the serf. According to the original and very judicious remark of an able critic of the ancient documents of our history, "The serf maintained against his master the same struggle that was maintained by the vassal against his seigneur, and by the seigneurs against the king."* However great might be the difference of position and power there was among those various parties, one and the same attempt followed by similar success.

In the eighth century, the serfs of the soil could be dispersed arbitrarily over the domain, transferred from one portion of land to another, united in the same domicile (*case*), or separated from one another, at the convenience of the master, without regard to the ties of relationship, if it existed between them. Two centuries later we find them all domiciled by families; their cabin, and the ground contiguous to it, had become an inheritance. That inheritance, burdened with a quit-rent and the duty of service, could be

* M. Guérard, Prolegomena to the Cartulary of the Abbey of Saint-Père de Chartres. *Collection des Cartulaires de France*, t. i., p. xli. See the great work of the same author on *La Condition des Personnes et des Terres, depuis les Invasions des Barbares jusqu'à l'Institution des Communes*—a work placed at the commencement of the edition of the *Polyptique* of Irminon, Abbé of Saint-Germain-des-Prés.

neither bequeathed nor sold; and the family of the serf was restricted by law to marry only in families of the same condition who were attached to the same domain. The rights of *mainmorte* and of *formariage* were reserved to the lord as a guarantee to counter-balance the right of property permitted to the serf. Detestable as they appear to us, they had not only their legal ground, but also their usefulness in favour of future progress. It was under their influence that the isolation of the servile condition ceased in the rural districts, replaced by the spirit of domestic life and association; and that, under the shadow of the baronial castle, agricultural bodies were formed which were destined to be the base of great civil communities.

In reading with attention the charters and other documents of history, we are able to trace from the commencement of the ninth century to the end of the tenth the successive results of the prescriptive right in the soil in the hands of those who cultivated it; we observe the right of the serf springing up on his plot of ground, then extending itself and becoming more determined in each succeeding generation. To this change, which gradually ameliorates the condition of the labourers and rural artisans, is added at the same period the acceleration of the tendency which for three centuries had been changing the face of the country districts by the formation of new villages, the enlargement of old ones, and the building of parochial

churches—the centres of new *circonscriptions* at once political and ecclesiastical. External, and entirely casual circumstances contributed to this progress: the devastations of the Normans, and the fear which they inspired, caused the inhabited parts of the large domains to be inclosed with walls of defence. On the one hand, castles were multiplied, on the other, the number of fortified towns was increased.

The labouring and dependent population crowded into these places of safety, whose inhabitants then passed from that which is properly called rural life to the commencement, as yet more or less unpolished, of the urban life. The purely demesial system was changed by the mixture of certain elements having the character of public institutions. For the purposes of police, and judgment of petty offences, the villagers themselves served as assistants and assessors to the *intendant*; and this officer, who was taken from among them and was one of their own class, became a kind of municipal magistrate. In this way the first elements of social life in these small infant societies sprung from the right of property, joined to the spirit of association; the instinct of prosperity, always alive, soon led them to advance further. From the commencement of the eleventh century, the inhabitants of the towns and boroughs—the *villains*, as they were then called—were no longer satisfied with their condition as dependent proprietors, they aspired to something more; a new want—that of ridding themselves

of burdensome obligations, of enfranchising their land, and, together with that, the persons on it—opened before them a new career of labours and struggles.

Among the opinions which formed at that period what may be considered the source from which the social ideas were drawn, there existed, with regard to the liberty of the noble, which was entirely a matter of privilege, derived from conquest and German usages, the idea of another kind of liberty, conformable to natural right, within the reach of all, equal to all, to which may be applied, after its origin, the name of Roman freedom. Though the name might be out of use,* the thing itself—that is to say, the civil state of the persons inhabiting the ancient municipal cities—had not yet perished. However much threatened it had been by the continually-increasing pressure of the feudal institutions, it was still found in those cities, more or less untouched, and together with it, as a sign of its durability, the old name of citizen. From hence the cities of recent foundation took the example of the municipal community, its regulations and its practices; and thither the ambition of men escaped from servitude, and, seeing themselves arrived halfway

* It was not used in the tenth century, except in the language of ecclesiastical law, in which the words *Libertas Romana* mean the immunity by means of which an abbey, with its domains, was exempted from the ordinary jurisdiction, and held solely of the Church of Rome.

towards freedom, turned for encouragement and hope.

What, then, was the power and nature of the municipal government in the Gallo-Frankish cities in the tenth century? The solution of this problem is one of the fundamental objects of our history; but it cannot be given at present with accuracy and completeness. One point is beyond doubt, namely, that at this period the urban population joined to its immemorial civil liberty an internal administration, which, since the Roman times and from different causes, had undergone great changes. These modifications, which were very various, and, so to speak, capricious in their forms, had everywhere produced in the main similar results. The hereditary and aristocratic government of the *curie* had been changed by a series of progressive alterations into an elective and, in different degrees, a popular government. The jurisdiction of the municipal officers much exceeded its ancient limits; it had considerably enlarged its authority in civil and criminal matters. There no longer existed of its own right an intermediate corporation between the college of the magistrates, and the entire body of the citizens; all the powers of administration were uniformly derived from public delegation, and their duration was reduced in general to the term of one year. Lastly, in consequence of the great influence which the dignitaries of the Church possessed from the Roman period over the internal affairs of the cities, the

Defenseur, the chief magistrate, had fallen into dependence on the bishop; he became in his estimation a subordinate officer, or had disappeared before him—a change effected without trouble by the mere popularity of the episcopate; and the natural tendency of this change was to constitute a kind of municipal autocracy, to the detriment of civil and political liberty.*

A certain confusion crept imperceptibly into the ideas entertained upon the source of urban authority and jurisdiction, and it was no longer distinctly seen from whom they emanated, whether from the people or the bishop. A silent struggle commenced from that time between the two principles of a free municipality and of an episcopal preponderance; then stepped in feudality, and lent all its influence to this last principle. It gave a new form to the temporal power of the bishops; it applied the institutions and all the privileges of the demesne seigniorship to the civic patronage, now degenerated into a quasi-sovereignty. The government of the towns, in spite of its origin, was gradually modelled on the system of the courts and the castles. The leading citizens became hereditary vassals of the cathedral church, and in that

* The qualification of *Seigneur, Dominus, Domnus*, was given to bishops in their cities long before the feudal times. An act passed in 804 by the *Curie* of Angers presents as synonyms the titles of *Defensor* and of *Vice-domus*; we first read, *Adstante viro laudabile Wifredo defensore, vel cuncta curia, . . .* and at the end, *Signum Wifredo, vice-domo*. See Martène, *Amplissima Collectio*, pp. 58 and 59.

character they oppressed the municipality, or usurped all its powers. The companies of professions and trades, unduly burdened with dues and compulsory service, fell into a state of dependence almost servile. In this way the condition imposed upon the industrial classes on the domains of the rich, and in the new towns which had not been enfranchised by a positive concession, tended by the very course of circumstances to become universal, and to be imposed upon the inhabitants, hitherto free, of the ancient municipal cities.

There were some cities where an undivided and permanent supremacy of the bishop as seigneur was established; there were others in which the feudal government was twofold, and was divided between the ecclesiastical power and that of the officer of the king, count or viscount. In the cities, which were the theatre, more or less stormy, of this rivalry, the bishop, perceiving the necessity of a political alliance, separated himself less from the free municipality, or threw himself back upon it. He lent it his support against the encroachments of the lay powers—he became the guardian of the elective principle; and this co-operation, if it did not arrest the progress of the decay of the municipal power, became at a later period a means of civil reaction and constitutional reform. The tenth and following centuries mark the lowest degree of degradation and oppression in the urban population; it was, if not the most unfortunate

class, certainly the one which could endure with least resignation its new social condition, for it had never yet been either slave or serf: it had hereditary liberties, and the pride which such recollections give. The destruction of these institutions, which was in no part complete, did not take place without resistance; and when the documents of our history are sifted to the bottom, there may be found in them, prior to the twelfth century, the traces of a civic struggle against the feudal powers. It was during this period of troubles and of a return to a sort of barbarism that the fusion into one class and one spirit was effected between the native and the German portion of the inhabitants of the Gallic cities, and that a common law was formed between them, founded on municipal customs, composed in different proportions, according to the territorial zones, of the elements of Roman tradition, and of the remains of the ancient barbarian codes.

This crisis in the condition of the urban society—that living remnant of the Roman world—was not confined to Gaul; it took place in Italy, under far better auspices for the cities of that country, which were larger, richer, and situated nearer together. It was there that, during the latter half of the eleventh century, favoured by the quarrel between the priesthood and the empire, the revolutionary movement broke out, which, by degrees or by a reaction, revived under new shapes and with a fresh degree of energy the spirit of municipal independence. On the foundation

of their ancient Roman institutions, more or less altered, the cities of Tuscany and Lombardy constructed a model of political organization, in which the greatest possible development of civil liberty was joined to an absolute right of jurisdiction, to the military powers, to all the prerogatives of the feudal seigniories. They created magistrates, who were at once judges, governors, and generals; they held meetings, exercising for the time sovereign authority, in which peace and war were decided upon. Their elective rulers took the name of Consuls.*

The movement which matured and spread these republican constitutions was not long in penetrating into Gaul across the Alps, and along the sea-coast. From the commencement of the twelfth century, the new form of municipal government, the consulate, is seen making its appearance successively in the cities which had the most intimate commercial relations with those of Italy, or the closest affinity with them in manners, material condition—in all the circumstances, in short, of civil and political life. From the principal cities where it was established, either by actual force or by mutual agreement between the citizens and the seigneur, the consular constitution extended by degrees to the cities of less importance. That kind of propagandism embraced in the South the third part of France as it now exists; while within

* See the *Considérations sur l'Histoire de France*, under the head of "*Récits des Temps Mérovingiens*," chap. vi.

a different zone in the north and the centre of the country, the same impulse of the popular mind, the same social causes, produced entirely different effects.

At the opposite extremity of the country, at the points which could not be reached by Italian influence, a second form of constitution, as recent and energetic, but less complete than the other, the *commune jurée*, arose spontaneously by the application to the municipal government of a species of association, the use of which was derived from German customs.* This form of free municipality, adapted to the social state, to the degree of civilization, and to the mixed traditions of northern Gaul, spread itself from north to south, at the same time that the consular form of government spread from south to north. On both sides, in spite of the difference of their proceedings and results, there was the same spirit—the spirit of action, of civic devotion, and creative inspiration. The two grand forms of municipal constitution—the *commune*, properly so called,† and the city governed by consuls—held equally as a principle the right of insurrection, more or less violent, more or less restrained; and, as an end, the equality of

* See the *Considérations sur l'Histoire de France*, chap. vi., p. 164 and following, in 8vo, 1852

† This word had not such a general meaning in the Middle Ages as we give it at present; it designated in a special manner the municipality constituted by association and mutual assurance under the pledge of an oath. See the *Considérations sur l'Histoire de France*, chap. vi., p. 174 and following.

rights, and the rehabilitation of labour. By the one or the other the existence of the urban state was not only restored, but renewed: the cities obtained the guarantee of a twofold state of liberty; they became *personnes juridiques* according to the ancient civil law, and *personnes juridiques* according to the feudal law—that is to say, they had not merely the power of controlling the interests of the neighbourhood, that of possession and alienation, but they obtained the same right of sovereignty within the circuit of their walls as the seigneurs exercised on their domains.

The two streams of municipal revolution, which advanced towards one another, did not meet at first. There existed between them an intermediate zone, where the shock made itself felt without going so far as a complete reform, as a constitutional renovation. In the central parts of Gaul, some ancient municipal cities of importance freed themselves from the seigneurial yoke by successive efforts, which secured to them a government more or less free, more or less democratic, but which had nothing of the character either of the *commune jurée* of the north, or of the consulate of the southern cities. Some reproduced, in the number of their elective magistrates, combinations analogous to those which were presented by the system of the Gallo-Roman *curies*; others aimed at an uniform method in their constitution, the government of four persons chosen each year by the majority of the citizens, and exercising the administrative and ju-

dicial power either alone or with the assistance of a certain number of notables.* In this arrangement were found the guarantees of civil and political liberty; but although these cities, less bold in point of innovation, might have succeeded in freeing the principle of popular election from its trammels, their municipal independence remained in many respects feeble and undecided; the energy and glory belonged to the new constitutions, to the consular government, and the *commune jurée*, the highest expression of the liberal instincts of the period.

This complete revolution, by which some ancient cities remained uninfluenced, penetrated under one or other of these two forms into many cities whose foundation was subsequent to the time of the Romans. Sometimes, indeed, when the city was situated close to an important borough which had sprung up under its walls, it came to pass that it was in the borough alone and not in the city that either the consulate or the government of the *commune jurée* was established.† Then, as always, the spirit of renovation blew where

* The ten *prud'hommes* of Orléans and Chartres seem a reminiscence of the part which the ten first senators *Decemprimi*, *Decaproti*, acted in the Roman municipality. The government of four *prud'hommes* which existed at Bourges and Tours enjoyed great popularity over a line of country stretching from the east to the west through Touraine, Berry, the Nivernais, Burgundy, and Franche-Comté.

† For examples of the first, Périgueux and Puy-Saint-Front may be cited; of the second, Tours and Châteauneuf.

it listed; its course seemed well ordered in some points, and in others capricious: here it met with unexpected encouragements, there it was arrested by unlooked-for obstacles. The chances were various, and the success unequal, in this great struggle of the *bourgeois* against the seigneurs; and not only was the amount of guarantees seized by force or obtained by good will not the same everywhere, but even in cities under the same political forms there were different degrees of liberty and independence. It may be said that the series of the municipal revolutions of the twelfth century offers something analogous to the movement which in our own times has spread the constitutional system through so many countries.* Imitation played a considerable part in it; war and peace, menace and concession, interest and generosity, bore their part in the final event. Some at the first outbreak obtained their object, others almost within reach of it found themselves carried back; there were great victories and great failures, and frequently the most noble efforts, and a will ardent and devoted, displayed themselves without success, or terminated in nothing of importance.†

Above the almost infinite variety of changes which were effected during the twelfth century in the government of the cities, whether great or small,

* See the *Lettres sur l'Histoire de France*, Lettre xiv

† See the history of the *commune* of Vézelay, *Lettres sur l'Histoire de France*, Lettres xxii., xxiii., et xxiv.

ancient or modern, there floats, if I may use the expression, one particular idea, the idea of reducing under the public government of the city all that had fallen by abuse, or continued from custom, under the private government of the domain. This suggestive idea could not be confined within the limits of a municipal revolution; it contained the germ of a series of revolutions destined to overthrow feudal society from top to bottom, and to efface even its least vestiges. We here reach the source of the social state of modern times; it is in the enfranchised, or rather regenerated cities, that the first manifestations of its character appear under a great variety of forms, more or less free, more or less complete. Institutions were there developed and preserved in an isolated form, which were one day destined to be no longer local, but to be recognised by the political and civil law of the country. By the charters of the communes, the charters of customs, and the municipal statutes, the written law resumes its supremacy; the administration, whose exercise had been lost, springs into vigour again in the cities; and its experiences of every kind, which are daily repeated in a multitude of different places, serve as an example and lesson to the State. The *bourgeoisie*, a new nation, whose usages are civil equality and unfettered industry, raises itself up between the nobility and serfdom, and for ever destroys the social duality of the early feudal times. Its innovating instincts, its activity, the

capital which it accumulates, are forces which react in a thousand ways against the power of the possessors of the soil; and, as in the beginnings of all civilization, the movement recommences with the urban life.

The action of the cities upon the rural districts is one of the great social facts of the twelfth and thirteenth centuries; municipal liberty, in all its stages, flowed down from one to the other, either by the influence of example and the contagion of ideas, or by the effect of a political patronage or a territorial incorporation. Not only did the populous towns aspire to the immunities and privileges of the fortified cities, but, in some places in the north, the new urban constitution, the *commune jurée*, was applied for good or evil, to single villages, or to the associated inhabitants of many villages.* The principles of natural right which, joined to the recollections of the ancient civil liberty, had inspired the *bourgeois* classes with the conception of their great revolution, descended into the agricultural classes, and there gained double force from their anguish of heart, the hardships of their serfdom, and the detestation of their territorial dependence. Having up to this time entertained scarcely a hope beyond that of being dis-

* See the Letters of Philippe-Auguste under the dates of 1184, 1185, 1186, 1196, 1205, 1216, and 1221. (*Becueil des Ordonn. des Rois de France*, t. XI., p. 231, 237, 245, 277, 291, 308, et 315)

charged from the most onerous services, the peasants, man after man, family after family, now raised themselves to the ideas and the desires of another rank; they began to demand their enfranchisement by whole seignories and districts, and to league themselves together to obtain it. That cry, appealing to the instinctive consciousness of original equality, *We are men as well as they*,* resounded through the hamlets, and rang in the ears of the seigneurs, enlightening while it menaced them. Traits both of blind fury and touching moderation marked this new crisis in the condition of the country people: a multitude of serfs, déserting their holdings, abandoned themselves in gangs to a life of vagrancy and pillage; others, calm and determined, bargained for their liberty, offering to give in return for it, say the charters, whatever price might be set upon it.† The fear of dangerous resistance, the

* Nus sumes homes cum il sunt,
 Tex membres avum cum il unt,
 Et altresì granz cors avum,
 Et altretant sofrir poum;
 Ne nus faut fors cuer sulement

(Wace, *Roman de Rou*, t. i, p. 306)

† Eodem anno (1183) in provinciâ Bituricensi, interfecta sunt septem millia Cotarellorum . . . et eo amplius, ab incolis illius terræ in unum contra Dei inimicos confæderatis. Isti terram regis vastando prædas ducebant. . . . (Rigordus, *De gestis Philippi Augusti*, apud Script. rer. gallic. et francic., t. xvii., p. 11.)—Omnes homines nostri de corpore, tam masculi quam femine, qui habitant in terrâ nostrâ de Stempensi, et

spirit of justice and interest, induced the masters of the soil to treat by pecuniary transactions for their rights of every description and their immemorial power. But these concessions, however large they might be, could not produce a complete, a general change. The obstacles were immense. The whole system of the landed property had to be destroyed and replaced. There was not in this instance the speedy and sympathetic action of revolution like that which favoured the revival of the municipal cities; the work was long, it required for its accomplishment a period of no less than six centuries.

illi etiam qui de eâ tenent et possident, ubicunque comorantes, astrinxerunt se nobis, per sacramentum a singulis sigillatim corporaliter prestitum et receptum, quod si servitutis opprobrium ab eis tolleremus, libertatis beneficium eis et filius tam natis quam nascituris impendentes, quascumque redbibitiones, et sibi et hæredibus ipsorum et terræ nostræ vellemus imponere, ipsi gratanter reciperent firmiter observarent, et in nullo penitus contrairent (*Charte du Chapitre de Sainte-Croix d'Orléans*, confirmée par lettres de Louis VIII. [1224], *Recueil des Ordonn. des Rois de France*, t. XI, p 322)